

Foreword

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Fifty years young, the University of San Diego School of Law faculty is among the best in the United States. A recent survey of many prominent law professors ensure that you need not only take my word for this.¹ But rankings are, alas, fleeting, so I hope the reader will put stock in what he or she might observe by a close review of the hard work of the forty or so law teachers who make up our full-time faculty. Only our law students and alums can testify, of course, to the ample skills of our faculty in the classroom. Yet, the wonderful phenomenon of published work in law journals including this one (about which I will have some more to say later in this introduction), not to mention the ever-growing access to the marketplace of ideas provided by electronic media, ensure that the scholarly work of our faculty can be read and appreciated by one and all. As legal scholars, we are in the idea business. And the development and refinement of our ideas in the activity of legal scholarship is a key aspect of our jobs as faculty members. On behalf of our faculty, and also as someone who has long

* Dean and Professor of Law, University of San Diego School of Law. As dean, I follow in the footsteps of many outstanding law school deans dating from the law school's founding in 1954, deans who are much more directly responsible than I for the formation and nurturing of a law faculty whose productivity, creativity, and energy as law teachers and legal scholars is remarkable. I am pleased to honor their service. I am equally pleased to honor the service of the many faculty members who have left our law school. In just the last few years, we have lost some of our most memorable colleagues. To the memory of Darrell Bratton, Michael Navin, Paul Wohlmuth, Donald Weckstein, and other great USD faculty and staff whose passing in recent years saddened us at USD and throughout the legal academy, we dedicate this volume.

1. See Brian Leiter, *Ranking of Law Faculty Quality for 2003–04*, at <http://www.utexas.edu/law/faculty/bleiter/rankings/rankings03.html> (2003).

enjoyed the published work of the USD faculty as a member of the larger academic community, I take my hat off to a job well done.

Academic freedom and a correlative value, academic pluralism, means that a faculty of a law school can more or less pursue their subjects and their ideas in the way they wish. No dean purports to regulate seriously the topics about which energetic faculty members write; nor is there a sensible way to organize the work of a diverse group of highly motivated and well-trained intellectuals so that the faculty of a law school becomes known from One Great Idea or even for one cohesive line of analysis. True, the history of legal education records law faculties who, at a point of time, were well known for a grand theory or, at least, a distinctive approach to understanding law and legal institutions. The University of Chicago's contribution to law and economics immediately comes to mind; in an earlier era, the University of Wisconsin's contribution to the Law and Society movement does as well. And the Critical Legal Studies movement's association with two great law schools, Harvard and Stanford, is another notable example of a law faculty associated broadly with an analytic approach, perhaps even a point of view.

Yet, these handful of instances of a discernible "school of thought" associated with a law faculty of a certain era are exceptional; indeed, even where a faculty was tagged with a distinctive identity, there were many faculty members at these law schools who would understandably recoil from the insistence that they must be writing in that school's "tradition." Law faculties are pluralistic, and proudly so. Their contributions to the marketplace of ideas as a faculty are measured properly by their work in all its diversity.

This is by way of a qualification for what I want to say about the University of San Diego law faculty, a faculty whose diversity is well illustrated in this volume. Our law faculty has made enormous contributions to many areas, but I believe that our 50th anniversary gives reason for reflection upon some particularly important contributions to the scholarly community. We are, and rightly ought to be, known for major contributions to academic debates in at least the following areas: legal theory, constitutionally theory and history, and law and economy.

I. LEGAL THEORY

Legal education is organized around a resolutely professional mission, namely, the training of prospective lawyers. Curriculum and pedagogy reflect the essentially professional function of the modern American law school. At the same time, law schools whose faculty are engaged significantly in the production and dissemination of legal scholarship have long understood that this training mission is consistent with—and

perhaps even requires—a sustained exposure to the foundational questions of legal theory. These questions are vast, of course. Legal theory encompasses questions about the nature of law, the proper approach to interpreting legal texts, critical scrutiny of judicial decisionmaking, the structure of legal discourse, and many other questions. Some of this work is internally focused, concerning the big issues of jurisprudence; other work is conspicuously interdisciplinary, endeavoring to apply the insights of modern analytic philosophy to legal puzzles.

