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

The Future of Law, Religion, and International Affairs
“America’s Love Affair with Religion and Foreign Affairs”
T. Jeremy Gunn, Director
American Civil Liberties Union Program on Freedom of Religion and Belief
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On July 6 of 1898, the president of the United States, William McKinley, issued a Thanksgiving Proclamation. In this Thanksgiving Proclamation, which was delivered in the midst of the Spanish-American War, it came out after the United States had defeated the Spanish Navy in Manila Bay after the United States had invaded Cuba and had won several victories but was still fighting. While the United States was fighting after having invaded the Philippines and after the United States had seized Guam, President McKinley thought that it was, in the midst of these military actions, appropriate to have a reflective interlude. And he said, in conjunction with his Thanksgiving Proclamation, "It is fitting that we should pause and put aside for the moment the feeling of exaltation that too naturally attends great deeds wrought by our countrymen in our country's cause. We should reverently bow before the throne of divine grace and give devout praise to God who holdeth the nations in the hollow of his hands and worketh upon them the marvels of His high will and who has thus far vouchsafed to us the light of His face and led our brave soldiers to victory."

President McKinley went on “to offer Thanksgiving to Almighty God, who in His inscrutable ways, has watched over our cause and brought nearer the success of the right and the attainment of just and honorable peace.” This in blessing of the American-Imperial War and the Spanish-American War.

The day after issuing the Thanksgiving Proclamation, President McKinley signed papers unilaterally annexing the Hawaiian Islands to the United States without any consultation with the Hawaiian people. And so a just and honorable peace continued.

The following Sunday, President McKinley went to church, and he heard a sermon by the Reverend Dr. Frank Bristol of the Methodist Episcopal Church in Washington, D.C. The Reverend Bristol was very much caught in the spirit of the times, and he said, from the pulpit, "If God ever had a peculiar people, He has them now. They are the product of all the struggles and aspirations of the past. The men who stand before Santiago in Cuba with the ongoing battle are not the product of a day or a century. They are the rich, consummate flower of the ages; the highest evolution of history." It's when evolution was a good word. "They represent a manhood
that has climbed century by century up the steps of light and liberty and now stands in sight of
the glorified summits of universal freedom and the universal brotherhood of man," also in praise
of the war. He went on, "Do you look toward the successful fight in Manila and Santiago and
say, 'Superior guns did this'? I say superior men stood behind the guns. Superior schools stood
behind the men. The superior religion stood behind the schools. And God the Supreme stood
behind the religion."

Now, what is this religion he is speaking of? The people who the United States was fighting at
that time were Spaniards, members of, for the most part, the Roman Catholic religion. So what
religion has prevailed, and which religion is God standing behind?

He went on to conclude, "Thanks to all those sons of God who, in offices of state and on fields of
battle, have caught the spirit of the heroic Christ and have pledged their fortunes, their sacred
honor, and their lives to realize the kingdom of righteousness and peace among men."

Now, what should the people in the audience have said to the Reverend Bristol? Should there
have been exclamations that this is blasphemy, that somehow the good reverend has confused the
United States with God and has confused a political decision to go to war with God's divine will?

Well, a reporter who attended the service said, and I quote, "At times, Dr. Bristol's hearers were
so thoroughly aroused by his patriotic utterances that ripples of spontaneous applause swept over
the congregation."

Now, this was during the War of 1898, during the Spanish-American War. Have things
changed? In 1955, Will Herberg – so we go from William McKinley to Will Herberg – said the
following, "Religion, as American citizens understand it, is not something that makes for
humility or the uneasy conscience. It is something that reassures him about the essential
rightness of everything American: his nation, his culture and himself. Something that validates
his goals and his ideals instead of calling them into question. Something that enhances his self-
regard instead of challenging it. Something that feeds his self-sufficiency instead of shattering
it. Something that offers him salvation on easy terms instead of demanding repentance with a
broken heart."

Now, Will Herberg was speaking of the 1950s and speaking specifically of the Eisenhower
administration. But the words that he said would fall equally – would be equally applicable to
the Spanish-American War—and would seem to fit, perhaps, wars that have been fought since
that time.

We have been hearing, during the course of the last two days, messages about the role of the
prophetic. And among the many different roles the prophetic can take is one of them can be – or
as understood to be -- something like predicting the future, sort of the crystal ball, tea leaves
version of prophesy.

