# of Law and Religion

Volume XXI		
	AALS Presentations	
Number 2	AALS Preface	Marie A. Failinger
2005-2006	Religious Lawyering's Second Wave	Russell G. Pearce and Amelia J. Uelmen
	The Religious Lawyering Critique	Bruce A. Green
	Commentary: The Lawyer in the Religious Traditions: A Lutheran finds Commonality	Susan R. Martyn
	Roman Catholic Lawyers in the United States of America	a Thomas L. Shaffer
	Articles	
	Crime and Justice in Postcolonial Nigeria: The Justificati and Challenges of Islamic Law of Shari'ah	ons Ogechi E. Anyanwu
	Answering the Dispersed Self and Nation: A Response to Jed Rubenfeld's Freedom and Time: A Theory of Constitutional Self Government	Richard P. Church
	Review Essay	
	Belief and Interpretation: Meditations on Pelikan's "Interpreting the Bible and the Constitution"	Francis J. Mootz III
	Law, Religion and Ethics Symposiu	ım
	Democracy and Virtue: Optimism or Faith?	Elizabeth Mensch
	A Democratic Faith	Earl Schwartz
	The Democratic Virtues, our Common Life and the Common School: Trust in Democracy: Anabaptists, Italian Americans, and Solidarity	Thomas L. Shaffer
	In Memoriam: Milton R. Konvitz	5

Sponsored by:Hamline University School of LawPublished by:Hamline University School of LawISSN: 0748-0814

# THE JOURNAL OF LAW AND RELIGION

VOLUME XXI

### 2005-2006

NUMBER 2

### EDITORIAL STAFF

*Editor* MARIE A. FAILINGER, Hamline University School of Law

Associate Editors PATRICK KEIFERT, Luther Theological Seminary HOWARD J. VOGEL, Hamline University School of Law

**Book Review Editor** LESLIE GRIFFIN, University of Houston Law Center

### **Technical Editors**

MARY L. DUNNEWOLD, Hamline University School of Law STEPHEN LIEBO, Hamline University School of Law

### **Production/Subscription Manager** LINDA BERGLIN, Hamline University School of Law

Jennifer Cho Peter Navis John Sadowski EDITORIAL ASSISTANTS CHRISTOPHER GANGL

Marit Peterson Lindsay Shaw Taneeza Islam Rebecca Pinero Karen Westwood

### EDITORIAL BOARD

JOSÉ ROBERTO JUÁREZ, University of Denver, Sturm College of Law, Chair STEPHEN L. CARTER, Yale Law School PAULA COOEY, Macalester College ANTHONY E. COOK, Georgetown University Law Center ANVER M. EMON, University of Toronto MARIE FAILINGER, Hamline University School of Law Ex Officio JON M. GARON, Hamline University School of Law LESLIE C. GRIFFIN, George Washington University Law School Ex Officio EMILY ALBRINK HARTIGAN, Saint Mary's University of San Antonio School of Law PATRICK R. KEIFERT, Luther Theological Seminary HOWARD LESNICK, University of Pennsylvania Law School ROBIN LOVIN, Perkins School of Theology, Southern Methodist University ELIZABETH MENSCH, State University of New York at Buffalo, School of Law NANCY MILLER-HERRON, Attorney at Law, Dresden, Tennessee, Secretary RUSSELL PEARCE, Fordham University School of Law MICHAEL PERRY, Emory University School of Law THOMAS PORTER, JUSTPEACE Center for Mediation & Conflict Transformation RICHARD QUINNEY, Professor Emeritus, Northern Illinois University ASIFA QURAISHI, University of Wisconsin Law School EARL SCHWARTZ, Hamline University DARRYL TRIMIEW, Colgate Rochester Crozer Divinity School AMELIA UELMEN, Fordham University School of Law HOWARD J. VOGEL, Hamline University School of Law, Treasurer

