

How It Ought to Be, as I See It

The subtitle of our recent “Campaign Finance Regulation in Wisconsin” conference might have surprised some. That subtitle read “The Law as It Was, Is, Should Be, and Will Be,” and I refer to the “Should Be” component. Marquette University Law School is not in the habit of taking positions on contested public policy matters. Nor did we here, and in fact the subtitle is explained easily: Part of the conference involved two nationally prominent guests, Alan B. Morrison and Bradley A. Smith, engaging in a debate or exchange concerning what, in the different estimation of each, the law of campaign finance should be.



But a larger point—specifically, the Law School’s role in policy debates—merits some further observations. Let us begin by focusing on this *Marquette Lawyer* magazine. The cover story (pages 8–19) reflects Judge Paul J. Watford’s visit from southern California last academic year to deliver our annual E. Harold Hallows Lecture. This was not direct engagement with—indeed, it anteceded—the events

in Ferguson, Mo. Yet in considering the origins of involvement by the U.S. Department of Justice in enforcing civil rights, the article sheds light on some of the challenges that the law and society still face in this area. The accompanying comment (pages 20–21) by two Marquette University colleagues adds another dimension to the reflection.

The following article (pages 22–29) builds on a conference that the Law School convened this past fall: “The Future of Catholic K–12 Education: National and Milwaukee Perspectives.” Here, again, as with the campaign finance conference and the Hallows Lecture, we gathered subject-matter experts from both afar and nearby. These participants variously included a pair of Notre Dame law professors whose book had helped engender our idea for this conference, East Coast policy-shapers, and individuals deeply involved in Catholic K–12 education in Milwaukee on a daily basis. Marquette Law School also will make a unique contribution with a national survey later this year on

attitudes toward Catholic K–12 education, under the auspices of the Marquette Law School Poll (about which a brief article appears on page 4).

Robert E. Scott’s 2014 Robert F. Boden Lecture (pages 30–47) is another example of our approach. Professor Scott has worked out a theory of contract law. Marquette Law School does not proclaim him to be correct. In fact, we open these pages to brief suggestions that Scott does not get it all right; these partial dissenters include one of his coauthors, from Stanford Law School, and two renowned University of Wisconsin law professors emeriti. These latter colleagues in the Wisconsin bar and the academy had traveled to Milwaukee from Madison to attend the lecture itself.

And here it makes sense to move from this magazine, although it contains much else, to a larger point about Marquette Law School. When I stood on Tory Hill, now the site of Eckstein Hall, to help announce Joseph J. Zilber’s \$30 million gift to the Law School in 2007, I said that we wanted people to say of Marquette Law School, “That’s where you take the hard problems, the ones that affect us all.” Since then, we have done many creative things to help realize that bold aspiration. Some sense of our extraordinary progress came in fall 2010, when the *Milwaukee Journal Sentinel* referred to Eckstein Hall as “Milwaukee’s public square,” but we have done much even since—and have bigger expectations yet.

So you won’t find Marquette Law School itself declaring “the truth” about many public policy topics. Such is not our role. But whether it is in the *Marquette Lawyer* magazine, the pages of the *Milwaukee Journal Sentinel* in recent years (some of its reporters have served as Lubar Fellows for Public Policy Research at the Law School to explore in depth important public policy topics), our distinguished lectures, the “On the Issues with Mike Gousha” series, political debates, topical conferences, or articles by law faculty, one can find civil, intelligent, and (often) contrasting discussion of matters of law and public policy by students, faculty, lawyers, judges, academics from other institutions—indeed, as I said that day in 2007, “all engaged citizens, really.” And *that’s* how it should be.

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