# of Law and Religion

Volumo VIV			
Volume XIV	Articles		
Number 2	An Essay on Liberalism and Public Theology	Theodore Y. Blumoff	
1999-2000	What O'Clock I Say: Juridical Epistemics and the Magisterium of the Church	Robert E. Rodes, Jr.	
	The Spiritualization of Secular Law: The Impact of the Lutheran Reformation	Harold J. Berman	
	The Breakdown of the Constitutional Tradition: Macintyrian and Theological Responses	Richard P. Church	
	Land, Liens, and Ts'Daqah	Earl Schwartz	
	Islam and Affirmative Action	S.A. Jackson	
	Theories of Religious Education in Ireland	Rory O'Connell	
	The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law	Steven K. Green	
	Paul Schmidt: A Workingman's Tenacious Pursuit of Religious Liberty	Chuck Smith	
	South Africa Symposium		
	Christianity and Human Rights	Charles Villa-Vicencio	
	A Natural Lawyer Takes a Sympathetic Look at Post-Modernism	Daniel J. Morrissey	
	Grotius, Theology, and International Law: Overcoming Textbook Bias	William P. George	

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

# THE JOURNAL OF LAW AND RELIGION

VOLUME XIV

1999-2000

NUMBER 2

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

**PRODUCTION/SUBSCRIPTION MANAGER** LINDA BERGLIN STUDENT ASSOCIATE EDITOR JULIE E. TESSIER

Anne D. Byrne Kevin Chang EDITORIAL ASSISTANTS ULISSE GALLO AAISHAH HASHMI

CHRISTA TURNELL

## 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 AL-ALWANI, 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 Mohamed S. el-Awa, Cairo, Egypt 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, MN Department of Correction, 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 2

### 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

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 2

# **TABLE OF CONTENTS**

Editor's Preface

xi

### ARTICLES

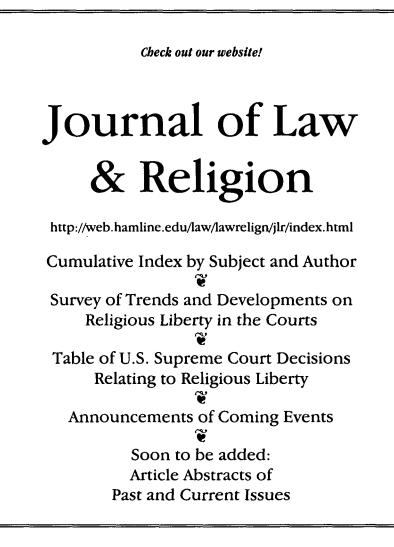
Theodore Y. Blumoff	An Essay on Liberalism and Public Theology22
Robert E. Rodes, Jr.	What O'Clock I Say: Juridical Epistemics and the Magisterium of the Church
Harold J. Berman	The Spiritualization of Secular Law: The Impact of the Lutheran Reformation31
Richard P. Church	The Breakdown of the Constitutional Tradition: Macintyrian and Theological Responses
Earl Schwartz	Land, Liens, and Ts'Daqah
S.A. Jackson	Islam and Affirmative Action40
Rory O'Connell	Theories of Religious Education in Ireland43
Steven K. Green	The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law

# JOURNAL OF LAW & RELIGION

Chuck Smith	Paul Schmidt: A Workingman's Tenacious	
	Pursuit of Religious Libert	y 559

# SOUTH AFRICA SYMPOSIUM

Charles Villa-Vicencio	Christianity and Human Rights579
Daniel J. Morrissey	A Natural Lawyer Takes a Sympathetic Look at Post-Modernism601
William P. George	Grotius, Theology, and International Law: Overcoming Textbook Bias



# EMORY UNIVERSITY STUDIES IN LAW AND RELIGION

# THE FABRIC OF HOPE An Essay

# by Glenn Tinder

"A pristine intellectual and spiritual achievement by one of the most penetrating thinkers of our day."

- MARY ANN GLENDON

"Tinder argues compellingly that modern despondency flows from a collapse of unreasonable optimism about our individual and collective prospects.... A beautifully written and touching work."



— JEAN BETHKE ELSHTAIN

ISBN 0-8028-4857-5 / paperback / 233 pages / \$21.00

### OTHER BOOKS IN THE SERIES NOW AVAILABLE FROM EERDMANS:

FAITH AND ORDER: The Reconciliation of Law and Religion Harold J. Berman 4852-4 / paperback / 427 pages / \$24.00

THE IDEA OF NATURAL RIGHTS: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625 Brian Tierney 4854-0 / paperback / 391 pages / \$24.00

POLITICAL ORDER AND THE PLURAL STRUCTURE OF SOCIETY James W. Skillen and Rockne M. McCarthy, eds. 4851-6 / paperback / 434 pages / \$34.00

At your bookstore, or call 800-253-7521 Fax: 616-459-6540 www.eerdmans.com RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: Legal Perspectives Johan D. van der Vyver and John Witte Jr., eds. 4856-7 / paperback / 717 pages / \$29.00

RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: Religious Perspectives John Witte Jr. and Johan D. van der Vyver, eds. 4855-9 / paperback / 632 pages / \$29.00

THEOLOGY OF LAW AND AUTHORITY IN THE ENGLISH REFORMATION Joan Lockwood O'Donovan 4850-8 / paperback / 181 pages / \$24.00

