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HONORARY FOREWORD

Michael Perry: A Pioneer Integrating Traditions in Law and Religion

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First impressions are mistaken impressions—or so says common wisdom. Most of the time, of course, common wisdom is correct. But every once in a while, a first impression conveys—in a flash, in a single instant—a truth about a person that is only burnished and deepened by time and experience. That is the case with respect to my first impression of Michael Perry.

During a year I spent as a student in Hyde Park in the mid-1980s, I wandered into an interdisciplinary seminar on law and religion that Perry, then a professor at Northwestern Law School, was teaching with Robin Lovin, then on the faculty of the University of Chicago Divinity School. Perry immediately struck me as someone who fully integrated in both mind and heart the disciplines by which I was most fascinated. He was an established law professor with a specialization in constitutional law. At the same time, he was also thoroughly knowledgeable about debates in both philosophy and theology regarding the nature of human dignity, the importance of human sociality, and the challenges of living together with peacefulness and respect in a pluralistic society. He was open-minded, dialogical, and respectful of different views, even as he vigorously defended his own positions.

Most importantly, as I came to realize later, Michael Perry was committed to treating law as an equal conversation partner with the humanities, rather than merely as an instrument to implement the insights of the social sciences. During the mid-1980s, in the heyday of “law and economics” scholarship at the University of Chicago, this commitment struck me as equally revolutionary and compelling. Perry was also dedicated to treating the insights of religious traditions as fully capable of engaging with the secular disciplines of law, politics, and philosophy. He read both *Theological Studies* (the most important American journal of Catholic theology) and the *Harvard Law Review*.

In my view, Perry’s real respect for religious traditions as loci of intellectual inquiry and debate is what sets him apart from many other scholars—both religious and secular—in the field of law and religion. In Perry’s hands, religious traditions are analogous to legal traditions in two ways. First, many people mistakenly believe that that the deliverances of both sets of traditions are simply self-interpreting commands backed by threats, whether those threats come from an omnipotent deity or a political ruler that is powerful enough to compel obedience. Second, despite what these people think, both law and religion involve traditions of inquiry characterized by complicated processes of reasoning. In both cases, even the process of recognizing a command as coming from the highest source, whether that source be the word of God or the words of a constitution, is not without complication and controversy. Consequently, studying religious and legal tradition together is not simply an idiosyncrasy. Rather, it is a path to intellectual enrichment.

Michael Perry has not only been a role model to me, he has also been a mentor. In fact, I owe my own long-standing involvement in the *Journal of Law and Religion* in large part to his

support. When I was practicing law as a young associate in Boston in the early 1990s, I was invited to join the board of the *JLR*, during the era in which it was based at Hamline Law School, under the creative and collaborative editorial leadership of Howard Vogel and Marie Failing. Our board meetings were based at Bandana Square, a shopping center and cowboy-themed mall outside of St. Paul. This was originally the site of the Como Shops of the Northern Pacific Railway, where passenger cars were constructed to serve the railway's great steel path in the migration to the West. As a young scholar, I thought the site was symbolically fitting, because scholars of law and religion at the time were intellectual pioneers. As a leader in this nascent field, Perry modeled both intellectual discipline and the excitement of crossing disciplinary boundaries to explore new vistas and perspectives.

Reflecting now on Perry's work, his teaching, and his life, I would say that his integrative academic work has three distinct markers. First, it not only draws from two or more disciplines, but it also aims to create a conversation among those disciplines. Integrative scholarship takes care to explain the presuppositions of one field to practitioners of the other(s) so that all are equipped to carry out a common discussion. I remember vividly Perry's efforts to ensure that the law students in the interdisciplinary seminar understood how theology worked, while the theology students acquired a basic grasp of legal reasoning.

Second, scholarship that is integrative across disciplines recognizes the arguments internal to each discipline and is sensitive to the changing shape of the consensus within each discipline. Integrative scholarship does not take an isolated insight or proposition from one discipline and bring it into another field of inquiry, as if one were carrying a tightly wrapped package across a border. Not content merely to take the answers from one discipline into another, integrative scholarship shows how the questions that one discipline asks, and the presuppositions it brings to them, can change the shape of the discussion in another field—and vice versa. A scholar determined to live his or her intellectual life traversing disciplinary boundaries produces a body of work that is marked by those choices, in a way that is far more radical than simply raiding another discipline for one or two helpful concepts (for example, raiding economics for the concept of Pareto optimality).

