

## EDITOR'S PREFACE

This issue of the *Journal of Law and Religion* is dedicated to two of the founding spirits of the Council on Religion and Law (CORAL), William Stringfellow and Myron Bloy, both of whom died in the past year. Close friends have provided brief dedicatory sketches. Malcolm Boyd describes Bill Stringfellow as a lawyer who “had better taste than to sell out in the face of the seduction of wealth and power” and who “combined his concerns about the law with the burning passion and compassion of Amos and Jesus.” Nancy Malone describes Mike Bloy as a compassionate pastor who was devoted to learning that is “capacious, collegial, and enlivened by biblical faith” and equally opposed to the “rationalistic, positivistic, individualistic, predatory” ideologies that hold the academy in thrall. Both Stringfellow and Bloy contributed enormously to CORAL. Their spirit and vision continues to guide and challenge us.

In the lead article of this issue Professor Harry Nasuti takes up the challenges of Stringfellow and Bloy to make sense of the biblical record. Readers of the Bible are often tempted to form their own “canon within the canon,” to borrow Hans Conzelmann’s classic phrase describing the tendency to regard as more normative or valuable those portions of the Bible with which a reader or a particular religious community is more comfortable. Nasuti points out that the genres of law and narrative are inseparably conjoined in the Hebrew Scriptures. He argues skillfully that this conjunction imposes a method of interpretation counteracting the temptation to minimize or exclude the legal material so as to “get on with the story.” In Nasuti’s view one reason why blocks of legal material are inserted throughout the narrative of the liberation of Israel is to correct behavior in the reader which is characteristic of the oppressor. The legal material works against a selective approach to the process of reading the Hebrew Scriptures by specifying “who such a reader must be if he or she wants to read the text correctly.” Torah invites its reader, concludes Nasuti, to get straight his or her identity as a liberated ex-slave called to imitate the behavior of the liberatory God in his or her world.

The 1983 pastoral letter of the Roman Catholic Bishops on war and peace has been the basis of extended commentary by ethicists and political scientists. The document was reviewed in Volume II of this journal. In this issue Professor Robert A. Destro adds the reflections

of a constitutional scholar on the document, exploring the constitutional and policy questions raised “whenever organized religious groups explicitly seek to involve themselves in the political process,” and discussing practical legal and moral questions raised “whenever individual believers seek exemptions from social or employer-imposed duties on religious grounds.” Because these questions are critical to the conscientious choices of all those to whom the pastoral letter is addressed, Destro’s article is a welcome addition to the literature developing on the supremely important question of how to preserve peace in the nuclear age.

This issue of the *Journal of Law and Religion* contains papers delivered at the colloquium on law and religion sponsored by Loyola Law School in 1985 as part of the dedication of its new campus in downtown Los Angeles. By their focus on the topics explored in the first year curriculum (contracts, property, tort, and procedures) the papers collectively repudiate a narrowly constricted view of law and religion limited to constitutional doctrine on the proper relationship between the government and religious bodies.

After an introductory article discussing the treatment of property, contracts, torts, crimes and procedure in the biblical record, four articles discuss the influence of religion on these areas of the law. Harold Berman explores the religious sources of contract law in the writings of the canonists of the eleventh and twelfth centuries and of the seventeenth century Puritans. William Bassett demonstrates that the myth of religious and cultural superiority of the “civilized” English over the wandering, “savage” indigenous populations of Ireland and North America was used to justify large-scale expropriation and brutal repression of the natives from the sixteenth to the nineteenth centuries. David Kader provides an introduction to the treatment of torts in Jewish law, and investigates the problem of reliance on explicitly religious legal tradition in the modern state of Israel. Robert Rodes suggests that procedural norms are “ways of trying to do God’s business without being God,” and shows that this insight can help us avoid both making an idol of our procedure and dispensing with it altogether on the pretense of being able to judge as God does. On the hypothesis that fourteenth century professors in the famous law school at the University of Bologna must have conceived of law differently in the Age of Faith than we do in the modern secular world, James Gordley concludes the colloquium with a sparkling conversation with a medieval jurist which is brimming with cross-cultural insight.

Each author presents a different perspective on the theme, but in their own way all these essays challenge the ideologies which Mike Bloy described as “rationalistic, positivistic, individualistic, and predatory.” The essays gathered in this colloquium may help to upset these ideologies where they hold unchallenged sway in American law schools. The respondents in this colloquium—Professors Blenkinsopp, McThenia, Williams, Bergman, and Mr. Lohn—are by no means strident or harsh critics of the major papers to which they reply. One common thread running among these responses, however, is the repeated suggestion that much more work is yet to be done in exploring the many ways in which religious experience and insight may fairly be said to be related to the major themes of the law: our expectations of contractual regularity, the taking of property on the predicate of racial superiority, the assignment of moral responsibility for personal injury, and the task of keeping procedure both fair and free from hubris.

Professor Carl Esbeck, an editor of the monthly digest of cases in the *Religious Freedom Reporter*, has agreed to provide an annual survey of trends and developments on religious liberty in the courts. The purpose of adding this feature to the *Journal of Law and Religion* is to report dispassionately significant decisions of the state and lower federal courts that relate to religious freedom. Professor Esbeck's contribution is most welcome.

In the review essays in this issue of the journal Professor Millard Lind explores the modern critical interpretation of biblical law, and Professor Douglas Laycock engages two constitutional historians who have written about the meaning of the provision in the first amendment prohibiting an establishment of religion.

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