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## Introducing the Law of Nonprofit Organizations and Philanthropy

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## Introducing the Law of Nonprofit Organizations and Philanthropy

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## **SYMPOSIUM: STATE-LEVEL LEGAL REFORM OF THE LAW OF NONPROFIT ORGANIZATIONS**

## **FOREWORD: INTRODUCING THE LAW OF NONPROFIT ORGANIZATIONS AND PHILANTHROPY**

*David A. Brennen\**

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## I. INTRODUCTION

People often say that society in the United States is a melting pot—a mixture of people, cultures, and ideas that come together to create something that is unique. This melting pot analogy has been an integral part of life in this country since its official “birth” in 1776 when we cast aside all ties to a geographically distant regime that refused to embrace our uniqueness. Over time, we have developed rules of law that attempt to simultaneously allow citizens to live in an orderly society and explore the many realms of undiscovered possibility. These legal developments, however, take time and are in constant flux. As law develops in established areas, it often becomes necessary to re-conceptualize these legal areas so as to be able to think anew about legal structure and societal possibility. For example, laws concerning nonprofit organizations and philanthropic activity have been around for a number of years but have been studied as add-on components of other more established legal areas such as tax law, corporate law, and trust law. Over the last few decades, however, this add-on view has changed, resulting in serious academic and professional treatment of nonprofit and philanthropy law as a discrete legal discipline.<sup>1</sup> In recognition of this serious treatment, legal institutions, both academic and professional, are developing to support efforts to more fully conceptualize nonprofit and philanthropy law. One such institution is the new Association of American Law Schools (AALS) section on Nonprofit and Philanthropy Law.

On January 5, 2007, the Nonprofit and Philanthropy Law Section of AALS held its first program at the AALS Annual Meeting in Washington, D.C.<sup>2</sup> The program, entitled “State-Level Legal Reform of the Law of Nonprofit Organizations,”<sup>3</sup> was a fitting way to launch what should prove to be a valuable contribution to the study of law

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<sup>1</sup> One very important law review article which recognizes the seriousness with which academia should take nonprofit law is *Developments in the Law — Nonprofit Corporations*, 105 HARV. L. REV. 1578 (1992).

<sup>2</sup> See ASS'N OF AM. LAW SCH., EXPANDING KNOWLEDGE AND SERVING OUR COMMUNITIES: ANNUAL MEETING 21 (Jan. 3–6, 2007), available at <http://www.aals.org/am2007/brochure.pdf> (listing dates and times for all meetings).

<sup>3</sup> *Id.*

relating to nonprofit organizations and philanthropy. This burgeoning area of academic legal study is well poised to grow by leaps and bounds in the coming years due to its impact on many traditional areas of legal study, including tax law, corporate law, estate law, trust law, constitutional law, education law, and others.<sup>4</sup>

This symposium issue of the *Georgia Law Review* provides an excellent opportunity to showcase both the subject matter of the January 2007 AALS section program and the growing field of legal study on matters concerning nonprofit and philanthropy law. Professor Garry Jenkins's article, included in this symposium, will provide foundational information concerning the section program.<sup>5</sup> But first, this short introduction to the symposium will outline other aspects of this growing field of law. It will describe the creation, development, and purpose of the new AALS section,<sup>6</sup> highlight the new Social Science Research Network (SSRN) abstracting journal on nonprofit law,<sup>7</sup> and identify one of the major educational institutes that focuses on nonprofit and philanthropy law studies.<sup>8</sup>

## II. THE AALS NONPROFIT LAW AND PHILANTHROPY SECTION

On May 26, 2006, the AALS granted provisional status for a new AALS section on nonprofit and philanthropy law.<sup>9</sup> The AALS is a

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<sup>4</sup> Nonprofit and philanthropy legal studies could significantly affect many nontraditional areas of legal study as well, such as critical race theory and law and economics. See generally David A. Brennen, *Race and Equality Across the Law School Curriculum: The Law of Tax Exemption*, 54 J. LEGAL EDUC. 336 (2004) (discussing impact of nonprofit and philanthropy legal studies on nontraditional fields); see also generally David A. Brennen, *A Diversity Theory of Charitable Tax Exemption—Beyond Efficiency, Through Critical Race Theory, Toward Diversity*, 4 PITTSBURGH TAX. REV. 1 (2006) (discussing one way in which critical race theory helps in understanding the charitable tax exemption).

