

Annual Report | 2015– 2016



New York University
School of Law
Journal of Legislation
and Public Policy

**NEW YORK UNIVERSITY
JOURNAL OF LEGISLATION
AND PUBLIC POLICY**

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Dear friend,

On behalf of the 2015-2016 Executive Board, it is my pleasure to report that the *Journal of Legislation and Public Policy* has had an extraordinarily productive and successful year here at NYU School of Law. In keeping with tradition, this Annual Report provides an overview of all that the Journal has achieved in the past year, as well as a glimpse of our plans for the months ahead.

The Journal achieved landmark successes as a publication during the 2015-2016 academic year. Led by our hardworking team of senior editors, we published six full issues of timely, high-quality legal scholarship, which caught us up in full on the Journal's publication calendar and author agreements. The articles that we publish continue to be cited in judicial opinions, litigation documents, treatises, and elite legal publications such as *Harvard Law Review* and the *Yale Law Journal*. In Volume 19, Issue 2, we also pioneered an innovative "in conversation" feature, which presented three short complementary essays by prominent scholars in the field of administrative law. We expect that the Journal will continue to use this "in conversation" model from time to time in conjunction with our traditional formats to explore issues of widespread scholarly debate.

The last year was also a great one for the Journal's development as part of the NYU Law community. In November 2015, we partnered with the Arthur Garfield Hays Civil Liberties Program to present a symposium on the movement for lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA) equality in the wake of the Supreme Court's historic decision in *Obergefell v. Hodges*, 35 S. Ct. 2584 (2015). We developed and implemented content-focused initiatives to ensure that both our print book and its online companion, *Quorum*, continue to serve as platforms for scholarship of the highest caliber by academics, policymakers, and practitioners in both the private and public sectors. *Quorum*, now in its fourth year, has published several shorter pieces on a variety of timely legal topics; and we are pleased to report that this content is now more broadly accessible to the legal community through electronic research services.

As the Journal grows and thrives as an institution, so too do its members. The Executive Board implemented several new practices designed to foster intellectual and social engagement among members of the Journal, including interest-focused assignment practices and a peer mentoring program to assist our junior staff editors navigate the 2L job search process. Our team of senior notes editors made major reforms to the Journal's flagship Note Workshop, and we have continued our efforts to promote our members' development as writers and student editors. These initiatives have met with great enthusiasm at all levels of the editorial staff; and we on the Board believe that they will help the Journal continue to build upon its reputation for excellence as a student group as well as a publication.

This fall, the Journal enters its twentieth year as an institutional member of the NYU community. It was my personal pleasure and privilege to lead the Journal as Editor-in-Chief during these last months, and I am sincerely excited for all that next year's leadership has in store. I have no doubt that next year's Annual Report will detail even greater plans and achievements as the new Executive Board guides the Journal into its third decade.

On Behalf of the Executive Board of 2015-2016,

Amanda J. Sterling
Washington, D.C.
August 2016

Governance & Membership

Unlike previous years, this year the Executive Board was comprised of fourteen members due to the addition of a Senior Executive Editor position. This role was filled by **Manuel Antunes** and assisted the Managing Editor of Production as well as the Senior *Quorum* Editor with the editing process for both the print publication and the online publication. The remaining third-year students assisted as Articles Editors, Notes Editors, and *Quorum* Editors. Article Editors assisted in editing and review of articles for the print publication, Notes Editors participated in our Notes program to work with journal members as they developed their individual student writing, *Quorum* Editors assisted the Senior *Quorum* Editor **Rebecca Weinstein** and Managing Editor **Trishna Velamoore** in editing pieces published in *Legislation's* online supplement

Forty-nine second-year students joined *Legislation* as Staff Editors in August 2015 after completing NYU Law's Writing Competition and Transfer Writing Competition over the summer.

The 2015 journal admission cycle was a highly successful one. Managing Editor **Trishna Velamoore** served on the inter-journal Writing Competition committee, and participated in choosing the topic of Mass Incarceration/Prison Reform for the Writing Competition. She provided many of the sources for the prompt packet that students were provided, ensuring the relevance of submissions to this Journal's Scope.

Non-Production Standing Committees

Legislation continued its practice of requiring participation of all staff editors on non-production standing committees. The committees exist to support the substantive work of *Legislation* and provide staff editors with ample opportunities to get involved in journal projects beyond the traditional production assignments. Committees perform both advisory and administrative functions. After receiving feedback from all staff editors on their committee preferences, each staff editor was assigned to one of the following four committees in 2015-16:

- **Content Committee** – Tasked with reviewing content submitted for publication consideration over the course of the academic year.
 - Chair: **Nathan Noh**, Senior Articles Editor
- **Development Committee** – Tasked with a wide variety of non-production journal operations including but not limited to *Quorum* content review, social media management, alumni relations, and the enrichment of *Legislation* members' law school experience.
 - Co-Chair: **Trishna Velamoore**, Managing Editor
 - Co-Chair: **Cerin Lindgrensavage**, *Quorum* Editor
- **Social Committee** – Tasked with planning Journal social events and release parties, as well as fostering camaraderie among journal members.
 - Co-Chair: **Robert L. Wenworth**, Executive Editor
 - Co-Chair: **Timothy T. Leech**, Articles Editor

- **Symposium Committee** – Tasked with the execution of the *Legislation*'s 2015 Symposium and the preparation of the 2016 Symposium Application.
 - Co-Chair: **Michelle Chun**, Senior Symposium Editor

Print Publications

This year, *Legislation* again published four full issues. Of these books, one presented the fruits of the Fall Alumni Lecture hosted in 2014–2015. In all, *Legislation* published fourteen academic articles by scholars, practitioners, and judges, and eight notes by current or recently graduated members of the editorial staff. Below, we provide synopses of the issues and the content contained therein.

