

## EDITORIAL

The four articles in this issue offer different perspectives on a perennial question of law and religion: how do law and religion respond to an ever-changing world? Both law and religion have strong commitments to tradition. Both spend much time looking back—to precedent, revelation, and prior practice—as they attempt to respond to the present. While tradition is central to both law and religion, this issue of *JLR* highlights the variety of legal and religious responses to change. Yifat Monnickendam examines the legal transplantation of Jewish law into the new religious community of Christianity. Deonnie Moodie describes the clash between changing aesthetics in India's courts and the desire by a local community to maintain traditional practices. Alex Deagon examines the thinking of John Milbank in relation to religious liberty; Milbank, in many ways, challenges the move away from forms of Christian tradition in political and social thought, and Deagon queries how the “new” development of religious liberty would fit in Milbank's thought. Charles Reid looks to the history of changing justifications for the Catholic Church's official response to same-sex relations to anticipate the possibility of new responses by the church in light of a changing social landscape. Each in their own way, these authors interrogate assumptions about the balance of stasis over change in law and religion.

Yifat Monnickendam's “Biblical Law in Greco-Roman Attire: The Case of Levirate Marriage in Late Antique Christian Legal Traditions” addresses the overarching question: What happened to biblical law when transferred to late antique Christianity? Monnickendam aims, in addressing that question, to “provide a paradigm that helps us understand the rise and development of late antique Christian legal traditions”—a “paradigm that elucidates how Christians adopted, adapted, and sometimes rejected their legal heritage, illuminating the overall development of Christian legal discourse.”<sup>1</sup> Monnickendam's article thereby “recontextualizes the legal discourse, positioning the Christian approach to levirate marriage as a complex case of legal transplant and adaptation of a legal heritage.”<sup>2</sup>

At the beginning of “Seeing Blood: Judicial Power versus Divine Desire at a Hindu Temple in West Bengal,” Deonnie Moodie reports that “[a]cross India, critiques of animal sacrifice have become increasingly strident over the past fifteen years.”<sup>3</sup> She then proceeds to contextualize and discuss a 2006 decision of the Calcutta High Court concerning a particular practice of animal sacrifice: the daily sacrifice of goats to the Hindu goddess Kali at Kalighat, a landmark Hindu pilgrimage site in Kolkata. Although the court did not go so far as to ban the practice, it ruled that the practice must be visually concealed. Professor Moodie suggests, in concluding her commentary, the ironic possibility that “the High Court's ruling may just increase the appeal of [animal] sacrifice in the same idiom of the Tantric tradition in which it is rooted.”<sup>4</sup> In addressing an issue of religious freedom, Moodie's article is of interest well beyond India.

1 Yifat Monnickendam, “Biblical Law in Greco-Roman Attire: The Case of Levirate Marriage in Late Antique Christian Legal Traditions,” *Journal of Law and Religion* 34, no. 2 (2019) (this issue).

2 Monnickendam, “Biblical Law in Greco-Roman Attire.”

3 Deonnie Moodie, “Seeing Blood: Judicial Power versus Divine Desire at a Hindu Temple in West Bengal,” *Journal of Law and Religion* 34, no. 2 (2019) (this issue).

4 Moodie, “Seeing Blood.”

Alex Deagon's aim, in "Reconciling John Milbank and Religious Freedom: 'Liberalism' through Love," is just what the title indicates. John Milbank is a leading member of the radical orthodoxy movement, and, as Professor Deagon notes, his "general critique of modernity and secular liberalism is well known."<sup>5</sup> Because "religious freedom" is part of the liberal framework Milbank so stridently criticizes, an important question arises, a question that in Deagon's view has not been adequately addressed: What are the implications of Milbank's political theology for religious freedom? In pursuing that inquiry, Deagon brings to bear "Milbank's theology and the law of love" on "the specific liberal ideas of religious freedom and the use of public or secular reasons in political discourse."<sup>6</sup> Deagon contends that "a discourse governed by the law of love [produces] genuine religious freedom that paradoxically transcends and fulfills the liberal ideals that secular liberalism proclaims but can never attain."<sup>7</sup>

Charles Reid's "Same-Sex Relations and the Catholic Church" "surveys the evolution of the Catholic Church's official response to same-sex relations over the last two centuries."<sup>8</sup> By *evolution*, Professor Reid does not mean that the church has "altered its condemnation of same-sex relations."<sup>9</sup> Rather, Reid's argument, amply documented in his article, is that "the justifications [the church] offers for [its condemnation] have shifted substantially, and have moved, especially recently, in a direction that makes possible the acceptance of same-sex relations at some future—and perhaps not too distant—date."<sup>10</sup> Reid's article brings to mind, of course, some important, controversial work of John T. Noonan, Jr.<sup>11</sup>—and brings to mind, too, therefore, Noonan's response to a criticism of that work:

Some Catholics concede that the church admits the principle of doctrinal development, but they accuse Noonan, in Richard John Neuhaus's words, of too often equating a development with "a change, or even a reversal, of doctrine." At a recent meeting of the Catholic Common Ground initiative, Noonan and theologian Avery Dulles had a polite, but sharp, exchange on the subject, with Noonan again insisting that "the record is replete with mistakes—the faithful can't just accept everything that comes from Rome as though God had authorized it."<sup>12</sup>

Careful, historical work by both Noonan and Reid shows that Catholic doctrine—like much in religion and law that might go by the name doctrine—is less settled than emerging.

5 Alex Deagon, "Reconciling John Milbank and Religious Freedom: 'Liberalism' through Love," *Journal of Law and Religion* 34, no. 2 (2019) (this issue).

6 Deagon, "Reconciling John Milbank and Religious Freedom."

7 Deagon.

8 Charles Reid, "Same-Sex Relations and the Catholic Church," *Journal of Law and Religion* 34, no. 2 (2019) (this issue).

9 Reid, "Same-Sex Relations and the Catholic Church."

10 Reid.

11 See, for example, John T. Noonan, Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame: University of Notre Dame Press, 2005). Professor Reid is quite familiar with Judge Noonan's work. See, for example, Charles Reid, Jr., "The Fundamental Freedom: Judge John T. Noonan Jr.'s Historiography of Religious Liberty," *Marquette Law Review* 83, no. 2 (1999): 367–433.

12 John T. McGreevy, "A Case of Doctrinal Development: John T. Noonan—Jurist, Historian, Author, Sage," *Commonweal*, November 12, 2000, at 12, 17. See also Thomas P. Rausch, *Reconciling Faith and Reason* (Collegeville: The Order of St. Benedict, 2000), 45–46 ("A presentation of the Catholic tradition able to acknowledge not just development, but also change in the doctrinal tradition is a more honest one."). For one author of this editorial's perspective on some issues relevant to Professor Reid's article, see Michael J. Perry, "Catholics, the Magisterium, and Same-Sex Unions: An Argument for Independent Judgment," in Michael J. Perry, *Under God? Religious Faith and Liberal Democracy* (Cambridge: Cambridge University Press, 2003), 86–97.

Many people perceive law and religion to be tradition-bound. The articles in this issue offer a counter-perspective on the liveliness of both law and religion. These articles also help us to see how law drives change in religion and religion drives change in law. In this regard, the issue is a testament to the importance of studying the interactions of law and religion.

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