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## Legal Periodicals

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AN UNDERSTANDING OF THE SIGNIFICANCE of legal periodicals can be obtained only through an understanding of the distinctive characteristics of legal literature. Unlike other subjects, law is peculiarly dependent upon arbitrarily drawn political boundaries. The results of an experiment in chemistry, for example, will be the same, other things being equal, whether performed in France, Germany—or the Soviet Union. The methods may vary, the language may differ, but fundamentally the conclusions will be identical. Such universality does not apply to law.

An English biologist who has mastered the French language can be expected to understand and communicate with a French biologist, but an English lawyer, irrespective of his mastery of the French language, cannot hope to understand French law unless he has extensive training in the French legal system.

The characteristics of American legal literature have been directly influenced by the development of American law from the English Common law. This is frequently (and misleadingly) categorized as “unwritten law.” It is so designated because the sources of the Common law are not found in codes or other clearly defined documents (e.g., the French law is in the Code Napoléon) but because resources of as the Common law are rooted in the precedents of reported court decisions. Thus, historically, the English or American lawyer had to be concerned only with court decisions and needed little else in his library.

The rise of legislation in the eighteenth and nineteenth centuries eventually forced lawyers grudgingly to pay attention to statute books. And the tremendous growth of both court reports and statutes in the last fifty years has compelled lawyers to seek assistance from materials other than statutes and decisions. The first legal periodical was

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### *Legal Periodicals*

founded and used by lawyers to help them in understanding the ever-growing mass of primary source materials. The function of legal periodicals then may be described as “. . . recording and criticism of doings of legislators and judges, discussion of current case law, narration of the lives of eminent lawyers and the scientific study of native and foreign jurisprudence.”<sup>1</sup> Or, to phrase it differently, legal periodicals exist to assist lawyers and others in the understanding of the two primary law-making institutions in our society—the courts and the legislators.

Legal periodicals today, with exceptions, are sponsored by law schools or bar associations.

The publications of law schools are customarily called “reviews” (as the *Harvard Law Review* or the *Utah Law Review*). A distinctive feature of law school reviews is the control of their editorial policies and management by boards of student editors. As Professor Llewellyn of the University of Chicago Law School has pointed out: “There is not, as far as I know, in the world an academic faculty which pins its reputation before the public upon the work of its undergraduate students—there is none, i.e., except in the American law review.”<sup>2</sup> The students forming the board of editors are chosen almost entirely on their scholarship record and usually represent the top five to ten per cent of their class. Each year a new board is chosen and it has the responsibility for the publication of the issues of the next volume.<sup>3</sup>

The typical law review is divided into three sections. The first consists of articles on various legal topics, frequently written by law professors and judges. The latter two sections, entirely written by students, are devoted to surveys of selected subjects and critical analyses of current court decisions. The number of law school reviews has been a cause for frequent comment. There are now 108 law school reviews published in the United States,<sup>4</sup> and since there are 133 accredited law schools,<sup>5</sup> additional ones may well be expected. The rationale for the publishing of a review may differ from school to school, but in general, the objectives of law school reviews are these: “1. To serve the practicing bar and the profession and through them the nation as a whole. 2. To educate students in the method of legal research, analysis, and expression.”<sup>6</sup>

The law school reviews have had a high degree of success in meeting these goals. The writings of the foremost legal scholars of this century have appeared in the law reviews, and their articles have been instrumental in moulding the course of many legal doctrines.<sup>7</sup> Former

Chief Justice of the United States Charles E. Hughes has also credited the law reviews with substantially influencing the writing of judicial opinions.<sup>8</sup> And, indeed, law reviews have even received the dubious honor of being attacked on the floor of Congress as having an insidious prestige with the United States Supreme Court!<sup>9, 10</sup>

Such acceptance, however, has not always been the fortune of law school reviews. For example, as late as 1924, the United States Supreme Court cited only one law review article. In subsequent years, the Court's attitude changed, and by 1956, sixty-three articles were cited in 27 different opinions of the court.<sup>11</sup> A similar trend has also occurred in the state reports.<sup>12</sup> There are many cogent reasons for the ascending influence of law reviews, but perhaps most influential have been the increasingly complex and technological aspects of our society. The courts today are charged with the tasks of making decisions based upon highly involved and intricate fact situations, and their use of and need for extrinsic aids in decision-making are understandable and laudable.

But despite the apparent acceptance of law reviews, they have not been without their critics. The substance of the criticism is aimed at the student control of the reviews, their numbers, and the similarity of each to the other.

Of these, the most salient one is the charge of similarity. Even if it is granted that each law school has a need to publish a review, must each one, it has been asked,<sup>13</sup> follow the same format? A few, however, are taking a different approach. Some, such as the *University of Illinois Law Forum*, devote their entire contents to symposiums on specific topics of state law. Others are changing from the concept of total coverage of American law to subject reviews such as the recently published *Natural Resources Journal* of the University of New Mexico Law School or the *Journal of Family Law* of the University of Louisville Law School.

It is perhaps safe to predict that as new law reviews enter the field, they will continue to develop formats that differ from the more traditional ones.

The typical law school review, then, may be characterized as subsidized by its parent university, with its circulation usually limited to its alumni and members of the bar within the jurisdiction where it is published. It is edited by a select group of undergraduate law students and serves as an important vehicle for the publication of significant legal research as well as an incisive and effective teaching tool.

