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Fiftieth Volume Tributes: Is There Cause for Jubilee?

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Fiftieth Volume Tributes

IS THERE CAUSE FOR JUBILEE?*

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My answer is a resounding "yes." The *Maryland Law Review* of which I was a member during its first year, 1936-37, and then chairman[1] during 1937-38, was an organization run by the faculty and a bar association. The student members' functions were confined to preparing notes or comments, checking article citations to be sure they were on point, and verifying that the title of each cited case was correct and the citation complete and in proper form.[2] How much differently the present day Board functions I learned when the *Law Review* published my Sobeloff Lecture in 1983.[3] I received from the editors a number of suggestions for changes in content or style that, except when they resulted in a change in the sense of what I was attempting to convey, were quite helpful.

The function of the chairman, in addition to doing his share of note and comment writing and article checking, was to act as a sort of office manager of the student editorial board, assigning board

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* *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1222 (1976) ("a state of joy or rejoicing: jubilation").

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1. "Chair" or "Chairperson" was not to come on the scene until decades later. And the *Law Review* has now bypassed that awkward phrasing with the much more descriptive and more impressive "Editor-in-Chief."

2. *See Concerning the Maryland Law Review*, 1 MD. L. REV. 51, 52 (1936), forthrightly stating: "The Student Editorial Board is composed of selected students at the Law School who will *participate* in the editorial work in the same manner as on the legal journals of other law schools in this country." (Emphasis added).

3. *See Justice, Bureaucracy, Structure and Simplification*, 42 MD. L. REV. 659 (1983).

members articles to check, being sure that other members' notes and comments were progressing according to schedule, and generally acting as liaison between Professor John S. Strahorn, Jr., the faculty editor, and members of the student editorial board.

It is not surprising that the *Law Review* at its beginning was oriented to the faculty and bar association. It was the Junior Bar Association of Baltimore City that pressed for the establishment of a Maryland legal journal and the *Law Review* began with not only a faculty editor, but also with an advisory editorial board, the members of which came from bar associations and the law school's faculty.[4] As I recall, the faculty editor selected members of the student editorial board in consultation with Dean Roger Howell and other members of the faculty, and article selection was primarily, if not entirely, the work of the faculty editor and the assistant faculty editor-business manager. And such mundane matters as finances, subscriptions, printing, and distribution of the *Law Review* were duties of the business manager, not the student editorial board.

Aside from the fact that the *Maryland Law Review* is now a student-run publication, what is there to be jubilant about? First, that the gender and color biases of the thirties, though not yet entirely dissipated, are noticeably less present. The class of 1938, the law school's largest up to that time, consisted of sixty-five persons, including just three women and one black. Donald Murray, the sole black, was admitted to the Maryland bar only after litigating his right all the way to the Court of Appeals,[5] with the result that women and persons of color now have the opportunity not only to be members of the *Law Review*, but also to be its editor-in-chief.[6]

Second, we can be jubilant that student authors are no longer second class citizens. When a student prepares a casenote or comment, the authorship is noted in the *Law Review*. In my day, student work was published anonymously, with the result that I am able today to tell you which note I wrote[7] only because in my copy of the issues, I signed my name in ink at the end of my note. Still to be regretted, however, is that the student's name appears at the end of

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4. *See Concerning the Maryland Law Review*, *supra* note 2, at 52.

5. *See* Pearson v. Murray, 169 Md. 478, 182 A. 590 (1936).

6. *See* Reynolds, *A Half Century of the Maryland Law Review*, 50 MD. L. REV. 239, 246 (1991).

7. *See* Note, *Judicial Termination of a Contract—Recovery for Partial Performance of an Entire Contract After Breach*—Bright v. Ganas, 1 MD. L. REV. 329 (1937); Note, *Disposition of Void and Otherwise Failing Devises in Maryland*, 2 MD. L. REV. 142 (1938); Note, *The Doctrine of Implied Warranty Between Restaurant and Guest*—Child's Dining Hall Co. v. Swingler, 2 MD. L. REV. 277 (1938).

the work, instead of the beginning. But since this is a common law review practice, it can, I suppose, be forgiven. It is, however, reminiscent of Justice Holmes' admonition to a lawyer who, in argument before the Supreme Court during the early 1900s, referred to law review articles as merely the "work of boys."[8]

