

EDITORIAL

## Founding the *Journal of Law and Religion*: A Reflection Forty Years On

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The *Journal of Law and Religion* emerged in 1982 from a conversation between me as a new dean of the Hamline University School of Law and Harvard Law School professor Harold Berman. I had known Hal as a student and then as assistant dean at the Harvard Law School before taking up my post as dean at Hamline. I called Hal in the early fall of that year to catch up and to get his advice on my desire to start something educational in law and religion. He suggested making Hamline home to a new journal, and he later gave us a gift of \$30,000 to cover initial administrative expenses.

What was in my mind? Two concerns. First, a very parochial, pragmatic decanal concern: How could I build support for the law school among the alums and faculty of Minnesota's oldest liberal arts college and one with a close affiliation to the United Methodist Church? Second, from being around the Harvard Law School as a student and later as assistant dean, I had a sense that there was a void in legal studies and legal education generally: the absence of compelling justification for the rule of law as foundational for any humane civil order.

Hamline was a very young law school. I was its third dean. Creating something focused on law and religion could, I thought, strategically bridge these two concerns by positioning this new school as having a distinctive approach to the study of law, an approach that would inspire faculty ambitions in teaching and research, attract students, give the school a mission different from those of its two local competitors, draw attention to the school from bench and bar and academics, and address the worrisome void in legal education.

Hamline University was the oldest university in Minnesota, founded in 1854 by the Methodist Conference. In 1982, the university was still operating under the auspices of the Methodist Conference. The university's trustees were approved, as I recall, by annual meetings of the conference, and about half of the trustees were Methodist pastors. The law school had been founded as an independent school—known originally as the Midwestern School of Law—but the American Bar Association required that it merge with an established university or college in order to receive accreditation. Having previously discontinued its graduate education, Hamline University was open to adding a professional school to its undergraduate program, and thus the Midwestern School of Law, with its faculty, staff, and students merged into Hamline University.

However, a number of old Hamline University donors and alums were concerned that a law school did not really fit with the antinomian Methodist tradition emphasizing John Wesley's commitments to knowledge and vital piety. That important Hamline constituency was not eager to embrace the law school and its mission. Such skepticism about the value of



law would hinder the university in giving full support financially and in other ways to its new and unproven law school.

On one occasion just after my arrival at Hamline, I was at a reception for prominent university supporters and alums, mostly Methodists. One older woman, poised, self-confident, and smiling, came over to me and asked, "Who are you?" I replied with some pride: "I'm Steve Young, the new dean of your law school!"

She stepped back, looked me up and down from head to toe, and asked, "How could you?"

I was quite taken aback and so, not yet knowing that much about Methodism, tried to learn more about her concern. I gathered that she thought the world already had too many lawyers, that society did not need any more, and that a good society was the work of good hearts, not of laws and regulations.

I brought this up with Charles Graham, the new university president and a devout Methodist; Walter Benjamin, professor of religion; and Donovan Hull, chaplain. I learned of their own reservations about the impact a law school might have on the university community. It became clear that the law school needed to prove its worth to the university community, more in the field of jurisprudence than in finely tuned analysis of black-letter law and the written opinions of courts, and thereby constructively engage with the Methodist tradition.

This specific strategic need for our new law school at Hamline brought to mind thoughts I had previously pondered in my spare time as the first assistant dean for student affairs at Harvard Law School. Harvard's dean, Albert Sacks, had asked me in 1978 to return to the school to take on this new role. His charge to me was to do something about student alienation and disenchantment with the school and legal education, to be creative in designing new experiences and opportunities for students. In this role, I observed the disappearing presence of jurisprudence and legal history in the school's presentation of law. Only the older professors taught and discussed jurisprudence with serious intent, and even fewer took an interest in legal history. Law was presented as a stand-alone discipline, cut off from larger moral, cultural, and intellectual paradigms and academic inquiry. Technique, mastery of a skill, seemed to be the preferred approach to law. Based on these observations, my experiences with classmates during law school (1971–1974), and conducting a kind of participant observation with current students as assistant dean, I wondered if a lack of big picture thinking about the law—how a student could find personal meaning through the study of law and become assured that the law indeed had very important social value—was not a hidden force keeping students from embracing the law as a vocation in addition to giving them potentially prestigious and remunerative livelihoods. Of the range of meanings possible in our lives, some are more morally legitimizing and emotionally uplifting than others. Working with law students disposed me to think it necessary that the practice of law be integrated with that which is spiritually and culturally bigger than just the law.

