WOE UNTO YOU, LAW REVIEWS!*

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I am about to be a disappointment to my audience. Though honored by the invitation to be a scholar-in-residence at such a fine educational institution as the University of Arizona College of Law and to address the annual *Law Review* banquet, I find myself unable to deliver a speech or essay on the importance of law reviews to the development of a socially worthwhile system of "law." Illadvisedly, if not mistakenly, the College and *Review* have invited a traitor into their midst. I am in fact one of the most dangerous breed of traitors to the "inner republic of the bench and bar": a legal realist.

Those persons who have any knowledge of the history of the legal realist movement earlier in this century will recognize the title of this essay as being stolen from the titles of two different works of the late Professor Fred Rodell who, though I never met him, is my hero in the saga of law professor service, or lack thereof, to society or (alternatively) to the legal profession. Other legal realists turned tail and ran when accused of injuring society through a nihilist attack on legal principles. Fred Rodell stood his ground. In the Introduction to the 1959 reprint edition of Rodell's *Woe Unto You, Lawyers!*, Jerome Frank wrote that, in retrospect, Fred might modify his harsh assessment of the American legal system. Fred replied, in a new preface to that edition, that he would not modify his realist attack on "The Law" because he remained, in his words, an "unreconstructed and unconverted" legal realist. Fred showed how a cynical, value challenging attack on "The Law" must proceed and form the basis for honest arguments about the types of legal rules that should be adopted so as to promote (admittedly his own personal vision of) social good. He saw no useful role being served by law reviews and so, in terms of his own writing, he said *Goodbye to Law Reviews*, though more than once.

Fred found only two things wrong with law reviews: their style and their content. I have no doubt that Fred was right in observing that: "in the main, the straight-jacket of law review style has killed what might have been a lively literature." The particular forms of law review abuse of our lan-

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guage and literary style should be well known to my audience at the College and the probable readers of this essay (meaning the few people who will read the reprints I will send to them). The three main culprits in the death of decent writing in law reviews are, of course, the footnote,[1] the impersonal tone of the writing, and the reversal of normal grammatical principles.

Footnotes in law review articles other than those in articles focused on the narrowest of points (such as "How to Depreciate Your Phone Lines for Tax Purposes Following Deregulation of the Telephone System") are almost totally unnecessary. Again as Rodell noted, footnotes are either "an excuse to let the law review writer be obscure and befuddled in the body of his article" or a means of proving, whether or not it is true, that the author has spent a lot of time doing research for the article and deserves even a bigger raise from his dean than that to which he could lay claim if the article had fewer footnotes.

The impersonal style manifests itself in the striking of clear statements of personal opinion. No author, if he wishes to lay claim to the title of "scholar," can state that he personally finds the result of a court decision to be immoral, socially harmful, or just plain stupid. A professor may wish to say: "I think Judge Smith's ruling is so immoral that he ought to be impeached. The only good thing about his opinion is that, since he is obviously an imbecile, he writes so poorly that no one will ever use the opinion for precedent for anything other than as a standard for failing grades in literacy tests." What the professor writes is: "It is arguable that Judge Smith's opinion does not focus on the application of clearly defined legal principles in previous appellate cases to the problem at hand and, therefore, produces a result which, it is suggested, might well be overruled on the basis of those precedents." If the author admits that the views contained in an article are his own, rather than drawn from some discovered source of ultimate truth in "The Law," the worth of his views will be suspect. If the author says anything with a touch of humor he will be considered to be something less than a true scholar.