Volume 18, Issue 3

Volume 18, Issue 3 memorialized and expanded on the material of the *Legislation*'s 2014 symposium, “Courts, Campaigns, and Corruption: Judicial Recusal Five Years After *Caperton*.” This event took place on November 14, 2014, and was organized in partnership with the Brennan Center for Justice at NYU and the American Bar Association's Center for Professional Responsibility.

The Symposium looked at the state of affairs five years after *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868 (2009), which held that a litigant's due process rights can be violated when an elected judge refuses recusal in a case in which that judge received significant campaign support from a litigant. A series of three panels and one discussion led by federal and state judges examined the effects of *Caperton* in the courtroom, evaluated the state of judicial recusal reform, and examined the issue of judicial partiality and recusal beyond the context of campaign spending. Participants included **Adam Liptak**, Supreme Court correspondent for the New York Times; **Robert Peck**, president of the Center for Constitutional Litigation; **Myles Lynk**, then-incoming chairman of ABA Standing Committee on Ethics and Professional Responsibility; the Honorable **Jonathan Lippman**, then-Chief Judge of the New York Court of Appeals; the Honorable **Maureen O'Connor**, Chief Justice of the Ohio Supreme Court; **Jed Shugerman**, professor at Fordham University School of Law; and **Rex Perschbacher**, professor at UC Davis School of Law.

Issue 18.3 contains the day's opening remarks by **Wendy Weiser**, Director of the Democracy Program at the Brennan Center for Justice; transcripts of the event's three panels and “judicial lunch” discussion; and closing remarks by **Dean Trevor Morrison**. It also includes four original scholarly articles written by four of the event's panelists:

- *Recusal Failures*
 - By **Dmitry Bam**, Associate Professor, University of Maine Law School
 - This Article describes the existence of improper bias within the American judiciary and argues that recusal since *Caperton* has failed to address this issue. Part I explains how three fundamental changes in the nature of judicial elections have created a major concern about judicial bias. Part II discusses the potential of recusal to be a solution to the judicial bias problem and briefly reviews the recusal standards and practices in the states that elect judges. Part III contends that recusal has failed to prevent biased judges from rendering judicial decisions and that it cannot serve as the solution to the problem of biased judges. Professor Bam concludes with some thoughts on where we can go from here and discussion of whether there are other potential solutions to the problem of judicial bias.
- *Three Reasons Why the Challenged Judge Should Not Rule on a Judicial Recusal Motion*
 - By **Debra Lyn Bassett**, John J. Schumacher Chair in Law, Southwestern Law School
 - In her remarks as a panelist at the Symposium, Professor Bassett focused on the need for alternative or additional decision-makers to decide judicial disqualification motions due to the extensively documented phenomenon of unconscious bias, whereby individuals do not always recognize their own biases and prejudices. Taking this opportunity to elaborate on this topic in this Article, Professor Bassett offers three reasons why a challenged judge should not rule on his or her own judicial recusal motion. These three reasons include unconscious bias, the bias blind spot, and the impact of publicly stating a position. Due to the automatic nature of these mental processes, the challenged judge typically will not be aware of their effect on his or her decision-making process. Accordingly, the use of additional or substitute decision-makers can bring a more impartial perspective to the recusal motion, ensuring that the challenged judge does not deny the motion for reasons personal to, but unrecognized by, the judge.
- *Judicial Recusal: Cognitive Biases and Racial Stereotyping*
 - By **Gregory S. Parks**, Assistant Professor of Law, Wake Forest University School of Law
 - This Article explores implicit, subconscious race bias in judicial decision-making and its implications for judicial recusal. In Part I, it describes an unmistakable instance of racial stereotyping and prejudice demonstrated by a federal judge, in order to exemplify that judges harbor such attitudes. In Part II, it explores examples of white judges being racially biased against black litigants and what this may mean for judicial recusal. In Parts III and IV, it examines the extent to which black judges can be racially biased against white and black litigants, respectively. Overall, Professor Parks contends that in light of the complex nature

of subconscious race bias, different recusal standards should be used for black and white judges depending upon other contextual considerations.

- Caperton *on the International Stage*
 - By **Rex R. Perschbacher**, Professor of Law, Daniel J. Dykstra Endowed Chair, U.C. Davis School of Law
 - This Article expands on Professor Perschbacher's panel remarks at the Symposium. In particular, it focuses on the similarities between the approach to judicial recusal in the United States and the approach taken in other countries. The Article offers three central points of comparison: similar recusal standard, similar decision-maker, and similar approaches by the decision-maker when employing the recusal standard. The Article concludes by reiterating the importance that recusal plays in generating and maintaining public confidence in the judicial system.

