

**DRAFT**

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In the spring of 1995, I visited the great Saxon capital of Dresden. I stood on the banks of the Elbe River at the site of the Frauenkirche -- the monumental domed church, consecrated in 1734, graced by one of Johann Sebastian Bach's greatest organ concerts in 1736, and celebrated in German music, art, and literature ever since.

It was a sobering moment. For the great church lay in ruins. A guide explained that the church did not survive the fire bombing of Dresden near the end of World War II. On February 13 and 14, 1945, 773 Allied bombers emptied their payloads on Dresden. No bombs hit the church directly. But the fires were enough. First the art, the woodwork, the pulpit, the organ, and the altars were consumed. As the fires penetrated more deeply, scores of people hidden in the church's catacombs were burned to death. Eventually, the intense heat of the fires weakened the church so much that it simply collapsed under its own weight. Large chunks of the dome, charred and cracked, still lay where they had fallen some fifty years before. A large piece of the steeple still protruded from the ground at a grim angle. Only one wall of the nave still stood, its top jagged and pocked where the roof had torn away.

It was also an exhilarating moment. For stretching out from the wall of the nave in all directions were dozens of rows of scaffolds, where workers were storing the 10,000 odd pieces of stone that had been collected from the rubble of the fallen church. The Frauenkirche, the guide informed me, would be reconstructed, using as many of the original stones as possible. A giant blueprint assigned each of the recovered stones to its original place in the structure. New stones were being collected from the same quarry that had been mined for the original construction. A massive outpouring of charity had made this reconstruction possible.

I have often given thanks for that brief moment on the banks of the Elbe River. For this small frame captured several themes that are at the center of my life -- as a Christian believer and as a legal historian.

The story of the Dresden church is a metaphor of life. Construction, destruction, and reconstruction. Work, judgment, and purgation. Birth, death, and resurrection. Creation, fall, and redemption. These are the stages of life. These are the passages of faith. The old must pass away so that the new may come forth. We must die so that we can be reborn. Our bodies must be buried so that they can be resurrected. Our works must be burned so that they can be purified. Our bonds must be broken so that we can be reconciled. This is the nature of biblical religion. It gives life its power. It gives pain its purpose. It gives time its pattern.

These basic biblical themes -- that time has a pattern, that history has a purpose, that life has an end of reconciliation -- inform my understanding of history. The Bible

teaches that time is linear, not cyclical. Biblical history moves forward from a sin-trampled garden to a golden city, from a fallen world to a perfect end-time. Our lives move, circuitously but inevitably, toward a reconciliation with God, neighbor, and self--if not in this life, then in the life to come; if not with the true God, then with a false god; if not in the company of heaven, then in the crowds of hell.

Human history cannot be fully understood without reference to this divine mystery. God is beyond time, yet has chosen to reveal a part of Himself within it. Through the creation and incarnation, God pours out a measure of His being and grace. Through the law and Gospel, God sets forth a measure of His word and will. Through miracles and messengers, God puts forth a measure of His power and judgment.

All of history, in Martin Luther's words, is "a demonstration, recollection, and sign of divine action and judgment, how God upholds, rules, obstructs, rewards, punishes, and honors the world, especially the human world." We are within time, yet we are able in part to transcend it. Through our conscience and imagination, we gradually discover something of the meaning of God's plan for each creature. Through our creativity and experimentation, we slowly uncover something of the majesty of God's plan for the creation. Through our liturgies and epiphanies, we slowly uncover something of the mystery of God's incarnation for the church. Through our texts and traditions, we gradually accumulate something of the wisdom of God's revelation for all people.

To be sure, God's plan and our history are not identical. God's plan consists of much more than what God chooses to reveal to us or what we are able to discern of it. Much of what we see appears to be the work of a concealed God, even at times a seemingly capricious God. In Martin Luther's colorful image, history is "God's mummery and mystery," "God's joust and tourney." History is "God's theatre," in which the play cannot be fully understood until it ends and until we exit. To equate one act or actor, one speech or text with the divine play itself is to cast a partial and premature judgment. To insist on one interpretation of the play before it ends is to presume the power of eternal discernment. To judge the play on the basis of a few episodes is to insult the genius of the divine playwright.

Human history, in turn, consists of much more than our conscientious struggle to follow God's word and will in our lives, to reflect God's image and immanence in our world. Much of what we see in our personal lives is the "war between our members," the struggle between the carnal and the spiritual, the sinner and the saint. Much of what we see in our collective lives is the sinful and savage excesses of corrupt creatures, the diverse and perverse choices of free human agents. But there is simply too much order in our world, too much constancy in our habits, too much justice in our norms for us to think that the course of human events is not somehow channeled by God's providential plan. God is thus both revealed and concealed in history. "All events," as John Calvin put it, "are governed by God's secret plan." If God were completely revealed in history, there would no reason for faith. History would simply be a mechanical execution of a predetermined plan. There would no eternal mystery for which faith could yearn. But if God were completely concealed in history, there would

also be no reason for faith. History would simply be a random and rudderless exercise of chaos. There would be no eternal justice in which faith could trust. "Somewhere between those two the Christian has to find his or her own balance between concealment and revelation."

