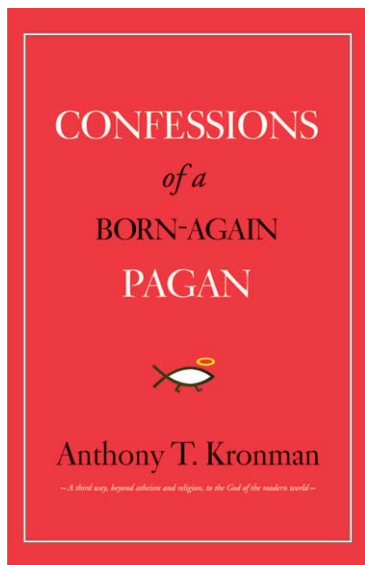


books in print

Everlasting and Divine

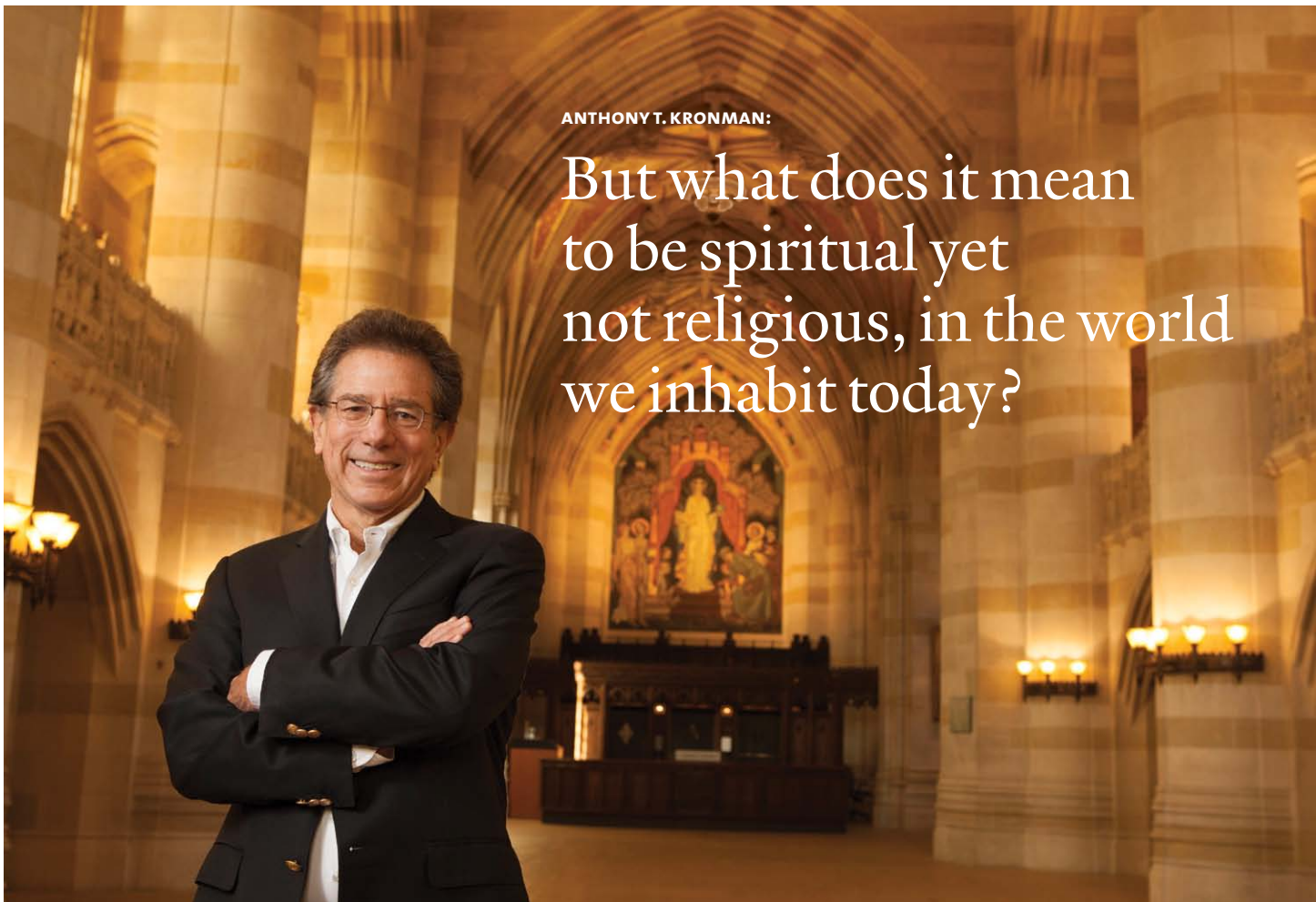
Professor Tony Kronman's new book, *Confessions of a Born-Again Pagan*, discusses the theology of life — from politics to art.