Finally, professors, in their law review articles, reverse normal grammatical rules so as to prove that they are better than the average writer by being different and defining the difference as scholarly. Any text on basic English grammar will advise the average writer to use the active voice and

1. Here is the only real footnote in this article. (*But, cf.*, note 2, *infra*?) I would advise those few of you who may be interested in learning more about Fred Rodell to begin by reading Note, *The Relentless Realist: Fred Rodell's Life and Writings*, 1984 U. ILL. L. REV. 823. That student note gives citations to almost all of Rodell's writings and to articles about Fred Rodell. Two articles by Fred Rodell about law reviews are contained in Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279 (1962). In other speeches and essays I have attempted to resurrect Fred Rodell's brand of legal realism in analyzing constitutional law issues. *See* Nowak, *Professor Rodell, The Burger Court, and Public Opinion*, 1 CONSTITUTIONAL COMMENTARY 107 (1984); Nowak, *Resurrecting Realist Jurisprudence: The Political Bias of Burger Court Justices*, 17 SUFFOLK U. L. REV. 549 (1983); Nowak, *Realism, Nihilism and the Supreme Court: Do the Emperors Have Nothing but Robes?*, 22 WASHBURN L.J. 246 (1983); Nowak, *Evaluating the Work of the New Libertarian Supreme Court*, 7 HASTINGS CONST. L.Q. 263 (1980). These legal realist speeches have been sandwiched in between a variety of traditional publications but, as I explain in today's speech and essay, a realist professor must realize that it is traditional writings that put bread, butter, and professional opportunities on an academic's table.

short, clear sentences to express ideas so that the writing can be readily understood. Law professors and law review editors delight in constructing sentences and, indeed, whole paragraphs in the passive voice and substituting long words for simple descriptions of legal concepts. Fred Rodell described this "style" as embodying: "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.' "

The problems of law review style are directly attributable to the law teaching profession. Law journals and reviews began as places for the interchange of ideas between judges, lawyers, professors, and students. The articles published in the first decades of law review history, near the turn of the century, are better written and more interesting than those in today's publications. Judges and lawyers are to be forgiven for the failures of modern law reviews. Their all too infrequent contributions to law reviews are commonly the subject of faculty room sneers and pejorative comments. Law reviews are the property of professors; student editors would be chastised by professors if they devoted a significant percentage of the review's pages to articles by judges or lawyers.

You must understand that the fault here lies with the "profession" of law teachers rather than any particular group of professors who could be identified by their political ideology or the schools with which they are affiliated. Any professor, regardless of his or her school or political beliefs, would have trouble in breaking away from the ridiculous law review style because his or her writings would not be deemed sufficiently "scholarly" by the deans and committees who pass upon promotions and pay raises. To young professors who have some sympathy with legal realist philosophy and ask about the need for writing traditional articles, I have often replied with a single statement: Remember, Fred Rodell was passed over for a "chair" by the so-called liberal Yale law school faculty and administration.

How is it that the profession came to place value on bad writing? There are two reasons: professors on the whole cannot write and most professors do not have anything significant to say. The fact that professsors of law do not write well should not be surprising since almost no one writes well any more. As Fred Rodell said more than two decades ago: "Three-fourths or more of the bright boys [and now, at last, bright girls] who beat their way into law school cannot, even after four years of college, construct a decent English sentence, much less an entire paragraph that holds together." These students find their models in their professors, who formerly were bright young boys and girls who could not write properly. We have been through enough generations of students turned professors who lack the ability to write properly that we have created an awkward style of writing which pleases professorial eyes and ears. Because this style sounds suitably "scholarly" it will be assumed to be both gramatically proper and intellectually worthy of consideration.

The ultimate reason, as Fred recognized, for the ridiculous law review style of writing is the fact that most professors simply do not have anything to write about. Many professors only write articles or books because they

must do so in order to get tenure, promotions, and raises in their salary or status in the profession. One of my favorite persons in the profession (a famous scholar whom I will not identify for fear of betraying his realist tendencies) described to me how to become a successful professor with a national reputation when I was a fledgling professor. He said: "Take an obscure little problem that no one has thought much about, blow it out of all proportion, and solve it, preferably several times, in prestigious law reviews."

