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TWENTY-FIVE YEARS OF LAW AND RELIGION SCHOLARSHIP: SOME REFLECTIONS

*Marie A. Failing**

We might describe this moment in law and religion scholarship as a crescendo in a rich and evocative symphony. It is an almost impossible task to count, much less characterize, the immense body of law and religion work being published in American law reviews and books.¹ Over the past twenty-five years, this field of study has also flourished throughout the world, giving rise to at least twenty specialized journals in the field,² not to mention the

* Professor of Law, Hamline University School of Law, and retiring Editor-in-Chief of the Journal of Law and Religion. My thanks to Sam Levine and my co-participants at the Religious Legal Theory conference, and to all of the scholars, not all here named in the interests of brevity, whose work has enriched my intellectual life.

¹ The references I cite comprise just a fraction of the wonderful works that could be cited. Any obvious omissions are the result of my faulty memory and space considerations, not the work's worthiness. I also ask forgiveness for indulging an editor's prerogative to focus on those works I know well from my work with the Journal of Law and Religion and my scholarship. Others have attempted to try to catalogue some of the work that has emerged in the past few decades, and they will offer different citations. See John Witte, *The Study of Law and Religion in the United States: An Interim Report*, 14 ECCL. L.J. 327 (2012) (tracing the development of law and religion study in the United States); David Hollander, *Jewish Law for the Law Librarian*, 98 LAW LIBR. J. 219 (2006) (providing a basic introduction to Jewish law and primary and recent secondary sources); Samuel J. Levine, *Teaching Jewish Law in American Law Schools: An Emerging Development in Law and Religion*, 26 FORDHAM URB. L.J. 1041 (1999) (discussing the prominence of religion in the legal profession); Samuel J. Levine, *Teaching Jewish Law in American Law Schools—Part II: An Annotated Syllabus*, 2 CHI.-KENT J. INT'L & COMP. L. 1 (2002) (introducing students to the place of Jewish law in American law schools and legal scholarship); Howard J. Vogel, *A Survey and Commentary on the New Literature in Law and Religion*, 1 J.L. & RELIGION 79 (1983) (surveying new literature in law and religion). See also 15 J.L. & RELIGION 462 (2000-2001); 16 J.L. & RELIGION 1 (2001) (surveying the "best books" in law and religion in the 1990's, including a bibliography of restorative and transitional justice scholarship).

² See, e.g., ÖSTERREICHISCHES ARCHIV FÜR RECHT & RELIGION (discussing current problems of ecclesiastical law in today's society); the French publication, ANNUAIRE DROIT ET RELIGIONS AND REVUE DE DROIT CANONIQUE (discussing decisions of French Courts and the European Court of Human Rights ("ECHR")); three German publications, ZEITSCHRIFT FÜR EVANGELISCHES KIRCHENRECHT (discussing all problems and aspects of Protestant church and state law relating to religion); ARCHIV DES ÖFFENTLICHEN RECHTS (discussing

outpouring of books³ and the rise of web-based conversations through blogs such as Mirror of Justice and Religion Clause.⁴ However, I think there are important tributaries in this growing stream of scholarship that are worth recognizing and reflecting on, realizing that these streams of scholarship are more turbulent and full of life than the surface that I will describe.

The last quarter-century of scholarly writing in law and religion in America has been characterized by both a broadening and a democratization of law and religion scholarship. This turn of events has produced a rich garden bursting with new genres, themes, and ideologies. If we were to play with this metaphor of a garden, we might think of the central questions of traditional law and religion

developments in theories of constitutional law); KIRCHE UND RECHT: ZEITSCHRIFT FÜR DIE KIRCHLICHE UND STAATLICHE PRAXIS (discussing ecclesiastical and state law); the British publication, ECCLESIASTICAL LAW JOURNAL AND RELIGION, STATE & SOCIETY, and the Italian publication, QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA (discussing law and religion topics). In both the Netherlands and in Spain, there are at least three such journals: RELIGION, LAW AND PUBLIC POLICY: THE JOURNAL OF RELIGION AND HUMAN RIGHTS (discussing the interactions, conflicts, and reconciliations between religion and human rights); ISLAMIC LAW AND SOCIETY (discussing classical and modern Islamic law); ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO (discussing law and religion topics in Spain); DERECHO Y RELIGION (analyzing issues associated with outward expression of religion); REVISTA GENERAL DE DER., CANÓNICO Y DER, ECLESIASTICO DEL ESTADO (discussing law and religion issues); and in Switzerland, VERITAS ET JUS (discussing canon law, ecclesiastical law, and relationships between church and state). Journals published in the United States include the JOURNAL OF CHURCH AND STATE (discussing constitutional, historical, philosophical, theological, and sociological studies on religion); THE J.L. & RELIGION; THE OXFORD J.L. & RELIGION; THE RUTGERS J.L. & RELIGION (discussing the dynamic interaction between law and religion). Some of these journals focus on special areas such as state law or canon law, while others are international in scope.

³ Even among law and religion textbooks, the variety and number is impressive. See, e.g., MICHAEL W. McCONNELL ET AL., RELIGION AND THE CONSTITUTION (3d ed. 2011); JOHN T. NOONAN, JR. & EDWARD MCGLYNN GAFFNEY, JR., RELIGIOUS FREEDOM: HISTORY, CASES AND OTHER MATERIALS ON THE INTERACTION OF RELIGION AND GOVERNMENT (3d ed. 2011) (analyzing important developments in church-state relations); HOWARD LESNICK, RELIGION IN LEGAL THOUGHT AND PRACTICE (2010); W. COLE DURHAM, JR. & BRETT G. SCHARFFS, LAW AND RELIGION: NATIONAL, INTERNATIONAL, AND COMPARATIVE PERSPECTIVES (2010); LESLIE C. GRIFFIN, LAW AND RELIGION: CASES AND MATERIALS (3d ed. 2013); ASPEN PUBLISHERS, LAW AND RELIGION: CASES IN CONTEXT (Leslie C. Griffin ed., 2010).

