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FOREWORD: HAVE WE OVERCOME?

*Meredith Render**

It is an honor to introduce this inaugural issue of the *Alabama Civil Rights & Civil Liberties Law Review*. The inception of this journal, at this institution, at this particular national political and cultural moment is indeed extraordinary. The ambition of this journal is to create an intellectual space for scholars who are engaged with the pressing civil rights issues of our day, and we can imagine no more appropriate institutional home for those conversations than the University of Alabama School of Law.

Ours is a state that has played no small role in the formation of our modern American concept of “civil rights.” Many of the defining moments of the Civil Rights Movement took place in Alabama. Rosa Parks took her exceptional bus ride through downtown Montgomery and inspired the Montgomery Bus Boycott of 1955. Dr. Martin Luther King penned the galvanizing phrase “injustice anywhere is a threat to justice everywhere” from the confines of Birmingham Jail.¹ The barbarous bombing of the Sixteenth Street Church in Birmingham drew the nation’s eyes back to Alabama, as did the savagery faced by marchers on the road from Selma to Montgomery in support of voting rights. Even our own University of Alabama passed an infamous moment in the national spotlight when Governor Wallace stood in the door of Foster Auditorium in a theatrical bid to deny admission to Vivian Malone and James Hood. Yet, the national spotlight that was fixed upon Alabama during the Civil Rights Movement shone not only on the misery and brutality of the Jim Crow South, but also on the courage and fortitude of a people rising up to peacefully resist manifest oppression.

From this crucible of cruelty and courage issued a new national consciousness which produced not only new civil rights laws, but also new ways of thinking and talking about equality and rights-based claims. Ideas

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1. King, Martin Luther, Jr., *Letter from Birmingham Jail*, 1854-66 THE NORTON ANTHOLOGY OF AFRICAN AMERICAN LITERATURE (Ed. Henry Louis Gates, Jr. and Nellie Y. McKay) New York: Norton, 1997.

that were posited and tested during the Civil Rights Movement proved, in many ways, to be transformative, nationally, regionally, and within our own institution. It is perhaps illustrative that last year the plaza outside of the newly renovated Foster Auditorium was rededicated as the Malone-Hood Plaza. This symbol of segregationist grandstanding has been transformed by the sacrifice and commitment of Vivian Malone and James Hood (and thousands of Alabamians like them) into a measure of how far our national egalitarian sensibilities have come. And how utterly appropriate that this same institution should, with this inaugural symposium issue, commence to incubate a new generation of potentially transformative ideas about how far we have yet to go and how we should go about getting there.

It is with this sense of both purpose and promise that our editors posed the symposium's organizing question: Have we overcome? After all, the journal's inception coincides with an extraordinary national moment. For the first time in history, our president is African-American, an unimaginable achievement 55 years ago when Rosa Parks refused to give up her seat to a white passenger. Yet, at the same moment, the poverty rate for African-Americans remains nearly three times that of white Americans.² Serious scholars and social commentators are wondering whether we have finally reached a post-racial legal and cultural moment³ at the same time that African-Americans and Hispanics, who collectively comprise 31% of the population comprise 60% of the national prison population.⁴ Similarly, during the last presidential election we had for first time a viable woman candidate for president and young women are increasingly reporting themselves to be "post-feminist," at the same time that American women are 32% more likely to be poor than American men and women are still paid less for the same work.⁵ And Congress last year repealed "Don't Ask, Don't Tell," while two years ago Californians voted to eliminate same-sex marriage in that state. In each of these civil rights contexts (and too many more to mention) we seem to be both hovering on the horizon of a new and better dawn while at the same time perched on the

2. In 2008, the poverty rate of African-Americans was 24.7 %, and the poverty rate of non-hispanic white Americans was 8.6 %. Carmen DeNavas-Walt, Bernadette D. Proctor, Jessica C. Smith, United States Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2008* 13 (2009), <http://www.census.gov/prod/2009pubs/p60-236.pdf>.

3. Sheryll Cashin, *Shall We Overcome? "Post-Racialism" and Inclusion in the 21st Century*, 1 ALA. C.R. & C.L. L. REV. 31 (2011). For a summary and critique of post-racialism, see Mario L. Barnes, Erwin Chemerinsky, and Trina Jones, *A Post-Race Equal Protection?*, 98 GEO. L.J. 967 (2010).