Clear writing would expose the quality of the author's thoughts. A professor who breaks away from the academic, law review style faces twin dangers. If he really has nothing of importance to say, everyone will know it. If he writes about important issues in terms understandable to everyone, many members of the academic profession will declare that his article is of no importance because it is so understandable. How can professors as a class declare themselves to be intellectually superior to lawyers, judges, and the public if everyone can understand what they discuss in academic circles. As Fred Rodell remarked about the academic profession: "the notion that the complexities of conceptualization that composed the law could ever be made comprehendible—so that the guy in the street could get them—is too terrible, too treasonable, to contemplate. He who tries such stuff is suspect; surely he can be no scholar. Ah, scholarship."

You want proof of what I've said so far? I have heard suggestions at meetings of professors in coffee rooms at several law schools (not my own, thank God) and law school conventions that realists such as myself overrate the importance of the late Professor Arthur Allen Leff to legal scholarship in general or constitutional law in particular. Art's work is criticized by those who really have little of value to say and need long footnotes, ponderous style, and a lack of humor to cover up that fact. Art Leff could write about issues of moral philosophy, constitutional law, or commercial law in a crisp, clear style and with humor as well as insight.

When I was the chairperson of the Association of American Law Schools Constitutional Law Section, I convinced Art to be a member of a panel discussing the proper role of judges in imposing "constitutional" values on society. After other professors had examined the role of the Supreme Court in traditional terms, Art, in just a few minutes, had the gathering of professors laughing out loud at the ways in which we hid our value judgments beneath claims to constitutional principles and engaging in a lively discussion of the relationship between uncertainties in moral philosophy and constitutional arguments. Art later delivered a lecture on this subject at the Duke University Law School. I guarantee that you can learn more about the basic problem of value selection that underlies all constitutional analysis from reading his article entitled *Unspeakable Ethics, Natural Law* in the December 1979 volume of the *Duke Law Review* (no footnote necessary) rather than by reading the last twenty years of articles on the same subject in the pages of the *Harvard Law Review*. Art wrote in a clear, literate style and his articles, like his life and lectures, are filled with humor. But how scholarly

could Art be? After all, he rarely used the word "hermeneutics".[2]

So what? Why should anyone care whether law reviews have fallen into a ridiculous, stuffy style? After all, the reviews have performed two purposes. First, the students who work on them learn how to spell, do law library research, and proofread; these students are rewarded for their efforts with excellent jobs in rich law firms. Second, professors who write in law reviews are rewarded with academic success.

We do not need to worry about the consumers of law reviews because they really do not exist. A few professors who author texts must read some of the articles, but most volumes are purchased to decorate law school library shelves. The only purchasers of law reviews outside of academe are law firms which gladly pay for the volumes even though no one reads them. There is always the chance that one of the articles will one day provide the firm with a series of case citations that might support an argument the firm will advance on behalf of its clients. Though the usefulness of law reviews for law firms may soon be diminished with the ability to get those case citations faster from computers than from law review articles, the firms are not likely to drop their subscriptions because the cost is passed on to the clients. Since the cost of purchasing law reviews is an insubstantial factor in causing the cost of legal services to keep rising, there may seem to be no reason to attack law review writing.

But there is a cost to maintaining the current law review style: the cost of lost opportunity. Law reviews can perform some functions for the legal profession (as opposed to society) even with their current style, but that style prevents them from influencing in a meaningful way the rules that are imposed on society by the legal system. Let's take a look at the types of articles that appear in law reviews. Academic writing, like Gaul and John Marshall's opinions, divides into three parts.

First, there is the highly technical article. This article is of the type that I mentioned before regarding specific resolution of a tax question. In this type of article the author attempts to resolve a narrow problem. Now, as a diehard legal realist, I have often argued that "law" is nothing more than what people in power do, and it may be surprising to find that I believe that the highly technical article is of any value. However, lawyers and judges each day in fact must decide whether a type of property is subject to tax,

