

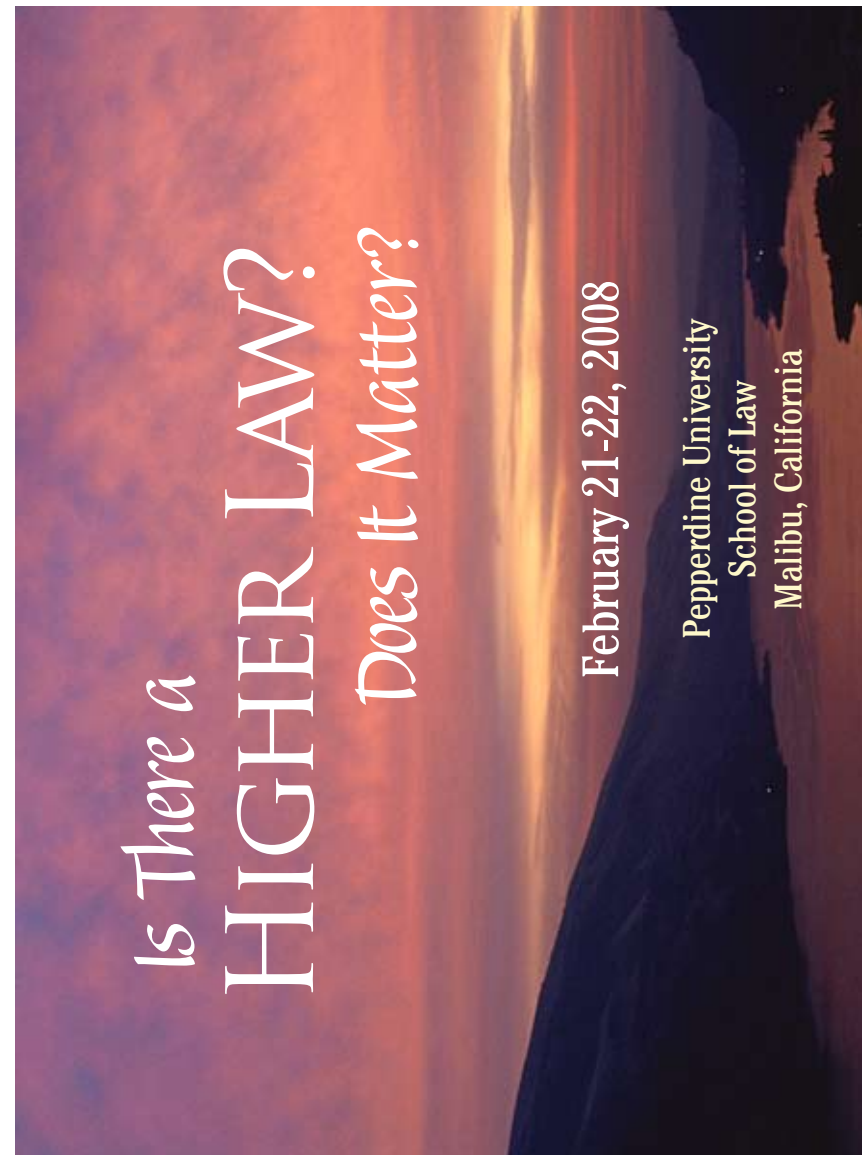
During the decade before the American Civil War, the question of whether there is a higher law was one of the most controversial questions facing the United States. Opponents of slavery challenged the pro-slavery positive law on the basis of a higher law. Supporters of slavery generally opposed the notion of a higher law, though some argued that the higher law supported slavery.

At the beginning of the 20th century, Justice Oliver Wendell Holmes ridiculed the notion of a higher law as “that brooding omnipresence in the sky.” In general, American legal theorists followed Holmes, with the Critical Legal Studies movement’s claim that all law is merely power and the Law and Economics claim that all good law is merely a matter of efficiency. But there were 20th century movements grounded on the notion of a higher law, notably the Nuremberg trials and the American civil rights movement.

Join us as we consider whether the notion of a higher law has any significance for the future of American law.

**Robert F. Cochran, Jr.**

*Louis D. Brandeis Professor of Law and  
Director, Herbert and Elinor Nootbaar  
Institute on Law, Religion, and Ethics*



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# Is There a HIGHER LAW? Does It Matter?

February 21-22, 2008

Pepperdine University  
School of Law  
Malibu, California

## Welcome

**A**t this conference, we bring together a group of law professors, judges, theologians, economists, historians, and philosophers to address whether there is a higher law, whether it matters, and the numerous questions that flow from these questions. Some speakers have argued for and some against the notion that there is a higher law.

## SPEAKERS

**RABBI YITZCHOK ADLERSTEIN**, the Sydney M. Irmas Chair in Jewish Law and Ethics at Loyola Law School directs the Simon Wiesenthal Center’s Project Next Step, an educational outreach in Los Angeles.

