

# Introduction to the 2011 Editors' Symposium: *The Morality of Preventive Restriction of Liberty*

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The outstanding collection of articles following this Introduction constitutes the 2011 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.<sup>1</sup> It was followed in 2005 by the Symposium *The Meaning of Marriage*;<sup>2</sup> in 2006 by the Symposium *The Rights and Wrongs of Discrimination*;<sup>3</sup> in 2007 by the Symposium *Informational Privacy: Philosophical Foundations and Legal Implications*;<sup>4</sup> in 2008 by the Symposium *National Borders and Immigration*;<sup>5</sup> in 2009 by the Symposium *Isaiah Berlin, Value Pluralism, and the Law*;<sup>6</sup> and in 2010 by the Symposium

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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).

*Freedom of Conscience: Stranger in a Secular Land.*<sup>7</sup> All eight 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 2012 Editors' Symposium, *The Philosophical Foundations of Intellectual Property*, will take place in April 2012, with subsequent publication of its papers in Volume 49 of the *San Diego Law Review*.

Restricting the liberty of persons who can be held morally and legally responsible for their conduct on the ground that they might abuse that liberty and commit criminal acts is both suspect and ubiquitous. Laws that restrict the ownership of guns, explosives, and other materials out of fear that those materials will be put to illegal uses are examples of such restrictions. So, too, are restraining orders, no contact orders, and the like. Laws restricting the residency of sex offenders are another example, as are laws permitting increased incarceration on the basis of predictions of dangerousness. Detention of suspected terrorists falls into this category, of course. So, too, do the doctrines of self-defense and defense of others, which are always preemptive of a feared future attack, as is a defensive preemptive military strike. And it may be the case that various inchoate crimes, such as conspiracy, are less examples of culpable acts than examples of acts that bespeak future danger, so that their "punishment" is really preventive rather than retributive. Finally, if any of these preemptive restrictions are in principle justifiable, what probabilities must be assigned to the feared conduct, and if that conduct occurs, to the feared harm, to justify the preemptive restrictions? This is an undertheorized and largely unaddressed issue in the extant literature.

This is the topic that a distinguished group of scholars discuss and debate in the pages that follow. The importance of the topic and their contributions to it cannot be overstated.

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.

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7. Symposium, *Freedom of Conscience: Stranger in a Secular Land*, 47 SAN DIEGO L. REV. 899 (2010).