I realized that, as positive law jurisprudence conflated law with politics, it would lose its legitimacy. The moral vision of the Athenians as recorded by Thucydides in his *History of the Peloponnesian War* was more and more in vogue: "The strong do what they can; the weak suffer what they must." Lawyers were starting to say with startling conviction that the practice of law is no longer a profession; it is a business. I concluded that legal education could not in good conscience teach that might makes right and, as its corollary, that there can be no such reality as living under the rule of law. If law were to be a social good, by contrast, it had to be encased within a jurisprudence that looked beyond power and self-interest for its values and aspirations. When asked to serve as the dean of the Hamline Law School, I thought of my responsibilities as a kind of fiduciary trust respecting a higher order of purpose than making money or imposing my will on others.

As the early decades of the twenty-first century unfold, the need to subordinate law to higher values is compelling. Will our global future be governed by the strong or by the just?

Today theocracies rule in China (Heaven's Mandate given to the Chinese to guide the All-Under-Heaven) and in Russia (the Rus people are God's chosen Third Rome). National socialisms—regimes of *volksgeist* authenticity—have taken power in those countries and others such as Iran. The Putin-Xi Pact of February 4, 2022, has put the West on notice that its post-World War II liberal international order is no longer efficacious. The discourse regime of the Enlightenment has run its course and is now collapsing all around us.

What should we expect of law—national and international—in the coming years: rule by law or the rule of law? The vocation of those who edited and wrote for the *Journal of Law and Religion* these past forty years has been to set admirable expectations for law in a global context of culture and religious reassurance.

As mentioned, I knew Hal Berman as a law student, so when I came back to Harvard as assistant dean in 1978, I would drop by his office from time to time to get his perspective on many things. He was open with me about his growing disenchantment with his faculty colleagues because of their disinterest in larger questions on the meaning and purpose of legal institutions and the source of justice. He told me that when he sent a note around to the faculty on the publication of his little book *The Interaction of Law and Religion*, not one of his colleagues congratulated him.<sup>1</sup> Hal's favorite biblical verse was "Woe unto you, scribes and Pharisees, hypocrites! for ye pay tithe of mint and anise and cummin, and have omitted the weightier *matters* of the law, judgment, mercy, and faith: these ought ye to have done, and not to leave the other undone."<sup>2</sup>

One day an invitation came from the Harvard Divinity School for law school participation in a series of conferences on the possibility of a global ethic. Hal was busy and no one he approached had any interest in participation. He asked me if I would like to represent the Law School. I said "Sure." The opportunity to think big about ethics and deep cultural perspectives over at the Divinity School from the standpoints of history and other faiths was delightful to contemplate. The workshops were organized by John Carman, director of the Center for World Religions, and Mark Juergensmeyer, then a professor at the Graduate Theological Union, and they included distinguished scholars in religious studies. In the discussions I got to know James Luther Adams, Robert Bellah, Stanley Tambiah, David Little, Sumner Twiss, Robin Lovin, Wilfred Cantwell Smith, and others.

