THE
JOURNAL
OF
LAW
AND



RELIGION

Volume XI

1994-95

Number 1

Sponsored by:

Hamline University School of Law

Published by:

Hamline University School of Law

ISSN: 0748-0814

THE JOURNAL OF LAW AND RELIGION

VOLUME XI 1994-95 NUMBER 1

EDITORIAL STAFF

Editors

MARIE FAILINGER, Hamline University, School of Law PATRICK KEIFERT, Luther Seminary

Managing & Book Editor Howard J. Vogel, Hamline University, School of Law

Production Manager
JO ANNE MATSON
Editorial Assistants

Editorial Assistants

BARBARA DEVRIES LORI FERRIS Brian Hall Sandra Hiller Michael Hubbard KRISTINE ISLE JANE JACOBSON

EDITORIAL BOARD

THOMAS PORTER, Attorney at Law, Boston, Chair FRANK ALEXANDER, Emory University School of Law AZIZAH Y. AL-HIBRI, T.C. Williams School of Law STEPHEN CARTER, Yale Law School MARIE FAILINGER, Hamline University School of Law EDWARD McGlynn Gaffney, Jr., Valparaiso University School of Law Emily Fowler Hartigan, St. Mary's University of San Antonio School of Law Cathleen Kaveny, Notre Dame University Law School PATRICK KEIFERT, Luther Seminary, St. Paul RAYMOND R. KRAUSE, Hamline University School of Law ROBIN LOVIN, Southern Methodist University NANCY MILLER-HERRON, Attorney at Law, Dresden, Tennessee Louis Newman, Carlton College MICHAEL J. PERRY, Northwestern University School of Law MICHAEL SCHERSCHLIGT, Hamline University School of Law DOUGLAS STURM, Bucknell University HOWARD J. VOGEL, Hamline University School of Law WILSON YATES, United Theological Seminary of the Twin Cities

ADVISORY COMMITTEE

RICHARD BAEPLER, Valparaiso University
HAROLD BERMAN, Emory University School of Law
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
CARL ESBECK, University of Missouri-Columbia School of Law
MILTON KONVITZ, Professor Emeritus, Cornell University of New York
LEIGH LERNER, Rabbi, Montreal
DAVID LITTLE, U.S. Institute of Peace
MARTIN MARTY, University of Chicago Divinity School
ELIZABETH MENSCH, State University of New York at Buffalo School of Law
NOOR MOHAMMAD, University of Baltimore School of Law
ELIZABETH SCHUESSLER-FIORENZA, HARVARD UNIVERSITY DIVINITY SCHOOl
THOMAS SHAFFER, NOTE Dame University Law School
PETER N. THOMPSON, Hamline University School of Law
ROSALIE WAHL, ASSOCIATE JUSTICE, Minnesota Supreme Court
STEPHEN B. YOUNG, Attorney at Law, St. 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 \$10 for foreign airmail service. Subscription requests, manuscripts and general correspondence should be addressed to:

Jo Anne Matson Production Manager The Journal of Law and Religion 1536 Hewitt Avenue St. Paul, MN 55104

Book review manuscripts and books to be reviewed should be sent to:

Howard J. Vogel Book Review Editor Hamline University School of Law 1536 Hewitt Avenue St. Paul, MN 55104

Commencing with Volume X, citations will 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 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, NY 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 data base 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* is available at http://www.hamline.edu/~jlr

All copyrights are reserved.

Cite as: 11 J Law & Relig



A Subscription to the

JOURNAL OF LAW AND RELIGION

Cost per volume (two issues):

\$15.00 individual (USA & foreign surface mail) \$25.00 individual (foreign air mail) \$25.00 institution (USA & foreign surface mail) \$35.00 institution (foreign air mail) \$10.00 student

Production Manager
Journal of Law and Religion
Hamline University School of Law
1536 Hewitt Avenue
St. Paul, Minnesota 55104

	Payment enclosed.	
	Please bill me.	
	Begin my subscription with vol	, number
Na	ame:	
Str	reet Address:	
Cit	ty & State: 2	Zip code:

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 & CO., INC. 1285 Main Street Buffalo, New York 14209

THE JOURNAL OF LAW AND RELIGION

VOLUME XI 1994-95

Number 1

TABLE OF CONTENTS

Editor's Preface				
Arnold N. Enker	Error Juris in Jewish Criminal Law	23		
Robert J. Araujo, S.J.	Political Theory and Liberation Theology: The Intersection of Unger and Gutiérrez	63		
John Howard Yoder	How Many Ways Are There to Think Morally About War?	83		
David Orgon Coolidge	A Legal Fantasy: Marylanders for Tolerance Now! v. Maryland State Administrative Board of Election Laws and American Citizens for Tolerance Now! v. Federal Election Commission	109		
Symposium i	in Honor of Judge John T. Noonan, Jr.			
Bernard J. Cassidy	Essays in Honor of Judge John T. Noonan, Jr.: An Introduction	143		
Kevin Starr	Judge John T. Noonan, Jr. A Brief Biography	151		
Bernard Häring	Learning More About God's Plan in a Worldwide Community	177		
M. Cathleen Kaveny	Listening for the Future in the Voices of the Past: John T. Noonan, Jr. on Love and Power in Human History	203		
Monroe H. Freedman	John T. Noonan, Jr.: Exemplar of Ethical Conduct	229		
Richard H. Helmholz	Excommunication in Twelfth Century England	235		
Robert E. Rodes, Jr.	Pilgrim Law	255		

Stephan Kuttner	Did Rolandus of Bologna Write a "Stroma ex Decretorum Corpore Carptum?"	267
Andrew L. Kaufman	The First Judge Cardozo: Albert, Father of Benjamin	271
David Daube	The Contrariness of Speech and Polytheism	317
John S. Dunne	The Friends of God "guided and guarded" J.R.R. Tolkien	323
Knut Wolfgang Nörr	"Economic Constitution": On the Roots of a Legal Concept	343
Robert A. Destro	The Structure of the Religious Liberty Guarantee	355
	Book Reviews	
Daniel G. Ashburn	Legal Issues and Religious Counseling, by Ronald K. Bullis and Cynthia S. Mazur	411
David R. Dow	On Reading Stephen Carter's <i>The Culture of Disbelief</i> —A Dissenting Opinion	417
Mary Läuchli	The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion by Stephen L. Carter	449
Emily Fowler Hartigan	Loving the Medium: A Review of Stephen Carter's The Culture of	450