THE COMPETING CLAIMS OF LAW AND RELIGION
WHO SHOULD INFLUENCE WHOM?

A RELIGIOUS LEGAL THEORY CONFERENCE
Sponsored by the Nootbaar Institute on Law, Religion, and Ethics and the Glazer Institute for Jewish Studies

February 23—25, 2012
Pepperdine University
Malibu, California
Dear Friends,

The conference will address a host of sub-questions all at the forefront of contemporary debates over the respective roles of law and religion. Among them:

- What constitutional restraints, if any, should be placed on the influence of religion on law?
- What constitutional restraints, if any, should be placed on the influence of law on religion?
- If religious faiths do not assert influence on law, will they be dominated by religious or secular traditions that are willing to do so?
- If religious faiths do not assert influence on law, will injustice reign?
- If religious faiths do assert influence on law, will injustice reign?
- Should the goal be autonomy within religious communities, or will that undermine the creation of an integrated and just society?

In many parts of the world, questions like this will engender not only controversy, but also outright hostility and aggression. At this conference, we look forward to a spirited, engaged, and thoughtful conversation that will explore numerous aspects of all of them.
Some speakers will address these issues as a matter of constitutional law, some as a matter of good citizenship, and some as a matter of religious faith. Speakers from a broad range of religious and secular traditions will address how their traditions might influence law—and vice versa.

We were overwhelmed with the quantity and quality of responses to our call for papers for this conference. In the end, we chose those papers which engage each other in conversations we think are important to the legal and religious communities. As the schedule shows, we have many fantastic speakers, any one of whom could anchor a conversation. We look forward to having all of them together.

We hope that you can join us and be part of the conversation.

All our best,

ROBERT F. COCHRAN, JR.
Louis D. Brandeis Professor of Law and Director, Herbert and Elinor Nootbaar Institute on Law, Religion, and Ethics
Pepperdine University School of Law

MICHAEL HELFAND
Associate Professor of Law
Pepperdine University School of Law
Associate Director, Diane and Guilford Glazer Institute for Jewish Studies
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PLENARY PRESENTERS

ABDULLAHI AHMED AN-NA’IM, Charles Howard Candler Professor of Law, Emory School of Law is a graduate of the University of Khartoum, LLB, University of Cambridge, LLB, and University of Edinburgh, PhD. He is author of Islam and the Secular State (Harvard University Press, 2008) and an internationally recognized scholar of Islam and human rights. His research projects focus on advocacy strategies for reform and include the Fellowship Program in Islam and Human Rights, Women and Land in Africa, and Islamic Family Law.

JAMES DAVISON HUNTER, Labrosse-Levinson Distinguished Professor of Religion, Culture, and Social Theory, and Executive Director of the Institute for Advanced Studies in Culture, University of Virginia is a graduate of Gordon College, BA, Rutgers University, MA, PhD. He has published a wide range of works regarding the problem of meaning and moral order in a time of political and cultural change in American life. His books include To Change the World: The Irony, Tragedy, and Possibility of Christianity in the Late Modern World (Oxford University Press, 2010).

ANDREW KOPPELMAN, John Paul Stevens Professor of Law, Northwestern University School of Law is a graduate of the University of Chicago, AB, Yale University, JD, PhD. His scholarship focuses on issues at the intersection of law and political philosophy. He is author of Religious Neutrality in American Law: An Analysis and Defense (Harvard University Press, forthcoming) and four other books.

MICHAEL STOKES PAULSEN, Distinguished University Chair and Professor of Law, University of St. Thomas is a graduate of Northwestern University, BA, Yale Divinity School, MA, and Yale Law School, JD. His publications include "How to Interpret the Constitution (and How Not To)" (Yale Law Journal, 2006), and "It’s a Girl" (Public Discourse, 2011), an essay on sex-selection. Professor Paulsen is a leading scholar of constitutional interpretation and previously taught at the University of Minnesota.
AYELET SHACHAR, Professor of Law and Canada Research Chair in Citizenship and Multiculturalism, University of Toronto Faculty of Law is a graduate of Tel Aviv University, BA, LLB, and Yale Law School, LLM, JSD. She is also Canada Research Chair in Citizenship and Multiculturalism. The Archbishop of Canterbury and the Supreme Court of Canada have cited her work in reconciling gender equality and religious diversity. She is author of *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009), which has interested policymakers and academics alike in regard to innovative institutional designs to promote global justice.

