

Histories

100 YEARS AND COUNTING

*Dawn Clark Netsch & Harold D. Shapiro**

I. INTRODUCTION: ITS TIME AND PLACE

The *Illinois Law Review*—Undoubtedly the field for law reviews of a general character is already overcrowded. Moreover, it must be conceded that such reviews, however excellent, enlist the interest of but a small minority of the practicing lawyers of Illinois. It is believed, however, that there is genuine and wide-spread need of a live periodical primarily devoted to the discussion and exposition of Illinois law, and of matters of special practical value to the Illinois bar. In that belief, and with the purpose of supplying that need, this *Review* is launched.¹

With that brief introduction and explanation, the Northwestern University School of Law launched the *Illinois Law Review*—the predecessor to today’s law journal—almost one hundred years ago, in May 1906.²

The “overcrowded” field of general law reviews at that time actually consisted of perhaps five: *American Law Register* (1852), which in several stages morphed into the *University of Pennsylvania Law Review* (1895, 1908, and 1945); *Harvard Law Review* (1887); *The Yale Law Journal* (1891); *Columbia Law Review* (1901); and *University of Michigan Law Review* (1902).³ Legal periodicals in a variety of forms had existed in abundance prior to the appearance of Harvard’s or Northwestern’s, but most of

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¹ Editorial Notes, 1 ILL. L. REV. 39, 39 (1906).

² The law review whose one hundredth birthday we are celebrating began life in 1906 as the *Illinois Law Review* and underwent a name change in 1951–1952 to the *Northwestern University Law Review*.

³ Professors Michael Swygert and Jon Bruce have assembled a fascinating account of the early years of legal journalism, Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739 (1985), and we have drawn on their history. The history of law school periodicals is also briefly traced by Yale Librarian Frederick Hicks in FREDERICK C. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 206–20 (3d ed. 1942).

them were commercially published and designed largely for practitioners. With a few short-lived exceptions (e.g., the law reviews of Albany and Columbia Law Schools),⁴ they did not emanate from a law school and were not student edited—the two characteristics by which we define a law review today.

Indeed, from 1893 to 1896, Northwestern's law school was the site of an early, short-lived, student-sponsored, and student-edited law review. That journal—titled the *Northwestern Law Review*⁵—was published monthly during the school year. In its first issue, the Editorial Board, made up of students, modestly explained:

In presenting this, the first number of the *Northwestern Law Review*, the editors feel that some explanation of their purpose is necessary. The youth and inexperience of students compared with the maturity and wisdom of those identified with established law journals would seem to make our task a useless one, and it might be so were it not for the generous aid that has been promised us, both by the instructors and lecturers of our school and the members of the bar of this city.

Here lawyers have almost unequalled advantages in dealing with novel and interesting points of law. The influx of large corporations, the daily birth of schemes of great financial magnitude, the construction of immense buildings on syndicated capital, the giving of new franchises, all present in a striking way problems with which practitioners in other cities are less familiar. Besides these articles on new questions, our professors and others will discuss rules and theories of law from the standpoint of legal scholars. The chief work of the editors will be to treat in a careful and accurate way such new decisions as may be of interest to our readers.

With these aims we start the *Review* hoping that it will bring no discredit on the institution of which we are a part. Should we prove successful, in time other features may be added. In case of failure we shall at least have the satisfaction of having had respectable aims.⁶

Two years later the *Review* noted the changing of the guard of the senior board of editors, expressed encouragement at the progress of the paper, and warmly solicited the “hearty support and assistance of the school.”⁷ In that same October 1894 issue, the Editorial Board also reminded the law school's incoming class of the journal's purpose:

⁴ The student-edited *Albany Law School Journal* was published only one year, 1875–1876; the *Columbia Jurist*, also student edited and published weekly, appeared only from 1885–1887. See Swygert & Bruce *supra* note 3, at 763–68.

⁵ To be distinguished from today's *Northwestern University Law Review*.

⁶ Comment, 1 NW. L. REV. 17, 17 (1893).

⁷ Comment, 3 NW. L. REV. 25, 25–26 (1894).

With the beginning of another year, it may not be out of place, especially for the benefit of the incoming class of the law school, to define briefly the purpose of this paper.

The *Law Review* is primarily intended to be a medium through which students may convey the results of their research to their fellow workers. This original investigation or discussion of legal cases and questions must serve to strengthen the capacity of every law candidate to the very work which will be most effective when he begins his practice. The opportunity offered here is one which a student can ill afford to slight.⁸

Alas, despite the students' confidence and enthusiasm, the student-run *Northwestern Law Review* expired in 1896 without an obituary to explain its demise.

In joining the "overcrowded" field of "enduring" law reviews at prestigious law schools with its launch of the *Illinois Law Review* in 1906, Northwestern joined a nascent law-review movement. By 1930, forty-three law schools boasted law reviews.⁹ By 1956, the fiftieth anniversary of Northwestern's review (by that time renamed the *Northwestern University Law Review*), Dean Harold C. Havighurst was inspired to write: "If Abraham Lincoln were living today, he perhaps would say that God must love the university law reviews because He made so many of them."¹⁰

Now, another fifty years later, the number of student-edited reviews has proliferated to estimates of anywhere from 500 to 1000 journals,¹¹ outnumbering the number of accredited law schools. What the founding fathers could not have foreseen was the emergence of multiple law journals at multiple major law schools¹²—with many of those journals oriented toward a particular area of law (e.g., environmental law, intellectual property, legislation, land use) or a particular cause (e.g., civil rights, women's rights, human rights).

While the *Northwestern University Law Review* is no longer one among a few, there is pride in having been a pioneer.

⁸ *Id.*

⁹ Swygert & Bruce, *supra* note 3, at 787.

¹⁰ Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 22 (1956).

¹¹ Estimates vary depending on what source is consulted. *See, e.g.*, Princeton.edu, Legal Periodical Indexes—Electronic Databases (excluding Westlaw and LexisNexis), <http://www.princeton.edu/~law/lawindex.htm> (last visited Oct. 13, 2005) (listing several legal periodical indexes who cover from 550 to 840 legal periodicals); Law.Harvard.edu, Indexes to Legal Journals, http://www.law.harvard.edu/library/collections/catalogs_indexes/indexes.php (last visited Oct. 13, 2005) (ranging from 500 to 1000).

¹² In 2005, Northwestern law students, for example, edited and published the *Northwestern University Law Review* (founded in 1906), the *Journal of Criminal Law and Criminology* (founded in 1910), the *Northwestern Journal of International Law and Business* (founded 1979) (all print journals); and the *Northwestern Journal of Technology and Intellectual Property* (founded in 2003), the *Journal of International Human Rights* (founded in 2003), and the *Northwestern Journal of Law and Social Policy* (founded in 2005) (electronic journals).

II. BIRTH AND EARLY GROWTH OF THE *LAW REVIEW*

If we were to look for founding fathers of the *Illinois Law Review* (titled as such until 1952), the honor rightly would go to John Henry Wigmore and Nathan William MacChesney. Wigmore was and is one of the towering figures of the law—as a scholar, a prolific writer, a long-serving law school dean, and an all-around intellectual adventurer. MacChesney had been a student at both Northwestern and the University of Michigan law schools. He also was a distinguished member of the Chicago Bar, a general in the Illinois National Guard, and later a Life Trustee of Northwestern University.

