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January 4, 2017: Is Secularism A Nonnegotiable Aspect of Liberal Constitutionalism?

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Title: Is Secularism A Nonnegotiable Aspect of Liberal Constitutionalism?

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1/4/2017—Greetings from rainy San Francisco, where I am attending the AALS annual meeting. I may have the chance on this blog to criticize the theme of this year's meeting, why law matters, [imagine a meeting of physicists in which they ask each other why physics matters] but today I want to address the session of the section on law and religion, the section I have been most associated with.

This theme is reflected in the title of this blog entry: is secularism a nonnegotiable aspect of liberal constitutionalism? As formulated, the question seems to ask whether the American model of secular constitutionalism is necessarily the only model of a basically constitutional state—one with, for example, freedom of speech, regular elections, the rule of law and it basically open economy? This is another way of asking whether Islamic countries, where Islam dominates, or Israel, where Judaism dominates, can ever be modern constitutional states?

Formulated in that way, the session is very helpful because it throws into question the dominant assumption of American law professors that only the America model is genuinely constitutionalism. I see the hand here of Richard Albert, the thoughtful and visible professor of law at Boston College. This is precisely the kind of challenge to liberalism that Richard likes to bring.

Nevertheless, the question avoids two direct challenges to the conception of American constitutionalism as basically secular: first, is American constitutionalism secular? Second, is secular constitutionalism possible?

As to the first question, I argued in a 2006 book, *American Religious Democracy*: coming to terms with the end of secular politics, that America does not have a secular political system. Nor is there any legitimate prohibition on religion in the public square. John Rawls is just wrong.

Looking at things in that way, the premise of the question in today's session is false.

The second question, however is new. Religion, and Christianity in particular, are in decline by any measure in America. And Christianity has declined most dramatically in the very heartland of the postindustrial Midwest where Donald Trump won his Electoral College victory. These communities used to be dominated by churches and Christian culture. Where are those churches today? They are hollowed out.

Some of those Trump voters were without hope and so they latched on to the false hope of a Trump. This brings to mind the observation of C.K. Chesterton: "When men choose not to believe in God, they do not thereafter believe in nothing, they then become capable of believing in anything."

What has secularism given to ordinary people as a reason to live, as a narrative of hope? All secularism has given us is a universe of chance and accident, in which the only reality is force and matter. I don't believe a civilization can be founded or sustained on this ontology.

I don't mean that this ontology is false. I just mean it is damaging.

So the question we should be asking is whether a secular, liberal constitutionalism can be sustained? I believe the answer is no. I wonder if that question will be addressed today.