Volume 18, Issue 4

Volume 18, Issue 4 featured five full-length scholarly articles and one student note on an array of timely legal topics. Articles printed in this issue included:

- *Local Judges and Local Government*
 - By **Ethan J. Leib**, Professor of Law, Fordham Law School
 - This Article is an interview-based empirical study of how local judges perceive their roles in local and state government. It explores local judges' relationships with the public that elects them, the executive and legislative branches of their localities, and the larger statewide judicial bureaucracy of which they are a part. Based on its findings, this Article suggests that scholars and policy-makers alike have mistakenly discounted the critical role local courts play in municipal government, and have failed to appreciate some of the psychological and institutional pressures local judges face on the job.
- *Stepping On (Or Over) the Constitution's Line: Evaluating FISA Section 702 in a World of Changing "Reasonableness" Under the Fourth Amendment*
 - By **Patrick Walsh**, Associate Professor, International and Operational Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia
 - This Article argues that two significant shifts in constitutional jurisprudence cast doubt on whether warrantless wiretaps under section 702 of the Foreign Intelligence Surveillance Act are consistent with the protections provided in the Fourth Amendment. Although federal courts and government oversight panels have narrowly approved section 702 interceptions in the past, courts have yet to consider the Supreme Court's recently increased scrutiny on traditional criminal

wiretaps searches, the rationales of which may also be applicable to the section 702 program. This Article also outlines cases in which the judicial branch applied less deference in national security affairs and suggests that courts are now willing to rule against the government on national security issues. Based on these observations, this Article concludes that current jurisprudence has laid the groundwork that a future court may rely on to rule that section 702 violates the Fourth Amendment.

- *The Bankruptcy Safe Harbor in Light of Government Bailouts: Reifying the Significance of Bankruptcy As a Backstop to Financial Risk*
 - By **Jodie A. Kirshner**, Lecturer in Law, Columbia Law School
 - This Article emphasizes the importance of effective bankruptcy law as a backstop to systemic risk. It is the first part of a two-part study. Part two will investigate prerequisites to the development of securities and derivatives markets in emerging economies. This Article argues that the recent financial crisis revealed deficiencies in the bankruptcy system; namely, that the exemption of securitized assets and derivatives trades from the bankruptcy process left bankruptcy law unable to stop runs on financial contracts held by financial institutions. It examines the necessity of strong bankruptcy law in preventing and improving responses to future crises, and concludes that a strong bankruptcy law could contribute to the avoidance of insolvency among financial institutions, and better enable firms to prepare for bankruptcy.
- *The Bitcoin Blockchain As Financial Market Infrastructure: A Consideration of Operational Risk*
 - By **Angela Walch**, Assistant Professor, St. Mary's University School of Law
 - This Article explores the suitability of the Bitcoin blockchain to serve as the backbone of financial market infrastructure, and evaluates whether it is robust enough to serve as the foundation of major payment, settlement, clearing, or trading systems. It emphasizes the vital importance of a functioning financial market infrastructure to global financial stability, and argues that the nature of Bitcoin software, together with its decentralized governance structure, generates considerable operational risks that render the technology unsuitable to serve as financial market infrastructure.
- *Toward a State-Centric Cyber Peace?: Analyzing the Role of National Cybersecurity Strategies in Enhancing Global Cybersecurity*
 - By **Scott J. Shackelford**, Assistant Professor of Business Law and Ethics, Indiana University, Senior Fellow, Indiana University Center for Applied Cybersecurity Research, W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Stanford University Hoover Institution, and **Andraz Kastelic**, Doctoral student, Sheffield University Law School

- This Article analyzes thirty-four national cybersecurity strategies in an effort to discover governance trends that could give rise to customary international law norms. After introducing the history of national cybersecurity strategies, it compares and contrasts a variety of such strategies across three dimensions: critical national infrastructure protection, cybercrime mitigation, and cybersecurity governance. Based on these observations, it examines the extent to which these national cybersecurity strategies converge in ways that could facilitate the creation of international cyber norms.

Issue 18.4 also contained the following student note:

- *“Whose Line Is It Anyway?”: Reducing Witness Coaching by Prosecutors*
 - By **Brittany R. Cohen**, J.D. 2015, NYU School of Law
 - This Note addresses the distinction between conduct by prosecutors that constitutes proper witness prepping and conduct that constitutes improper witness coaching. It explores the science of behind false memories and suggestibility, explaining why witness coaching is so detrimental, and argues that existing safeguards are insufficient to prevent prosecutors from engaging in this activity. In conclusion, this Note proposes reforms to mitigate damage caused by coaching, focusing in particular on prosecutors who unknowingly coach their witnesses.