Anthony T. Kronman
Confessions of a Born-Again Pagan
Yale University Press, 2016

For the past twelve years, Sterling Professor of Law Tony Kronman '75 has been teaching in the Directed Studies (DS) Program in Yale College — a traditional 'great books' course for freshman. In *Education's End* (2007), he described the principles of liberal education that underlie DS and other programs like it. Now Kronman has written a new book that addresses one of the central questions that he and his students in Directed Studies confront each year: Is the modern world a godless one, or are its most characteristic features shaped by a novel and distinctive understanding of what Aristotle called "the everlasting and divine?" In *Confessions of a Born-Again Pagan*, Kronman defends the latter view, and while *Confessions* is a big book and covers a lot of ground, it is mainly a work of theology — or more exactly, one that seeks to put theology back at the center of our thinking about politics, science, and art, from which it has been banished in recent years.

Kronman admits that he has never been a religious person in the sense in which that phrase is most commonly used today. He doesn't believe in a God beyond the world, sitting in judgment on our doings down below, parceling out rewards and punishments according to our deserts. But at the same time, he's never been comfortable with those skeptical atheists who declare that only fools believe in God. Kronman has always regarded himself as a spiritual person for whom the numinous aura that surrounds all things is even more impressive than the things themselves. But what does it mean to be spiritual yet not religious, in the world we inhabit today? In his sweeping new book, which traces the arc of Western civilization from the Greeks to quantum mechanics and Walt Whitman, Kronman tries to answer this question, which countless others have asked themselves as well.



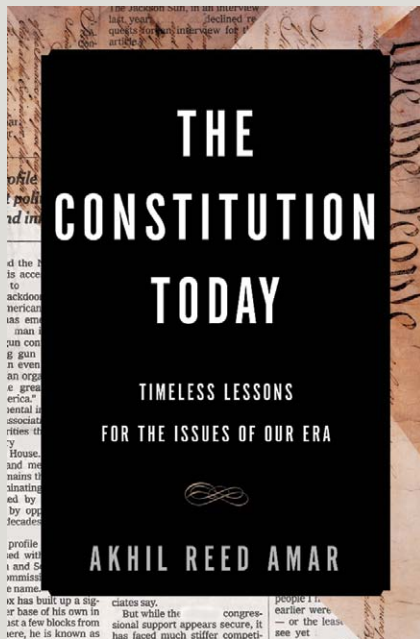
ANTHONY T. KRONMAN:

But what does it mean
to be spiritual yet
not religious, in the world
we inhabit today?

In Kronman's view, most of those who today either assert the existence of God or deny it have the same God in mind. This is the God of Abraham — an all-powerful creator who exists apart from the world and demands an obedience that cannot be rationally justified. By contrast, the God to whom Kronman leads his readers is compatible with a boundless commitment to reason and closer to the world than the supernatural God of Moses, Jesus, and Mohammed can possibly be. Kronman finds one source for such an idea of God in the philosophy of Aristotle, for whom the divine is nothing but the eternal intelligibility of the world itself. From a modern perspective, however, Aristotle's theology has a fatal flaw. It is incapable of explaining how the uniqueness of any individual can be invested with a meaning and value that no human inquiry can ever exhaust, as all the Abrahamic religions insist, and modern science, politics, and art likewise presume. The reason why Aristotle's theology falls short in this regard is that his God,

though immanent in the world rather than separate from it, and coincidental with reason instead of conflicting with it, lacks the infinitude of power, being, and reality that is the most distinctive feature of the God of Abraham. To find the God we need for the world we inhabit today, Kronman argues, we must join the immanence of Aristotle's God to the infinitude of Abraham's. He finds the model for such an idea in Spinoza's *Ethics* and to describe his own reworking of it, coins the term "born-again paganism."