2. This footnote is *à propos* of nothing. However, here is a true story that I am dying to spread around the law teacher profession. There was a time when the word hermeneutics was used infrequently because it was used only in a technically correct manner in the disciplines of theology and philosophy. Today the term is used by everybody who wants to teach constitutional law at a good law school, or who wants to impress their peers in academe, and who was a student in Philosophy 101 or Theology 101 in college. Recently, a professor and former judge for whom I have the highest respect sat patiently through the "seminar" of a candidate for a faculty position. The candidate had made a very scholarly presentation about the judicial selection of values. The judge was forced into the discussion by a fellow faculty member who called on him to react, as a former judge, to the faculty candidate's thesis. The judge looked at the faculty candidate and said: "I was afraid I'd go the whole semester without hearing the word hermeneutics, but you've managed to use it seven times in the last thirty minutes." Faculty members hear the story and laugh, but only because of the obvious effect on the candidate's interview. Few of them realize, as Art Leff would have, that the judge's comment was more a condemnation of the current style of academic discourse than an insult to the individual who had the bad luck to be the target of the comment.

which one of several competing claimants owns a piece of property, or who gets handed the bills from a multi-car automobile accident. The highly technical article does not address the values that should be used by the ultimate decisionmaker—the legislature usually or the Supreme Court in rare instances—regarding tax, property law or injury compensation policies, but it does give lawyers, judges and legislators some linguistic tools with which to resolve current, narrow problems within the terms of the existing legal system. These articles are of the most practical use; they are almost always written by students, lawyers, or judges. The traditional law review style does little damage to these articles because there is little in them to be damaged: what you see is what you get. The technical article is meant to present a package of information to the reader, much of which may be contained in footnotes more efficiently than text since the print is smaller. The clumsy, impersonal style is of little importance since the article, if read at all, is read simply for the purpose of extracting information about the existence of prior cases, administrative rulings, or specific points in legislation.

I should add here that it is my belief that the narrow, technical article is best suited to providing the law review student with some worthwhile training in the areas of research and writing. Although students would rather write articles on broad, philosophical issues, they sharpen their skills for practice by working on the more narrow note. Since no one reads student notes except lawyers looking for case citations, this skills-sharpening function is the only real purpose to be served by student authorship. Legal realists like Fred Rodell or myself make no brief for the ways in which legal language is used by attorneys to disguise simple concepts and to perform simple services at outrageous fees. However, the law review students are about to join the world of practicing attorneys and, for better or worse, working on an article on a technical topic will introduce the student to the type of research he or she will do in his or her professional life. Of course, as a realist with a social conscience, I would hope that this training would produce lawyers who are not only more efficient but who will take steps to simplify and improve the legal process so that it becomes easier for legislatures to deal with technical problems and for judges to apply legislative policies for the benefit of society. But, as a realist, I admit that the law review experience only will serve to make the law review editor more economically valuable to the large firm or corporation.

The second type of article that appears in law reviews I would label "descriptive scholarship." This type of article involves a professorial attempt to explain why certain general principles in an area of the law have been developed by courts or administrative agencies. Occasionally the history of a legislative enactment will be studied in such an article, but normally legislative topics are considered unfit for true "scholarship" by professors because discussing the history of the legislation would require clear language and would reveal whether the professor had anything of value to say about the topic. The descriptive scholarship article is very common in the constitutional law area. Mark Tushnet described these articles in his article *Truth, Justice, and the American Way: An Interpretation of Public Law Scholarship in the Seventies* in the November 1979 *Texas Law Review* as

being a formula production which involves a professor stringing together quotations from a group of cases and explaining that seemingly disparate judicial results can be resolved by a balancing test which yields not only the same results as those decreed by the courts but, in future cases, should produce results compatible with the professor's political philosophy (surprise!).

There is some value to descriptive scholarship. This is something I have to claim since I have produced a lot of it during the past decade and a half, and since I intend to do a lot more. Students and professors like it; it puts bread and butter on the author's academic table. However, descriptive scholarship serves a purpose because without it, many judicial opinions in important cases would be incomprehensible to many lawyers and non-lawyers alike. Many courts, particularly the Supreme Court, in many legal areas, particularly constitutional law, write such verbose, vaguely worded opinions that it is difficult for other judges, lawyers, professors, or students to figure out what in God's name the judge or court that issued the opinion meant. Even those of us who believe that "law" is only what persons in power do, and that "constitutional law" is simply what persons on the Supreme Court do, have a need to resort to descriptive scholarship. It is impossible for lawyers or the public to diagnose what it is that judges are doing with their political power if the judges use such vague language that no one can understand them.