STEWEN D. SMITH, Class of 1975 Endowed Professor of Law, University of San Diego School of Law is a graduate of Brigham Young University, BA, and Yale University, JD, and has taught at Notre Dame and the University of Virginia. Among his many scholarly works, his publications include *The Disenchantment of Secular Discourse* (Harvard University Press, 2010) and “Discourse in the Dusk: The Twilight of Religious Freedom” (*Harvard Law Review*, 2009).

SUZANNE LAST STONE, University Professor of Jewish Law and Contemporary Civilization, Professor of Law, and Director of the Center for Jewish Law and Contemporary Civilization, Cardozo School of Law at Yeshiva University is a graduate of Princeton University, BA, and Columbia University, JD. Her publications include "In Pursuit of the Counter-Text: The Turn to the Jewish Legal Model in Contemporary American Legal Theory" (*Harvard Law Review*, 1993). She is also coeditor in chief of *Diné Israel*, a peer review journal of Jewish law coedited with Tel Aviv Law School, and on the editorial boards for *Jewish Quarterly Review* and *Hebraic Political Studies*. 
CONFERENCE SCHEDULE

THURSDAY, FEBRUARY 23

3:30—4:30 PM  ▶  Registration

4:30—4:35 PM  ▶  Welcome, Robert F. Cochran, Jr.

4:35—6:15 PM  ▶  Plenary Session I

THE MEANING OF THE RELIGION CLAUSES:
A HIGH WALL? NEUTRALITY?

There is little consensus among commentators and Supreme Court justices on Religion Clause jurisprudence. The one point of agreement seems to be that it is an inconsistent mess. This panel will explore two possible standards for addressing religion/law conflicts: a "wall of separation" and "neutrality."

• Michael Stokes Paulsen, with response by Eugene Volokh
• Andrew Koppelman, with response by Richard Garnett, Chad Flanders
• Moderated by Deanell R. Tacha
FRIDAY, FEBRUARY 24

8:30–10:15 AM  ▶  Plenary Session II

COMPETING OR COMPLEMENTARY? CLAIMS OF LAW AND RELIGION: ISLAMIC AND JEWISH PERSPECTIVES

Drawing on the conference theme, this session will focus on the compatibility of the claims of law and the claims of religion. It will approach this question from the perspectives of Judaism and Islam and, in turn, provide opportunity for comparison and contrast between these and other faith traditions.

• Abdullahi Ahmed An-Na‘im, with response by Mohammad Fadel
• Suzanne Last Stone, with response by David Flatto
• Moderated by Douglas Kmiec

10:30 AM–12 noon  ▶  Breakout Sessions I

ACCOMMODATING RELIGION AND RELIGIOUS VIEWS?

• Alan Brownstein, Intended and Incidental Consequences of Constitutional Doctrine on Expressive Interactions Between Church and State
• Bruce N. Cameron, Conflict in Standards of Religious Accommodation in the Workplace
• Kristen Carpenter, Limiting Principles and Practices in American Indian Religious Freedoms Jurisprudence
• Barry McDonald, Getting Beyond Religion as Science: Unstifling Worldview Formation in American Public Education
• Frank Ravitch, Symbolism and Constitutional Boundaries

INTERNATIONAL AND COMPARATIVE PERSPECTIVES, PART I

• Robert John Araujo, “Render unto Mao What Is Mao’s”: Conflict of Authority in the People’s Republic of China and the Holy See
• Eoin Carolan, Catholic Constitutionalism: Lessons from the Irish Experience
• Austin Dacey, Blasphemy, Religious Hatred, and the Poverty of Human Rights Discourse
• Mark D. Rosen, Is a Non-Neutral Liberal State an Oxymoron? The Examples of Israel and France
• Stijn Smet, Freedom of Religion Versus Freedom from Religion in the Jurisprudence of the European Court of Human Rights

