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

The Alonzo L. McDonald Lecture:
“The Religious Future of Law, the Legal Future of Religion”

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Dear friends, Abraham Lincoln said, “If we could first know where we are and whither we are tending, we might know what to do and how to do it.” With that sentence, I provided the text for the evening meditation and paid my debts so that I can operate congenially with my colleague Jean Bethke Elshtain, who would like to have Abraham Lincoln mentioned, and he fits exactly.

It’s a thrill to be here. If I had a billboard, I’d put there all my debts to it. I’ve talked to several people here who’d like to model from this conference and this place, extensions of this, and we heard many people talking about that along the way. But I used that Lincoln quote because I’m going to talk about the future. It’s my assignment.

I know that you know that I know that we don’t know anything about the future—anything that’s interesting, at least. All the things in my life that I use as markers—the Second Vatican Council—who prophesied it the day before it was called? The fall of the Soviet Union, the rise of Jihad language into our life, multiculturalism, globalization, DNA, AIDS, etcetera. There’s a certain day when you see that little headline and it grows into something that alters our life entirely. And so a lot of us are irreverent about talking about the future. Usually, it’s an intellectual like Yogi Berra who gets quoted, “I’ve seen the future, and it is very much like the present, only longer,” or “Prediction is real easy unless it’s about the future.”

As a historian, my job is the past. We have nothing to say, really, as historians, until something’s happened, then we can usually explain why it had to happen just the way it did, and we would have foreseen it had we foreseen it. But we didn’t. Present and past, Lincoln again, “If we could first know where we are and whither we are tending, we might know what to do and how to do it.” And I think every paper at this conference has been an assessment of some feature of the present with some projection in hope, in planning, with use of intellect and maybe spiritual force to move in that direction. So the future of law—the most obvious thing to say is there’s gonna be more of it. Professor Bellah just neatly outlined all the implications for a global economy and global interaction, and law will be a part of all of that.
Law gets ever more complex in our own society. I don’t know any place where one escapes the reach of law. Totalitarian societies totally misuse it because they have only a law of control. At the opposite end, I’ve always been amused that we think anarchists don’t have laws. The basic source book on it is called *Patterns of Anarchy*. Well, that’s kind of “archy” isn’t it, if you have patterns. And if you’ve ever dealt with people who conceive of themselves as anarchists—I did some during the free university movement and I’d sit somewhere and say, “No, no, that’s not where you sit. That’s where so-and-so sits,” because they’d been there a year earlier. I quickly learned that there’s an informal set of laws. There’s no place to escape it. And there are plenty of reasons to fear a future in which the totalitarian impulse will grow, and there’s an anarchic impulse, and between them is that very broad spectrum to which great numbers of hundreds of millions of people live under some version of a rule of law, and I think what all of them, all of us, who are religious know is that in all polities, religion is subordinate to law. It is in our Constitution, too. It doesn’t mean you have to be supine if you’re religious, but the state doesn’t come to the church and ask to be let out of its stewardship campaign. The church goes to the state and asks, “Can we have tax exemption?” etcetera. So the law is an overarching theme with which we have to work, and we will do so more. You law students are not likely to be out of a job.

Similarly, with religion, more—that’s more of a surprise, I suppose, and we should spend at least a moment discussing the definitions. I know my time is short, so I’ll give you my usual definitions. It’s quite accurate, but people don’t think it is. I was one of the editors of a 16-volume book called *The Encyclopedia of Religion*, and I define religion as the kind of stuff you write about in a book like that. And if you think about it, that’s about it. It has the entire expansion from invisible religion, individualized religion, historic religions to overarching religions. But there are many debates in the academy, especially among us who teach religion in the academy. Some say there is no such thing as religion. That’s something you put on other kinds of realities.

But H.L. Mencken in his book on *The American Language* said there is an “Americanism” called “get religion.” You got religion. So there must be something there that we touch, and we know what we’re talking about, and what do you do with it? For some, you try to minimize the impact, positive and negative of religion, by alternatives that today usually go by the word “spiritual.” Every religious tradition I know honors the spiritual, and they better. It’s a very big thing. But sometimes it becomes a surrogate. My former colleague, Winifred Sullivan, was asked to define spirituality as it surrounded our culture. She said, “First you take everything a religion is, and then you take out everything you don’t like, and what’s left, you call ‘spirituality.’” And that usually means you take out the institutions and the common life and the sacrifice and the works that go there. I don’t want to knock the individual spirituality. It is aesthetically beautiful. It can ennoble an individual life, but when we’re talking about law and religion and the future of each, we have to know that for the vast majority of the people who are in any way spiritual, they’re going to be, by classic definitions, religious.

