

FOREWORD

A FOUNDER'S REFLECTION'S REFLECTIONS: THE *JOURNAL* AT FORTY YEARS

On the occasion of the *Harvard Journal of Law & Public Policy's* fortieth anniversary, it is fitting to provide a brief reflection on the *Journal's* history.

In the mid-1970s, the environment at Harvard Law School and other law schools was not friendly to conservatives. While there was an abundance of liberal publications on a variety of topics, neither Harvard nor any other major law school published a single conservative journal. Conservative academics had no outlet in which to publish their work. If law students wanted to develop their editing skills, their only option was to aid in preparing liberal scholarship. So, during the 1976–77 academic year, a handful of Harvard students decided to approach the Law School administration about founding a journal dedicated to publishing conservative and libertarian viewpoints on issues of law and public policy.

Unsurprisingly, we were met with resistance. The Law School leadership refused to grant us funding for our endeavor, claiming that the Law School only funded facially neutral publications. The many liberal law reviews associated with Harvard Law School at that time did not explicitly state their political viewpoints, and the Dean and other officials were apparently untroubled by the fact that they had not published any conservative articles in years.

Undaunted, we sought funding from outside sources. Though it was initially difficult to find donors, within a year we identified a benefactor who was willing to invest in the first issue of our new conservative publication.

That fall, a band of about ten students met with then-Dean Albert Sacks. Though he could not bar us from publishing our own independently funded journal, he initially refused us the use of the Harvard name in our title, claiming our publication might somehow injure the reputation of the Law School. We resisted and ultimately prevailed by pointing out that Harvard had never challenged the use of its name by other independent

efforts—including not only scholarly endeavors, but also restaurants and a liquor store.

The first volume of the *Harvard Journal of Law & Public Policy* was published in the spring of 1978 with only a handful of student editors on its masthead. Several hundred law libraries purchased subscriptions, and the *Journal* was on its feet. During Ronald Reagan's presidency, conservative campus publications gained traction. We found ourselves with more students willing to serve as editors, more writers contributing to the *Journal*, and a more receptive faculty.

In the spring of 1982, I received a call from Lee Liberman, a law student at the University of Chicago. She told me that she and conservative students at other law schools had founded several campus organizations dedicated to giving a platform to conservative and libertarian perspectives on legal issues. They planned to hold a national symposium and asked if the *Journal* would publish the proceedings. That fall, the *Harvard Journal of Law & Public Policy* published an issue covering the first national symposium of what would become the Federalist Society. The Federalist Society has been the closest ally of the *Journal* ever since. Today, a subscription to the *Journal* is a benefit of membership in the Federalist Society, helping to make it one of the five most widely circulated legal journals in the United States.¹

The *Harvard Journal of Law & Public Policy* has grown from a seed planted by a handful of students to the nation's leading conservative and libertarian legal journal. The writings of senators, leading academics, and jurists have filled its pages. Their arguments have shaped the law of the nation, having been cited by the Supreme Court, federal Courts of Appeals, and other federal and state courts more than 120 times.² One of the *Journal's* former editors,³ Neil M. Gorsuch, is now an Associate Justice of the United States Supreme Court.

1. *Journals and Publications*, HARV. L. SCH., <http://hls.harvard.edu/dept/dos/student-journals/journals-and-publications/> [<https://perma.cc/2BPS-EL3K?type=image>] (last visited Jan. 6, 2018).

2. *See* Cases Citing the *Harvard Journal of Law & Public Policy*, LEXISNEXIS, <https://advance.lexis.com/> [<https://perma.cc/EXF9-NEDX>] (last visited Jan. 6, 2018) (search "Harv. J.L. & Pub. Pol'y").

3. *See* 13 HARV. J.L. & PUB. POL'Y, at xi (1991).

It is tempting to think from the national successes of the *Journal* and the Federalist Society that conservative thought has established a secure foothold in legal scholarship and the academy, but the *Journal's* original mission of sustaining a viable alternative to uniformly liberal scholarship is as relevant today as it was in 1977. Throughout the nation, freedom of thought is increasingly under threat in academia from a new generation of students and faculty seemingly aghast that alternative viewpoints on social, political, economic, or cultural matters exist, and all too often dedicated to stifling the First Amendment rights of those who would voice opinions contrary to the reigning progressive campus orthodoxy.

These students and faculty see conservative arguments not as an intellectual challenge to their own beliefs that merit a thoughtful response, but as violent personal attacks against them. They have no interest in the university as a forum for debate and would, it seems, prefer to expel opposing viewpoints from our institutions of higher learning. They have sought to intimidate and silence conservative faculty, disinvite speakers invited by their universities, shout down administrators who have dared to stand up to them, and disrupt speaking events on campus—sometimes even resorting to physical violence. Insofar as they do respond to dissenting views, they do so by attempting to tar those who hold them with epithets like “bigot” and “racist” rather than engaging with the substance of the view.

In 1977 there were no conservative voices or publications on law school campuses, and to this day the *Journal* remains, as Steven Eberhard and I referred to it in its first volume, *vox clamantis in deserto*.⁴ It is the only right-of-center publication at Harvard Law School and the nation's only conservative student-edited law journal with a national readership. Even at forty years of age, the *Journal* serves as a critical bulwark against the threat of a uniform progressive ideology establishing total dominance over the legal academy. It will continue to do so far into the future.

A reflection on the fortieth anniversary of the *Journal* would not be complete without thanking a few of those who made its

4. E. Spencer Abraham & Steven J. Eberhard, Preface, 1 HARV. J.L. & PUB. POL'Y, at vii, viii (1978) (meaning “the voice of one crying out in the wilderness,” from *Isaiah* 40:3, *Matthew* 3:3, *Mark* 1:3, *Luke* 3:4, *John* 1:23 (Vulgate)).

success possible. Thank you to those first students who organized the *Journal*, met with the Harvard administration, and served on our first masthead. I wish also to express my gratitude to the generous individuals and foundations whose investments made the *Journal's* early volumes possible—with a special thanks to the late John McGoff, who sponsored our first volume. Thanks also to Clifford Taylor, former Chief Justice of the Michigan Supreme Court, who agreed to serve as our first advisor.

My thanks would be incomplete without a tribute to the *Journal's* Co-Founder and first Editor-in-Chief, Steven Eberhard. Steve was an exceptional student, a patriot, and a true friend. His untimely death robbed the conservative movement and the nation of a great man who would surely have been one of its most brilliant and courageous leaders.

Finally, I congratulate and thank this year's editors for your outstanding work in carrying the *Journal* into its fifth decade. Your efforts provide another generation of conservative law students the opportunity to hone their editorial skills and give a voice to the greatest conservative legal minds of our day. In today's climate, no less than ever, those voices are needed in the great debates of our nation's legal academies.

E. Spencer Abraham
Co-Founder