

## EDITOR'S PREFACE

In yesterday's paper, an editorial writer implied that the disappearance of the moderate middle in the American public conversation over values and Congress' abdication of political responsibility for American social and economic life has its parallels in post-World War I Germany. While it is easy to "play the Nazi Germany card" in critique of almost any modern society, the author (perhaps inadvertently) implies that public conversation led by moderate voices and responsible leadership is an essential part of social stability in any community. Most academics and academic journal authors, whose vocation centers around public conversation, most often of the moderate variety, would probably agree with that assumption. However, it is by no means a given that the rest of the world would agree with such an assessment. Any perusal of a "day in the life" of the average person, or even the blogosphere which is communication, puts such a statement in question.

The two symposia we publish in this issue, and to some extent the additional articles, pose this question of the value of public conversation to non-academic audiences. In the first, a collection of papers given at the January 2006 American Association of Law Schools Section on Professional Responsibility program, law professors ask lawyers to think about whether, in their daily lives, they participate in overlapping communities, communities with their individual clients, communities with other lawyers, and their own religious communities, each of these a community of conversation within itself and, by virtue of the lawyer's participation in them, communities of conversation with each other.

In this symposium, Russell Pearce and Amy Uelmen describe how lawyers are creating communities of discourse and reflection and trying to work out ethical problems they encounter drawing from the conversation in both communities, in the "second wave" of what they term the religious lawyering movement. Bruce Green issues a note of caution about either presuming that lawyers experience serious conflict between their religious and their professional lives, or presuming that lawyers' religious values can be imported wholesale to solve pressing ethical problems. Tom Shaffer takes the specific history of Catholic lawyers in America to muse about how conflicting traditions in one's own faith community, such as the American Catholic tradition of

patriotism and Catholic Social Teaching, inform how law students, law professors and lawyers carry out their work. Susan Martyn offers her reflections on how Luther's insight into God's two governances of the world informs Lutheran lawyers who participate in both professional and religious callings and communities.

Our second symposium, which includes some of the remarks presented at the October 2005 Journal of Law and Religion/Hamline University School of Law Symposium on Law, Religion and Ethics, pursues the theme of the role of conversation in exploring commonality in difference, this time as focused upon American political life. All three of our authors express great discomfort with the easy marrying of tradition and democratic life that is the vogue of political speeches on both the right and the left. Through a close reading of the Gettysburg address, Earl Schwartz points out that though "the conception in liberty and a proposition of equality, one a matter of history and the other of possibility, were congenitally joined in the thinking and intent of the founders," Lincoln understood, in a way that we moderns are loath to admit, that this joining "would prove a source of instability for *any* such nation, absent the constant rededication of the people to the holding together of these two things . . ."<sup>1</sup>

In this JLR Symposium, Tom Shaffer reminds us that some of the most vital "contributing" communities in the United States have been those communities who have challenged, confounded, and rejected a common story for the entire nation, focusing on three such communities: the Anabaptists, "the community of Italian-American immigrants, and the community "contemplated in modern Roman Catholic social teaching on solidarity."<sup>2</sup> Betty Mensch challenges the notion of a tradition itself, reminding us through a recitation of nineteenth-century intellectual turbulence that "[t]radition, when located in its actual historical context, is confusing and ambiguous." Rather than urging that we walk away from a conversation on tradition, however, she proposes,

there also really is a difference between, on the one hand, a juridical model that separates the deserving from the undeserving, and, on the other, the (utterly tradition-dependent) message of boundless Christian love.<sup>3</sup>

How we should think about this relationship between individual autonomy and political life in a pluralistic, secular democracy is further explored in some depth by Richard Church and Francis Mootz. Church

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1. See *infra* at Schwartz, 403.

2. See *infra* at Shaffer, 409.

3. See *infra* at Mensch, 397.

takes on Jed Rubenfeld's moral anthropology in *Freedom and Time: A Theory of Constitutional Self-Government*, which argues that "democracy and constitutional commitments are analogous to the achievement of personal freedom, selfhood and moral agency." Church rejects Rubenfeld's claims that individual autonomy and its "self-supporting commitments" are possible and necessary, and that an analogy between the self and the nation is appropriate. Mootz engages Jaroslav Pelikan's comparison of constitutional and Biblical interpretation in *Interpreting the Bible & the Constitution* to probe the difference between faithful interpretation of a central text rooted in a community's beliefs and "strategic manipulation" of such a text to suit the personal goals of the interpreter.

Ogechi Anyanwu similarly gets at the problem of community and tradition in a very different time and place. He probes the good as well as the challenges that come with the re-introduction of religious law, the law of Shari'ah, into a national jurisprudence that has been forced into modern secular norms by imperialism in denial of its own history and culture. We also offer a small tribute to a founding member of the Journal, Milton Konvitz, who lived as he taught and wrote, faithful to his community of faith and his community of work. We hope these offerings, along with a slew of fine book reviews, will engage your own thinking about the relationship between communities of faith and political life in a pluralistic world.

Marie A. Failinger, Editor