

AALS SECTION ON LAW AND RELIGION

December 2008 Newsletter

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Greetings from the Executive Committee of the Section on Law and Religion. This has been a busy year for the Section, and for the academic study of law and religion. We have another excellent program planned for next month's AALS annual meeting, and we are co-sponsoring a program with the Section on Law and Communitarian Studies. In addition, several other programs of interest are noted. Below you will find more detail about these programs as well as our annual business meeting, which will take place directly following our section program on Friday morning, January 9, 2008. You will also find information regarding last year's business meeting, including the election of this past year's Section officers. Finally, as is customary, we are including a bibliography of law and religion books and articles published since last year's newsletter.

We dedicate this Symposium to the memory of Harold J. Berman, Robert W. Woodruff Professor of Law at Emory University, who passed away November 12, 2007, in New York City. Without Harold Berman's pioneering work in law and religion, the AALS Section on Law and Religion may not have come into existence—or at least much

later than it did. All of us who work in the field of law and religion owe Professor Berman a great debt both for his extraordinary efforts to establish law and religion as a legitimate field of inquiry and for his tremendous insights regarding the relationship between law and religion. We will miss his gracious presence, but his insights will continue to stimulate our thinking for many years to come. For more reflections on Professor Berman's tremendous impact on the academic study of law and religion and on numerous scholars in this area, see *In Praise of a Legal Polymath: A Special Issue Dedicated to the Memory of Harold J. Berman (1918-2007)*, 57 Emory L.J. 1393 (2007-2008) (see Symposia Section below).

I. 2008 AALS ANNUAL MEETING PROGRAMS: SECTION ON LAW AND RELIGION AND PROGRAMS OF INTEREST

A. Section on Law and Religion: *Scriptural and Constitutional Interpretation* (Co-Sponsored by Islamic Law and Jewish Law) (*Torrance, South Tower/Level 4, San Diego Marriott Hotel & Marina*) (Program to be published in *Michigan State University Law Review*) (**Friday, January 9, 2008**) (**10:30-12:15 p.m.**)

Over the years, a substantial body of literature has developed exploring methodological similarities and differences in constitutional and scriptural interpretation. For instance, both disciplines involve interpretation of authoritative texts that are designed to formulate and embody the principles that underlie the basic values and structure of society. At the same time, these texts are often formulated in general terms that require complex modes of hermeneutics through which they are defined, refined, interpreted, and applied.

This area of study has recently gained new vitality with increased interdisciplinary focus in the examination of these issues in works such as Jaroslav Pelikan's *Interpreting the Bible and the Constitution*. Perhaps more significantly—if less directly—comparisons between constitutional and scriptural interpretation relate to one of the most controversial and pressing issues in contemporary constitutional jurisprudence: the relevance of foreign law to constitutional interpretation. In this context, scriptural interpretation may serve as yet another model to be applied to constitutional interpretation.

This panel will include scholars in the fields of both constitutional and scriptural interpretation, who will consider the extent to which these methods may--or may not--provide mutual analogs to facilitate more thoughtful study in each of these fields.

Moderator: Mark C. Modak-Truran, Mississippi College School of Law

Speakers:

- 1) Patrick M. Brennan, Villanova University, School of Law
- 2) Ronald R. Garet, Univ. of Southern California, Gould School of Law
- 3) Samuel J. Levine, Pepperdine University, School of Law
- 4) Sanford Levinson, The University of Texas, School of Law
- 5) Francis J. Mootz, Univ. of Nevada, William S. Boyd School of Law
- 6) Asifa B. Quraishi, University of Wisconsin, Law School

B. *Community and Subsidiarity in Domestic and International Relations (Section on Law and Communitarian Studies, Co-Sponsored by Law and Religion)* (Marina Salon G, South Tower/Level 3, San Diego Marriott Hotel & Marina) (Friday, January 9, 2008 at 1:30-3:15 p.m.)

