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Foreword

Journal Editors

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Liberty is the common component of the otherwise disparate triads of values in the name of which the two great revolutions of the eighteenth century were fought. One of those revolutions, the French, championing Liberty, Equality, and Fraternity, produced a quarter century of strife and generations of intellectual conflict over its merits and implications. The other, the American, espousing Life, Liberty, and the Pursuit of Happiness, issued finally, if indirectly, in the American Constitution, which substituted the more sober "Property" for the spirited "Pursuit of Happiness" in the revolutionary triad, but otherwise presented itself as intended to "secure the Blessings of Liberty" for the people of the United States. It is liberty as a battle cry, as a concept, and as a value central to a legal system that is the focus of this issue of the *Journal.*

In his essay, Professor Ralph McInerny addresses the efforts of the Catholic Church to come to terms with the call for liberty against a background of protracted dispute between churchmen and their adversaries, who had often used the language of liberty in advocating policies to which the Church had been adamantly opposed. Professor McInerny sketches the process by which the Catholic Church appropriated the language of liberty by finding for it a rationale that at many points remains at variance with the secular rationale in which that language initally was rooted.

In a much different vein, the substantial articles by Professors Terrell and Butler take on liberty as an element of American Constitutionalism, and this is largely true of the commentary by Professors Cass, Graglia, Kmiec and Komesar as well. Professor Timothy Terrell attempts to shed some light on the concept of liberty by examining the component parts of its central or focal meaning. He then uses the concept thus elucidated as a criterion by which to test the correctness of a series of recent Supreme Court "liberty" decisions. Professor George Butler argues that economic liberties have been unnecessarily jeopardized over the past fifty years due to the failure of the judiciary to recognize the potential of the civil jury as the proper vindicator of those liberties.

Professor Graglia suggests that much of Professor Terrell's search for liberty's focal meaning is outside any reasonable conception of constitutional law. Similarly, Professors

Cass and Komesar find limitations in the presented analysis, the former because it too freely mixes interpretivist and non-interpretivist approaches and the latter on the basis of insufficient attention to the institutional characteristics of the actors involved. Professor Kmiec argues that a conception of liberty which is insufficiently deferential to Lockean conceptions of property ultimately diminishes both liberty *and* property.

There is some peculiarity to the articles included here that requires comment. Ordinarily the pages of this *Journal* are not given over to recondite forrays into legal history, or to intricate arguments about the interplay of abtruse legal doctrines. Thus, the extensive discussion of these matters is clearly something of an exception. We believe, however, an exception well justified by the quality of the articles themselves. Moreover, it is our belief that these articles merit the exceptional treatment we have given them if only because of their capacity to provoke the reader to reflect and reconsider settled notions of both history and policy that may be brought to the ethical consideration of liberty.