Volume 19, Issue 1

Issue 19.1 addresses a variety of timely legal issues and included the following four articles:

- *The Illusion of the Free-Trade Constitution*
 - By **Jide O. Nzelibe**, Professor of Law, Northwestern University School of Law
 - This Article addresses the claim that our constitutional structure of government can be reformed to promote the general welfare at the expense of special interest groups. Ultimately, the author argues that there is likely is no set of constitutional structures that will guarantee a path to free trade, and that the relationship between free trade and constitutional institutions is largely contingent and dependent on interest group politics. The Article addresses a widely touted constitutional innovation—the longstanding practice in which Congress delegates significant international trade authority to the President. The author casts doubt on a commonly told narrative that Congress agreed in 1934 to sacrifice some portion of its constitutional international trade authority for the greater good, thereby disempowering interest groups and enabling the President to pursue trade policies that benefit the general welfare. The Article demonstrates that such reciprocity and delegation were themselves the products of interest group politics. Therefore,

neither reciprocity nor the delegation of trade authority to the President were efforts to transcend interest group pressure in trade policy.

- *Untangling the Web: Juvenile Justice in Indian Country*
 - By **Addie C. Rolnick**, Associate Professor, University of Nevada, Las Vegas, William S. Boyd School of Law
 - Native youth become involved in the juvenile justice system at high rates, are more likely than other youth to be incarcerated, and are less likely to receive necessary health, mental-health, and education services. This Article provides a description and diagnosis of the reasons that the Indian country juvenile justice system continues to fail Native youth. It provides an analysis of the law governing juvenile delinquency jurisdiction in Indian country, and in doing so reveals much greater potential for tribal control under current laws than other commentators assume exists. The author examines the inner workings of each sovereign's approach to Indian country justice, and provides the full picture necessary to identify and implement both large-scale and small-scale solutions. As federal and tribal leaders debate legal and policy changes to the Indian country juvenile justice system, including potential amendments to the Federal Juvenile Delinquency Prevention Act, the Juvenile Justice and Delinquency Prevention Act, federal criminal laws, and Public Law 280, this Article's investigation of barriers to improvement attempts to elucidate a better path to reform.
- *The Checkered History of Regulatory Reform Since the APA*
 - By **Stuart Shapiro**, Associate Professor and Director of the Public Policy Program, Bloustein School of Planning and Public Policy, Rutgers University, & **Deanna Moran**, Bloustein School of Planning and Public Policy, Rutgers University.
 - This Article reviews four major regulatory reform statutes passed since the adoption of the Administrative Procedure Act in 1946. The Article argues that none of the statutes accomplished their substantive goals, such as reducing the burden of regulation. The authors recount the debate that accompanied the passage of these statutes and find that passage required the support of legislators and Presidents who favored strong regulation, and that each statute therefore gave considerable discretion to regulatory agencies. The Article argues that regulatory agencies have used this discretion to ensure that regulatory reform does not curb their ability to make their preferred regulatory decisions. The authors conclude that as long as the cooperation of political actors who support strong regulation is necessary, reforms to the regulatory process are likely to have minimal effects on the substance of regulation.
- *Regulatory Takings and Ridesharing: "Just Compensation" for Taxi Medallion Owners?*
 - By **David K. Suska**, J.D. Candidate, 2016, University of Chicago Law School

- This Article addresses legal issues related to the sharp diminution in the value of taxi medallions resulting from the regulatory accommodation of ridesharing services such as Uber. The Article addresses both doctrinal and normative aspects of the issue of compensating medallion owners. It first argues that medallion owners lack a doctrinally plausible regulatory takings claim. Second, it argues that a legislative policy of compensating medallion owners as part of regulatory change—a policy of transition relief—may be preferable to letting losses lie. Moreover, the Article aims to show that transition relief may yield efficient regulatory incentives and outcomes.

Issue 19.1 also contained the following student note:

- *Discount Double-Check: An Analysis of the Discount Rate for Calculating the Social Cost of Carbon*
 - By **Max R. Sarinsky**, J.D. 2015
 - In 2009, the White House charged the “Interagency Working Group on Social Cost of Carbon” with calculating the present value of the societal benefit of reducing carbon emissions by one ton. The Working Group published its original social cost of carbon (“SCC”) estimates in 2010, and increased them in 2013 in response to updated scientific data. This Note analyzes the various methods that the Working Group used to calculate discount rates. It argues that most of these approaches—with the exception of “hyperbolic discounting”—fail to account for long-term uncertainty and, as a result, severely undervalue regulatory benefits. Ultimately, the Note argues that the Working Group should calculate a single SCC value based on hyperbolic discounting and rescind its other SCC values that apply unsound cost-benefit principles.

Volume 19, Issue 2

In Issue 19.2, the *Journal* presented a trio of essays as a feature that examined the government’s use of cost-benefit analysis as a means of constraining costs in the modern administrative state.

- *The Regulatory Budget Debate*
 - By **Richard J. Pierce, Jr.**, Lyle T. Alverson Professor of Law, George Washington University
 - For thirty-five years, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has used benefit-cost analysis (BCA) to review major rules issued by executive-branch agencies. For almost as long as OIRA has been applying BCA, some of the smartest and most productive progressive scholars have criticized the role of OIRA generally and OIRA’s use

of BCA in particular. This essay argues that the time has come for those scholars to stop wasting their energy tilting at windmills, and that they ought to devote their talents to more promising endeavors.