This is the balance I try to find in my work as a Christian historian. For me, history is more than a series of tricks that we play on the dead, or that the dead play on us. History is more than simply an accidental chronology of first one thing happening, and then another. For me, history is also a source of revelation, a collection of wisdom. The archive is a treasure trove. Old books are windows on truth. The challenge of the Christian historian is to search within the wisdom of the ages for some indication of the eternal wisdom of God. It is to try to seek God's revelation and judgment over time without presuming the power of divine judgment. It is to try to discern God's justice within God's joust.

### **The Binocular of Law and Religion**

These basic convictions about history inform my work on the interaction of law and religion in Western history, and they have been informed by the same. I start with the assumption that somehow God is both hidden and revealed in human laws, and that human laws in turn both reflect and deflect God's teachings. I believe that the patterns of human laws over time will reflect something of the meaning of religious truth, and that the patterns of religious truth over time in turn will reflect something of the measure of divine laws. Law will reveal a religious dimension. Religion will reveal a legal dimension.

Western history bears out these assumptions. In the Western tradition, systems of law and systems of religion have coexisted from the beginning. The contents of these legal and religious systems, of course, have differed dramatically over time and across cultures. At points, they have converged or contradicted each other. Every religious tradition in the West has known both theonomism and antinomianism--the excessive legalization and the excessive spiritualization of religion. Every legal tradition has known both theocracy and totalitarianism--the excessive sacralization and the excessive secularization of law. But the dominant reality in the West is that law and religion stand not in monistic unity, nor in dualistic antinomy, but in dialectical harmony. Each political community struggles to balance law and religion by counterpoising justice and mercy, rule and equity, discipline and love. Each religious tradition strives to come to terms with law by striking a balance between the rational and the mystical, the prophetic and the priestly, the structural and the spiritual. Each legal tradition struggles to link its formal structures and processes with the beliefs and ideals of its people.

This dialectical interaction has allowed the spheres and sciences of law and religion to combine and to cross-fertilize each other in a variety of ways.

It is these points of cross-over and cross-fertilization that are the special province of the interdisciplinary field of law and religion, and the special opportunity for Christian

reflection about the law. How do legal and religious ideas and institutions, methods and mechanisms, beliefs and believers influence each other -- for better and for worse, in the past, present, and future? These are the cardinal questions that the burgeoning field of law and religion has set out to answer. Over the past generation of scholarship, a number of tentative answers have become to come forth, focused on the various modes of interaction between law and religion.

For example, law and religion are institutionally related—principally in the relation between church and state, but also in the relations among sundry other religious and political groups. Jurists and theologians have worked hand-in-hand, and sometimes combated hand-to-hand, to define the proper relation between these religious and political groups, to determine their respective responsibilities, to facilitate their cooperation, to delimit the forms of support and protection one can afford the other. Many of the great Western constitutional doctrines of church and state—two cities, two powers, two swords, and two kingdoms—are rooted in both civil law and canon law, in theological jurisprudence and political theology. Much of our American constitutional law of church and state is the product both of Enlightenment legal and political doctrine and of Christian theological and moral dogma.

Law and religion are conceptually related. Both disciplines draw upon the same underlying concepts about the nature of being and order, of the person and community, of knowledge and truth. Both law and religion embrace closely analogous concepts of sin and crime, covenant and contract, redemption and rehabilitation, righteousness and justice that invariably combine in the mind of the legislator, judge, or juror. The modern legal concept of crime, for example, has been shaped by an ancient Jewish and medieval Catholic theology of sin. The modern legal concept of absolutely obligating contracts was forged in the crucible of Puritan covenant theology. The modern legal concept of the purposes of punishment are rooted in Catholic doctrines of the causes of natural law and Protestant doctrines of the uses of moral law. Both law and religion draw upon each other's concepts to devise their own doctrines. The legal doctrine that the punishment must fit the crime rests upon Jewish and Catholic doctrines of purgation and repentance. The theological doctrine of humanity's fallen sinful nature is rooted in legal concepts of agency, complicity, and vicarious liability.

Law and religion are methodologically related. Both have developed analogous hermeneutical methods, modes of interpreting their authoritative texts. Both have developed logical methods, modes of deducing precepts from principles, of reasoning from analogy and precedent. Both have developed ethical methods, modes of molding their deepest values and beliefs into prescribed or preferred habits of conduct. Both have developed forensic and rhetorical methods, modes of arranging and presenting arguments and data. Both have developed methods of adducing evidence and adjudicating disputes. Both have developed methods of organizing, systematizing, and teaching their subject matters. These methods have constantly cross-fertilized each other; indeed the same method is sometimes simply applied to both legal and religious subjects.