Confessions of a Born-Again Pagan is a panoramic survey of modern life. It attempts to explain how the modern world came to be and what its scientific, literary, and political ideals mean. But most of all, it is a passionate plea for the belief that no human life is imaginable outside the shadow of eternity — even, as Kronman says, in our world today, where all ideas of God seem, but only seem, to have been swallowed by the voracious mouth of time.



The Supreme Law of the Land

Sterling Professor of Law and Political Science Akhil Reed Amar looks to America's founding document to provide guidance in understanding today's most pressing national issues.

Akhil Reed Amar

The Constitution Today:

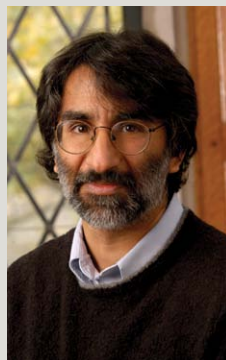
Timeless Lessons for the Issues of Our Era

Basic Books, 2016

IN *THE CONSTITUTION TODAY*, Akhil Reed Amar '84 uses a series of essays to probe the biggest and most bitterly contested debates of the past two decades—from gun control to gay marriage, affirmative action to criminal procedure, Bill Clinton's impeachment to Obamacare. With wit and wisdom, he sheds light on these issues

while offering a more enduring set of ideas—a road map for where constitutional law must go in the long run. Amar, author of several books on the Constitution, has been favorably cited by Supreme Court Justices across the spectrum in more than thirty cases and ranks among America's five most-cited legal scholars under the age of sixty.

Looking to the Constitution's text, history, and structure for the specific rules



and grand themes relevant to every vital organ of the American body politic, Amar explores the basic structure of the modern federal government, examining in turn the key institutions and offices of national power set forth in the Constitution. He warns of the problems of presidential dynasties and the dangers of our current system

of presidential succession; argues for a "nuclear option" to tame the filibuster and restore the principle of majority rule in the U.S. Senate; and advocates for greater transparency in the federal judiciary.

The following excerpt—a *Slate* article written in December 2012—is a remembrance and appreciation of Amar's former Yale Law School professor, the late Robert Bork.

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Remembering Bork

Slate, Thursday, December 20, 2012, 12:16 p.m. (ET)

The last time I spoke to Robert Bork, who died Wednesday, was thirty years ago this week. In mid-December 1982, I was a second-year law student at Yale finishing up a seminar that Bork taught, a seminar organized around ambitious works by leading constitutional scholars—Alex Bickel, John Hart Ely, Charles Black, and others. I did not entirely love the seminar, or Bork, but today I find myself, weirdly, standing in Bork's shoes. At fifty-four, I am now almost exactly the same age as Bork was then; and I regularly teach a seminar at Yale inspired by the one I took from him, with a reading list that includes several of the books I first read under his supervision. In fact, my seminar usually meets in Bork's old classroom. (And did I mention that I, too, have a beard that some would call scruffy?)

So why didn't I ever converse with Bork after the class ended? And how did a seminar and a professor that I didn't entirely love end up having such a profound effect on me?

I never spoke to Bork after 1982 because, frankly, he could be insensitive and off-putting. In the classroom, he was quick to dismiss imaginative ideas floated by students. In his defense, it must be said that many of these student bubbles deserved to be popped. A law professor's job is to train students to think rigorously. Bullshit does not win cases. So even as I disliked Bork's demeanor at the time, I have since come to admire his honesty. Here was a man who cared enough about ideas to defend his own, and to hit yours head-on if he thought they deserved it. Most important of all, he did not downgrade

students who came back at him with tight counterarguments. My term paper for this class was an all-out thirty-page attack on several of Bork's pet ideas, yet he gave me a top grade—without which I might never have been hired by Yale to teach constitutional law.