For the past two decades or so, USD has contributed importantly to debates about and within the broad parameters of legal theory. Through hosted conferences and symposia, the publication of a journal on law and philosophy, through scores of books and articles on legal theory, and, most recently, by the good work of the Institute on Law and Philosophy, USD has earned its reputation as one of the most fertile homes for the rigorous thinking about the really big questions of legal theory.

II. CONSTITUTIONAL THEORY AND HISTORY

The study of the American constitution has advanced considerably in sophistication and scope within the past quarter century. One key element in this scholarly renaissance has been the conspicuous attention paid by many leading constitutional scholars to American constitutional history. Many scholars of all political stripes have considered carefully the origins of American constitutionalism in order to shape thinking about contemporary controversies, including federalism, separation of powers, religious liberty, criminal justice, and other key issues of political and legal dispute.

The burst of interest in originalism has fundamentally altered the way constitutional law scholarship is conducted. Today, historical considerations broadly conceived are central to the enterprise to an extent not witnessed since the origins of constitutional scholarship. Through a plethora of books and articles, many University of San Diego law faculty have contributed usefully to these raging debates. Indeed, our law school is now well known as a place where originalist constitutional scholarship is rampant and important. Relatedly, though not at all coincidentally, serious critics of this approach also enjoy the dialogue engendered by a faculty in which leading originalist voices form a critical mass and in which ideas across the political spectrum are welcomed, chewed over, and ultimately refined.

III. LAW AND THE ECONOMY

The extraordinary range of scholarship in recent years focusing on the role of law in the configuration, regulation, and performance of the economic market is one of the single most impressive characteristics of modern legal scholarship. Fifty years from now, this phenomenon, along with the great attention paid to the rapid globalization of law and legal institutions, will be seen as perhaps the main contribution of the scholarly period from the 1990s to the present. Surely one reason for this explosion of interest is the growth of new technologies and its fundamental impact on the economy and on legal strategies and innovation. Another reason, though, is what I would call the maturation of interdisciplinary scholarship, and particularly economic analysis in its various forms, including the contributions of behavioral economics, socioeconomics, and positive political economy. Moreover, there is a wealth of new scholarship applying cutting edge insights from the social sciences and the humanities to areas that, say, twenty years ago would not have been regarded by most as appropriate subjects for such types of analysis. An incomplete list of such subjects would include family law, administrative law, tax law, and constitutional law.

Interdisciplinary scholarship is more sophisticated, more self-critical, and more plentiful than ever before, and the sustained contributions of leading law faculties to both perennial and new debates makes this an extraordinarily exciting time to be an active legal scholar. And it is an exciting time to be a faculty member at the University of San Diego School of Law.

Our law faculty energetically participate in important debates over the role, performance, and limits of legal institutions in the market. Viewed as a large, diverse whole, our faculty is hard at work thinking and writing about major questions involving economic activity, the consequences of modern industrial organization on social needs and interests, the content and impact of legal rules, and the advantages and disadvantages of certain institutional arrangements. Much of this scholarship is interdisciplinary in the best sense; other scholarship is in the tradition of careful, rigorous doctrinal analysis. Contributing to these major debates and advancing ideas through published work is a calling; lawyers, lawmakers, and legal scholars invested in the outcome of these debates are the beneficiaries of these great efforts.

This special issue of the *San Diego Law Review* commemorates not only the 50th anniversary of the School of Law but, as well, the 40th

anniversary of the *Law Review*. This law journal has provided a wonderful venue for important legal articles, articles written by USD law faculty, legal scholars from around the world, and by important lawyers and judges. Moreover, the *Law Review* has published comments by many distinguished San Diego law students. This experience of creating legal scholarship, along with the valuable training provided by the *Law Review*'s editorial process, represents a key contribution of this prestigious journal. In forty short years, the *San Diego Law Review* has joined the ranks of the nation's leading law journals. The law faculty joins with the hundreds of the *Review*'s alumni in celebrating the anniversary of this journal.