- *Can Fiscal Budget Concepts Improve Regulation?*
 - By **Susan E. Dudley**, Director, GW Regulatory Studies Center; Distinguished Professor of Practice, George Washington University Trachtenberg School of Public Policy & Public Administration
 - In recent years, Congress has explored the possibility that applying fiscal budgeting concepts to regulation could bring more accountability and transparency to the regulatory process. This essay examines the advantages and challenges of applying regulatory budgeting practices and draws some preliminary conclusions based on successful experiences in other countries.
- *Windmills and Holy Grails*
 - By **Amy Sinden**, James E. Beasley Professor of Law, Temple University; Member Scholar, Center for Progressive Reform.
 - This essay responds to Professor Pierce's argument by critiquing formal cost-benefit analysis (CBA) as a means of constraining spending by the administrative state. After exploring the theoretical and practical problems surrounding formal CBA, this essay presents an argument as to why this analytical technique should not be treated as conclusive in the review of administrative rulemakings.

Issue 19.2 also featured two full-length articles, each of which examined ongoing issues related to the project of legislation.

- *Dangerous Tongues: Storytelling in Congressional Testimony and an Evidence-Based Solution*
 - By **Clare Keefe Coleman**, Associate Teaching Professor, Drexel University Thomas R. Kline School of Law
 - This article draws upon concepts from the fields of linguistics and critical theory to examine the use of storytelling in legislative debate, highlighting in particular the dangers that can arise when special interest groups use metaphors, archetypes, and myths to crowd out sound data and good science. Ultimately, the article endorses evidence-based legislation as a means of curtailing these potential problems and protecting the integrity of the legislative process.
- *Fighting to Lose the Vote: How the Soldier Voting Acts of 1942 and 1944 Disenfranchised America's Armed Forces*
 - By **Molly Guphill Manning**, Author, *When Books Went to War: The Stories that Helped Us Win World War II* and *The Myth of Ephraim Tutt: Arthur Train and His Great Literary Hoax*; Attorney, U.S. Court of Appeals for the Second Circuit

- Legal issues plagued the passage of the Soldier Voting Acts of 1942 and 1944; and both statutes had significant implications for soldiers’ ability to exercise their right to vote. Although these statutes have largely been forgotten today, an effective soldier ballot has not yet been implemented. This article explores the legal problems involved in the statutes’ passage and examines the unique challenges that the system has since presented for members of the armed services.

Issue 19.2 also contained the following student notes:

- *Non-Delegation as Non-Deliberation*
 - By **Nathan K. Noh**, J.D. 2016
 - This note explores deliberative values embedded in theoretical and early historical understandings of the separation of powers in order to identify a constitutionally firm basis for the delegation of lawmaking authority to the modern administrative state. In drawing upon congressional deliberation as an independent and necessary virtue of the federal lawmaking process, it provides a theoretical account of delegation and proposes a workable standard for distinguishing valid from unconstitutional delegations of the legislative power.
- *Judicial Standards for the Anti-Circumvention Rationale in Campaign Finance*
 - By **Nabil Ansari**, J.D. 2016
 - The evidentiary standards for evaluating claims of circumvention are a central question for campaign finance jurisprudence. This note traces the development of this anti-circumvention rationale and explores its role in the Supreme Court’s review of campaign finance reforms. Ultimately, the note endorses a lenient evidentiary standard that would comport with existing doctrine and reflect the inherently predictive nature of congressional judgments regarding campaign finance reform.

The Production Process

Legislation’s production process has seen substantial changes this year under the leadership of Managing Editor **Craig Ewasiuk**. First, at the beginning of the fall semester, the 2015–2016 Board compiled Staff Editors’ interests and areas of expertise and then took these into account in assigning articles. Second and most importantly, all of the various stages of source gathering and C&S have now been integrated into one process by means of Google Drive. Whereas before, Staff Editors were expected to make and combine PDFs for every authority listed in a footnote, now Staff Editors submit a single table via Google Drive, which captures all of their edits and includes hyperlinks to the authorities cited. This means that Staff and Executive editors no longer have to deal with numerous PDF files, and revisions can be made without having to remake PDF

files. For the first time, *Legislation* truly has a fully electronic citation and substantiation check for every article.

***Quorum*: Legislation's Online Companion**

In keeping with *Legislation*'s mission to provide timely and practical scholarship to inform public debate on important issues, *Quorum* aims to publish shorter articles than the print journal at a correspondingly accelerated production schedule. With a shorter production schedule and lower word counts, *Quorum* provides a valuable outlet for faculty, practitioners, and students to address present-day legal controversies as they unfold, while maintaining the rigor and substance of traditional legal scholarship.

Quorum is indexed on LexisNexis, and will soon be indexed on WestLaw as well. In 2015, *Quorum* has been cited *George Washington Law Review* (September, 2015) and the *Journal of Law and Health*.

Quorum is published on an annual calendar. In December 2015, its third full volume was completed. On the 2015–16 Executive Board, Senior *Quorum* Editor **Rebecca Weinstein** supervised content generation and production, working in conjunction with Managing Editor **Trishna Velamoor**, six 3L *Quorum* editors, and a rotating cadre of staff editors.

