

JOURNAL OF Law and Religion

VOLUME XXVIII NUMBER 2 2012-13

ARTICLES

The Reality of Moral Imperatives in Liberal Religion
Howard Lesnick

Diversity in Democracy: Accommodating Religious
Particularity in Largely Secular Legal Systems
Mirjam Künkler & Yüksel Sezgin

Seeking to Accommodate Shari'a Within a Human Rights
Framework: The Future of the Greek Shari'a Courts
Konstantinos Tsitselikis

The Right to be Different: Homosexuality, Orthodoxy and
the Politics of Global Legal Pluralism in Orthodox-Protestant
Schools in the Netherlands
Barbara Oomen & Niels Rijke

Religious and Legal Pluralism in Recent African
Constitutional Reform
M. Christian Green

Rape as a Variant of Fornication (*Zinā*) in Islamic Law: An
Examination of the Early Legal Reports
Hina Azam

Evolving Views of Islamic Law in Turkey
Russell Powell

The Relevance of a *Maqasid* Approach for Political Islam Post
Arab Revolutions
Halim Rane

Sponsored by: Hamline University School of Law

Published by: JOURNAL OF LAW AND RELIGION
ISSN: 0748-0814

JOURNAL OF LAW AND RELIGION

VOLUME XXVIII

2012-2013

NUMBER 2

EDITORIAL STAFF

Editor in Chief

MARIE A. FAILINGER, Hamline University School of Law

Associate Editor

HOWARD J. VOGEL, Hamline University School of Law

Technical Editors

BETH HONETSCHLAGER, Hamline University School of Law

STEPHEN LIEBO, Hamline University School of Law

Production/Subscription Manager

LINDA BERGLIN, Hamline University School of Law

JENESSA STROMBERGER, Hamline University School of Law

EDITORIAL ASSISTANTS

CRAIG DOWNS

CALVIN PIPENHAGEN

BRITTALISA GESS

EDITORIAL BOARD

JOSÉ ROBERTO JUÁREZ, University of Denver, Sturm College of Law, Chair

FRANK S. ALEXANDER, Emory University School of Law

DEBORAH CANTRELL, University of Colorado Law School

PAULA COOEY, Macalester College

PERRY DANE, Rutgers University

Ex Officio

ANVER M. EMON, University of Toronto

MARIE A. FAILINGER, Hamline University School of Law

Ex Officio

M. CHRISTIAN GREEN, University of Notre Dame

Ex Officio

EMILY ALBRINK HARTIGAN, Saint Mary's University of San Antonio School of Law

AFRA JALABI, Islamic Scholar, Beaconsfield, Quebec

HOWARD LESNICK, University of Pennsylvania Law School

DONALD LEWIS, Hamline University School of Law

Ex Officio

ROBIN LOVIN, Perkins School of Theology, Southern Methodist University

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
ASIFA QURAIISHI, University of Wisconsin Law School
KATHLEEN SANDS, University of Hawaii at Manoa
EARL SCHWARTZ, Hamline University
STEVEN D. SMITH, University of San Diego School of Law
DARRYL TRIMIEW, Medgar Evers College
AMELIA UELMEN, Fordham University School of Law
HOWARD J. VOGEL, Hamline University School of Law, Treasurer

ADVISORY COMMITTEE

- SAM LEVINE, Touro Law Center, Chair*
- 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 ISHAQ ANSARI, Islamic Research Institute, International Islamic University, Pakistan*
- GERARD BRADLEY, Notre Dame University Law School*
- MICHAEL J. BROYDE, Emory University School of Law*
- LYNN BUZZARD, Campbell University School of Law*
Southern Methodist University
- STEPHEN L. CARTER, Yale Law School*
- 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*
- M. CATHLEEN KAVENY, Notre Dame University Law School*
- PATRICK R. KEIFERT, Luther Theological Seminary*
- DAMIEN KEOWN, University of London, Goldsmiths*
- MICHAEL KESSLER, Georgetown University*
- URFAN KHALIQ, Cardiff Law School*
- SANFORD LEVINSON, University of Texas School of Law*
- DAVID LITTLE, Harvard University Divinity School*
- ELIZABETH MENSCH, SUNY Distinguished Teaching Professor Emerita*
- EBRAHIM MOOSA, Duke University*
- SEYYED HOSSEIN NASR, George Washington University*
- LOUIS NEWMAN, Carleton College*
- KAY PRANIS, Saint Paul, Minnesota*
- JAWDAT SAID, Muslim Scholar and Activist, Syria*
- ELISABETH SCHÜSSLER FIORENZA, Harvard University Divinity School*
- THOMAS L. SHAFFER, Notre Dame University Law School*
- DONALD W. SHRIVER, Union Theological Seminary in New York*
- DANIEL SINCLAIR, Tel Aviv Law School*
- 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, Emeritus Professor, United Theological Seminary of the Twin Cities*
- STEPHEN B. YOUNG, Attorney at Law, Saint Paul, Minnesota*

The JOURNAL OF LAW AND RELIGION is an interdisciplinary, interfaith academic and professional publication devoted to investigating the interaction of religion and law.

