

GROVE CITY COLLEGE

JOURNAL OF LAW & PUBLIC POLICY



ARTICLES

- Lincoln's Executive Prerogative
and Constitutionality: The
President's Actions Justified *Ben Hutchison '18*
- Toward A Federalist
Middle Ground *Samuel Leach '17*
- Congress, Diversion, and
the Court: An Analysis *Micah Quigley '18*
- Compact Theory and
Modern Nullification *Luke Leone '18*
- War Powers *Deanna J. (Roepke '18) Longjohn*

GROVE CITY COLLEGE

JOURNAL OF LAW & PUBLIC POLICY



Volume 9

2018

CONTENTS

Editor's Preface	<i>Falco A. Muscante II '20</i>	IX
Foreword	<i>Dr. Caleb A. Verbois</i>	XI

ARTICLES

Lincoln's Executive Prerogative and Constitutionality: The President's Actions Justified	<i>Ben Hutchison '18</i>	1
Toward a Federalist Middle Ground	<i>Samuel Leach '17</i>	31

Congress, Diversion, and the Court: An Analysis.	<i>Micah Quigley '18</i>	57
Compact Theory and Modern Nullification	<i>Luke Leone '18</i>	81
War Powers.	<i>Deanna J. (Roepke '18) Longjohn</i>	107

The *Grove City College Journal of Law & Public Policy* invites submissions of unsolicited manuscripts, which should conform to *The Bluebook: A Uniform System of Citation* (20th ed. 2015). Manuscripts should be submitted electronically in Microsoft Word™ format to LawJournal@gcc.edu.

The editors strongly prefer articles under 15,000 words in length, the equivalent of 50 *Journal* pages, including text and footnotes. The *Journal* will not publish articles exceeding 20,000 words, the equivalent of 60 *Journal* pages, except in extraordinary circumstances.

To facilitate our anonymous review process, please confine your name, affiliation, biographical information, and acknowledgements to a separate cover page. Please include the manuscript's title on the first text page.

Please use footnotes rather than endnotes. All citations and formatting should conform to the 20th edition of *The Bluebook*.

For additional information about the *Grove City College Journal of Law & Public Policy*, please email us at LawJournal@gcc.edu or visit us online at <http://www2.gcc.edu/orgs/GCLawJournal/> or search for us at HeinOnline.

*The views expressed within these articles are those of the authors and do not necessarily reflect the policies or opinions of the *Journal*, its editors and staff, or Grove City College and its administration.

GROVE CITY COLLEGE

JOURNAL OF LAW & PUBLIC POLICY

2017-2018 Staff List

IAN N. JONES '18
Editor-in-Chief

LINDSEY A. SCHULENBURG '19
Executive Administrative Editor

JOSHUA W. BARHAM '19
Executive Articles Editor

MICAH S. QUIGLEY '18
Senior Editor

CHRISTOPHER R. OSTERTAG '20
Deputy Articles Editor

CAROLYN T. A. HARTWICK '19
Junior Editor

FALCO A. MUSCANTE II '20
Executive Content Editor

JOSIAH A. ADEN '19
Citations Editor

JENNIFER E. MONTAZZOLI '18
Style Editor

MIRIAM R. TAN '20
Executive Production Editor

SARAH E. OPST '21
PAIGE M. FAY '21

NOAH C. GOULD '20
HANNAH K. HOWE '21

DAVID S. HUTCHISON '21
LAURA E. LOCHER '21

Associate Content Editors

HARRISON K. ZELT '19 OWEN T. GAGLIARDO '18
COURTNEY M^ACARTHUR '19 SARAH E. GIBBS '18

DANIEL R. LAUER '18
JULIA M. TAURIELLO '20

Associate Style Editors

STEFANIE B. KLAVES
'21

Associate Citations Editors

GRACE E. HERMESMANN
'19

 FACULTY ADVISORS

PAUL J. MCNUITY, '80, J.D.
President of Grove City College

CALEB A. VERBOIS, PH.D.
*Associate Professor of Political Science,
 Grove City College*

 EDITORIAL BOARD

MELODY BRIAND-RUNKLE, '04, ESQ.
*Assistant Prosecuting Attorney,
 Wayne County Ohio*

TRACY C. MILLER, PH.D.
*Former Professor of Economics,
 Grove City College*

DANIEL S. BROWN, JR., PH.D.
*Professor of Communication Studies,
 Grove City College*

JENNIFER A. MOBLEY, '99, PH.D.
*Assistant Dean for Service Learning,
 Grove City College*

SCOTT G. BULLOCK, '88, ESQ.
*President and General Counsel,
 Institute for Justice*

DAVID J. PORTER, '88, ESQ.
*Shareholder, Buchanan Ingersoll
 & Rooney, PC*

CRAIG E. COLUMBUS, J.D.
*Former Chair of Entrepreneurship Department,
 Grove City College*