<sup>5</sup> See generally Garry W. Jenkins, *Uniformity, Incorporation Choice and the Reform of Nonprofit State Law*, 41 GA. L. REV. 1113 (2007) (providing foundational information concerning 2007 AALS section program).

<sup>6</sup> See *infra* notes 9–37 and accompanying text.

<sup>7</sup> See *infra* notes 38–46 and accompanying text.

<sup>8</sup> See *infra* notes 52–72 and accompanying text.

<sup>9</sup> See Letter from Jane LaBarbera, Assoc. Dir., AALS, to Harvey Dale, Chair, AALS Section on Nonprofit Law and Philanthropy (May 26, 2006) (on file with AALS) (granting provisional status to section). The Executive Committee for the provisionally approved AALS section on nonprofit and philanthropy law includes Professor Harvey P. Dale (Chair), New York University School of Law; David Alexander Brennen (Chair Elect), University of Georgia School of Law; Professor Robert A. Katz (Secretary), Indiana University School of Law,

nonprofit membership organization comprising between 150 and 200 law schools.<sup>10</sup> The AALS aims to improve the legal profession through legal education.<sup>11</sup> As such, the AALS serves as the learned society for law teachers and is the principal representative of legal education to the federal government and other national higher education organizations and learned societies.<sup>12</sup> Among the AALS's many activities is an annual meeting held in January.<sup>13</sup> Much of the programming for the annual meeting is sponsored by between eighty-five and ninety AALS sections, which are interest groups composed of faculty members and professional staff of AALS member schools.<sup>14</sup> In addition to presenting programs at the AALS annual meeting, AALS sections create newsletters for their faculty/staff members and also provide other services, such as mentoring programs, exam exchanges, directories, websites, and listservs.<sup>15</sup> AALS section creation and operation are governed by the organization's bylaws and Executive Committee Regulations.<sup>16</sup>

As a provisional section, the AALS section on nonprofit and philanthropy law is permitted to "operate in all other respects as and be subject to all the requirements of a [s]ection" of the AALS.<sup>17</sup> After two years of operating as a provisional section, the new nonprofit and philanthropy law section will be eligible to receive full

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Indianapolis; Professor Evelyn Brody (Treasurer), Chicago-Kent College of Law Illinois Institute of Technology; Professor Susan N. Gary, University of Oregon School of Law; Professor Mark Sidel, University of Iowa College of Law; and Professor Norman I. Silber, Hofstra University School of Law. See Ass'n of Am. Law Sch., Section on Nonprofit and Philanthropy Law, [http://www.aals.org/services\\_sections\\_nonprofit.php](http://www.aals.org/services_sections_nonprofit.php) (last visited June 15, 2007) (listing members of executive committee).

<sup>10</sup> See Ass'n of Am. Law Sch., What Is the AALS?, <http://www.aals.org/about.php> (last visited June 15, 2007) ("The AALS is a non-profit association of 168 law schools.").

<sup>11</sup> ASS'N OF AM. LAW SCH., 2006 HANDBOOK 25 (2006), available at [http://www.aals.org/about\\_handbook.php](http://www.aals.org/about_handbook.php).

<sup>12</sup> Ass'n of Am. Law Sch., *supra* note 10.

<sup>13</sup> See Ass'n of Am. Law Sch., AALS Annual Meeting, [http://www.aals.org/events\\_annualmeeting.php](http://www.aals.org/events_annualmeeting.php) (last visited June 15, 2007) (noting that 2007, 2008, and 2009 meetings are/will be in January).

<sup>14</sup> Ass'n of Am. Law Sch., Sections, [http://www.aals.org/services\\_sections.php](http://www.aals.org/services_sections.php) (last visited June 15, 2007).

<sup>15</sup> *Id.*

<sup>16</sup> See ASS'N OF AM. LAW SCH., *supra* note 11, at 31 (discussing establishment and operation of AALS sections generally).

