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CONFERENCE ON RELIGIOUS LEGAL THEORY

RLT IV: EXPANDING THE CONVERSATION

FOREWORD

Samuel J. Levine *

On April 10-12, 2013, Touro Law Center hosted the fourth annual Conference on Religious Legal Theory (“RLT”), revolving around the theme, *RLT IV: Expanding the Conversation*.¹ The inaugural RLT Conference, organized at Seton Hall University School of Law in 2009,² was designed to bring together scholars from across the United States to explore ways in which religious thought might help illuminate law and legal theory. Subsequent conferences, held at St. John’s University School of Law³ and Pepperdine University School of Law,⁴ continued to address the relevance of religious doc-

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¹ See *RLT: Religious Legal Theory – Expanding the Conversation*, TOURO LAW CENTER, <http://www.tourolaw.edu/News/?pageid=739> (last visited Jan. 6, 2014).

² See *Religious Legal Theory: State of the Field*, SETON HALL UNIV., http://law.shu.edu/About/News_Events/lawfaithculture/upload/Legal-Theory-Program.pdf (last visited Jan. 6, 2014); Robert K. Vischer, *When is a Catholic Doing Legal Theory Doing “Catholic Legal Theory?”*, 40 SETON HALL L. REV. 845 (2010); Mark L. Movsesian, *Fiqh and Canons: Reflections on Islamic and Christian Jurisprudence*, 40 SETON HALL L. REV. 861 (2010); John F. Coverdale, *The Normative Justification for Tax Exemption: Elements from Catholic Social Thought*, 40 SETON HALL L. REV. 889 (2010); Michael V. Hernandez, *Theism, Realism, and Rawls*, 40 SETON HALL L. REV. 905 (2010); Samuel J. Levine, *Applying Jewish Legal Theory in the Context of American Law and Legal Scholarship: A Methodological Analysis*, 40 SETON HALL L. REV. 933 (2010); Amelia J. Uelmen, *Religious Legal Theory’s “Second Wave”*, 40 SETON HALL L. REV. 955 (2010); David S. Caudill, *On the Rhetorical Invention of a Failed Project: A Critical Response to Skeel’s Assessment of Christian Legal Scholarship*, 40 SETON HALL L. REV. 971 (2010).

³ See *2010 Religious Legal Theory Conference: Religion in Law, Law in Religion*, ST. JOHNS UNIV., http://www.stjohns.edu/academics/graduate/law/academics/centers/lawreligion/programs/religious_conference (last visited Jan. 6, 2014); *Symposium: Religious Legal Theory*, 85 ST. JOHN’S L. REV. 397 (2011).

⁴ See *The Competing Claims of Law and Religion: Who Should Influence Whom?*,

trine and theory to a variety of substantive, conceptual, and philosophical aspects of law.⁵

Building on the success of the previous conferences, the Touro Conference aimed to expand even further the range of issues and approaches incorporated into the conversation. Toward that end, conference panels considered the relationship between law and religion through a number of different religious perspectives, and within the context of both American and international legal systems. In addition, conference presentations drew insights from several disciplines, including not only law and theology, but also history, philosophy, sociology, political science, and media studies.

The articles from the conference published in this Symposium Issue of the *Touro Law Review* provide a sampling of the variety of topics and disciplines explored and the range of perspectives represented. Consistent with the conference theme of expanding the conversation, these articles address issues that have been central to the overall project of Religious Legal Theory, while at the same time taking the analysis in new directions that will help set the contours for future research and discussion.⁶

For example, the opening conference panel focused on the relationship between religion and the practice of law, an issue that has been the subject of growing attention among scholars, lawyers, and judges.⁷ Panelists included leading scholars of the legal profession

PEPPERDINE UNIV., <http://law.pepperdine.edu/nootbaar/news-events/events/law-and-religion/Nootbaar-Law-and-Religion-Brochure.pdf> (last visited Nov. 24, 2013); Robert F. Cochran, Jr. & Michael A. Helfand, *Symposium Introduction: The Competing Claims of Law and Religion: Who Should Influence Whom?*, 39 PEPP. L. REV. 1051 (2013).

⁵ See generally Samuel J. Levine, *RLT: A Preliminary Examination of Religious Legal Theory as a Movement*, 85 ST. JOHN'S L. REV. 579 (2011). The fifth annual RLT Conference will be hosted by Emory University School of Law in 2014. See *A Global Conversation: Exploring Interfaith and International Models for the Interaction of Religion and State*, EMORY LAW SCHOOL, http://cslr.law.emory.edu/fileadmin/media/CSLR_Faculty_and_Staff/Visiting_Fellows/CALL_FOR_PAPERS.pdf (last visited Jan. 6, 2014).

