# of Law and Religion

Volume XIV

Number 1

1999-2000

#### Perry Symposium

Who Counts Morally? Eric Blumenson

Rights as Religious or Secular: Why Not Both?

Lisa Sowle Cahill

The Dignity of the Human Person and
The Idea of Human Rights: Four Inquiries

Jean Bethke Elshtain

Review Essay: A Secular View of Human Rights Natan Lerner

From Natural Law to Human Rights: Or, Why Rights Talk Matters

Reflections on "Universal Absolutes"

Max L. Stackhouse

Michael Perry, Peter Singer, and Quasimodo:
Persons with Disabilities and the Nature of Rights

R. George Wright

A Few Words of Gratitude Michael J. Perry

Articles

The Reek of Cruelty and the Quest for Healing— Where Retributive and Restorative Justice Meet

The Transformation of Buddhism During British Colonialism

The Criminal Defense Attorney: Roadblock or Bridge to Restorative Justice

Charles Villa-Vicencio

Yarina Liston

Jean Porter

Robert F. Cochran, Jr.

Sponsored by: Hamline University School of Law

Published by: Hamline University School of Law

ISSN: 0748-0814

### THE JOURNAL OF LAW AND RELIGION

VOLUME XIV 1999-2000 NUMBER 1

#### EDITORIAL STAFF

#### **Editors**

MARIE FAILINGER, Hamline University School of Law PATRICK KEIFERT, Luther Theological Seminary

#### Managing & Book Editor

HOWARD J. VOGEL, Hamline University School of Law

#### **Book Review Editor**

EDWARD MCGLYNN GAFFNEY, JR, Valparaiso University School of Law

ASSOCIATE EDITOR
MICHAEL HERRIGES

STUDENT SUBSCRIPTION MANAGER
JULIE C. TESSIER

PRODUCTION MANAGER
LINDA BERGLIN

ANNE D. BYRNE

CHRIS CARLISLE

EDITORIAL ASSISTANTS ULISSE GALLO AAISHAH HASHMI

KARA KIRKEBY KRISTINE K. NOGOSEK

#### **EDITORIAL BOARD**

THOMAS PORTER, Attorney at Law, Boston, Massachusetts, Chair AZIZAH AL-HIBRI, T.C. Williams School of Law, University of Richmond EDWIN J. BUTTERFOSS, Hamline University School of Law STEPHEN L. CARTER, Yale Law School MARIE FAILINGER, Hamline University School of Law EDWARD McGLYNN GAFFNEY, JR., Valparaiso University School of Law EMILY HARTIGAN, Saint Mary's University of San Antonio School of Law CATHLEEN KAVENY, Notre Dame University Law School PATRICK KEIFERT, Luther Theological Seminary, Saint Paul, Minnesota HOWARD LESNICK, University of Pennsylvania Law School ROBIN LOVIN, Southern Methodist University, Perkins School of Theology ELIZABETH MENSCH, State University of New York at Buffalo, School of Law NANCY MILLER-HERRON, Attorney at Law, Dresden, Tennessee MICHAEL J. PERRY, Wake Forest University School of Law EARL SCHWARTZ, Saint Paul, Minnesota DOUGLAS STURM, Professor Emeritus, Bucknell University HOWARD J. VOGEL, Hamline University School of Law AMINA WADUD, Virginia Commonwealth University ROBERT YAZZIE, Office of the Chief Justice - Navajo Nation