Bork's truculence in the classroom made me want to fight back—but to do so, I had to work hard and drill down. In the process, I came to love constitutional law, a subject that had not electrified me as a first-year student in an introductory course taught by a gentler and less edgy professor.

The combativeness that Bork brought to the classroom later came into public view during his 1987 confirmation hearings. His arrogance did not serve him well in these hearings—but truth be told, arrogance runs rampant in the higher reaches of the legal academy. (And here I most emphatically do not exempt myself.)

My biggest criticism of Bork thus concerns not his attitude but his altitude: His work in constitutional law never came close to the heights reached by his most gifted contemporaries. John Hart Ely wrote a soaring book on constitutional law—a book that I read while in Bork's class and that I continue to reread and to teach and to learn from every time I re-engage it. Ditto for some of the great works of other modern constitutional law giants, including Charles Black, Philip Bobbitt, Bruce Ackerman, and Laurence Tribe. But as of 1982, Bork's most significant writing in constitutional law was a single middling article on free expression, an article whose best ideas had already been elaborated by other, better constitutional scholars. In his later years, Bork did write several popular books on various issues related to constitutional law, but none of these breezy volumes makes a substantial and enduring contribution to serious scholarship.

By contrast, Bork powerfully contributed to antitrust scholarship with influential articles that culminated in an enormously important 1978 book, *The Antitrust Paradox*. Thus, a fair assessment of Bork's career would properly describe him as a constitutional writer and a towering scholar; but he should not be thought of as a towering constitutional scholar.



He did have one big constitutional idea, namely, that original intent should play an important role in constitutional decision-making. Though Bork was hardly the first

the liberal reformers of their day—nationalist anti-aristocrats at the Founding, egalitarian crusaders for racial justice in the 1860s, suffragists and civil-rights activists in the twentieth century.

Bork failed to see the basic contradiction because he was, to repeat, not an accomplished historian or even a sophisticated consumer of serious historical work. But his clarion calls for renewed attention to constitutional text, history, and structure—alongside similar calls from friends in the political and academic worlds, such as Reagan attorney general Ed Meese and law professor Steve Calabresi—were not without effect. Today, all serious constitutional scholars and most justices are far, far more attentive to originalist arguments than before Bork took the stage. Thanks in part to Bork, we are all textualists of sorts; we are originalists in part.

And by “we,” I of course include myself. When I entered Bork's class in 1982, I was inclined to undervalue originalist arguments; I left with much greater respect for

“Today, all serious constitutional scholars and most justices are far, far more attentive to originalist arguments than before Bork took the stage. Thanks in part to Bork, we are all textualists of sorts; we are originalists in part.”

or the best to put forth this theory, he used his notoriety to popularize it. Many scholars and judges in the late 1960s and throughout the 1970s had begun to talk and act as if the original purposes of the Constitution's founders and amenders were almost irrelevant to serious constitutional analysis in the modern world. Bork thought otherwise, and loudly proclaimed that scholars and judges must pay heed to original understandings.

But Bork was an awkward mouthpiece for this view because he himself knew very little about the Constitution's history. And his extreme political conservatism compounded the problem because much of the history of the document's enactment and amendment is a history of those who were

the fidelity Bork preached to text, history, and structure. Over the ensuing thirty years, I have devoted my career to proving, clause by clause, historical fact by historical fact, that faithful adherence to Bork's approved methods does not invariably lead to Bork's politically conservative conclusions. In fact, I've tried to show how many of the methods Bork claimed to embrace often support results precisely contrary to the ones Bork reached.

In short, Professor Robert Bork got under my skin and into my head so much that I have spent the last thirty years taking seriously the issues he first introduced me to. Though I did not entirely love him, I did learn from him. Indeed, I can now see that he profoundly changed my life.

Here's just a sampling of the many other books recently written or edited by our alumni, faculty, staff, and students.

