

# VIRGINIA LAW REVIEW

---

---

VOLUME 23

NOVEMBER, 1936

NUMBER 1

---

---

## NEW FIELDS FOR THE LEGAL PERIODICAL,\*

### I

LAW reviews are not, of course, identical; neither are peas in a pod. But, like the peas, the resemblances of one law review to another are far more fundamental than are the differences. And if one compares the reviews of 1900 to those of the present day, this statement still holds true.

The uncritical reaction to this phenomenon of persistent adherence to a form in a time of changing forms will, if hostile, brand it as a manifestation of the lawyer's bondage to precedent, his professional resistance to the unfamiliar. To the admirer of the law review, on the other hand, this steadfastness in conformity will represent nothing more than a recognition of the perfection of the form.

For one whose purpose is to explore new areas for exploitation by the legal periodical, it is obvious that an explanation of the basic similarities among law reviews is prerequisite to his task, and it is equally apparent that he must press behind the conflicting answers suggested above. But his search need not carry him far. The answer, I submit, lies in the fact that the law review is an integral part of the American system of legal education. Certainly the standardization of the law reviews is no more striking than the standardization of the schools which have fathered them. More peas in a bigger pod, or, to use a metaphor better adapted to the times and to the objects under comparison, a series of models of the same machine, equipped with interchangeable parts. Give a Harvard law professor a Columbia casebook and set him to teaching in any summer school in the land, and, with perhaps a perceptible grinding of gears, the wheels turn and another groove is cut in those "legal minds" which our machines are designed to produce. And the variations in the product are

---

\*This group of articles is printed in the belief that a frank discussion of the merits and the failings of law reviews is timely. It goes without saying that the opinions of the authors are not necessarily those of this Review.

 1936 LR New Fields for the Legal Periodical LIFE INSURANCE LAW QUARTERLY.pdf - A

[https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5460&context=faculty\\_scholarship](https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5460&context=faculty_scholarship)

Ocasionally, with the high purpose of interrelating law and the social sciences, the resources of a foundation are tapped and facts are found. These are assembled with scrupulous care, correlated, charted, and all too frequently forgotten.

That significant contributions could 'be made by those who did not await a research grant to liberate them from the confines traditional to legal scholarship may be made more evident by reference to a specific field

But talk to sales finance company officials, to automobile dealers, to the proprietors of furniture stores, to Better Business Bureau executives, to social workers, to the officials of small claim courts, and a congeries of complex and interrelated problems is revealed.

What he might, and should, have is the opinion evidence, the common-sense judgments, of those informed by experience, and such aid in analysis and appraisal as the economist and the sociologist can afford. And it is only by excursions into the legal hinterland that these can be procured.

Such lay testimony may be partisan, distorted, opinionated. So much the better. Problems arise because

people are partisan, inaccurate, and opinionated; to ignore that fact is to oversimplify. To press passionately-held beliefs through the filter of objectivity may result in understatement. What is needed is a forum for their presentation and a stimulus to secure it. Corrective criticism will follow

But where

action takes legal form, it is the product of many wills, and for that action to be based on informed opinion it must have been preceded by a period of discussion in which proposals have been exposed for appraisal, amplification, and amendment. The medium through which this can be best effected, at least in the initial stages, is the printed word; more specifically, the periodical

Given periodicals which are deliberately directed to the consideration of legal problems in the broader sense which has -been suggested, periodicals which are sponsored and directed by disinterested institutions, and to which not only the trained legal scholar but also the informed layman and the student of the related social sciences contribute, and in time there would be effected, I am confident, a very real and a, needed extension in the range of legal scholarship. And in the fruits of this development

the legal profession would obtain a direct and considerable share.

The type of periodical which would best subserve the ends which I believe the law review has neglected is one which would be limited to a specific field of human activity but which would develop all its aspects which are properly of concern to the lawyer, the "client", the judge, the legislator, and the legal scholar (embracing in the last term, the student of law as a social force as well as of law as a professional discipline).

There is a steady, if not very large, stream of articles in the law reviews relating to banking problems, a stream which, -however, tends to flow in a few well-defined channels, leaving bare wide areas of untouched problems. Obviously

Consider, too, the wealth of material which would be amassed in a few years by a department in such a journal, devoted to the analysis of corporate reorganization plans, accompanied -by so much of the history of each reorganization as is discoverable without benefit of subpoena

It is enough for present purposes to recognize the wide extent of the undeniably

significant which the law review does not reach

Such a journal, moreover, would constitute a standing invitation to the student in this field to utilize the stores of significant facts which are being accumulated as a consequence of governmental investigations and the routine activities of the s. E. c.