Subsidiarity is at the core of various pressing debates about domestic and international relations. It is pertinent to the topic of institutional pluralism. Communitarian thought has stressed the principle of subsidiarity — that no unit of society should perform functions more appropriately performed by a smaller entity and that government should support, rather than supplant, institutions of civil society. Such thought regards community as a potent "third force" between the individual and the state and calls for a more creative division of labor among the state and civil society. Invoking subsidiarity, the Bush Administration's "faith-based initiative," which has expanded the use of public-private partnerships to provide social services, both in domestic and foreign policy.

Subsidiarity is also manifest in the international arena, where there are calls for a creative division of labor among the state and other institutional forms. It is a basic principle of the European Union and also relevant to interpreting human rights norms. It is evident in multi-track diplomacy, which seeks to foster international cooperation by enlisting multiple sectors of society. These and other developments raise questions about sources of global norms and new models for an international community.

Moderator: Linda C. Mc Clain, Boston University, School of Law

Speakers:

- 1) Paolo G. Carozza, Notre Dame Law School
- 2) Robert F. Cochran, Pepperdine University, School of Law
- 3) William A. Galston, Brookings Institution
- 4) Ira C. Lupu, The George Washington University Law School
- 5) Robert W. Tuttle, The George Washington University Law School

C. Hot Topic Panel: Pulpit Freedom?: On Taxes, Elections, And Religious Freedom (San Diego Salon C, North Tower/Lobby Level) (Thursday, January 8, 2009, 8:30-10:15 a.m.)

The relationship between church and state has always been fraught with tension, as some advocate a strict separationist approach and others support interaction on various levels. In May 2008, a conservative religious freedom group, the Alliance Defense Fund, launched an organized campaign to challenge one particular flashpoint for disagreement: the extent to which pastors, rabbis, imams, and other religious leaders speaking to their congregations should be able to express views about politics and particularly about candidates for public office. Thanks to a federal tax provision, churches and other houses of worship have in theory had to either restrain their leaders from expressing such views from the pulpit or face the loss of the significant tax benefits they enjoy. The recruitment by the ADF of pastors at more than 30 churches to challenge this restriction on First Amendment grounds, and the demands from supporters of a strong separation between church and state for the IRS to enforce the restriction against these churches have brought

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this flashpoint to the fore. The panel will discuss the legal and public policy rationales that support and oppose the restriction and also this looming confrontation's broader ramifications for religious freedom, elections, and federal tax law.

Moderator: Lloyd H. Mayer, Notre Dame Law School

Speakers: 1) Marci A. Hamilton, Yeshiva U. Benjamin N. Cardozo School of Law;
2) Vaughn E. James, Texas Tech University School of Law;
3) Douglas Laycock, University of Michigan Law School;
4) Bernadette A. Meyler, Cornell Law School;
5) Donald B. Tobin, Ohio State Univ., Michael E. Moritz Coll. of Law;
6) Robert W. Tuttle, George Washington University Law School

D. Section on Jewish Law, Intersections and Connections with the Legal Academic Study of Jewish Law (*Columbia 1, North Tower/Lobby Level, San Diego Marriott Hotel & Marina*) (Thursday, January 8, 2009, 8:30-10:15 a.m.)

The focus of the Section is research and teaching Jewish law in the legal academy. No academic subject, however, sits in splendid isolation. Most obviously, the interest of the Section is distinct from, though it overlaps with, the study of Jewish Law as a subject in history and religious studies. From a different angle, it is closely related to the study of other religiously-grounded legal systems. And it is also related, from yet another side, to the inquiry into how religious and civil norms interact in modern pluralistic societies.

The goal of this year's session is to explore each of these points of intersection. It will feature a series of papers -- by a historian of Jewish law and surrounding cultures in late antiquity, a specialist in Islamic law, and a scholar of legal pluralism and constitutional law -- that should speak profoundly to, without being from, the legal academic study of Jewish law, along with a commentary that draws the connections together and makes them explicit. One goal of the program is to help crystallize some questions about what it exactly means to study Jewish law in a law school. The session should also appeal to anyone interested in comparative law, legal history, or political and constitutional theory.