The spark that led to the founding of the *Illinois Law Review* may well have come from General MacChesney.¹³ It was he who hosted a luncheon at the University Club in Chicago early in 1906 at which the plans for a law review were laid. Attending the luncheon were Frederic C. Woodward, who became the first faculty editor-in-chief; Albert M. Kales, a long-serving respected member of the Northwestern faculty; Mitchell D. Follansbee, an alumnus and eminent member of the Illinois bar; and, of course, Wigmore, dean of the Law School since 1901.¹⁴ On February 2, 1906, a committee of the Law School was appointed “[t]o consider and Report upon the Feasibility of Publishing a Legal Periodical,” and on February 28, the committee reported to the faculty, recommending “[t]hat a legal periodical be established under the auspices and direction of this faculty, and that this faculty recommend to the Board of Trustees that the Bulletin of the Law School be hereafter issued as a part of the proposed periodical.”¹⁵ The report of the faculty committee, which was chaired by Mr. Woodward, presaged the introduction to Volume 1 by emphasizing the “need for a periodical primarily devoted to the discussion and exposition of Illinois law and of matters of especial interest to the Illinois bar.”¹⁶ On March 2, the faculty voted its approval of the committee report. On March 8, Dean Wigmore submitted the proposal to the Chairman of the Law Committee of Northwestern University, Henry S. Towle,¹⁷ who, in turn, on March 19, sent the Executive Committee of Northwestern University his recommendation to authorize the publication of the *Illinois Law Review* in place of the *Quar-*

¹³ Nathan William MacChesney, *An Old Tradition—The Same Review—But a New Name*, 47 NW. U. L. REV. iii (1952). A short history of the *Law Review* from 1906–1956 was part of the commemoration of the *Review*’s 50th anniversary. See *Law Reviews and Legal Progress: Herein of Past Services and Future Responsibilities*, 51 NW. U. L. REV. 2 (1956).

¹⁴ MacChesney, *supra* note 13, at iii.

¹⁵ COMM. APPOINTED FEB. 2, 1906 TO CONSIDER AND REPORT ON THE FEASIBILITY OF PUBLISHING A LEGAL PERIODICAL, REPORT 2–3 (Feb. 28, 1906) (on file with the Northwestern University archives).

¹⁶ *Id.* at 1.

¹⁷ Letter from John H. Wigmore, Dean, Northwestern Univ. Sch. of Law, to Henry S. Towle, Chairman of the Law Comm., Northwestern Univ. (Mar. 8, 1906) [hereinafter Letter from John H. Wigmore to Henry S. Towle] (on file with the Northwestern University archives).

terly *Bulletin* of the Law School.¹⁸ In May 1906, the first issue of the *Illinois Law Review* was published. One wonders whether in today's All Deliberate Speed syndrome such a momentous undertaking could have been realized so fast. One possible reason for the speed is suggested in Dean Wigmore's proposal to the University:

This is a step long hoped for, and strongly demanded by the best interests of the School. It came to a head at this time, because we had received private information that an Illinois Law Journal was now being discussed by Chicago University, and we anticipated that Dr. James' University would sooner or later wish to do the same. Whichever undertook it first would practically forestall the others, and we found that if done by us at all it must be done now.¹⁹

The first issue of the *University of Chicago Law Review* was not published until 1933. The first issue of the *University of Illinois Law Forum* followed in 1944. While Dean Wigmore's letter revealed a competitive streak, all of the participants in launching the *Illinois Law Review* believed that it would, indeed, serve the interests of the law school as well as the profession in Illinois.

Financing the start-up of the *Review* called for the founders to "put their money where their mouths were." For the first full year of operation (April 1906 to April 1907) the Northwestern University Law Publishing Association, which was organized by faculty and alumni to publish the legal periodical, experienced a deficit of \$350.²⁰ A deficit was not unexpected until the periodical got established through subscriptions and advertisements; in anticipation, some fourteen faculty and alumni had agreed to underwrite any debt in assigned amounts. Dean Wigmore and General MacChesney, for example, agreed to a maximum assessment of \$500 each. A letter dated July 10, 1907, advised Dean Wigmore that his current share of the deficit was \$125 and where to send the check.²¹

The 1906 Committee report had included a "conservative" estimate of expenditures and receipts for one year of nine issues: expenditures ranging from \$2410 to \$3100, which assumed a printing of 2000 copies of sixty pages each; anticipated receipts from \$2800 to \$4500, which assumed sale of 1000 subscriptions; and continuation of the University's \$500 appropriation in support of the *Bulletin*. Apparently the proposed financial plan did not work out exactly as anticipated. Later, Wigmore wrote that

¹⁸ Memorandum from Henry S. Towle, Chairman of the Law Comm., Northwestern Univ., to the Executive Comm., Northwestern Univ. (Mar. 19, 1906) (on file with the Northwestern University archives).

¹⁹ See Letter from John H. Wigmore to Henry S. Towle, *supra* note 17. Dean Wigmore was referring to Edmund James, president of the University of Illinois from 1904 to 1920.

²⁰ Letter from Nathan W. MacChesney, Treasurer, Ill. Law Review, to John H. Wigmore, Dean, Northwestern Univ. Sch. of Law (July 10, 1907) (on file with the Northwestern University archives).

²¹ *Id.*

for the first ten years or so of its existence the *Review* was published at the personal expense and risk of the Faculty alone, without aid from the funds of the School or the University. Later, the annual subvention that had been used for printing occasional School Bulletins was transferred to the *Review*.²²

In contrast, the *Law Review* today (2005–2006) has a budget of \$72,500 for four issues annually, an amount that covers publishing and operating expenses only. Additional expenses—such as subscription management, office space, staff support—are not included in that budget, but are provided by the Law School.

That John Henry Wigmore played a central role in both the birth and the development of the *Illinois Law Review* is not surprising. For one, during the birth of law reviews, it was not at all unusual for faculty members to play a prominent role in the publication, even for those that were student edited such as Harvard's.²³ Moreover, his own experience as a student at Harvard Law School prepared him for that role.²⁴ In 1886, Wigmore was one of a small group of students who founded the *Harvard Law Review*, an act which Wigmore later described as really “rather daring, even rash, was it not, for students still in a law school to believe that they could start and edit a worth-while law review?”²⁵

Indeed, biographer Roalfe notes that the original objective of the *Harvard Law Review* was to serve as a vehicle for faculty writings although student contributions were expected as well. Two of Wigmore's classmates and co-founders of the *Harvard Law Review* were Joseph H. Beale, subsequently a member of the Harvard law faculty, and Julian W. Mack, who later served with Wigmore on the faculty of Northwestern's law school.²⁶ Wigmore was credited with having invented the Harvard journal's “Recent Cases” department, in which recent court decisions were summarized and occasionally subjected to pointed criticism. Thus, Wigmore came to Northwestern well versed in the positive role a law review could play in a law school setting.