So what else can you do with it? Well, you can kill it off if you want. We are a great deal these days about the new atheists, and they’re all bestsellers. That’s an interesting cultural phenomenon, and to make a bestseller book, you have to run it a few thousand at least, but I think that if you took them all together, they’re upper-middle class books by highly literate
people, probably all of whom could be stuffed into the Baptist churches of Dallas on a Sunday morning. Not that the thing is to be decided that way, but I’m trying to get the point across -- you are not going to get rid of religion, you’re not going to. You can decide to kill it off and religion will be indifferent to your effort to kill it off. Indifference can kill it much more than attack. But religion is growing, and Robert Bellah gave us some of those statistics: If one-third of the people in the world are Christian as they were a century ago, in the midst of all this upheaval, at mid-century, why every seventh person in the world is Muslim. At the turn of the century, every fifth person was, and Buddhism and Hinduism have come back in new and often very aggressive forms. So ‘gonna be more law, more religion and more to talk about and deal with in the future.

And it’s a bifocal thing now. Again, I’m building on Robert Bellah’s theme, what globalization has done, you can no longer have the luxury of discussing law and religion inside the boundaries of your law office, your church office, your precinct, your parish, your nation. These things are being determined by us very far away. And the edge that I described, very often an aggressive and assertive dimension to both law and to religion, will be part of it.

So we need a framework for it, and I’m gonna use the framework that I always use for a framework. Once you find a framework, you just have a framework, so here’s my framework. It was published the same year that Robert Bellah published the civil religion essay, and I don’t know if I published anything, but I read a book. It’s Herman Kahn and Anthony Wiener, The Year 2000.

It may be hard for people to believe, but in the 1960’s people couldn’t wait for the year 2000, and there was a commission on the year 2000. You were probably on one of the subcommittees. I was on the Subcommittee on Values and we disbanded almost instantly because we hadn’t the faintest idea of what the values of ’66 were to project into the future.

But Herman Kahn and Anthony Weiner wrote a very important book called The Year 2000: A Framework for Speculation on the Next Thirty-Three Years, and I think it gives us a good framework now for determining how to deal with future of law and the future of religion. The two of them devoted almost the entire book to the first of these, but a page-and-a-half to the second, and I’m gonna try to say that in those subsequent 40 years, that page-and-a-half has swelled into equal shape.

Here’s the one, this is right at the beginning of the book, and its caption is “Table 1: Basic Long-term Multifold Trend.” And they mention there’s going to be an increasing universality of the multifold trend. It wasn’t gonna remain just Western. Now, I’m gonna string these adjectives together, and if you think about them, ask yourself, “Isn’t this what the world was in ’67, and isn’t it more so now?”

They use the word from Pitirim Sorokin, the sensate, a word you can forget about because they describe it. The world will be increasingly sensate, meaning empirical—look in the future—could be more so. We’re testing, testing, testing—“this worldly,” there’s an awful lot of that running around – “secular, humanistic, pragmatic, utilitarian, contractual, epicurean, hedonistic” and the like.
I don’t know whether you remember, Robert, but we were at the Vatican Conference together—that other Vatican—Rome, not Atlanta (this is our new power center). But we were at a conference on *The Culture of Unbelief*. I think he had a paper, I had a response. There were six translators, and I was described the world around, and I said, “Well, it’s going to be more and more empirical. This world is secular, humanistic, pragmatic, utilitarian, contractual, epicurean, hedonistic and the like.” And they keep sputtering out of the translation booth, “Mr. Marty, tonight you buy the wine.” And except for the German who said I was really easy. “I just change all your ‘-ics’ to ‘-ish.” Now I tell a story that way so it’ll stamp in your mind. That was, I think, a very accurate picture of a mainstream, basic, long-term, multifold trend, and they elaborated on that in many kinds of ways.

