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BOOK REVIEWS IN LAW REVIEWS: AN ENDANGERED SPECIES

*David F. Cavers**

For a disquieting number of years, as a reader of law school periodicals, I have observed the dwindling away of their book review sections with an apprehension akin to that with which certain environmentalists view the plight of the sperm whale and the American eagle. Unlike the champions of those endangered species, I have found it impossible to ease my distress by taking even symbolic action: annual appeals to book review editors in my law school used to yield expressions of sympathy and the hope that "this year we'll do better," a hope which, for reasons that I think I can understand, was never realized. Consequently, when I learned of the *Michigan Law Review's* bold innovation of devoting an entire issue to the reviewing of books, I offered to submit a short paper in the nature of a brief *amicus*.

The first section of my submission may suggest a Brandeis brief: an arraying of pertinent data to demonstrate the actuality of the evil, especially for the benefit of those readers whose encounters with law reviews began only ten or fifteen years ago. Then I shall advance some notions of mine as to the causes of the ailment, and finally, I shall seek to identify some of the benefits its correction would confer.

I. THE DECLINE IN THE REVIEWING OF BOOKS OF INTEREST TO LAWYER READERS

Perhaps the skeptic will demand that I first demonstrate that there has been no decline in the *publishing* of books of interest to lawyer readers. I have no evidence at hand to prove this, but I submit that the contrary trend is clear enough to enable a reasonably well-read bench to take judicial notice of it. True, few major legal treatises are now being published, but, even in the heyday of book reviewing in law, such treatises represented only occasional events. However, today I am confident that more monographs of legal content are being published.¹ Of special conse-

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1. This confidence has been bolstered by data from the Harvard Law School Library's *Annual Legal Bibliography*, listing a selection of books and articles acquired by the Library each year. Its section on Common Law Jurisdictions was checked in Volumes 6

quence, moreover, is the rapidly increasing number of law-related books, written sometimes by, or in collaboration with, lawyers but often by social scientists, historians, and philosophers. Given the broadening horizons of today's profession and, in particular, of lawyer-scholars, the range and number of works which deserve attention have grown significantly.

In starting my quest for data, I first turned to the *Harvard Law Review*, which happens to be within easy reach. For a base line, I chose twenty-five-year-old Volume 67, published in 1953-54. I found that it contained reviews of twenty-nine works, a well-balanced array of books including a number which still command attention, reviewed by an impressive cast of reviewers. In addition, Volume 67 contained thirteen "Book Notes" by student authors, not skimpy notices but comments a page or two in length—and book review pages in 10 pt. then ran to five hundred words or more.

I then turned to Volume 90, published in 1976-77 (Volume 91 being incomplete). Volume 90 lists reviews for a total of nine works. No doubt these reviews average more pages (in larger type) than those published in Volume 67, but this, I submit, does not compensate for a shrinkage in reviews to less than one-third. Most issues of the *Review* do end with a list of "Recent Publications" with a short paragraph providing a thumbnail description of each book listed, a service lacking the utility of the "Book Notes" in the earlier volume.

But perhaps the *Harvard Law Review* is less hospitable to book reviews; other periodicals should be examined. So off to the stacks I went, and, taking down the latest volumes there of eleven law reviews of substantial girth and standing,² compiled the data in the accompanying table.

In a few instances, more than one book was included in a single review. In several law reviews, lists of "Books Received" appeared at the end of an issue, usually without comment. However, in the *Wisconsin Law Review*, three issues carried 56 evaluative book notes averaging about four hundred to five hundred words in length.

(1966) and 18 (1978), the former being the first volume to distinguish book listings typographically. The entries counted (including multiple listings) were all the American books in subsections not listing books by nations and all books in English listed in "United States" subsections. The 1966 Index had 1108 such book listings under Common Law Jurisdictions. The 1978 Index gained nearly one-third, to 1471 listings. However, surveying listings while counting gave me the impression that unreviewable books, pamphlets, and reports were much more numerous than review-worthy works.