Wigmore's contribution to the development of Northwestern's law journal went well beyond supporting its creation, however. Already a prolific writer, he became a frequent contributor to the pages of the *Law Re-*

²² NORTHWESTERN UNIV. SCH. OF LAW, EDUCATIONAL SURVEY 1927: REPORT OF THE DEAN 72 (1927) (on file with the Northwestern University archives).

²³ See Swygert & Bruce, *supra* note 3, at 771.

²⁴ Wigmore's role with the *Harvard Law Review* is described in WILLIAM R. ROALFE, JOHN HENRY WIGMORE: SCHOLAR AND REFORMER 11 (1977). See also JAMES A. RAHL & KURT SCHWERIN, NORTHWESTERN UNIVERSITY SCHOOL OF LAW—A SHORT HISTORY 20 (1960); Swygert & Bruce, *supra* note 3, at 771, 777; John H. Wigmore, *The Recent Cases Department*, 50 HARV. L. REV. 862 (1937).

²⁵ Wigmore, *supra* note 24, at 862.

²⁶ ROALFE, *supra* note 24, at 10–11.

view. Indeed, in the first volume he wrote or co-authored two lead articles,²⁷ eleven case comments, and four editorial notes.

Wigmore was anything but shy about expressing his opinions, and he made use of the Editorial Notes from time to time for that purpose, often in very sharp prose. To illustrate: In one particularly outspoken editorial in Volume 1, Dean Wigmore berated the Chicago Bar Association for its inaction in assuring the selection of quality judges on all the locally based courts and challenged it to reverse course—as the New York Bar Association had done—and seize the opportunity to “raise the good men to office and cast out afar the incompetent.”²⁸ He wrote:

Who shall lead us in this action? Surely the Bar Association, if it has any sense of public spirit and professional pride,—if it is anything more than aggregation of names,—if it is led by lawyers who have not merely the kid-gloved indifference and selfish timidity of client-seekers but the manly courage and independence which overcome civic sloth and strike bold blows for the good cause that appeals to all that is best in them.

... We call upon them, by all that is in them of manly self-respect and professional pride, to do two things,—*first, to nominate a select ticket* and to work for it, and *secondly, to secure the cooperation of the press* in advocating the election of this ticket. Nothing less than this will meet the necessity of the crisis.

The Association has now its chance to make a new record. Its recent past is not a page of glory. Its feet have been in the trough of clientage, while public professional calls of duty have gone unheeded. Four times in the past year it has neglected that call.

....

It is not merely a question of getting a good Municipal Court this time. It is a question of getting it this time, and next time, and the time after that, and ALL THE TIME! It is a question of getting good judges on *all* the benches,—Municipal, County, Circuit, Superior, State, and Federal. It is a question of the normal healthy attitude of the Bar Association and its leaders towards their duties now and throughout the future. We want to see them not merely stirred up to one spasmodic good deed, but inspired to take and maintain an active leadership in the public affairs of the profession. We want to see their entire attitude altered for the better. We want to see them redeem the name of lawyer from the reproach of a tame and creeping and self-centered technician, and give it the meaning of public service and public leadership in action²⁹

²⁷ Henry C. Hall & John H. Wigmore, *Compensation for Property Destroyed to Stop the Spread of a Conflagration*, 1 ILL. L. REV. 501 (1907); John H. Wigmore, *Some Evidence Statutes That Illinois Ought to Have*, 1 ILL. L. REV. 9 (1906). *See generally* 1 ILL. L. REV. i–iv (1907).

²⁸ John H. Wigmore, Editorial Note, 1 ILL. L. REV. 180, 180 (1906).

²⁹ *Id.* at 180–83.

This editorial also illustrates another side to Wigmore and to the *Law Review* itself. Along with his scholarly mantle, Wigmore bore a firm practical streak and was strongly committed to judicial reform, especially in his adopted state.³⁰

The *Illinois Law Review* adopted essentially the format of Harvard's law review, as did virtually every other law review, then and now: lead articles, written by the faculty or outsiders; comments of moderate length and complexity, written by faculty or, in some cases, students; case notes or digests typically written by students; and book reviews. The law journals were of course free to improvise on the standard format, and a number did. Wigmore went further in the *Illinois Law Review* and initiated a section titled "Diversities de la Ley" which was described as

intended for contributions not already otherwise classified—in other words, for miscellany within the scope of this *Review*[.] . . . [e]xtended articles with little or no formal documentation[,] . . . relatively short studies, discussions, and comments in any field of legal science—even grotesqueries and curiosities.

. . . .

. . . It is hoped that the busy writer or teacher may find here an outlet for his thoughts which he may employ as a convenience, and which he may in many cases prefer to use over the narrower and more formal avenue of the so-called "leading article."³¹

As if to prove the uniqueness of the Diversities department, Wigmore contributed the first entry, *Synoptic and Hyperethnic Nomology*, his search for a terminology more suitable to the coming "world-law."³² His contribution was followed by questions posed by the *Legal Ethics Clinic of the New York County Lawyers Association*.³³ The Diversities section was later abandoned.

Dean Wigmore remained active in support of the *Law Review* even after retiring, unwillingly, as dean of the Law School in 1929. He died in 1943 following an automobile accident. The *Review's* place among the leading law journals, both in timing and in quality, certainly owes a major debt to the stature of John Henry Wigmore, its loyal and vocal supporter.

III. THE *ILLINOIS LAW REVIEW*: A SHORT-LIVED JOINT EFFORT

Except for a short period from 1924 to 1932, the *Law Review* was and is produced by the Law School, and was initially published by the North-

³⁰ See Robert P. Burns, *A Wistful Retrospective on Wigmore and His Prescriptions for Illinois Evidence Law*, 100 NW. U. L. REV. 131 (2006).

³¹ John H. Wigmore, *Diversities de la Ley*, 15 ILL. L. REV. 51, 51 (1920).

³² John H. Wigmore, *Synoptic and Hyperethnic Nomology*, 15 ILL. L. REV. 52 (1920).

³³ *Legal Ethics Clinic of the New York County Lawyers' Association*, 15 ILL. L. REV. 55 (1920).

western University Press. The period of nonexclusive control by Northwestern was apparently initiated by Dean Albert J. Harno of the University of Illinois College of Law. In a letter dated January 11, 1923 to Dean Wigmore, Dean Harno recalls their recent conversation about the possibility of Northwestern, the University of Chicago, and the University of Illinois jointly publishing a legal magazine.³⁴ After discussions with the president of his university, he was “quite friendly toward opening negotiations” and suggested a conference, to include Dean James Parker Hall of the University of Chicago.³⁵ The three deans and several assistants first met in Chicago on January 25, 1923; subsequent negotiations resulted in a plan of cooperation agreed to by representatives of the three schools.³⁶ The plan called for a Board of Editors of six, including two from each faculty; an Editor-in-Chief elected by the Editorial Board every three years, preferably in rotation from each of the schools; Associate Student Editors, consisting of no more than nine from each school, selected by their faculty; and a Board of Managers, which included alumni along with the Board of Editors. The *Review*’s new management was explained as follows:

THE NEW MANAGEMENT OF *THE REVIEW*.—Thomas Carlyle once wrote, “Ten men united can accomplish more than one hundred men each acting for himself.”