Slender as their dimensions are, the reader will find in them more of value in their respective -and important-fields than he is likely to discover after tedious researches in the law reviews. When one considers how much greater their contribution would have been had they been developed on the law review scale, one grudges thd reviews their more generous patronage.

Association sponsorship provides a backlog of subscribers and thereby insures a certain financial stability to the enterprise the existence of commercial journals suggests the existence of a potential demand which the specialized periodical could awaken ;16 a demand which, incidentally, would not be greatly affected by law review competition.

He would have to know the men in the legal profession and outside it who were the leaders of thought and action in the periodical's field

To discharge his duty most effectively, he would be obliged to ferret out and then persuade, inveigle, and cajole people into contributing who had never before written for publication.

He would soon find himself an Authority, a Person of Importance, in his field.

To vest in a single man (possibly with student editorial assistants) sole responsibility for the conduct of such a journal might be of doubtful wisdom. The cooperation of others expert in the field should, if possible, -be enlisted

In the large universities a special opportunity would be afforded for the cooperation of the law school with those other departments of the university interested in the subject matter of the periodical.<sup>1</sup> Such collaboration would be peculiarly advantageous in breaking down that isolation which characterizes the law school's position on almost every campus.

The "Board of Advisers" which adorns the mast-heads of so

many learned periodicals is often no more than harmless windowdressing, but in periodicals of the sort envisaged it is quite probable that such boards would prove of genuine utility to editors, at least in the developmental years when the making of wide contacts would be essential.

It is possible that some periodicals would include departments of notes and comments similar to those in law reviews, a practice attended by the danger that this would fortify the tendency-always to be consciously resisted - for the periodical to slip back into the conventional law review pattern

The "nice" case for law review comment is not always the significant case from the standpoint of the operation of law in a given field.

Consequently, those legal educators who prize the law review primarily as a pedagogical device (i. e. as a means of according special training to that portion of each class which needs it least 20) will not have to disband their student law review editorial boards.

The innovators would, in all probability, have to come from this group.

There would -be little likelihood that the new periodicals would fall into a single pattern. There would be experimentation, mistakes, and occasional failures. There would 'be an unremitting challenge to the resourcefulness and the ingenuity of the editors (harried souls -but not drudges). And there would be successes far more exciting than perpetuating great traditions or supplying the acquiescent members of a state bar association their quarterly ration of legal thought

Consider the successes. A periodical which met specifications such as I have-sketchd with respect to objectives, content, and organization, would, if wisely conducted, gain in influence and vitality with every year of its existence. The impact of the ideas and proposals presented in its pages would be far more direct than that of those now appearing in the law reviews since their incidence would be upon a group of subscribers who had subscribed because they were interested in these ideas and proposals

and were most likely to be affected by them. Each issue of, say, a hypothetical Life Insurance Law Quarterly, would be awaited with interest-and occasionally, perhaps, with anxiety-by the legal counselors of the insurance companies, by attorneys with large insurance practices, and by forty-eight insurance commissioners. They could not afford to ignore it. They could not fail to profit from it

To be sure, such readers would not look upon the specialized periodical as an instrument for the reorientation of legal study or even as an agency for, law reform. To them, such a periodical would appeal -because it would come closer to their daily concerns than the law review, because it would deal with aspects of their problems which the law review writer has ignored, because, in short, it would be more "practical."

For that which the man of affairs esteems as "practical," the schoolman tends to reject as not appropriate for the concern of scholars. However, the destruction of this false antithesis would be one of the goals of the specialized periodical, and the editor who persisted in his endeavor to secure articles diverging from the law review stereotype would find his task steadily growing easier. Each successful exploration of the terra deserta between the well-tilled fields

of the legal commentator and the broader ranges of the social scientist and the "business" writer, would afford a guide to the next adventurer.

As these accumulated, the gravitational pull of the customary would be lessened. Students (in the schools and out) would begin, without editorial urging, to set their own observations down on paper. A demand will always tend to generate its own supply, and, as supply increases, standards of quality can be raised.

It calls for systematic and persistent and imaginative effort and a means whereby its fruits may be made available in the present and be stored for the future.

David F. Cavers

DuKE UNIVERSITY SCHOOL OF LAW.