
AALS LAW AND RELIGION SECTION NEWSLETTER*

WINTER 2016

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SECTION LEADERSHIP

SECTION OFFICERS:

Chair:

Richard Albert, Boston College Law School

Chair-Elect:

Robin Fretwell Wilson, University of Illinois College of Law

Executive Committee:

Marc O. De Girolami, St. John's University School of Law

Michael Helfand, Pepperdine University School of Law

Paul Horwitz, The University of Alabama School of Law

Nathan B. Oman, William & Mary Law School

Elizabeth Sepper, Washington University in St. Louis School of Law

MESSAGE FROM THE CHAIR

Richard Albert
Boston College Law School

There are many people to thank as I near the end of my term as Chair of our Section on Law & Religion. The generous, thoughtful and quite frankly extraordinary people involved in the leadership of our Section have made this term immensely enjoyable and incredibly productive.

* This newsletter is a forum for the exchange of ideas. Opinions expressed here are not necessarily those of the Section and do not necessarily represent the position of the Association of American Law Schools.

When you next see them, please join me in thanking the members of the Executive Committee for their contributions to the life of our Section: Marc DeGirolami (St. John's), Michael Helfand (Pepperdine), Paul Horwitz (Alabama), Nathan Oman (William & Mary), Elizabeth Sepper (Washington-St. Louis), Anna Su (Toronto) and Robin Wilson (Illinois).

Michael Helfand deserves special thanks for agreeing to chair a newly-convened Prize Committee to award a new Section prize to an untenured scholar for excellence in law & religion scholarship. I thought it was important to create this prize in order to recognize the great work of younger scholars in the field. After deliberation and discussion, Michael and his committee colleagues—Zak Calo (Hamad Bin Khalifa/Valparaiso), Rick Garnett (Notre Dame) and Lisa Shaw Roy (Mississippi)—decided to name the Section prize after Harold Berman, a veritable giant in our field. The inaugural Berman Prize will be given to Nathan Chapman (Georgia) at our Section program in January. I thank Tracie Thomas of the AALS for generously supporting the idea for this award, and I also thank Zak, Rick and Lisa for all they did for our Section.

The Nomination Committee, chaired by Anna Su along with Caroline Mala Corbin (Miami), Claudia Haupt (Columbia/Yale), Christopher Lund (Wayne State) and Michael Moreland (Villanova), has put together an outstanding slate of officers for the year ahead. Thank you to each of them. I am confident that the next Executive Committee will work well under the leadership of our Section Chair-Elect, Robin Wilson, when their work begins in January. (Robin's work has already begun, in fact; she prepared this annual newsletter. We owe Robin a debt of gratitude for this great service to the Section.)

And a very big thank you to our Program Committee, co-chaired by Paul Horwitz and Nathan Oman. Paul and Nathan were supported by David Landau (Florida State), Frank Ravitch (Michigan State) and Yaniv Roznai (IDC-Herzliya). David and Yaniv developed the ideas for the program and secured the participation of outstanding panelists for our Section program in January, while Frank made arrangements to have the papers published in the Michigan State Law Review. Paul, Nathan, David, Frank and Yaniv deserve our thanks for giving us such a wonderful program. We look forward to seeing many of you in attendance.

One more thank you: to our dear friend Mark Scarberry (Pepperdine) for keeping us connected virtually through the email list he so generously maintains for our Section.

I hope for all of us a smooth end to 2016, and I send you my best wishes of health, happiness and fulfillment as we begin the new year.

Yours sincerely,

Richard Albert

UPCOMING EVENTS

Pepperdine University School of Law Nootbaar Conference
“Religious Critiques of Law”
March 9-10, 2017

**Pepperdine University School of Law
Malibu, California**

We hope you will join us for the conference discussed below. Mark your calendar, submit a proposal, and forward this message to blogs, list serves, and people who might be interested. Speakers already confirmed include the following:

John Witte (Emory)
Sanford V. Levinson (Texas)
Jihad Turk (Claremont School of Theology)
Linda R. Meyer (Quinnipiac)
Richard Helmhotz (Chicago)
Michael Broyde (Emory)
Steve Smith (San Diego)
Robert K. Vischer (St. Thomas)
Perry Dane (Rutgers Camden)
Mark Modak-Truran (Mississippi College)
John Nagle (Notre Dame)
Barbara Armacost (Virginia)
Michael Moreland (Villanova)
Nathan B. Oman (William & Mary)
David Opperbeck (Seton Hall)
Jeffrey Pojanowski (Notre Dame)
Sarah M.R. Cravens (Akron)
Samuel Levine (Touro)
Ellen Pryor (UNT Dallas)
David VanDrunen (Westminster Seminary, CA)
Mark Aaron Goldfeder (Emory)

