

ESSAY

History of the Founding and Early Years of the *Journal of Law and Religion*

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Abstract

In this essay, I recount the history of the founding and early years of the *Journal of Law and Religion* from its origins in the Committee on Religion and Law through the editorial transitions in 1988 that led to a second phase of *JLR*'s history. In recounting this history, I focus on the exceptional scholars who brought *JLR* into existence and nurtured its growth during those early years, creating, in the process, not only new academic endeavor but a community and a kind of family.

Keywords: *Journal of Law and Religion*; Committee on Religion and Law; interdisciplinary; religious leaders; religious institutions

The story of the founding of the *Journal of Law and Religion* starts with Emory University School of Law's own Frank Alexander. While a student at both Harvard Divinity School and Harvard Law School, he led the formation in April 1976 of the Committee on Religion and Law, a group of law professors and theologians, including Harold Berman and James Luther Adams, as well as practitioners. The first event of the committee, "Symposium on Theology and Law: Responsibilities of Vocation," was held at Harvard Law School March 5–6, 1977. The presentations included a seminal piece by Roger Cramton, dean of Cornell Law School, "The Ordinary Religion of the Law School Classroom." The second day of the conference was an intensive dialogue on the work being done and needing to be done by those interested in the relationship between law and religion. I recall professor Morton Horwitz commenting to me in conversation, "I think this was the most moving and deepening time I have spent in the ten to twelve years that I have been associated with the Harvard Law School." By March 24, the committee, with the encouragement of the participants in the symposium, had decided to expand its vision, to incorporate, form a board of directors, and change the name to the Council on Religion and Law. The first board meeting was on November 19, 1977, at Harvard Divinity School.¹

The members of the board for that first meeting were an illustrious group.² But the list does not tell the story. In my experience, I was in the presence of greatness. Just to describe a

¹ The archives of the Council on Religion and Law and the *Journal of Law and Religion* are held by the MacMillan Law Library at Emory University School of Law as part of the records of the Center for the Study of Law and Religion. Emory Law, Emory Law Archives and Manuscripts, <https://library.law.emory.edu/collections/archives-and-rare-books.html>, accessed April 2, 2024.

² The board included the following directors (with their positions at that time): James Luther Adams, professor emeritus, Harvard Divinity School (who taught classes in law and religion with Harold Berman); Frank Alexander;



few. Harold Berman gave us the map with his book, *The Interaction of Law and Religion*.³ He and James Luther Adams taught classes together. The future general editor of the journal, Wilson Yates, was a student in the first of these classes. Adams could impart more wisdom in a story than most others could in a series of lectures. Pauli Murray was a civil rights lawyer and the first African American woman to become an Episcopal priest: there is now a Pauli Murray College at Yale University. After law school, William Stringfellow moved to East Harlem to practice law; later, referring to Stringfellow, Karl Barth once commanded an audience at the University of Chicago: “Listen to this man.”⁴ Doug Sturm, professor at Bucknell, wrote more about law and religion than anyone else, and he did so with clarity and passion. Lois Forer, judge of the Philadelphia Court of Common Pleas, brought her rich experience as a judge. Edward Gaffney, later the dean of Valparaiso Law School, always reminded us by his words and actions of the prophetic role of law and religion. Later, Virginia Mackey, the mother of the restorative justice movement, joined the board. Mark Taylor, a student at Harvard Divinity School and later an attorney, was the coordinator of all of the council’s activities and key to our growth and success.

The Council on Religion and Law, known as CORAL, was very active, with a large national membership and many events and projects including major symposia; *Interface*, a booklet describing existing programs, courses, and associations working to promote the interrelationships of law and religion, encouragement of a wide range of new courses and programs at various institutions, and an extensive bibliography of literature; and a newsletter to keep everyone connected.

From the beginning, we had two principal goals. The first was to establish an institute for the study of law and religion. Doug Sturm headed up the effort and Frank Alexander accomplished the goal in 1982 after he left the practice of law and became a faculty member at Emory University School of Law, with the establishment of the Center for the Study of Law and Religion. Frank encouraged Harold Berman to move from Harvard Law to Emory, which he did in 1985.

The second goal was to establish a journal of law and religion. We boldly announced in the summer 1980 newsletter that we would begin publishing a journal in late fall 1981. This issue would include the articles from a symposium, “Religion, Law and the Political Process,” held on September 25, 1981, which we were co-sponsoring with Harvard Law School. John Corrigan was named editor-in-chief. John, who occupied the office beside me in our law firm, was a great lawyer with a brilliant mind and a deep interest in religion, but it soon became apparent that editing and publishing a journal was more than a lawyer could accomplish while practicing law.