Third, the law school is to be congratulated on not having followed the trend elsewhere of unreasonably proliferating the number of law reviews or journals it harbors. Harvard now sponsors nine in addition to the *Harvard Law Review*[9] and the Georgetown University Law Center maintains eight student journals[10] while Boalt Hall School of Law at the University of California has nine.[11] It is true, of course, that specialization is much more prevalent in the practice of law than it was fifty years ago, but the need for writings directed to lawyers specializing in particular fields and judges who must deal with specialized phases of the law can be met by articles in generalist journals, as, indeed, *Harvard Law Review*'s annual "Developments in the Law" has made clear. Moreover, having been a member of the editorial board of a specialist law journal may be less helpful with employment opportunities because most law firms are still largely generalist in their practice.

Fourth (and here I agree with Professor Reynolds[12] and disagree with Professor Schlegel[13]), congratulations are due for the content of the materials carried by the *Law Review*, including its annual surveys of recent developments in Maryland law in a number of particular fields. I do not question the value of the articles, advocated by Professor Schlegel, concerning how and why the law is being used, but I do think that what the law is and what it should be is of greater importance to the larger part of the law review reading public—generalist practicing lawyers and generalist judges. As Chief Justice Charles Evan Hughes wrote on the fiftieth anniversary of the publication of the *Yale Law Journal*,

> The articles contributed to the reviews by eminent legal experts have given lawyers and judges the benefit of wide re-

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8. *See* Hughes, *Foreword*, 50 YALE L.J. 737 (1941).

9. *See* HARV. BLACKLETTER J., HARV. C.R.-C.L. L. REV., HARV. ENVTL. L. REV., HARV. INT'L L.J., HARV. J. ON LEGIS., HARV. J.L. & TECH., HARV. J. L. & PUB. POL'Y, HARV. WOMEN'S L.J., and HARV. HUM. R.J.

10. *See* AM. CRIM. L. REV., GEO. IMMIGR. L.J., GEO. INT'L ENVTL. L. REV., GEO. J. LEGAL ETHICS, GEO. L.J., J.L. & TECH., TAX LAWYER, and LAW & POL'Y INT'L BUS.

11. BLACK L.J., BUS. LAW., CALIF. L. REV., ECOLOGY L.Q., HIGH TECH. L.J., INDUS. REL. L.J., INT'L TAX, LA RAZA L.J., and WOMEN'S L.J.

12. *See* Reynolds, *supra* note 6, at subpart II(B).

13. Schlegel, *Better than No Teeth at All*, 50 MD. L. REV. 231 (1991).

> search and exploration, not infrequently blazing trails in preference to old but less desirable paths. It is not too much to say that, in confronting any serious problem, a wide-awake and careful judge will at once look to see if the subject has been discussed, or the authorities collated and analyzed, in a good law periodical.[14]

That the same attitude prevails today is attested to by my former colleague on the New York Court of Appeals, Judge Judith S. Kaye, in her recent article:

> [M]ost of the time I read law reviews particularly, as an aid to resolving the cases before us. It is hard to think of *completing* an opinion without venturing into the literature, and ideally I like *starting* an opinion with good briefs and articles. I do not seek out law review articles for case compilations—we have a variety of manual and computerized research tools for such information. I look to law review articles for something much different—for the newest thinking on the subject, for a sense of the direction of the law and how the case before us fits within it, for a more global yet profound perspective on the law and its social context than any individual case presents.[15]

Fifth, the *Law Review* is to be congratulated for having, for the most part, kept the titles of the articles it prints understandable and direct. Such gobbledegook titles as "Epistemological Foundations and Meta-Hermeneutic Methods: The Search for a Theoretical Justification of the Coercive Force of Legal Interpretation"[16] turn off most readers before they start. Buried in the body of such an article there may be material of value on a particular problem one is researching, and in this day of key-word computer access it may even be retrievable, but law review readers should not be forced by such esoteric titles to dig that deeply.

Finally, Professor Reynolds notes that the *Law Review* was recently found to be one of the twenty-five most cited law reviews.[17] Bearing in mind that there are now 558 indexed periodicals,[18] we can both marvel and rejoice at how far it has come in fifty years!

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14. Hughes, *supra* note 8, at 737.

15. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 319 (1990) (emphasis in original).

16. 68 B.U.L. REV. 733 (1988).

17. *See* Reynolds, *supra* note 6, at 252.

18. 29 INDEX TO LEGAL PERIODICALS ix (1990).