2. The *Michigan Law Review* I deemed *hors concours*.

Name and Volume of Review	Year	No. of Reviews	No. of Pages in Volume
64 Calif. L. Rev.	'76	5	1489
76 Colum. L. Rev.	'76	9	1377
62 Cornell L. Rev.	'76-'77	3	1136
61 Minn. L. Rev.	'76-'77	2	1057
29 Stan. L. Rev.	'76-'77	7	1329
55 Texas L. Rev.	'76-'77	11	1475
125 U. Pa. L. Rev.	'76-'77	1	1444
30 Vand. L. Rev.	'77	6	1308
63 Va. L. Rev.	'77	2	1518
23 Wayne L. Rev.	'76-'77	2	1474
1976 Wis. L. Rev.	'76	5	1369

One may still ask whether, taking American law school periodicals as a whole, worthwhile relevant new books do not receive adequate attention. This question is significant for, even if several of the reviews listed above had been performing admirably, the readers of American reviews would still be treated to lean fare if reviewing was also under-developed in all the other periodicals. It is hard to measure coverage, but I used a rough yardstick. In the Book Review sections of three three-year compilations of the *Index to Legal Periodicals*, I counted the number of periodicals indexed (many of which are not law reviews) and the number of books which were reviewed in more than five, ten, and twenty periodicals. I chose the *ILP* volumes for August 1952-July 1955 (Volume 10), for September 1961-August 1964 (Volume 13), and September 1973-August 1976 (Volume 17). Here are the results.

	Vol. 10 '52-'55	Vol. 13 '61-'64	Vol. 17 '73-'76
Periodicals indexed	225	291	400
Books reviewed in			
over 5 periodicals*	114	68	52
over 10 periodicals*	42	15	8
over 20 periodicals	7	0	0

*Including the books in the succeeding brackets.

I should confess that I excluded books published abroad which were reviewed chiefly in non-American periodicals, knowing that among them the practice of book reviewing still flourishes. Indeed, the contrast with two leading English legal periodicals is striking. The *Law Quarterly Review* for 1977 carried reviews of 74 books, supplemented by 22 book notes, in its 632 pages; the *Modern Law Review* for 1976 reviewed 83 books in its 752 pages. Many of the reviews in both these periodicals were

relatively brief—four, five, or six hundred words, a few less — but some ranged to well over a thousand words, especially in the *Law Quarterly* which often combined two or more books in one review. Even its book notes included brief evaluations.

I must note some exceptions to my gloomy generalizations. The *American Bar Association Journal* has not yielded to the trend. Each issue carries eight to ten reviews covering a diversity of books of legal interest and follows these reviews with a longer list of thumbnail descriptive book notes. The spectacular proliferation of specialized periodicals, especially in the past decade, has provided a medium for reviews of books pertaining to their respective fields. A considerable number of these new periodicals have responded to this opportunity in varying degrees. An outstanding example of thorough coverage of a field's literature is afforded by the much older *American Journal of International Law*. With its three categories of reviews, it covers not only most works in English that merit attention in its field, but also many in foreign tongues. Its example is followed on a lesser scale by the quarterly *American Journal of Comparative Law*. But a once prolific source of reviews, the *Journal of Legal Education*, has cut its output sharply.

Encouraging as examples of persistence in book reviewing may be, they do not exculpate their less specialized contemporaries. However, they do demonstrate that book reviewers can be found and can be persuaded to write reviews of dimensions varied to meet editorial specifications.

II. CAUSES OF THE DECLINE IN REVIEWING: SOME HYPOTHESES

This section represents opinion evidence. Without purporting to qualify as expert, I offer my hunch-based hypotheses for what they may be worth.

Enlisting reviewers today is not easy. One reason for this, I am confident, is simply the fact that the practice of reviewing is, and has been for perhaps fifteen years, in an accelerating slump. When his brethren at the bar or in the law faculties are not writing reviews as a matter of course, it becomes hard to persuade any one prospective reviewer to say "Yes." Considerable effort will be required to turn this trend around, and, understandably, student book-review editors tend to feel inadequate to the task. That is one reason why the symbolic value of the *Michigan Law Review's* innovation may prove of special importance.

Book reviews pose other difficulties for student book review editors. Editors are often obliged to sow where their successors

will reap, perhaps not too happily. Book reviewers are disinclined to respect deadlines, and procrastination in reading a solid volume comes naturally. Moreover, the student editor lacks acquaintance with a wide range of potential reviewers; the odds against securing acceptances from the obvious always run high. To persuade younger law teachers to sit in judgment on works emanating from established scholars or experts is not easy, especially since, for those who lack tenure, the number of brownie points earned by a review is not large. On most of these problems, the *Michigan* experiment promises to ease the editor's task.