Since the last annual report, *Quorum* published three new pieces in the 2015 volume:

***Quorum* Volume 2015**

- White Paper, *Open access for Parents to an Education Network (Open): An Open-Data Policy to Improve the Effectiveness and Equal Utilization of School Choices and Open Enrollment Options Across the Education Landscape*
 - By **Robin C. Burrell**, J.D. 2017, Legislation Competition 2015 Winner
 - <http://www.nyujlpp.org/wp-content/uploads/2013/03/Burrell-2015-nyujlpp-quorum.pdf>
 - This white paper was selected as the winning entry for the 2015 NYU Journal of Legislation & Public Policy Legislation Competition, and aims to explain to advocates and provide them tools to use when talking to legislators about the attached draft bill. The Legislation Competition asked participants to develop and

submit model state legislation to address a specific policy issue identified by the Legislation Competition Committee and further submit a white paper to supplement the draft bill. Entries were reviewed by the chairs of the Legislation Competition Committee who rated entries on criteria such as originality, creativeness, quality of submission, and viability of proposal.

- Note, *Navigating The Policy Landscape To Bring Autonomous Vehicle Legislation To Your State*
 - By **Kurt M. Gosselin**, J.D. 2015
 - <http://www.nyujlpp.org/wp-content/uploads/2013/03/Gosselin-2015-nyujlpp-quorum.pdf>
 - At an economic cost of nearly \$300 billion, more than 5.5 million car accidents result in over 30,000 fatalities on American roadways each year. Advocates of automated vehicle (“AV”) technology view self-driving cars as a solution for reducing both the number and severity of accidents. Using AV technology on public roadways currently exists in a legal gray area as there is no national consensus on the legality of AV technology. However, NHTSA recently published guidance on the topic, many states are considering legislation to authorize the operation of these vehicles, and a few states have already passed legislation permitting the testing of automated vehicles. Building from NHTSA guidance and current state legislative and regulatory activity, this Note analyzes the interests involved in state-based regulation of autonomous vehicle testing and proposes a model plan for enacting a regulatory regime for AV technology.
- *Declining Controversial Cases: How Marriage Equality Changed The Paradigm*
 - By **Elena Baylis**
 - <http://www.nyujlpp.org/wp-content/uploads/2013/03/Baylis-2015-nyujlpp-110.pdf>
 - Until recently, state attorneys general defended their states’ laws as a matter of course. However, one attorney general’s decision not to defend his state’s law in a prominent marriage equality case sparked a cascade of attorney general declinations in other marriage equality cases. Declinations have also increased across a range of states and with respect to several other contentious subjects, including abortion and gun control. This Essay evaluates the causes and implications of this recent trend of state attorneys general abstaining from defending controversial laws on the grounds that those laws are unconstitutional, focusing on the marriage equality cases as its example. It argues that reputational factors, in addition to legal and political considerations, play a role in determining whether attorneys general will defend their states’ laws when they may have a basis for declining to do so. Moreover, the impact of nondefense goes beyond the directly connected litigation and can have negative ramifications for the public’s perception of the legal system and for the functioning of direct democracy.

2015 Fall Symposium

The *Journal of Legislation and Public Policy* and the Arthur Garfield Hays Civil Liberties Program partnered to host a Symposium entitled “‘It Is So Ordered’: Social Change and the Campaign for Marriage Equality” at New York University School of Law on Friday, November 13th, 2015. This event analyzed the implications of the U.S. Supreme Court’s historic decision in *Obergefell v. Hodges* for the lesbian, gay, bisexual, transgender, queer, intersex and asexual (“LGBTQIA”) community, specifically focusing on the numerous issues beyond marriage access that continue to pose challenges in the community’s struggle for equal rights. The Symposium engaged in further in-depth analysis of the movement for LGBTQIA equality by evaluating the legal strategies that this and other civil rights campaigns have employed in their efforts to achieve social change.

An introduction was given by Walter Riemann, JD '84. Andrew Tobias gave the keynote address entitled “Tom Stoddard’s Legacy & the Future of Equal Rights”.

This first panel was called “The Next Chapter in the Struggle for LGBTQIA Equality”. This panel explored issues that continue to pose challenges for the lesbian, gay, bisexual, transgender, queer, intersex, and asexual (“LGBTQIA”) community in the wake of the Supreme Court’s decision in *Obergefell v. Hodges*, and that are now at the forefront of the movement for LGBTQIA rights. This includes “second generation” issues that arise directly from marriage, such as divorce, family rights, and enforcement of judgments; employment rights, such as pay and benefits disparities; additional gender-equality issues, such as equal rights for trans individuals; problems involving safety and equality in incarceration; and issues affecting equality of education, including bullying.