Third, in my view, the work of a scholar dedicated to integrative scholarship evinces a kind of integration in the components of his or her own work. Years of reading intensively and extensively across disciplinary boundaries creates an expansiveness in both thought and writing. It generates an impetus to cast questions and concerns not in the terms of one field or the other, but in the terms of a unique and rich fusion of both. Integration builds upon similarities as well as differences. Both law and Catholic theology, for example, develop by analogical reasoning and the distinction of cases. Many other eminent scholars of religion, such as Harold Berman and John Witte, also stand for the integration of law and religion. While their work complements and coordinates with that of Perry, I see some differences in their approaches. I see Berman and Witte as more oriented toward institutional history and Perry as more focused on the conceptual history. His work, in my view, is more similar to that of John Noonan, whose famous first book (*The Scholastic Analysis of Usury* [Cambridge, MA: Harvard University Press, 1957]) traced how the practice of lending money at interest evolved from a mortal sin to a morally acceptable business practice.

As Perry has himself observed, his work over the past four decades has centered on three basic areas: (1) constitutional law, (2) human rights in a global perspective, and (3) political morality in a liberal democracy, with a focus on the intersection of law and religion. It is possible to treat these broad subject areas as autonomous fields of inquiry. Many other scholars do. Yet, as Perry's later work makes increasingly clear, his normative commitments in each of these areas affect how he construes the nature, purpose, and fundamental tasks of the other fields. Moreover, the interconnections in the three facets of his work draw from and strengthen a coherent moral and social anthropology that animates his work as a whole.

Consider, for example, Perry's recent book, *A Global Political Morality* (Cambridge: Cambridge University Press, 2017 [page citations in parentheses]). In his view, the norms relevant to constitutional interpretation are drawn not only from the US Constitution itself, but also from the morality of human rights, and in particular the right to democratic governance (99). The right to democratic governance leads Perry to argue that the United States Supreme Court, generally, should proceed "deferentially" when presented with a claim that the government has violated a constitutional norm (103). But there is an exception for cases arguing that the Constitution protects a claim "*that is part of the morality of human rights*" (111, Perry's emphasis). In such situations, the Court should vindicate the right hypothetically if there is a reasonable argument that the human rights claim is a constitutionally protected right, even while it defers to a reasonable argument that the right was not in fact violated in the case at hand.

Perry's commitment to global human rights not only infuses his approach to constitutional interpretation but also animates his political morality. Perry recognizes that some, even many, human rights are legal rights in that they are recognized and enforceable by the machinery of a legal system. Nonetheless, he argues that the fundamental nature of human rights is moral rather than legal when he observes: "[T]he human rights *the violation of which truly does violate the 'act toward all human beings in a spirit of brotherhood' imperative or an equivalent norm*—are moral rights. If we call such human rights 'true' human rights, we may say that all true human rights are moral rights" (20, Perry's emphasis).

According to Perry, the underpinning of democratic rule is the political right to moral equality. It is only because of "the right of every human being to be treated as the moral equal of every other human being" (56) that it makes sense to organize ourselves in a democratic polity in the first place. In his view, the right to moral equality both gives support to and is supported by the religious life of the people. On the one hand, because he sees religious freedom as so intimately connected with individual moral dignity, he calls for a broad interpretation of that right, which he sees as covering acts or omissions with "a religious or spiritual essence" (68, quoting *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 553). On the other hand, Perry also recognizes and welcomes the contributions of both religious and secular voices to deliberations about the public good. Moreover, in treating the development of global human rights morality, Perry does not present that development as a purely secular accomplishment of lawyers and political philosophers, but rather he highlights the contributions of religious thinkers and religious thought to the project (29–41).

As I noted above, early in my career, I considered scholars in law and religion to be akin to the pioneers who explored the West. As a mature scholar, I have more vividly realized the deeply problematic aspects of American Western expansion, especially the gross mistreatment and erasure of the native populations and their religious traditions. But these problematic aspects of American pioneer life are also instructive for scholars of law and religion. It is far too easy to dismiss unfamiliar traditions and ways of life as defective or irrelevant. In his work and his life, Michael Perry has always forcefully countered such dismal and disrespect. I see one fruit of his work in the 2021 restructuring of the *JLR* editorial board to expand the journal's competence and reach with respect to disciplines, geography, and traditions of faith. Thanks to Michael Perry's work and example, scholars of law and religion rightly still see ourselves as pioneers—but, I hope, as humble and respectful pioneers.

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