Another problem which current editorial practice has created for book-review editors has its source in the lengthy book review. Though reviews are fewer today, they tend to run much longer. If long reviews are the mode, the editor who requests a prospective reviewer to stay within, say, fifteen hundred words risks convincing him that so short a review is not worth the time required to compose it. However, if the invitee assumes that a long review is expected of him, he may well decline on the ground that its writing would impose a burden far beyond its rewards. If, on occasion, a book or a group of closely related books does seem to merit a really long review, then I submit that a review article is the proper solution. Every now and again, such an article is published; I believe this should be done more often.

There is one conspicuous development among law school periodicals that has several deplorable consequences, not the least of which is its impact on book reviewing. I refer to the plague of elephantiasis that has beset student notes and comments. The compulsion to write exhaustively exerts a pressure on space, and space is subject to budgetary limitations. Something has to give. Book reviews come at the end of an issue. Need I say more?

Given this array of problems, what suggestions do I have for a turn-around? *Michigan's* scheme should certainly be considered, at least by periodicals publishing eight issues per year. In law schools where the periodicals are under faculty control or where faculty participation would be tolerated, I suggest the appointment of a faculty book-review editor—often the law librarian would be a good choice. He should be assured a reasonable allotment of space. But in schools where such a departure from tradition would be unacceptable, I should urge the student board to take its book reviewing responsibilities seriously, to assure its book-review editor a fair amount of space, and to enlist an advisory group among the faculty to aid the editor in the search for suitable reviewers.

A determination by a few law reviews of standing to pursue such a course might work a reversal of the present trend and start a current flowing in the opposite direction. That such a development would be a consummation to be wished—seriously if not devoutly—is the theme of the succeeding section.

III. SOME BENEFITS OF MORE BOOK REVIEWING

One happy consequence of a substantial increase in the publishing of book reviews would be an increase in the writing of books on or about the law, especially works to be *read* as distinguished from "law books" to be referred to as the exigencies of legal research or teaching may dictate. Professor Richard Danzig has stated persuasively the need for more such books:

Few law teachers write what I will call discursive books: books you can sit down and read, in one or more sittings, from cover to cover; books that make an argument; books that lay claim to expanding the horizons of the profession. Many do not write at all. Those professors who do write typically content themselves with detailed analysis of problems attacked piecemeal (in the form of articles) or they devote their energy to processing preexisting knowledge so as to render it teachable (as in casebooks) or authoritatively accessible (as in treatises).

. . . The paucity of discursive books is important because it is a tangible surrogate for an intangible shortfall: the shortage of intellectually ambitious work in the law; the scarcity of overviews, of imaginative writing, of speculation and creativity cleanly presented.³

Given Professor Danzig's concern, which I share, I find it odd that he seems to begrudge the fact that so many reviewers were found for the slim volume which he himself is reviewing: *The Death of Contract* by Professor Grant Gilmore.⁴ Danzig notes that this one-hundred-page set of four lectures had yielded more than twice as many pages of reviews than did Professor Lawrence Friedman's *Contract in American Law*, a much more ambitious 1965 work which both Gilmore and Danzig admire.⁵ Danzig sees Gilmore as able to "engage so broad a professional audience"

3. Danzig, *The Death of Contract and the Life of the Profession: Observations on the Intellectual State of Legal Academia*, 29 STAN. L. REV. 1125, 1127 (1977).

4. G. GILMORE, *THE DEATH OF CONTRACT* (1974).

5. Danzig, *supra* note 3, at 1129. The *Index to Legal Periodicals* listed reviews of Friedman's book in 10 periodicals, of Gilmore's in 14, including several leading law reviews which had overlooked Friedman's book. Danzig observes that the reviews of Gilmore he cites totaled 150 pages. *Id.* at 1128.

because law teachers today "are wedded to case analysis" and find "too long" anything that "cannot be discussed comfortably in class."⁶ Not only is *The Death of Contract* brief, but "in its most significant parts, the intellectual horizon of this book is familiarly fixed."⁷

With these obvious attractions to law-teacher reviewers, the wonder is that the *ILP* reports only fourteen periodicals as having reviewed *The Death of Contract*.⁸ Twenty years earlier it would have had two or three times as many reviews, though doubtless fewer lengthy ones. It seems short-sighted to chasten today's law-teacher reviewers for not having been writing books to be read rather than writing reviews to entice law teachers to read books. The more books that are reviewed in our periodicals, the more likely, I submit, are review-worthy books to be written—and published—and read.

