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Francis A. Allen

University of Michigan Law School

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ON COMING OF AGE: TWENTY-FIVE YEARS OF THE UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM

Francis A. Allen*

A generation has grown to maturity since a small group of Law School faculty members, reinforced by the indispensable interest and financial support of Jason L. Honigman of the Detroit bar, founded in 1968 what has become *The University of Michigan Journal of Law Reform*. Asked to pronounce a decanal blessing on the new enterprise, I concluded my benediction in the first issue with typical deanly rhetoric: "It [the new journal] is a lusty infant, and the prospects of sound and healthy growth are good."¹

Actually, the vital signs were weaker than the brave pronouncement suggests; parturition was accompanied by unusual perils. The gravest of these related to the editorial leadership of the new enterprise. The founders intended to place the *Journal* initially under faculty editorship. Professor Frank E. Cooper, the preeminent and much admired expert on state administrative law and procedure, agreed to take on the task. Professor Cooper's death before the first issue appeared was a sad loss to the School, and created a crisis for the student editorial board that had been appointed to assist him. The ingenuity and improvisations of the student board, led by the Managing Editor, David L. Callies (now a prominent law teacher at the University of Hawaii), gave life to the enterprise. Editorial direction of the *Journal* has ever since been firmly in student hands.

Naming the child created unexpected difficulties. The first issues bore the legend, *Prospectus: A Journal of Law Reform*. The title, it was thought, suggested a forward thrust especially appropriate to a periodical concerned with legal change and reform. Subtlety and nuance, however, are better eschewed when devising labels. Very soon it became clear that the title was causing misunderstanding among prospective contributors

* Edson R. Sunderland Professor of Law *emeritus*, University of Michigan. Professor of Law, University of Florida.

1. Francis A. Allen, *A Prospectus for Reform*, 1 PROSPECTUS 1, 4 (1968).

and readers, many apparently believing that the new publication was one devoted to corporate securities regulation. Accordingly, the present designation of the *Journal* evolved in rather short order.

Finally, the emotional environment of the universities in 1968 might have been thought unfavorable to launching a periodical dedicated to social amelioration through reform of law and legal institutions. The first issue of the *Journal* appeared as campus unrest in the Vietnam era neared its crescendo. Voices (perhaps louder than their numbers warranted) denounced law as the tool of oppressors. Law reform is futile, it was said; it serves only to divert attention from the central task of overthrowing a corrupt and unjust social order. The distinguished Association of the Bar of the City of New York, alarmed, issued a volume entitled *Is Law Dead?*²

Yet despite the special difficulties, as well as those associated with any new publishing venture, the *Journal* survived and continues to survive. Scores of Michigan law students have contributed to its life. The bound volumes have proliferated, and the volumes have become more voluminous. A substantial array of distinguished legal scholars have contributed to the *Journal's* pages, including (if my count is correct) some thirty members of the Michigan Law School faculty. Numbers of young law teachers from across the country appear to have launched their writing careers in the *Journal*. What impact has the *Journal* had on social amelioration through law? Is it widely read in the profession and in the law schools? These are questions I am unable to answer in any satisfactory way, but let me submit one piece of empirical evidence. In thumbing through the bound copies of the *Journal* on the shelves of a law library situated a thousand miles from Ann Arbor, I was struck by the frequent heavy underlinings of passages in articles and student contributions, indicating, I should think, close reading. I was therefore gratified, however much such book abuse may be deplored by law librarians.

Procreators of both persons and periodicals are often, in the course of time, surprised and sometimes dismayed by what their offspring have become. What did those who founded the

2. IS LAW DEAD? (Eugene V. Rostow ed., 1971).

Journal in 1968 expect it to be, and how well have these purposes been realized? There is some contemporary evidence of the founders' objectives. In the introduction to the first issue, mentioned above, I find myself pointing to two goals: "to report efforts to improve the law and its administration and to stimulate thought and . . . action to this end,"³ and second, "to enlarge the opportunities for law journal experience of students at the University of Michigan Law School."⁴ Ten years later, the *Journal*, celebrating completion of its first decade, published a statement of a former student editor. Mr. Domanskis repeated and reaffirmed the objectives as stated above, and asserted that, thus far, they had been honored in practice.⁵

Any periodical dedicated to law reform necessarily undertakes a number of ancillary commitments. Important contributions to social policy demand more than value analysis and manipulation of concepts, important and fascinating as these pursuits undoubtedly are. Rational social policy requires knowledge of concrete social reality, entailing the sometimes burdensome commitment to fact finding. The necessity of acquiring sound empirical foundations asserts itself at every stage of legal policy making: the discovery of problems requiring attention, the devising of institutional solutions, the evaluation of the performance of measures already undertaken. This does not mean, of course, that every venture into law reform necessarily entails the elaborate apparatus of empirical research. It does mean a stronger orientation to concrete social reality than we as lawyers ordinarily bring to our thought on policy issues. The commitment to law reform also probably entails greater concentration on legislative law than is displayed in most law-review fare and correspondingly less preoccupation with the seductive pleasures of judicial, and especially constitutional, theory.

