

Symposium

THE FIRST CENTURY: CELEBRATING 100 YEARS OF LEGAL SCHOLARSHIP

FOREWORD

When the *Illinois Law Review* was launched exactly one hundred years ago, the first order of business was to justify its existence.

As Professors Dawn Clark Netsch and Harold D. Shapiro recount in their delightful history of what is now known as the *Northwestern University Law Review*—the essay that serves as the centerpiece of this centennial symposium issue—by 1906 the *Harvard Law Review* had been publishing for nearly two decades, *The Yale Law Journal* for fifteen years, the *Columbia Law Review* for five, and the *University of Michigan Law Review* for four. All of these journals were mere infants when compared with the *American Law Register*, which was founded in 1852 and gradually evolved into today’s *University of Pennsylvania Law Review*.¹

With these five journals in operation, the field for general law reviews was “already overcrowded,” according to the *Illinois Law Review*’s first editors.² And so in what now looks to us like a savvy marketing ploy, those editorial pioneers cast the *Illinois Law Review* as something of a niche journal, focused on a different set of legal issues than its peers. Writing in the *Law Review*’s first editorial note, the editors make clear that their peer journals,

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 widespread 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.³

Such were the deceptively modest beginnings of the *Illinois Law Review*. What that first editorial note masks, though, is the zeal and ambition of this *Law Review*’s two principal founders, General Nathan William MacChesney and Dean John Henry Wigmore. As Netsch and Shapiro vividly describe, the two men conceptualized and created the *Illinois Law Re-*

¹ Dawn Clark Netsch & Harold D. Shapiro, *100 Years and Counting*, 100 NW. U. L. REV. 1, 1 (2006).

² *Id.* (citing Editorial Notes, 1 ILL. L. REV. 39, 39 (1906)).

³ *Id.*

view in a mere four months. In early February 1906, a faculty committee was formed to assess the feasibility of launching a law review; in early May of that same year, the first issue of the *Illinois Law Review* rolled off the presses. Clearly, the committee had deemed the task feasible.⁴

Dean Wigmore did more than just help launch the *Law Review*. During that first year, he was one of the journal's most frequent contributors, authoring or co-authoring two articles, eleven case comments, and four editorial notes.⁵ One of those articles resurfaces in the pages of this symposium issue as Professor Robert P. Burns revisits Wigmore's first contribution, *Some Evidence Statutes That Illinois Ought to Have*.⁶ One hundred years later, it appears, Dean Wigmore—to whom this volume is dedicated—still has something to say.

As does his journal. Today the *Illinois Law Review* not only survives but thrives in what is still considered an “overcrowded” field of law reviews. (Estimates vary, but there are anywhere from 500 to 1000 law reviews, both general and specialty, in circulation today.)⁷ Renamed the *Northwestern University Law Review* in 1952 by an editorial board led by Netsch and Shapiro, the journal that was once steeped in Illinois law and legal issues is now considerably broader in scope, featuring articles with national and international appeal.

There have been other changes as well. Nine relatively slim issues per volume have been replaced by four relatively heftier ones. Gone are the years—from 1924 to 1932—when Northwestern's *Law Review* was a cooperative enterprise, a product of the joint efforts of law students and faculty from Northwestern, the University of Chicago, and the University of Illinois. Further, our *Law Review* has not proven immune to the onward march of technology; in fact, the last five years have probably seen more changes to the world of legal scholarship than the last hundred. Our readers today are far more likely to review a journal article after downloading it from the Internet than they are to page through a hard copy. Our staff members regularly complete their source and cite assignments in the relative comfort of a coffeehouse with wireless Internet access, far from the sobering stacks of the Pritzker library. Faculty members routinely post their work online and engage in lively debates in various digital fora. We are also in the early stages of moving all of our content online, so that future editorial boards and the general public will have free and unlimited access to all of the work ever published in the *Northwestern University Law Review*.

And there are other, more subtle differences. In 1906, only a handful of students were allowed to toil away in the *Law Review*'s office, a somewhat dubious honor awarded to those who found themselves at the very top

⁴ *See id.* at 4–5.

⁵ *Id.* at 7.

⁶ 1 ILL. L. REV. 9 (1906).

