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Foreword

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FOREWORD

Thomas Wm. Mayo*

It is an honor to offer an introduction to this first curated collection of articles for the SMU Law Review Association’s new online journal, the *SMU Law Review Forum*. I want first to comment briefly on the articles and authors in this Collection and then place the path on which the *Forum* is embarked in context.

For this Collection, the editors of the *Forum* reached out to thought leaders across ten fields of legal scholarship and practice with a request that was in equal parts challenging and significant. The invitation letter to authors emphasized: “With 2020 on the horizon, we want legal experts with specializations in different societal areas to reflect on the last decade of developments in their fields and to contemplate what the future may hold.” The response to this challenge by the authors represented in this Collection was gratifying, to say the least.

No collection is likely to address every possible topic, but a truly excellent collection will strive to offer a broadly representative sample of scholarship that illustrates where legal developments have brought us and the work that is still left to do. This is what the editors of this *Forum* Collection set out to do and is precisely what the authors have accomplished brilliantly.

The scope of the articles in this Collection is really quite amazing. Consider this list: reforming criminal justice and election law, reconceptualizing disability rights, invigorating notions of social justice with a deeper and broader understanding of “equality,” restoring traditional understandings of the Constitution’s Religion Clauses, expanding our understanding of “identity” to promote equality, attacking the racist structure of immigration laws, recognizing due process rights for military veterans, improving child welfare norms by reforming foster care, and redressing the invisibility and marginalization of indigenous peoples in the United States.

The articles in this Collection represent more than a splendid coming together of moral imagination and legal scholarship. Consider two examples of authors in

* Altshuler Distinguished Teaching Professor and Professor of Law, SMU Dedman School of Law; Faculty Advisor, SMU Law Review Association. I wish particularly to recognize the vision and energy brought to this Collection by the *Forum*’s Executive Editor, Griffin Rubin. His hard work (along with that of SMU Law Review Association President Emily Rhine) has established a foundation from which future editions—and future curated collections—of the *Forum* will undoubtedly flourish.

this Collection whose lived experiences shape their wellspring of inspiration and conviction and inform the passion that drives their analyses. In addition to teaching numerous courses on the intersection of indigenous people and the law and founding the Southwest Indian Law Clinic at the University of New Mexico School of Law, Professor Christine Zuni Cruz is also a member of Isleta Pueblo and has served in various tribal and inter-tribal governmental roles.¹ Another example is Professor James Binnall, whose research focus includes “the civic marginalization of former offenders [and] parole and post-release restrictions.”² This focus can be seen in his article on the widespread denial of convicted felons’ right to vote and reflects Professor Binnall’s experience as a “(self-described) convicted felon.”³

The context for this Collection, and indeed for the emergence of the *SMU Law Review Forum* in the first place, requires a bit of history. We are not the first law review to add a digital journal dedicated to the online publication of scholarship in articles that are typically shorter and more timely than the usual lead articles in traditional print journals. A sufficient number of journals have started down this path that this form can confidently be called a trend. Considering the blistering, long-standing, and continuing criticism of traditional law review writing, however, perhaps a word of justification for our entry into this trend is in order.

Criticisms of law review writing surely did not start with Yale Law professor Fred Rodell, but his 1936 article on the subject is arguably the most well-known and oft-cited.⁴ Acknowledged as something of a curmudgeon even by his admirers,⁵ Rodell’s indictment was as fierce as it was concise and as witty as it was comprehensive: “There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground.”⁶ In the remainder of his self-described “bleat,” Rodell laid out his bill of particulars: “the antediluvian or mock-heroic style in which most law review material is written,”⁷

1. Christine Zuni Cruz, *School of Law Faculty Profile*, UNIV. OF N.M., <http://lawschool.unm.edu/faculty/zuni-cruz/index.html> [https://perma.cc/BMU9-MKR5]; see *About Us*, ISLETA PUEBLO, <https://www.isletapueblo.com/about-us/> [https://perma.cc/DRA2-C9DG] (last visited Apr. 21, 2020).

2. James M. Binnall, *School of Criminology, Criminal Justice & Emergency Management Faculty Profile*, CAL. STATE UNIV., LONG BEACH, <https://www.csulb.edu/criminology-criminal-justice-and-emergency-management/page/james-m-binnall> [https://perma.cc/892V-E5XA].

3. James M. Binnall, *A “Meaningful” Seat at the Table: Contemplating Our Ongoing Struggle to Access Democracy*, 73 SMU L. REV. F. 35, 35 (2020).

4. See Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936) [hereinafter Rodell, *Goodbye*]. Rodell’s “good-bye” was not entirely successful, as he continued to write for the journals, although (as he pointed out) most of his essays were comparatively brief encomiums for colleagues and friends upon their retirement or death. See Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279, 287 (1962) [hereinafter Rodell, *Goodbye Revisited*]. The law review articles Rodell wrote after penning *Goodbye to Law Reviews* are collected in Harry T. Edwards, *Another Look at Professor Rodell’s Goodbye to Law Reviews*, 100 VA. L. REV. 1483, 1486 n.11 (2014).

5. See Obituary, *Fred Rodell of Yale, Expert on Constitutional Law*, N.Y. TIMES, June 6, 1980, at D15; see, e.g., Charles Alan Wright, *Goodbye to Fred Rodell*, 89 YALE L.J. 1455, 1461 (1980) (agreeing with the *New York Times*’s obituarist’s assessment of Rodell as “crusty, sardonic, and irreverent”).

6. Rodell, *Goodbye*, *supra* note 4, at 38. Rodell later wrote that the true target of his ire was not so much substance as style—“the nonsensical, noxious notion that a piece of work is more scholarly if polysyllabically enunciated than if put in short words. I mean the utilization of ‘utilization’—ugh—instead of the plain and simple use of ‘use.’” Rodell, *Goodbye Revisited*, *supra* note 4, at 287.

7. Rodell, *Goodbye*, *supra* note 4, at 38.

“nothing may be said forcefully and nothing may be said amusingly,”⁸ “[l]ong sentences, awkward constructions, and fuzzy-wuzzy words,”⁹ and “[t]hen there is this business of footnotes, the flaunted Phi Beta Kappa keys of legal writing.”¹⁰

Professor Rodell’s point was valid, of course, and his prediction that his “bleat” would change nothing¹¹ has proved to be at least partially true. There is still a lot of law review writing that would be improved by his critique. And yet, in the same article, Rodell expressed a wish for academic lawyers and others who publish in law reviews, a wish that serves well as a mission statement for this Collection (and, I hope, for the *Forum* going forward):

I do not wish to labor the point but perhaps it had best be stated once in dead earnest. With law as the only alternative to force as a means of solving the myriad problems of the world, it seems to me that the articulate among the clan of lawyers might, in their writings, be more pointedly aware of those problems, might recognize that the use of law to help toward their solution is the only excuse for the law’s existence¹²

This is the high calling of the law review author at his or her best, and of the editors who plan, shape, scheme, and toil over this scholarly institution that has been parodied¹³ and reviled¹⁴ but remains resilient and—as this Collection so well illustrates—vibrant and progressive (in both senses). In that spirit, congratulations to all who have contributed to this issue of the *SMU Law Review Forum*. May they and the *Forum* go forth and prosper.

8. *Id.*

9. *Id.* at 39.

10. *Id.* at 40.

11. *See id.* at 38.

12. *Id.* at 43.

13. *See, e.g.,* Aside, *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975).

14. *See, e.g.,* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992) (“[I]t is my impression that judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the academy.”). Judge Edwards’s sweeping critique of legal education and legal scholarship is broad enough to include the law reviews that publish legal scholarship.