#### ADVISORY COMMITTEE

MILTON KONVITZ, Professor Emeritus, Cornell University of New York, Co-chair DOUGLAS STURM, Professor Emeritus, Bucknell University, Co-chair TAHA JABIR ALALWANI, The Graduate School of Islamic & Social Sciences RICHARD BAEPLER, Valparaiso University MILNER BALL, University of Georgia HAROLD BERMAN, Emory University School of Law GERARD BRADLEY, Notre Dame University Law School JAMES BRESNAHAN, Northwestern University Medical School LYNN BUZZARD, Campbell University School of Law FRED CARNEY, Southern Methodist University ROGER CRAMTON, Cornell University School of Law CARL ESBECK, University of Missouri-Columbia School of Law RICHARD HIERS, University of Florida DAMIEN KEOWN, University of London, Goldsmiths LEIGH LERNER, Rabbi, Montreal, Canada SANFORD LEVINSON, University of Texas School of Law DAVID LITTLE, Harvard Divinity School MARTIN MARTY, University of Chicago Divinity School SEYYED HUSSEIN NASR, George Washington University LOUIS NEWMAN, Carleton College KAY PRANIS, Minnesota Department of Corrections, Restorative Justice ELIZABETH SCHUESSLER-FIORENZA, Harvard University Divinity School THOMAS SHAFFER, Notre Dame University Law School PETER N. THOMPSON, Hamline University School of Law CHARLES VILLA-VICENCIO, University of Cape Town, South Africa ROSALIE WAHL, Associate Justice, Retired, Minnesota Supreme Court MICHAEL WELKER, University of Heidelberg, Germany JOHN WITTE, Jr., Emory University School of Law WILSON YATES, United Theological Seminary STEPHEN B. YOUNG, Attorney at Law, Saint Paul

The Journal of Law and Religion is sponsored by the Hamline University School of Law and is a nonprofit, nonpartisan publication devoted to investigating the interaction of religion and law.

Subscriptions to *The Journal of Law and Religion*, which is published twice annually, are \$15 per two-issue volume for individuals, \$25 for institutions, and \$10 for students. Add an additional \$10 for foreign airmail service. Subscription requests, manuscripts, book reviews, books to be reviewed, and general correspondence should be addressed to:

The Journal of Law and Religion 1536 Hewitt Avenue Saint Paul, Minnesota 55104 or jlr@gw.hamline.edu

Commencing with Volume X, citations conform to: *The University of Chicago Manual of Legal Citation* (1989) copyright by the University of Chicago. Unsolicited manuscripts will be returned only upon request.

Individual and back issues and complete sets of *The Journal of Law and Religion* may be ordered directly from William S. Hein & Co., 1285 Main Street, Buffalo, New York 14209.

The views and opinions expressed in *The Journal of Law and Religion* are those of the authors and do not necessarily reflect the views of the editorial staff, the editorial board, the advisory board, or the sponsors of *The Journal of Law and Religion*.

Articles are indexed in the *Index to Legal Periodicals* published by The H.W. Wilson Co. (Bronx, New York), and in the *Legal Resource Index* available on line on a variety of computer database services.

Articles are also indexed in *Religion Index One: Periodicals;* book reviews are indexed in *Index to Book Reviews in Religion*. Both indexes are published by the American Theological Library Association, Chicago, and are available online through BRS Information Technologies (Latham, New York) and DIALOG Information Services (Palo Alto, California).

Internet access to *The Journal of Law and Religion*, including an index to past issues, is available at http://web.hamline.edu/law/lawrelign/jlr/

All copyrights are reserved.

Cite as: 14 J LAW & RELIG 1

#### JOURNAL OF LAW AND RELIGION

#### STATEMENT OF PERSPECTIVE

The Journal of Law and Religion was initiated in 1982 as a collaborative effort of the Council on Religion and Law and the Hamline University School of Law. It was born of a sense of historical malaise. The modern age with its strong propensity toward the secularization of all areas of life, while not without merit in its liberating effects, nonetheless has its dark side.

We live, some say, in a time of profound historical crisis. Domestically and globally, we confront massive issues which force us to reconsider, in fundamental ways, the shape and quality of our common life. Yet many of the disciplines of thought and practice that should be a rich resource in such a time are found wanting—among them, law and religion. Law, a discipline presumably devoted to the ways of justice, has all too often become a set of complex, technical tools without concern for higher purpose. Religion, presumably given to the all-embracing promises and prescriptions implied in the sense of the sacred, has all too often become privatized and neglectful of our public life.

The Journal of Law and Religion is dedicated to a fundamental reappraisal of the disciplines of law and religion as they impinge on each other, might instruct each other, and taken in their conjunction, might offer a constructive response to the major issues of our times. As such its concerns are sixfold.