#### ADVISORY COMMITTEE

TAHA JABER AL-ALWANI, Graduate School of Social and Islamic Sciences AZIZAH AL-HIBRI, T.C. Williams School of Law, University of Richmond ABDULLAHI AN-NA'IM, Emory University School of Law ZAFAR ISHAO ANSARI, Islamic Research Institute, International Islamic University, Pakistan RICHARD BAEPLER, Professor Emeritus, Valparaiso University School of Law MILNER BALL, University of Georgia School of Law HAROLD BERMAN, Emory University School of Law GERARD BRADLEY, Notre Dame University Law School MICHAEL J. BROYDE, Emory University School of Law LYNN BUZZARD, Campbell University School of Law FRED CARNEY, Professor Emeritus, Perkins School of Theology, Southern Methodist University ROBERT F. COCHRAN, JR., Pepperdine University School of Law MOHAMED S. EL-AWA, Islamic Scholar, Egypt CARL ESBECK, University of Missouri-Columbia School of Law EDWARD MCGLYNN GAFFNEY, JR., Valparaiso University School of Law RICHARD HIERS, University of Florida CATHLEEN KAVENY, Notre Dame University Law School DAMIEN KEOWN, University of London, Goldsmiths SANFORD LEVINSON, University of Texas School of Law DAVID LITTLE, Harvard University Divinity School SEYYED HOSSEIN NASR, George Washington University LOUIS NEWMAN, Carleton College KAY PRANIS, Saint Paul, Minnesota ELISABETH SCHÜSSLER FIORENZA, Harvard University Divinity School THOMAS L. SHAFFER, Notre Dame University Law School STEVEN D. SMITH, University of San Diego School of Law DOUGLAS STURM, Professor Emeritus, Bucknell University PETER N. THOMPSON, Hamline University School of Law CHARLES VILLA-VICENCIO, Institute for Justice and Reconciliation, South Africa MICHAEL WELKER, University of Heidelberg, Germany JOHN WITTE, Jr., Emory University School of Law WILSON YATES, United Theological Seminary of the Twin Cities STEPHEN B. YOUNG, Attorney at Law, Saint Paul, Minnesota

The *Journal of Law and Religion* is sponsored by the Hamline University School of Law and is a interdisciplinary, interfaith academic and professional publication devoted to investigating the interaction of religion and law.

Subscriptions to the *Journal of Law and Religion*, which is published twice annually, are \$25 per two-issue volume for individuals, \$35 for institutions, and \$12 for students. Add an additional \$10 for foreign postage. Subscription requests, manuscripts, and general correspondence should be addressed to:

Journal of Law and Religion 1536 Hewitt Avenue Saint Paul, Minnesota 55104 Iberglin@hamline.edu

## Book reviews and books to be reviewed should be addressed to: lgriffin@uh.edu

Citations generally conform to the Association of Legal Writing Directors' *ALWD Citation Manual.* Citations to Jewish/Christian Biblical sources conform to the SBL Handbook of Style and the Jewish Law Annual. 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.

This periodical is also indexed in the *ATLA Religion Database*®, published by the American Theological Library Association, 300 S. Wacker Dr., Suite 2100, Chicago, IL 60606, E-mail: atla@atla.com, WWW: http://www.atla.com/.

Internet access to information about the *Journal of Law and Religion*, including an index to past issues, is available at http://www.hamline.edu/law/jlr

All copyrights are reserved.

Cite as: 21 J. L. & RELIG. (2005-06)

### 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

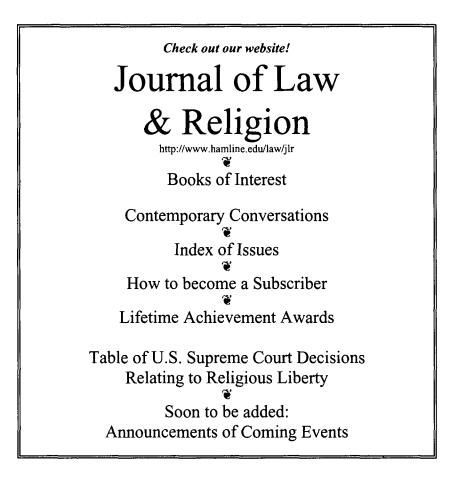
### Cost per volume (two issues):

\$25.00 individual (U.S.)
\$35.00 individual (foreign)
\$35.00 institution (U.S.)
\$45.00 institution (foreign)
\$12.00 student

Print and send to: Circulation Manager Journal of Law and Religion Hamline University School of Law 1536 Hewitt Avenue St. Paul, MN 55104 U.S.

Please Enclose Payment made out to: Journal of Law and Religion

Name:			
Address:			
City:	State:	Zip:	
Country:			
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 14209-1987 Orders may also be placed by calling Hein at 800.828.7571; via fax 716.883.8100; or found in electronic format for all your research needs on HeinOnline <u>http://heinonline.org/</u>

https://doi.org/10.1017/S0748081400005567 Published online by Cambridge University Press

# THE REVIEW OF FAITH & INTERNATIONAL AFFAIRS



In quite a short time *The Review* has become an important point of reference for anyone interested in the relation of religion and global developments. I recommend it warmly.

