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Foreword

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FOREWORD

In this issue we commence our volume long salute to the new architecture of Loyola Law School. The series of five buildings designed by renowned post-modernist architect Frank O. Gehry has not only increased the size of our campus by four times, it has also enhanced the academic and intellectual vitality of the Loyola community. In order to project this new vitality to the outside world, we will present a photograph of a different angle of the campus in each of the four issues that comprise Volume 19. These pictures will be accompanied by a short explanation by architect Gehry and, in this issue, by a "Tribute to the New Architecture" authored by Loyola Associate Professor and Chairman of the Art Committee, Robert Benson.

As our lead Article in this issue, we are pleased to present "Three Fallacies of Contemporary Jurisprudence" by Frank Alexander, Assistant Professor at Emory University School of Law. Professor Alexander's thoughtful Article asserts that an appreciation of the moral issues arising out of the pre-Enlightenment theological controversies of Arminianism and Socinianism offers new insights about the limitations of and possibilities for contemporary jurisprudence.

Whereas Professor Alexander perceives the religious foundations of law as a source of legal authority and analysis, our second Article presents a telling and diametrically opposed perspective. Economists Walter Block and David Gordon present a thought-provoking case for the legalization of blackmail (though not extortion) that expressly contradicts what they consider to be their *irrelevant* moral and ethical reservations. In "Blackmail, Extortion and Free Speech," Mr. Block and Mr. Gordon set forth their thesis and then critique objections to legalizing blackmail offered by Professor (now Judge) Richard Posner, and Professors Richard Epstein, Robert Nozick and James Lindgren.

In addition, we are honored to reprint a recent address given by Associate Justice William J. Brennan, Jr. at the American Bar Association's rededication of the Magna Carta Memorial at Runnymede, England, 770 years after the signing of that historic document.

Our six student Notes and Comments offer a varied and interesting array of topics which align into three general groupings. The first group includes two Comments which concern privacy issues that relate to human existence. One Comment discusses the legal difficulties of removing life support medical equipment from comatose patients who have not executed living wills. The other Comment proposes legislation based on the framework of *Roe v. Wade* which balances the state's interest in the potential life of an ovum, fertilized and frozen in a petri dish, with the privacy interest of a woman to determine the fate of her "frozen em-

bryo.” It is interesting that Professor Alexander touches upon similar privacy issues when he uses pregnancy contracts in his lead article as an example of what he views as the failure of contemporary jurisprudence to incorporate the basic moral and theological questions which he maintains lie at the foundation of all law.

Next, in the second group, two student written Notes initially criticize two 1984 United States Supreme Court decisions, and then offer alternative analyses. The first such Note critiques *Lynch v. Donnelly*—which allowed the City of Pawtucket, Rhode Island to erect a nativity scene on privately owned park land during the winter holiday season—and maintains that the *Lemon* test no longer sufficiently resolves disputes arising under the establishment clause. As a replacement, the author suggests that the establishment clause cases could be resolved more consistently under a categorization methodology similar to that currently employed in equal protection clause analysis.

The second Note critiquing the United States Supreme Court involves *Grove City College v. Bell*, where the Court narrowly construed Title IX to require that only the financial aid department of a private university need comply with the anti-sex discrimination requirements of Title IX of the Education Amendment of 1972 when students attending that university receive federally supported financial aid. In response, the author proffers new federal legislation that would apply Title IX to an entire educational institution in such a situation while at the same time protecting against inappropriate federal civil rights jurisdiction.

Finally, in the third group, two other student Notes focus on cases concerning more functional areas of law. In a property issue context, the first such Note analyzes the recent California Supreme Court case of *Warsaw v. Chicago Metallic Ceilings, Inc.*, where the acquirer of a prescriptive easement was relieved of the duty to compensate the underlying property owner for use of the easement. This Note recommends an amendment to California Civil Code section 1007 which would require the court to order the payment of compensation to the party dispossessed upon “the acquisition of proscriptive title.”

And, in a taxation context, the last Note criticizes the United States Supreme Court’s decision of *Commissioner v. Engle*, where the Court revives the allowance of percentage depletion on advance royalty and lease receipts arising from nonproducing oil and gas leases. This Note maintains that Congress intended to repeal this depletion deduction with the addition of section 613A to the Internal Revenue Code in the Tax Reduction Act of 1975, and that the Court’s reinstatement of this deduction constitutes excessive judicial activism.

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