Let us return to the earlier question: How well has the *Journal* during the past quarter-century realized its original purposes and expectations? There are, after all, limits to self-immolation and to the patience of readers; and so I shall not offer the meticulous analysis of twenty-four bound volumes of

3. Allen, *supra* note 1, at 2.

4. *Id.* at 3.

5. Alexander R. Domanskis, *The Journal: After a Decade*, 11 U. MICH. J.L. REF. 1 (1977).

the *Journal* necessary to a fully satisfactory answer. It seems clear, however, that the second objective stated above has been achieved: Opportunities for student participation in law review activities at Michigan have been significantly enlarged. An extraordinary range of issues and topics has been uncovered and addressed by the students; and, with all due deference to the distinguished faculty contributors, much that is most interesting about the *Journal* has been achieved by the student writers and editors. In recent years the editorial boards have published numerous symposia on a variety of important issues with contributions from experts across the country. There is much of interest and value in this. I hope the tendency, however, will not result in significant diminution of student contributions, as it has in some other periodicals.

Has the *Journal* sustained its distinctive focus on law reform and social policy and honored the ancillary commitments necessarily implied? One would not be surprised to find some slippage here, some weakening of purpose, with the passage of time. The force of convention and habit, and notions of prestige make distinctive orientations hard to maintain, and move student-edited periodicals to resemble all other student periodicals. There are issues of the *Journal* in past years that appear to be bending to such pressures. Contributions appear that have only tenuous relation to the *Journal's* declared purposes, and the apparently insatiable urge of students to write and publish Supreme Court case-notes seems on occasion to have been too powerful to resist. Yet such detour and deviation do not characterize the *Journal's* history as a whole; the original thrust has lost little of its force. To a surprising degree, the interests and emphases of the *Journal* persist.

If, as I suggested earlier, close attention to legislative law and law-making is a prime requisite of publications focusing on law reform and social policy, the *Journal* in its quarter-century history has abundantly satisfied the requirement. Extensive discussions of statutory law at the national, state, and local levels are to be found in all the *Journal's* bound volumes. In its early years the *Journal* published a series of "Legislation Notes" reporting new legislation, not only in Michigan, but also throughout the country, often providing a brief history of the enactment and analysis of its provisions.

The "Notes" appear to have been abandoned, a loss I regret; but in justice it must be said that the *Journal* in other ways has succeeded in alerting its readers to an extraordinary range of new statutory law.

Has the *Journal* maintained a steady gaze on social reality, on the actual performance of social institutions? My recollections of the hopes of the *Journal's* founding fathers may still be of some relevance here. It was never the expectation of that hardy band that the new student publication should confine itself to empirical studies establishing the need for law reform or auditing the performance of existing arrangements. Yet I think that most felt such studies should regularly appear in the *Journal's* pages. It was my hope that perhaps each summer a group of student writers could be funded to carry out such inquiry and publish its results in the succeeding volume. The dream has not come to full fruition. Reasons are probably to be found both in the burdensome logistics that such frequent projects impose on the student boards and faculty advisors, and also the tyranny of the "summer clerkship" that since the *Journal's* founding has increasingly preempted students' time between May and August. Nevertheless, a considerable amount of such material has appeared in the *Journal's* pages, including some excellent work by student researchers. Like *Oliver Twist* I should like more.

How does all this add up? Very creditably, I think, to the student editors and writers (who may have received a bit of help from faculty advisors). To a surprising degree (at least surprising to me), the originally perceived purposes of the *Journal* have been kept in view. The *Journal's* interests and commitments, sometimes in unexpected forms of expression, have survived and continue to animate its publication. The interests and commitments are important, and not only to the *Journal's* future. The assumptions on which the *Journal* has operated for a generation are in conflict with certain tendencies in law school research and scholarship. It is good to have publications affirming that there is a distinctive *legal* subject matter, that in intellectual life law schools need not conceive themselves to be merely colonial outposts of university graduate schools, that "a juster justice and a more lawful

law”⁶ is a meaningful goal, and that “the relief of man’s estate” (as Lord Bacon put it)⁷ is the ultimate ethical justification for the legal enterprise.

6. See Max Radin, *A Juster Justice, a More Lawful Law*, in LEGAL ESSAYS IN TRIBUTE TO ORRIN KIP MCMURRAY 537 (Max Radin & A.M. Kidd eds., 1935).

7. FRANCIS BACON, THE ADVANCEMENT OF LEARNING 35 (G.W. Kitchin ed., J.M. Dent & Sons Ltd. 1965) (1605).