⁴ See, e.g., Richard W. Garnett, *The Competing Claims of Law and Religion*, MIRROR OF JUST. (Jan. 22, 2013, 9:42 AM), <http://mirrorofjustice.blogs.com/mirrorofjustice/2013/01/the-competing-claims-of-law-and-religion.html> (discussing Catholic legal thought in a blog co-written by a number of authors); CTR. FOR L. AND RELIGION F., <http://clrforum.org> (last visited Jan. 6, 2014); Howard Friedman, RELIGION CLAUSE, <http://religionclause.blogspot.com> (last visited Jan. 6, 2014); Neil Addison, RELIGION L. BLOG, <http://religionlaw.blogspot.com> (last visited Jan. 6, 2014); WHERE L. AND RELIGION MEET, <http://www.emorylawandreligion.com> (last visited Jan. 6, 2014).

studies, those framed by what I would call mainline institutions and scholars, as the stalwart plantings in the garden. These scholars continue to parse such questions as the relationship between the state and religious organizations,⁵ the limits on the right of believers to challenge or even disobey secular law,⁶ and the debate between Enlightenment secularism and dominant religion on the role of religious belief and activity in shaping our common life.⁷ Other scholarship, like heirloom tomatoes, has deepened and sharpened our authentic connection to a past by more correctly and richly re-telling the actual history that shapes our imagination about religious freedom in our time.⁸ This historical and political scholarship ranges wide—

⁵ See, e.g., Thomas C. Berg, *The Voluntary Principle and Church Autonomy, Then and Now*, 2004 BYU L. REV. 1593, 1596 (2004) (describing Carl Esbeck's work on church autonomy, and posing the uncertainty of historical application of voluntary principle in cases of government aid to religious organizations, promotion of religious ideas, such as through prayer in the public schools, and protection of believers against generally applicable laws); William Johnson Everett, *Ecclesial Freedom and Federal Order: Reflections on the Pacific Homes Case*, 12 J.L. & RELIGION 371 (1996) (discussing state intervention into structure religious health care facility organization); Carl H. Esbeck, *Government Regulation of Religiously Based Social Services: The First Amendment Considerations*, 19 HASTINGS CONST. L.Q. 343 (1992) (attempting a methodology for determining First Amendment limitations on government regulation of religious institutions). Edward McGlynn Gaffney, Jr. has written regularly on this topic. See, e.g., Edward McGlynn Gaffney, Jr., *On Not Rendering to Caesar: The Unconstitutionality of the Regulation of Activities of Religious Organizations Relating to Politics*, 40 DEPAUL L. REV. 1 (1990).

⁶ See, e.g., Barbara Bezdek, *Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation*, 62 TENN. L. REV. 899 (1995) (describing the history of the modern Sanctuary movement in the U.S.).

⁷ See, e.g., Daniel O. Conkle, *Secular Fundamentalism, Religious Fundamentalism and the Search for Truth in Contemporary America*, 12 J.L. & RELIGION 337 (1995) (discussing ways in which secular assumptions about private life and truth, interpretation and liberal values are fundamentalist, and critiquing fundamentalist thinking); Franklin I. Gamwell, *Religion and Reason in American Politics*, 2 J.L. & RELIGION 325 (1984) (discussing the Framers' commitment to rational public argument and the importance of religion to public life).

⁸ These historical works range over a large number of subjects. See, e.g., Lucas P. Volkman, *Church Property Disputes, Religious Freedom, and the Ordeal of African Methodists in Antebellum St. Louis: Farrar v. Finney (1855)*, 27 J.L. & RELIGION 83 (2011-2012) (describing the 19th century history of a church property dispute between white and African American Methodists when the Methodist Church split over the question of slavery); Steven Wedgworth, *"The Two Sons of Oil" and the Limits of American Religious Dissent*, 27 J.L. & RELIGION 141 (2011-2012) (describing the fight between two Covenanter Presbyterians, Samuel Brown Wylie and William Findley, who fought over whether the American Constitution was compatible with Christian principles); William G. Ross, *The Role of Religion in the Defeat of the 1937 Court-Packing Plan*, 23 J.L. & RELIGION 629 (2007-2008) (describing how religious leaders' and organizations' concerns about threats to religious liberty protected by the Supreme Court helped form the coalition defeating the court-packing plan).

for example, it re-tells the story of English and European Enlightenment responses to the religious wars,⁹ the story of American leaders' responses to religious diversity in the colonies and early American history,¹⁰ the interaction between Muslim rulers and scholars in the early medieval period,¹¹ the struggle of Jews to find an authentically Jewish interpretive voice in the modern age,¹² and the influence of Hinduism or Buddhism on modern nation-states from India to Korea,¹³ to touch only the surface. This scholarship also

⁹ See, e.g., Peter G. Danchin, *The Emergence and Structure of Religious Freedom in International Law Reconsidered*, 23 J.L. & RELIGION 455 (2007-2008) (arguing that the standard story tracing the rise of secularism from the Reformation and Peace of Westphalia to the Enlightenment and modern life fails to capture the complex value pluralism that existed throughout this history); Harold J. Berman, *Conscience and Law: The Lutheran Reformation and the Western Tradition*, 5 J.L. & RELIGION 177 (1987) (describing the "legal reformation" that occurred after Luther and others reformed the church). John Witte, Jr. has written extensively on post-Reformation law reform. See, e.g., JOHN WITTE, JR., *FROM SACRAMENT TO CONTRACT: MARRIAGE, RELIGION, AND LAW IN THE WESTERN TRADITION* (2d ed. 2012) (tracing the development of marriage law from Catholic canon law to Lutheran, Calvinist, Anglican and Enlightenment influences on secular law).

¹⁰ See, e.g., STEVEN K. GREEN, *THE SECOND DISESTABLISHMENT: CHURCH AND STATE IN NINETEENTH CENTURY AMERICA* (2010) (examining the development of church and state during the nineteenth century); Robert Emery, *Church and State in the Early Republic: The Covenanters' Radical Critique*, 25 J.L. & RELIGION 487 (2009-2010) (describing Revolutionary War-era critique of Reformed Presbyterians about the nature of state authority); David M. Cobin & Earl Schwartz, *The Encrypted Sermons of Sabato Morais*, 23 J.L. & RELIGION 147 (2007-2008) (presenting 1861-1862 anti-slavery sermons of American rabbi Sabato Morais); Arlin Adams & Charles J. Emmerich, *William Penn and the American Heritage of Religious Liberty*, 8 J.L. & RELIGION 57 (1990) (describing how Penn's view of ultimate allegiance owing God over the state influenced Penn's vision for the Pennsylvania colony).

¹¹ See, e.g., WAEL B. HALLAQ, *AN INTRODUCTION TO ISLAMIC LAW* (2009). This is Hallaq's more concise introduction to pre-modern Islamic law and the influence of colonization on Muslim legal institutions. *Id.*

¹² See, e.g., Yosef Lindell, *A Science Like Any Other? Classical Legal Formalism in the Halakhic Jurisprudence of Rabbis Isaac Jacob Reines and Moses Avigdor Amiel*, 28 J.L. & RELIGION 179, 179 (2012-2013) (describing how these late nineteenth century rabbis attempted, like their secular contemporaries, to order Jewish law along a "scientific" and rational model); Amihai Radzyner, *Between Scholar and Jurist: The Controversy over the Research of Jewish Law Using Comparative Methods at the Early Time of the Field*, 23 J.L. & RELIGION 189, 191-92 (2007-2008) (discussing debates in the Jewish law society over the interpretation of halakhah, or Jewish law).