In his book, *American Lawyers and Their Communities*, Tom Shaffer envisions a downtown street. On one side of the street is a house of worship; on the other is a courthouse. According to Shaffer, law schools train lawyers to look at the religious congregation from the courthouse—that is to analyze the problems the religious congregation creates for the law. Shaffer contends that too often, law schools ignore the possibility that there might be a view of the courthouse from the house of worship.

Prophetic witness is discounted in law teaching. Our part of the academy, more than any other, has systematically discouraged and disapproved of invoking the religious tradition as important or even interesting. It ignores the community of the faithful so resolutely that even its students who have come to law school from the community of the faithful learn to look at the [religious congregation] from the courthouse, rather than at the courthouse from [religious congregation].

Shaffer encourages lawyers to "walk across the street" and look at the courthouse from their religious congregation.

At this conference, some speakers will support Shaffer's notion that religious critiques of law are of important value to our legal discourse. Others will challenge that notion. It is our hope that the conference will draw speakers from a wide variety of religious traditions who will address the law from their tradition. We welcome speakers who might address the history of religious influence on law. Any subject area of law is fair game, but we want to encourage speakers to address subjects that do not ordinarily come in for religious critique—property, contracts, torts, etc. We hope some speakers will address the legal profession and legal education from religious perspectives. We hope that you can join us.

As usual, we are trying to do a national conference on a local budget. We will not be able to provide travel expenses. Our hope is that speakers' home institutions will be able to provide their expenses.

If you have questions about the substance of the conference, contact Bob Cochran robert.cochran@pepperdine.edu or Michael Helfand michael.helfand@pepperdine.edu.

SECTION SPONSORED EVENTS

2017 AALS ANNUAL MEETING San Francisco, CA

The Section's annual program is scheduled for Wednesday, January 4, 2017, from 1:30pm to 4:30pm, in Continental Parlor 9 on the Ballroom Level of the Hilton San Francisco Union Square. The program will feature the panel described below. We will also award the Section's new Harold Berman Prize to an untenured scholar for excellence in law & religion scholarship. The program will close with a business meeting; anyone interested in joining the leadership of the Section is invited to express an interest at the business meeting.

Is Secularism a Non-Negotiable Aspect of Liberal Constitutionalism?

This panel will take a comparative perspective on the place of religion and secularism in modern constitutionalism. Invited speakers will consider a number of models, drawn from Asia, Africa, the Middle East, and Europe, and will raise questions about the extent to which liberal constitutionalism is consistent with constitutional designs that privilege a particular religion in various ways. Invited speakers will also consider the extent to which the principle of secularism should be and is being placed beyond the realm of democratic debate, for example by being formally entrenched in unamendable constitutional clauses (as in Turkey) or as a feature within the constitution's "basic structure" and therefore implicitly entrenched (as in India). This panel will enrich our comparative understanding of constitutionalism and religion, and it will moreover unsettle our conventional understandings of this relationship in American constitutional law.

Moderator:

Richard Albert
Boston College Law School

Panelists:

Alan Brownstein
University of California-Davis School of Law

Jaclyn Neo
National University of Singapore Faculty of Law

Frank Ravitch
Michigan State University College of Law

Michel Rosenfeld
Benjamin N. Cardozo School of Law

Yaniv Roznai
Radzyner Law School, Interdisciplinary Center Herzliya

Seval Yildirim
Whittier Law School

Papers from the program will be published in Michigan State Law Review.

All are welcome to attend.

