

FOREWORD

THE WAKE FOREST JOURNAL OF LAW & POLICY

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This inaugural edition of the *Wake Forest Journal of Law & Policy* marks another historic step in the scholarly enrichment of the academy. Dedicated to an enhanced discussion of complex issues in contemporary society, the *Journal of Law & Policy* provides an invaluable forum that demonstrates the inexorable intersection between law and the social and public policies that shape legal rules designed to promote social order. Wake Forest proudly joins an impressive group of institutions that advance this intersectional discussion.¹

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1. The academy has a number of publications that are dedicated to the study of law and policies that influence the substance of legal rules. See, for example, the following scholarly publications: *American University Journal of Gender, Social Policy & the Law* (with a mission to include social policy issues and gender issues in the discussion of legal principles); *Cardozo Public Law, Policy and Ethics Journal* (a multidisciplinary publication that discusses and analyzes policy implications of governmental action); *Columbia Journal of Law and Social Problems* (which publishes articles that analyze a specific legal question in light of related economic, political, or sociological considerations); *Duke Journal of Gender Law & Policy* (which focuses on publishing pieces that discuss gender, sexuality, race, and class in the context of law and public policy); *Duke Forum for Law & Social Change* (with a mission to bring social issues to the forefront of the Duke Law community in a concrete way); *Harvard Law & Policy Review* (which has a mission to provide a forum for debate between progressive legal scholars, policymakers, and practitioners, and to dem-

The *Wake Forest Journal of Law & Policy*'s historic evolution established its potential as a true scholarly force. Several years ago, enterprising law students approached me with a proposal for a new journal at the law school, one that explores the connection between law and contemporary, cutting edge issues in society. The students initially confined the focus of the proposed journal to issues involving gender. After considerable debate and counseling, however, the focus expanded and the *Wake Forest Journal of Law & Policy* emerged as an exciting, new publication for the law school.

Perhaps the single, most intuitive question that overshadows the start of any journal centers on its educative necessity. A plethora of legal commentary has proliferated in the last twenty to twenty-five years.² The sheer number of publications, both in hard copy and in electronic format, presupposes the redundancy of a new journal. In fact, the ubiquity of the Internet³ and the ever-increasing number of informational sources such as blogs has prompted such statements as, "the last thing [the academy needs] is another journal."⁴ However, a large number of sources does not signify that all factors and viewpoints have been fully explored. As a consequence, belief in the presumption that there are too many academic journals would be myopic at best.

Law, as a basic construct, evolves from complex variables and factors within the context of social interactions.⁵ Context, which

onstrate the importance of the nexus between academics and practitioners in this debate); *Northwestern Journal of Law and Social Policy* (which explores the impact of the law on different aspects of society); *Richmond Journal of Law and the Public Interest* (which provides a discussion of issues regarding social welfare, public policy, and the law); *Virginia Journal of Social Policy and the Law* (which provides a forum for the examination of contending legal, judicial, and political perspectives relating to the interaction of law and social policy); *Yale Law and Policy Review* (which publishes scholarly articles and essays by law professors, and policy proposals and legal analyses by judges, policymakers, and practitioners).

2. See Marc Galanter, *A World Without Trials?*, 2006 J. DISP. RESOL. 7 n.88 (noting that "the number of law reviews has multiplied and the average output of each has grown.").

3. See Blake D. Morant, *First Amendment Issues in Emerging Technology—The Search for a Viable Theory of Regulation in the Digital Age*, 47 U. LOUISVILLE L. REV. 661, 673 (2009) (observing the dominance of the Internet as a medium for news and information).

4. Remarks at the 40th Annual Deans' Workshop of the ABA Mid-Year Meeting, Breakout Session (Feb. 4, 2010).

5. My own scholarship in the areas of contracts and media law has emphasized the importance of context in the interpretation and application of law and rules. E.g., Larry A. DiMatteo & Blake D. Morant, *Contract in Context and Contract as Context*, 45 WAKE

generally consists of interrelated conditions and circumstances that impact behavior,⁶ influences social and public policies, as well as laws that evolve from those policies. Law spawns rules, which appear facially objective and self-evident. This façade of objectivity, however, masks the reality that laws and legal rules are products of context. Comprehension of the meaning and true import of legal rules requires thorough examination of the context in which those rules were authored. This premise of credible analysis substantiates the need for journals that encourage detailed examination of the humanistic factors endemic in any context. With this in mind and contrary to the belief of some,⁷ the legal academy, judicial decision makers, and legislators benefit from journals that explore the context of law. As such, the *Wake Forest Journal of Law & Policy*, which publishes articles that explore the variant contexts that shape legal principles, contributes to a better understanding of laws and legal rules.

Examination of the contextual underpinnings of law expands scholarly debate beyond the boundaries of classical analysis. Similar to other policy journals,⁸ the *Journal of Law & Policy* publishes articles that delve into humanistic factors that are intertwined with laws and legal rules. Gender, race, class, economic status, and social and psychological behavior thus become salient points for discussion. Feminism, critical race theory, critical legal studies, law and economics, and issues pertaining to the public interest at large all become rich analytical tools that expand scholarly discourse. Through its focus on context, the *Journal of Law & Policy* will publish scholarship that explores the unique perspectives of policymakers, legislators, academicians who study the broad implication of rules, and the jurists who apply those rules to various cases and controversies. This important feature adds analytical richness to scholarship and signals the *Journal's* unlimited potential.