Harold J. Berman, professor of Law at Harvard Law School; Rev. Myron B. Bloy, Jr., Director, National Institute for Campus Ministries; Sister Loretta A. Broderick, nun and attorney; Lynn Buzzard, founder and executive director of the Christian Legal Society; Roger Cramton, dean, Cornell Law School; A. Myrvin DeLapp, professor at Princeton Theological Seminary; Lois G. Forer, judge, Court of Common Pleas, Philadelphia; Edward Gaffney, director of the Center for Constitutional Studies at Notre Dame University; Jerome Hall, professor at Hastings College of Law; Patricia B. Kepler, director of the Office of Ministerial Studies, Harvard Divinity School; Ira A. Korff, rabbi and attorney; William McLennan, minister and attorney; Pauli Murray, civil rights lawyer and Episcopal priest; Errol Rohr, minister and director of the United Christian Center, Ohio State University; John Lee Smith, assistant dean, Cornell Law School; William Stringfellow, attorney, minister, and theologian; Douglas Sturm, professor at Bucknell University; and me. Much could be said about each of these people—their contributions to the work of Council on Religion and Law, and their remarkable careers.

³ Harold J. Berman, *The Interaction of Law and Religion* (Nashville: Abingdon, 1974).

⁴ As quoted in Bill Wylie-Kellermann, “Not Vice Versa. Reading the Powers Biblically: Stringfellow, Hermeneutics, and the Principalities,” *Anglican Theological Review* 81, no. 4 (1999): 665–82, at 671.

Fortunately, Stephen Young, dean of Hamline Law School, came to the rescue.⁵ He began conversations with Harold Berman, his teacher at Harvard Law School, in the fall of 1981 about developing a program in law and religion. Steve invited Hal to visit Hamline for informal meetings with his faculty and the president of Hamline University, Charles Graham. In Steve's words, he wanted Hal "to present his vision of the foundational importance of religion for informing jurisprudence and envisioning law as an arm of social justice."⁶

Hal reported on these conversations at the annual meeting of CORAL on December 5, 1981. He noted how impressed he was by his meetings with the law faculty, including Howard Vogel, a Quaker, and Michael Scherschligt, a Lutheran, and CORAL's regional coordinator in the Minneapolis area, Wilson Yates, professor and dean at United Theological Seminary of the Twin Cities. I represented CORAL in the conversations with Hamline, including discussing the possibility of cosponsoring the *Journal of Law and Religion*, all with the enthusiastic support of John Corrigan. Harold and I visited Hamline and the collaboration with the journal was affirmed. We brought with us the manuscripts from the symposium.

The first meeting of the journal's board of editors was held on November 6, 1982. Doug Sturm, Ed Gaffney, and I represented CORAL. Robin Lovin (professor at the University of Chicago Divinity School), Michael Scherschligt and Wilson Yates represented Hamline with Dean Young supporting all our efforts. Michael and Wilson were named general editors and Ed book review editor. Howard Vogel agreed to do an in-depth survey of recent literature and continued to bring depth and wisdom to the life of the journal. Doug was elected chair of the board, serving through 1988 and playing a critical role in guiding the development of the journal. Hal gave a significant financial gift to the new venture. We also elected an advisory committee.⁷ (For a discussion of the remarkable people who later joined the board, see in this issue Marie Failing's essay on the second life of the journal.⁸)

Forty years ago, in the summer of 1983, volume 1, issue 1 of the *Journal of Law and Religion* was published. In the editor's preface, Michael and Wilson wrote, "In undertaking this venture, we seek to provide a forum, a place to hear and be heard, for all those interested in exploring how law and religion are related. We will publish works that cover a diverse range of issues and subjects regarding the relationship of law and religion, including historical studies, articles that deal with theoretical questions of jurisprudence and theology, essays on the meaning of such concepts as justice and rights, power and authority, works focused on the interaction of clergy and lawyers, and studies regarding the interplay of law and religion in the social arena."⁹

From the beginning, the *Journal of Law and Religion* was an interfaith, interdisciplinary, peer-reviewed journal. The articles illustrated the intersection of law and religion takes

⁵ For Stephen Young's reflections on the founding of JLR, see Stephen B. Young, "Founding the *Journal of Law and Religion*: A Reflection Forty Years On," *Journal of Law and Religion* 38, no. 2 (2023): 183–88.

⁶ Young, "Founding the *Journal of Law and Religion*," 187.

