

**AALS SECTION ON LAW AND RELIGION**  
**December 2013 Newsletter**

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We are pleased to bring you the 2013 newsletter for the Section on Law and Religion. We look forward to seeing you at our program at the 2014 AALS annual conference, *Cooperating with Evil, Complicity with Sin*. The program will be held at 2:00 p.m. – 3:45 p.m. on Saturday, January 4, 2014. Additional details are provided below. Many thanks to our Program Committee Co-Chairs, Alan Brownstein and Joel Nichols, for their efforts in assembling this outstanding panel.

We hope you will also join us immediately following the Section program for our annual business meeting. We are always looking for section officers and other participants in planning our annual program and other matters, and especially encourage junior professors to participate and become active in the Law and Religion Section. You will find further information about the annual business meeting below. This issue also contains 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.

**I. 2014 AALS ANNUAL MEETING PROGRAMS: SECTION ON LAW AND RELIGION AND PROGRAMS OF INTEREST****A. Section on Law and Religion: *Cooperating with Evil, Complicity with Sin***  
Saturday, January 4, 2014, 2:00 p.m. – 3:45 p.m.**Moderator:** Alan E. Brownstein, University of California at Davis School of Law**Speakers:** Thomas C. Berg, University of St. Thomas School of Law  
Jennifer Carr, UNLV, William S. Boyd School of Law  
Gregory A. Kalscheur, S.J., Brown College Law School  
Martin S. Lederman, Georgetown University Law Center

What does it mean for religious believers and groups to refrain from “cooperating with evil?” When does involvement with government action rise to condoning it? And who decides whether a religious objector is “participating” in and thereby “complicit” with religiously objectionable conduct? Such questions play a central role in the HHS contraceptive mandate debate but they arise in other controversies as well—ranging from religious objections to same-sex marriage to the conscience claims of pharmacists opposed to stocking or selling abortifacients.

Numerous doctrinal issues are relevant to a discussion of this problem. These include whether allegations of moral complicity satisfy the “substantial burden” requirement a RFRA or free exercise claimant must satisfy, and how courts should take attenuated causation questions into account if a substantial burden is found to exist. Other questions relate to the concern that an expansive conception of moral complicity may extend so broadly that general accommodation statutes (or constitutional interpretations) would become unacceptable in their scope and unmanageable in their operation. This panel will explore these and other problems arising from the relationship between conceptions of moral complicity and the evaluation of religious liberty claims under constitutional or statutory law.

Business Meeting at conclusion of program.

**B. Sections on Islamic Law and Jewish Law Joint Program: *Islamic and Jewish Law in the 21st Century: Contemporary Philosophical and Legal Challenges to Religious Law***  
Sunday, January 5, 2014, 9:00 a.m. – 12:15 p.m.

Panel I - Religious Law in U.S. Courts (9:00 – 10:30 am)

**Moderator:** Michael A. Helfand, Pepperdine University School of Law**Speakers:** Ann Laquer Estin, University of Iowa College of Law  
Michelle A. Greenberg-Kobrin, Columbia University School of Law

Faisal Kutty, Valparaiso University School of Law  
Christopher C. Lund, Wayne State University Law School

Whether in the context of contract interpretation, tortious conduct or family law, courts increasingly are being asked to address religious that touch upon religious law, raising a host of constitutional and religious complications. Panelists will address persistent worries in these contexts, considering to what extent courts can resolve disputes when religion and law mix.

Panel II - Religious Law in the Secular State (10:45 am – 12:15 pm)

**Moderator:** Seval Yildirim, Whittier Law School

**Speakers:** Asli U. Bali, University of California, Los Angeles School of Law  
Russell Powell, Seattle University School of Law  
Mark D. Rosen, Chicago-Kent College of Law  
Zvi Triger, S.J.D., Deputy Dean, Haim Striks School of Law,  
Rishon LeZion, Israel

