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Foreword

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Honorable Joseph R. Weisberger

The science of law may well be described as the study of human relations at the point of conflict. Our empirical materials for this study are obtained largely from appellate opinions that describe these relations and attempt to resolve the conflicts that are set forth therein.

The Supreme Court of Rhode Island has been attempting to resolve such conflicts since colonial times, when it was then described as the Superior Court of Judicature, Court of Assize and General Goal Delivery. In 1842, this court was given constitutional status. Theretofore, it derived its authority from the Charter of King Charles II delivered by royal authority in 1663, and by act of the all-powerful General Assembly.

Rhode Island has had a proud judicial history. In 1786, in the landmark case of *Trevett v. Weeden*, the justices declined to enforce a statute of the General Assembly which purported to require all persons within the state to accept paper money in full discharge of any indebtedness and in return for merchandise or services. From the arguments presented in the case, it is reasonable to infer that this may have been the first judicial exercise of the right of review over the constitutionality of a legislative act. The court may have concluded that the paper money statute with its stringent sanctions was in violation of the Charter issued by Charles II, which required all laws to be in conformity with the common law of England and with its unwritten constitution including the Magna Charta. It is worthy of comment to note that this decision preceded the famous *Marbury v. Madison*[1] by 17 years. Later in a ringing declaration of the concept of separation of powers, Chief Justice Ames, writing for the Supreme Court of Rhode Island pursuant to the 1842 constitution, advised the Legislature in no uncer-

1. 5 U.S. (1 Cranch) 137 (1803).

tain terms that it could not pass an act granting a new trial in a judicial proceeding.[2]

It is notable that from colonial times down to the present day Rhode Island has never had a law review published within its borders. The *Roger Williams University Law Review* now to be published is the first of its kind in the history of our colony and state beginning in the year of grace 1636. It is indeed a proud occasion to participate and to observe the publication of the first edition of the *Roger Williams University Law Review*. I am confident that this edition will be the first of many to follow.

The outstanding Victorian literary critic Matthew Arnold wrote many years ago that the contribution of the critic to literature was as great in some respects as the contribution of the authors who created the literary works upon which they commented. He pointed out that the critics contributed to the current of ideas and that these contributions enriched the culture of society and probably improved the work product of those who actually created the literature itself. In his essay on "The Function of Criticism at the Present Time," published in 1865, he made the following incisive and insightful observations about the power and effect of criticism.

> [I]n the Greece of Pindar and Sophocles, in the England of Shakespeare, the poet lived in a current of ideas in the highest degree animating and nourishing to the creative power; society was, in the fullest measure, permeated by fresh thought, intelligent and alive; and this state of things is the true basis for the creative power's exercise—in this it finds its data, its materials, truly ready for its hand. . . . Such an atmosphere, the many-sided learning and the long and widely-combined critical effort of Germany formed for Goethe, when he lived and worked. There was no national glow of life and thought there, as in the England of Elizabeth. . . . But there was a sort of equivalent for it in the complete culture and unfettered thinking of a large body of Germans.

The eloquent Jeremiah, as Matthew Arnold was often described, credited the critical power with the ability to create a current of ideas in which the creative power could be brought forth and flourish.

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2. Taylor v. Place, 4 R.I. 324 (1856).

In the same manner editors and staff members of a law review greatly contribute to the legal culture of those jurisdictions upon whose cases they comment. The appellate judges or justices who write the opinions obviously, like all other authors, add their contribution to the great body of legal thought that constantly renews and develops the common law and constitutional law of our states and nation. By the same token, those who analyze, criticize and comment upon these opinions in the course of writing law review articles and notes assist the judges and justices in evaluating and improving their own opinions and in elevating their perspective upon the jurisprudence of their state.

The mission of a law school is not just to educate persons who wish to become members of the bar, but also to contribute to and enhance the legal culture of every jurisdiction which the law school touches. One of the primary tools in producing this contribution is the law review published by the law school. The law review is a think tank which contributes original thought as well as a synthesis and presentation of the thoughts embodied in the appellate opinions which they analyze. Probably this contribution is as great in the performance of the educational mission as is the training of law school students who aspire to membership in the bar.

Rhode Island is fortunate at long last to have a law school and even more fortunate to have a law school that is about to embark upon the publication of what will undoubtedly become a highly respected law review. As Chief Justice of the Supreme Court of this state, I am honored to have the opportunity to write this foreword to this first edition of the *Roger Williams University Law Review*. I look forward to your critical comments upon my opinions and those of my colleagues. I am confident that we shall all profit by your careful and scholarly analysis.