⁷ Netsch & Shapiro, *supra* note 1, at 3 n.11.

of their class. Today, roughly eighty second- and third-year students participate in the production of the *Law Review*, the vast majority of whom are selected using a combination of one rather blunt metric (first-year GPA) and another far more nuanced one (writing talent). Women comprise nearly fifty percent of today's staff. And where faculty members once played a prominent role in the journal's production—authoring, selecting, and editing pieces—today the *Law Review* is predominantly, proudly, almost defiantly student run. This shift to student control—and the benefits that students accrued in this process—did not go unnoticed by members of the faculty. In his foreword to the fiftieth anniversary issue of the *Law Review*, by now firmly under the control of its student editors, Dean Harold Havighurst opined that “[w]hereas 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.”⁸

We can only hope that today's journal marries these twin objectives—scholarly production and student training—without sacrificing one for the advancement of the other. Ours remains a journal committed to identifying and promoting cutting-edge legal scholarship; it is also a journal committed to the growth and development of its members. The experience of serving as editors of the *Law Review* trains us to be stronger writers, more critical thinkers, more forceful advocates. We may shape the *Law Review* during our single year on its board, but the *Law Review* forever shapes us.

The symposium issue we have assembled to inaugurate this 100th Volume of the *Northwestern University Law Review* is not a typical symposium. Rather than focus our efforts on analyzing and dissecting a single area of the law, we have chosen to mark our journal's centennial with a celebration of the diversity of scholarship represented in the legal academy today. Northwestern's own faculty members—twenty-seven of whom have written for this issue—represent that breadth. Included in our faculty ranks, and in this issue, are noted constitutional and empirical legal studies scholars; faculty members well versed in the law of torts and corporations; and professors who have made their mark in fields as diverse as political theory, evidence, taxation, criminal procedure, trial advocacy, and international law. Our goal in organizing and editing this symposium was to create an issue whose diversity of pieces would mirror the diversity of pieces that have appeared in our publication over its first century.

Some of the pieces are commemorative in nature. An essay by Professors Cynthia Grant Bowman, Dorothy Roberts, and Leonard S. Rubinowitz chronicles the *Law Review*'s history, with a critical eye to the role that race

⁸ *Id.* at 14 (citing Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 23–24 (1956)).

and gender have played in the pages of the publication. Justice John Paul Stevens strikes a personal note in his piece, sharing memories of his time at the helm of the *Law Review* and of his co-editor-in-chief, Art Seder. As mentioned above, Professor Robert Burns responds to Wigmore's first article in this journal's pages. He is joined in this reflective endeavor by Professor Ronen Avraham, who revisits *Valuing Life and Limb in Tort: Scheduling Pain and Suffering*, published by Randall R. Bovbjerg, Frank A. Sloan, and James F. Blumstein in the eighty-third Volume of our journal.⁹

Some of the pieces have reminded us of the complex and dynamic relationship between the academy, the bench, and the bar. Professor Ronald J. Allen, for example, writes of the central role played by the work of Dean Wigmore (yes, we owe much to Dean Wigmore) and Professor Fred Inbau in the Supreme Court's continued grappling with notions of voluntariness and coercion in *Miranda v. Arizona* and beyond. And at least one of the pieces defies the normal confines of the law review genre. For questions about the subtle and heretofore underappreciated effect of baseball on the course of human history, we refer you to Professor Anthony D'Amato's *The Contribution of the Infield Fly Rule to Western Civilization (and Vice Versa)*.

If the wide range of pieces in this issue is not apparent just yet, allow us to refer you to a few more. Professors James Lindgren and Miranda Oshige McGowan rely heavily on original empirical analysis as they try to untangle the "myth of the model minority" in their co-authored piece. Professors Shari Seidman Diamond and Mary R. Rose and Ms. Beth Murphy take a similarly quantitative approach in their essay on the non-unanimous civil jury. Professor John O. McGinnis decries the use of international and foreign law in recent Supreme Court jurisprudence, and Professor Martin H. Redish and Mr. Christopher R. Pudelski, a former editor-in-chief of this journal, urge a reinterpretation of the post-Civil War case *United States v. Klein*. Professor Robert W. Bennett warns of the trouble brewing below the surface in the electoral college, and Professor Stephen B. Presser warns of other dangers that may arise if state courts continue to endorse a casual piercing of the corporate veil.

That, dear reader, is but a sample of the twenty-four pieces we publish in this symposium collection. They reflect not only the breadth of the overall legal academy today but also the range of legal scholarship that has appeared in the pages of this journal. As such, this collection is not only a fitting tribute to the first century of the *Northwestern University Law Review*; it is also a harbinger of what is to come.

—Katherine Shaw, *Editor-in-Chief*
—Georgia N. Alexakis, *Special Sections Editor*

⁹ 83 NW. U. L. REV. 908 (1989).