¹³ See, e.g., Mark Nathan, *The Encounter of Buddhism and Law in Early Twentieth-Century Korea*, 25 J.L. & RELIGION 1 (2009-2010) (revising the view that Japanese colonial rule over Korea was responsible for the influence of Buddhism in that country and considering whether Buddhist reforms incorporated with secular legal norms on proselytization to create modern Korean Buddhist institutions); Debarati Halder & K. Jaishankar, *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India*, 24 J.L. & RELIGION 663 (2008-2009) (critiquing of the restriction of Hindu women's property rights in India during ancient, medieval and modern

deepens, and makes more complex, the record of stories that have become commonplace to us, from the debates over abortion¹⁴ and evolution¹⁵ to the protection of Native American sacred sites¹⁶ and local conflicts over the siting of houses of worship.¹⁷

Some of this scholarship, like the perennial vegetables in the garden, is focused on maintaining our relationships with each other in the highly pluralistic, contentious geography in which we live together. While much of it focuses on traditional legal issues, such as parsing the First Amendment,¹⁸ the Religious Freedom Restoration Act (“RFRA”),¹⁹ or state and federal religious non-discrimination statutes in the U.S.²⁰ and other nations,²¹ in my mind, the most

times).

¹⁴ See generally ELIZABETH MENSCH & ALAN FREEMAN, *THE POLITICS OF VIRTUE: IS ABORTION DEBATABLE?* (1993) (tracing the history of fundamentalist and mainstream Protestant and Catholic influences on the abortion debate in the U.S.).

¹⁵ For a complex history of the Scopes trial, see EDWARD J. LARSON, *SUMMER FOR THE GODS: THE SCOPES TRIAL AND AMERICA’S CONTINUING DEBATE OVER SCIENCE AND RELIGION* (1997).

¹⁶ See, e.g., Howard J. Vogel, *The Clash of Stories at Chimney Rock: A Narrative Approach to Cultural Conflict over Native American Sacred Sites on Public Land*, 41 SANTA CLARA L. REV. 757 (2001) (describing how conflicting Native and white meta-narratives resulted in the legal conflict over the protection of American Indian sacred sites).

¹⁷ See, e.g., Douglas Laycock & Luke W. Goodrich, *RLUIPA: Necessary, Modest and Under-Enforced*, 39 FORDHAM URB. L.J. 1021, 1049 (2012); Douglas Laycock, *State RFRAs and Land Use Regulation*, 32 U.C. DAVIS. L. REV. 755 (1999) (describing legal conflicts over exemptions for houses of worship).

¹⁸ Among the regular contributors to these debates are: STEVEN D. SMITH, *FOREORDAINED FAILURE: THE QUEST FOR A CONSTITUTIONAL PRINCIPLE OF RELIGIOUS FREEDOM* (1995); MARCI HAMILTON, *GOD VS. THE GAVEL: RELIGION AND THE RULE OF LAW* (2005) (discussing the impropriety of court exemptions for religious conduct in cases such as protection of children in faith healing families and religious land use accommodations); Thomas C. Berg, *Religious Liberty in America at the End of the Century*, 16 J.L. & RELIGION 187 (2001) (discussing the Supreme Court’s move from strict separation to religious equality and critiquing its failure to emphasize religious freedom as the core value of the Religion Clauses); Michael W. McConnell, *Religious Freedom at a Crossroads*, 59 U. CHI. L. REV. 115, 117 (1992) (critiquing Supreme Court Establishment Clause jurisprudence and arguing for the Court to “foster a regime of religious pluralism . . .”); Douglas Laycock, *Formal, Substantive and Disaggregated Neutrality Toward Religion*, 39 DEPAUL L. REV. 993 (1990) (arguing that the Religion Clauses should be read to guarantee substantive neutrality).

¹⁹ See, e.g., Scott C. Idleman, *The Religious Freedom Restoration Act: Pushing the Limits of Legislative Power*, 73 TEX. L. REV. 247 (1994) (questioning whether RFRA would have the effect of discouraging state or court moves to encourage religious liberty).

²⁰ See, e.g., Steven D. Jamar, *Accommodating Religion at Work: A Principled Approach to Title VII and Religious Freedom*, 40 N.Y.L. SCH. L. REV. 719, 729 (1996) (proposing a discursive approach to employment-related religious accommodation informed “by the principles and ideals of tolerance, equality, neutrality, and inclusion.”).

²¹ See, e.g., Gerhard Robbers, *Church Autonomy in the European Court of Human Rights—Recent Developments in Germany*, 26 J.L. & RELIGION 281, 283-84 (2010-2011)

important work in this area asks about the ethics of community in a religiously pluralistic culture.²² Whether they are writing about religious speech or international human rights, scholars like Michael Perry,²³ Kent Greenawalt²⁴ and many others have asked establishment lawyers, judges, and scholars to consider what moral duties we owe each other, and especially, what duties we American public elites owe the rest of our society, from humility about our truths to careful listening and embracing of the Other.²⁵

But if we looked at the garden of law and religion scholarship from the gate, we would see that these stalwart plantings, critical as they are, are almost overshadowed by the luxuriant growth of all sorts of other scholarly work. Some of this work, like a grafted plant,

(describing recent church autonomy cases in the ECHR and arguing that tolerance and respect be given not only to issues of worship and ritual practice, but also to religious beliefs about the way religious communities should be structured, including respect for ways in which religious communities differ from general secular behavior and norms); *see also* Carolyn Evans, *Individual and Group Religious Freedom in the European Court of Human Rights: Cracks in the Intellectual Architecture*, 26 J.L. & RELIGION 321 (2010-2011) (describing the work of the ECHR on religious freedom issues involving religious registration and headscarves worn by Muslim women).

²² The efforts of Ayelet Shachar to describe and re-define the relationship between religious communities and secular states on behalf of religious women caught between two worlds are most prominently illustrated in her award-winning text *AYELET SHACHAR, MULTICULTURAL JURISDICTIONS: CULTURAL DIFFERENCES AND WOMEN'S RIGHTS* (2001). *See also* Roshan Danesh, *Church and State in the Bahá'í Faith: An Epistemic Approach*, 24 J.L. & RELIGION 21, 25 (2008-2009) (suggesting that the Bahá'í theological vision is compatible with pluralistic forms of government); *FREDERICK MARK GEDICKS, THE RHETORIC OF CHURCH AND STATE: A CRITICAL ANALYSIS OF RELIGION CLAUSE JURISPRUDENCE* 4 (1995) (arguing that the Supreme Court's religion decisions evince "the displacement of a religiously informed communitarian discourse on public morality and politics by a secular, neutral, individualist discourse on such matters.").