- Historical The Journal intends to encourage the examination of historical developments, movements, thinkers, and issues to enrich our understanding of how law and religion have, in various ways, been mutually influential.
- Theoretical The Journal intends to promote constructive work in religious and legal thought about fundamental theological and jurisprudential questions pertaining to professional practice and the structures of our public life.
  - Ethical The Journal intends to support explorations into the foundations of ethical judgment and normative critiques of our social life, particularly as they draw upon resources from the life of law and religion.
  - Global The Journal intends to be encompassing in its reach, seeking out voices from all the religious and legal traditions throughout the world and bringing them into conversations with each other.
- **Professional** The Journal intends to stimulate collaboration between jurists and religious leaders given their respective commitments, as professionals, to the common good of all peoples.
  - Spiritual The Journal recognizes that human existence is grounded in the spiritual, which is represented in many forms and expressions.

The *Journal* is thus a forum within which the disciplines of law and religion might together consider with utmost seriousness their joint responsibility for the creation of a civilization of genuine peace and justice. Within the compass of that purpose, the *Journal* intends to be open-minded and non-prejudicial; it is receptive to submissions from all persuasions and perspectives.



#### A subscription to the

## JOURNAL OF LAW AND RELIGION

Cost per volume (two issues):

\$15.00 individual (USA) \$25.00 individual (foreign) \$25.00 institution (USA) \$35.00 institution (foreign) \$10.00 student

Circulation Manager Journal of Law and Religion Hamline University School of Law 1536 Hewitt Avenue Saint Paul, Minnesota 55104

☐ Payment Enclosed

	☐ Please Bill	I	
Name:			
Address: _			
City:	State:	Zip:	
Phone:	Fax:	E-Mail:	

#### **ANNOUNCEMENT**

We have acquired the entire back stock, reprint and microform rights to the

#### JOURNAL OF LAW AND RELIGION

Complete sets to date are now available. We can also furnish single volumes and issues.

WILLIAM S. HEIN & COMPANY, INC. 1285 Main Street Buffalo, New York 14209

## THE JOURNAL OF LAW AND RELIGION

VOLUME XIV	1999-2000	Number 1
	TABLE OF CONTENTS	
Editor's Preface		xiii
	PERRY SYMPOSIUM	
Eric Blumenson	Who Counts Morally?	1
Lisa Sowle Cahill	Rights as Religious or Secular: Why Not Both?	41
Jean Bethke Elshtain	The Dignity of the Human Person a The Idea of Human Rights: Four I	
Natan Lerner	Review Essay: A Secular View of Human Rights	67
Jean Porter	From Natural Law to Human Right Or, Why Rights Talk Matters	
Max L. Stackhouse	Reflections on "Universal Absolute	es"97
R. George Wright	Michael Perry, Peter Singer, and Que Persons with Disabilities and the lof Rights	Vature
Michael J. Perry	A Few Words of Gratitude	161

#### JOURNAL OF LAW & RELIGION

#### Articles

Charles Villa-Vicencio	The Reek of Cruelty and the Quest for Healing—Where Retributive and Restorative Justice Meet	165
Yarina Liston	The Transformation of Buddhism During British Colonialism	189
Robert F. Cochran, Jr.	The Criminal Defense Attorney: Roadblock or Bridge to Restorative Justice	211

#### ERRATA to Volume XIII, Issue No. 2

In the article by Rex J. Ahdar, A Christian State? (pp 455-57 fn 12, 13, 19; p 463 fn 49; p 474 fn 96; p 479 fn 114) the correct citation for the cites to the New Zealand Law Review should have been as New Zealand Law Reports. The correct citation for the Dominion Law Review should have been Dominion Law Reports (p 455 fn 9; pp 475-76 fn 97, 101; p 478 fn 107; p 480 fn 117).

Check out our website!