This panel will cover contemporary issues related to the practice and implementation of religious law in secular democracies. Specifically, the panelists will discuss how Jewish and Islamic law—as well as Jewish and Islamic identities—have engaged with secular, political and legal structures in a range of countries including Israel, Turkey, and the United States. As the world has moved into the 21st century, new tensions between law and religion have become an almost daily affair. Recent examples of these tensions in the United States include a wide range of conflicts, including a proposed circumcision ban in San Francisco, the rise of anti-Sharia bills that prevent state courts from considering religious law, and state laws prohibiting religiously-motivated business owners from denying services for same-sex weddings. The Supreme Court has itself been called upon to address recent skirmishes between law and religion, issuing decisions in both *Hosanna-Tabor v. EEOC* and *CLS v. Martinez* that consider conflicts between anti-discrimination norms and religious liberty. While these debates implicate a wide range of considerations, a recurring theme is the unique challenge of reconciling conflicts not just between religion and law, but between “religious legal communities” and the law of the nation-state. American Muslim and Jewish communities serve as prime examples of such religious legal communities—that is, communities that experience their religious norms through the prism of legal rules—and thus the challenges faced by these communities often parallel each other in important ways. Moreover, the increasingly complicated relationship between law and religion is not unique to the United States. Other liberal democracies continue to experience growing pains in their attempts to find the ideal balance between religious liberties and secular concerns. In turn, the jointly-sponsored program of the Islamic and Jewish Law sections focuses on some of these unique philosophical and legal challenges that emerge for religious legal communities within the context of the 21st century liberal democracy.

## II. 2014 SECTION ON LAW AND RELIGION BUSINESS MEETING

The 2014 Business Meeting of the Section on Law and Religion will be held at the conclusion of the Section program on **Saturday, January 4, 2014, at 2:00 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-Chair Elect, John Inazu, 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 would then 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.*

### NOMINATIONS FOR 2014 EXECUTIVE COMMITTEE

John Inazu

**Chair**

Washington University in St. Louis  
School of Law

Marc O. DeGirolami

**Chair Elect**

St. John's University  
School of Law

Kristine Kalanges

**Co-Chair, Program Committee**

University of Notre Dame  
School of Law

Robert A. Katz

**Co-Chair, Program Committee**

Indiana University  
Robert H. McKinney  
School of Law

Zachary Calo

**Co-Chair, Nominating Committee**

Valparaiso University  
School of Law

Samuel J. Levine

**Co-Chair, Nominating Committee**

Touro College  
Fuchsberg Law Center

### **Other Executive Committee Members:**

B. Jessie Hill (Immediate Past Chair)

**Executive Committee Member**

Case Western Reserve University  
School of Law

### **Executive Committee Members (at-large)**

### **III. UPCOMING CONFERENCES OF INTEREST**

#### **A. Love and Law (February 7-8, 2014)**

Pepperdine University School of Law  
Malibu, California

In a provocative essay, philosopher Jeffrie Murphy asks: “What would law be like if we organized it around the value of Christian love [agape]?” Analogous questions arise within other theological and moral traditions. What would be the implications for the substance and the practice of law? We invite presentation and panel proposals for our upcoming conference. See below for details. The following speakers are already confirmed:

Jeffrie Murphy  
Arizona State University  
“Law Like Love—Is Punishment Consistent with the Love Commandment?”

James Boyd White  
University of Michigan  
“Agape: the Activity of Reframing”

Charles Mathewes  
University of Virginia  
“‘Be Instructed, All You Who Judge the Earth’: The Dialectic of Law and Love during the World in Psalm 2:10 and Augustine”

Richard Mouw  
Fuller Theological Seminary  
“Calvin, Law, and Love”

Chaim Saiman  
Villanova School of Law  
“Law AS Love: A view from the Talmud”

Varun Soni  
University of Southern California  
“Love as Law: A Hindu Approach”

Najeeba Syeed-Miller  
Claremont School of Theology  
“Humanizing Legal Systems: Exploring the Capacity for a Humane Approach to Justice from a Muslim Perspective”

Barbara Armacost  
University of Virginia School of Law

“Restorative Justice”

Meghan J. Ryan  
SMU School of Law  
“Dignity and Rehabilitation”

Patrick Brennan  
Villanova University School of Law  
“Love, Justice, and Polity in Catholic Social Doctrine”

Zachary Calo  
Valparaiso University Law School  
“Sacralizing Law? Political Forgiveness and Liberal Justice”

David VanDrunen  
Westminster Seminary California  
“Why Christian Love Is an Improper Category to Apply to Civil Law: A Contrarian Perspective”

Robert Vischer  
University of St. Thomas School of Law  
“Is Agape the Last, Best Hope for the Legal Profession?”