Richard Albert (Boston College)
Chair, Section on Law & Religion
richard.albert@bc.edu

The AALS Section on Law and Religion will be co-sponsoring a session at the AALS Annual Meeting in San Francisco, CA, on Wednesday, January 4, 2017, from 8:30 a.m. to 10:15 a.m., “Is There Room in the U.S. Legal System for Halacha and Sharia? Family Law, Public Accommodations, Antitrust, and Arbitration. The moderator and panelists will be:

Moderator:

Michael Helfand
Associate Professor of Law
Pepperdine University School of Law

Panelists:

Michael J. Broyde
Professor of Law
Emory University School of Law

Haider Ala Hamoudi
Associate Professor of Law
Associate Dean of Research & Faculty Development
University of Pittsburgh School of Law

Asifa Quraishi-Landes
Associate Professor of Law
University of Wisconsin Law School

Barak Richman
Edgar P. and Elizabeth C. Bartlett Professor of Law & Professor of Business
Administration
Duke University School of Law

Topics for discussion will include:

- (a) the legal controversy over government regulation of the practice of metzitzah b'peh in New York and its implications for other forms of ritual practice in the American Jewish and Islamic communities (ritual practice v. public health regulation)
- (b) the enforceability of the Islamic mahr that a husband is required to give a wife upon concluding the marriage contract (religious law v. commercial law),
- (c) the controversy over single-sex swim hours at public swimming pools (religious regulation of modesty v. laws governing public accommodation)
- (d) the regulation of clergy placement and employment terms in congregations by rabbinic professional associations and its implications for other religious communities (communal self-governance v. antitrust), and
- (e) judicial approval of religious arbitration in the recent dispute between Luis Garcia and the Church of Scientology and its implications for religious arbitration in Jewish and Islamic communities (communal self-governance v. due process rights).

The panel will consider these topics not only from the perspective of U.S. law's accommodation of religious law but also the capacity and obligation of religious law to accommodate secular legal norms in ways that may reduce tension. Audience participation in the discussion will be most welcome.

I hope you will consider attending and spreading the word to anyone whom you think might be interested.

Timothy D. Lytton
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**AALS FACULTY RECRUITMENT CONFERENCE
RELIGIOUSLY AFFILIATED LAW SCHOOLS RECEPTION**

October 13-15, 2016

The AALS Section on Law and Religion co-sponsored the Religiously Affiliated Law Schools' reception at the AALS Faculty Recruitment Conference. This year's reception was held on October 13-15, at the Marriott Wardman Park Hotel. Thank you to Jeff Pojanowski (Notre Dame Law School) for providing us this sponsorship opportunity.

AWARDS

The AALS Section on Law & Religion is delighted to award Nathan Chapman the Inaugural Harold Berman Prize for Excellence in Law & Religion Scholarship.

The Harold Berman Prize is awarded to an untenured scholar on the tenure track for excellence in law and religion scholarship, who has made an outstanding scholarly contribution to the field of law and religion. The members of the prize committee selected Nathan's article, "The Establishment Clause, State Action and Town of Greece," (24 Wm. & Mary Bill Rts. J. 405 (2015)) as the most meritorious.

The members of the prize committee include, Zak Calo (Hamad Bin Khalifa / Valparaiso), Rick Garnett (Notre Dame Law School), Michael Helfand (Pepperdine University School of Law), Lisa Shaw Roy (The University of Mississippi School of Law).

The AALS Section on Law & Religion will award Nathan at the AALS Annual Meeting on January 4, 2017, 1:30pm to 4:30pm. We will gather at the Hilton San Francisco Union Square, Continental Parlor 9, Ballroom Level.

We ask that you join us in congratulating Nathan on this award.

MEMBER NEWS & RECENT AND FORTHCOMING PUBLICATIONS

Ryan T. Anderson, the Heritage Foundation, will soon publish *DEBATING RELIGIOUS LIBERTY AND DISCRIMINATION* (Oxford University Press 2017) (with John Corvino and Sherif Girgis).

Thomas Berg, James L. Oberstar Professor of Law and Public Policy at the University of St. Thomas School of Law, has published two books *RELIGION AND THE CONSTITUTION* (Aspen Publishers, 4th ed. 2016) (with Michael McConnell and Christopher Lund), *THE STATE AND RELIGION IN A NUTSHELL* (West Law Books, 3d. ed. 2016). Additionally, Thomas has published *Protecting Same-Sex Marriage and Religious Liberty*, in *RELIGION, DEMOCRACY, AND EQUALITY* (Cole Durham et. Al. eds., Routledge 2016) (with Douglas Laycock), *Partly Acculturated Religious Activity: A Case for Accommodating Religious Nonprofits*, 91 *NOTRE DAME L. REV.* 1341 (2016), and *Religious Exemptions and Third-Party Harms*, 17 *FEDERALIST SOCIETY REV.* (Issue 3) (2016). Thomas will publish *Agape, Gift, and Intellectual Property*, in *AGAPE AND LAW* (Robert Cochran and Zachary Calo eds.) (forthcoming Cambridge University Press).