⁷ The advisory committee included (with positions at the time noted for those not previously described): James Luther Adams; Frank Alexander; Richard Baepler, professor of theology at Valparaiso University; James Bresnahan, professor at Northwestern University Medical School; Lynn Buzzard; Lisa Cahill, professor at Boston College; Fred Carney, professor at Perkins School of Theology; Roger Cramton; Leigh Lerner, rabbi, St. Paul, Minnesota; David Little, professor at the University of Virginia; Martin Marty, professor at the University of Chicago Divinity School; Noor Mohammad, professor at the University of Baltimore School of Law; Leslie Rothenberg, attorney, Los Angeles; Elizabeth Schuessler-Forenza, professor at Notre Dame University; and Thomas Shaffer, professor at Washington and Lee University School of Law.

⁸ Marie A. Failing, "The *Journal of Law and Religion*—Second Life," *Journal of Law and Religion* 40, no. 1 (2025) (this issue).

⁹ Michael Scherschligt and Wilson Yates, "Editor's Preface," *Journal of Law and Religion* 1, no. 1 (1983): 1–2, at 1–2.

place on numerous planes—historical, theoretical, and practical—and not simply in regard to any particular issue. I offer here a brief glimpse at the richness of the initial work, from 1983–1988.

Robin Lovin was the guest editor of volume 2, issue 2 (1984). Robin focused on issues concerning religion and law in the American political sphere, drawing on the University of Chicago Project on Religion and the American Public Life. This issue also contained a discussion among Joseph Cardinal Bernardin, Professor Martin Marty, and Judge Arlin Adams on the public role of the religious leader.¹⁰ The journal was interested in hearing directly from religious leaders and religious institutions about how they were dealing with issues of law.

Volume 3, issue 1 (1985), included papers from a colloquium on law, metaphor and theology at the Washington and Lee University Law School. The colloquium focused on and responded to a paper by Milner Ball, professor of Law at the University of Georgia School of Law, where he argued that the metaphor of “law as the bulwark of freedom” was inadequate and suggested an alternative metaphor of “the law as a medium of human solidarity.”¹¹

Under Ed Gaffney’s leadership, the book reviews were always a very significant part of each issue, and Gaffney also served as the guest editor for volume 4, issue 1 (1986). The issue focused on the papers delivered at a Loyola Law School colloquium on law and religion in the first-year curriculum, focusing on the subjects of contracts, torts, property, and procedure. This issue also included a new feature, “Annual Survey of Trends and Development on Religious Liberty in the Courts,” by Carl Esbeck for 1985, which continued in subsequent volumes of the journal.¹²

Resistance to apartheid in South Africa was an occasion for the journal to bring the historical, theoretical, and practical together through attention to an important global challenge. This occurred in volume 5, issue 2 (1987), which included a symposium on South African Liberation. In a lead article, “Theology, Law and State Illegitimacy: An Agenda for Theologians and Lawyers,” Charles Villa-Vicencio, professor in the Department of Religious Studies at the University of Cape Town, South Africa, made the legal and theological case for a democratic revolution in South Africa.¹³

Volume 6, issue 1 (1988), marked the end of Wilson Yate’s role as a general editor because of increased demands on his time as president of United Theological Seminary. Michael Scherschligt said, “Wilson has thoroughly understood the spirit and intent of the *Journal*. Accordingly, he has been a thoughtful and careful editor, a knowledgeable and wise evaluator of manuscripts, and a sensible counsellor on administrative matters.”¹⁴ The same would be said about Michael, who continued as general editor for one more year.

In 1988, Marie Failingler became an assistant editor and then general editor of the journal. Brilliant, wise, spiritually and intellectually profound with wit and humility, Marie, as Emily Hartigan said in her 2022 tribute in the journal, “was, at several levels, the journal” until it moved to Emory.¹⁵

The members of the board of the journal became more than an academic community. We began every annual meeting with each of us sharing our journeys since the last meeting.

¹⁰ “The Religious Leader and Public Policy,” symposium, *Journal of Law and Religion* 2, no. 2 (1984): 367–91.

¹¹ Milner S. Ball, “Law Natural: Its Family of Metaphors and Its Theology,” *Journal of Law and Religion* 3, no. 1 (1985): 141–66 at 143–44.

¹² Carl H. Esbeck, “1985 Survey on Religious Liberty,” *Journal of Law and Religion* 4, no. 1 (1986): 211–40.

¹³ Charles Villa-Vicencio, “Theology, Law, and State Illegitimacy: An Agenda for Theologians and Lawyers,” *Journal of Law and Religion* 5, no. 2 (1987): 241–57.

¹⁴ Michael Scherschligt, “Editor’s Preface,” *Journal of Law and Religion* 6, no. 1 (1988): vii–viii, at vii.

¹⁵ Emily Albrink Hartigan, “A Tribute to Marie Failingler,” *Journal of Law and Religion* 37, no. 1 (2022): 2–4, at 3.

For me, this community of scholars and practitioners understood that law and religion are both about right relations and justice as solidarity or love. They lived these understandings. For me this community became family, and they continue to enrich my life.

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