### *Legal Periodicals*

The other significant class of legal periodicals is the publications of the various bar associations. Bar associations are organizations formed by lawyers to encourage and safeguard the interest of the legal profession and to help improve the administration of justice. There are national, state, county, and municipal bar associations, and each almost invariably has a publication of some type. These publications vary from such distinguished periodicals as the *American Bar Association Journal* or the *Record of the Association of the Bar of the City of New York* to publications that are little more than newsletters. The format of the publication is usually related to the size of the association.

The fundamental purposes for bar associations publications are to inform the membership of the association's activities, to give news of the membership, to comment upon pending legislation, and to report current local court decisions. When bar association publications do publish articles, they tend to be on the more practical aspects of the law with emphasis upon problem-solving rather than upon theoretical aspects of the law. They are concerned with the law as it is rather than with what it should be. Thus, they perform functions different from law school reviews, in which the emphasis is upon reform and change and the articles tend to be more scholarly in nature.

There is a tendency for bar association publications to change from the news-of-membership bulletin to a more formal type of periodical. For example, within the last eighteen months, three bar association publications have changed their titles or format. Commencing with volume 33, January 1961, the *New York State Bar Record* changed its title to the *New York State Bar Journal* with the statement that the new title more adequately describes its function. Similarly, in 1960, the *Administrative Law Bulletin* changed its title to the *Administrative Law Review* with increased space allocated to articles. In June 1961, the Cincinnati Bar Association started an expanded periodical called the *Cincinnati Bar News and Journal*. Unlike its predecessor, the new journal includes articles of sufficient value to require larger law libraries to subscribe to it.

As the organized bar continues to grow and as the law becomes more complex and more difficult, this trend may be expected to continue. This fact has significance for law libraries which need not collect the news bulletins, but do have an obligation to acquire the periodical-type publications of bar associations.

While law review and bar association periodicals are rather clearly

J. MYRON JACOBSTEIN

defined by their sponsorship and their content, there are some legal periodicals that transcend either classification. In some of the states a law school and state bar association jointly publish a periodical as the *Washington Law Review and State Bar Journal*.

There are also a few instances of law periodicals published by private publishing companies and supported entirely by subscriptions; e.g., the *Insurance Law Journal*. These are few in number and are usually limited to subjects of interest to lawyers specializing in taxation law and labor law. On dissimilar subjects, it is doubtful if other periodicals can be profitably supported. New periodicals will undoubtedly continue to be subsidized by universities or supported by membership dues of bar associations.

Legal periodicals, other than those published in the United States, are of varying interest to American lawyers. Because the legal system of the United States is derived from English law, the latter has more than an academic interest to the American lawyer. Court decisions of Great Britain and other Commonwealth countries may be cited as persuasive authority in American courts, and accredited law schools must have certain English law reports available in their libraries.<sup>14</sup> American law libraries have always felt an obligation to have English and Commonwealth legal periodicals in their collection. However, these periodicals have not presented too great a problem because their number is limited. But their number is increasing rapidly, and the possibility of additional ones must be anticipated with the increase in the number of law schools in Canada and other Commonwealth countries.

While the laws of countries that do not follow the Common law have no authoritative or persuasive value in our courts, they cannot be entirely ignored. The chief impetus for foreign law collections has been the necessity of such material in the teaching of foreign law or comparative law. A recent study<sup>15</sup> indicates that 41 schools now offer courses in foreign law as compared to 26 in 1950. With the increasing commitments of this country in world affairs, this trend will undoubtedly continue. Research in foreign law cannot be conducted without access to periodicals of the countries being studied. Consequently, many libraries will be faced with the problem of allocating a larger proportion of their periodical budget to the acquisition of foreign law periodicals.

It is axiomatic that utilization of legal periodicals cannot be made without an adequate index allowing access to them. And the history

## *Legal Periodicals*

in the use of legal periodicals has been similar to that of other types of legal literature. Periodical indexes do not index sufficient numbers of legal periodicals nor use adequate subject headings for purposes of legal research. Additionally, the requirement to index case notes and comments made it more difficult for the general periodical indexes to include legal periodicals. Thus, in 1908, the American Association of Law Libraries commenced publishing the *Index to Legal Periodicals*,<sup>16, 17</sup> which now includes more than 200 English language periodicals, and with its separate author, subject, case, and book review sections, provides a substantial degree of bibliographical control over legal periodicals. (The American Association of Law Libraries, at its annual meeting in June, 1961, agreed to sell the *Index to Legal Periodicals* to the H. W. Wilson Company.)

Mention has already been made of the increasing use of foreign legal periodicals. For many years, research in foreign law was severely hindered by the lack of a comprehensive index to the periodical literature. This handicap has now been largely overcome by the beginning, in 1960, of the *Index to Foreign Legal Periodicals*, sponsored by the American Association of Law Libraries, with the assistance of a grant from the Ford Foundation.<sup>18</sup> More than 250 periodicals in the fields of international, comparative, and foreign law are included in it. It is a most useful adjunct to legal research in foreign law and stands as another tribute to the work of a professional library association.

Space does not permit a full discussion of the difficulties of locating legal articles appearing in nonlegal periodicals. However, some measure of control over such articles is now available by publication of the *Index to Periodical Articles Related to Law*,<sup>19</sup> which indexes significant legal articles from periodicals not included in the *Index to Legal Periodicals* or the *Index to Foreign Legal Periodicals*. Arranged by subject headings familiar to lawyers, it provides access to important articles that would be overlooked in the ordinary course of legal research.

Finally, and as a fitting conclusion to this brief survey, a recent cost analysis of legal periodicals by the Harvard Law School Library revealed that from a base figure of 100 for the years 1947-49, the cost index has increased by 1960 to 176.3!<sup>20</sup>

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J. MYRON JACOBSTEIN

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