Jonathan Cohen, Professor of Law and Associate Director of the Institute for Dispute Resoluition at the University of Florida Levin College of Law, published *A Genesis of Conflict: The Zero-Sum Mindset*, 17 *Cardozo J. of Conflict Resol.* 427 (2016). In the paper Professor Cohen examines the subject of zero-sum thinking in both contemporary American legal dispute resolution discourse and in the Bible, more specifically, the book of Genesis.

Daniel Conkle, Robert H. McKinney Professor of Law and Adjunct Professor of Religious Studies at the Indiana University Maurer School of Law, published *RELIGION, LAW, AND THE CONSTITUTION* (Fondation Press, Concepts and Insights Series, 2016).

Christine A. Corcos (Richard C. Cadwallader Associate Professory of Law, Louisiana State University Paul M. Hebert Law Center), *The Scrying Game: The First Amendment, the Rise of Spiritualism, and State Prohibition or Regulation of the Crafty Sciences, 1848-1944*, 38 *Whittier Law Review* -- (forthcoming 2017).

Carl Esbeck, R.B. Price Distinguished Professor and the Isabelle Wade & Paul C. Lyda Professor of Law at the University of Missouri School of Law, published *Charity for the Autonomous Self, a Review Essay*, 32 *Cambridge Journal of Law and Religion* Issue 1 (March 2017); and *When Religious Exemptions Cause Third-Party Harms: Is the Establishment Clause Violated?* 58 *OXFORD JOURNAL OF CHURCH & STATE* (March 15, 2016), available to view here: <http://jcs.oxfordjournals.org/content/early/2016/03/14/jcs.csw003.full.pdf+html?sid=c82a3ec8-63c6-4bec-890f-c98eab8abdaf>.

Marie Failing, Professor of Law at the Mitchell Hamline School of Law, reports that the Council Council on Religion and Law (CORAL) in conjunction with United Theological Seminary and Luther Seminary held its annual symposium in St. Paul, MN, on Friday, October 28, around the theme “Lutheran Interpretations of Contemporary gal Issues.” The program, co-chaired by Marie Failing from Mitchell Hamline and Ronald Duty, a retired Evangelical Lutheran Church in America staff member, was the second in a series of conferences held for Lutheran academic lawyers and theologians to explore Lutheran perspec,ves on secular legal issues. The essays from the first conference on Lutheran perspectives, published by Eerdmans Publishing in summer 2016 as “On Secular Governance,” included chapters on religious freedom, authority and interpretation,

property law, human trafficking, immigration reform, and other issues. The essays from the 2016 conference, which explore general themes such as natural and positive law, annominianism, family and criminal law, the Religion Clauses, conscientious objection beyond military service, economic justice, medical trials, property issues, torture and just war will be published by Ashgate Press in early 2018. CORAL's fall 2017 conference will focus on new exploration of ideas in seminal articles published during the first thirty years of the Journal of Law and Religion.

Michael Helfand, Associate Professor of Law and Associate Director, Diane and Guilford Glazer Institute for Jewish Studies at Pepperdine University School of Law, published *Identifying Substantial Burdens*, 2016 U. ILL. L. REV. 1771 (2016), *How to Limit Accommodations: Wrong Answers and Rights Answers*, 4 J. L. RELIGION & STATE (forthcoming 2016), and *The Future of Religious Liberty in the Wake of Hobby Lobby*, in THE CONTESTED PLACE OF RELIGION IN FAMILY LIFE (Robin Fretwell Wilson ed. Cambridge University Press forthcoming 2016).

John Inazu was given the Sally D. Danforth Distinguished Professor of Law and Religious Chair at Washington University School of Law. Additionally, John reports that his book [CONFIDENT PLURALISM: SURVIVING AND THRIVING THROUGH DEEP DIFFERENCE](#) was published this year by University of Chicago Press.

Bruce Ledewitz, Professor of Law at the Duquesne University School of Law, published, *The Five Days in June When Values Died in American Law*, 49 AKRON L.REV. 115 (2016).