I do not know why a judge would want to write opinions that require a series of descriptive articles simply to explain what the judge did in the first place. Maybe these judges were brainwashed during their student days and think that they must try to emulate a professorial style in their opinions. Maybe their judicial law clerks were so infected by the professorial style during their days on a law review staff that they have tainted the writing of the judge for whom they work. Maybe a judge simply does not want anybody to realize what the hell he or she is doing in a given case. In any event, it seems to me that there is a need for scholarship that examines court rulings and opinions that are rendered under the pretense of simply applying a "principle" of constitutional law or a "precedent" from prior decisions. Someone needs to describe exactly what went on in those cases so that all of us can start to fight about whether or not we agree with the judicial use of political power in those cases. It is hard to complain about how you are being governed until you find out exactly how you are being governed. It is a shame that we need authors to explain Supreme Court opinions just as it is a shame that we have tax forms so complex that they have given birth to a cottage industry in tax form preparation. However, given our governmental system today, we need both descriptive scholarship and H & R Block.

The law review style has seriously hurt the modest role of descriptive scholarship in the legal system. The convoluted style of law review writing, which infects casebooks and textbooks as well as law reviews, complicates what should be a fairly simple task for professors. The professorial style of writing, which is meant to impress deans and promotion committees, impedes any professor's ability to explain to the average reader exactly what went on in court cases. Current academic standards cripple the professor's ability to give an honest evaluation of the court actions he or she is examin-

ing. Indeed, those professors who seek most to impress deans and promotion committees are likely not only to produce an abundance of descriptive scholarship but also to follow the law review style so slavishly that their articles describing judicial opinions are more verbose and vague than the judicial opinions they analyze.

There is a third type of legal scholarship that could have made a meaningful contribution to the development of legal rules and that would have been socially beneficial. I say "could have" because this is a type of scholarship that is almost nonexistent today. It was killed off by the straight jacket style to which Fred Rodell referred. This type of scholarship would have involved an open, no-holds-barred debate between authors about what was morally acceptable or unacceptable in court rulings or legislative actions. These statements raise two questions. First, why do I believe such a debate would have been important? Second, why do I claim that this literature does not exist when an awful lot of professors seem to be giving their views about a great many issues in general and are flocking to critique the Supreme Court action, or inaction, in extending civil rights in particular? The answer to both those questions lies in the fact that I, like Fred Rodell, am a true legal realist.

As I have mentioned before in this speech/essay, a legal realist does not believe in "law." For us, law is what persons in power do; constitutional law is what Supreme Court Justices do when they exercise their political power. Constitutional law does not exist in the precedents or theories predicting or defining legal "principles." It is the present exercise of power by persons who presently are Justices of the Supreme Court of the United States. We challenge anyone to prove to us that there are any "true" legal principles, whether founded on history or philosophy, as a means of showing that there is no objective referent by which to judge the actions of the Supreme Court. A realist analysis of judicial rulings should present a true nihilist challenge to those who pretend that judges can create legal rules to govern society from a value source outside themselves and that there is a true set of legal principles to be imposed by judges. Judges and justices are persons who exercise important political power; they should be judged as actors in a political process.

A true realist does not have to be a nihilist. A realist does not have to believe that judges should feel free to exercise their power in any way that suits their whim or that any manner in which a court rules must be right because it is a ruling that exists at a certain moment in time. Fred Rodell was no nihilist. He critiqued courts in general, and the Supreme Court in particular, in terms of whether their rulings were beneficial to the public as opposed to the economically powerful. Fred was simply honest enough, as was Art Leff, to admit that he critiqued court actions in terms of his conception of social good.