Such an opportunity interested not only the legal educator in me but also the comparativist. I was working half time as assistant dean so that I could devote the other half to being a research associate in the East Asian Studies Program, working with Vietnamese colleagues on a translation of the Vietnamese 1433 Le Dynasty law code from Chinese characters into English and, with Professor Nguyen Ngoc Huy, on a study proposing a new understanding of human rights in traditional China and Vietnam. While serving in Vietnam for the US Agency for International Development in rural development and village government programs, I had met and taken Huy, founder of the Tan Dai Viet Party, as a mentor on Vietnamese jurisprudence. I had learned some Chinese jurisprudence and the cultural histories of Thailand and Vietnam, where I had lived, worked, and learned the languages. One day in 1966, while doing field anthropology in the northeastern Thai village of Ban Chiang, I

<sup>1</sup> Harold J. Berman, *The Interaction of Law and Religion* (Nashville: Abingdon Press, 1974).

<sup>2</sup> Matthew 23:23. All biblical quotations are from the King James Version.

tripped, fell on my face, and discovered the remains of a Bronze Age culture. The village is now a UNESCO World Heritage Site.

The small-group workshops and the large, open discussion sessions demonstrated, I thought, the common sense soundness of looking at law in dialogue with religion. There was no such dialogue between these realms of human discipline in the law school where I worked. I saw how the practicality and earthiness of one realm balanced the idealism and transcendent hopes of the other. Neither on its own seemed to provide a foundation for well-being. The religious perspectives I listened to provided wisdom of which there was little to be had in most of my law school conversations.

I carried these experiences of the limits of positivistic law and the value of religious and ethical discourse with me to St. Paul. Shortly after becoming dean at Hamline, I wrote an article for the school's law review on law as social architecture—just as I was thinking about starting the journal. I minimized the truth value of critical legal studies and instead advocated historical jurisprudence as the most constructive theory of law, one that blended the rules of sovereign authorities with cultural principles of virtue. I looked to what Daniel Bell called “axial” principles as the justifications for culturally specific values and behaviors.<sup>3</sup> Religion came naturally to mind when, as a student of jurisprudence, I was searching for the wellsprings of a culture's axial principle.

I sought a basis for a legal education that would help students answer questions of why, not just how: What gives value to a deliberative or fact-finding process? Why is a law just? To what ends should anyone put their legal skills? I proposed the study of law as a vocation—secular to be sure but at the same time something far more than a secular, scientific, and spiritually vacuous functionality.

My intuition was that we as human persons always need an inspiring dynamism in order to become our best, not to engage in oppressive manipulation of one another by power. I liked Mencius's saying that his only counsels were to benevolence and righteousness (*jenyi*).<sup>4</sup> Jesus had taught something similar when he said that we do not live by bread alone but by every word of God.<sup>5</sup> I had in my dean's office a calligraphic rendition of the biblical proverb “Where there is no vision, the people perish.”<sup>6</sup>

So, after I arrived at Hamline and when I was debating with myself how best to position Hamline's new law school, I called Hal and put the question to him: What might be done to encourage reflection, study, and research on the intersection of law and religion?

“Start a journal,” he said.

I raised the idea of starting a journal with Hamline's president, Charles Graham. He was warmly supportive of Hamline focusing efforts on creating a quality intellectual contribution that would draw on both law as a social power and on religious suppositions as deeply personal perspectives about how to enhance community well-being. But I needed faculty leadership to run a journal and gain support from faculty colleagues that an innovative and ambitious journal at Hamline would promote the fortunes of the school. There were three members of the law faculty with energizing personal interests in religion. Michael Scherschligt was Missouri Synod Lutheran from a family of distinguished educators serving in Missouri Synod schools. Michael had spoken to me in our one-on-one dean/professor dialogues of his desire to broaden his teaching of torts to embrace more openly moral issues and dilemmas. Howard Vogel, Quaker, taught constitutional law as a hinge between the state and morality. David Cobin had become more orthodox in his Jewish faith and had

<sup>3</sup> Daniel Bell, *The Coming of Post-industrial Society: A Venture of Social Forecasting* (New York: Basic Books, 1973), 10.

<sup>4</sup> Mencius, *The Works of Mencius*, trans. James Legge (Oxford: Clarendon Press, 1895), book 1, part 1, chapter 1.

