

## EDITOR'S PREFACE

*Time* magazine explained its decision to name “the protester” the Person of the Year in December 2011 as follows: “‘Massive and effective street protest’” was a global oxymoron until—suddenly, shockingly—starting exactly a year ago, it became the defining trope of our times. And the protester once again became a maker of history.”<sup>1</sup> And yet, the protest, the dissent, the lone figure standing up to legal and political power has been a feature of religious narratives and theological controversy since the first recordings of sacred texts.

A thread that links this issue’s articles, otherwise located in such disparate times and places, is the theme of dissent, of protest of the status quo. Mark Chinen’s article, *Crumbs from the Table: The Syrophoenician Woman and International Law*, begins with the story of a woman who takes issue with Jesus’ reply to her plea for help with her daughter’s evil spirits, “it is not right to take the children’s bread and toss it to their dogs.” Chinen argues that her reply to this apparently insulting remark, “Yes, Lord, but even the dogs under the table eat the children’s crumbs,” begins as a critique of unjust social and economic structures where some are granted places at the table and others are not, but ends with the possibility of reconciliation even in such a world. His article probes the work of several theorists who have criticized the inability of international law to provide true justice for all, then turns to theologian Miroslav Volf’s proposal that reconciliation requires self-sacrificial embrace of the other as a metaphor capable of transforming international legal theory.

Daphna Hacker’s study of the Israeli rabbinical courts considers institutionalized dissent, where religious minorities have opted out of national court systems because their values and practices do not mirror those of the religion. She aims to discover how the debate about multiculturalism and the rights of religious communities to choose potentially divergent dispute resolution jurisdiction works out in practice. Studying the processes and rulings of the rabbinical courts, Hacker concludes that religious court systems change their practices in dynamic relationship to national secular courts, depending on how

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1. Kurt Andersen, *The Protester*, TIME, Dec. 14, 2011, at 53-89, [http://www.time.com/time/specials/packages/article/0,28804,2101745\\_2102132\\_2102373,00.html](http://www.time.com/time/specials/packages/article/0,28804,2101745_2102132_2102373,00.html).

flexible that religion has been on the subject matter of the dispute, the cultural background of the religious judges, and the degree of authority that the religious tribunal can exercise over the dispute.

Lucas Volkman's article brings to light a little-known historical controversy, perhaps repeated throughout the pre-Civil War South, about who should ultimately hold title to the Missouri Methodist Episcopal church of an African American congregation when some Christian churches split into northern and southern denominations in the debate over slavery. He chronicles the valiant attempt made by African American congregants to hold on to their own house of worship and their affiliation with the anti-slavery branch of their church body against the southern-affiliated White contingent of that church, who used law to retain their property and their power.

Steven Wedgworth's article, *The Two Sons of Oil*, tells the story of two Covenanter Presbyterians, Samuel Brown Wylie and William Findley, who fought over whether the American Constitution was compatible with Christian principles. Their debate highlights two of the most critical themes in the history of debate over civil protest and religious disobedience to the state: what is the relationship between natural law/natural rights, religious freedom and the proper demands of the state? To what extent can a dissenting body, such as the Covenanters, reject the basic themes and arrangements of a secular constitution before they become outsiders to that nation's polity, dissenters who cannot be tolerated?

A number of the books reviewed in this issue echo related themes, for example, Kamari Clarke's study of the International Criminal Court as it encounters legal pluralism in sub-Saharan Africa, editor David Gushee's reader on dissent over U.S. practices regarding torture and terrorists, and Paula Abrams's story of the struggle of parochial schools to maintain a place in American K-12 education. We also offer Jeffrey Shulman's review of three new books on the Framers' views of the Religion Clauses; he wryly notes that despite "the opacity of the historical record, the variety of viewpoints held by founders . . . the humanness of founders who did not always practice what they preached, even the basic indeterminacy of language . . . we are seduced by the siren song of interpretive certainty." Reviews of books by John Witte on the Western tradition of law and religion, Islamic family law, clergy abuse in the Catholic Church, religious influence on the American Constitution, and Howard Lesnick's thoughtful reader, *Religion in Legal Thought and Practice* round out this issue. We hope these offerings will

lead you to further reflection on the place of the protester in the life of religion and of law.

Marie A. Failinger, Editor