The second panel was called “Achieving Results: Lessons from Civil Rights Movements”. This panel contextualized the LGBTQIA movement as one of a number of attempts to use courts, legislatures, organizing, and other means of advocacy to achieve social change. The panel facilitated a conversation among experts on different social-change movements—including those for racial, gender, and economic equality—to examine how these other efforts have proceeded after the Supreme Court recognized or rejected broad constitutional principles. The panelists discussed the roles of litigation, legislation, and social change campaigns in each of these movements, and also evaluated how each of these strategies can be effectively leveraged to

address the different issues that the LGBTQIA community now faces. Panelists included Burt Neuborne, Richard Blum, Peggy Cooper Davis, and Bebe Anderson.

Roberta Kaplan gave concluding remarks.

Upcoming Symposia (Spring 2017)

During the Spring 2017 term, *Legislation* will host a symposium to explore *Miranda v. Arizona*, 384 U.S. 436 (1966), on the 50th anniversary of this influential case. In *Miranda*, the Supreme Court, by a slender majority, fundamentally altered law enforcement procedure in the United States when it held that defendants in police custody must be informed of their Fifth and Sixth Amendment rights before questioning, and must understand and voluntarily waive these rights in order for statements elicited during the interrogation to be used against them in court. Law enforcement agencies nationwide immediately responded to the newly announced constitutional standard by amending their policies on criminal interrogation, as elected officials responded to the decision with shock, outrage, and calls for reform. Today, *Miranda* continues to generate significant controversy, even as it stands as one of the most important and culturally significant decisions that the Supreme Court has ever issued.

This symposium will focus on *Miranda*'s legacy and role in current policing practices, as well as on related law-enforcement issues. Through three interrelated panel discussions, a short keynote address, and brief closing remarks, *Legislation* intends to consider topics such as police governance and oversight, narratives pertaining to law enforcement and racial equality, the implications of scientific developments for the law that governs police conduct, and police-community relations and law enforcement policymaking more broadly. The journal's goal is to foster a constructive discussion among scholars and legal experts who hold diverse points of view in the hopes of identifying ways in which law enforcement might more effectively promote a just, safe, and peaceable society.

Since the Law School just recently approved the symposium topic, *Legislation* has just begun to approach potential partners and sponsors, both internal and external to the NYU community. The journal anticipates that by focusing on *Miranda*, this symposium will make an important contribution to the law enforcement conversation in which communities throughout the nation are currently engaged.

Citation Statistics

Legislation has been cited in 317 secondary sources during 2015–2016, including two citations in *Columbia Law Review*, three in *Cornell Law Review*, two in *Emory Law Journal*, one in

Georgetown Law Journal, four in the Harvard Law Review, three in Michigan Law Review, one in NYU Law Review, two in Notre Dame Law Review, two in Stanford Law Review, two in University of Chicago Legal Forum, two in Wisconsin Law Review, three in Yale Law Journal, and two in Yale Law Journal Forum. See below for some of the highlights.

- Columbia Business Law Review, 2015, 2015 Colum. Bus. L. Rev. 654
- Columbia Human Rights Law Review, Fall, 2015, 47 Colum. Hum. Rts. L. Rev. 151
- Columbia Law Review, November, 2015, 115 Colum. L. Rev. 1867
- Columbia Law Review, December, 2015, 115 Colum. L. Rev. 2265
- Columbia Journal of Gender and Law, 2015, 31 Colum. J. Gender & L. 135
- Cornell Journal of Law & Public Policy, Spring 2015, 24 Cornell J.L. & Pub. Pol'y 567
- Cornell Law Review, September, 2015, 100 Cornell L. Rev. 1281
- Cornell Law Review, May, 2016, 101 Cornell L. Rev. 1053
- Cornell Law Review, January, 2016, 101 Cornell L. Rev. 261
- Duke Law & Technology Review, February 21, 2016, 14 Duke L. & Tech. Rev. 227
- Emory Law Journal, 2015, 64 Emory L.J. 1905
- Emory Law Journal, 2015, 64 Emory L.J. 2093
- George Washington Law Review, September, 2015, 83 Geo. Wash. L. Rev. 1446
- Georgetown Journal of International Law, Summer, 2015, 46 Geo. J. Int'l L. 1245
- Georgetown Journal of Gender and the Law, 2015, 16 Geo. J. Gender & L. 323
- Georgetown Law Journal, January, 2016, 104 Geo. L.J. 229
- Harvard Journal on Legislation, Winter, 2016, 53 Harv. J. on Legis. 99
- Harvard Law & Policy Review, Winter, 2016, 10 Harv. L. & Pol'y Rev. 123
- Harvard Law Review, May, 2015, 128 Harv. L. Rev. 2018
- Harvard Law Review, November, 2015, 129 Harv. L. Rev. 281
- Harvard Law Review, February, 2016, 129 Harv. L. Rev. 1128
- Harvard Law Review, April, 2016, 129 Harv. L. Rev. 1566
- Loyola University Chicago Law Journal, Winter, 2015, 47 Loy. U. Chi. L.J. 515
- Michigan Law Review, November, 2015, 114 Mich. L. Rev. 275
- Michigan Law Review, May, 2015, 113 Mich. L. Rev. 1115
- Michigan Law Review, April, 2016, 114 Mich. L. Rev. 847
- New York University Law Review, April, 2015, 90 N.Y.U. L. Rev. 1
- Northwestern Journal of International Human Rights, 2015, 13 Nw. J. Int'l Hum. Rts. 27
- Northwestern Journal of Technology & Intellectual Property, 2016, 14 Nw. J. Tech. & Intell. Prop. 111
- Notre Dame Law Review, February, 2015, 90 Notre Dame L. Rev. 1373
- Notre Dame Law Review, December, 2015, 91 Notre Dame L. Rev. 757
- Stanford Journal of Civil Rights & Civil Liberties, June, 2015, 11 Stan. J. Civ. Rts. &