JOHN A. SCHWAB, '98, ESQ.
*Partner at Pietragallo Gordon Alfano
 Bosick & Raspanti, LLP*

MICHAEL L. COULTER, '91, PH.D.
*Professor of Political Science and Humanities,
 Grove City College*

GARY S. SMITH, '77, PH.D.
*Former Chair of History Department and
 Coordinator of the Humanities Core,
 Grove City College*

GEMMA L. DESCOTEAUX, '86, J.D.
*Partner, Akin Gump Strauss
 Hauer & Feld, LLP*

GAREY B. SPRADLEY, PH.D.
*Former Chair of Philosophy and
 Professor of Philosophy, Theology, and Law,
 Grove City College*

RICHARD G. JEWELL, '67, J.D.
Eighth President of Grove City College

STEVEN L. JONES, PH.D.
*Former Associate Professor of Sociology,
 Grove City College*

SAMUEL S. STANTON, JR., PH.D.
*Chair and Professor of Political Science,
 Grove City College*

BRIAN J. KAHLE, '00, J.D.
Attorney, Tucker Arensberg, PC

JOHN A. SPARKS, '66, J.D.
*Former Dean for the Alva J. Calderwood
 School of Arts & Letters and
 Professor of Business, Grove City College*

P.C. KEMENY, PH.D.
*Assistant Dean and Professor of Biblical and
 Religious Studies and Humanities,
 Grove City College*

THOMAS M. THOMPSON, '65, J.D.
*Shareholder/Attorney, Buchanan Ingersoll
 & Rooney, PC*

PAUL G. KENGOR, PH.D.
*Senior Director and Chief Academic Fellow for
 The Center for Vision & Values
 Professor of Political Science,
 Grove City College*

JAMES P. VAN EERDEN, '85, M.A., M.B.A.
*Founder and Managing Director,
 Helixx Group, LLC*

RECOGNITION OF DONORS TO THIS EDITION

John D. Aderholt J.D. '99	Laura A. Jenks '91
Molly (Hannah '99) Aderholt	Karen (Eckstrom '75) Lackey
Joyce E. Brandon	Robert L. Lackey '74
Ronald W. Brandon '64	Dr. Joanne F. McVay
Eric E. Brandt '91	Dr. William J. McVay
Jean M. Brandt	Adam V. Nowland '07
Brig. Gen. Bradley W. Butler (Ret.) '76	Katie (Schroeder '07) Nowland
Paula Butler	Dr. Clair A. Smith Jr. '97
Samuel A. Duerr Jr. '48	Meredith J. Smith
Tracey Duesterdick	Gay Stewart
P. Scott Duesterdick '76	William C. Stewart '61
Laura (Koller '11) Fryan	1st Lt. James R.R. VanEerden '12
Raymond V. Fryan Jr. '08	Emily VanEerden
Bruce Gridley '69	John J. Vierthaler '63
Brittany (Hayward '11) Hoffman	Denise (Weingartner '77) Wade
Kevin A. Hoffman '11	James V. Wade '77
O. Alan Holsinger Jr. '52	

The *Grove City College Journal of Law & Public Policy* is published annually and operates solely on readers' donations. You may continue to receive the *Journal* at no cost; however, any monetary donation would be greatly appreciated. If at any point you no longer wish to receive the *Journal*, please contact the editors in order to be removed from our database. Address all written correspondence to our business address: *Grove City College Journal of Law & Public Policy*, 100 Campus Drive, Grove City, Pennsylvania 16127. Donations should be designated for the *Journal* and mailed to the Office of Advancement at the same address.

GROVE CITY COLLEGE

Grove City College was founded in 1876 in Grove City, Pennsylvania. The College is dedicated to providing high quality liberal arts and professional education in a Christian environment at an affordable cost. Nationally accredited and globally acclaimed, Grove City College educates students through the advancement of free enterprise, civil and religious liberty, representative government, arts and letters, and science and technology. True to its founding, the College strives to develop young leaders in areas of intellect, morality, spirituality, and society through intellectual inquiry, extensive study of the humanities, the ethical absolutes of the Ten Commandments, and Christ's moral teachings. The College advocates independence in higher education and actively demonstrates that conviction by exemplifying the American ideals of individual liberty and responsibility.

Since its inception, Grove City College has consistently been ranked among the best colleges and universities in the nation. Recent accolades include: The Princeton Review's "America's Best Value Colleges," Young America's Foundation "Top Conservative College," and U.S. News & World Report's "America's Best Colleges."

