

***PER CURIAM* PREFACE**

E. SPENCER ABRAHAM

PREFACE

When the *Harvard Journal of Law & Public Policy* published its first edition, the opportunities to publish conservative legal scholarship at American law schools were essentially non-existent. In 1977, several classmates and I approached the Harvard Law School administration about starting a journal to publish and foster debate about conservative ideas, ideas conspicuously absent from the legal conversation we encountered in the classroom. The administration refused. They claimed that Harvard's stable of student-run journals did not endorse political viewpoints and were facially neutral. Although technically true, the dearth of conservative articles in those journals for many years underscored the absence of opportunities for conservatives to share their perspectives in the marketplace of legal argumentation. And Harvard was by no means unique within the academy in this de facto silencing of heterodox views.

In the face of this stiff resistance, a small group of HLS students persisted. With the support of generous benefactors; the guidance of Clifford Taylor, former Chief Justice of the Michigan Supreme Court and the *Journal's* first academic advisor; the leadership of the *Journal's* Co-Founder and first Editor-in-Chief, Steve Eberhard; and the tireless work of many others, the *Journal* was up and running. We published our first edition in the spring of 1978. And several years later, in 1982, after the *Journal* published the proceedings of a small conference of conservative law students, that group decided to make the *Harvard Journal of Law & Public Policy* its official publication. For nearly four decades since that initial collaboration, and continuing today, every member of the Federalist Society

continues to receive the *Journal* as a benefit of a “FedSoc” membership.

In the intervening 40 years, the *Harvard Journal of Law & Public Policy* has grown from an idea in the minds of a handful of law students to the nation’s leading conservative and libertarian legal journal.¹ U.S. Senators, captains of industry, jurists at every level including the U.S. Supreme Court, and many others have all cut their teeth serving on the *Journal’s* staff. The *Journal* has published the writings of the greatest conservative legal minds of our day and has provided an opportunity for the next generation to engage with that scholarship.

The *Journal* was conceived as a home for conservative scholarship in print, and we look forward to continuing that important task well into the future. Today, however, the same hostility that descends on any challenge to progressive orthodoxy has crept into the digital marketplace of ideas as well. I am very pleased that *JLPP: Per Curiam* is emerging to combat this old threat that is surfacing in a new form.

The *Harvard Journal of Law & Public Policy* is uniquely qualified to provide an alternative to progressive platforms. The *Journal* was, and remains, as Steve Eberhard and I referred to it in its first volume, *vox clamantis in deserto*.² The *Journal* exists as a bulwark against the threat of a uniform progressive ideology establishing unchallenged dominance over the legal academy. *JLPP: Per Curiam* will be an essential part of continuing that mission in a digital age.

Despite the *Journal’s* growth and success since 1978, its original mission of providing an alternative to unvaryingly progressive

¹ Journals and Publications, HARV. L. SCH., <https://hls.harvard.edu/dept/ceeb/student-journals/journals-and-publications/#HarvardJournalofLawPublicPolicy> [<https://perma.cc/ZS8U-4VM6>] (last visited Aug. 10, 2021).

² 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)).

scholarship is as relevant today as it was then. Throughout the nation in academia, government, entertainment, and elsewhere, diversity of opinion and freedom of thought are under threat. This situation is not new. What is new is the incursion of this ideological intolerance into the promised bastion of free expression: the Internet.

Today, online speech platforms all too often see themselves as judges of truth. Those who challenge this dogma risk their ideas being labeled misinformation, chilling dissent. Our “moral arbiters” also wield “deplatforming” as a tool to outright silence those with whom they disagree, removing the pen from the writer’s hand. In this sense, the Internet resembles the landscape of legal scholarship in the late 1970s.

However, in an important way, the Internet is different. The low cost of Internet distribution makes self-publication accessible. As a result, ideas distributed online are less dependent on institutional gatekeepers than ideas published in print. This dynamic is exemplified by conservative legal blogs, which have amassed substantial followings. “Less dependent,” however, should not be understood as independent. The availability of self-publication is not a perfect defense against ideological intolerance, because self-publication cannot replace the amplifying effect of a well-established platform, particularly one with decades of rigorous scholarship behind its name. Today, the *Journal* launches *JLPP: Per Curiam* to stand in the digital gap.

JLPP: Per Curiam will be a home for legal scholarship that dares to challenge progressive orthodoxy online. It will provide a digital platform for the top conservative legal minds of our day and a source of high-level legal argumentation for the large audience of our readers—including law students, lawyers, members of the judiciary, and policymakers—who seek an alternative to the existing sources of legal discussion that still predominate in today’s classrooms, faculty lounges, and government offices.

At the time of the *Journal's* founding, it was our hope to select and publish a small number of thoughtful articles and notes each year. Of course, in 1978 it would have been difficult to imagine the Internet. Today, though, as one of the most widely circulated legal journals in the United States—and the only conservative one—*JLPP: Per Curiam* will take that platform online, where it can feature an even larger number of conservative voices and views that are urgently needed in today's legal debate. Shorter articles, published more frequently, will make the *Journal* even more impactful than the triannual print edition alone. Additionally, *JLPP: Per Curiam* will meet readers online where they increasingly live and work, further multiplying the *Journal's* impact. Everyone connected with the *Journal*, past and present, is excited by this development, and we have great expectations for its success.

JLPP: Per Curiam is a significant undertaking for the *Journal*. It is impossible to commemorate such an event without thanking those who made it possible. As I briefly mentioned earlier, that includes those first students who organized the *Journal*, met with the Harvard administration, and served on our first masthead. I also wish to express my gratitude to the generous individuals and foundations whose investments made the *Journal's* early volumes possible. Thanks also are due to Clifford Taylor, former Chief Justice of the Michigan Supreme Court, our first advisor. He stepped forward when faculty members at Harvard Law School would not. His courage deserves mention here.

My thanks would be incomplete without a special recognition of my co-founder and the *Journal's* first Editor-in-Chief, Steve Eberhard. As I wrote several years ago, "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."³

³ E. Spencer Abraham, *A Founder's Reflection's Reflections: The Journal at Forty Years*, 44 HARV. J.L. & PUB. POL'Y, 446 (2018).

This advancement of the *Journal* into the digital age, and all of our future innovations, are possible only because Steve stepped into the breach all those years ago. He is still missed today.

Finally, I congratulate and thank those who are working today to establish *JLPP: Per Curiam*. Your efforts will expand the reach of conservative legal scholarship at a critical time in our nation's history and in a vitally important medium. I wish your team the best of luck in this new endeavor!

E. Spencer Abraham
Co-Founder