Civ. Liberties 237

- Stanford Law and Policy Review, 2015, 26 Stan. L. & Pol'y Rev. 307
- Stanford Law Review, April, 2015, 67 Stan. L. Rev. 809
- Stanford Law Review, April, 2015, 67 Stan. L. Rev. 917
- UC Irvine Law Review, November, 2015, 5 UC Irvine L. Rev. 813
- UC Irvine Law Review, November, 2015, 5 UC Irvine L. Rev. 843
- University of Chicago Legal Forum, 2015, 2015 U. Chi. Legal F. 29
- University of Chicago Legal Forum, 2015, 2015 U. Chi. Legal F. 527
- University of Illinois Law Review, 2015, 2015 U. Ill. L. Rev. 1259
- University of Pennsylvania Journal of Constitutional Law, May, 2015, 17 U. Pa. J. Const. L. 1283
- University of Pittsburgh Law Review, Summer, 2015, 76 U. Pitt. L. Rev. 569
- Wisconsin Law Review, 2015, 2015 Wis. L. Rev. 247
- Wisconsin Law Review, 2015, 2015 Wis. L. Rev. 321
- Yale Law Journal, June, 2015, 124 Yale L.J. 2804
- Yale Law Journal, June, 2015, 124 Yale L.J. 3052
- Yale Law Journal, November, 2015, 125 Yale L.J. 543
- Yale Law Journal Forum, April 28, 2015, 125 Yale L.J. Forum 1
- Yale Law Journal Forum, November 9, 2015, 125 Yale L.J. Forum 185
- Yale Journal of Law & Feminism, 2016, 27 Yale J.L. & Feminism 179
- Yale Journal of International Law, Winter 2016, 41 Yale J. Int'l L. 105
- Yale Journal on Regulation, Winter 2016, 33 Yale J. on Reg. 213

Legislation was also cited in three court cases: *Floyd v. Cosi, Inc.*, 78 F. Supp. 3d 558 (Eastern District of New York); *Adams v. Dep't of Corr.*, 189 Wn. App. 925 (Washington State Appeals Division 3); *Wells Fargo Bank, N.A. v. Pinsky*, 2015 Conn. Super. LEXIS 743 (Conn. New Haven Superior Court).

Awards and Achievements

Final Note: Greetings from Our 2016–17 Editor-in-Chief

Dear Reader:

It is with great pride and much enthusiasm that the 2016–17 board guides the *Journal of Legislation and Public Policy* into its twentieth year of publication at N.Y.U. School of Law. In

keeping with previous years, we at the Journal look forward to continuing our tradition of publishing practical and well-reasoned scholarship while also launching a series of new programs aimed at benefiting both our readers and current student membership.

We are excited to announce that we have already filled two issues for the coming year. Along side articles by academics and practitioners, these issues will contain student notes written by members of the journals community at NYU. In addition to these two issues, the Journal has committed to publishing two companion issues to events hosted at the law school. The first will include scholarship resulting from the Journal's spring *Miranda* symposium, described below. The second will further the discussion that began at *Beyond Elite Law: Access to Civil Justice in America*, a two-day conference held at the law school during the Spring 2016 term and co-hosted by the Institute of Judicial Administration and the Center on Civil Justice at NYU School of Law. All four of these issues adhere to the Journal's commitment to publishing relevant and actionable work that can be read and used by practitioners, policymakers, academics, and students.

This spring, the Journal will host a symposium to recognize the fiftieth anniversary of the Supreme Court's decision in *Miranda v. Arizona*, which fundamentally altered law enforcement procedure in the United States when it held that defendants in police custody must be informed of their Fifth and Sixth Amendment rights before questioning, and must understand and voluntarily waive these rights in order for statements elicited during the interrogation to be used against them in court. This symposium will make an important contribution to the current discussions on policing and law enforcement taking place across the nation.

Over the coming year, we are excited to transform *Quorum*, the Journal's online companion, into a platform for rapid and timely engagement with contemporary policy matters. Members of the Journal will have the opportunity to publish commentary on the areas of policy and law that intrigue them personally and that hold implications for society at-large. *Quorum* will also support longer-term initiatives, such as legislation tracking, conceived by our membership.

The 2016–2017 board is grateful to its predecessors for the immeasurable time and effort that each member contributed and to Professor Helen Hershkoff for her tireless support as our faculty advisor. We look forward to guiding the Journal into its twentieth year and to making important contributions to the areas of law and public policy.

On behalf of the Executive Board of 2016–2017,

Winston Berkman
Editor-in-Chief
New York City
May 2016