GROVE CITY COLLEGE
JOURNAL OF LAW & PUBLIC POLICY

The *Grove City College Journal of Law & Public Policy* was organized in the fall of 2009 and is devoted to the academic discussion of law and public policy and the pursuit of scholarly research. Organized by co-founders James Van Eerden '12, Kevin Hoffman '11, and Steven Irwin '12, the *Journal* was originally sponsored by the Grove City College Law Society. The unique, close-knit nature of the College's community allows the *Journal* to feature the work of undergraduates, faculty, and alumni, together in one publication.

Nearly entirely student-managed, the *Journal* serves as an educational tool for undergraduate students to gain invaluable experience that will be helpful in graduate school and their future careers. The participation of alumni and faculty editors and the inclusion of alumni and faculty submissions add credence to the publication and allow for natural mentoring to take place. The *Journal* continues to impact educational communities around the country and can now be found in the law libraries of Akron University, Regent University, Duquesne University, the University of Pittsburgh, and Pennsylvania State University. The *Journal* has been featured by the Heritage Foundation and continues to be supported by a myriad of law schools, law firms, and think tanks around the nation.

EDITOR'S PREFACE

Dear Esteemed Reader,

“The advancement and diffusion of knowledge
...is the only Guardian of true liberty.”

These words written by James Madison, the architect of the United States Constitution, speak of a legacy that Thomas Jefferson hoped to bequeath this great nation.

When the *Grove City College Journal of Law & Public Policy* was founded eight years ago, the undergraduate pioneers of the *Journal* had a similar vision. They realized the importance of scholarly writing in academe and the impact such writing has in promulgating knowledge and cultural values. To that end, we present a journal filled with law and policy articles penned by undergraduate students of the 21st century, rooted in values and ideas perpetuated by the Founders of 18th century America.

Through a combination of seemingly diverse topics, we hope you will be reinvigorated by the rich history that surrounds the inception of the United States Constitution and the impact that such a powerful document has had on shaping American law and political thought over more than two centuries. Our authors examine several tough constitutional-era questions including: What is the proper meaning of federalism according to the founders? What is diversionary legislation and why is it unconstitutional? Was Lincoln's use of executive prerogative constitutionally legitimate?

Our team of twenty-five undergraduate editors has worked tirelessly to provide you with a scholarly journal comprised of thoughtful and well-researched articles. As a result of unforeseen production issues, we delayed publication of this edition of the *Journal* to provide you, the reader, with a high-quality work. On behalf of the editorial board, I thank you for your readership and continued support of the *Grove City College Journal of Law & Public Policy*. Please consider providing a tax-deductible donation by mailing a check to the Grove City College Office of Advancement, 100 Campus Drive, Grove City, PA 16127, or visiting giving.gcc.edu/givenow. It is with great pleasure that we present Volume 9 of our esteemed publication.



Falco A. Muscante II '20
Interim Editor-in-Chief

* I must offer specific thanks to our adviser, Dr. Caleb Verbois, and to Adam Nowland in the GCC Advancement Office. Without their advice and guidance, this edition could not have been possible.

FOREWORD

Dear Reader,

Welcome to Volume 9 of the *Grove City College Journal of Law & Public Policy*. As the pre-law advisor at Grove City College and the advisor to the *Journal*, I have the privilege of working with an excellent group of students who work hard to publish one of the few undergraduate peer-reviewed journals in the country. Over the past several years numerous students that have either worked for the *Journal*, written for it, or both, have gone on to some of the top law schools and graduate programs in the country.

The current edition of the *Journal* is filled with essays that focus on a constitutional idea, or crisis, at some point in the nation's past and links that constitutional claim with contemporary issues in law and public policy. For example, the first essay, by Ben Hutchison, looks at President Lincoln's actions during the Civil War and argues that properly understood, Lincoln acted within the bounds of the Constitution, suggesting that if Lincoln could manage to do so during the Civil War, we should expect contemporary Presidents to do the same in lesser crises. The second article, by Samuel Leach, examines the issue of federalism from the founding and argues that it was misapplied during the Progressive Era in ways that still resonate today. The third essay, written by Micah Quigley, focuses on what Micah has termed "diversionary legislation," or legislation that accomplishes extra-constitutional ends by virtue of Congress' powers to

pursue constitutionally enumerated ends. Micah argues that this creates an unjust end-run around the Constitution with profound effects on governmental overreach. The fourth essay, by Luke Leone, reexamines compact theory and concludes that it should be rejected on both constitutional and historical grounds, and that doing so has modern implications via recent state nullifications of federal marijuana laws. The final piece by Deanna (Roepke) Longjohn reexamines the famous Steel Seizure case from the Korean War and argues that the case turned on a skewed understanding of separation of powers that still harms the proper relationship of the President and Congress over war powers.

Each of these essays takes a historical case or controversy, carefully considers it, and applies it to modern law and policy debates in a helpful way.

We hope you will enjoy and benefit from reflecting on these essays,



Dr. Caleb A. Verbois
Associate Professor of Political Science
Grove City College