But they were not stupid people, and they wanted to give some weight to other things that are going on, and gave a great deal of weight to it along the way on that little page-and-a-half. After they finished all the talk about that we were probably in what they call “late sensate culture,” still projected but still powerful, something new was likely to come along, and they quoted Sorokin. And they said, “Almost all of the 19th and 20th century philosophers of history seem to believe it likely that some new kind of religious stage will follow a termination of the sensate culture.” And they spelled out some versions of this new stage. This stage could be spiritual and intellectual rather than arising out of technology, and again, I’ve just tried to document that some of that is there. There is a great deal of new intellectual energy being given to all the religions, and there are great spiritual burstings, your charismatic congregation in Kansas—I don’t know whether it’s your fault or not, but it’s all over the world now. It’s what’s growing by the tens of millions every week, every year in Africa—18,000 new Christians per day in sub-Saharan Africa, and most of them are Pentecostal. So there’s a spiritual envisioning that they said every major philosopher of history of the past century-and-a-half said it was coming.

Secondly, they said it could be properly religious—a simple development of Christianity or Islam or whatever. And we’ve seen that—often back to the basics, fundamentalisms, evangelicalisms, traditionalisms—reaching back for something you can use to project into the future.

Or could be a new synthesis to the East and West, and I think there’s a good deal of that going on—never neat and easily, but something’s there, or it could be completely different. But, say the authors, in any case this is the key thing. Late sensate and early new religiosity, all these philosophers of history argue that there will be “some unpleasant events between the late sensate chaos and the new religiosity,” and I think that’s exactly where we’ve been living in these recent years.

Rilke has in one of his poems, “Each torpid turn of the world has such children to whom no longer what’s been and not yet what’s here appears.” We can see the growth of both of these things at the same time often in the same nation, in the same religious bodies, maybe in ourselves.

The authors described what the philosophers history thought would be the basic attitudes in late sensate culture, and this I’ll leave up to you to decide whether this is what’s going on. But the mood would be—and I didn’t inflict this on the Vatican translators—cynical, disillusioned,
nihilistic, chaotic, blasé, transient, superficial, weary, sophistic, formalistic, atheistic, trivial, changeable, meaningless, alienated, absolutely relative. Yeah—we won’t have to handle them today except to say that that’s their description of the mood in the time of the unpleasant events where these two worlds come together.

“Most macrohistorians,” quoting Kahn and Weiner, “hold with Sorokin that our civilization will not continue along the multifold or any other trend, but will either be terminated or have a more or less painful rebirth following this time of chaos, anarchy, nihilism, irrationality.” Well, as somebody who really does love rationality and order, I don’t want to say goodbye to any of that along the way and I don’t think we have to say goodbye to it, but we have to ask how are we going to deal with it when it comes to the focal points of what this means for law and what it means for religion.

Chaos—law says order. Anarchy—the law says “-archy,” monarchy or any other kind of – archy. Nihilism versus commitment. Irrationality versus the rational.

Our late colleague, Paul Recour, once said, “The modern world is constantly growing, increasing in ever greater rationality and absurdity.” Now, if I’m assigning law, mainly rationality—there are plenty of legal scholars in the room that aren’t so sure it’s all that rational, and if you think I’m gonna assign religion to irrationality, I hope you don’t.

But he’s pointing to the fact that these apparently contradictory forces can both be growing at the same time, and it isn’t that half the human race is doing one and half is doing the other. It is that insofar as law represents one set of things and religion represents another and their interests constantly coincide—we keep bumping into both along the way—that’s it.

So that’s my assessment based on a 40-year-old document that I can’t shake, and it’s even more true every year. Abraham Lincoln: “If we could first know where we are and whither we are tending,” if there’s anything to this theory that they’re both happening, then he says that, “we might know what to do and how to do it.” Well, there’s no cosmic plan for it.

I think Bellah sketched out a good way in which some of the economic and political and religious themes could do it, but nobody has a hold on the whole thing. I think you start where you are in your nation, your academy, or wherever. Let’s think of the Center of which we are a part. Isn’t that really what it’s been trying to do in studying the chaos in what’s come in the life of a family, and can there be order not based just on law, but it may have covenant along the way?