There is another form of prophesy that we think of as calling people to repentance and calling
them to think more seriously about the connections that they're making, that questions arrogance
that can be done in the name of God.
Now, I'm going to take an interlude from what I've been saying and go on to a different direction. I will come back to the theme that I start with, President McKinley.

The United States, among countries in the world, has relatively few domestic laws about religion. In many ways, from the foreign perspective, the United States thinks upon religion as something like the way that it thinks about guns and firearms. It's something that's good, it's something that should be unregulated, and the answer to problems of it is to have more of it.

If we look at the major issues in the world on the area of religion, so from a comparative law perspective, the issues that I would rate sort of in the order of priority, but it will vary from country to country, the United States does quite well on them. The first one that I would identify the most problematic issue across the world is registration of religious organizations. In the United States it's quite easy to register a church, regardless of which state you are in. In fact, often state laws will have a variety of laws to facilitate the registration of religion. In other countries, that typically is a process that must go through some kind of government review before religion can be registered. In the United States, it is a ministerial act. It is one that is almost automatic.

For tax exempt status for religious organizations, in the United States also it is automatic. If you declare yourself to be a religious organization, the Internal Revenue Service recognizes it immediately, subject to subsequent revocation.

Another issue that is problematic in the world is the issue of donations to religious groups. Again, in the United States we don't even think about this as an issue because donations are not only not regulated by state but they are even tax deductible.

Other issues that cause problems and do cause problems in the United States are zoning and land use. Can you build a church, can you build a mosque on a particular site? And on those issues we do have lawsuits. But the United States Congress then enacts a law, RILUPA, designed to facilitate the erection of religious sites. So the laws in the United States are designed less to regulate or restrict religion as to facilitate religious practice. The United States virtually stands alone in this.

Another issue is religious activities. What kinds of religious activities are permitted and not? Well, in the United States the U.S. Congress enacted the Religious Freedom Restoration Act, designed to help, once again, facilitate religion and religious practice. And there are, of course, problems with its constitutionality, but that is another issue.

But again, when we come to issues of religion domestically, the United States, first, has few laws; and secondly, those laws the United States does have are designed to facilitate the practice of religion.

But if we go to the issue internationally, issues of religion internationally, most countries have no laws and have no attempt to have an effect on the issue of religion internationally.
The United States, along with several other countries, of course, has been involved in international human rights treaties and international human rights declarations to promote freedom of religion and belief. So, the United States played a role in the drafting of the International Declaration on Human Rights, including its Article 18. The United States played a role in the International Covenant on Civil and Political Rights in enacting that. The United States played an important role in the drafting of the 1981 Declaration on Intolerance of the United Nations. The United States played an important role in the drafting of the Helsinki Final Act of 1975. The United States played a major role in the Vienna Declaration for the Conference on Security and Cooperation in Europe. So the United States, like many other countries, has been involved in international movements and international efforts to promote freedom of religion and belief. Some who are more skeptical of the United States will say, "Well, yes, sometimes the United States participates in the drafting process, but the United States certainly has a difficulty when it comes to the ratification process." And sometimes, when the United States – well, often when the United States ratifies international human rights treaties, it does so only after introducing what is in State Department parlance, providing RUDs, which are reservations, understandings and declarations, which often means that the United States qualifies its ratification of the human rights treaty to say that anything that is in this treaty that might be construed as being against U.S. law is hereby null and void.

Whereas the United States has few laws on religion domestically, the United States does like to enact laws related to religion internationally. And the United States, going from one extreme on its domestic laws of not having laws, to the other extreme—or relatively extreme—in international laws. So, the United States has enacted several laws designed to promote freedom of religion internationally.

I'm just skipping over some of these. In 1974, one of the most famous was the Jackson-Vanik amendment to the Trade Act, which was really designed to help Soviet Jews immigrate from the Soviet Union, though it was targeted to all non-market economies, meaning that the United States differentiated between those who would not let people immigrate who had capitalist systems and those who would not be permitted to immigrate who were under socialist or communist systems.

In 1977, the U.S. Congress passed a law requiring the State Department to issue annual reports on human rights practices of other countries, including practices related to religion, and those reports started issuing in 1979 and have been going on for almost 40 years.

In 1998, the most famous of the laws where the United States attempted to promote freedom of religion internationally was the International Religious Freedom Act. The United States Congress was able to adopt that law virtually unanimously, at a time when there was a great deal of controversy in the United States.