4. Paige M. Harrison & Allen J. Beck, Bureau of Justice Statistics, *Prisoners in 2005* 8 (2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p05.pdf>.

5. Legal Momentum, *Reading Between the Lines: Women's Poverty in the United States, 2009* 1 (2009), https://secure2.convio.net/legalm/site/DocServer/lm_povertyreport2006.pdf?docID=721

precipice of a significant backward slide. How exactly should we think about the present state of civil rights and liberties? *Have* we overcome?

The luminaries who have joined this symposium have approached this question from a number of distinct, yet complimentary, perspectives. Indeed, the essays contained in this issue reveal the richness of our modern concepts of “civil rights” and “civil liberties,” as well the many methodological tools that are usefully brought to bear on the questions that occupy this field of scholarship. Nonetheless, these essays are remarkably united in their skillful use of our shared civil rights past as a mechanism for illuminating the present and mapping the future of civil rights. For example, Professors Sheryll Cashin and Joseph Singer each masterfully address the question of whether (and why) we have failed to “overcome” in the context of specific projects within the Civil Rights Movement. Professor Cashin is concerned with the incomplete project of meaningful integration and she persuasively posits that despite our present cultural fascination with post-racialism, political post-racialism is harmful to the cause of meaningful integration.⁶ Similarly, Professor Singer is likewise concerned with the unrealized promise of a stalwart tenet of the Civil Rights Movement: equal treatment in places of public accommodation.⁷ Professor Singer contends that federal courts’ inclination to narrowly interpret civil rights statutes in the context of retail contracts is due in part to a misapprehension of what he convincingly describes as the “anti-apartheid principle” in property law.

Professor Anita Allen and Judge U. W. Clemon (and co-author Stephanie Y. Moore) also artfully make use of our shared civil rights past to illuminate aspects of the present state of civil rights. In particular, Allen and Clemon (and Moore) each examine the significance of specific jurisprudential steps (or missteps) in the construction of civil rights doctrine. Towards this end, Professor Allen finds salient a landmark civil rights case that has had an enduring impact on the doctrines of associational and informational privacy.⁸ Judge Clemon and Ms. Moore, on the other hand, are concerned with the jurisprudence of Justice Clarence Thomas, and the lasting (and, in their view, corrosive) impact it has had on the development of civil rights doctrine.⁹

Finally, Professor Alfred Brophy and Royal Dumas are each expertly engaged in mining our specific past to help us better understand the task

6. Sheryll Cashin, *Shall We Overcome? “Post-Racialism” and Inclusion in the 21st Century*, 1 ALA. C.R. & C.L. L. REV. 31 (2011).

7. Joseph Singer, *The Anti-Apartheid Principle in American Property Law*, 1 ALA. C.R. & C.L. L. REV. 91 (2011).

8. Anita Allen, *Associational Privacy and the First Amendment: NAACP v. Alabama, Privacy and Data Protection*, 1 ALA. C.R. & C.L. L. REV. 1 (2011).

9. U. W. Clemon & Stephanie Y. Moore, *Justice Clarence Thomas: The Burning of Civil Rights Bridges*, 1 ALA. C.R. & C.L. L. REV. 49 (2011).

and texture of “overcoming” in context of the University of Alabama. Professor Brophy offers a fascinating account of the great distance our institution has traveled since its founding days, providing along the way a deeper understanding of what it means to “overcome.”¹⁰ Similarly, Mr. Dumas ably uncovers the antebellum University of Alabama student, and reveals with this discovery new ways of thinking about our institution.¹¹

Together these essays tell us more than simply whether and in what ways we have overcome (or failed to overcome), they tell us, too, the many reasons why this is an important question to ask at this particular moment, in this particular forum, and at this particular institution.

10. Alfred Brophy, *Overcoming at the University of Alabama*, 1 ALA. C.R. & C.L. L. REV. 15 (2011).

11. Royal Dumas, *My Son and My Money Go the the University of Alabama? The Students at the University of Alabama in 1845 and the Families That Sent Them*, 1 ALA. C.R. & C.L. L. REV. 67 (2011).