<sup>17</sup> *Id.* at 44.

status as an AALS section.<sup>18</sup> To receive full status, the section must file a petition with the AALS containing (1) a description of the section's activities while on provisional status, (2) a certification from the AALS executive director that the section has complied with filing and reporting requirements during provisional status, and (3) the signatures of the chair and chair-elect of the section.<sup>19</sup> Once the petition is filed, the AALS Executive Committee must then review the petition.<sup>20</sup> If the AALS Executive Committee finds that (1) the section has served the purposes of the AALS and (2) the section's continuation will serve a significant number of faculty members of AALS member schools and the purposes of the AALS, it shall grant full status to the section.<sup>21</sup>

The new AALS section on nonprofit and philanthropy law was organized by a group of law professors whose primary area of teaching and research is significantly related to nonprofit law, philanthropy law, or some combination of the two. These professors felt strongly about creating the new section because the then-existing AALS sections rarely, if ever, had panels or presentations on subjects that directly involve nonprofit law or philanthropy law.<sup>22</sup> This provisional section of the AALS will provide a forum for law professors who teach courses relating to nonprofit and philanthropy law, such as nonprofit law; federal and state taxation; estate, trust, and probate law; corporations law; charitable solicitations law; healthcare law; elder law; poverty law; art law; education law; religion law; and any other doctrinal courses and seminars that involve discussion of nonprofit and philanthropy law. The section

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<sup>18</sup> See *id.* ("A Section with provisional status may petition for full status not earlier than two years and not later than three years after the date of granting provisional status.").

<sup>19</sup> *Id.*

<sup>20</sup> See *id.* (discussing necessary findings of the executive committee).

<sup>21</sup> *Id.*

<sup>22</sup> See Letter from author to Jane M. LaBarbera, Assoc. Dir., AALS (Feb. 6, 2006) [hereinafter Letter from author to Jane M. LaBarbera], available at [http://www.philanthropy.iupui.edu/about/aals/aals\\_petition.html](http://www.philanthropy.iupui.edu/about/aals/aals_petition.html) (proposing new AALS section on nonprofit law and philanthropy). Although the National Center on Philanthropy and the Law (NCPL) traditionally held breakfast meetings at many AALS annual meetings, that organization is not a section of the AALS. See Nat'l Ctr. on Philanthropy & the Law, About NCPL, <http://www.law.nyu.edu/ncpl/abtframe.html> (last visited June 15, 2007) ("[NCPL] was established at New York University School of Law to explore a broad range of legal issues affecting the nation's nonprofit sector and to provide an integrated examination of the legal doctrines related to the activities of charitable organizations.").

will also provide a forum for law professors who teach in nonprofit legal clinics throughout the country.<sup>23</sup>

The proponents of this new section could not find an example in the recent past of an AALS section organizing a panel or presentation on a subject directly involving significant discussion of nonprofit or philanthropy law issues.<sup>24</sup> This is unfortunate given the rising importance of this area of law in legal practice and education. For example, three major law reform organizations (the American Law Institute, the American Bar Association, and the National Conference of Commissioners on Uniform State Laws) have ongoing projects that concern state law regulation of nonprofit organizations, philanthropy, and management of charitable funds.<sup>25</sup> Additionally, the major book publishers (West, Lexis, and Foundation) recently published several books that deal with the tax law aspects of nonprofit organizations and/or the corporate/trust law aspects of these organizations.<sup>26</sup> Given this high level of activity within the legal academy in the field of nonprofit and philanthropy law, and because the AALS is the learned society for law schools in the United States, it is only appropriate for the AALS to consider creating a nonprofit and philanthropy law section.

The effort to create the new section began in the fall of 2004 by professors who noticed a lack of attention paid to nonprofit and

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See generally Evelyn Brody, *From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing*, 41 GA. L. REV. 1183 (2007) (noting ALI's ongoing project); Elizabeth A. Moody, *Revising The Model Nonprofit Corporation Act: Plus Ça Change, Plus C'est La Môme Chose*, 41 GA. L. REV. 1335 (2007) (noting ABA's ongoing project); Susan N. Gary, *Charities, Endowments, and Donor Intent: The Uniform Prudent Management of Institutional Funds Act*, 41 GA. L. REV. 1277 (2007) (noting NCCUSL's ongoing project).

<sup>26</sup> Although there have long been treatises devoted to nonprofit law, see generally FRANCES R. HILL & DOUGLAS M. MANCINO, *TAXATION OF EXEMPT ORGANIZATIONS* (2002); BRUCE R. HOPKINS, *THE LAW OF TAX-EXEMPT ORGANIZATIONS* (8th ed. 2003), before 1995 there was no widely adopted casebook devoted to the matter. Between 1995 and 2003 there was only one casebook that focused significantly, though not exclusively, on tax-exempt law. JAMES J. FISHMAN & STEPHEN SCHWARZ, *NONPROFIT ORGANIZATIONS* (1995). In 2003, three new casebooks dealing exclusively with tax laws affecting tax-exempt organizations were published. See generally NICHOLAS P. CAFARDI & JACLYN FABEAN CHERRY, *TAX EXEMPT ORGANIZATIONS* (2003); JAMES J. FISHMAN & STEPHEN SCHWARZ, *TAXATION OF NONPROFIT ORGANIZATIONS* (2003); DARRYL K. JONES ET AL., *THE TAX LAW OF CHARITIES AND OTHER EXEMPT ORGANIZATIONS* (2d ed. 2007).