## Journal of Law & Religion

http://web.hamline.edu/law/lawrelign/jlr/index.html

Cumulative Index by Subject and Author



Survey of Trends and Developments on Religious Liberty in the Courts



Table of U.S. Supreme Court Decisions Relating to Religious Liberty



Announcements of Coming Events



Soon to be added:
Article Abstracts of Past and Current Issues

#### The Religion Case Reporter

A monthly reporting federal and state cases addressing the free exercise of religion, state establishment of religion, the clergy and religious institutions. Providing complete coverage of religion as it impacts on:

- Family Law
- Bankruptcy
- Employment
- Medical Care
- Clergy
- Rights of Association
- Public Accommodations
- Housing
- Fora Analysis
- Criminal Law
- Prisoner Rights
- Evidence and Privileges
- Commercial Law
- Immigration
- Religious Institutions
- Immunity From Suit
- Education and Schools
- Arbitration
- Native Americans
- New Age Religion
- Jurisdiction
- Jurors
- Real Property Law
- Internet
- Broadcasting
- Unemployment Insurance

- Taxation
- Libel and Defamation
- Blue Laws
- Church Membership
- Military
- Statutes of Limitation
- Insurance
- Negligent Hiring, Training, Retention and Supervision
- Religious Symbols
- Prayer
- Damages
- Muslims and Islamic Law
- Jews and Jewish Law
- Mormons, Sikhs and Other Religious Groups
- Defamation and Libel
- Sexual Abuse
- Standing
- State Financial Aid
- Workers' Compensation
- Unions
- Trademarks
- Welfare Benefits
- Zoning and Land Control
- Nearly 1,000 Indexed Topics

Paradigm Publications, Inc.

1358 East 24th Street • Brooklyn, NY 11210-5143 Phone: (718) 951 8206 • Fax: (718) 258 7471

E-mail: parapub@worldnet.att.net • Web site:www.paradigmpub.com

#### The Religion Case Reporter

The only publication reporting all the relevant federal and state cases, The Religion Case Reporter reported 608 cases in its first two years of publication, 60% more than the closest comparable publication.

Appearing 12 times a year and averaging 50-60 pages, *The Religion Case Reporter*, provides complete coverage of all the pertinent factual and legal issues of each case.

A detailed, analytic index and table of statutes accompanies each issue and the subsequent history of reported cases is tracked from month to month.

A free of charge, online, Cumulative Index and Table of Statutes, updated monthly and currently containing nearly 1,000 indexed headings and subheadings and referencing over 400 statutes, allows subscribers to conduct their research using a single, fully integrated, source.

To view the Cumulative Index and Table of Statutes, simply log onto <a href="https://www.paradigmpub.com">www.paradigmpub.com</a> and click the appropriate buttons. You may also view sample copies of *The Religion Case Reporter* on the Paradigm website. To obtain free samples in the mail, telephone, email or fax using the numbers printed below.

Subscribe online and take advantage of the introductory subscription rate.

Paradigm Publications, Inc.
1358 East 24th Street • Brooklyn, NY 11210-5143
Phone: (718) 951 8206 • Fax: (718) 258 7471
E-mail: parapub@worldnet.att.net • Web site:www.paradigmpub.com

#### Called by Stories

## Biblical Sagas and Their Challenge for Law

#### MILNER S. BALL

Distinguished legal scholar and Presbyterian minister

Milner S. Ball examines great sagas and tales from the Bible for
the light they shed on the practice of law and on the meaning
of a life lived in the legal profession.

"Milner Ball has written a wonderful book, a sustained and fruitful meditation on the relation between fundamental biblical texts and possible meanings of the practice of law in modern America. He illuminates these crucial texts and the law itself in original, surprising, and highly persuasive ways. A truly impressive achievement."—James Boyd White, author of Acts of Hope:

The Creation of Authority in Literature, Law, and Politics

"Simply put, this book is extraordinary. . . . Ball says strikingly original things about familiar old texts and acutely probes pressing contemporary issues. Milner Ball is deeply learned across traditional disciplinary lines, but he wears his learning lightly. A wise, clear, and funny conversationalist, he is also extraordinarily deep and inspiring."—Aviam Soifer, author of Law and the Company We Keep

264 pages, paper \$17.95

#### **Duke University Press**

1-888-651-0122 www.dukeupress.edu