True realists, such as Fred Rodell and Art Leff, would not want to do away with the Supreme Court merely because there are no demonstrably true constitutional principles. Realists recognize that the Supreme Court has served a valuable function in our society by helping us to resolve conflicts between persons or groups that tested our society's commitment to

twin, and incompatible, beliefs in the value of democratic decisionmaking and "higher law" limitations on the power of the majority to make decisions. As the late Professor Leff put it in the *Duke Law Review* article to which I have previously referred, every society needs to place limits on its own actions in terms of a collective moral decision, but the American Revolution cut us off from the only two standards of morality which we could not challenge because they had to be taken on faith: those dictated by God or the King. This observation means that only the Supreme Court is a useful tool in resolving certain moral decisions which face society and not that its decisions are in any sense correct. The correctness of Supreme Court decisions ultimately will be judged by history. We must judge them in our own time in terms of our individually held moral standards.

Legal realism is a way of exposing the use of political power by courts, legislatures, or executive officials to the judgments of all segments of society. While seemingly nihilist in demonstrating the inability of judges or legislators to prove that the principles they were imposing on the rest of us are demonstrably "correct," legal realism involves an invitation to all of us, whether we are members of the legal profession or not, to determine whether we believe that those legal rules are morally acceptable and produce social good. Philosophers have a role in explaining theories for making such judgments; sociologists and economists have a role in helping us to understand the impact of legal rules. The public at large has a right to challenge those judgments.

Neither the realists of the 1930's or today encourage judges to act as arbitrary wielders of political power. Legal realists challenge judges to face the need to justify their decisions not only in terms of legal jargon but through an open analysis of the compatibility of their rulings with principles of moral philosophy or an analysis of their understanding of social good and how it is promoted by their rulings.

Judges, on the whole, are a good and honest lot. Most judges will tell you that they do not arbitrarily exercise power but only seek to apply established legal rules to resolve disputes brought before their courts and I have no doubt that they believe what they say. Indeed, in many cases, judges in trial courts or intermediate appellate courts are trying to apply existing rules to resolve technical problems. However, at the level of state supreme courts, with their control over state common law and state constitutional principles, and the United States Supreme Court, the judge or justice who tries to resolve cases merely by a search for true legal principles in history or judicial precedents is fooling herself or himself. Whether the judge knows it or not, that judge's assessment of the current state of constitutional doctrine and the parameters of permissible judicial conduct is established by her or his personal view of the proper scope of judicial activity which, in turn, is derived from her or his personal moral and political philosophy.

Where shall these judges look to evaluate their political philosophy in terms of its applicability in today's problems and its usefulness to society? Where will they look to get an understanding of society's and the legal profession's assessment of how they are exercising their power? Judges or justices will get some type of feedback regarding their rulings from society and

the profession with or without the help of law reviews. Judges, of course, will become aware of the popular political reaction by reading the newspapers. They may get some informal feedback regarding the assessment of their rulings by the legal profession through discussions with their law clerks and members of the profession whom they know on an informal basis.

Unfortunately, judges get virtually no useful feedback concerning the proper role of judges from law reviews, which could have provided not only a lively critique of judicial actions but also a forum for professional feedback to judges as to how judicial opinions were being evaluated by professors and lawyers who represented a wide spectrum of political philosophies in our society. The law reviews have totally failed in that function because of law professor insistence that law review articles follow what professors deem to be an academic style and format. Law reviews only could serve as an effective forum for debating the morality of legal rules and court actions if they were open to a wide variety of styles and the assessment of court rulings in political terms.

In order to influence judicial or societal attitudes, law review articles, first of all, would have to be read. Very few people will read anything written in the current law review style unless he or she is a member of a law school administration who is forced to read the material, a friend of the author, or a poor fool such as myself who feels obligated to read every reprint that is sent to him. In addition to being read, the articles would have to be clear in their style to be worthwhile to judges as feedback concerning the moral acceptability of their decisions. It may or may not be considered acceptable professional conduct for an author to slant the description of court rulings to suit the author's political philosophy. But when an author hides his or her political philosophy (be it conservative or liberal) in an academic description of judicial actions, the author guarantees that the article will not be very persuasive in influencing the political philosophy of judges.