Think of the destructive forces on the lives of the children, and yet the children so eager to be, I’d say, spiritual. By the way, the first review of my book came out in Library Journal. Every author wants that one because that’s when the library decides—The Mystery of the Child—it starts out, “Now that he is well into old age, Martin Marty is starting to write about children.”

But there’s a very clear design. If you really want to change things, you’re going to work with education. You’re going to work with children. You’re going to work with nurseries. You’re going to do that—that’s where this all starts. And so we have a Center devoted to these kinds of
topics, and that big fat illustrated bibliography shows how much has happened in 25 years, that you can study law and religion together in their intellectual and their spiritual and their practical dimensions.

Now even to single this out at all—it might sound as if I’m captive just because I’ve had such wonderful years here. Thomas Merton, looking back on his conversion and his moving to Gethsemani Monastery in Kentucky, in one of his books said, “Well, America doesn’t know this, but Gethsemani is the soul of America. It’s what holds it all together. It doesn’t know it, but what we’re doing there in our praying – that does it.” And I thought, “What an arrogant, provincial cuss!” until I read on and he said, “America has many places and many soul engendering things.” And I think you have to think of that along the way here. So four dimensions I think of what has to go on at the center in the next 25 years building on what’s been here—I do think that it serves the culture and law and religion well by continuing and maybe increasing in the self-critical dimension.

What we learn is how hard it is for us to look at ourselves and then the mirror is held often by somebody who has a somewhat different concept. We heard some wonderful papers on the concept of Shari’a Law, and for most U.S. citizens that is such a very different concept. It’s on Page One almost every day, and our patterns of law are almost on theirs.

Somewhere, somebody, who is not likely to be in any of the state departments, is going to have to devote themselves to understanding these different concepts of law, as we heard from a colleague here so well today. In domestic life, the same kind of thing, the self-critical dimension, we heard many critiques including today on the polarization, it doesn’t allow us to examine anything in between two extremes.

The self-critical function is extremely important for people who are in patterns of law and in patterns of religion. The second, and I heard some good translations for the concept of tolerance—tolerance is having a hard time around here this week, and I’ll add to it—tolerance is a wonderful word and history. It was hard fought—it took centuries and centuries—1688 in England, you could get a pretty good dose of it, The Glorious Revolution, they started talking about tolerance.

As a loyal, patriotic, self-centered Christian, I thought, “Well, we must have really invented it,” and W.C. Fields once said, “I’ve spent a lot of years studying the Bible looking for a loophole.” I spent a lot of years reading Christian history looking for somebody that had the concept of tolerance, and I found Lactantius in the Court of Constantine, and then it stopped again.

The help of the Enlightenment, about which we have such ambiguity: enlightenment isn’t all rationality. It’s spiritual, too. It’s intellectual, too. It pulses, Jefferson says, “the head and the heart.” They’re all there, but we needed that. And today tolerance, my paraphrase would be close to one I heard this morning, it has come to mean for many people, “if I can get you to believe as little as I do and to believe it as lightly as I do, we’re gonna get along all right.” You are dead before you start in the world where the volatile concepts of law and religion are present if you think that’s what’s going to happen. I prefer the word and the concept of hospitality. A strong, I call it “risky,” hospitality that—we all know the word xenophobia—“xeno” is
stranger—you hate the stranger. Xenophelia, the love of the stranger, is the Greek word translated as hospitality.

In the Hebrew Scriptures, there’s almost no sin worse than being inhospitable. You, Israel, you have to take in the stranger for you were once strangers. And the New Testament, the same kind of thing is a long essay, appealing to this, and Jesus knocks over all the tables in order to get to the tables where hospitality is present.

During a six-year study of militant fundamentalisms around the world, my colleague Robert Scott Appleby, now at Notre Dame—and I paraphrase this sentence by Harold Isaacs in his book *Idols of the Tribe*. It’s in my mind just like the framework was that I gave you. “Around the world, there is a massive convulsive ingathering of peoples into their separatenesses and over againstnesses to protect their pride and power and place from the real or presumed threat of others who are doing the same.”

Hospitality means breaking that apart—and there are many people—I have many good stories of people who break that pattern that seems so irresistible. But I think the fact that a center like this wants to be hospitable to uncongenial ideas, to people representing very different kinds of forces, and, you better get ready, you’re doomed to have to do more of it in the future. Not all the voices are going to be gentle and kind, but they’re going to be here, and if they are receiving hospitality, they will give hospitality, and their ideas and their spiritual forces and their laws will get a new hearing.

