EDITOR'S PREFACE

It is fitting, perhaps, in a year in which we celebrate the 60th anniversary of one of the most remarked Supreme Court Establishment Clause cases in history—the *Everson* decision—that politicians are still engaged in a tug-of-war about what it means to be a nation that does not officially recognize an established creed, yet continues to be home to hundreds of robust religions. As I write this, law and religion scholars are emailing back and forth about the significance of U.S. House Resolution 847 "recognizing the importance of Christmas and the Christian faith," passed on December 10, 2007, by a vote of 372 to 9 (with 50 not voting.) One wondered whether it says anything about how far we have come since *Everson* that the House has added to its traditional recognition of Christmas, Chanukah and Kwanzaa a similar October 2 resolution recognizing the Muslim faith at Ramadan. (Again, the resolution passed by a lopsided margin of 376 to 0, though 42 abstained.)

Both the Christmas and Ramadan resolutions acknowledge each of these religions as "one of the great religions of the world" and take pains to enumerate the large number of adherents worldwide (2 billion Christians and 1.5 billion Muslims), though it is not clear if they want to imply that the status of a "great religion" is dependent on its numbers. It is perhaps telling, however, that the language of these resolutions inadvertently recognizes the relative status of Islam and Christianity in Congress. The Ramadan resolution expresses "solidarity with and support for" Muslims in the U.S. and throughout the world, borrowing language associated with embattled minorities. The Christmas resolution, while also rejecting bigotry and persecution against Christians in the U.S. and abroad, goes further to "acknowledge[] and support[] the role played by Christians and Christianity in the founding of the United States and in the formation of the western civilization."

Our opening articles in this issue of the Journal similarly recognize this continuing debate over the role of religion in the U.S. Carl Esbeck reviews the history of religion and state before *Everson*, describing how disestablishment played out and the historical role of religious "voluntaryism" in shaping religion-state relations. He hails *Everson* as a true "novation" in constitutional law, because through it, "[f]or the first time in the nation's history, the daily, retail-level interactions between

church and state were now a matter of federal constitutional law and thereby subject to federal judicial review." Surveying the post-*Everson* landscape, Esbeck argues that *Everson* has brought more good than ill for religious freedom in the U.S.

David Gushee turns our attention to the political implications of a nation roiled by but not governed by religion. As a witness to shifts in the political involvement of evangelicals in this country, he explores what it means that evangelical votes are currently "up for grabs" and that evangelicals are at the heart of the broader "culture wars" debate "tearing our country apart." He calls upon Christians to consider what it would mean for politics if they rejected the idea of America as a Christian nation and instead, in full recognition that Christ, not politics, redeems the world, lived as if "[t]he church is called to 'seek the peace and prosperity of the city' in which it dwells."

David Cobin and Earl Schwartz offer an interesting historical parallel in the sermons of Sabato Morais, a Portuguese-Italian immigrant who became rabbi of the Spanish and Portuguese Mikveh Israel congregation in Philadelphia in the early nineteenth century. Morais became a leading voice among Jewish rabbis against slavery; and this painstaking translation of his politically charged sermons from the almost-dead vernacular of Pittman shorthand is destined to become important original source material on the role of Jewish rabbis and intellectuals in religious anti-slavery discourse around the Civil War.

Turning from institutions to ideas, the value of religion as a source of wisdom for modern legal problems is much in evidence in work we publish from a comparative Jewish and American law program presented at the American Association of Law Schools in January, 2007. (The second part of this Jewish law symposium will be published in our spring 2008 issue.) The chair of that program, Samuel Levine, whom we have to thank for arranging this publication, introduces the symposium and the value of such comparative approaches. Adam Chodorow's careful reading of ancient Biblical taxation systems for their contribution to shaping today's progressive tax structures demonstrates the substantial, diverse historical wisdom that Jewish law offers today—as the next issue's articles on consumer warranties and oppressive contracts will show.

At a theological level, Chaim Saiman's contribution to the AALS symposium, recognizes the spate of recent writing on Christian views of law and probes a lingering question in light of the claimed anti-nomian legacy of the Reformation—whether Christian thought indeed has anything to say about law. Saiman suggests that history has witnessed

the successful "de-legalization of the Christian religious consciousness." He suggests that a Talmudic reading of the Gospels will yield a comprehensible legal theory for Jesus and his followers that can be brought to bear on contemporary questions. Kent Greenawalt carefully dissects the question whether Christian and Jewish approaches to law may resemble the standards vs. rules interpretive debate in secular American law, and whether Protestant views of moral obligation tell us anything about how secular law should be interpreted. David Skeel tests what Jesus, in his encounters with the Pharisees, meant by law; and similarly asks whether "Jesus' expansive interpretation of the law of Moses" has something to say about Christian views of the limits of secular moral legislation.

In an issue partly devoted to comparative Jewish and American law, it is only fitting that Amihai Radzyner would help us think about even the question of legal comparison by offering a glimpse into early twentieth-century Jewish law debates between modernists who attempted to show how Jewish law had historically been influenced by, and was available for, borrowing into secular legal systems, and their rabbinical opponents. The rabbis claimed that, given the divinely inspired origin of the law of the Jewish people, any claim that the law of the new Jewish State of Israel should be borrowed from non-Jewish secular systems was unthinkable.

We witness a modern version of this dilemma of incorporation in Indonesia, where Islamic law has increasingly influenced the shape of modern commercial law. Alfitri notes the debate about whether the Jakarta Charter, specifying the role of Islamic law in Indonesian secular law, needs to be concretized through secular legislation that recognizes the role of Islamic law in Islamic religious court disputes on contracts and property law.

Similarly, in the Ukraine, the transition from Soviet to Western legal systems has raised powerful questions about capitalist property structures that "create and maintain vast inequalities in the distribution and holding of wealth." Paul Babie introduces a little known Christian voice on this question, the prophetic voice of Metropolitan Andrei Sheptyts'kyi, the leader of the Ukrainian Greek-Catholic Church from 1901 to 1944. In comparing Metropolitan Sheptyts'kyi's voice to contemporary legal-political "private property as social relations" theorists, Babie argues that Christian moral thought and secular communitarian thought have much in common on the shape of the institution of private property.

In the spirit of re-thinking the common wisdom, Glen Bowman offers a limited rebuttal to our recently published work by David Van Drunen, *The Use of Natural Law in Early Calvinist Resistance Theory*, which probes the sixteenth-century resistance theorists John Knox, Christopher Goodman, John Ponet, Theodore Beza, Francois Hotman, and the writer of *Vindiciae contra Tyrannos*. Bowman argues that, at least, the English bishop John Ponet's theological views mark him more as a Reformed theologian than a strict follower of Calvin, and that this distinction may be important generally in considering the influence of the Reformed movement on political theory of that time.

Finally, we are pleased to offer book reviews on a number of recently published texts covering everything from Buddhist influences on politics and culture to medieval church law, the headscarf debate in France, and the unfolding tradition of Jewish law. Leslie Griffin has introduced an important new format, in her multi-book review of new volumes on religion and politics over the past three years, a challenge that we hope our other reviewers will take up.

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