Moderator: Perry Dane, Rutgers, The State Univ. of N.J., School of Law, Camden

Speakers: 1) Natalie B. Dohrmann, University of Pennsylvania (Philadelphia)
2) Haider Ala Hamoudi, University of Pittsburgh, School of Law
3) Mark D. Rosen, Illinois Inst. of Tech., Chicago-Kent College of Law

E. Section on Islamic Law, Muslims and Secularism: A Conversation about the Future of Islamic Law, Pluralism, Democracy, and Liberal States (*San Diego Salon C, North Tower/Lobby Level, San Diego Marriott Hotel & Marina*) (Saturday, January 10, 2009, 9:00 a.m. - 12:00 p.m.)

Islamic law and Muslims are at the center of contemporary debates over just how far liberal democratic states must accommodate pluralism. France bans the headscarf in

public schools. So does Turkey, despite the recent legislative attempts to overturn the ban in universities. And the litigation surrounding this issue is at the center of intense debates over the nature of Turkey's secularism. In Canada, a proposal for Shari'a mediation tribunals generated intense public debate, repeated again in the United Kingdom following the Archbishop of Canterbury's assertion that the accommodation of Shari'a is unavoidable. What does all this tell us about the relationship of Islamic law and secularism? Is the answer in Muslim-majority countries different from the answer in countries where Muslims are living as a minority? Our panel will discuss the meaning of secularism in these various contexts, with special attention to its impact and interaction with Islamic law. Tariq Ramadan will participate by video because he has been denied entry to the United States.

Moderator: Asifa B. Quraishi, University of Wisconsin, Law School

Speakers: 1) Andrew F. March, Michigan State University
2) Ramadan Tariq, Pres. European Muslim Network, Bruxelles, Belgium
3) Seval Yildirim, Whitter Law School

II. 2009 BUSINESS MEETING: SECTION ON LAW AND RELIGION

The 2009 Business Meeting of the Section on Law and Religion will be held at the conclusion of the Section program on **Friday, January 9, 2008, at 12:15 p.m.** At this meeting, we will elect Section officers for next year. These include the Chair Elect, the Chair of the Program Committee, and the Chair of the Nominating Committee. We will also elect two at-large members of the Section's Executive Committee. This year's Co-Chairs Elect (Samuel J. Levine and Mark C. Modak-Truran) will automatically become Chair for next year. The offices of Chair, Chair Elect, Chair of the Program Committee, and Chair of the Nominating Committee can be held by one individual or by two individuals (who will serve as Co-Chairs). This year's Nominating Committee has put together a slate of candidates to serve as Chair Elect, Chair of the Program Committee, and Co-Chairs of the Nominating Committee. Nominations may also be made from the floor. Nominations for the two at-large positions on the Executive Committee may only come from the floor. *We encourage all Sections members to attend and to think about nominations that they might want to make from the floor.*

The Nominating Committee's slate of nominees are as follows:

Chair-Elect: Christopher Lund (Mississippi College School of Law):

Professor Lund has expertise in the areas of law and religion, employment discrimination, and contracts. His recent scholarship focuses on the constitutional law governing the relationship between government and religious institutions, and has appeared in the *Journal of Law and Religion*, the *Tulsa Law Review*, and the *Harvard Journal of Law and Public Policy*. After graduating with high honors from the University of Texas, School of Law, where he served as Chief Articles Editor, Professor Lund clerked for the Hon. Karen Nelson Moore on the United

States Court of Appeals for the Sixth Circuit. Before joining the faculty at Mississippi College School of Law, he was a Madison Fellow at Americans United for Separation of Church and State and a Visiting Assistant Professor at the University of Houston, School of Law.

