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## *TRIBUTE*

### A TRIBUTE TO DAVID MARTIN

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AT the end of the 2015–2016 academic year, David Martin retired thirty-six years after first joining our faculty. He is a true citizen-scholar who made a mark in the worlds of policy and public service, as well as in scholarly research and teaching. Indeed, it would be fair to say that he has had the career that aspiring law professors dream of.

David is a graduate of DePauw University in his native Indiana. He received his J.D. from Yale Law School in 1975, where he was elected Editor-in-Chief of the *Yale Law Journal* and selected to clerk for Judge J. Skelly Wright and then for Justice Lewis F. Powell Jr. After a year in private practice in Washington, DC, he took his first government post in the State Department in 1978 as Special Assistant to the newly created post of Assistant Secretary for Human Rights and Humanitarian Affairs, working on refugee and asylum issues that included legislative liaison work on the Refugee Act of 1980.<sup>1</sup>

David left the government for an entry-level position on our faculty in 1980. One of his earliest published pieces was “Large-Scale Migrations of Asylum Seekers.”<sup>2</sup> The article made two simple but important observations. It noted that refugee law paid almost exclusive attention to receiving states rather than addressing the more difficult problem of human rights violations in source states. It also argued that the law as defined in the United Nations convention differed significantly from

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<sup>1</sup> Pub. L. No. 96-212, 94 Stat. 102 (codified in scattered sections of 8 U.S.C., ch. 12).

<sup>2</sup> David A. Martin, Comment, Large-Scale Migrations of Asylum Seekers, 76 Am. J. Int’l L. 598 (1982).

practice on the ground. Perhaps there is no better illustration of David's desire to wrestle with fundamental issues than his writing on a series of problems that resonate as deeply in 2016 as they did in 1982.

But David also had a keen eye for the topical, used to great effect in another early article, "The Legislative Veto and the Responsible Exercise of Congressional Power."<sup>3</sup> The article provided a counterargument to the many commentators who saw in the legislative veto a way for Congress to rein in aggressive administrative agencies—another problem that has not disappeared in subsequent years. But Martin argued that rather than align administrative policy with majority preferences, the legislative veto would simply encourage agencies to avoid politically sensitive issues. The U.S. Supreme Court cited David's work in its opinion in *INS v. Chadha*, finding the legislative veto unconstitutional on separation of powers grounds.<sup>4</sup>

In his subsequent work on human rights and refugee issues, David became a leading voice for pragmatism in the formulation and application of policy. In his view, human rights advocates and policymakers should strive to end human suffering sooner rather than later. Sometimes this will require steps that advocates might dislike on grounds of principle, such as providing limited amnesty for some members of authoritarian regimes to induce them to give way to elected governments.

David applied this pragmatic streak to his primary area of interest, refugee law. He recognized early on that many asylum seekers arriving in developed countries in the 1980s, although certainly fleeing countries in which human rights abuses were rife, were not subject to persecution more immediate or dire than that faced by large numbers of their countrymen. They were part of spontaneous mass migrations, facilitated in part by increased mobility and a growing infrastructure of third parties that provided transportation and advice on the most effective ways to enter and remain in a developed country. In a series of works, David argued that the political asylum adjudication system required an overhaul to ensure more prompt and accurate determinations.<sup>5</sup> The likely conse-

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<sup>3</sup> David A. Martin, *The Legislative Veto and The Responsible Exercise of Congressional Power*, 68 Va. L. Rev. 253 (1982).

<sup>4</sup> 462 U.S. 919, 925 n. 2, 945, 959 (1983).

<sup>5</sup> David A. Martin, *The New Asylum Seekers*, in *The New Asylum Seekers: Refugee Law in the 1980s*, *The Ninth Sokol Colloquium on International Law* 1, 6–13 (David A. Martin ed., 1988); David A. Martin, *Reforming Asylum Adjudication: On Navigating the Coast of Bohemia*, 138 U. Pa. L. Rev. 1247 (1990). The latter work was an abbreviated version of a

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quence of a failure to reform, he concluded, would be a political backlash against the asylum system that would make refugees as a whole worse off.

The U.S. Immigration and Naturalization Service took up Martin's call for reform in the early 1990s and selected him as lead consultant. In 1995, as the administrative reforms were finalized, David became general counsel of the INS. The reforms he inspired and shepherded have been credited with avoiding precisely the legislative backlash against which he warned in the late 1980s.<sup>6</sup>

David returned to the Law School and to scholarship on citizenship and immigration policy in 1998. However, his country had one more task for him. For two years from 2009–2010, he served as deputy general counsel of the Department of Homeland Security under Secretary Janet Napolitano, one of his former students. In that role, he was deeply involved in the dispute over whether federal law preempted an Arizona immigration enforcement statute. The Supreme Court ultimately found most of the statute preempted in *Arizona v. United States*.<sup>7</sup>

David has been a marvelous teacher, scholar, and colleague. His contributions to immigration and refugee law will long survive his retirement from full-time teaching. Even in retirement, he remains a member of the Homeland Security Advisory Council. I doubt very much that we have heard the last of him in what are now front-page policy debates over immigration and suspect he will remain a participant in the Law School's intellectual life. Nevertheless, we wish him and Cyndy all the best as he lays down a portion of his labors.

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consultant's report that Martin prepared at the request of the Administrative Conference of the United States.

<sup>6</sup> See Philip G. Schrag, *A Well-Founded Fear: The Congressional Battle to Save Political Asylum in America* (2000).

<sup>7</sup> 132 S. Ct. 2492 (2012).