Subscription requests should be addressed to:

journals@cambridge.org

The JOURNAL OF LAW AND RELIGION has moved to Emory University's Center for the Study of Law and Religion, and will be published hereafter by Cambridge University Press. If you are an author or subscriber, or otherwise need to be in touch with the JOURNAL, please contact the Managing Editor, Silas W. Allard (after Aug. 15, 2013) at:

JOURNAL OF LAW AND RELIGION
Center for the Study of Law and Religion
Emory Law School
1301 Clifton Rd. N.E.
Atlanta, GA 30322-2770
silas.allard@emory.edu
404.727.6816

The JOURNAL currently follows the Blue Book citation format. 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., 2350 North Forest Road, Getzville, NY 14068. Back issues can also be found in electronic format for all your research needs on HeinOnline, <http://heionline.org>

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](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: 28 J.L. & RELIGION (2012-13)

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.

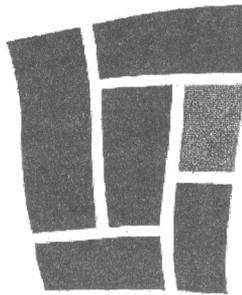
CAMBRIDGE

JOURNALS

ANNOUNCEMENT

From Volume 29 the Journal of Law and Religion will be published by the Center for the Study of Law and Religion at Emory University and Cambridge University Press. All subscribers will be contacted to explain new arrangements later in 2013. Please direct queries to journals@cambridge.org.

Center *for the*
Study *of Law and Religion*
at Emory University



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.

24 East Ferry Street

Buffalo, New York 14209

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 <http://heinonline.org/>

THE JOURNAL OF LAW AND RELIGION

VOLUME XXVIII

2012-2013

NUMBER 2

TABLE OF CONTENTS

A Last Word from the Editor	xiii
Preface	xvii

ARTICLES

Howard Lesnick	<i>The Reality of Moral Imperatives in Liberal Religion</i>	297
Mirjam Künkler and Yüksel Sezgin	<i>Diversity in Democracy: Accommodating Religious Particularity in Largely Secular Legal Systems</i>	337
Konstantinos Tsitselikis	<i>Seeking to Accommodate Shari'a Within a Human Rights Framework: The Future of the Greek Shari'a Courts</i>	341
Barbara Oomen and Niels Rijke	<i>The Right to be Different: Homosexuality, Orthodoxy and the Politics of Global Legal Pluralism in Orthodox-Protestant Schools in the Netherlands</i>	361
M. Christian Green	<i>Religious and Legal Pluralism in Recent African Constitutional Reform</i>	401

JOURNAL OF LAW & RELIGION

Hina Azam	<i>Rape as a Variant of Fornication (Zinā) in Islamic Law: An Examination of the Early Legal Reports</i>	441
Russell Powell	<i>Evolving Views of Islamic Law in Turkey</i>	467
Halim Rane	<i>The Relevance of a Maqasid Approach for Political Islam Post Arab Revolutions</i>	489

REVIEW ESSAYS

Rodney L. Petersen	<i>Forgiveness Works</i>	521
Elizabeth A. Clark	<i>Religion and the European Union: Two European Books and Comparative Reflections from Across the Atlantic</i>	533

BOOK REVIEWS

Shannon Dunn	<i>Honour, Violence, Women and Islam</i> , edited by Mohammad Mazher Idriss and Tahir Abbas; <i>Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia</i> , by Nina Nurmila	545
Haider Ala Hamoudi	<i>Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt</i> , by Kristen Stilt.....	555
Moshe Simon-Shoshan	<i>Narratives of Truth in Islamic Law</i> , edited by Baudouin Dupret, Barbara Drieskens and Annelies Moors; <i>Law and Truth in Biblical and Rabbinic Literature</i> , by Chaya T. Halberstam	565

JOURNAL OF LAW & RELIGION

Susan J. Stabile

*Women's Rights and the Bible:
Implications for Christian Ethics and
Social Policy,*

by Richard H. Hiers 573