

University of Michigan Journal of Law Reform

Volume 1 | Issue 1

1968

A Prospectus For Reform

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Recommended Citation

Francis A. Allen, *A Prospectus For Reform*, 1 U. MICH. J. L. REFORM 1 (1968).

Available at: <https://repository.law.umich.edu/mjlr/vol1/iss1/3>

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A PROSPECTUS FOR REFORM

*Francis A. Allen**

The one thing certain about the age in which we live is that we cannot stand still. We cannot escape or outwit the forces of change by nonaction; for, in any event, the social context in which we live and work will alter, as will our relations to it. Accordingly, the only issue remaining is whether or to what extent change is to be the product of thought and deliberation.

Reflections such as these must have crossed the minds of many lawyers during the course of the past decade. There is nothing new, however, about the problems of accommodating law to altered circumstances. The common law has survived the centuries because it contributed a shrewd awareness of the changing needs of men, and because its method of adjudication constitutes an effective mechanism for orderly change and development. Those who practice in the common law system are routinely engaged in processes of law reform and regeneration. The creative impulse of the common law has not run its course, and all evidence indicates that we shall continue to rely on the evolution of judge-made law as one important means to insure the continued relevance of the legal system to the new conditions that beset us. No lawyer needs to be told, however, that we are, and for a long time have been, living in an age of legislation and administration. Judgments may differ about some uses made of legislation, but few of us would deny that the wise applications of legislative power and of judicial and administrative rule-making power are indispensable to the satisfactory functioning of modern society.

The continuing necessity for law reform has not escaped the attention of the American bar. Nor has the appreciation of these needs been confined to any single segment of the profession. If one restricts his attention to leaders of the bar in the last generation who were deeply involved in law reform activities, he will encounter such names as William Howard Taft, Roscoe Pound, Charles Evans Hughes, Elihu Root, Louis D. Brandeis, and Willis Van Devanter. The political and social values of these men were diverse and in some measure conflicting. But one characteristic they shared in common: they were lawyers strongly committed to improvement of the law and its administration through conscious effort.

Although law reform has been one of the historical preoccupations of the American legal profession, the problems of adapting law to the conditions of modern society have acquired a wholly new magnitude, complexity, and urgency. We are passing through a knowledge explosion of unprecedented dimensions; and the social problems following in the wake

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of the new technology present challenges to the wisdom and ingenuity of lawyers unlike anything encountered in the past. We are confronted by a movement of social protest that questions the efficacy of the law as an instrumentality of social justice, and which asserts that the administration of law has frequently been used as a device to frustrate the legitimate aspirations of those seeking to participate in the benefits of American society. We live in a world characterized by a radical disorganization of international relations, and in which human survival is threatened by irresponsible uses of military power.

No one will assert that problems of this scope concern only lawyers or that fundamental solutions are likely to result simply from exercises in law reform. Yet the legal order figures prominently in each, and we can reasonably assume that the lawyer's contribution to their solution will be of genuine importance. No new law journal can aspire to address all of the great problems of these times, even those issues of direct relevance to the improvement of law and the administration of justice. But great problems often consist of an aggregate of smaller problems; and a journal that seeks conscientiously to identify some of the areas in which intelligent action is required and offers guidelines for that action, can be expected to make a worthwhile contribution.

This is the first issue of PROSPECTUS: A JOURNAL OF LAW REFORM. Since we do not suffer from a lack of legal periodicals in the United States, the launching of a new law journal ought to be accompanied by a statement of purposes and (if necessary) justification. It can fairly be said that this publication aspires to achieve two principal objectives. First, it seeks to report efforts to improve the law and its administration and to stimulate thought and constructive action to this end. Some of the studies published in this journal may concentrate their attention on the needs for law reform in a wide variety of areas. One of the remarkable and lamentable aspects of the age of legislation and administration in which we live is the poverty of the resources we devote to identify the needs to which response is required and to audit the effectiveness of measures already undertaken. Law reform does not necessarily consist of enlarging legal regulation. It may on occasion demand the cessation of legal intervention in a field where experience has demonstrated that the existing law is not achieving its intended purposes, or in which achievement of the purpose is accompanied by unintended consequences too serious to tolerate. The problem is that the efforts of legislatures, law revision commissions, and governmental boards of inquiry, although highly important, are insufficient, standing alone, to assure identification of the needs for law reform. This journal can be expected to address this problem and, in so doing, render a valuable public service. It will also report experience and contribute new thought on the ways and means of law reform. We may hope that it will serve as a clearing house of information about interesting and significant experimentation throughout the country and perhaps occasionally in other countries. It

will, moreover, serve as a vehicle to communicate new ideas in the field and stimulate public discussion of promising and untried proposals.

The interests of this journal are not focused narrowly on any particular areas of law reform. It will be concerned with issues relating to the improvement of both private law and public law, judicial administration, law enforcement, administrative regulation, and much more. In short, it seeks to promote the improvement of law and its administration in all areas in which needs are disclosed and in which useful proposals can be advanced. No doubt, many of the problems to be discussed will be those with an important local impact. One of the interesting developments of our times is the degree to which the principal problems of our domestic policy involve interests that are immediate and local — problems of local government and the quality of life in our cities, the control and prevention of crime, the physical environment in which men work and live. But the journal's attention to local problems does not imply a parochial orientation. Michigan problems will be grist for the mill; but, at the same time, its interests will not be limited by state or regional boundaries. Finally, the approach will be essentially practical. The emphasis will be on practical problems and practical solutions.

The second principal objective of this publication is to enlarge the opportunities for law journal experience of students at the University of Michigan Law School. A substantial portion of the contents will consist of student writing. The potency of law review participation as an educational device has been clearly and repeatedly demonstrated over a period of three-quarters of a century. Nor is there any room to doubt that law students are capable of producing written work of substantial value to the bar and others concerned with social problems in which the law is significantly involved. The need for extending the advantages of this experience to a larger fraction of the student body is particularly acute at a time when the general levels of competence of our students have markedly increased and when it has become clearly apparent that the capacity to profit from law journal experience and to produce creditable work is not restricted to a small group of those enrolled. Although the purpose is to enlarge opportunities for law journal participation, this publication will not in all respects be bound by the traditions or format of existing American law reviews. It will seek innovation in presentation and content, and will not hesitate to employ unorthodox means whenever these give promise of achieving the journal's objectives.

A new journal does not, like Athena, emerge full grown from the brow of Zeus. The birth of PROSPECTUS has been attended by a full measure of labor pain. No doubt its progress toward maturity will be accompanied by further difficulties, frustrations, and false starts. Nevertheless, much that is associated with this venture provides a sound basis for future development. Special thanks are extended to Jason L. Honigman, Esq. of the Detroit bar, who has made indispensable contributions of interest and money to the founding of this journal. Mr. Honigman, a distinguished

alumnus of the University of Michigan Law School, successfully championed the establishment of the Michigan Law Revision Commission and is currently serving as its first Chairman. In this capacity and in his numerous other activities, he is enhancing the public life of the state. Among the many who devoted invaluable efforts to this undertaking was the late Professor Frank E. Cooper, who graciously and generously consented to serve as Faculty Editor. Professor Cooper's untimely death before the first issue appeared has saddened us all. He will be sorely missed. Finally, I wish to thank Mr. David L. Callies, Managing Editor, and his loyal and hard pressed student editorial board. They understand better now than when they first assumed their duties, the frustrations and rewards that are the lot of pioneers.

PROSPECTUS: A JOURNAL OF LAW REFORM thus begins its career. It is a lusty infant, and the prospects of sound and healthy growth are good.