PREFACE

In 1931, Karl Llewellyn wrote, "[f]erment is abroad in the law. The sphere of interest widens; men become interested again in the life that swirls around things legal."[1] He could well have been writing about our own time, in which political movements have swiftly overtaken established realities—movements that we signify by catch-phrases such as the fall of Communism, Selma to Stonewall, the European Union, and the Arab Spring.

In this issue of the JOURNAL, many of our offerings explore the dynamic interplay between political and social life and the law itself. They illustrate that the concerns that impelled the formation of the JOURNAL OF LAW AND RELIGION have been both borne out and subverted by recent historical events. Said our JOURNAL founders in the statement of perspective, "Law, a discipline presumably devoted to the ways of justice, has all too often become a set of complex, technical tools without concern for higher purpose." And yet, as these works give ample evidence, law has confounded these predictions of a technocratic death spiral for the law, becoming the symbol and the very body of the hopes and dreams of millions for justice and equality, realized, and just as profoundly dashed. So too, the founders argued, "Religion, presumably given to the all-embracing promises and prescriptions implied in the sense of the sacred, has all too often become privatized and neglectful of our public life." To be sure, we see much evidence of this insight; and yet, the world over, religion is having a profound impact on the way in which we organize our common life together, in the law of whom we can marry, in the regulation of how religious women can dress in public, and in many other confrontations between secular publics and religious minorities.

We begin with the philosophical. Howard Lesnick caps a prolific scholarly career by reflecting on Ivan Karamazov's maxim, "without God, everything is permitted." His first premise is that traditional religion makes exaggerated claims about being able to ground moral judgments "beyond merely human argumentation." Second, arguing that liberal religions take a somewhat different approach to moral reflection, Lesnick considers the difference in "belief, belonging and

1. Karl J. Llewellyn, *Some Realism about Realism—Responding to Dean Pound*, 46 HARV. L. REV. 1222 (1931).

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behavior" in these two approaches to moral deliberation. Attempting to find a way for religious traditionalists and liberals to talk respectfully, while probing for common ground between liberal religionists and secularists, Lesnick evokes his own testament in summoning Sartre, "That God does not exist, I cannot deny. That my whole being cries out for God, I cannot forget."[2]

Then there is politics. Symposium organizers Mirjam Künkler and Yüksel Sezgin bring us three offerings of which Llewellyn may have approved. Konstantinos Tsitselikis describes the dynamic relationship between religion, culture, society and law in the *shari'a* courts adjudicating family conflicts between Muslim Turks living in Greece's Western Thrace. In this jurisdiction, where informally authorized muftis judging by customary Islamic law may sometimes be overruled by secular Greek courts, the conflict between minority religions and the state, local culture and national hegemony, religion and secular democracy is seemingly insoluble. Christy Green explores the lively interchange between majority religions and the state in the African countries of Kenya, Zambia and Tanzania. She describes how these particular cultures with their diverse political and social fabrics have produced different legal approaches to religious freedom. Green illustrates that the levels of ethnic conflict and trust in institutions political societies make a significant difference in the level of religious freedom afforded minority groups.

Finally, in this symposium, Barbara Oomen and Niels Rijke delve into the Dutch conflict over whether the state may require Dutch Reformed schools to accept gay teachers, illustrating how local, national and even international political and legal bodies such as the European Court of Human Rights influence each other's approach to the law and practice of equal rights in nation-states. Elizabeth Clark's review essay of two new books on law and religion in the European Union highlights similarities with and divergence from U.S. conflicts between religion and state.

The politics of Muslim majority states are ever in view these days. We offer two articles from our fall 2012 symposium on Emerging Voic in Islamic Jurisprudence. Russ Powell probes three recent approaches to the integration of Islamic law in Turkey, a nation decidedly secular in the twentieth century, but attempting to make peace with its Islamic roots in the twenty-first century. Each of the new approaches to Islamic

2. *See* Howard J. Lesnick, *The Reality of Moral Imperatives in Liberal Religion*, *infra* at 297.

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law for the Turkish nation, by *Diyanet*, Öztürk, Gülen and others, includes some modern elements, but as Powell illustrates by probing popular surveys about the relationship between Islam and the state, there is yet no common consensus about what it means in Turkey to be an Islamic democratic nation.

Halim Rane considers the value of *maqasid*-oriented approaches for resolving the tension between Islamic law and secular democracy in Muslim-majority nations. He suggests that this "second generation" option may offer a healthy middle way between first generation Islamic political parties pushing for Islamic states with *shari'a* law codes and those advocating for purely secular nations after the Arab Spring. For Rane, such an approach can fold in democratic concerns as economic development, basic rights and freedoms and good government while remaining true to the culture and religious orientation of nations in the MENA (Middle East and North Africa) region.

Haider Hamoudi's review of Kirsten Stilt's new book on legal authority and discretion in Mamluk Egypt considers the interplay of politics and social life in framing lawmaking, albeit in an earlier era. Moshe Simon-Shoshan's review essay of two works on Qur'anic, Rabbinic and Biblical narratives similarly focuses upon the problematical relationship between social and political realities "on the ground" and religious law in ancient cultures.

Law and religion raise particular issues for women inside traditional religion. Hina Azam looks back into the history of Islamic law to unpack a troubling modern problem: whether Islamic law required rape to be treated as a form of *zina,* or adultery by the victim. Concluding that rape was treated as a variant of *zina* in the early Islamic tradition, Azam challenges reformers to consider that democratic values of gender equality may be employed to decouple rape from *zina* in a way that stays true to the ethical values and methodology of Islamic law reasoning.

Shannon Dunn's review essay of two recent books on Islamic polygamy and violence against Muslim women raises a similar challenge in a modern setting. Finally, Susan Stabile's review of Dick Hiers's *Women's Rights and the Bible: Implications for Christian Ethics and Social Policy* approaches the problem of gender justice and textual authenticity from a Christian perspective.

Whether they are probing ancient cultures or modern problems, this issue's authors both describe and push the question of how law is and should be influenced by cultural expectation and traditional religious morality. We hope that our readers will find insights that will enrich

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their own wrestling with these questions so critical to our modern life.

Marie Failinger, Editor

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