Of course, adopting laws on religion in controversial times is not unique to the International Religious Freedom Act. The original Columbus Day celebration, which is where we first got our Pledge of Allegiance, also was adopted unanimously by our Congress in 1892. So, religion is something that does bring us Americans together.
But now, let's go back and start looking at where I left off with President McKinley and his proclamation giving thanks to God for military victories, and Reverend Bristol for identifying the Spirit of Christ behind America's victories.

The idea of issuing presidential proclamations on issues of foreign policy did not begin with President McKinley. Indeed, even James Madison issued some, which he later apologized for, having issued in regard to the War of 1812. But they had been issued before, and they were issued subsequently.

But in 1948, the U.S. Congress decided to get involved, so these were not just presidential proclamations, but these were now laws, in one sense, a joint resolution, but has the effect of law. Setting aside days of thanksgiving, days of prayer and adoration.

In 1948, in response to one such declaration, President Harry Truman issued the following day of prayer and adoration statement. Now, I would think that if I read this to you without identifying in advance that it was President Truman, you probably would never have guessed who the president was who issued this, and think of different presidents in whom you might understand these words. But listen carefully to them, if you would. Speaking of the prayer, "We must always make spiritual values our main line of defense." We're talking here about [defense against] communism, “our main line of defense.” “Freedom of religion as well as the freedom of security of nations is seriously threatened by antireligious forces. It is therefore necessary that all loyal American citizens join together to stem this tide of these evil forces by girding ourselves with the sword of faith and the armor of truth."

"Loyal Americans," he says, "will use the sword of faith." Who are the unloyal Americans? Apparently those who do not use the sword of faith.

"Because Christians in other lands are being persecuted," President Truman went on to say, "we in the United States, who still enjoy full religious liberty, should commemorate this day in a solemn and sacred manner." (This is Good Friday that we're celebrating in a solid, sacred matter. I forgot to mention that.) "For us, Good Friday should be a day of prayer and adoration, of sorrow and love, of forgiveness and assistance."

This is the president of the United States speaking on Good Friday to tell American people how to worship and what to worship and that this is the first line of defense against communism. Now, an editorial writer for the Jackson Citizen Patriot, which is in Michigan, a person named Carl Saunders, heard President Truman's statement and thought that it would be a good idea to enact further legislation to make these presidential declarations more common. So, he wrote an editorial in his newspaper suggesting that this be created as a national day, and within two weeks, Congress quickly enacted a law requiring that on Memorial Day at 8:00 p.m., in case you forgot what time it is, it doesn't specify whether Eastern Standard Time or not, but on 8:00 p.m. on Memorial Day, it would be a time for universal prayer. So, a law enacted by Congress, we have now set aside a time for universal prayer.

Journalist Saunders argued in favor of this by saying that, "We are largely a Christian nation, and so isn't a moment of national prayer a logical course?" He also believed that the prayer would be
a first line of defense. The editorial that he wrote espousing this position was so well regarded that he won the Pulitzer Prize for editorial comment that year.

Let's go forward a couple of years to 1953. The president – there has just been a newly elected president of the United States, Dwight David Eisenhower, who at this particular time, does not belong to any church. In fact, in 1952 he confessed to Billy Graham that he had not been particularly religious, had not attended ceremonies. In his book, *Crusading Europe*, he did not refer to his personal faith at all, the book that he had published by that particular time. So, religion had not been particularly important to Eisenhower, at least through 1952.

But by 1953, shortly after his inauguration – shortly after he took the oath of office, he made the following statement. Now, think of this as being the very first presidential inauguration taking place on live national television. You have a hero from World War II, newly elected president of the United States, what are his first words to the American people?

"My friends, before I begin the expression of those thoughts that I deem appropriate to this moment, would you permit me the privilege of uttering a little private prayer of my own? I ask you to bow your heads." So, Eisenhower, no longer the commander in chief, he is, as has been frequently noted, taking the role of pastor in chief. But note that he uses the word private prayer in a prayer broadcast live before the American people. What does the word private mean there?

A few days later on the Sabbath – that is, Saturday – Rabbi Samuel Segal made comment about President Eisenhower's call for prayer. And what do you think the good rabbi would say? He did say, in fact – he praised the Eisenhower administration for the new tone which it had taken. And he said the administration, "In freedom will inspire others to become free to reap a harvest of brotherhood under the spiritual sovereignty of God." So, we are a country, now, of Protestants, Catholics and Jews.