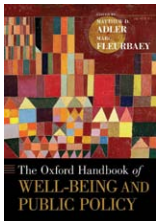
We welcome your submissions.

Please contact us: lawreport@yale.edu.

Matthew D. Adler and Marc Fleurbaey, eds.

The Oxford Handbook of Well-Being and Public Policy

Oxford University Press, 2016



Adler '91 and Fleurbaey explore the various methodologies that may be used to improve government policies, in relation to how these policies might positively or negatively affect individual well-being. Containing

chapters from an international range of scholars, and taking on the subject from an interdisciplinary perspective, the book addresses topics such as GDP, inequality, cost-benefit analysis, social welfare, objective goods, and tools for the measurement of well-being, among others.

Mary Campbell

Charles Ellis Johnson and the Erotic Mormon Image

University of Chicago Press, 2016



In her new book, Campbell '01 describes the fundamental transformation that occurred in the aftermath of Mormonism's abandonment of polygamy, through the lens of the church's favorite photographer, Charles Ellis Johnson. While photograph-

ing important church figures and sites, Johnson also ran a mail-order erotic photography business, where he sold what he referred to as "spicy pictures of girls." By contextualizing the complicated and unexpected relationships between his erotic and sacred photography in turn-of-the-century America, Campbell explicates the important place of pictures in both the re-formation of the Mormon Church, as well as the changing American nation as a whole.

Damiano Canapa

Trademarks and Brands in Merger Control: An Analysis of the European and Swiss Legal Orders

Wolters Kluwer, 2016



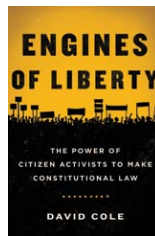
Canapa '15 LL.M. examines the role of intellectual property rights in merger control procedures, and addresses trademarks and brands from this perspective. The book addresses how European and Swiss competition authori-

ties in particular should assess a merger in light of trademarks and brands, and seeks answers to questions deriving from the economic approaches prevalent in European Union Law.

David Cole

Engines of Liberty: The Power of Citizen Activists to Make Constitutional Law

Basic Books, 2016



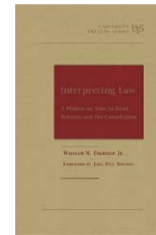
Cole '84 argues that the real impetus behind change in U.S. constitutional law is not the Supreme Court alone, as is commonly assumed, but the campaigns of citizen activists seeking change. By exploring

three such examples from the past forty years—the fight for marriage equality, the NRA's machinations regarding the Second Amendment, and the quest for assuring human rights in the war on terror—Cole demonstrates that politically engaged citizens and organizations are the true power in affecting our nation's most fundamental laws.

William N. Eskridge, Jr.

Interpreting Law: A Primer on How to Read Statutes and the Constitution

Foundation Press, 2016



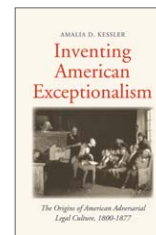
William Eskridge '78, John A. Garver Professor of Jurisprudence, presents an introduction to statutory and constitutional interpretation, identifying not only the primary precepts that guide such inter-

pretations, but also their operations and interactions. Focusing upon a statute that prohibits vehicles across the street from the White House, the book considers applications of the statute and its context, in order to bring its implications to a wide range of situations.

Amalia D. Kessler

Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800–1877

Yale University Press, 2016



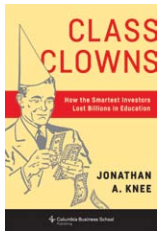
The adversarial trial—pitting lawyer against lawyer in a performative display of eloquence, rhetoric, and suasion—stands as the quintessential model of the American legal system. In her latest book, Kessler '99 provides

a compelling history of this lawyer-driven legal culture, bringing the reader back to its origins in the decades before the Civil War. By explaining how this adversarialism emerged in response to the legal, socio-economic, political, and cultural debates of antebellum America, the author demonstrates not only its importance for the formation of American legal institutions, but also its role in the creation of a national identity.

