

REFLECTIONS ON THE TWENTY-FIFTH  
ANNIVERSARY OF THE *HARVARD JOURNAL*  
*OF LAW & PUBLIC POLICY*

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Twenty-five years ago, when I was an enthusiastic assistant professor of law only recently arrived at Harvard, Steven Eberhard and Spencer Abraham were enterprising law students in search of a faculty member to provide cover for their idea of founding a new journal at the Harvard Law School. The creation of a new law journal was an almost commonplace event at Harvard in those days. The ranks of specialized publications produced by students under the auspices of the Law School had swelled during the 1970s, as various interest groups comprised of a few students, with the support of sympathetic members of the faculty, started one such journal after another. To establish yet another journal might have seemed like carrying coals to Newcastle, but Eberhard and Abraham had no commonplace journal in mind.

Indeed, the new journal they proposed was to be unlike any publication at any law school: they conceived of a journal devoted to the study of law from a conservative perspective. At the time, the idea appeared as odd as it was novel. After all, conservatives were not riding high in the saddle just then; it was only two years since the resignation of President Richard Nixon, a one-time conservative who had gone to China and at home had imposed Keynesian wage and price controls. If the timing seemed improbable, however, the institutional affiliation of the planned journal was more curious still. The faculty of the Harvard Law School was overwhelmingly hostile to conservative ideas and the student body appeared to be only a little more diverse. Indeed, the closest the school came to ideological pluralism during those years was reflected in the

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continuing debate between the Great Society social democrats and the adherents of the Critical Legal Studies movement about whether there really was any difference between law and politics, while one tenured and two un-tenured conservatives looked on with dismay. That the campus could sustain a forum for conservative thought was far from clear; in fact, it was near to risible.

Nonetheless, in a mischievous moment—which is all it took—I agreed to serve as the faculty advisor for the nascent *Harvard Journal of Law & Public Policy*. As it turned out, however, the effort required of me in that capacity was close to nil, owing to the diligence of the students on the *Journal's* staff. Despite having been denied funding from the Law School, and notwithstanding the difficulties that affect any start-up organization staffed by overworked volunteers, the *Journal* soon published its first issue. It has grown stronger in circulation and in influence with each passing year. I have derived great personal satisfaction in watching the *Journal's* success, and the *Journal's* readership indicates that I am not alone.

The *Harvard Journal of Law & Public Policy* is now the preeminent forum in the country for conservative legal commentary. No other law review has as great a reach; more than 8,000 readers receive each issue of the *Journal*. This is to say nothing of the influence that articles appearing in the *Journal* have had upon the development of the law. Indeed, the *Journal* has helped to generate the impetus for a new, innovative wave of legal research and scholarship, a wave that correlates closely with a return by the courts to their historic obligations of self-restraint and fidelity to texts. All who believe, as did Hamilton, that "it is the best expedient which can be devised in any government, to secure a steady, upright, and impartial administration of laws"<sup>1</sup> should applaud the *Journal* for its contribution to this beneficial reform.

Of course, conservative members of the legal community have long recognized the *Journal's* place in the struggle for reform. From the moment the *Journal* stated its intention to provide an outlet for heterodox legal thought, students with

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1. THE FEDERALIST NO. 78, at 433 (Alexander Hamilton) (Clinton Rossiter ed., 1999).

ideas that challenged the orthodoxies of the legal academy came forward, and law professors seized upon the opportunity to publish legal theories that earlier might not have found an outlet. Some of these students and faculty founded at other law schools new publications devoted to conservative legal thought, several of which style themselves journals of "law and public policy" in an homage of the sort paid by the pioneers who settled the American West, naming the towns they founded after the hometowns from which they had departed. Meanwhile, members of the bar plucked from the *Journal's* pages new perspectives on the law, some of which later were adopted in the courts. In all these ways, the *Journal* was instrumental in helping conservatives leave their bunkers—and for conservatism to assert itself as part of the legal mainstream.

That said, to focus upon the *Journal's* role in advancing conservatism in the law would be to overlook its broader and ultimately more significant accomplishment. After the *Journal* established a beachhead in the legal academy for conservative ideas, conservatives less frequently defined their views in contrast to the prevailing academic dogma, and conservatism developed from a reactive set of impulses into a vibrant framework for addressing contemporary problems in the law.

As my colleague, Judge Alex Kozinski of the Ninth Circuit, observed in these pages a few years ago, conservatism retained "a core that was analytically sound, had been tested by experience and whose merit was transparent to the mainstream: self-reliance, individualism, an emphasis on family . . . and minimal government interference with all of the above."<sup>2</sup> Beyond these general principles—this "mere conservatism," as it were—conservative legal thought grew deeper. Where once it was a conservative act for a judge merely to honor the plain meaning of a statutory term because other judges could not be counted upon to do the same,<sup>3</sup> with the blossoming of the conservative legal movement, the same judge might apply the principles of textualism, or of

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2. Alex Kozinski, *Introduction to Volume Nineteen*, 19 HARV. J.L. & PUB. POL'Y 1, 1 (1995).

3. See generally E. Spencer Abraham, *Introduction: Twentieth Anniversary Volume*, *Harvard Journal of Law & Public Policy*, 20 HARV. J.L. & PUB. POL'Y 1 (1996) ("The dominant view in the legal academy was that judges were free, if not duty-bound, to twist the clear meaning of statutes and the Constitution in whatever form necessary to achieve liberal policy goals.").

originalism, or of a combination of both in order to resolve the case before him. Similarly, what had been the all-purpose, lone conservative law professor on an otherwise liberal faculty might later be a socially conservative law professor, or a libertarian law professor, or even, as the discipline evolved, a rational choice theorist. Both the faculty and students at the nation's law schools have come to appreciate these distinctions, much as they understand the differences between legal realism and critical legal studies. In the words of Mao Zedong, a thousand flowers have bloomed. With all these variants of conservatism competing for support within the legal community, the quality of legal thought as a whole has been immeasurably enriched.

Much in legal thought has changed during the last twenty-five years, but the largest, most beneficial change has been that the subject of our study has become more rigorous, more open-minded and, as a result, more interesting. The *Harvard Journal of Law & Public Policy*, its authors, its supporters, and most important, the students who have produced and edited it, have played a crucial role in bringing that about—indeed a cause for celebration on this twenty-fifth anniversary.