EDITOR'S PREFACE

Sixty years ago this December, the General Assembly of the United Nations proudly proclaimed:

> [T]his Universal Declaration of Human Rights [serves] as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.[1]

In the ensuing years, as nation-states have turned from merely making paper commitments to these principles to the task of living them out, however, lawyers and judges have learned that international law is no different than domestic law in one respect: law proliferates law.

To be sure, Article 18's declaration of the religious rights of every human being is sweeping:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[2]

However, interpretation of this lofty acknowledgement has been fraught with difficulties in a profoundly pluralistic world as international courts struggle with what "margin of appreciation" to accord national religious and cultural expressions that interfere with religious freedom rights as they are understood in Western countries. Conversely, as nation-states begin to acknowledge the relevance of international legal interpretation to their domestic situations—some grudgingly, as in the United States—the question of how new paradigms will re-shape domestic interpretations of national protections such as the Free Exercise Clause is thrown into high relief.

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1. *Universal Declaration of Human Rights*, http://www.un.org/Overview/rights.html (accessed June 19, 2008).
2. *Id.*

In *The Emergence and Structure of Religious Freedom in International Law Reconsidered*, Peter Danchin asks us to go back to what we think we know about the development of the idea of religious freedom. The "common wisdom" describes a linear progression from the Reformation to the Enlightenment which accepts the "modernist turn to subjectivity and the ensuing difficulties of the Cartesian opposition of subject and object which today shape our international legal discourse." (456) Danchin wishes to show that the story is much more complex and pluralistic than we know, a story of many paths and

> negotiations at different times and in different places between politics and religion, the public and the private, reason and faith, the secular and the divine, modernity and tradition resulting in a wide range of accommodations and forms of consensus. (459)

Turning an international eye to view domestic law, Michael Helfand exposes the disconnect between the U.S. willingness to accept the "foreign compulsion defense" when a citizen is caught between the demands of two national governments, one criminalizing his act and the other his failure to commit the same act, and its refusal to accept such a defense when an individual is caught between the demands of his religion's law and the law of the nation. Critiquing the work of Joseph Raz on why subjects defer to legal authority, Helfand argues that in limited circumstances where religious obligation has the characteristics of law, the U.S. courts should permit a limited "foreign compulsion"-like defense to enable a religious subject to fulfill her religious obligations.

Selin Esen and Levent Gonenç take up a direct conflict between the Turkish Constitution and Turkish law that requires national family registries to include the religion of the family. Although this statute was modified in 2006 to permit individuals to change their religion on the registration, Esen and Gonenç argue that the inclusion of any religious designation on national registrations or identity cards violates Turkish constitutional guarantees of religious liberty, viewing this problem from the perspective of various arguments about the religious "neutrality" of the state.

We are also pleased to publish our first manuscript from an Iranian author, Saeid Nazari Tavakkoli, who describes how a *Shi'ite* theology informs the modern dilemma about the precise end of life in a situation where medical technology can keep bodies functioning well beyond the

point of brain death. Tavakkoli asks whether the modern definition of brain death can be compared to the traditional Islamic concept of "unstable life," an analysis he unpacks by describing the *Shi'ite* conception of the nature of human life.

William Ross provides a fresh look at a well-rehearsed crisis in American judicial history—President Roosevelt's plan to pack the Supreme Court in 1937 when he was faced with judicial opposition to his New Deal legislation. Ross shows that many religious leaders from a wide spectrum of faiths lobbied against the court-packing plan because of concerns that it would diminish the Court's role as a protector of religious freedom.

Similarly, a novel look at the environmental theology of the Church of the Latter Day Saints and its historical and prospective influence on U.S. environmental policy is offered by Micah McOwen. He recounts three historical moments that have been and will continue to be influential in the development of U.S. law on the environment: the LDS settlement of Utah territory, twentieth-century Mormon political engagement in environmental issues, and the settlement of Polynesia by a large LDS population.

Introduced by Sam Levine, who arranged for these papers, we offer the second part of our symposium on comparative Jewish and American law, this part focusing on consumer and commercial issues. Aaron Levine compares how "lemon" goods are treated in U.S. and Jewish law, with an emphasis on the importance of the development of trust as a key element of Jewish law. And Shahar Lifshitz shows how Jewish law ameliorates the harms of "oppressive-exploitative" contracts where "a semi-monopolistic party exploits the distress of a needy party in order to demand an above-market price" (426) in ways that accord justice to both sellers and buyers.

Thanks to the hard work of our book review editor, Leslie Griffin, we are also pleased to present several book reviews on topics from law and religion casebooks and creationism to India's crisis of secularism and the history of the law of chastity. Clark Lombardi leads this section off with a review essay of a new work on the development of the Islamic schools of law.

We invite our readers to join us in celebrating the 25th anniversary of the first publication of the *Journal of Law and Religion* on October 23-25, 2008 at Hamline University School of Law in St. Paul, Minnesota. The proceedings from that celebration will be published in our spring, 2009 issue. For further information about the anniversary symposium and celebration, see our website,

http://law.hamline.edu/law/jlr. If you are unable to join us in person, we welcome your reflections both on the twenty-five years past, and on the role of the *Journal* in continuing this conversation in the future.

Marie A. Failinger, Editor