²³ Two of Perry's many works along this line are *MICHAEL J. PERRY, LOVE & POWER: THE ROLE OF RELIGION AND MORALITY IN AMERICAN POLITICS* (1991); and *MICHAEL J. PERRY, THE IDEA OF HUMAN RIGHTS: FOUR INQUIRIES* (1998).

²⁴ As one example of his work, see *KENT GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS* 6-7 (1995) (arguing that liberal democracies should not prohibit all morally problematical actions because of pluralistic views about human good, and should permit citizens to rely on their religious and moral convictions when they are proposing solutions to contested social problems).

²⁵ *See, e.g., PERRY, LOVE & POWER, supra* note 23, at 125, 132-37 (arguing for "ecumenical political dialogue" characterized by the concerns for "fallibilism (in conjunction with pluralism), self-interest, [tolerance,] compassion, community, and conscientiousness"); M. Cathleen Kaveny, *Diversity and Deliberation*, 34 J. RELIGIOUS ETHICS 311, 311, 317-18, 333 (2006) (discussing dialogical diversity on a presidential bioethics commission); Mark A. Chinen, *Crumbs from the Table: The Syrophoenician Woman and International Law*, 27 J.L. & RELIGION 1 (2011-2012) (following theologian Miroslav Volf and arguing that international law can be guided by a metaphor of reconciliation as self-sacrificial embrace of the Other).

certainly engages traditional scholarship on its own terms, pointing out some missing insight from a different jurisprudential, historical, or philosophical approach. Other work, however, starts from completely new seed, independently formed and sometimes almost dismissive of the garden stalwarts.

What is especially telling about a considerable amount of this scholarship is that it is unapologetically religious. By that, I mean that its authors disclose their religious traditions, experiences, and commitments forthrightly. In some cases, they are telling stories of their own religious journeys.²⁶ In other cases, they use the language, narratives and ritual rhythms of their faith traditions to frame and explain what they have learned about the interweaving of law and religion in their own lives, in their own communities, in thought itself.²⁷ Some work is autodidactic, evincing the author's own attempt to learn a tradition he or she missed in a madrasa or synagogue or Sunday school.²⁸ Some is confessional, asserting who

²⁶ See, e.g., HOWARD LESNICK, LISTENING FOR GOD: RELIGION AND MORAL DISCERNMENT (Author's Choice Press 2007) (1998); REBECCA REDWOOD FRENCH, THE GOLDEN YOKE: THE LEGAL COSMOLOGY OF BUDDHIST TIBET 341-47 (1995) (describing her encounter with a Buddhist monk and its effect on her understanding of Buddhist theology).

²⁷ See, e.g., Chinen, *supra* note 25 (using the Biblical story of the Syrophenician woman to probe the foundations of international human rights); Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J.L. & RELIGION 459 (2002-2003) (quoting Thomas L. Shaffer, *The Tension between Law in America and the Religious Tradition*, in LAW AND THE ORDERING OF OUR LIFE TOGETHER 28, 45 (Richard John Neuhaus ed., 1989) (describing Thomas Shaffer's work as an argument that a lawyer is a person "called out of the church, sent out from [a] particular people, to do something that is religiously important")); Jawdat Said, *Law, Religion and the Prophetic Method of Social Change*, 15 J.L. & RELIGION 83 (2000-2001) (discussing the Quran's understanding of humanity and the roots of historical violence in human history); Perry Dane, *The Yoke of Heaven, the Question of Sinai, and the Life of Law*, 44 U. TORONTO L.J. 353 (1994) (arguing that revelation is not a prerequisite to accepting halakhic responsibilities). Much of this work is part of what Russell Pearce and Amy Uelman have called "the religious lawyering movement," which aims at being self-reflective about the place of a lawyer's faith in his or her professional work. For a description of this movement, see Robert K. Vischer, *Heretics in the Temple of Law: The Promise and Peril of the Religious Lawyering Movement*, 19 J.L. & RELIGION 427 (2004) (arguing that the analogy of lawyers to priests in the legal profession must be discarded in favor of a new paradigm that both respects the communal aspects of religious lawyering and the foundations of the project of liberalism). See also Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering's Second Wave*, 21 J.L. & RELIGION 269 (2005-2006) (discussing the "first wave" of discussion focusing on whether lawyers should bring their faith traditions to bear on their professional work and "second wave" on how lawyers should do so).

²⁸ Most of this work remains unpublished because sophisticated lawyers do not have an equally sophisticated understanding of their own religious traditions, making the job of producing scholarship balanced in complexity between law and religion more difficult. Nonetheless, most such writing has value in the development of the author's understanding

God is and what we can know of God and God's work in the world.²⁹ But even in that work framed in what some would call more "objective" or "observational" language, the author often discloses his or her faith history in the choice of subject, approach, or argument.³⁰

This willingness to speak out of one's own faith tradition is a welcome development for many reasons. From the speaker's perspective, it is more authentic, allowing the author to describe his own and his community's experience in a way not distorted or diminished by politically or socially dominant voices in this nation. The hearer or reader of these pieces written in an explicitly religious voice may also test the speaker's propositions to see if they ring true to his or her own faith community's experience or that of his or her other community of identity. He or she can also identify parallel experiential grounds to assent to, enrich, criticize, or reject propositional claims. Such authentic speech also adds to the diversity of voice in the larger community replacing stereotypes about particular religions with truths, signaling a welcome to still others who may have been timid about raising religiously informed voices in public space, and creating respect for traditions that have been forgotten or misheard through the ages.

Out of this new abundance of voices, the dynamic of law and religion discussion has undergone a dramatic change. Law and religion scholarship was once heavily centered on the concerns of mainline law and religion scholars whose thought structures were

of his or her own tradition.

²⁹ See, e.g., David K. DeWolf & Robert J. Araujo, *And God's Justice Shall Become Ours: Reflections on Teaching Law in a Catholic University*, 11 REGENT U. L. REV. 37, 37 (1998) (noting that "the realization that everything depends on God's transcendent truth lies at the heart of seeking and doing justice"); Ze'ev W. Falk, *Gender Differentiation and Spirituality*, 13 J.L. & RELIGION 85, 87 (1995-1996) (discussing the need for Jewish scholars to engage feminists to ensure that criticism of patriarchal structures will be supplemented with a new Jewish theology that embodies the idea of the Torah, which "means primarily self-effacement vis-à-vis God and readiness to stand in judgment before Him").