philanthropy law issues at the AALS annual meeting programs.<sup>27</sup> Since that time, support for the new section has grown significantly, culminating in a petition signed by 116 law professors from sixty different law schools requesting that the AALS approve the creation of a provisional section on nonprofit and philanthropy law.<sup>28</sup> In addition, several law professors joined a Yahoo! Groups listserv in support of the new section.<sup>29</sup> Finally, a significant number of law professors attended an open programs session at the January 2006 AALS annual meeting.

Since its provisional approval in May 2006, the section on nonprofit and philanthropy law has established various institutional components that should serve the AALS and its member law schools well in terms of developing a community of legal academics who study and teach nonprofit and philanthropy law. First, as reflected in this symposium issue, the section plans to regularly organize programs at the AALS annual meetings that concern issues of importance to nonprofit and philanthropy law professors. In addition to a main program, this section intends to create a tradition of having a teaching roundtable in conjunction with the annual meeting. Thus, it is the desire of the current section leadership that this section will organize at least two programs in the near future at the AALS annual meeting: one on a substantive legal area and one on teaching. Finally, if at all possible, this section will attempt to have a law review or other legal publisher publish papers from at least one of these AALS programs as they occur.

A second significant part of what the section plans to do is create a community of legal academics whose focus is nonprofit and philanthropy law. Toward this end, this section has created a website,<sup>30</sup> two email listservs,<sup>31</sup> and a mentoring program. At the

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<sup>27</sup> Letter from author to Jane M. LaBarbera, *supra* note 22.

<sup>28</sup> *Id.*

<sup>29</sup> Yahoo! Groups AALS—Nonprofit Law & Philanthropy List, <http://groups.yahoo.com/group/aalsnonprofphil/> (last visited June 15, 2007).

<sup>30</sup> Nonprofit and Philanthropy Law Section, <http://www.philanthropy.iupui.edu/about/aals/aals.html> (last visited June 15, 2007). Readers should be aware that the AALS maintains a permanent link to all section websites so that, should the official website change at some point, those seeking the new official site can locate it by going to the AALS website. Ass'n of Am. Law Sch., *supra* note 9.

<sup>31</sup> The two listservs can be found at [dsilberaalsnfp@hofstra.edu](mailto:dsilberaalsnfp@hofstra.edu) and [asilberaalsnfp@ho](mailto:asilberaalsnfp@ho)

section's website, you will find information on this section's listservs, officers, and programs.<sup>32</sup> You will also find links to other information of interest to legal academics in the area of nonprofit and philanthropy law, including links to nonprofit and philanthropy institutes and the National Center on Philanthropy and the Law's (NCPL) nonprofit legal bibliography.<sup>33</sup> In addition to its website, the AALS Nonprofit and Philanthropy Law section has two listservs.<sup>34</sup> One is a traditional moderated discussion listserv, which serves as a vehicle for discussing current issues of concern to academics in this area.<sup>35</sup> The other section listserv is used as a means of making announcements to section members about section business or business of significant concern to section members as determined by the section executive committee.<sup>36</sup> Both listservs are currently hosted by Hofstra University School of Law.<sup>37</sup> The final community-building aspect of this section is its mentoring program. The mentoring program is intended to augment longtime efforts of NCPL, which regularly holds a breakfast for teachers of nonprofit and philanthropy law in conjunction with the AALS annual meeting. This section's enhancements to NCPL's activities are not set in stone, but they have included organization of an off-site dinner on the night of the AALS section program, an offer to arrange for readers of junior faculty scholarship, and a regularly scheduled teaching session as a second program at the AALS annual meeting.

Over time, it is quite likely that many of the specific methods of operation of the nonprofit and philanthropy law section will change. For instance, the section does not currently have a newsletter, but

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fstra.edu.

<sup>32</sup> Nonprofit and Philanthropy Law Section, *supra* note 30.