That is the simple motive which has brought together the Faculties of Law of the three largest universities of the State of Illinois, to unite henceforth in the editing and publication of the *Illinois Law Review*. The *Illinois Law Quarterly* (founded in 1917, at the University of Illinois) and the *Illinois Law Review* (founded in 1906, at Northwestern University) are merged, under the name of the *Illinois Law Review*. The faculty of Law of the University of Chicago joins the Editorial Board; and the three faculties, with equal powers and duties, now associate to devote their best labors to the *Illinois Law Review*.

....

A main objective of the *Illinois Law Review*, in its eighteen years of existence, has been to speak directly to the Bench and Bar and Legislature of the State of Illinois. That state is supreme and independent in its authority over the largest part of its people’s law. No better professional service could be

³⁴ Letter from Albert J. Harno, Dean, Univ. of Ill. Coll. of Law, to John H. Wigmore, Dean, Northwestern Univ. Sch. of Law (Jan. 11, 1923) (on file with the Northwestern University archives).

³⁵ *Id.*; see also Letter from John H. Wigmore, Dean, Northwestern Univ. Sch. of Law, to Albert J. Harno, Dean, Univ. of Ill. Coll. of Law (Jan. 16, 1923) (on file with the Northwestern University archives); Letter from Albert J. Harno, Dean, Univ. of Ill. Coll. of Law, to John H. Wigmore, Dean, Northwestern Univ. Sch. of Law (Jan. 17, 1923) (on file with the Northwestern University archives); Letter from John H. Wigmore, Dean, Northwestern Univ. Sch. of Law, to Albert J. Harno, Dean, Univ. of Ill. Coll. of Law (Jan. 18, 1923) (on file with the Northwestern University archives).

³⁶ Meeting of the Northwestern Univ. Press Bd. of Dirs. (Nov. 27, 1923) (minutes on file with the Northwestern University archives).

rendered than to aid the sound and consistent development of that system. The *Illinois Law Review* was the first review in the United States to emphasize the need of an organ for state law. This objective will continue.

But with the tripling of its editorial powers . . . , the *Review* now finds itself more capable of including in its scope the law of all American jurisdictions. Hereafter, the comments on judicial decisions and legislative enactments will be based on a survey of current materials in all states, as well as in the federal field.

....

The editors of the *Review* have always believed that their function was not a merely academic one. Our profession practices an applied science. The voices uttered in these pages have been addressed directly to the intelligent reflections of every member of the Bench, Bar and Legislature. They were meant to be heard.³⁷

The joint arrangement apparently was successful. In 1928, Dean Wigmore, commenting on a proposed consolidation of management at the *Texas Law Review*, wrote that there was “unanimous satisfaction” with the Illinois joint management and “[n]ot the slightest jealousy between the editorial members has shown itself.”³⁸ Moreover, subscriptions had increased from 1100 to 2500 and contributed material was more abundant and varied.³⁹

Despite the euphoria expressed in Wigmore’s letter, the shared editing arrangement dissolved in 1932.⁴⁰ Apparently the dissolution was instigated by the Northwestern Student Publications Board which, in 1931, requested that the faculty exercise its option to take back the *Review* “with the purpose of resting its editorial management in the student board, under faculty supervision, as is done with the best publications in the country.”⁴¹ That led to a period of negotiations among the three schools to attempt to find a more satisfactory way to accommodate all interests, including the “desire of Northwestern University . . . to stress in its cooperation the function of the review as a teaching agency.”⁴² From the October 1932 Memorandum to the Alumni, it is clear that Northwestern had several problems with the existing arrangement. For one, it was providing sixty to sixty-five percent of

³⁷ Editorial Note, 19 ILL. L. REV. 161, 161–63 (1924).

³⁸ Letter from John H. Wigmore, Dean, Northwestern Univ. Sch. of Law, to W.L. Cook (June 12, 1928) (on file with the Northwestern University archives).

³⁹ *Id.*

⁴⁰ The University of Chicago began publication of its law review in 1933; the University of Illinois, in 1949.

⁴¹ Memorandum from the Faculty of Northwestern Univ. Sch. of Law, including former Dean John H. Wigmore and then-current Dean Leon Green, to the Alumni of the Law Sch. (Oct. 10, 1932) [hereinafter Memorandum] (on file with the Northwestern University archives).

⁴² Memorandum *In re Ill. Law Review* from Robert W. Millar 1 (Apr. 2, 1932) (on file with the Northwestern University archives).

the financial support, but the faculties and students of the University of Chicago and the University of Illinois had the largest share of the pages for their writing (e.g., seventy-nine percent in one volume). Northwestern students and faculty were effectively being denied access to their own publication. The decision was “regretted” but nevertheless made—“that Northwestern should take back the *Review*, beginning with the November, 1932 issue.”⁴³ The October Memorandum to the Alumni, which also actively and aggressively solicited subscriptions to the *Review*, noted that there would be improvements under the new regime. The most important innovation, however, was that editorial control, for the first time, was to be vested primarily in the Student Board with supervision of faculty and alumni.

There is every reason to expect that under the direct control of the student board, the *Review* will keep its place with the best legal periodicals of the country. Every legal periodical which has shifted from faculty to student editorial control has been improved by the change. The school likewise benefits. The reasons are obvious. With the faculty editor, the *Review* is necessarily incidental; with the student editor, the *Review*, as the most significant means of expression at his command, is a primary interest.⁴⁴

From 1932 on, the *Law Review* has been edited solely by Northwestern law students, although the journal was not renamed the *Northwestern University Law Review* until almost two decades later. A Board of Managers, which consisted of selected faculty, administrative officers, and alumni, made its appearance on the masthead and was apparently part of the business management, but not editorial structure. In later years, it seemed to take a less active role altogether and much of that burden apparently was assumed by the professional business manager. The Board of Managers disappeared from the masthead without explanation with the November–December issue of 1966.⁴⁵ Since then, the only formal faculty participant in the *Review* has been a Faculty Adviser, appointed from time to time—although faculty support, advice, counsel, and occasional disagreement were and still are present in abundance. The structure of student management has gone through a number of configurations—in part, it would seem, to accommodate the larger numbers of *Law Review* members—but the students today remain firmly in charge of the publication.

IV. WHY A LAW REVIEW?

For one hundred years the Northwestern University School of Law has published a law review. For what purpose? Was there a clearly defined or widely held objective? Perhaps surprisingly, at least to those of us who

⁴³ See Memorandum, *supra* note 41.

⁴⁴ *Id.*

⁴⁵ See 61 NW. U. L. REV. 677 (1966).

have grown up with the “modern” law review, the answer has not always been the same. Rather, the explanations have differed from time to time over its history.