**PATRICK MCKINLEY BRENNAN**, the John F. Scarpa Chair in Catholic Legal Studies, Villanova University School of Law. The author of more than 25 articles and book chapters, he is also coauthor of *By Nature Equal* (Princeton, 1999) and the editor of *After Authority* (forthcoming).

**WILLIAM S. BREWBAKER III**, professor of law, University of Alabama School of Law, served previously as a visiting faculty member at the University of Cambridge and St. Edmund’s College, and as a member of Tyndale House. His areas of interest include health care law and jurisprudence.

**ROBERT F. COCHRAN, JR.**, is the Louis D. Brandeis Professor and the founder and director of the Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics, Pepperdine University School of Law. His books include *Christian Perspectives on Legal Thought* (with Michael McConnell and Angela Carmella) (Yale, 2001), and *Lawyers, Clients, and Moral Responsibility* (with Thomas L. Shaffer) (West, 1994).

**KENNETH G. ELZINGA**, the Robert C. Taylor Professor of Economics, University of Virginia, is the recipient of numerous teaching awards and teaches economics to a class of over a thousand at U.Va. each fall. His specialty is antitrust economics and he has published articles in the *Harvard Law Review*.

**PETER GABEL** taught previously at the law schools at U.C. Berkeley and the University of Minnesota before founding the New College Law School of California in 1975. He was a member of the organizing committee of the Conference on Critical Legal Studies and is associate editor of *Tikkun* magazine, a progressive Jewish quarterly.

**DOUGLAS W. KMIEC**, the Caruso Family Chair in Constitutional Law, Pepperdine University, previously served as head of the Office of Legal Counsel, dean of the law school at Catholic University, and professor of law at the University of Notre Dame, where he founded the *Notre Dame Journal of Law, Ethics, and Public Policy*.

**ALLEN MARTIN LINDEN**, supernumerary judge, Federal Court of Appeal, Canada, served as professor of law, Osgoode Hall Law School, 1961-78, before going on the bench. He is coauthor of *Canadian Tort Law* (Butterworth, 2004, 8th ed.) and *Canadian Tort Law: Cases, Notes, and Materials* (Butterworth, 2004, 12<sup>th</sup> ed.).

**ELIZABETH B. MENSCH**, the SUNY Distinguished Teaching Professor, University at Buffalo Law School, The State University of New York, coauthored the books *Property Law, Vols. 1 and 2*, (with Alan Freeman) (NYU, 1993) and *The Politics of Virtue: Is Abortion Debatable?* (Duke, 1993) and many articles and book chapters.

**DAVID NOVAK**, the J. Richard and Dorothy Shiff Chair of Jewish Studies at the University of Toronto, is the author of 11 books, including *Covenantal Rights* (Princeton, 2000), which won the American Academy of Religion Award for “best book in constructive religious thought in 2000.” He received his Ph.D. from Georgetown University.

**JOAN LOCKWOOD O’DONOVAN**, Honorary Fellow, School of Divinity, New College, University of Edinburgh, received her Ph.D. in theology from the University of St. Michael’s College in the University of Toronto. She is the coauthor, with Oliver O’Donovan, of *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100-1625* (Wm. B. Eerdmans, 1999) and *Bonds of Imperfection: Christian Politics Past and Present* (Wm. B. Eerdmans, 2004).

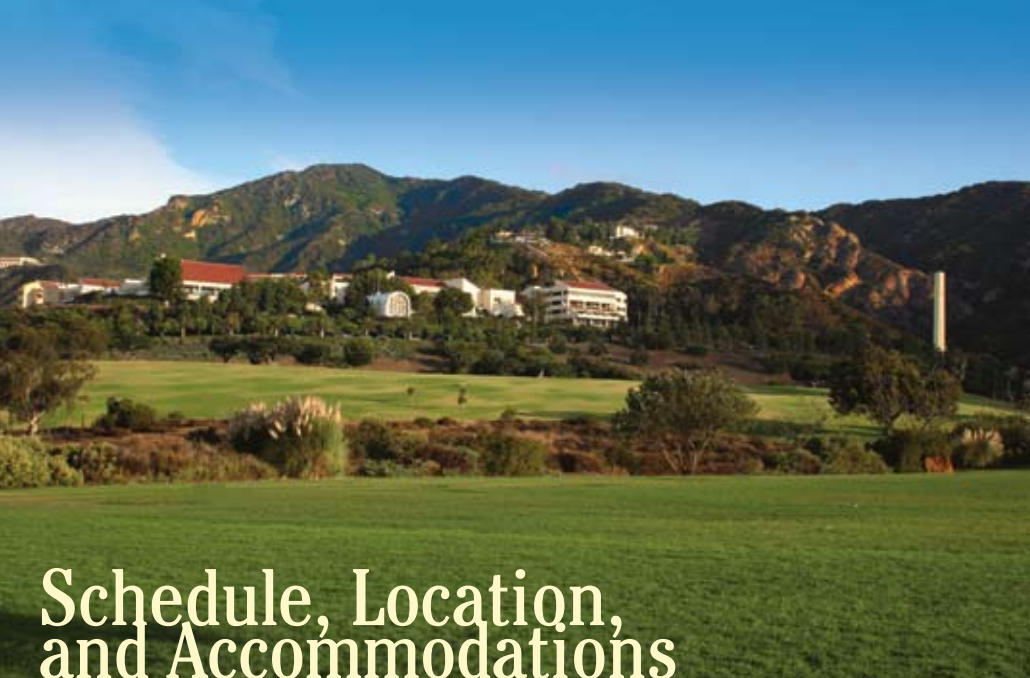
**OLIVER O’DONOVAN**, professor of Christian ethics and practical theology, School of Divinity, University of Edinburgh, was Regius Professor of Moral and Pastoral Theology and canon of Christ Church at the University of Oxford from 1982 until 2006. His books include *The Desire of the Nations* (Cambridge, 1996).

