

## EDITOR'S PREFACE

This year, the *Journal of Law and Religion* inaugurates a new tradition: recognition of those persons who have made a lifetime of contributions to the field of law and religion. The award recognizes that any tradition worth its salt thrives on vision. We need the prophetic, who look beyond the horizon of established thought, and the wise, who look back with clarity on the past. We have that much more reason to celebrate when the gifts we receive on the printed page flow from a life which exemplifies the virtues of scholar and teacher. The *Journal of Law and Religion* award for lifetime achievement recognizes those persons who by their life and work have permitted each of us to go far beyond existing borders in exploring the intersections of law and religion, justice and faith, interpretation and commitment.

While pioneering is a trite image most often confined to the technological breakthroughs in modern times, its use to describe *Journal* award winners seems undeniable: from the thickets of profound but tangled questions shared by the disciplines of law and religion, the recipients of the *Journal of Law and Religion* award have forged distinct yet critical clear paths. Thomas L. Shaffer, the first recipient of the award, has given much of his life to the ethics of the lawyer, indeed living the complete lawyer's life as a private practitioner, scholar, teacher, clinician and advisor to law reform efforts. His singular path has taken seriously both law and theology, stories and rules, as he explored legal ethics in unique ways with the conviction, as Emily Hartigan has said, that justice might indeed be something we give one another. Such other pathblazers as Harold Berman and Douglas Sturm join him as award recipients in 1994 and 1995.

In this issue of the *Journal*, we pay Tom perhaps the best tribute a scholar can have: we take him on and we take him seriously, searching into a massive body of work for the questions that have haunted us all. Can a lawyer at the same time be an officer of the law, and an anarchist deeply suspicious of the community's role in doing good? Can a religious tradition that inherits the state's power to kill survive the temptation to claim special moral worth, and instead stand for recognition of human dignity faithful to its community memory? Can lawyers be gentlemen; be friends; be saved? Can Tom's modus operandi, the story, teach the fullness of

human quandary? Is his story the Abrahamic/Jeremian call or is it triumphal Christendom?

A substantial portion of this issue also focusses on recent church-state developments, with a special emphasis on resources for scholars working in the area. Carl Esbeck has kindly repeated his careful *Survey* on religious liberty in the courts, focussing on issues from intra-church disputes to education and labor practices. He also provides us a useful table of Supreme Court cases on religious liberty for teachers and students. Fr. Robert Drinan and Jennifer Huffman contribute a legislative history of the Religious Freedom Restoration Act.

Also in the church-state vein, Ellis West mounts a historical challenge to those blasting the *Smith* decision. He argues that constitutionally compelled exemptions were not contemplated by the Framers, working primarily from the history of conscientious objection exemptions. Hugh Breyer takes on an old problem: he puts Jonathan Nuechterlein's claim that the Religion Clauses are not in tension into conversation with Doug Laycock's search for a workable definition of government neutrality.

In the broader context of relations between church and society, Robert Araujo weighs in on the ongoing debate about whether religious individuals and institutions should participate in political discourse, interpreting the Catholic tradition on this question. Keith Pavlischek contributes a book review essay on *John Courtney Murray and the American Civil Conversation*, focussing on Murray's claim that the Religion Clauses were secular 'articles of peace' without (Protestant) theological content.

This issue also contributes two imaginative 'law and theology' articles to the literature. John Witte and Thomas Arthur show how the 'three uses of the law' formulated by Lutherans and Calvinists parallel the secular criminal theories of deterrence, retribution and rehabilitation. Their article sheds light on the historical cross-fertilization between these doctrines as they developed in theology and in law.

Finally, drawing on the work of Mircea Eliade, Peter Mostow makes the ethical argument that, as a sacred memorial to those who perished in the Holocaust, modern societies should not use data from the Nazi experiments, even when it might be medically useful.

We are also pleased to present a complete index of the first ten volumes of the *Journal*. Like the other resource materials in this volume, we hope that the index, contributed by Andrew Berger under the direction of Howard Vogel, will enable readers to utilize the *Journal* as a research tool in addition to its continuing vitality as a prod to thoughtful discussion. As this index reflects the range of subjects and ideas encompassed by our discipline, we hope and expect that the next ten volumes will produce a similar variety of riches.

Marie A. Failing, Editor