The announced purpose of the *Illinois Law Review* at the time of its founding seems clear and straightforward. It was to be a “periodical primarily devoted to the discussion and exposition of Illinois law, and of matters of special practical value to the Illinois bar.”⁴⁶ The expected features of the *Review* reflected the focus on Illinois law and Illinois practitioners: history and status of important doctrines in the courts of this state, review of the work of the state legislature, monthly digests of Illinois Appellate Court decisions, critical comment on important decisions of federal and Illinois courts, and “in some instances of the courts of other states.”⁴⁷ (The degree to which the contents concentrated on Illinois matters is discussed in more detail below.) What can be noted here is that early volumes of the *Review* contained, typically, multiple articles on some aspect of Illinois law or practice or on some matter helpful to serving the needs of members of the profession—practicing lawyers and judges. At the same time, multiple pages were filled with topics that extended far beyond Illinois’s borders and were far broader than Illinois practice. Nevertheless, the *Illinois Law Review* was perceived by its founders as filling a different role from the general Harvard-like reviews.

The more parochial purpose of the *Illinois Law Review* seems difficult to reconcile with the mantra of its most dominant founder, John Henry Wigmore, a sophisticated worldly intellectual and scholar. He had his reasons for keeping Northwestern’s new law journal focused on more local matters, however, and his thinking was spelled out in more detail in an Editorial Note, *The Function of a State Law Review*, written on the occasion of the tenth anniversary of the *Illinois Law Review*.⁴⁸ In that piece, Wigmore noted that the then-Editor-in-Chief George P. Costigan, Jr. had stated his aims for the *Review* as the exposition of Illinois law, “a very important aim” and “to advance the cause of legal learning everywhere,” “another very important aim.”⁴⁹ Wigmore commented:

Well, these are two different aims; but they are perfectly consistent, and both of them can be and are pursued in the same journal. The present writer would not for a moment have it otherwise.

But each of us may look with differing emphasis on these two aims. The former of them is the one which the present writer is fond of emphasizing. And this emphasis appeals to him from the point of view of its greater relative need. The *Illinois Law Review*, in his conviction, has for ten years “filled a

⁴⁶ Editorial Notes, 1 ILL. L. REV. 39, 39 (1906).

⁴⁷ *Id.* at 39–40.

⁴⁸ John H. Wigmore, *The Function of a State Law Review*, 10 ILL. L. REV. 129 (1915).

⁴⁹ *Id.* at 129 (emphasis in original).

long felt want,” viz., the want of an organ to cultivate the *scientific exposition and discussion of the law of this state*.

Look about, and observe the facts. Here is a great federation of states. Each state is sovereign in its own justice, except so far as it has surrendered certain topics to the federal government. This sovereign control over its own justice is no mere survival of an archaic political status. It is, and will continue to be, a wise and sage embodiment of the sound old world-principle of decentralization, of self-government for each community. No matter that the state boundary lines are now merely arbitrary. No matter that the American people are now become fairly homogeneous. No matter that federal uniformity is now relatively a larger need in some fields. The solid fact remains that every great nation, be it empire or republic, will always wisely need to partition up its justice powers and to leave them largely to local independent control.

And see what a large field that leaves permanently to the state legislatures and supreme courts. Estimating it roughly, by the amount of litigation and legislation, more than 95% of our justice is state justice. In every state of our United States, the affairs of the people—their contracts, their property, their liberty, their crimes, their commerce, their health—are governed by themselves, through their legislatures and their courts, in 95% or more of all acts and transactions.⁵⁰

Wigmore went on to explain that until the advent of the *Illinois Law Review*, there was no forum in any state “dedicated primarily to the systematic discussion and exposition of state law.”⁵¹ Wigmore saw the *Illinois Law Review*, “an organ for state law,” as a model for other states to adopt.⁵² George Costigan, in a response to Wigmore, did not disagree with Wigmore’s aims but lamented the multiplication of law reviews, which in his view, “has been due largely to the desire of those schools to advertise themselves as wide awake” and has led to “economic and . . . literary waste.”⁵³

A decade later, in 1924, the *Illinois Law Review* was poised to assume its incarnation as a joint product of the three major Illinois law schools: Northwestern, the University of Chicago, and the University of Illinois. As noted above, the editors confirmed their commitment to an “organ for state law” while acknowledging that the increased ranks allowed the *Review* to branch out into the law of all American jurisdictions. They wrote: “With

⁵⁰ *Id.* at 129–30.

⁵¹ *Id.* at 131.

⁵² *Id.* at 132.

⁵³ George P. Costigan, *The Waste of Law Reviews*, 10 ILL. L. REV. 135, 135 (1915). In the course of their lengthy history of the development of law reviews, Professors Swygert and Bruce identified several factors contributing to the rapid proliferation in the decades following the Harvard-Yale-Pennsylvania-Columbia-Michigan-Northwestern models: “keeping up with Harvard,” the recognized educational benefits of student-run operations, a mark of a mature educational institution, and a positive statement by the law school about commitment to legal scholarship. Swygert & Bruce, *supra* note 3, at 773.

the enlarged scope of the *Review*, it is confidently hoped that its pages will on a large scale have an increased utility to practitioners and a just influence on the practical progress of the law, not only in Illinois but in our United States.⁷⁵⁴

What is most interesting about this Editorial Note is not just that it confirms the expanded reach of the *Review* in terms of content, but that it continues to emphasize the *Review*'s contribution to practitioners and law reform. There is very little acknowledgment of the educational role of the *Review* for students, probably because the students' role, although increasing, was still limited at that time. It seems likely that as the students' participation in the *Review* expanded, its value as part of the educational program for the Law School kept pace.⁵⁵ Certainly its educational role was embraced by Dean Harold C. Havighurst on the occasion of the fiftieth anniversary of Northwestern's *Law Review*. In his article, *Law Reviews and Legal Education*, Dean Havighurst said:

In considering the value of the law review for legal education[,] . . . the fact that it provides an incentive to the student to work harder in order to obtain higher grades in the first year is only incidental. The principal value comes from the training which superior students receive in writing the notes and comments. This leads me to remark that law reviews are unique among publications in that they do not exist because of any large demand on the part of a reading public. Whereas most periodicals are published primarily in order that they may be read, the law reviews are published primarily in order that they may be written. This, I imagine, was not the view of that small group of students, including the young Wigmore and the young Beale, when they first started the *Harvard Law Review*, and doubtless there are some who will take exception to my expression in this regard.⁵⁶

Havighurst's belief in the value of law review as an educational experience prompted him to advocate an extension of the benefits of law review training to a larger number of students, possibly by publishing a number of papers written by non-law-review students for seminars. He elaborated on the value:

⁵⁴ Editorial Notes, 19 ILL. L. REV. 161, 162 (1924). Professor Albert Kocourek, a faculty Editor-in-Chief of the *Illinois Law Review*, put his own brand on this version of the law review upon relinquishing editorship of the joint publication to Professor Ernst Puttkammer of the University of Chicago. He delivered a diatribe against the multiplication of general law reviews and "the waste of talent, energy, and money that the legal periodical situation involves." Albert Kocourek, *The Law Review*, 21 ILL. L. REV. 147, 150 (1926). Instead, Kocourek advocated both for local law journals and for a move to cooperative or regional publication for the general law reviews (like the jointly produced *Illinois Law Review*), as well as to specialized journals (like the *Journal of Criminal Law and Criminology*). *Id.* at 151–52.

⁵⁵ A 1947 article in the *Illinois Law Review* analyzed various aspects of the law review (not limited to Northwestern's) as an educational institution. Harold Marsh, Jr., *The Law Review and the Law School: Some Reflections About Legal Education*, 42 ILL. L. REV. 424 (1947).