12 noon–1:30 PM  ▶  Lunch

1:30–2:45 PM  ▶  Breakout Sessions II

GOVERNMENT INSTITUTIONS, RELIGIOUS AFFAIRS, AND THE FIRST AMENDMENT

• Mark O. DeGirolami, The Method of Tragedy and History Applied
• Michael Helfand, Litigating Religion
• Raymond Pierce, The First Amendment “Under God”: Reviewing the Coercion Test in Establishment of Religion Claims
• Mark Strasser, The Endorsement Test Is Alive and Well: A Cause for Celebration and Sorrow

RELIGION, LAW, AND CULTURE

• Henry L. Chambers, Jr., The Reconstruction Amendments: Abolishing the Law and Fulfilling the Law?
• Sherman J. Clark, To Teach and Persuade
• Chaim Saiman, Using Legal Doctrine to Teach Ethical Behavior
• Jack L. Sammons, Listening to Law

WHO SHOULD INFLUENCE WHOM?

• Perry Dane, The Anxiety of Influence: Legal Values and the Life of Faith
• David Flatto, Reflections on the Relationship Between Law and Power in Jewish, Islamic, Christian, and Western Jurisprudence
• David W. Opderbeck, Theology, Property, and Metaphysics
• Zoë Robinson, Privatization of Religion

THE BIBLE AND THE LAW

• Barbara Armacost, Justice and the Prophets
• Tremper Longman III, The Mosaic Law
• David VanDrunen, Creation, Fall, and the Patriarchs
• Dallas Willard, Jesus and the Law
• Robert F. Cochran, Jr., The Relevance of the Bible for the Law
3–4:15 PM  ▶  Plenary Session III

TWO THEORIES OF RELIGIOUS ACCOMMODATION

This session will focus on the clash of religious accommodation, gender equality, and individual identity. In so doing, the session will highlight the interaction between religious and secular sources of identity and authority in regulating the family.

• Ayelet Shachar, with response by Marie Failinger, Paul Horwitz, Robin Fretwell Wilson
• Moderated by Michael Helfand

6 PM  ▶  Conference Dinner Friday, February 24

SATURDAY, FEBRUARY 25

8:30–10:15 AM  ▶  Plenary Session IV

LAW, RELIGION, AND THE COMMON GOOD: REFLECTIONS ON THE CHALLENGES OF LATE MODERNITY

This panel will address the descriptive and the prescriptive. Are Western culture and law taking a secular or a sacred turn? Should religious communities seek to transform culture and law, or merely seek what James Davison Hunter has called “faithful presence”? Panelists are likely to disagree over each question.

• James Davison Hunter, with response by Patrick Brennan, Zachary R. Calo
• Steven D. Smith, with response by Edward J. Larson
• Moderated by Barbara Armacost

10:30 AM–12 noon  ▶  Breakout Sessions III

CONSCIENCE CLAUSES AND MEDICAL CARE PROVIDERS

• Matthew S. Bowman, Access and Privacy
• Caroline B. Newcombe, Administrative Law and Conscience Clauses
• Bettina B. Plevan, Employers
• Robin Fretwell Wilson, Empowering Private Conscience

IS RELIGION SPECIAL?