Stephen Bainbridge  
UCLA School of Law  
“The Relevance of Agape to Fiduciary Duties, If Any”

Ellen Pryor  
UNT Dallas College of Law  
“Agape and Legal Education”

Michael Scaperlanda  
University of Oklahoma College of Law  
“Love, Law, and the Immigrant”

Amy Uelmen  
Georgetown School of Law  
“Love, Obligation, and the Common Law No Duty to Rescue”

Joel A. Nichols  
University of St. Thomas School of Law  
“Love, Indeterminacy, and Family Law”

James W. McCarty  
Emory University

“Divine Love, Humanity’s Law, and the ‘Crime Against Humanity’ in Transitional Justice”

Contact: Mark Scarberry, mark.scarberry@pepperdine.edu

**B. Feminism, Law, and Religion (March 20-21, 2014)**

University of St. Thomas  
St. Paul, Minnesota

This conference is structured around the recently published collection of essays by feminists of a wide variety of religious perspectives, *Feminism, Law, and Religion* (Ashgate Press 2013, Failing, Schiltz and Stabile eds).

*Feminist Legal Theory: Religious and Secular Encounters*

Emily Albrink Hartigan  
St. Mary’s University School of Law  
What is the Matter with Antigone?

Cheryl B. Preston  
Brigham Young University Law School, Utah  
Deconstructing Equality in Religion

Elizabeth R. Schiltz  
University of St. Thomas School of Law  
A Contemporary Catholic Theory of Complementarity

Susan J. Stabile  
University of St. Thomas School of Law  
The Catholic Church and Women: The Divergence Between What is Said and What is Heard

*Domestic Violence, Religion and Law*

Deborah Cantrell  
University of Colorado Law School  
With Compassion and Lovingkindness: One Feminist Buddhist’s Exploration of Feminist Domestic Violence Advocacy

Naomi Graetz  
Ben-Gurion University of the Negev, Israel  
Jewish Law: The Case of Wifebeating

Juliane Hammer



University of North Carolina at Chapel Hill  
“Men are the Protectors of Women”: Negotiating Marriage, Feminism, and (Islamic)  
Law in American Muslim Efforts Against Domestic Violence

*Feminist Readings of Theological Texts on Women’s Concerns*

Hina Azam  
University of Texas at Austin  
Competing Approaches to Rape in Islamic Law

Asifa Quraishi-Landes  
University of Wisconsin Law School  
A Meditation on Mahr, Modernity and Muslim Marriage Contract Law

Marie Failing  
Hamline University School of Law  
Co-creating the Family: A Lutheran View of Marriage and Divorce Law

Frances Raday  
Hebrew University of Jerusalem Faculty of Law  
Modesty Disrobed - Gendered Modesty Rules Under the Monotheistic Religions

*Reinterpreting Women’s Roles and Women’s Human Rights*

Nimat Hafez Barazangi  
Cornell University  
Why Muslim Women are Re-interpreting the Qur’an and Hadith: A Transformative  
Scholarship-Activism

M. Christian Green  
Emory University School of Law  
From Third Wave to Third Generation: Feminism, Faith and Human Rights

Ayelet Shachar  
University of Toronto Faculty of Law  
Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law

*Women’s Leadership Within Religious Communities*

Sr. Sara Butler  
University of St. Mary of the Lake Seminary  
Catholic Women and Equality: Women in the Code of Canon Law

Rebecca Redwood French  
State University of New York Buffalo School of Law

The Sakyadhita Movement, Buddhist Law and the Position of Buddhist Nuns

Mary Szto  
Hamline University School of Law  
Chinese Women Lawyers and Judges as Priests

Contact: Marie Fallinger, mfallinger@hamline.edu

**C. Law and Human Rights in a Post-Secular World (March 28-29, 2014)**

Mississippi College of Law  
Jackson, Mississippi

The “return of religion” has resulted in an existential crisis for secular liberalism. Vigorous debate now centers on what it means for the state and the law to be “secular” or even whether secular neutrality is possible. Critical perspectives on law have put into question the professed neutrality and universality of law, but discussion of the “secular” and secularism focus mainly on redefining those terms without considering the historical connection between law and religion, without defining religion, and without reexamining the nature of law and human rights. In other words, even with these widespread debates, contemporary conceptions of law and human rights remain essentially untouched and intact. These conceptions continue to view religion primarily from the perspective of law (e.g., rights protecting religious liberty) and presuppose that the law is predominantly secular rather than religious. On this account, religion can be contained within the private realm of faith while law circulates freely in the public realm of reason. Postmodern critiques of the modern public/private divide have decreased the distance between faith and reason but provide little insight into a way forward. Rather, they condemn us to a never-ending battle for power among equally true (or equally false) secular and religious convictions.

