

Introduction to the 2010 Editors' Symposium: *Freedom of Conscience: Stranger in a Secular Land*

LARRY ALEXANDER*
STEVEN D. SMITH**

The outstanding collection of articles and comments thereon that follows this Introduction constitutes the 2010 Editors' Symposium of the *San Diego Law Review*. The Editors' Symposium, an annual event, began with the 2004 Symposium, *What Is Legal Interpretation?*, which appeared in these pages in Volume 42.¹ It was followed in 2005 by the Symposium, *The Meaning of Marriage*;² in 2006 by the Symposium, *The Rights and Wrongs of Discrimination*;³ in 2007 by the Symposium, *Informational Privacy: Philosophical Foundations and Legal Implications*;⁴ in 2008 by the Symposium, *National Borders and Immigration*;⁵ and in 2009 by the Symposium, *Isaiah Berlin, Value Pluralism, and the Law*.⁶ All seven

* Warren Distinguished Professor of Law, University of San Diego School of Law.

** Warren Distinguished Professor of Law, University of San Diego School of Law.

1. Symposium, *What Is Legal Interpretation?*, 42 SAN DIEGO L. REV. 461 (2005).

2. Symposium, *The Meaning of Marriage*, 42 SAN DIEGO L. REV. 821 (2005).

3. Symposium, *The Rights and Wrongs of Discrimination*, 43 SAN DIEGO L. REV. 733 (2006).

4. Symposium, *Informational Privacy: Philosophical Foundations and Legal Implications*, 44 SAN DIEGO L. REV. 695 (2007).

5. Symposium, *National Borders and Immigration*, 45 SAN DIEGO L. REV. 863 (2008).

6. Symposium, *Isaiah Berlin, Value Pluralism, and the Law*, 46 SAN DIEGO L. REV. 753 (2009).

symposia were organized by the Institute for Law and Philosophy at the University of San Diego School of Law, and all consisted of papers and comments presented at the School of Law. The 2011 Editors' Symposium, *The Morality of Preventive Restriction of Liberty*, will take place in April 2011, with subsequent publication of its papers in Volume 48 of the *San Diego Law Review*.

Although "freedom of conscience" has been one of the long-standing and central commitments of liberal constitutionalism, the commitment arose in a world in which religious assumptions figured prominently in the framework or worldview within which political issues involving religion and conscience were understood and debated. Conscience was commonly understood to be a religious faculty, and "freedom of conscience" was presented and understood in religious terms. Today, by contrast, such matters are typically considered within a more secular framework. Marie Failinger suggests that freedom of conscience "began as an argument that government must ensure a free response by the individual called distinctively by the Divine within" but by now "has come to mean very little beyond the notion of personal existential decision-making."⁷

This change in frameworks and conceptions raises questions. What *is* conscience? Does the term have any useful content today? Can freedom of conscience—whatever it is—be adequately justified on secular assumptions? Several scholars recently have doubted that it can be. Is Noah Feldman correct that the once central constitutional commitment to freedom of conscience has to a significant degree been replaced by a commitment to equality?⁸ And if so, is this development to be applauded or regretted?

Such questions are the subject of this Symposium, which considers the meaning, importance, and viability of the venerable commitment to freedom of conscience.

In seeking to make an annual Editors' Symposium a reality, the Institute and the *San Diego Law Review* have worked to build a permanent endowment sufficient to finance it. To that end, we have solicited—and shall continue to solicit—donations from all former editors of the *San Diego Law Review*. Those who have contributed to date are listed at the beginning of the issue. We are very, very grateful for your generosity and hope this product vindicates our seeking your support. Thank you.

7. Marie A. Failinger, *Wondering After Babel: Power, Freedom and Ideology in U.S. Supreme Court Interpretations of the Religion Clauses*, in *LAW AND RELIGION* 81, 93–94 (Rex J. Ahdar ed., 2000).

8. Noah Feldman, *From Liberty to Equality: The Transformation of the Establishment Clause*, 90 *CALIF. L. REV.* 673 (2002).