³⁰ See, e.g., Robert F. Cochran, Jr., *Catholic and Evangelical Supreme Court Justices: A Theological Analysis*, 4 U. ST. THOMAS L.J. 296 (2006) (using the evangelical doctrine of sphere sovereignty and common grace, and the Catholic doctrines of natural law and subsidiarity to explain Supreme Court members' jurisprudence and the composition of the Court); Mohammed Abu-Nimer, *A Framework for Nonviolence and Peacebuilding in Islam*, 25 J.L. & RELIGION 217 (2000-2001) (describing an Islamic theory of nonviolence and peacebuilding); Robert E. Rodes, Jr., *Pilgrim Law*, 11 J.L. & RELIGION 255, 264 (1994-1995) (describing the quest of Christian jurisprudence to "pursue an unknown end by inefficacious means" such as "pilgrim law").

embedded in powerful majority religions in America. The narrative they have shaped responds to concerns such as mediating a constitutional course between individual freedom and social control,³¹ the definition of equality for religious individuals and groups,³² the necessity of parallel treatment of religious and secular institutions,³³ and the contours of individual freedom to dissent.³⁴ Generally, cultural and religious minorities—Jews, Muslims, Hindus, Buddhists, Native religionists, “peculiar” Christians,³⁵ and religious women, among others—have been imagined by this scholarship (if at all) as strangers or outsiders, either invisible or challenging to the traditional American imagination.³⁶ Put another way, they have been

³¹ See, e.g., Daniel R. Heimbach, *Contrasting Views of Religious Liberty: Clarifying the Relationship between Responsible Government and the Freedom of Religion*, 11 J.L. & RELIGION 715 (1994-1995) (discussing the reasons for protecting religious liberty and constraints on it to preserve the security of the civil order).

³² See, e.g., Alan E. Brownstein, *Evaluating School Voucher Programs through a Liberty, Equality and Free Speech Matrix*, 31 CONN. L. REV. 871 (1999) (discussing, in part, whether a constitutional regime requiring similar funding for both religious and secular schools is necessary).

³³ See, e.g., Robin Charlow, *The Elusive Meaning of Religious Equality*, 83 WASH. U. L.Q. 1529, 1531 (2005) (examining the difficulty of arriving at a meaning for religious equality). For a discussion of how theology can inform the equality principle generally, see Robin W. Lovin, *Equality and Covenant Theology*, 2 J.L. & RELIGION 241, 243 (1984) (arguing that Puritan social thought shares “voluntaristic [tendencies] and egalitarian tendencies” with contractarian philosophy, informed by the values of dignity and equal participation).

³⁴ See, e.g., Milton R. Konvitz, *Civil Disobedience: Reflections on the Contribution of James Luther Adams*, 12 J.L. & RELIGION 9, 10-11 (1995-1996) (discussing Adams’ 1970 essay on the limits of civil disobedience); John T. Noonan, Jr., *Principled or Pragmatic Foundations for the Freedom of Conscience?*, 5 J.L. & RELIGION 203 (1987) (discussing theological warrants in Augustine and Aquinas for freedom of conscience); Douglas Sturm, *Constitutionalism and Conscientiousness: The Dignity of Objection to Military Service*, 1 J.L. & RELIGION 265 (1983) (arguing that constitutionalism, and the Free Exercise Clause specifically, should be read as guaranteeing the right of a conscientious objector not to participate in war, even if his objection is to a specific war).

³⁵ See, e.g., David M. Smolin, *Religion, Education and the Theoretically Liberal State: Contrasting Evangelical and Secularist Perspectives*, 44 J. CATH. LEGAL STUD. 99, 103 (2005) (discussing how Christian evangelicals are perceived as threatening and stereotyped); see also STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 6-7 (1993) (“Our culture seems to take the position that believing deeply in the tenets of one’s faith represents a kind of mystical irrationality . . .”).

³⁶ See, e.g., STEPHEN M. FELDMAN, *PLEASE DON’T WISH ME A MERRY CHRISTMAS: A CRITICAL HISTORY OF THE SEPARATION OF CHURCH AND STATE* (1997) (arguing that the American tradition of church-state separation has been used to dominate minority religions, particularly focusing on Judaism); Azizah Yahia al-Hibri, *Muslim Women’s Rights in the Global Village: Challenges and Opportunities*, 15 J.L. & RELIGION 37, 46-55 (2000-2001) (describing women’s rights in the original Islamic understanding).

an ethical and constitutional “problem” to be addressed by mainline scholars.³⁷

However, the democratization of law and religion has meant that the conversation between mainline law and religion scholars and “outsider” scholars has become bi-directional. To be sure, in one direction, establishment law and religion scholars have reached out to embrace the work of scholars from these outsider traditions, legitimizing them and their work in the academy and the scholarly community.³⁸ And they have nurtured scholarly communities emerging from within these once “outsider” religions.³⁹

In the other direction, however, “outsider” religion scholars are independently shaping their ideas from the soil of their own traditions. As they do, they have reached out to include mainline law and religion scholars in *their* conversations as well. At the risk of trivializing these conversations by categories, I would suggest at least five current streams characterizing what was once “outsider” scholarship. Many law and religion scholars working in such “outsider” traditions have published work in more than one of these streams, and indeed, some individual scholarly works reflect more than one of these streams.

One of these streams, notably among Islamic law scholars but one which I believe can also be seen in Jewish law and evangelical

³⁷ Scott Idleman has argued that religion poses a threat that it will compete with the state for sovereignty, which accounts for the failure of minority religious claims to prevail in constitutional adjudication. Scott C. Idleman, *Why the State Must Subordinate Religion*, in *LAW AND RELIGION: A CRITICAL ANTHOLOGY* 175, 186 (2000). Of course, there are some notable exceptions to my claim—for example, we would be remiss not to acknowledge the significant impact that Jewish scholars and lawyers have made on mainline Establishment Clause jurisprudence in the mid-twentieth century. See, e.g., J. David Holcomb, *Religion in Public Life: The ‘Pfefferian Inversion’ Reconsidered*, 25 *J.L. & RELIGION* 57-58 (2009-2010) (discussing the church-state separation philosophy of Leo Pfeffer, termed “arguably the twentieth century’s most influential voice for the separation of church and state.”).

