

EDITOR'S PREFACE

As the *Journal of Law and Religion* enters the end of its first decade of publication, signs that this field of intellectual inquiry may have come into some respectability multiply, although only the foolhardy would insist that, as a discipline, law and religion has come of age. Articles on law and religion are not difficult to find in mainstream journals, even those slow to spot new modes of thought. Programs at individual institutions, as well as in academic associations such as the Society of Christian Ethics and the Association of American Law Schools, have multiplied enough so that even the most ardent disciple cannot be ubiquitous. Perhaps most encouraging, forums and study opportunities for practicing lawyers, clergy, and other professionals suggest that praxis is not impossible, nor relevance an embarrassing boast.

This issue of the *Journal* demonstrates once again the range, both broad and deep, of inquiries into law and religion. Within the issue, proposals are defined as well as questioned by history, the profound shares place with the common, the religious becomes a source for law, and law is found within sacred texts.

Daniel Conkle takes a new trail from the important clearing hewn by Richard John Neuhaus, Michael Perry, Kent Greenawalt, Fred Gedicks, and many others on the place of religious argument in American politics and law, in "Different Religions, Different Politics." In lamenting, with others, the privatization of religion in modern America, he proposes that the notion of religious equality has prevented us from evaluating whether particular religious traditions contribute to public discussion. Arguing that religion should play a "worldly religious" role compatible with the intellectual roots of American law, he warns against uncritical acceptance of both the fundamentalist and the modernist resolution of key issues such as interpretive principles, political decision-making processes and involvement, and the relation of religion to modernity.

Just how religious understandings actually inform law has been difficult to describe. In "Images, Spirituality and the Law," Richard Stith turns to the Eastern Christian tradition on iconography to understand how fulfillment of the law can image the law, and fulfillment of the eternal law can image God, not as a mere copy, but as participant in the prototype. Rejecting consequentialism, Stith describes how law thus understood means human dignity for the subject who

obeys the law even in sacrifice of his life. Lucinda Peach also tackles the problem of the legal image in "From Spiritual Descriptions to Legal Prescriptions," criticizing the symbolic equation of women as fetal containers in Jewish and Christian theology. Peach suggests how this image has determined a particular jurisprudence of pregnancy, from abortion cases to neglect actions filed against mothers of damaged fetuses. Ze'ev Falk's review of Susan Niditch's *War in the Hebrew Bible* notes how the decision to employ either the image of God as warrior or the contrary image of God as peacemaker shapes the politics of modern nation-states.

Yael Levy turns to a practical problem in Jewish jurisprudence, the plight of the *agunah*, the abandoned wife, who cannot get a bill of divorce, when her husband has been incapacitated or lost, or does not return. Describing both traditional and modern rabbinical solutions for women whose husbands were lost at sea or war, Levy appeals for a *takkanah* by the religious courts in the State of Israel to resolve this dilemma, in "The *Agunah* and the Missing Husband." Nicholas Cafardi similarly takes on the practical difficulty of constructing appropriate statutory protection for the Roman Catholic Church's secret archives in "Discovering the Secret Archives: Evidentiary Privileges for Church Records." His detailed proposal tries to balance the church's interest in its own disciplinary system with the state's interest in disclosure of information relevant to litigation.

The role of religious doctrine and values in the formation of legal traditions is a key area of inquiry for many who study law and religion. Paul Rasor traces the "Biblical Roots of Modern Consumer Credit Law," not only describing the normative influences of Biblical understanding on American consumer credit statutes, but also showing how the language form of Biblical law points to the humanitarian concerns of Biblical consumer protections for the poor, widows, orphans and aliens. Anne Cucchiara Besser and Kalman Kaplan take up a related theme in "The Good Samaritan: Jewish and American Legal Perspectives," demonstrating how Jewish laws on the return of lost property, rendering aid to victims, and helping those in danger are permeated with a distinct Jewish understanding of freedom through the obligation of *mitzvot*. Richard Hiers' "Transfer of Property by Inheritance and Bequest in Biblical Law and Tradition" uses Biblical sources to describe ancient expectations on the inheritance of family members and the relationship of redemption and jubilee to inheritance rights.

In his Review Essay, "The Opposition to Roman Law and the

Reformation in Germany," Gottfried Krodel dissects a work which has passed with little remark on the role of religion on law in the post-Reformation modern state. Krodel refutes the claims of Gerald Strauss in *Law, Resistance and the State* that the work of Martin Luther significantly influenced the creation of modern European, absolutist states. John Mansfield takes Adrian Hasting's *Church and State: The English Experience*, a history of church-state relations in Britain from the early 19th century to the First World War, as an occasion to think about church-state relations in Britain in the future.

To celebrate the abundance with which those toiling in the field of law and religion are blessed, the *Journal of Law and Religion* will inaugurate a yearly award for those who have made significant contributions to the field of law and religion on this tenth anniversary. Thomas Shaffer will be its first recipient at the inaugural Journal of Law and Religion banquet on October 14, 1993, at Hamline University. We will also be making the transition into the new decade with a ten-year index of JLR articles to help you find work in your area of interest, as well as presenting new surveys in the field of law and religion. As always, we welcome your ideas and criticisms and your participation as a reader, manuscript reviewer or author.

Marie A. Failinger, Editor