⁶ The conference panels addressed the following topics: "Religion and the Practice of Law"; "Robert Cover and Religious Legal Theory"; "Media Perspectives on Law and Religion"; "International Perspectives on Law and Religion"; "Religious Legal Theory and the Perspectives of 'Others'"; "Religion and the Laws of War"; and "Philosophical and Political Perspectives on Religious Legal Theory." See, e.g., *Religious Legal Theory – RLT IV: Expanding the Conversation*, TOURO LAW CENTER, http://www.tourolaw.edu/pdf/RLT_Program_final.pdf (last visited Jan. 6, 2014).

⁷ Indeed, the literature on "religious lawyering" has been so voluminous as to constitute a "Religious Lawyering Movement." See, e.g., Howard Lesnick, *Riding the Second Wave of the So-Called Religious Lawyering Movement*, 75 ST. JOHN'S L. REV. 283 (2001); Russell G.

and legal ethics, most of whom offered insights into American legal practice through the prism of religious traditions. One speaker, Mary Szto, looks at the issue through the less familiar context of the practice of law in China. In particular, Professor Szto identifies five “rituals” connected to Chinese legal practice—“drinking tea, banqueting, drinking alcohol, napping and karaoke”—all of which “are tied to ancestral, Confucian, Buddhist, and Daoist tenets.”⁸ According to Professor Szto, these rituals “should not be taken for granted or ignored[,]” because “[p]racticed properly these rituals do invoke virtue, harmony, communion, balance and wholeness [, which] are essential for pursuing justice.”⁹ Therefore, she suggests, “[t]hose of us outside of China can consider these and other rituals as well in the practice of law.”¹⁰

The next panel, likewise building on previous scholarship,¹¹ considered the lasting influence of Robert Cover on Religious Legal

Pearce & Amelia J. Uelmen, *Religious Lawyering in a Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. 127 (2004); Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J.L. & RELIGION 427 (2004). For examples of conferences and programs exploring the relationship between religion and the practice of law, see AALS Section on Professional Responsibility 2006 Annual Meeting Papers, 21 J.L. & RELIGION 265 (2005-2006); Colloquium, *Can the Ordinary Practice of Law be a Religious Calling?*, 32 PEPP. L. REV. 373 (2005); Symposium, *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, 26 FORDHAM URB. L.J. 821 (1999); *Faith and the Law Symposium*, 27 TEX. TECH L. REV. 911 (1996); *Symposium on Law & Politics as Vocation*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 1 (2006); *Symposium on Lawyering and Personal Values*, 38 CATH. LAW. 145 (1998); Symposium, *The Relevance of Religion to a Lawyer’s Work: An Interfaith Conference*, 66 FORDHAM L. REV. 1075 (1998); *Touro Law Center hosts the 2012 Conference of Religiously Affiliated Law Schools*, TOURO LAW CENTER, <http://www.tourolaw.edu/News/?pageid=631> (focusing on “The Place of Religion in the Law School, the University and the Practice of Law”) (last visited Jan. 6, 2014).

⁸ Mary Szto, *Chinese Ritual and the Practice of Law*, 30 TOURO L. REV. 103, 103-04 (2014).

⁹ *Id.* at 126.

¹⁰ *Id.*

¹¹ See, e.g., Symposium, *Rethinking Robert Cover’s Nomos and Narrative*, 17 YALE J.L. & HUMAN. 1 (2005); 8 CARDOZO STUD. L. & LITERATURE 1 (1996); 45 CONSERVATIVE JUDAISM 1 (Fall 1992); 7 J.L. & RELIGION 1 (1989); Tribute, *Tributes to Robert M. Cover*, 96 YALE L.J. 1699 (1987); Ronald R. Garet, *Judges as Prophets: A Coverian Interpretation*, 72 S. CAL. L. REV. 385 (1999); Samuel J. Levine, *Halacha and Aggada: Translating Robert Cover’s Nomos and Narrative*, 1998 UTAH L. REV. 465 (1998); Suzanne Last Stone, *In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813 (1993). For a notable recent illustration of Cover’s influence, see Alan Jotkowitz, *Nomos and Narrative in Jewish Law: The Care of the Dying Patient and the Prayer of the Handmaid*, 33 MODERN JUDAISM 56 (2013).