³⁸ For example, see the fellowship and research programs at Emory University’s Center for the Study of Religion and Law, *Research Opportunities*, CENTER FOR THE STUDY OF LAW AND RELIGION, <http://cslr.law.emory.edu/joint-degree-program/research-opportunities/> (last visited Jan. 6, 2014); and *Mission & History*, CENTER FOR THE STUDY OF LAW AND RELIGION, <http://cslr.law.emory.edu/about/mission-history/> (last visited Jan. 6, 2014). I will, hereinafter, refer to the “Center for the Study of Law and Religion” as “CSLR.”

³⁹ See, e.g., *Twenty-first Annual Journal of Law and Religion Symposium: “Emerging Voices in Islamic Jurisprudence”*, HAMLIN UNIVERSITY SCHOOL OF LAW, <http://law.hamline.edu/Content.aspx?id=4294974878> (last visited Jan. 6, 2014); *Islam and Human Rights Fellowship Program*, CSLR, <http://cslr.law.emory.edu/research/islamic-legal-studies/islam-and-human-rights-fellowship-program/> (last visited Jan. 6, 2014).

literature,⁴⁰ is corrective. This scholarship attempts to rebut popular Western misconceptions about the outsider religion and its views. This is crucially important scholarship, because both the public and lawyers and judges too often get their ideas about religious traditions from those ignorant about the traditions, even sometimes from racists and fearmongers.⁴¹ In terms of this corrective scholarship, I think of the work of scholars like Asifa Quraishi-Landes and Azizah al-Hibri,⁴² whose work is vital to combating this disinformation, particularly within our own profession. This scholarship is critical because without trust, and without truth, it is difficult to build a lasting political or social community in a religiously pluralistic world.

A second stream of scholarship works at building bridges. Recognizing that they stand with feet in both worlds, one in their own tradition and one in the mainline tradition, these scholars have attempted to bring the conversation between the traditions together, by pointing out their similar or even parallel theological and ethical approaches to legal problems that have recurred throughout human history. I think of Sam Levine's work in comparative criminal law and legal interpretation,⁴³ as well as other Jewish law comparative

⁴⁰ See, e.g., Suzanne Last Stone, *Spinoza's Identity and Philosophy: Jewish or Otherwise?*, 25 CARDOZO L. REV. 579, 581 (2003) (debunking the myth that "American law shares an intellectual affinity with Jewish law"); David M. Smolin, *Religion, Education and the Theoretically Liberal State: Contrasting Evangelical and Secularist Perspectives*, 44 J. CATH. LEGAL STUD. 99, 103-07 (2005) (discussing stereotypes about evangelical Christians and politics).

⁴¹ For a discussion of these stereotypes, see Sahar Aziz, *Sticks and Stone, the Words that Hurt: Entrenched Stereotypes Eight Years after 9/11*, 13 N.Y. CITY L. REV. 33 (2009) (describing how stereotypes influence racial profiling, anti-terrorism legislation and case law as well as proposing causes of action to combat these dangers); David Cole, *Secrecy, Guilt by Association and the Terrorist Profile*, 15 J.L. & RELIGION 267, 268 (2000-2001) (arguing that the Immigration and Nationalization Service's use of secret evidence and guilt by association is driven by stereotypes, ignorance and prejudice).

⁴² See, e.g., Asifa Quraishi-Landes, *Rumors of the Sharia Threat are Greatly Exaggerated: What American Judges Really Do with Islamic Family Law in their Courtrooms*, 57 N.Y.L. SCH. L. REV. 245, 247 (2012-2013) (dispelling myths about the effect of so-called "sharia law" on American law); Azizah Yahia al-Hibri, *Muslim Women's Rights in the Global Village: Challenges and Opportunities*, 15 J.L. & RELIGION 37, 37-39 (2000-2001) (describing basic tenets of Islam regarding women's rights for both Islamic and non-Islamic audiences in an attempt to show both audiences that "Islam is not a mere 'Oriental' religion, but a world religion which is capable of meeting the needs of Muslims in all historical eras and all geographical locations.").

⁴³ See, e.g., Samuel J. Levine, *Rethinking Self-Incrimination, Voluntariness, and Coercion, through the Perspective of Jewish Law and Legal Theory*, 12 J.L. SOCIETY 72 (2010-2011); Samuel J. Levine, *Capital Punishment in Jewish Law and its Application: A Conceptual Overview*, 29 ST. MARY'S L.J. 1037 (1998) (discussing comparatively the underpinnings of Jewish and American law on coerced confessions and capital punishment);

work on commercial exploitation of others by Shahar Lifshitz, or on freedom of speech and inciting language by Jonathan Crane.⁴⁴ Islamic jurisprudence boasts similar efforts to compare its jurisprudence to secular American and other mainstream schools of jurisprudence, by scholars like Quraishi-Landes, Intisar Rabb, and Sadiq Reza.⁴⁵ This conversation is important, not only for building trust among religious communities, but for establishing common ground on which we can move forward in the practical task of law-making in pursuit of our desire to create a more just community.

A third stream might be termed “invited to observe” work. In this stream, law and religion scholars, who once primarily conversed with others from their own tradition in journals aimed exclusively at members of that tradition, have moved these conversations into mainline journals or books.⁴⁶ Thus, for example, honest

Samuel J. Levine, *An Introduction to Legislation in Jewish Law, with References to the American Legal System*, 29 SETON HALL L. REV. 916 (1999) (comparing Jewish and American legislative assumptions).

⁴⁴ See, e.g., Shahar Lifshitz, *Oppressive-Exploitative Contracts: A Jewish Law Perspective*, 23 J.L. & RELIGION 425 (2007-2008) (comparing Jewish law’s focus in unconscionability cases on individual distress and modern secular law’s focus on individual autonomy); Jonathan K. Crane, *Defining the Unspeakable: Incitement in Halakhah and Anglo American Jurisprudence*, 25 J.L. & RELIGION 329, 330-33 (2010) (showing how the Jewish law of incitement focuses on threats to the integrity of the Jewish community, while Anglo-American law focuses on specific and imminent harm to individuals). Professor Levine has catalogued comparative approaches in Jewish law in more than one article. See, e.g., Samuel J. Levine, *Emerging Application of Jewish Law in American Legal Scholarship: An Introduction*, 23 J.L. & RELIGION 43 (2007-2008) (composing a bibliography of such works). This conversation occurs also from the standpoint of other traditions. See, e.g., Gregory A. Kalscheur, *Christian Scripture and American Scripture: An Instructive Analogy?*, 21 J.L. & RELIGION 101 (2005-2006) (comparing interpretive principles in constitutional and Biblical interpretation).