---Peter L. Berger, Institute on Culture, Religion and World Affairs, Boston University

*The Review* is providing an important platform for the dialogue of civilizations and in doing so is giving us an alternative paradigm to the pervasive idea of the clash of civilizations.

—Akbar S. Ahmed, Ibn Khaldun Chair of Islamic Studies, American University

Publishers are always looking for a new niche. *The Review* meets a need that was waiting to be filled. It is an indispensable forum both for conversation among believers concerned about world affairs and for general readers interested in the place of religion in world politics.

-Drew Christiansen, Editor in Chief, America

### FORTHCOMING ISSUES WILL FEATURE:

**Condoleezza Rice**, U.S. Secretary of State **Madeleine Albright**, former U.S. Secretary of State **Noah Feldman**, New York University Law School **Thomas Farr**, former director, Office of Religious Freedom, U.S. State Department **Scott Thomas**, University of Bath

Scott Homas, Oniversity of Bath

Qibla Ayaz, University of Peshawar Mark Silk, Greenberg Center for the Study of

Religion in Public Life
Paul Marshall, Freedom House

r aut iviarsnam, rreedom riouse

Jytte Klausen, Brandeis University

James Skillen, Center for Public Justice

and others...

### ANNUAL SUBSCRIPTION (4 ISSUES) Individual \$25 Library \$40 THREE WAYS TO ORDER: • online at: www.globalengage.org/store • by phone at: 703-527-3100

by mail at: The Review, c/o IGE P.O. Box 14477 Washington, DC 20044

# THE JOURNAL OF LAW AND RELIGION

Volume XXI	2005-2006	NUMBER 2
	TABLE OF CONTENTS	
Editor's Preface		xv
	AALS Presentations	
Marie A. Failinger	AALS Preface	265
Russell G. Pearce and Amelia J. Uelmen	Religious Lawyering's Second V	Wave 269
Bruce A. Green	The Religious Lawyering Critiq	ue 283
Susan R. Martyn	Commentary: The Lawyer in the Traditions: A Lutheran finds Co	-
Thomas L. Shaffer	Roman Catholic Lawyers in the United States of America	
	ARTICLES	

Ogechi E. Anyanwu	Crime and Justice in Postcolonial Nigeria:	
	The Justifications and Challenges of Islamic	
	Law of Shari'ah	315

### JOURNAL OF LAW & RELIGION

Richard P. Church	Answering the Dispersed Self and Nation:	
	A Response to Jed Rubenfeld's Freedom	
	and Time: A Theory of Constitutional	
	Self Government	. 349

### **REVIEW ESSAY**

Francis J. Mootz III	Belief and Interpretation:	
	Meditations on Pelikan's "Interpreting the	
	Bible and the Constitution"	. 385

### Law, Religion and Ethics Symposium

Elizabeth Mensch	Democracy and Virtue: Optimism or Faith? 401
Earl Schwartz	A Democratic Faith 407
Thomas L. Shaffer	The Democratic Virtues, our Common Life and the Common School: Trust in Democracy: Anabaptists, Italian Americans, and Solidarity

### In Memoriam: Milton R. Konvitz

Marie A. Failinger	Editor's Note	427
	Bibliography: Milton R. Konvitz	431

### **BOOK REVIEWS**

John A. Coleman	Church, State and Civil Society, by David Fergusson
Steven G. Gey	That Godless Court?: Supreme Court Decisions on Church-State Relationships, by Ronald B. Flowers

### JOURNAL OF LAW & RELIGION

Christine E. Gudorf	Blessing Same-Sex Unions: The Perils of Queer Romance and the Confusions of Christian Marriage, by Mark D. Jordan
Mark W. Janis	Law and Religion in Post-Communist Europe, edited by Silvio Ferrari, W. Cole Durham, Jr. and Elizabeth A. Sewell; Laws on Religion and the State in Post- Communist Europe, edited by W. Cole Durham, Jr. and Silvio Ferrari
Bradley J. Longfield	John Witherspoon and the Founding of the American Republic, by Jeffry H. Morrison
Mary Anderlik Majumder	The Christian Religion and Biotechnology: A Search for Principled Decision-making, by George P. Smith, II
Joseph V. Montville	Nonviolence and Peace Building in Islam: Theory and Practice, by Mohammed Abu-Nimer
Susan Tiefenbrun	Why the Medieval Trial of Joan of Arc is of Particular Interest Today <i>The Trial of Joan of Arc</i> , by Daniel Hobbins
Stacey A. Tovino	Hardwired Behavior: What Neuroscience Reveals about Morality, by Laurence R. Tancredi
Thomas Glyn Watkin	Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition, by Harold J. Berman