⁵⁶ Havighurst, *supra* note 10, at 23–24.

It is apparent that the future of law reviews is closely bound up with the future of legal education. The outlook for both is good. Although the increase in the number of publications has resulted in the printing of some material that is of little direct benefit to the profession, I would not on that account advocate measures of birth control nor even of eugenics. For the value of the law review as an institution is measured more in terms of opportunity than in terms of quality. The aggregate of the subsidies required to keep the reviews alive must amount to hundreds of thousands of dollars every year. But for legal education they are well worth the price.⁵⁷

V. STUDENTS AND THE *LAW REVIEW*

Today virtually all law school law reviews are student edited, usually student dominated, and the *Northwestern University Law Review* is no exception. However, the student role had to grow over time. In contrast with other members of its peer group, the *Illinois Law Review* was actually created by the faculty, large parts were written by the faculty, and the editor-in-chief and the majority of associate editors were faculty or alumni. The few students listed with the associate editors were assigned the Illinois Appellate Court Monthly Digest, which consisted of a short summary of recent appellate court opinions, a feature of practical value to practitioners because there were no advance sheets of appellate court decisions. That apparently was the students' only visible contribution.

In 1919, Albert Kocourek, the faculty Editor-in-Chief, announced a new department and an expanded role for the "undergraduates," as the law students were then labeled. He wrote:

RECENT CASES—A NEW DEPARTMENT

The *Review* commences this, its fourteenth year, with a new feature—a department of federal and Illinois cases, the material for which will be supplied by the undergraduate associate editors. . . . [I]t is expected that in the course of a few months this department will expand to the point where it may be relied on to give a statement of every new important Illinois Supreme Court decision and of all recent federal court decisions likely to be of general interest to Illinois practitioners.

. . . .

. . . The new department is entitled "Recent Cases" to distinguish it from the column entitled "Comment on Recent Cases." A qualitative distinction will be maintained between the two departments, in this that the latter will continue to be one of constructive criticism, while the other will be limited chiefly to expository statement of the cases together with similar expository statement of

⁵⁷ *Id.* at 26.

analogies and such other connected materials as the research of the writer may bring to light. . . .

It is a singular coincidence that the “recent case” which was first put in motion by Dean Wigmore [at *Harvard Law Review*] should now come back to him (as a member of the Managing Board) in the last university law journal to adopt it.⁵⁸

Note that the students were relegated to a more perfunctory “expository” statement of recent cases while faculty or members of the Bar continued to write the comments on recent cases. In that same Editorial Note, Professor Kocourek was prescient in foreseeing the likely takeover by students of the reins of power on the *Law Review*; but interestingly enough, some seven years later, he expressed some reservations about the student role, writing:

While preparation of case notes by students is excellent training, and while the researches of law students are valuable in gathering material, in classifying the trend of decisions, and in presenting points of view (since only the best senior students are selected for this work) yet the bar is entitled to more than that. Student notes cannot build up a body of doctrine. They will always lack that breadth of legal knowledge and maturity of view which can come only to one who has lived with a specialty for many years. We do not underrate the value of student notes, but we insist only that the bar is entitled to have the opinion of the specialist if it can be made available. That it can be made available, the *Review* has been demonstrating to the legal profession for more than twenty years.⁵⁹

The milestone in student control of the *Illinois Law Review* came in 1932, concurrent with dissolution of the joint-edit project and return of exclusive control of the journal to Northwestern. The *Law Review* announced: “Beginning with this issue the *Illinois Law Review* will be edited by the student members of the Legal Publications Board of the Northwestern University School of Law.”⁶⁰ With that issue, the first student Editor-in-Chief, David S. Sampsell, was named, and the masthead reflected the change in management. The Board of Editors was composed of students. A smaller Board of Managers included faculty and a few members of the Bar (e.g., General MacChesney). A faculty member, Minier Sargent, was listed as Advisor to the Editorial Board. Faculty continued to be listed on the masthead for many years as members of the Board of Managers, but they seemingly played a diminishing role in managing the affairs of the *Review*. The Board of Managers disappeared from the masthead in 1966.

Student members of the *Law Review* also increased their writing contributions to the publication. Sometime around 1938, for example, the *Re-*

⁵⁸ Albert Kocourek, Editorial Note, *Recent Cases—A New Department*, 14 ILL. L. REV. 64, 64–66 (1919).

⁵⁹ Kocourek, *supra* note 54, at 149.

⁶⁰ Editorial, 27 ILL. L. REV. 290, 290 (1932).

view began to realign the format by dividing the content between lead articles, which would continue to be written by faculty members, outside scholars, or practitioners, and a section of notes and comments, both of which would be written mostly by students. The notes tended to be slightly longer versions of the Recent Cases section, which students had been preparing for some years. The comments, however, were more in-depth pieces, which in prior years had been written almost exclusively by faculty members or members of the Bar. Now the students were given this responsibility. Over time, the notes diminished in prominence and the comments, student written and sometimes as long as lead articles, gained in prominence.

In the Fiftieth Anniversary issue of the *Law Review*, the change in personality brought on in large part by the student take-over was described as follows:

Coincidental with the shift to student editorship of the *Review* in 1932, personalities became less distinct. The editorial page which Wigmore had used so frequently was dropped. Faculty members contributed less often and when they did it was usually in the form of scholarly lead articles rather than the short and pungent case comments of previous years. Anonymity rather than personalized comment became the order of the day.⁶¹

Perhaps the major development since this assessment was made in 1956 has been the erosion of anonymity for student pieces. For a time, student authors were named on the masthead but not identified with particular articles. More recently, the comments are attributed to their individual student authors. This development, it can be assumed, would have pleased Professor Kocourek, the longest serving Editor-in-Chief of the *Illinois Law Review*. In his 1926 Editorial Note on law reviews, he decried the widespread use of anonymous comments in other law reviews, writing that “anonymity takes away much of the authoritative value of professional writing. The reader wants to know who is back of the comment, and if such a comment is to have any force beyond its own inherent logic, the writer’s name must be signed.”⁶² One can only assume that he might have intended this argument to apply to student-authored comments as well.

Since 1932, when students assumed the editing responsibility, the *Law Review* has from time to time listed a faculty adviser on its masthead—and faculty members are of course available for advice and counsel at all times—but, as mentioned before, it remains a student-run operation.

VI. SELECTION TO THE *LAW REVIEW*

From the beginning, the student members of Northwestern’s *Law Review* have represented the best and the brightest of the Law School’s stu-

⁶¹ *The Northwestern University Law Review, 1906–1956*, 51 NW. U. L. REV. 2, 7 (1956).

⁶² Kocourek, *supra* note 54, at 149.

dent body, regardless of how those members were selected. At the outset and for a good part of its history, the measuring rod was grades; an invitation to serve on the *Law Review* was based purely on scholastic average. Grade standing did not automatically lead to acceptance, though, and a writing requirement often was included. Beginning in 1951–1952, however, and since that time, it has been possible for students whose grades alone would not have qualified them for membership on the *Law Review* to “write their way on.” The variations in the selection procedure have been too numerous and too nuanced to retrace in detail here, and some it seems were not announced in writing in the *Review*, which requires a degree of speculation as to time and content. A few highlights, though, are worth noting.