⁴⁵ See, e.g., Asifa Quraishi, *On Fallibility and Finality: Why Thinking Like a Qadi Helps Me Understand American Constitutional Law*, 2009 MICH. ST. L. REV. 339, 340-41 (2009) (describing how a review of qadi practice “illustrates that the Court simultaneously performs two roles: it is both the final adjudicator of constitutional disputes and also the ultimate expositor of constitutional law.”); Sadiq Reza, *Islam’s Fourth Amendment: Search and Seizure in Islamic Doctrine and Muslim Practice*, 40 GEO. J. INT’L L. 703, 708-09, 722 (2009) (refuting arguments that Fourth Amendment-like search and seizure protections existed in traditional Islamic law, though suggesting that the foundations for such protections can be found); Intisar A. Rabb, *The Islamic Rule of Lenity: Judicial Discretion and Legal Canons*, 44 VAND. J. TRANSNAT’L L. 1299, 1302 (2001) (arguing that the rule of lenity in Islam evidences stronger legislative authority by judges than the American rule).

⁴⁶ See, e.g., Sister Sara Butler, *Catholic Women and Equality: Women in the Code of Canon Law*, in FEMINISM, LAW AND RELIGION 345-66 (Marie A. Failinger et al eds., 2013) [“hereinafter FAILINGER, SCHILTZ AND STABILE”] (arguing that canon law treats Catholic women as equals, despite their exclusion from the priesthood); Susan J. Stabile, *The Catholic Church and Women: The Divergence Between What is Said and What is Heard*, in

conversations about the competitive relationship between Jewish and secular authorities in the State of Israel,⁴⁷ or the response of religious communities to wife-beating⁴⁸ or whether mix-gendered prayers are permitted in Islam⁴⁹ is now occurring out in the open, for the rest of the world to hear. But in these conversations, non-Jews and non-Muslims are invited in primarily as observers to these internal debates rather than as full conversation partners.⁵⁰ This “invited to observe” stream of law and religious scholarship is important for at least two reasons. First, it signals a level of trust in the rest of the law and religion community, assuming that those of us who are not part of these religious communities will neither use these internal conversations to demean or distort our description of that tradition to others, and that we will have the common sense not to try to control this conversation, asserting our own intellectual privilege. I hope, of course, those of us who are so trusted will continue to earn that trust by faithfully supporting and accurately transmitting these internal conversations.

Second, if those of us who are outsiders to particular traditions can observe such conversations as silent listeners, we have a better prospect of achieving a minimally competent understanding

FAILINGER, SCHILTZ AND STABILE, *supra*, at 63-80 (arguing that, regardless of their exclusion from the priesthood, Catholic women should be more visible in the Church, in areas such as liturgy and non-priestly positions of authority, to demonstrate Catholicism’s commitment to women’s equality); Hina Azam, *Competing Approaches to Rape in Islamic Law*, in FAILINGER, SCHILTZ AND STABILE, *supra*, at 327-39 (describing debate among Islamic scholars about whether rape was considered a form of zina, or adultery in classical Islamic law).

⁴⁷ See, e.g., Daphna Hacker, *Religious Tribunals in Democratic States: Lessons from the Israeli Rabbinical Courts*, 27 J.L. & RELIGION 59 (2011-2012) (describing the competition for “business” between religious and secular courts in Israel, and contending that religious courts have changed their practices to compete with these courts); Adam S. Hofri-Winogradow, *A Plurality of Discontent: Legal Pluralism, Religious Adjudication and the State*, 26 J.L. & RELIGION 57 (2010-2011) (describing Israel’s integrationist model for including rabbinical courts, and comparing it with Western community court models).

⁴⁸ See, e.g., Naomi Graetz, *Jewish Law: The Case of Wifebeating*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 307-28; Juliane Hammer, “Men are the Protectors of Women” Negotiating Marriage, Feminism, and (Islamic) Law in American Muslim Efforts Against Domestic Violence, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 237-54.

⁴⁹ See, e.g., Ahmed Elewa & Laury Silvers, “I am one of the People”: A Survey and Analysis of Legal Arguments on Woman-Led Prayer in Islam, 26 J.L. & RELIGION 141, 141-43 (2011) (discussing the controversial “Wadud prayer” and debating whether Islamic law permits, or should be immediately reformed to permit, women to lead mixed-gender prayers).

⁵⁰ See *supra* notes 46-49 (compiling resources inviting outside scholars to observe the traditions and discussions of various traditions).

of the rich complexity of such religious communities—something that seems almost impossible without the ability to listen in to these internal scholarly conversations. I can't imagine, for example, how one could even get close to understanding the role of women in Buddhist religious society⁵¹ or the difficult situation of the agunah in Jewish law,⁵² without listening to this internal conversation, and I am honored to have been allowed to listen. At some point, those of us who are outsiders to these traditions may have insights to contribute as persons able to stand outside a tradition and see it in a different way, but this task is a delicate matter and requires an invitation from those inside if it is going to be at all useful.

A fourth stream of this scholarship is prophetic or critical. It often accepts the mainline conversation on law and religion as a starting ground, but argues, from within one or more religious traditions, that the law embodies problematical ethical or theological assumptions about the nature of the human person, his or her relationship to others, the good community, etc.⁵³ While again I risk trivializing, usually the chief goal of such literature is not simply to argue that outsider traditions are superior to the mainline tradition or others. Sometimes, of course, some of this literature tries to encourage the mainline tradition to adopt some of the ethical values of an outsider religious tradition in framing jurisprudence, law and legal systems.⁵⁴ Other times, this prophetic literature wants to

⁵¹ See, e.g., Rebecca Redwood French, *Daughters of the Buddha: The Sakyadhita Movement, Buddhist Law and the Position of Buddhist Nuns*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 371-87; see also Mary Szto, *Chinese Women Lawyers and Judges as Priests*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 391-402 (comparing traditional exclusion of women from Chinese religious roles to modern-day embrace of such women in priest-like roles).

⁵² See, e.g., Avishalom Westreich, *The "Gatekeepers" of Jewish Family Law: Marriage Annulment as a Test Case*, 27 J.L. & RELIGION 329 (2011-2012) (discussing internal Jewish law debates over whether marriage annulment can legitimately be used to free the agunah from her "chained" fate).

⁵³ See, e.g., Nimat Hafez Barazangi, *Why Muslim Women are Re-interpreting the Qur'an and Hadith: A Transformative Scholarship-Activism*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 257-76 (arguing that Muslim women's interpretation of religious texts is critical to achieving justice for women and an authentic understanding of Islam's vision for humankind).