• Nathan Chapman, Disentangling Conscience and Religion
• Bruce Ledewitz, Does the Evolution of Religion Undermine Religious Legal Theory or Fulfill It?
• Micah Schwartzmann, What If Religion Isn’t Special?
• Nelson Tebbe, Secular Nonendorsement

LEGISLATIVE PRAYER: SPEAKING WHOSE TRUTH TO WHICH POWER—THOUGHTS ON Forsyth County, North Carolina v. Joyner

• Scott W. Gaylord, J. Michael Johnson, Christopher C. Lund, Robert Luther III, Jeremy G. Mallory
12 noon–1:30 PM    Lunch

1:30–3:00 PM    Breakout Sessions IV

THE MINISTERIAL EXCEPTION
• Ian Bartrum, Race and Religion: The Ministerial Exception Reexamined
• Caroline Mala Corbin, The Irony of Hosanna-Tabor
• Paul Horwitz, The Ministerial Exception and the Civic Duties of Institutions and Citizens
• Michael P. Moreland, Freedom of the Church and the Origins of Liberalism
• Nora O’Callaghan, Creative Minorities in a Naked Public Square: Challenges to Religious Institutions

INFLUENCE ON LAWYERS, JUDGES, LITIGANTS, AND LAW PROFESSORS
• John M. Breen and Lee J. Strang, History of Catholic Legal Education
• Howard Kislowicz, Narratives of Religious Freedom Litigation: The Interaction of Law and Religion in Canada
• Robert K. Vischer, Love and Justice: Martin Luther King, Jr.’s Lessons for Lawyers
• Kevin Walsh, Roman Catholics on the Roberts and Rehnquist Courts

INTERNATIONAL & COMPARATIVE PERSPECTIVES, PART 2
• Dia Dabby, Children Stuck in the Middle: Competing Claims of Law and Religion in Canada
• Kuk-Woon (Kuyper) Lee, Christian Jurisprudence in Multireligious and Rapidly Modernizing Society
• Santiago Legarre, The Virgin Mary in the Temple of Justice: How U.S. Jurisprudence Is Messing up Argentine Constitutional Principles
• Mark L. Movsesian, Crosses and Culture: Public Religious Symbols in the U.S. and Europe
• Kyriaki Topidi, Religious Diversity and Education in Multicultural Societies: Possibilities and Impossibilities in the European Union

3:15–4:30 PM    Breakout Sessions V

RIGHTS AND RESPONSIBILITIES OF RELIGIOUS GROUPS ON CAMPUS
• Mary Jean Dolan, The Reasonableness of a Religious Oath for Student Group Membership at a Public University
• Richard Garnett, Religious Freedom, Discrimination, and Pluralism
• Lisa Shaw Roy, Evangelicals and the First Amendment: Free Speech and Free Exercise
• Timothy J. Tracey, Demise of Equal Access and Christian Response

COMMERCIAL LAW
• Lyman Johnson, Debarring Faithless Fiduciaries in Bankruptcy
• Barak D. Richman, Saving the First Amendment from Itself: Relief from the Sherman Act Against Rabbinic Cartels
• Mark Scarberry, Religion and Bankruptcy: Debt Forgiveness and the Common Good
• Susan Stabile, Catholic Universities and Mandatory Collective Bargaining

SECULARIZATION
• Patrick Brown, Law, Religion, and the Dialectic of Secularization
• Steven K. Green, “Good Fences Make Good Neighbors”- Distinguishing Interference and Influence
• John Hill, John Stuart Mill and the “Final Inexplicability” of the Self, or Why Liberals Need the Soul
• Mark C. Modak-Truran, A Post-Secular Pluralistic Legitimation of Law
BARBARA ARMACOST, Professor of Law, University of Virginia, is a graduate of the University of Virginia, BS, JD, and Regent College of the University of British Columbia, MTS. She is the author of "Organizational Culture and Police Misconduct" (George Washington Law Review, 2004).

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EDWARD J. LARSON, University Professor of History and Hugh and Hazel Darling Chair in Law, Pepperdine University School of Law is a graduate of Williams College, BA, University of Wisconsin, MA, PhD, and Harvard University, JD. He is author of Summer for the Gods: The Scopes Trial and America’s Continuing Debate over Science and Religion (Basic Books 1997), for which he received the Pulitzer Prize.

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HELEN ALVARÉ, Associate Professor of Law, George Mason University School of Law is a graduate of Villanova University, the Catholic University of America, MA (systematic theology), and Cornell University, JD. Her publications include “Beyond the Sex-Ed Wars: Addressing Disadvantaged Single Mothers’ Search for Community” (Akron Law Review, 2011).