Initially, when the students’ role on the *Law Review* was limited, a small number of students, “not more than seven members, of known ability [were] appointed [presumably by the dean or the editor-in-chief] from the second and third year classes as Associate Editors of the *Illinois Law Review* and [had] charge of digesting the manuscript decisions of the Appellate Court.”⁶³ By 1919, the number of student members had increased but the qualifications were largely the same: “Membership on the Undergraduate Board is one of the highest honors attainable in the Law School, since eligibility is based on ‘honor list’ academic rank plus other special qualifications for editorial labor.”⁶⁴ In a 1924 memorandum announcing the joint project with Chicago and Illinois, Professors Robert Millar and Albert Kocourek listed nine students selected “under the direction of the faculty” as the student Senior Editors representing Northwestern. A second list named nine Junior Editors who were primarily responsible for the Appellate Court Digest and who, after one year of satisfactory service, would be promoted to the senior group.⁶⁵

There is no indication that the eligibility ground rules changed when students assumed operation of the *Law Review* in 1932. It is probable that about ten percent of the students with high grades, usually on completion of the first year, were invited to participate. If so, this pattern tracks the practice of most other law school reviews. In a 1947 article titled *The Law Review and the Law School: Some Reflections About Legal Education*, Professor Harold Marsh analyzed, among other components, the selection process used at a number of other law reviews,⁶⁶ using in large part the results of a detailed survey administered at twenty representative law schools. He found that in all cases students were chosen on the basis of grades; that some schools purported to accept material from other non-law-review students, but that this was a rare occurrence; and that on average about nine

⁶³ NORTHWESTERN UNIV., ANNUAL CATALOGUE, 1907–1908, at 235 (1908).

⁶⁴ Kocourek, *supra* note 58, at 66.

⁶⁵ Memorandum from Professors R. W. Millar & A. Kocourek to the Ill. Law Review Editorial Bd. (1924) (on file with the Northwestern University archives).

⁶⁶ Marsh, *supra* note 55.

percent of the student body was on *Law Review*. At some point Northwestern added another requirement for membership on the Editorial Board: completion of two pieces, notes or comments, which were deemed publishable in either the *Law Review* or in one of the other two journals—the *Journal of Criminal Law and Criminology* and the *Journal of Air Law*—for which the Board was also responsible during that period.⁶⁷

The 1951–1952 Editorial Board—the same board which changed the journal’s name to the *Northwestern University Law Review*—extended to all members of the 1952 and 1953 classes the opportunity to write their way onto the Board without necessarily meeting the grade standing. The requirement for all candidates was to produce two publishable notes or comments. That “democratization” of law review membership has survived to one degree or another to the present, albeit with a number of permutations.

A 1968 note from the editors described the responsibilities of those on *Law Review* staff, providing some insight into the work burden:

Prompted by a desire to insure the substantive validity and technical accuracy of our product, the production schedule of the *Review* has been revised to include a source-check, as well as a cite-check. As a result of this innovation, when an article or student paper is tentatively accepted for publication by the Editor-in-Chief, it is turned over to members of the staff for an evaluation of its substantive accuracy. They are instructed to read the sources relied on by the author, do any substantive editing suggested by their research, and recommend stylistic changes. The source-checked manuscript is returned to the Article Editor, or an Associate Editor if student written, for his editing and then proceeds to the Editor-in-Chief for final approval.

The writing required of staff members has been correspondingly reduced to allow sufficient time to implement this new procedure properly. Staff members are now required to write one comment or two notes, in addition to their part in the Illinois Symposium. Since members of the Editorial Board now write a comment in their senior year, the traditional writing requirement of two notes has merely been spread over the two years of *Review* participation.⁶⁸

The movement in the 1960s to do away with numerical grades altogether required some adjustment in the grade average standard for eligibility. A 1969 note from the editors stated:

Traditionally, Northwestern University law school students have competed for high grade average with its correspondingly high class rank. The rank entitled the student to membership on the *Review* and quite likely the best posi-

⁶⁷ The *Journal of Criminal Law and Criminology*, which was also founded by Dean Wigmore in 1910, underwent several title revisions but continues to be published at Northwestern by Northwestern students. The *Journal of Air Law*, an outgrowth of Dean Wigmore’s establishment of the Air Law Institute at Northwestern in 1929, moved to Southern Methodist University Law School in 1961 where it is published under the title *Journal of Air Law and Commerce*.

⁶⁸ From the Editors, 62 NW. U. L. REV. No. 6 (1968).

tions after graduation. This year, the inevitability of this process caused the student body to seek a change.

Beginning with the present freshman class, all students will receive only a pass or tutorial grade the first semester. In subsequent semesters, they will receive one of the following grades in each course: honors, satisfactory pass, pass, or fail. The new "word system" replaces what the student grade reform committee termed the "tyranny of numbers." The editors anticipated this movement against the determinative effect of class rank when we began a limited writing competition last year. Five places were opened to dean's list students who had not been among the top twenty-five selected on grades alone. To date no decision on a selection method has been made by the incoming board of editors. The alternatives, however, are clear: 1) a schoolwide writing competition in the spring of freshman year; 2) faculty recommendations alone or coupled with a writing competition; and 3) conversion of the word designations back to numbers. The choice that is made should conform to the purpose of this year's move to open up *Review* membership.⁶⁹

The apparent choice was a hybrid of grades and writing competition:

As a result of the Law School's new grading policies . . . , it was decided to rely more on a writing competition program for selection than previously. The majority of *Review* members will still continue to be selected on the basis of their grades from freshman year. [Two-fifths of the members, however, were to be selected from a writing competition conducted in the fall.]

The new method of selection is designed to afford each student the fullest possible opportunity to demonstrate his ability to successfully participate in *Review* work.⁷⁰

Still later, in 1972, the editors restated the optional path to membership:

The *Review* has once again modified its selection process in an effort to better fulfill its two major goals: publishing a scholarly journal and providing second and third year students with a challenging and rewarding educational experience. The new process is two-phased. First, a small group of students is selected on the basis of their first year scholastic achievement. Second, any student can be selected to the *Review* after the production of a publishable work. The *Review* provides aid to students in the preparation of these works. This process will provide all interested students with a valuable writing experience, whether they are eventually selected for *Review* membership or not.⁷¹

In this, the one hundredth year of the *Review*, the selection procedure continues to be an amalgam of academic elitism and skilled written communication. All students interested in participating on the *Law Review* or on any of the other student-run journals are asked, at the end of the first

⁶⁹ From the Editors, 64 NW. U. L. REV. No. 1 (1969).

⁷⁰ From the Editors, 64 NW. U. L. REV. No. 2 (1969).

⁷¹ From the Editors, 67 NW. U. L. REV. No. 3 (1972).

year, to write on a single, assigned topic. Each of the journals, including the *Law Review*, evaluates the papers and each journal assigns varying weights to the paper and to the grades of the author. Their evaluations determine who will be invited to be on staff, which is the first stage of membership. In addition, every year, a smaller group of students become members of the *Law Review* and other student publications by “writing on”—a process that takes into account only the publishable quality of their note or comment and other editorial work for the journal, rather than their grades.