Theory. The panel consisted of friends and colleagues who offered both scholarly and personal reflections on Cover's life and work. Among the presenters, Ronald Garet embarks upon a survey of some of Cover's most significant academic work,¹² which Professor Garet associates with Cover's personal character as "a kind and compassionate man, who identified himself with a suffering world in a way that can rightly be described as prayerful."¹³ More specifically, Garet finds that Cover "called down God's blessing upon us, orienting us with a certain attitude or outlook, much as prayer orients us with a certain attitude or outlook."¹⁴

Illustrating one of the salient features of RLT,¹⁵ another conference panel included scholars who have studied religious systems of thought different from their own. Indeed, the diversity of religious perspectives represented within RLT scholarship serves as both a challenge and an opportunity for the growth of RLT as a coherent movement.¹⁶ At least one panelist, Randy Lee, sees the challenge as very much of an opportunity, on both personal and professional levels.¹⁷ Reflecting on his experiences at conferences dedicated to law and religion, Professor Lee recalls his realization that "if I wanted to become a better Christian, I would need to become a better Jew."¹⁸ In particular, he declares, "I was going to have to learn to listen as God listens I was going to have to learn to listen and hear like a Jew."¹⁹ Applying these reflections, in turn, to his experiences as a lawyer, Lee "wonder[s] if the lives of [] clients might have been transformed, as [mine] has been, if someone could have heard and listened to them Jewish—with the ears and heart of God."²⁰

Contributing to the expanded nature of the conversation, other

¹² See ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* (1975); Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Robert M. Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J.L. & RELIGION 65 (1987).

¹³ Ronald R. Garet, "Extraordinarily Called Upon by the Blessings Which We Have Received", 30 TOURO L. REV. 27, 27 (2014).

¹⁴ *Id.* at 29.

¹⁵ Levine, *supra* note 5.

¹⁶ *Id.*

¹⁷ Randy Lee, *A Christian on Listening with Jewish Ears and Hearing with the Heart of God*, 30 TOURO L. REV. 57 (2014).

¹⁸ *Id.* at 58.

¹⁹ *Id.* at 59.

²⁰ *Id.* at 64.

conference panels consisted of not only scholars from the American legal academy, but also prominent figures from the fields of media, philosophy, and political science, from both the United States and abroad, who likewise explored the relevance of law and religion within their own disciplines. G.J. McAleer, one of the panelists addressing religion and the laws of war, observes that “it is typical before a war both to read newspaper articles using [Thomas] Aquinas to assess the legitimacy of the war and to find politicians citing his rules.”²¹ On the other hand, he also notes, “[n]atural law thinking does not figure at all in the major works of ethics and law by leading U.S. intellectuals, and many Catholic theologians have wondered about its continuing usefulness, not least Cardinal Ratzinger, later Benedict XVI.”²² Thus, Professor McAleer sets out to explore the basic question: “How exactly do [Aquinas’s rules] relate to natural law?”²³ McAleer concludes that “[n]atural law, now isolated from its own history, geography, and personages, subverts rule of law. Its moral content rids law of rule and instead, taking on an aspect of mobility, creates novel charges that breach the protections built into criminal procedure.”²⁴

A conference panel addressing philosophical and political perspectives on RLT included, among other speakers, Fuat Gursozlu, who explores “[a]n unavoidable issue for every liberal democratic theory [:] the question of how liberals should engage those who reject fundamental values and principles of liberal democracy.”²⁵ To respond to this question, Professor Gursozlu analyzes John Rawls’s political philosophy regarding “how liberals should engage with unreasonable people.”²⁶ Aiming to “challenge the widely accepted interpretations of Rawls,” Gursozlu critiques two prevailing approaches and instead relies on a “fuller account of the fate of unreasonable people in political liberalism.”²⁷ Gursozlu concludes that “Rawls’s position on the status of unreasonable people centers on the

²¹ G.J. McAleer, *Catholic Ideas about War: Why Does Carl Schmitt Reject Natural Law Justifications of War?*, 30 *TOURO L. REV.* 65, 66 (2014).

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 76.

²⁵ Fuat Gursozlu, *Political Liberalism and the Fate of Unreasonable People*, 30 *TOURO L. REV.* 35, 35 (2014).