Program Committee Chair: Nelson Tebbe (Brooklyn Law School):

Professor Tebbe's scholarship focuses on the relationship between religious traditions and constitutional law, both the United States and South Africa. In the domestic context, an article that recently appeared in the *University of Pennsylvania Law Review* argues that the government ought to be able to single out religious entities for denials of support, subject to certain limits imposed by the First Amendment. With respect to South Africa, he has written several articles on the tension between African customary law and individual rights. One of these was published in *The Georgetown Law Journal* and another is forthcoming in *The Journal of Religion*. Professor Tebbe came to Brooklyn Law School from St. John's University School of Law, where he received a Dean's Teaching Award. Before teaching, Tebbe clerked for Judge John M. Walker, Jr. on the United States Court of Appeals for the Second Circuit and practiced law at the American Civil Liberties Union and at Davis Polk & Wardwell. A graduate of Yale Law School, Professor Tebbe also holds a Ph.D. with distinction from the University of Chicago Divinity School. He was a Fulbright Scholar at the University of Cape Town.

Nominating Committee Co-Chairs: Bernadette A. Meyler (Cornell University), Paul Horwitz (University of Alabama):

Professor Horwitz teaches law and religion, constitutional law, and legal profession. He received a B.A. in English Literature from McGill University in Montreal in 1990, M.S., with honors, in Journalism from Columbia University in 1991, LL.B. from the University of Toronto in 1995 where he was co-editor-in-chief of the *University of Toronto Faculty of Law Review*, and LL.M. from Columbia Law School in 1997. Professor Horwitz clerked for the Honorable Ed Carnes of the United Court of Appeals for the Eleventh Circuit. Before joining the University of Alabama, Professor Horwitz was an associate professor at the Southwestern University School of Law in Los Angeles. He has also been a visiting professor at the University of Iowa College of Law, the University of San Diego School of Law, and Notre Dame Law School. In addition to having written and spoken widely on issues of constitutional law, Professor Horwitz is a member of the popular legal blog *Prawfsblawg*.

Professor Meyler is an expert on law and religion as well as on British and American legal history and the intersections between constitutional and common law. Her recent articles include *Commerce in Religion*, 84 *Notre Dame L. Rev.* ___ (forthcoming 2008), *The Limits of Group Rights: Religious Institutions and Religious Minorities in International Law*, 22 *St. John's J. Leg. Commentary* 535

(2007), and *The Equal Protection of Free Exercise: Two Approaches and Their History*, 47 B.C. L. Rev. 275 (2006). She received a Mellon Fellowship in Humanistic Studies and a Chancellor's Fellowship to pursue her doctorate in English at the University of California, Irvine. Following law school, she clerked for the Hon. Robert A. Katzmann of the U.S. Court of Appeals for the Second Circuit. Professor Meyler is currently working on two book manuscripts - *Towards a Common Law Originalism* and *Theaters of Pardoning: Sovereignty and Judgment from Shakespeare to Kant*.

Section Co-Chairs: Samuel J. Levine, Pepperdine University School of Law, and **Mark C. Modak-Truran**, Mississippi College School of Law, were elected by the Section as Co-Chairs Elect in January 2008 and will automatically become Section Co-Chairs at the end of the 2009 business meeting.

III. OTHER PROGRAMS IN CONNECTION WITH THE 2008 AALS ANNUAL MEETING

Some Section members might be interested in a “**Conference on Christian Legal Thought**” co-sponsored by the Lumen Christi Institute and the Law Professors’ Christian Fellowship to be held at the Hilton Gaslamp Quarter, 401 K Street, San Diego, California, on Saturday, January 10, 2009. If you would like more information about this program, visit the Lumen Christi Institute website at <http://www.lumenchristi.org> or contact 773-955-5887, info@lumenchristi.org, or Professor Robert F. Cochran, Jr. at Robert.cochran@pepperdine.edu.

Speakers:

- 1) Patrick McKinley Brennan, Villanova University School of Law.
- 2) Elizabeth Brown, University of St. Thomas School of Law.
- 3) Jeannette Cox, University of Dayton.
- 4) Stewart Davenport, Pepperdine University.
- 5) Marie Failinger, Hamline University School of Law.
- 6) Edward J. Larson, Pepperdine Univ. School of Law.
- 7) Robert T. Miller, Villanova University School of Law.
- 8) Elizabeth R. Schiltz, University of St. Thomas School of Law.
- 9) Steven D. Smith, University of San Diego School of Law.
- 10) David M. VanDrunen, Westminster Seminary California.