The number of students who have the opportunity to benefit from law journal experience has increased dramatically from the seven “of known ability” in 1907. Today some three hundred students serve on the boards or staffs of the student publications at Northwestern, of whom about eighty are on the *Law Review*. The major reason for this increased participation, of course, is the increased number of student-edited journals. We would like to think that a more democratic selection process has also contributed.

VII. WHAT MERITED PUBLICATION IN THE *LAW REVIEW*

Given the stated purpose of the *Illinois Law Review* at its creation—“a live periodical primarily devoted to the discussion and exposition of Illinois law, and of matters of special practical value to the Illinois bar”⁷²—it is instructive to track the presence, or absence, of pieces that fulfill that role. Early volumes of the *Illinois Law Review* conformed fairly closely with the mission statement in Volume 1 and dealt largely, but certainly not exclusively, with Illinois matters. Between the two of them, Dean Wigmore and Professor Albert Kales contributed some thirty-six pieces in that first volume, most of them dealing with some aspect of Illinois law. In the first ten years of the *Review*’s life, it was not uncommon for Illinois articles to take up to seventy percent of a volume, due in part, but only in part, to the digest of cases decided that year by the Illinois Appellate Court. By the second decade, Illinois content was frequently down to thirty percent and less, and the downward trend continued.

Indeed, as the earlier discussion of purpose indicates, the faculty editors were themselves ambivalent about Illinois centrism. Perhaps the most revealing barometer of the waning of focus on Illinois law is the difference in treatment of Illinois’s two constitutional conventions. At the time of the 1920 Illinois Constitutional Convention, the *Law Review* published a number of articles on state constitutions and Illinois’s need for constitutional revision.⁷³ A 1938 issue also was devoted to Illinois constitutional revision.⁷⁴ During the period of the 1970 Constitutional Con-

⁷² Editorial Notes, 1 ILL. L. REV. 39, 39 (1906).

⁷³ See Index, 14 ILL. L. REV. iii (1919); Index, 15 ILL. L. REV. ii (1920); Index, 16 ILL. L. REV. iii (1921).

⁷⁴ Foreword, 33 ILL. L. REV. 1 (1938).

vention, however, the *Review* was silent on the subject, doubly surprising because state constitutional questions were more on the front-burner in 1970 than in 1920.

Nevertheless, despite the obviously diminished focus on Illinois, the *Law Review* continued to carry an annual Illinois Supreme Court Review through 1972.⁷⁵ And given the fact that Illinois is a major state, as well as the journal's home state, it is not surprising that the *Law Review* continues to address Illinois-focused issues from time to time, as it does.

Compared to the early volumes, contributions from Northwestern faculty diminished over time but by no means stopped altogether—as this centennial symposium issue attests. Those later volumes were augmented by contributions from, among many others, soon-to-be Justices Louis D. Brandeis and William O. Douglas, soon-to-be judges Jerome Frank and Roger Traynor, and distinguished non-Northwestern academics such as Ernst Freund, Roscoe Pound (who was also a faculty member at one time), Harry A. Bigelow, Ernst Puttkammer, Ernest Lorenzen, Samuel Williston, Lon L. Fuller, William Prosser, W.W. Cook, Karl Llewellyn, Sidney Hook, and Chief Justice William Rehnquist. The subject matter of topics handled by the *Review* expanded far past its stated mission in Volume 1; later issues of the *Law Review* reflected then-current phenomena like prohibition (much coverage was given during the 1920s to the legal problems arising therefrom); the New Deal programs of the 1930s and the constitutional questions they raised; and World War II, when the *Review*, with a much diminished Board,⁷⁶ grappled with such issues as the draft, price control, and industrial disputes and strikes during a war.

By the 1940s and early 1950s, the *Review's* focus had changed sufficiently that no more than a quarter (and in some volumes, quite a bit less) of its articles and comments were concerned with matters of Illinois law. This incongruity—having a learned journal called the *Illinois Law Review*, which dealt only episodically with Illinois issues—was finally addressed by the 1951–1952 Editorial Board, which voted to change the name. Lore at the time had it that General MacChesney, the last surviving founder of the *Illinois Law Review* and who was still active in the affairs of the Law School and the fortunes of the *Review*, would be unfriendly to any sort of name change. That turned out not to be the case, and he wrote the Foreword to the renamed *Northwestern University Law Review*.⁷⁷

The withering away of Illinois content was caused not just by wars, depression, and prohibition but also by the increasing volume of new non-

⁷⁵ *Illinois Supreme Court Review*, 67 NW. U. L. REV. 659 (1972).

⁷⁶ The effect of World War II is dramatically discernable by looking at Volumes 36 (immediately prior to the U.S. entry into WWII), 37, 38, 39, and 40, which had, respectively, 901 pages, 464 pages, 428 pages, 434 pages, and 573 pages. Matters moved back toward normal with Volume 41, which had 707 pages and was published when the War ended.

⁷⁷ MacChesney, *supra* note 13, at iii.

Illinois-centric issues. Thus, in the *Review*'s later years, there have been many pieces dealing with the First Amendment, including religious issues and commercial speech; antitrust law here and abroad; civil rights; constitutional law, including issues such as school funding and voting rights; securities law; administrative law, dealing with federal agencies and regulations; and criminal law, with attention being paid not just to relatively old issues, like *Miranda* and entrapment, but also to newer ones like stalking, bias crimes, the decriminalization of marijuana, and white-collar crime. Attention has been paid to cyber law, satellite law, alternative dispute resolution, housing, immigration, income tax, and poverty law. Indeed, the list could go on and on.

The issues published are fewer in number but substantially larger in bulk. The lead articles have grown much longer and frequently more esoteric—at the least, not oriented toward the concerns of the everyday practitioner. The student pieces have also become longer, fewer in number in annual volumes, and, not infrequently, as scholarly as lead articles. However measured, the *Law Review* is a very different publication—for a different time and place.

VIII. 100 YEARS LATER: WHAT WOULD THE FOUNDERS THINK?

They might well be vexed that the *Review* has strayed so far from its Illinois-centric mission. They would certainly be surprised that roughly half of the student body (seventy-five percent if you exclude the first-year students) would be writing, editing, source-checking, and cite-checking for the law school's six journals, with eighty of those students exclusively dedicated to the *Law Review*. And the sheer size of each volume would astound them. The *Illinois Law Review* started out with nine issues per volume, about 60 pages per issue; in total, 637 pages were printed as part of Volume 1. By Volume 50, published in the 1955–1956 academic year, there were only six issues but some 140 pages per issue which totaled 834 pages for the volume. More recently, the *Review* is now four issues per volume and averages 460 pages per issue, for a volume total of 1800-plus pages. They would be amazed to learn that the three youngest law journals at Northwestern are published only on-line. And they would be fascinated by some of the subjects covered in the *Law Review*: cyber space and outer space, artificial insemination and cloning, and global everything.

Vexed, surprised, astounded, amazed and fascinated and, we think, proud of the first one hundred years and looking forward to the next one hundred.