<sup>33</sup> *Id.*

<sup>34</sup> See *supra* note 31.

<sup>35</sup> The current discussion listserv address is [dsilberaalsnfp@hofstra.edu](mailto:dsilberaalsnfp@hofstra.edu). To subscribe to the discussion listserv, send an email request to [Norman.I.Silber@hofstra.edu](mailto:Norman.I.Silber@hofstra.edu). The request should read: subscribe dsilberaalsnfp [name][institution].

<sup>36</sup> The announcements listserv is located at [asilberaalsnfp@hofstra.edu](mailto:asilberaalsnfp@hofstra.edu). To subscribe to the announcements listserv, send an email request to [Norman.I.Silber@hofstra.edu](mailto:Norman.I.Silber@hofstra.edu). The request should read: subscribe asilberaalsnfp [name] [institution].

<sup>37</sup> As with the section's official website, it is possible that the section's listserv host school or list address may change in the future. Thus, a person who is interested in the current listserv information should look to the section's AALS website at [http://www.aals.org/services\\_sections\\_nonprofit.php](http://www.aals.org/services_sections_nonprofit.php).

it is quite possible that this may change in the future. Also, the section's configuration of websites and listservs could possibly change. It is the hope of the current section leadership, however, that the core of the section—the idea of developing a community of scholars and teachers in legal academia—will remain constant.

### III. SSRN ABSTRACTING JOURNAL ON NONPROFIT AND PHILANTHROPY LAW

On September 22, 2006, SSRN launched its first ever abstracting journal on nonprofit and philanthropy law, which is appropriately named Nonprofit and Philanthropy Law Abstracts.<sup>38</sup> SSRN is an award-winning online journal that is devoted to the rapid worldwide dissemination of social science research.<sup>39</sup> SSRN is “composed of a number of specialized research networks in each of the social sciences” including law.<sup>40</sup> SSRN's networks encourage scholars and others to distribute research at an early stage by publishing abstracts.<sup>41</sup> SSRN encourages scholars and researchers to exchange abstracts with one another by allowing individuals to subscribe to networks or particular subject matter or institutional journals published by each network.<sup>42</sup> Subscribing allows individuals to receive periodic emails containing abstracts of papers submitted to the journal.<sup>43</sup> Each journal has an editor (who reviews submissions for germaneness) and a board of advisors with whom the editor consults if needed. The networks operate to encourage researchers and other readers to communicate directly with other journal subscribers concerning their own and other's research.<sup>44</sup> Through

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<sup>38</sup> See Soc. Sci. Research Network, Nonprofit & Philanthropy Law, [http://papers.ssrn.com/Sol3/JELJOUR\\_Results.cfm?form\\_name=journalBrowse&journal\\_id=889928](http://papers.ssrn.com/Sol3/JELJOUR_Results.cfm?form_name=journalBrowse&journal_id=889928) (last visited June 15, 2007) (listing articles related to nonprofit and philanthropy law).

<sup>39</sup> See Soc. Sci. Research Network, <http://www.ssrn.com/> (last visited June 15, 2007) (describing SSRN's purpose).

<sup>40</sup> Soc. Sci. Research Network, Frequently Asked Questions, [http://ssrn.com/update/general/ssrn\\_faq.html#what\\_is](http://ssrn.com/update/general/ssrn_faq.html#what_is) (last visited June 15, 2007).

<sup>41</sup> See *id.* (detailing SSRN's Primary functions).

<sup>42</sup> See *id.* (“The Networks encourage readers to communicate directly with other subscribers concerning their own and other's research.”).

<sup>43</sup> See Soc. Sci. Research Network, *supra* note 39 (“[SSRN] provide[s] electronic delivery of the papers when authors wish us to do so from the SSRN eLibrary.”).

<sup>44</sup> See *supra* note 42 and accompanying text.

its email abstracting journals, SSRN is able to reach over 80,000 people in more than seventy different countries.<sup>45</sup>

SSRN's Nonprofit and Philanthropy Law Abstracts journal is a part of SSRN's Legal Scholarship Network (LSN).<sup>46</sup> Prior to the launch of the Nonprofit and Philanthropy Law Abstracts journal, LSN had no journals devoted exclusively to this legal discipline. The Nonprofit and Philanthropy Law Abstracts journal publishes

abstracts of draft working papers and accepted articles in the fields of nonprofit law and policy, philanthropy law and policy and related areas of scholarship. Thus, drafts and articles that concern nonprofit corporations, charities, charitable corporations, charitable organizations, charitable donations, charitable foundations, charitable fundraising, charitable solicitation, charitable trusts, philanthropy, private foundations, nongovernmental organizations, tax-exempt organizations, tax-exempt corporations, private clubs, membership clubs and similar topics are appropriate for this journal.<sup>47</sup>

Since its creation in late 2006, individuals have downloaded nearly 8,000 drafts of working papers that were submitted to the SSRN Nonprofit and Philanthropy Law Abstracts journal.<sup>48</sup> The SSRN Nonprofit and Philanthropy Law Abstracts journal should prove a very useful tool for research in the area for years to come.