<sup>5</sup> Matthew 4:4.

<sup>6</sup> Proverbs 29:18a.

been to Israel on a personal pilgrimage. Each was immediately excited by the prospect of working on a journal of law and religion.

But it was obvious that our Hamline professors alone did not have the experience or networks to bring forward perspectives from religion. So I approached Wilson Yates, then president of United Theological Seminary in St. Paul, just a few miles from Hamline. Mike knew and respected Wilson. Wilson responded with caution but, most importantly, with a visionary determination to make a difference. Wilson also knew James Luther Adams, a wise and spiritually engaged professor at the Harvard Divinity School. Adams quickly gave his endorsement to the proposal.

I invited Hal Berman to visit Hamline for informal meetings with our faculty to present his vision of the foundational importance of religion for informing jurisprudence and envisioning law as an arm of social justice. He encouraged the faculty with the thought that a new law school could make a distinctive contribution in bringing forward a spiritually sensitive approach to law and that as a school of yet-to-be-proven quality and distinction, Hamline could nevertheless compete with established schools in credibility and quality of intellectual leadership.

During a lunch with faculty members interested in the journal, Hal reminded us that the Latin root word of *religion* shared something with that of *law*: the Latin word *ligare* indicated a joining together while the Latin word *lex* had the express purpose of linking individuals to a community and to one another. A guest at the lunch, University of Minnesota professor Mulford Q. Sibley, one of Howard Vogel's mentors, affirmed that our most important work was always to be done where time and space meet.

Hal was quite impressed with Mulford and expressed to me his growing excitement over prospects for the journal initiative. Hal also reassured Graham that there was a need nationally for such a journal and that there was a void in scholarship and teaching which could be filled and draw widespread interest to the new journal.

Following Hal's visit to Hamline, the journal gained momentum. Mike and Wilson agreed to be co-editors of the journal. Hal put me in touch with Thomas Porter, a Boston lawyer and part of the Council on Religion and Law. Tom immediately liked the idea of a journal and brought to the team his quick mind, practical experience, organization, and network.<sup>7</sup> Mike, Wilson, Tom, and Hal recruited volunteers for an editorial board and an advisory committee. With crew and compass in hand, these academic argonauts set sail to best the tides of fortune in legal education. Forty years ago, in the summer of 1983, volume 1, issue 1, of the *Journal of Law and Religion* appeared in print.

Those who have edited, advised, and written for the *Journal of Law and Religion* over these past forty years have demonstrated proof of concept. There was a role for the journal; law does need to be comprehended and valued as social architecture inspired by design exogenous to its internal rules and self-referential protocols. I am grateful to each and every one for their contributions.

What of the next forty years?

Some years ago now, a wise person advised me, "Everyone knows we are living at the end of an age. But no one knows what is coming next. They are afraid. Therefore, everyone does today only what they did yesterday." I think the contribution to be made by the journal going forward is to help us transition from the end of an era that is dying to a new one that will be more generous to each of us in its humanism. For me, the continuing contribution of the journal is nothing short of securing a becoming vision of civilization, undertaking the

<sup>7</sup> Tom Porter has offered his own perspective on the journal's founding and early years in an online symposium celebrating the journal's fortieth anniversary, alongside the longtime editor-in-chief, Marie Failing. Their remarks will appear in volume 40, issue 1 (January 2025). A recording of the symposium, which also included remarks from Perry Dane and Jaclyn Neo, can be viewed at <https://www.youtube.com/watch?v=D997iT5I1XQ>.

task of replacing the Western Enlightenment with an equilibrium between power and justice sustained by plural transcendental insights instantiated in many hearts around the world. The age-old but ever young insight of Heraclitus still speaks to me: *Ethos anthropos daimon* (character is fate). It is the ethical, not the mundane, that should, from within our souls, inspire our lives. To be a lawyer is to assume a trust of great importance, that of a noble vocation, no matter where one lives or works or who one is.

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