**CONNIE S. ROSATI**, associate professor, philosophy, University of Arizona, is currently a visiting professor at the University of Maryland. Her areas of specialty are ethics and legal and political philosophy. She holds her J.D. from Harvard and her Ph.D. in philosophy from the University of Michigan.

**STEVEN D. SMITH**, the Warren Distinguished Professor of Law, University of San Diego, previously taught at the University of Virginia, Notre Dame, and the University of Colorado School of Law. He is the author of *The Constitution and the Pride of Reason* (Oxford, 1998), *Foreordained Failure: The Quest for a Constitutional Principle of Religious Freedom* (Oxford, 1995), and *Law’s Quandary* (Harvard, 2007).

**MARK V. TUSHNET**, the William Nelson Cromwell Professor of Law at Harvard previously taught at Georgetown. His books include *The New Constitutional Order* (Princeton University Press, 2003) and *The Oxford Handbook of Legal Studies* (ed. with Cane) (Oxford, 2003).

**DALLAS WILLARD**, professor, School of Philosophy, University of Southern California previously taught at the University of Wisconsin-Madison. His philosophical publications are mainly in the areas of epistemology, the philosophy of mind and of logic, and on the philosophy of Edmund Husserl. His religious publications include *The Divine Conspiracy* (HarperCollins, 1998).



## Schedule, Location, and Accommodations

The conference will begin at 4 p.m. on Thursday, February 21, 2008, and conclude at 5:30 p.m. on Friday, February 22. The optional conference dinner will be held on Thursday evening at Beau Rivage, a four-star restaurant in Malibu. For a detailed conference schedule, visit: <http://law.pepperdine.edu/ilre/conferences.html>.

The conference will be held at Pepperdine University School of Law, Malibu, California. The weather in February is typically sunny and pleasant, in the mid-70s during the day and the 50s at night. The campus is along the coast, 45 minutes north of Los Angeles International Airport (LAX). For links to hotels in the area, visit: [http://law.pepperdine.edu/welcome/visitor\\_information/hotels.html](http://law.pepperdine.edu/welcome/visitor_information/hotels.html).

**A Note to Our Jewish Colleagues – Pepperdine law school** is located one-and-a-half miles from an Orthodox worship center and hotel accommodations (Casa Malibu). Kosher meals will be available at all conference events. To request Kosher meals or raise additional questions, contact Rabbi and Pepperdine law professor Sam Levine at (310) 506-6892 or [samuel.levine@pepperdine.edu](mailto:samuel.levine@pepperdine.edu).

## MCLE Credit

This conference has been approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit for 1.5 credit hours on Thursday and 4.5 hours on Friday. Pepperdine University School of Law certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

## Registration

~~On line at <http://law.pepperdine.edu/ilre> or~~

Name: \_\_\_\_\_

Address \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

NON-STUDENT OPTIONS Conference Fee Includes: breakfast, snacks, and lunch \$100.00

Optional Thursday Dinner at Beau Rivage \$75 x \_\_\_\_\_ (no. of additional guests) \$ \_\_\_\_\_

Name of Guest(s): \_\_\_\_\_

Total Amount: \_\_\_\_\_

STUDENT OPTIONS Conference Fee Includes: breakfast, snacks, and lunch \$25.00

Optional Thursday Dinner at Beau Rivage \$75 x \_\_\_\_\_ (no. of additional guests) \$ \_\_\_\_\_

Name of Guest(s): \_\_\_\_\_

Total Amount: \_\_\_\_\_

Please check all that apply—I plan to attend: Session on Thursday Sessions on Friday

Please provide: vegetarian meals

Payment by: VISA MasterCard Enclosed check (payable to **Pepperdine University**)

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