⁵⁴ See, e.g., Lifschitz, *supra* note 44, at 448-53 (arguing that secular law shares some of the values of Jewish law regarding oppressive contracts, but can be inspired to incorporate a better balance of individuality and solidarity in a dialogue with Jewish law); Amina Wadud, *Towards a Qur'anic Hermeneutics of Social Justice: Race, Class, and Gender*, 12 J.L. & RELIGION 37, 38 (1995-1996) (arguing for a vision of social justice informed by the Qur'an, noting that "[f]rom [a] Muslim perspective, the Qur'anic world-view provides the most

question whether the mainline tradition has lost its way, either because its founding ethical principles have been corroded over time or because they have been misapplied because of competing and distorting concerns.⁵⁵ Such literature sometimes argues that the mainline tradition should wield power making, interpreting, or enforcing secular law in a way that is truer to its own core. Examples of this genre, to my mind, include the work on Martin Luther King's Beloved Community,⁵⁶ evangelical Christian critiques of law's failure to protect human rights,⁵⁷ Jewish understandings of law as obligation,⁵⁸ Buddhism's critique of the law from its fundamental value of compassion,⁵⁹ and Islam's vision of human rights.⁶⁰

Finally, while they are often difficult to distinguish from the prophetic or critical, some streams of outsider law and religion scholarship might be termed transformational. As the name suggests, prophetic or critical literature primarily attempts to push mainline

efficient avenue for comprehensive alleviation of problems of oppression.”).

⁵⁵ See, e.g., Frances Raday, *Modesty Disrobed: Gendered Modesty Rules under the Monotheistic Religions*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 283-306 (showing how religious modesty rules, which served important religious values, were used by religious patriarchies to keep women in subordinate places).

⁵⁶ See, e.g., Anthony Cook, *King and the Beloved Community: A Communitarian Defense of Black Reparations*, 68 GEO. WASH. L. REV. 959, 959 (2000) (following Dr. King's metaphor of the Beloved Community, arguing for a move “from a fear-based conception of justice prevalent in Liberal theories to a love-based conception of justice that valorized the principles of spiritual unity and interdependent existence.”).

⁵⁷ See, e.g., David P. Gushee, *Evangelicals and Politics: A Rethinking*, 23 J.L. & RELIGION 1 (2008) (discussing the 2004 National Association of Evangelicals for the Health of the Nation statement describing human rights that evangelicals support); *but see* Joel A. Nichols, *Evangelicals and Human Rights: The Continuing Ambivalence of Evangelical Christians' Support for Human Rights*, 24 J.L. & RELIGION 629 (2008-2009) (discussing difficulties with evangelical support of secular human rights assumptions).

⁵⁸ See, e.g., Robert M. Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J.L. & RELIGION 65 (1987) (contrasting jurisprudence based on rights and on mitzvot).

⁵⁹ See, e.g., Deborah J. Cantrell, *With Compassion and Lovingkindness: One Feminist Buddhist's Exploration of Feminist Domestic Violence Advocacy*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 219-36 (correcting Western feminist understandings of Buddhism's precept of compassion as neglecting patriarchal power, and describing how Buddhism's focus on connectedness and loving kindness permits feminists to respond to domestic violence in ways other than anger).

⁶⁰ See, e.g., Anver M. Emon, *Natural Law and Natural Rights in Islamic Law*, 20 J.L. & RELIGION 351 (2004-2005) (rejecting the view that Islamic law is positivist and proposing an authentically Islamic natural rights tradition that can inform international human rights debates); Ebrahim Moosa, *The Dilemma of Islamic Human Rights Schemes*, 15 J. L. & RELIGION 185, 214-15 (2000-2001) (arguing that secular and Muslim human rights traditions are differently informed, and that Muslim theorists should re-think their views on rights given changes in human society and concepts of self and other).

traditions to acknowledge how the law has strayed from its founding values. Transformational scholarship discards many of the basic premises of mainline scholarship, including assumptions about proper genres, anthropological and sociological presumptions about human nature and activity, and ethical first principles. Instead, transformational scholarship proposes its own. Some feminist law and religion scholarship, for example, fit this description of transformation, by rejecting many of the premises of mainline law and religion scholarship.⁶¹ In terms of genre, it has followed other feminist scholarship in discarding purely philosophical arguments in favor of (at least partial) narrative; it uses personal, concrete and metaphorical language rather than abstract, logical generalization,⁶² and occasionally it uses poetic, dramatic or other genres through which to speak.⁶³ As with other feminist scholarship, it discards presumptions about human nature and interaction, such as assumptions that human beings are distinct, isolated, self-focused, and that they primarily thrive on individual freedom, personal achievement, and material well-being.⁶⁴ Indeed, it may call into question our Western understanding of the law itself, for example, as Emily Hartigan has done in thinking the spirit of the law.⁶⁵ As with other feminist scholarship and other outsider traditions, feminist law and religion scholarship may instead argue for the ethical priorities of vulnerability, belonging, interconnection and compassion in the

⁶¹ See, e.g., FAILINGER, SCHILTZ AND STABILE, *supra* note 46 (outlining articles compiling minority perspectives).

⁶² See, e.g., Emily Hartigan, *What is the Matter with Antigone?*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 85-104 (posing a feminist challenge to the “false knowability” of Western scientific rationalism).

⁶³ See, e.g., Lydia Johnson-Hill, *Three of My Sisters*, 12 J.L. & RELIGION 25 (1996) (describing the experience of oppressed third world women through a poem). For the narrative approach, see M. Christian Green, *From Third Wave to Third Generation: Feminism, Faith, and Human Rights*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 141-71 (using stories of the lives of religious activists Dorothy Day, Wangari Maathai, Rigoberta Menchu, and Aung San Suu Kyi to show how “third wave” religious feminism is critical to the development of “third generation” human rights for women); Emily Hartigan, *What is the Matter with Antigone?*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 85-104 (reflecting upon the legal suppression of the feminism through the story of Antigone).

⁶⁴ See, e.g., Cheryl B. Preston, *Deconstructing Equality in Religion*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 25-62 (deconstructing secular feminist deconstructions of religion as based on a male standard of comparison, in favor of a feminist Christian model for equality).

⁶⁵ See, e.g., Emily Fowler Hartigan, *Law and Mystery: Calling the Letter to Life Through the Spirit of the Law of State Constitutions*, 6 J. L. & RELIGION 225 (1988).

development of law and legal systems.⁶⁶

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 banquet as 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. It has been my gift to be one of the hosts at this table in my twenty-five year tenure as editor of the *Journal of Law and Religion*, and I hope to continue sitting and sharing this feast for a good long while yet.

⁶⁶ See, e.g., Elizabeth R. Schiltz, *A Contemporary Catholic Theory of Complementarity*, in FAILINGER, SCHILTZ AND STABILE, *supra* note 46, at 3 (describing Allen's theory of male-female complementarity as a reflection of the Trinity as a "communion of divine Persons").