²⁶ *Id.*

²⁷ *Id.* at 36.

reformation of unreasonable citizens over time.”²⁸

The conference proceedings also included the Jewish Law Institute’s Spring 2013 Distinguished Lecture,²⁹ a reception in honor of the thirtieth anniversary of Touro Law Center’s Judaica Collection,³⁰ and keynote addresses by prominent scholars. Illustrating yet another aspect of the wide-ranging nature of the conversation, one of the keynote speakers was Geoffrey Miller. Like a number of other speakers at the conference, Professor Miller’s primary scholarship focuses on areas unrelated to RLT, but he has a strong interest in religious legal thought.³¹ Building on his previous work on both legal and narrative aspects of the Bible, Miller “examines the political theory of revelation in the narratives of the Hebrew Bible, particularly the theophany at Sinai.”³² As Miller observes, “[a]ccepting that God’s will is valid and binding on human beings, the question becomes one of determining what God’s will is.”³³ Accordingly, Miller explores: “the media God uses to reveal himself [which] provide stability by signaling the importance and scope of the revelation in question”; “strategies that the Bible uses to constrain God’s ability to change his mind – to minimize the risk that revelation will result in random or destructive changes in God’s commands”; “methods for authenticating the veracity of claims to revelation”; and “access rules which limit claims of revelation by persons not part of the political elite.”³⁴

Finally, another keynote speaker at the conference was Marie Failinger, who took the opportunity to share her reflections on a quarter-century of law and religion scholarship.³⁵ Professor Failinger offers her observations from a unique perspective, having served during these twenty-five years as Editor-in-Chief of the *Journal of Law and*

²⁸ *Id.* at 37.

²⁹ *The Jewish Law Institute Distinguished Lecture Series*, TOURO LAW CENTER, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=725> (last visited Jan. 6, 2014).

³⁰ *The Abraham Goldstein and Lillie Goldstein Judaica Collection*, TOURO LAW CENTER, <http://www.tourolaw.edu/JewishLawInstitute/?pageid=728> (last visited Jan. 6, 2014).

³¹ See Geoffrey Parsons Miller – Publications, NYU LAW, <https://its.law.nyu.edu/faculty/profiles/profile.cfm?section=pubs&personID=20131> (last visited Jan. 6, 2014).

³² Geoffrey P. Miller, *The Political Function of Revelation: Lesson From the Hebrew Bible*, 30 TOURO L. REV. 77, 77 (2014).

³³ *Id.* at 80.

³⁴ *Id.*

³⁵ Marie A. Failinger, *Twenty-Five Years of Law and Religion Scholarship: Some Reflections*, 30 TOURO L. REV. 9 (2014).

Religion.³⁶ Of course, Failinger does not limit her survey of the literature to articles published in her own journal; instead she documents, in great detail, much of “the immense body of law and religion work being published in American law reviews and books,” identifying “important tributaries in the growing stream of scholarship that are worth recognizing and reflecting on[.]”³⁷ In short, as she puts it, “[t]he last quarter-century of scholarly writing in law and religion has been characterized by both a broadening and a democratization of law and religion scholarship.”³⁸ Thus, employing an evocative metaphor, she finds that “[t]his turn of events has produced a rich garden bursting with new genres, themes, and ideologies.”³⁹

Taken together, the articles in this Symposium Issue of the *Touro Law Review* represent yet another significant step in the ongoing development of Religious Legal Theory.⁴⁰ It may therefore be fitting to close with Failinger’s extended metaphor, which captures both the atmosphere of the conversations at the Touro Conference and, more generally, the prevalent attitude among RLT scholars:

However we view these directions in law and religion scholarship, we cannot help but rejoice at the way in which all law and religion scholars are approaching the banquet of riches plucked from the garden of law and religion scholarship. As we approach this as banquet hosts, all bringing the rich stews and luscious desserts of our traditions to feed each others’ minds and souls, strangers have so very often turned into friends as the meal progresses.⁴¹

Failinger’s metaphor offers an inspirational and aspirational vision for the future, a vision that scholars might embrace as Religious Legal Theory continues to expand as a significant movement in the American legal academy and beyond.⁴²

³⁶ See *About the Journal of Law and Religion*, HAMLINE UNIV., <http://law.hamline.edu/jlr/about.html> (last visited Jan. 6, 2014).

³⁷ Failinger, *supra* note 35, at 10.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *supra* notes 2 - 5 and accompanying text.

⁴¹ Failinger, *supra* note 35, at 25.

⁴² Levine, *supra* note 5.