

Introduction to the 2006 Editors' Symposium: *The Rights and Wrongs of Discrimination*

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The outstanding collection of articles and comments thereon that follows this Introduction constitute the 2006 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, No. 2.¹ It was followed in 2005 by the Symposium *The Meaning of Marriage* in Volume 42, No. 3.² All three 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 2007 Editors' Symposium *Informational Privacy: Philosophical Foundations and Legal Implications* will take place in April 2007, with subsequent publication of its papers in Volume 44 of the Law Review.

In 1992 I published an article in the *University of Pennsylvania Law Review* entitled *What Makes Wrongful Discrimination Wrong?*³ The premise of the article was that although we know that certain paradigm instances of discrimination are, indeed, wrong, we do not have a clear idea of *why* they are wrong. Moreover, that lack of clarity regarding the paradigm cases results in uncertainty about the multitude of non-paradigm cases: so-called rational (statistical) discrimination; qualifications

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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. Larry Alexander, *What Makes Wrongful Discrimination Wrong?*, 141 U. PA. L. REV. 149 (1992).

that produce a “disparate impact”; gender-plus discrimination; trait discrimination; gender-segregated athletic teams; and so on. Moreover, the failure to identify the rationale of the paradigm cases means that we do not know if discrimination by *employees* against *employers*, or by *consumers* against *sellers*, are equally as wrongful as that by employers or sellers.

More than a decade later, it remained unclear regarding just when and why discrimination was wrong. The Institute for Law and Philosophy decided that it was time to convene a number of the best minds, both nationally and internationally, to tackle the problem, first in writing, then in discussion, and finally in rewriting. What you find in the following pages are the results of that endeavor. I believe you will be impressed, as I am, by the depth and clarity of the analyses and will come away with a keen appreciation of the competing arguments that bear on the rights and wrongs of discrimination.

In seeking to make an annual Editors’ Symposium a reality, the Institute and the 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 Law Review. Those who have contributed to date are listed at the beginning of this issue. We are very, very grateful for your generosity and hope this product vindicates our seeking your support. Thank you.