Traditional law review authors, in striving to be "academic," sacrifice the ability to persuade others through forceful writing. An article attacking the school integration rulings of the Warren and Burger Courts would be better written in terms of an assessment of whether forced integration actually harms children of racial minorities, impedes the education of all children, and unnecessarily imposes social costs on a small group of lower middle-class children rather than by discussing the proper role of the judiciary in terms of intentions of the "framers" of the fourteenth amendment. Those authors who attack these rulings in academic terms have no chance of getting the Court to reverse its stand on school integration [thank God!]. Those persons who favor granting an indigent woman a right to a government paid abortion should explain openly and honestly why they feel that "freedom of choice" is more important than any societal interest in protecting potential human life. Using a professorial analysis of the Constitution through "hermeneutical principles" simply will not have any impact on popular or judicial opinion regarding state paid abortions.

Let me give you an example of how legal literature could be useful to judges and legislators, but isn't. There is now before legislatures and courts in this country the question of whether parents and doctors should be able to

kill or allow to die (depending upon your point of view) children who are born with certain health defects. The analysis of such issues in the nonlegal literature, such as the article, *The Awful Privacy of Baby Doe*, by Nat Hentoff, in the January 1985 *Atlantic Monthly*, will be useful to legislators and judges. That literature will contain honest arguments about whether the lives of these children should be terminated. That literature may directly confront this issue in terms of moral values and the problem of delegating the life and death decisions regarding that child to particular groups of persons, whether they are judges, legislators, parents, or doctors.

The legal literature on this subject will be totally unhelpful to legislators or judges. The legal literature will involve only academic arguments concerning the proper interpretation of "life" after *Roe v. Wade* in terms of the original intention of the framers of the due process clauses (by those who will want the children to have the right to live) or in terms of a philosophical (and, yes, hermeneutical) analysis (by those who want to give the parents a right to terminate the child's existence). Those articles will give a legislator or judge who has made up his mind on the issue some legal jargon to justify his or her decision but they will not help him or her in deciding what is the morally correct rule or what society sees as the proper role of judges and legislators in this area.

There should be a place in law school sponsored literature for professors to have a lively debate concerning moral principles and their evaluation of judicial and legislative actions in terms of their personal conceptions of morality and social good. Until recently, such form was totally lacking. The few professors who, like Fred Rodell, sought to have an impact on social decisionmaking had to risk their academic reputations by writing for the "popular" journals. I am pleased to say that I see some hope for legal literature. Some law reviews, including the *Arizona Law Review*, are publishing more "essays" or "comments" that are honest assessments of the propriety of court rulings in terms of the moral or political philosophy held by an author. Most hopeful is the appearance of faculty edited journals such as *Law and Society*, *Law and Human Behavior* and *Constitutional Commentary*, which encourage debate on current legal issues through short essays and articles written in styles inconsistent with the traditional law review format. A look at the most recent (Winter, 1985) issue of *Constitutional Commentary* gives one a glimpse of how lively our professional literature could be if there were more journals open to nontraditional articles.

To the law review editors in my audience and those professors who read this essay I say: for the good of our profession, revise your attitude concerning both the style and form of law review articles. Of course, much of our "legal" writing will be on narrow topics or will be merely descriptive. But we must expand our academic horizons if our work is to be socially useful. Let's shed the "straight jacket" which Fred Rodell described and make law reviews not only more a lively literature but an important source of professional and societal feedback to judges and legislators concerning our assessment of their exercises of political power.

Despite my earnest plea for change I realize that there is little likelihood that the law reviews, or legal literature in general, will be open to new styles

of writing. Traditional writing is a safe harbor for students and professors alike. Oh well, as Fred Rodell said at the end of *Goodby to Law Reviews—Revisited*: "Ah, scholarship. Ah, nuts."