IV. 2008 SECTION ON LAW AND RELIGION BUSINESS MEETING

At last year’s business meeting, the Co-Chairs Elect, the Chair of the Program Committee, the Co-Chairs of the Nominating Committee, and two at-large members of the Executive Committee were elected for 2008. In accordance with the Section By-Laws, the Chair Elect, Kathleen Brady, automatically became the Chair at the conclusion of the business meeting. Additional members of the Executive Committee for 2008 are also listed below as well as the remaining members of the Nominating and Program

Committees. We thank all of these officers and committee members for their hard work during 2008.

EXECUTIVE COMMITTEE:

Section Officers:

Kathleen Brady

Chair

Villanova University School of Law

Samuel J. Levine

Co-Chair Elect

Pepperdine University School of Law

Mark C. Modak-Truran

Co-Chair Elect & Newsletter Editor

Mississippi College School of Law

Christopher Lund

Chair of Program Committee

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Nelson Tebbe

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Other Executive Comm. Members:

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Executive Committee Member

Notre Dame Law School

Joel A. Nichols

At-large Executive Committee Member

University of St. Thomas School of Law

Frank S. Ravitch

At-large Executive Committee Member

Michigan State University College of Law

OTHER COMMITTEE MEMBERS:

Program Committee:

Eric R. Claeys

Member of the Program Committee

George Mason University School of Law

Leslie C. Griffin

Member of the Program Committee

University of Houston Law Center

Paul Horwitz

Member of the Program Committee

University of Alabama School of Law

Mike Moreland

Member of the Program Committee

Villanova University School of Law

Lisa Shaw Roy

Member of the Program Committee

University of Mississippi School of Law

Nominating Committee:

Patrick Brennan

Member of the Nominating Committee

Villanova University School of Law

Emily Hartigan

Member of the Nominating Committee

St. Mary's University, School of Law

Jessie Hill

Member of the Nominating Committee

Case Western Reserve Univ., School of Law

V. 2008 SECTION ON LAW AND RELIGION PROGRAM PAPERS

At last year's AALS annual meeting, the Section on Law and Religion hosted an excellent and well-attended program entitled *The Supreme Court's Hands-Off Approach to Religious Doctrine*. The papers from this program will soon appear in the volume 84 of the *Notre Dame Law Review* (forthcoming 2009). They are as follows:

- 1) Samuel J. Levine, *The Supreme Court's Hands-Off Approach to Religious Doctrine: An Introduction*, 84 *Notre Dame L. Rev.* (forthcoming 2009).
- 2) Christopher L. Eisgruber & Lawrence G. Sager, *Does it Matter What Religion Is?*, 84 *Notre Dame L. Rev.* (forthcoming 2009).
- 3) Richard W. Garnett, *A Hands-Off Approach to Religious Doctrine: What Are We Talking About*, 84 *Notre Dame L. Rev.* (forthcoming 2009).
- 4) Andrew Koppelman, *The Troublesome Roots of Religious Neutrality*, 84 *Notre Dame L. Rev.* (forthcoming 2009).
- 5) Bernadette Meyler, *Commerce in Religion*, 84 *Notre Dame L. Rev.* (forthcoming 2009).
- 6) Kent Greenawalt, *Hands Off: When and About What*, 84 *Notre Dame L. Rev.* (forthcoming 2009).

VI. LAW AND RELIGION BIBLIOGRAPHY FOR 2008

As in the past, we have compiled a law and religion bibliography that includes books and articles published in the last year. We have tried to compile a comprehensive list that includes items appearing since last year's newsletter and through November of 2008. We have also included some omissions from last year's list. As has been our practice during the last three years, we are also including a list of law and religion related blogs, which might be of interest to Section members. We apologize for any errors or omissions to this year's bibliography, and ask you to inform Mark Modak-Truran, the 2008 Co-Chair Elect and Newsletter Editor, about any necessary corrections for next year's newsletter. Special thanks to Mississippi College School of Law student Robert Neill Bryant for his help in compiling this bibliography.

BOOKS

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