REV. ROBERT JOHN ARAUJO, University Professor, Loyola University Chicago School of Law is a graduate of Georgetown University, BA, JD, Weston School of Theology, MDiv, STL, St. Michael’s Institute, PhD, Oxford University, BCL, and Columbia University LLM, JSD. He is author of Papal Diplomacy and the Quest for Peace at the United Nations - From Pius XII to Paul VI (with John Lucal, SJ, St. Joseph’s University Press, 2010).

IAN BARTRUM, Associate Professor, University of Nevada, Las Vegas William S. Boyd School of Law is a graduate of Hamilton College, Vermont Law School, JD, and Yale Law School, LLM. His articles include “The Constitutional Canon as Argumentative Metonymy” (William and Mary Bill of Rights Journal, 2009).

MATTHEW S. BOWMAN, Legal Counsel, Alliance Defense Fund (ADF) is a graduate of Ave Maria School of Law, JD, clerked at the Third Circuit and the District of Arizona, and is a member of the Life Litigation Project at ADF. He has litigated Conscience Clause cases around the United States.

JOHN M. BREEN, Professor of Law, Loyola University Chicago School of Law is a graduate of the University of Notre Dame and Harvard University, JD. His publications include “The Road Not Taken: Catholic Legal Education at the Middle of the 20th Century” (with Lee Strang, American Journal of Legal History, 2011).

PATRICK BROWN, Visiting Assistant Professor of Law, Seattle University School of Law is a graduate of Boston College, BA, MA, PhD, and the University of Washington School of Law, JD. His publications include “The Task of Aiming Excessively High and Far: The Early Lonergan and the Challenge of Theory in Catholic Social Thought” (Theological Studies, 2011).

ALAN BROWNSTEIN, Professor of Law and Boocehever and Byrd Chair for the Study and Teaching of Freedom and Equality, University of California Davis School of Law is a graduate of Antioch College and Harvard University, JD. He is author of “Gays, Jews, and Other Strangers in a Strange Land: The Case for Reciprocal Accommodation of Religious Liberty and the Right of Same-Sex Couples to Marry” (University of San Francisco Law Review, 2010).

BRUCE N. CAMERON, Reed Larson Professor of Labor Law, Regent University School of Law is a graduate of Andrews University and Emory University School of Law, JD. He is the author of a number of publications as well as www.GoBible.org’s online weekly Bible studies.

EOIN CAROLAN, Barrister and Lecturer in Law, University College Dublin School of Law is a graduate of Trinity College, LLB, PhD, and the University of Cambridge, LLM. He is author of The New Separation of Powers: A Theory for the Modern State (Oxford University Press, 2009).

KRISTEN CARPENTER, Associate Dean for Faculty Development and Associate Professor of Law, University of Colorado Law School is a graduate of Dartmouth College and Harvard Law School, JD. She is author of The Indian Civil Rights Act at 40 (M. Fletcher and A. Riley, eds., UCLA American Indian Studies Center, 2011).

HENRY L. CHAMBERS, JR., Professor of Law, University of Richmond School of Law is a graduate of the University of Virginia and the University of Virginia School of Law, JD. His publications include “Much Ado About Nothing Much: Protestant Episcopal Church in the Diocese of Virginia v. Truro Church” (with Isaac McBeth, University of Richmond Law Review, 2010).

NATHAN CHAPMAN, Executive Director at the Stanford Constitutional Law Center, Stanford Law School is a graduate of Belmont University, Duke Divinity School, and Duke University School of Law. His publications include “Law Asks for Trust” (Religious Legal Theory Symposium, St. John’s Law Review, 2011).

TREY CHILDRESS, Associate Professor of Law, Pepperdine University School of Law is a graduate of the University of Virginia, BA, Oxford Brookes University, MA, and Duke University, JD, LLM. His publications include "The Alien Tort Statute, Federalism, and the Next Wave of International Law Litigation” (Georgetown Law Journal, 2012).

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