These and other forms of interaction have helped to render the spheres and sciences of law and religion dependent on each other—indeed, as Harold Berman puts it, as "dimensions" of each other. On the one hand, law gives religion its structure—the order and orthodoxy that it needs to survive and to flourish in society. Legal "habits of the heart" structure the inner spiritual life and discipline of religious believers, from the reclusive hermit to the aggressive zealot. Legal ideas of justice, order, atonement, restitution, responsibility, obligation, and others pervade the theological doctrines of many religious traditions. Legal structures and processes -- the Halacha in Judaism, the canon law in Christianity, the Shari'a in Islam -- define and govern religious communities and their distinctive beliefs and rituals, mores and morals.

On the other hand, religion gives law its spirit—the sanctity and authority it needs to command obedience and respect. Religion inspires the rituals of the court room, the decorum of the legislature, the pageantry of the executive office, all of which aim to celebrate and confirm the truth and justice of the law. Religion gives law its structural fairness, its "inner morality," as Lon Fuller called it. Legal rules and sanctions, just like divine laws and promises, are publicly proclaimed, popularly known, uniform, stable, understandable, prospectively applied, consistently enforced. Religion gives law its respect for tradition, for the continuity of institutions, language, and practice, for precedent and preservation. Just as religion has the Talmudic tradition, the Christian tradition, and the Islamic tradition, so law has the common law tradition, the civil law tradition, the constitutional tradition. As in religion, so in law, we abandon the time-tested practices of the past only with trepidation, only with explanation. Religion gives law its authority and legitimacy, by inducing in citizens and subjects a reverence for law and structures of authority. Like religion, law has written or spoken sources, texts or oracles, which are considered to be decisive in themselves. Religion has the Bible and the Torah and the pastors and rabbis who expound them. Law has the constitutions and the statutes and the judges and agencies that apply them.

Law and religion, therefore, are two great interlocking systems of ideas and institutions, values and beliefs. They have their own sources and structures of normativity and authority, their own methods and measures of enforcement and amendment, their own rituals and habits of conceptualization and celebration of values. These spheres and sciences of law and religion exist in dialectical harmony. They share many elements, many concepts, and many methods. They also balance each other by counterpoising justice and mercy, rule and equity, orthodoxy and liberty, discipline and love. Without law, religion decays into shallow spiritualism. Without religion, law decays into empty formalism.

I started with the little story of the Dresden church, as a metaphor for how we might think about God's plan in the human world. I would like to end with a little story about a church in France, as a metaphor for how we might think about our response to God's plan, particularly those of us who are in the legal profession or might be preparing for it in a prelaw program here.

My story comes from a late medieval diary where we read: A traveler from Italy came to the French town of Chartres to see the great cathedral that was being built

there. Arriving at the end of the day, the traveler went to the site of the cathedral just as the workmen were leaving for home. He asked one man, covered with dust, what he did there. The man replied that he was a stone mason. He spent his day carving rocks. Another man, when asked, said he was a glassblower, who spent his days making slabs of colored glass. Still another workman replied that he was a blacksmith who pounded iron for a living.

“Wandering into the deepening gloom of this unfinished edifice, the traveler came upon an old widow, armed with a straw broom, sweeping up the stone chips, glass shards, and iron filings from the day’s work. “And what are you doing?” he asked her. The woman paused, looked up, and said proudly: “Me? Why, I am building a cathedral to the glory of Almighty God.”

The law is like a massive medieval cathedral, always under construction, always in need of new construction. It stands at the center of the city, at the center of matters spiritual and temporal, at the center of everyone’s life. All live at times in the glory of this cathedral of the law. All live at times in its shadow. This cathedral of the law houses beautiful altars and hideous gargoyles, stain glass windows that capture the light of heaven, and bleak marble monuments that signal the darkness of death. Though always under construction, this cathedral of the law is always open to those who knock. Its officials are always available to those who have need.

We members of the legal profession are at once the masters and the servants of this cathedral of the law. Some of us build on the edifice, some of us tend its doors. Some of us are the Michelangelos who paint frescoes with fine feathered brushes, others of us are the widows who sweep the floors with crude straw brooms. But we all have a craft; we all have a calling; we all have a place for our tools and our talents in this cathedral of the law.

The ethic of the widow in Chartres must be our ethic in the legal profession. We must not grow too proud in our own craft, too lost in painting our own frescoes, too confident that our little chapels of study are equivalent to the cathedral itself. We must not be too contemptuous of the past by removing or remodeling too easily what earlier workers have done. We must not be too contemptuous of the future, by believing that our formulations are beyond amendment and emendation. And most of all, we must not forget why we are here in this cathedral of the law—to give glory to Almighty God and to give loving service to our neighbor.