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<sup>45</sup> Soc. Sci. Research Network, *supra* note 40.

<sup>46</sup> See Soc. Sci. Research Network, Legal Scholarship Network, <http://www.ssrn.com/lsn/index.html> (last visited June 15, 2007) (describing LSN).

<sup>47</sup> *Id.* (click Subject Matter eJournals, then click Nonprofit & Philanthropy Law to reach the journal's page) (last visited June 15, 2007).

<sup>48</sup> *Id.* (click Subject Matter eJournals, then click Nonprofit & Philanthropy Law, then click Browse our Electronic Library) (last visited June 15, 2007).

#### IV. EDUCATIONAL INSTITUTES THAT FOCUS ON NONPROFITS AND PHILANTHROPY STUDIES

In addition to the targeted efforts of the AALS section and the SSRN journal on certain aspects of nonprofit and philanthropy law, several educational institutes and stand-alone organizations have done much to advance the cause of this discrete legal discipline. Prominent universities across the country are steadily developing or expanding nonprofit and philanthropy law related institutes. For example, the University of Iowa College of Law has a research center on Iowa nonprofit law.<sup>49</sup> Indiana University has a center on nonprofit law that seeks to increase the understanding of philanthropy and improve its practice through research, teaching, and public service.<sup>50</sup> One prominent stand-alone organization that has a small but significant law component is the Association for Research on Nonprofit Organizations and Voluntary Action (ARNOVA), which is an international membership organization dedicated to fostering through research an understanding of the nonprofit sector, philanthropy, and volunteerism.<sup>51</sup> Of the many educational and stand-alone organizations, however, one of the most influential on the law as it relates to nonprofit organizations and philanthropy is New York University's NCPL.

New York University (NYU) established NCPL in 1988. NCPL, which is operated under the supervision of its director, Professor Harvey P. Dale, "was established at [NYU] School of Law to explore a broad range of legal issues affecting the nation's nonprofit sector and to provide an integrated examination of the legal doctrines related to the activities of charitable organizations."<sup>52</sup> In addition to its domestic services, NCPL "operates for the benefit of the international philanthropic community."<sup>53</sup> Many individuals

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<sup>49</sup> See Univ. of Iowa Coll. of Law, The Larned A. Waterman Iowa Nonprofit Research Center, <http://www.law.uiowa.edu/research/nonprofit-law-center.php>.

<sup>50</sup> See The Center on Philanthropy at Indiana University, <http://www.philanthropy.iupui.edu/>.

<sup>51</sup> Association for Research on Nonprofit Organizations and Voluntary Action, <http://www.arnova.org/>.

<sup>52</sup> Nat'l Ctr. on Philanthropy & the Law, *supra* note 22.

<sup>53</sup> *Id.*

worldwide have benefitted from NCPL's resources, including "[s]cholars, students, practitioners, and nonprofit organizations."<sup>54</sup>

NCPL received an initial grant in 1988 to operate for seven years.<sup>55</sup> In its sixth year, NCPL was evaluated by an inspection team that included a former NYU School of Law dean and other well-respected scholars and educational leaders.<sup>56</sup> The inspection consisted of a formal evaluation of NCPL based on site visits and interviews with NYU law students, faculty, and other NCPL participants.<sup>57</sup> The inspection team prepared a formal written evaluation of NCPL.<sup>58</sup> Based on the team's evaluation, NYU agreed to make NCPL a permanent center at the university.<sup>59</sup> NCPL has been recognized as "the only U.S. program of its kind for the systematic study of [p]hilanthropy and the [l]aw."<sup>60</sup> NCPL covers issues of law that frequently are ignored or glossed over in traditional law courses and seeks to combine elements of tax law, corporate law, trust law, contract law, and constitutional law, together with jurisprudential branches, into a common compendium of philanthropy and the law.<sup>61</sup> NCPL is attempting to develop a "unified field of study that provides central focus and leadership to curriculum development, scholarly research, conferences, and career development in the nonprofit sector."<sup>62</sup> NCPL expects that this approach should "add to and improve the overall quality of education and scholarship among law students, legal scholars, nonprofit organizations, practicing attorneys, judges, executives, administrators, and other professionals in the field."<sup>63</sup>