Micah Schwarzman, the Edward F. Howrey Professor of Law at the University of Virginia School of Law, published THE RISE OF CORPORATE RELIGIOUS LIBERTY (with Chad Flanders and Zoë Robinson eds., Oxford University Press, 2016), *Some Realism about Corporate Rights*, in THE RISE OF CORPORATE RELIGIOUS LIBERTY 345 (Schwarzman et al. eds., 2016) (with Richard Schragger), and *Introduction*, in THE RISE OF RELIGIOUS CORPORATE LIBERTY xiii (Schwarzman et al. eds., 2016) (with Chad Flanders and Zoë Robinson).

Nelson Tebbe, Professor of Law at Brooklyn Law School, published RELIGIOUS FREEDOM IN AN EGALITARIAN AGE (Harvard Press, Jan. 2017), *When Do Religious Accommodations Burden Others?* in THE CONSCIENCE WARS: RETHINKING THE BALANCE BETWEEN RELIGION, IDENTITY, AND EQUALITY (Susanna Mancini & Michel Rosenfeld eds., Cambridge Univ. Press, forthcoming 2017) (with Richard Schragger and Micah Schwarzman), *How Much May Religious Accommodations Harm Others?* in LAW, RELIGION, AND HEALTH IN THE UNITED STATES (Elizabeth Sepper, Holly Fernandez Lynch, and I. Glenn Cohen, ed., Cambridge Univ. Press, forthcoming 2017) (with Richard Schragger and Micah Schwarzman), *How to Think About Religious Freedom in an Egalitarian Age*, 93 U. DET. MERCY L. REV. 353 (2016) (McElroy Lecture), and *Religion and Social Coherentism*, 91 NOTRE DAME L. REV. 363 (2015). In popular press, Nelson also published, *Zubik and the Demands of Justice*, SCOTUSBLOG (May 16, 2016) (with Micah Schwarzman, and Richard Schragger), <http://www.scotusblog.com/2016/05/symposium-zubik-and-the-demands-of-justice/>, and *The Contraception Compromise*, SLATE (April 14, 2016) (with Richard Schragger and Micah Schwarzman), http://www.slate.com/articles/news_and_politics/jurisprudence/2016/04/seven_sisters_are_open_to_obamacare_contraception_compromise.html.

Robin Fretwell Wilson, the Roger and Stephany Joslin Professor of Law at the University of Illinois College of Law, received a gift from the Templeton Religion Trust to support the Fairness for All Initiative, which Professor Wilson directs. That initiative seeks to support state lawmakers who are striving to balance LGBT rights and religious liberty, as Utah did in the Utah Compromise. As the Co-Director of University of Illinois College of Law's [Epstein Health and Law and Policy Program](#), Professor Wilson will co-convene a Roundtable Discussion on creative solutions to the tension between religious conscience and access to healthcare, with Michelle Goodwin, Chancellor's Professor of Law, University of California, Irvine. Professor Wilson's forthcoming book, *THE CONTESTED PLACE OF RELIGION IN FAMILY LAW* (Robin Fretwell Wilson, ed.), is under contract with Cambridge University Press. She also published "*Squaring Faith and Sexuality in Religious Institutions: The Unique Challenge of Sports*," 34 *LAW AND INEQUALITY: A JOURNAL OF THEORY AND PRACTICE* 385 (2016); "The Future of Religious Liberty Protections in Illinois: Harmonizing Religious Exercise and Legitimate Government Concerns," in *AN ILLINOIS CONSTITUTION FOR THE 21ST CENTURY* (Illinois Policy Institute, 2016) (co-authored with Heidi L. Brady) (forthcoming); "[Bargaining for Religious Accommodations: Same-Sex Marriage and LGBT Rights after Hobby Lobby](#)," in *THE RISE OF CORPORATE RELIGION LIBERTY* (Micah Schwartzman, Chad Flanders, Zoë Robinson, eds., Oxford University Press, 2016); "[Getting the Government Out of Marriage](#)" *Post Obergefell: The Ill-Considered Consequences of Transforming the State's Relationship to Marriage*, 2016(4) *U. ILL. L. REV.* 1445 (2016); and "Unpacking the Relationship Between Religious Conscience and Access" in *LAW, RELIGION, AND HEALTH IN AMERICA* (Holly Fernandez Lynch, I. Glenn Cohen, & Elizabeth Sepper, eds., Cambridge University Press, 2016) (forthcoming). Professor Wilson will be co-convening a Conference on FAITH, SEXUALITY, AND THE MEANING OF FREEDOM at Yale Law School, with Professor William Eskridge on January 13-14, 2017. Professor Wilson may be reached at wils@illinois.edu.

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