Jonathan A. Knee

Class Clowns: How the Smartest Investors Lost Billions in Education

Columbia University Press, 2016



Knee '88 investigates how dozens of investors with records of success have failed over the last thirty years in attempting to improve education with market-driven principles.

By examining four massive financial failures in the realm of education investment, he provides an important cautionary tale for policymakers and future investors keen on reforming education with a belief in the curative power of the market.

Lewis Segal

With All Due Respect

Tupelo Press, 2016



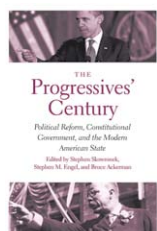
When Michael Cullen, the protagonist in Segal's '59 novel, joins a prestigious law firm in 1974, he unexpectedly hears a new partner claim that the United States committed

a grave error in not aligning with Nazi Germany during the Second World War. Grappling with the conflicting demands of his profession and his conscience, Cullen must negotiate his firm's anti-Semitism, his partner's seeming sympathy for fascism, and the tension between the lawyer's pursuit of justice and the practical obstacles in the way of that work.

Stephen Skowronek, Stephen M. Engel, and Bruce Ackerman, eds.

The Progressives' Century: Political Reform, Constitutional Government, and the Modern American State

Yale University Press, 2016



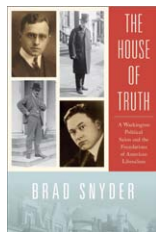
The Progressives' Century, edited by Bruce Ackerman '67, Sterling Professor of Law and Political Science (with Stephen Skowronek and Stephen M. Engel), studies how the Progressive Era redefined the political

landscape for those on the left, right, and center. The book's collection of chapters from renowned historians, political scientists, and legal scholars explores the century from 1912, when progressivism first emerged on the national stage as an insurgent political movement, to the present day, where it finds itself on the defensive from a counterinsurgent conservative agenda. Ackerman contributes the volume's concluding chapter, "What Is to Be Done? A New Progressivism for a New Century."

Brad Snyder

The House of Truth: A Washington Political Salon and the Foundations of American Liberalism

Oxford University Press, 2017



Snyder '99 examines the birth of American liberalism through the political salon known as the "House of Truth," near Dupont Circle in Washington, DC. With a focus on the pre-New

Deal era, he explores how men such as Felix Frankfurter, Walter Lippmann, Oliver Wendell Holmes, and others debated the American future within the confines of that row house's walls. The author also connects these early twentieth-century debates to current questions of sociopolitical discourse, demonstrating the contemporary relevance of these elite salon discussions.

Marcia A. Zug

Buying a Bride: An Engaging History of Mail-Order Matches

NYU Press, 2016



From the "Tobacco Wives" of the Jamestown colony to contemporary same-sex mail-order grooms, Zug '04 examines the implications, advantages, and disadvantages of mail-order marriage throughout

American history. While the author does discuss the deception, abuse, and human trafficking prevalent in the institution, she

also examines the potential for empowerment and sociopolitical advancement that mail-order brides might gain. Drawing on a long history of mail-order marriage court cases, Zug ultimately argues that mail-order marriage can actually empower women, and should thus be both safeguarded and supported.

ALSO OF NOTE

Ronald Jay Allen, William J. Stunz, Joseph L. Hoffmann, Debra A. Livingston, Andrew D. Leipold, and Tracey L. Meares

Comprehensive Criminal Procedure, 4th Edition

Aspen Publishers, 2016

Ralph R. Banks, Kim Forde-Mazrui, Guy-Uriel Charles, and Cristina M. Rodríguez '00

Racial Justice and Law:

Cases and Materials

Foundation Press, 2016

Philip Segal '04 MSJ

The Art of Fact Investigation: Creative Thinking in the Age of Information Overload

Ignaz Press, 2016

Roberto Saba '95 LL.M., '11 JSD Más allá de la igualdad formal ante la ley: ¿Qué le debe el Estado a los grupos desaventajados?

Siglo XXI Editores, 2016

Mrinal Satish '04 LL.M., '13 JSD Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India

Cambridge University Press, 2016

Mary Hutchings Reed '76

One for the Ark

Ampersand, Inc., 2016