In 1953, President Eisenhower declared a national day of prayer for the Fourth of July. So, the Fourth of July is not only a national holiday to celebrate independence from Great Britain. It is also now a day of prayer.

In 1954, the following year, a prayer room was erected in the Capitol Building. In 1954, President Eisenhower also went to a sermon at the New York Avenue Presbyterian Church, heard by the Reverend George Docherty, who suggested at that time that two words should be added to the Pledge of Allegiance: “under God,” as you can all figure out. And Reverend Docherty said this is something that will help separate American school children from what Reverend Docherty called “those little Muscovites.” So, by saying “under God,” we are now offering a pledge that “little Muscovites” cannot offer.

When President Eisenhower left the service where Reverend Docherty made that [statement], the Press Corps was standing outside and asked the president what he thought of this, and Eisenhower said he thought it was a good idea. After which members of Congress stumbled over themselves to adopt legislation to put in “under God” in the Pledge of Allegiance.

In the report that was issued by Congress – a very short Senate report – that said, "One of the
greatest differences between the free world and communists is a belief in God. Adding a total of
eight letters and two words will enable us to strike a blow against those who would enslave us."
And so “under God” went into the Pledge of Allegiance, and we became much more sure and
secure against the communists.

President Eisenhower, when he signed the law that added this to the Pledge of Allegiance, said,
"From this day forward, millions of our school children will daily proclaim in every city and
town, every village and rural schoolhouse, the dedication of our nation and our people to the
Almighty."

A few years later when the Ninth Circuit struck down “under God” in the Pledge of Allegiance,
the United States Congress was outraged by having removed these important words from
the Pledge of Allegiance. Among other comments, I think it's notable to say, that a certain Senator
Hillary Rodham Clinton said that she was, by the decision of the Ninth Circuit to take “under
God” out of the Pledge of Allegiance, "surprised and offended by the decision."

She accused the court of having sought to undermine one of the bedrock values of our
democracy, and we are indeed one nation “under God,” as embodied in the Pledge of Allegiance,
Senator Clinton said.

Now, I have to ask you, we can ask ourselves, are all of these politicians really serious about
what they are saying? Is the Pledge of Allegiance with “under God” a bedrock value? Does
Congress really believe that it should set aside its other business to reaffirm this? Are
congressmen and senators serious about this or are they cajoling the American people? Are they
speaking as genuine political leaders or are they acting as cheerleaders?

The litany goes on from the 1950s for “under God” in the Pledge of Allegiance to “In God We
Trust,” each of which was introduced as a way of fighting the communists. So, Americans
believed that by enacting laws of Congress to put “In God We Trust” on currency, to put “In God
We Trust” on postage stamps, to make “In God We Trust” the national motto, that we were
waging a battle against the communists, and we were shoring up our own virtues.

Now, I would hope that when you heard the words of William McKinley, with which I began,
that you might have some thought in your mind that that certainly was an abuse of religion. That
certainly was an abuse of rhetoric, that that was appealing to the lowest common denominator,
rather than calling people to the highest form of repentance or understanding. That what was
happening is that God was being used to bless political decisions rather than the people of
America were being called to repent and called to understand themselves.

In this two-day conference, as are asked both to look to the past for the last 25 years and to look
towards the future. Well, what does the future bring? Inasmuch as I have suggested to you that
100 years ago, President McKinley would abuse this form of language, 50 years ago Will
Herberg could identify this as not being the language of religion – not language of serious
religion but language of superficial use of religion, and that perhaps such language continues to
this day. We might ask ourselves is there likely to be change?
So, I think of Doug Laycock saying that the reason that we know the fourth great awakening will end is because the other three did, well, this may be something that will go on without end.

But the challenge, I believe, is not for lawmakers to revisit this issue because lawmakers will do what is politically acceptable and politically pleasing. The issue is for, I believe, religious leaders to say, "What are we doing with our political rhetoric? Are we using this political rhetoric that unites country, God, and immediate political decisions, trying to combine those in order to gain particular advantage? Are we using it for that purpose? And should we not be, instead, calling people to repentance and calling people to look at the truly fundamental values of our country and the truly fundamental values of our religion?" Thank you.