NCPL's goals of increasing the knowledge in the area of law and philanthropy and improving the practice of law in this field are realized through a variety of activities, including curriculum, scholarly research, conferences, library collection, bibliographies,

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

fellowships, placement, and faculty development.<sup>64</sup> In the area of curriculum, NCPL offers five courses to law, graduate, and undergraduate students at NYU.<sup>65</sup> The courses cover nonprofit law generally, tax aspects of nonprofit law, tax aspects of charitable giving, nonprofit issues likely to be encountered by managers, and the role of the nonprofit sector in society.<sup>66</sup> In the area of scholarly research, NCPL funds law school research assistants and supervises, publishes, and distributes law review articles written by student teams on a variety of topics pertaining to philanthropy and the law.<sup>67</sup> In the area of conferences, NCPL sponsors various conferences for scholars and practitioners as a means of providing neutral forums for law and non-law scholars and practitioners to exchange ideas.<sup>68</sup>

In the area of library collection, NCPL provides space in the NYU law library "for the use of scholars and students worldwide who wish to conduct scholarly research in the area of [p]hilanthropy and the [l]aw."<sup>69</sup> The space "is equipped with computer terminals and a core collection of books and other materials dealing with the legal aspects of philanthropy."<sup>70</sup> In the area of bibliography, NCPL "has prepared a comprehensive bibliography of all English language resources, both domestic and international, pertaining to the law of

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<sup>64</sup> *Id.*

<sup>65</sup> *See id.* (listing courses offered).

<sup>66</sup> *See id.* ("[NCPL] offers the following three courses to NYU law students: a) a course on the Law of Nonprofit Organizations . . . , which covers a broad range of legal issues and underlying policies, including: constitutional law, tax law, corporate law, trust law, and miscellaneous areas of regulation; b) a course on Tax Exempt Organizations . . . , which focuses on the federal tax law provisions that play a crucial role in government regulation of nonprofit organizations, qualification for exempt status, the stringent rules for "private foundations," and the taxation of unrelated business income; and c) a course on the Tax Aspects of Charitable Giving . . . , which examines the special rules that connect philanthropy to tax planning by donors. [NCPL] also offers . . . to students of the Robert F. Wagner Graduate School of Public Service a course on Nonprofit Law. This course focuses on the legal issues likely to be confronted by nonprofit managers. [Finally, NCPL] offers a course on Charity, Philanthropy, and the Nonprofit Sector . . . to NYU Freshman Honors students. This course focuses on the nonprofit sector and its role in society, from a perspective that touches on legal, economic, policy, and other realms.").

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

nonprofit organizations.”<sup>71</sup> In the area of fellowships, NCPL established two fellowship programs designed to “provide law school graduates with exposure to an unusually wide variety of legal and organizational issues encountered by nonprofit organizations.”<sup>72</sup> In the area of placement, NCPL “provides job placement and career counseling services for law students and alumni nationwide who are interested in working in the nonprofit sector.”<sup>73</sup> Finally, in the area of faculty development, NCPL hosts a breakfast for philanthropy professors at either an ABA meeting or the AALS annual meeting.<sup>74</sup>

## V. CONCLUSION

Though this introductory Article is by no means comprehensive in its description of the developing academic discipline known as nonprofit and philanthropy law, it does give a feel for what the discipline is all about. The area has much in common with other discrete disciplines in law, but lacks the long-term comprehensive focus that other areas have experienced. Given time, nonprofit and philanthropy law will grow into a recognized area of legal study. The creation of the new AALS section, the launch of the SSRN journal, and the existence of educational institutes such as NCPL all contribute to the growth of this academic area. The recent increase in the number of law school focused casebooks and textbooks on nonprofit law is certainly a strong indication that this legal area is coming into its own.

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.* The two fellowships are the Rockefeller Brothers Fund Fellowship in Nonprofit Law at the Vera Institute of Justice and the NCPL Fellowship in Nonprofit Law at NYU's Office of Legal Counsel. *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*