I do not wish to create the impression that only books meeting Danzig's specifications deserve notice in book-review departments restored to their past dimensions.⁹ Some law books, to be sure, do not aspire to enlarge knowledge and understanding but serve simply to make more accessible the tools of the lawyer's calling. Probably publishers can be relied on for their distribution. However, if law books are more ambitious than such primers and case-finders, their exposure to disinterested appraisal by their authors' peers can be important. An author valiant enough to use a canvas larger than the law review article would welcome the readership that, say, a dozen reviews of his book would create. However, realizing as he must today that a book embodying his analyses would all too probably escape the attention of most thoughtful users, the prospective author can be forgiven if he chooses the easier road of law review writing. By selecting some phases of his subject for an article or two, he can count on the *Index to Legal Periodicals* to capture some readers for his work.

This brings me to a second contribution which a vigorous flow of reviews can make: active book-review departments can themselves serve as a marketplace for ideas, a market we now

6. *Id.* at 1129.

7. *Id.*

8. See note 5 *supra*.

9. In addition to the review-worthy law books discussed in this paragraph, there is another type of book which may be both "intellectually ambitious" and important to lawyer readers, yet which cannot be characterized as "imaginative writing" or "speculation." I refer to empirical studies of law-related behavior and attitudes, *e.g.*, the recently published *Lawyers in Pursuit of Legal Rights*, by Professor Joel Handler of Wisconsin with E. Hollingsworth and H. Erlanger.

lack. Our profession's periodicals tend to the ponderous. Leading articles have steadily grown longer, and today, student contributions not infrequently outrun the articles. Law teaching has no journalism of its own, and, until recently, the legal profession had none¹⁰ (a condition which certain current developments may cause it to view with nostalgia). Back in the days when law reviews were often publishing four or five book reviews to the issue, one might take the current issue of a review home for an evening's reading—in the book-review department. Occasionally one might encounter a review with something to say about one's own bailiwick, and, at the least, one could count on contact with some of the ideas current in less familiar fields. Now and again, a new book would divide its reviewers into hostile, proselyting camps. And if one's interest had been engaged, one would look for other reviews of the same work and wonder how or whether the author would respond to his critics.

Sometimes, to be sure, reviewers merely picked nits; sometimes they forgot about the books they were reviewing and wrote little essays on notions of their own. But these, too, could be interesting, and, as for the scantily reviewed book, the reader could watch for its next review in the hope that it would be more informative.

There is, at least, one more mission which good book-review departments could fulfill. Those legal periodicals which enjoy some international circulation can undertake the business of bringing American legal scholarship—and scholarship about law in American society—to the attention of scholars in other countries. In delegating to their students the responsibility of determining the content of American legal periodicals, law faculties have allowed their juniors to set priorities to suit current student values and ambitions. One consequence has been to reduce to a minimum the export of intelligence concerning American legal writing. It is not surprising that our colleagues abroad are moved to inquire, "Why is it that American law professors write so few books?"

Foreign readers do not represent the only public which more ambitious book-review departments might assist. The social scientist whose discipline's own periodicals teem with book reviews might turn again to the law reviews to seek books bearing on points of contact between that discipline and the law. A list of

10. In this context, I do not consider those adjuncts to court calendars published daily in big cities as constituting "journalism."

titles or four-line "book notes" will not suffice. Descriptions and evaluations are needed that will reveal whether the books reviewed are likely to prove rewarding and render inter-library loans worthwhile. Frustrated in the search, the social scientist, too, may be left with the belief that American law professors write too few books.

Certainly the number of books emanating from our four thousand or so law teachers is far fewer than it ought to be, but that number is distinctly larger than the paucity of book reviews suggests. One may hope that the book-review issues of the *Michigan Law Review* and the emulators it may inspire will help to correct such misimpressions as, not surprisingly, our colleagues from foreign countries and neighboring disciplines have acquired.