Third of the four, is reform itself. There are many people, as we heard this morning, who are dealing with a vast number of concepts that are listed under Shari’a Law. There’s no single thing like that, and there’s no single thing like Islam, a single thing like Christianity. You have to get into it—the local manifestations. You have to see all the ways that are there, then you can set out, I think, to reform along the way.

And I don’t think that all intellectual analysis is something that necessarily leads to reform, but I don’t think reform can happen without analysis of things along the way. And then the empathy for the other—empathy for the other almost inevitably grows when you have people gathered to deal with wonderfully tough issues like this. You start seeing it from their angle and in their eyes along the way. So what to do and how to do it.

I will leave challenged by four, five, six presentations, two of them today, and by the life work of Harold Berman who is a spirit behind all this. Challenged because I haven’t got it figured out, and I’m going to have to come back for a little inoculation once in a while, in case you break through, and that is the search for world law, world civil religion, world sufficient consensus that there can be law.

John Courtney Murray, we are great fans of his, said that there has to be minimal consensus you raise—just enough that you agree about that you even know what to fight about. You have to have the same words. You have to have some of these languages. What will they be? Image of God—oh, man, I like that. I’m gonna take it right home and write a book about it. That was really good.
But there’s so many others offered—we heard them tossed up and then they’re down. Rights—
does everybody talk rights? Everybody talking nature? Natural law? It isn’t easy at all. I, by
accident, chaired a session on religions anteceding the Cairo Conference on Population,
Women’s Reproductive Rights and Migration. It was held in 1995 in Cairo, and several
foundations got together and had us get scholars from around the world representative of the
various religions. What could they teach about these three things?

And of course, birth control and abortion were the major things that were talked about, but many
things about women’s rights were there all along—26 people, 20 nations, 16 religions—and
there were a lot of things that we agreed on pretty quickly. We really could agree on a lot. But
there was always a pressure, can we really ask why we’re agreeing because it’s going to be a
hard sell when we get to the NGOs and the national delegates in Cairo. How did we sell it to
them? Well, we said, “We gotta have a consensus.” The papal delegate was a Polish priest who
said, “Well, at least our consensus can be based on our common belief in God.” Michio Araki
was sitting there from Japan, and he said, “I’m as religious as you are, but we don’t believe in
God. We have holy emptiness.”

So the priest said, “Well, couldn’t we then say we all have a common belief in The sacred.” He
said, “Capital ‘S,’ that’s how you smuggle God back in the West. We have Sacred books. We
have Sacred shrines. We have Sacred holy people.” We don’t have that now, do we? Now,
Araki was not less humane, less hospitable, less willing to be self-critical. I think he left changed
by it, and we left changed by it, but we couldn’t necessarily come to a clear formulation of it, and
maybe you never will.

Many of you know the old story of when you want to ground something—I often think of that
when I read the Berman essays which are really exciting challenges for me because I want to
make it work. But the old story, I’ve heard 50 versions of it, was somebody’s talking to a Native
American and wanted to know about the world. “Well, the world rests on a great turtle—the
back of a great turtle.” Well, that doesn’t solve a lot. What is the turtle on? “It’s on another
great turtle.” Well, where does it end? “It’s turtles all the way down. And when you say that,
you can be called a relativist, nihilist—anything else, but it seems to me to pose the issue that
we’re going to have to work on, on how you get a fabric of law that can transcend some of the
domestic laws that now are in opposition to each other.

And I think we’ve seen in the last century in the midst of all of the chaos, the time of the
unpleasant events, as Herman Kahn called it, embodiments—we’ve seen individuals. You had
one on the campus here last week. We have them in the historic religions. We have people of no
visible faith who have risked a great deal along the way. They are models. They are exemplars,
and I think they will be studied a great deal here at the Center in the future.

So as somebody who profited a great deal already from this place, and who gobbles up these
books as they come out, I intend to hang around and keep learning how to be more self-critical
and more hospitable and more reformist, and way down deep maybe get some new ideas about
the ideas behind it all. Thank you very much.