The *Journal's* inaugural publication demonstrates its vibrancy. Volume 1, issue 1 commences with a series of essays that

FOREST L. REV. 549 (2010); Blake D. Morant, *Electoral Integrity: Media, Democracy, and the Value of Self-Restraint*, 55 ALA. L. REV. 1 (2003).

6. See *Context Definition*, MERRIAM WEBSTER, www.merriam-webster.com/dictionary/context (last visited Apr. 3, 2011).

7. See *supra* note 4 and accompanying text.

8. See *supra* note 1.

commemorate the fortieth anniversary of the United States Supreme Court's decision in *New York Times v. United States* (the *Pentagon Papers* case). The series' lead piece entitled, *The Pentagon Papers After Four Decades*,⁹ details the finer points of the litigation in that famous case. Written by Mr. Floyd Abrams, who functioned as co-counsel to the *New York Times* in that historic case, the essay also includes an appendix of fascinating documents that the *New York Times* had in its possession when it wrote its news stories based on the Papers. Mr. Abrams' essay provides a unique *contextual* analysis of the Pentagon Papers litigation and the fortuitous events that gave rise to our current regime of expressive freedom.

Demonstrative of the *Journal's* interdisciplinary richness is Mr. Charles Bierbauer's contribution to Volume 1's special series.¹⁰ Mr. Bierbauer, who has been a longtime CNN Senior White House Correspondent and Supreme Court Correspondent, is now the Dean at the University of South Carolina College of Mass Communications and Information Studies. His essay will emphasize the continuing relevance of the *Pentagon Papers* case to such present controversies as WikiLeaks's disclosures and the historic regime change in Egypt precipitated by democratic protests. Volume 1, issue 1 also includes an essay that examines the tension between the right to expressive liberties and the need for societal order.¹¹ Other pieces in the *Journal's* initial publication analyze matters such as censorship and the Internet,¹² the possible chilling effects of litigation against newspapers for content on their websites,¹³ the questionable impartiality of the federal judiciary given the realities of the confir-

9. Floyd Abrams, *The Pentagon Papers After Four Decades*, 1 WAKE FOREST J.L. & POL'Y 7 (2011).

10. Charles Bierbauer, *When Everything is Classified, Nothing is Classified*, 1 WAKE FOREST J.L. & POL'Y 21 (2011).

11. Jerome A. Barron, *The Pentagon Papers Case and the WikiLeaks Controversy: National Security and the First Amendment*, 1 WAKE FOREST J.L. & POL'Y 49 (2011).

12. Derek E. Bambauer, *Consider the Censor*, 1 WAKE FOREST J.L. & POL'Y 31 (2011).

13. Charles F. Marshall & Eric M. David, *Prior Restraint 2.0: A Framework for Applying Section 230 to Online Journalism*, 1 WAKE FOREST J.L. & POL'Y 75 (2011).

mation process,¹⁴ and the raging debate on the propriety of rules designed to regulate immigration.¹⁵

The *Journal's* first symposium, entitled *Patriarchal Religion, Sexuality, and Gender*, demonstrated contextual analysis at its best. As the title of the symposium suggests, scholars examined the elasticity of civil liberties, particularly when the exercise of those liberties disproportionately impacts historically disadvantaged constituencies. The symposium, published in Volume 1, issue 2 of the *Journal*, features such renowned scholars as Professor David A.J. Richards of New York University Law School, and Dr. Nicholas Bamforth of Queens College, the University of Oxford.

The somewhat cutting edge and sensitive nature of some of the *Journal's* articles and essays will no doubt enhance readership. This enviable result, however, serves as a precursor to the *Journal's* ultimate objective, that is, to provide detailed analysis that cuts through sensationalism and delivers reasoned analysis. In my view, sensational topics compel detailed analysis to ensure a respectful colloquy. The thorough examination of the context that gives rise to a sensational topic or controversy optimizes the probability of reasoned debate.

An enterprising staff, the unqualified support of the faculty, and fascinating topics explored with rich, contextual analysis combine to ensure the stature of the *Wake Forest Journal of Law & Policy* as a definitive voice in legal scholarship. Policymakers, scholars, jurists, practitioners, and individuals with a vested interest in societal order will find the *Journal's* innovative publications both compelling and intellectually enriching. With an exciting agenda and limitless potential, it gives me great pleasure to present the *Journal of Law & Policy*, and I invite the entire academy to engage with this dynamic new enterprise of the Wake Forest University School of Law.

14. Keith J. Bybee, *Will the Real Elena Kagan Please Stand Up? Conflicting Public Images in the Supreme Court Confirmation Process*, 1 WAKE FOREST J.L. & POL'Y 137 (2011).

15. Lorraine Schmall, *U.S. Internal Immigration Enforcement: Not a Model but an Alarum*, 1 WAKE FOREST J.L. & POL'Y 157 (2011).