Each participant will present a paper engaging these issues with the aim of developing post-secular theories of law and human rights. These theories will be informed by different disciplinary perspectives including historical, philosophical, sociological, theological, and aesthetic perspectives that will provide resources for rethinking contemporary conceptions of religion, religious pluralism, secularism, politics, human rights, and law. In addition to theoretical inquiries, some papers will explore historical and contemporary cases that illuminate the problematic assumptions of secular liberalism in domestic, international, and comparative law contexts. Moreover, the hope is to advance the contemporary debate by showing that a post-secular world requires a fundamental reworking of conceptions of law and human rights rather than minor adjustments to the prevailing contemporary views.

Confirmed Participants:

John Anderson (Mississippi College, School of Law)

Larry Cata Backer (Pennsylvania State University, School of Law)  
Zachary Calo (Valparaiso University, School of Law)  
John D. Haskell (Mississippi College, School of Law)  
Kevin Lee (Campbell University, School of Law)  
Robin W. Lovin (Center of Theological Inquiry, Princeton University)  
Mark Modak-Truran (Mississippi College, School of Law)  
Kenneth Townsend (Millsaps College)

Contact: Mark Modak-Truran, mmodak@mc.edu

**D. Religious Accommodation in the Age of Civil Rights (April 3-5, 2014)**

Harvard University School of Law  
Cambridge, Massachusetts

Current controversies over marriage equality, antidiscrimination law, and the Affordable Care Act's contraceptive mandate have raised conflicts between religious claims, on one hand, and LGBT equality and women's rights, on the other. Hoping to add to the current conversation, the conference seeks to deepen our understanding of the competing claims by bringing together nationally recognized scholars in the fields of sexuality, gender, and law and religion.

Sponsored by the Williams Institute, Harvard Law School, the ACLU, and USC Gould School of Law's Center for Law, History, and Culture.

Session 1: The Current Clash

Panelists: Douglas Laycock, Nan Hunter, Michael Helfand

Chair: Jack Rakove

Session 2: Reflections on the Right to Religious Accommodation

Panelists: Andrew Koppelman, Nelson Tebbe, Richard Garnett, Sally Gordon

Chair: Nancy Rosenblum

Session 3: Reflections on Sexual and Gender Equality

Panelists: Kenji Yoshino, William Eskridge, Douglas NeJaime, Reva Siegel

Chair: David Codell

Session 4: Complexifying Religious Accommodation

Panelists: Sandy Levinson, Steven Smith, John Inazu, Malick Ghachem

Chair: Nomi Stolzenberg

Session 5: Complexifying Accommodation in Anti-Discrimination Law

Panelists: Chai Feldblum, Ariela Dubler, Alison Renteln

Chair: Brad Sears

Session 6: Accommodation in the Age of the Withering Welfare State

Panelists: Ian Meyer, Melissa Murray, Elizabeth Sepper, Tom Berg

Session 7: Religion & Sex(uality), Race & Class

Panelists: Priscilla Ocen, Katherine Franke, Bernadette Meyler

Contacts: Mark Tushnet, [mtushnet@law.harvard.edu](mailto:mtushnet@law.harvard.edu)  
Nomi Stolzenberg, [nstolzen@law.usc.edu](mailto:nstolzen@law.usc.edu)

#### IV. 2013 LAW AND RELIGION BIBLIOGRAPHY

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 2013. As has been our practice, we are also including a list of law and religion related blogs which may be of interest to section members. We apologize for any errors or omissions to this year's bibliography, and ask you to inform John Inazu, the 2013 Chair Elect and Newsletter Editor, about any necessary corrections for next year's newsletter. Special thanks to Mark Kloempken of the Washington University School of Law library for his assistance in compiling this bibliography.

##### **Books**

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