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IN PRAISE OF BOOK REVIEWS

*Francis A. Allen **

*Nature fits all her children with some-
thing to do;
He who would and can't write, can
surely review.*

James Russell Lowell

*[T]he book reviews are stuck away in
the back like country cousins and
anyone who wants to take off his
shoes and feel at home in a law re-
view will do well to come in by way of
the kitchen.*

Fred Rodell¹

This is the third time in as many years that the *Michigan Law Review* has presented a substantial canvass of legal and law-relevant literature to its readers. Any institutional practice repeated three times is in a fair way of becoming a tradition, and the tradition of an annual "book-review issue" in this journal seems vigorously alive and well. Accordingly, the present collection of review essays requires no benediction from me. That these remarks are a work of supererogation is even more strongly suggested when one recalls the elegant essay of David Cavers, which helped launch the first collection two years ago.² Perhaps the most useful service my comments can offer is to induce a few readers who missed it to search out and read Professor Cavers's earlier article.

I

The motivating impulse for the book-review issue, as I understand it, stems from a paradox: at a time when legal scholarship results more and more in the publication of books other than casebooks and conventional treatises, the university-based law journals are publishing fewer and fewer book reviews. Professor Cavers

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1. Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 44 (1936).

2. Cavers, *Book Reviews in Law Reviews: An Endangered Species*, 77 MICH. L. REV. 327 (1979).

has supplied statistical corroboration of the phenomenon, but it had also become evident to those of us who rely on more impressionistic modes of fact-finding. A few years ago one of the most distinguished American law teachers, a man of wide reputation and public experience, told me that one of his books incorporating lectures delivered from a prestigious forum and addressing a topic of general interest was reviewed in none of the American law reviews. My own experience is similar. A book published in 1974 and devoted principally (or so I thought) to problems of law and the administration of justice was discussed in one American law review.³ It was reviewed, however, by a number of journals in other disciplines and was several times noticed in foreign periodicals, one of the latter reviews appearing as late as five years after the book's publication. I hasten to add that the attention given to the book in journals other than the American law reviews does not speak at all to its merits. Rather, such attention as it received was entirely routine, reflecting the assumption of the periodicals that books dealing with certain serious subject matters need to be identified and appraised. The neglect of books by the law reviews seems more egregious in some subject areas than in others. My impression is that legal historians manage to publish vigorous criticisms of their colleagues' work-products with fair regularity; and specialized journals in comparative law and international law provide vehicles for book reviews in those fields. But with only small qualifications, the paradox stated above is valid.

In the paragraphs that follow I shall identify a number of the losses associated with the neglect of books by the law reviews and some reasons for the neglect. The loss of central importance, however, can be stated now: the decline in book reviewing diminishes the vigor and quality of the intellectual dialogue going forward in law schools and in the legal profession. It is a diminishment particularly unfortunate, for it occurs at a time when new forms of legal scholarship are struggling to be born and when the premises upon which serious scholarship are to rest are rendered problematical by the anarchy of values characterizing all aspects of modern life.

II

In toting up the gains derived from book reviews and the losses sustained by their absence, one may first wish to make the simple point that book reviews, properly done, are sources of pleasure and profit. It is still true that book reviews provide the closest approxi-

3. It was not the *Michigan Law Review*.

mation to a literature of informal essays that American legal writing regularly supplies. An occasional published speech and even a rare judicial opinion can be so classified, but by and large the proposition holds. Never has a sanctuary for reasonable brevity and the informal style been more needed than at this hour. Professor Cavers noted the verbal elephantiasis that has come to characterize many leading articles and student comments. The one-hundred page article with four hundred footnotes is not yet quite the norm, but any editorial board that fails to include at least one in its volume can hardly be trying. An article that appeared in another law review a few years ago epitomizes for me the modern tendency. It ran just short of one hundred pages and was waist-deep in footnotes. The author, a young law teacher, had chosen an interesting topic and was submitting the article as a tenure piece. In developing his thesis, however, the writer inundated his manuscript with discussion and citations of every authority that could be regarded as even remotely relevant to his subject. Every judicial opinion, every statute, administrative rule and regulation, all of the secondary literature including much non-legal literature, were present and accounted for. Two-thirds of the way along, the writer inserted a short section in which he sought to identify and evaluate the fundamental policy issues implicit in his topic. It was a useful and impressive analysis. I wonder, however, how many of his readers persisted long enough to reach the one segment of the article that was both readable and worth reading. Reaching it was a little like cutting through the husk and hard shell of a black walnut to get at the kernel, a difficult and frustrating procedure.

This is not the place to speculate at length about the reasons for the new gigantism in the law reviews and the anxiety about "completeness" that often transforms modern coursebooks into encyclopedias at the expense of their pedagogical utility. It may be that the length and complexity of much law review writing is related in part to the loss of a consensus of values that characterizes the times. If a set of premises must be fashioned and defended before an argument can be advanced, if one cannot assume common ground at the starting point, then extreme length and complexity are likely to be attributes of the writing. I am not asserting that there has been a general loss of quality in law review articles. Indeed, as I have said elsewhere, many articles, including some of extraordinary length, represent impressive intellectual achievements. There has probably never been a time when law review articles displayed such sophistication,

such breadth of knowledge and virtuosity, as at present.⁴ The new writing, however, reduces the utility of law reviews for readers seeking some notion of the issues agitating areas of the law other than their own specialties. For although one may in a fit of conscientiousness undertake the reading of one of the hundred-page monsters if it relates to one's own immediate professional concerns, one is not likely to engage in such self-immolation simply to broaden his general information. Book reviews can help here by providing discussions of a variety of subject areas in forms less painful and more palatable than those typical of many leading articles and student notes. In doing so they make an important humanistic contribution.

III

A much more elaborate case for the revival of book reviewing than has so far been presented could probably be assembled rather easily. At this point, however, the questions that most need to be raised are these: if the tradition of book reviewing is so important, why did it wane, and what obstacles inhibit its reinvigoration? Before attempting answers it is well, first, to acquit the student editors of primary responsibility for the low estate into which book reviewing has fallen. Being a book-review editor in recent years has often proved to be a dispiriting and frustrating task, not because of a dearth of books worth noticing but rather because of the difficulty and sometimes the impossibility of inducing competent persons to accept assignments. Since most of those declining have been law teachers, the heart of the problem can be said to lie in certain widespread faculty attitudes.

The reluctance of law professors to write book reviews may have its origins in the years before academic tenure is granted. In many law schools these days the young faculty member is considered for tenure four or five years after beginning his teaching career. Most faculties condition tenure in part on the candidate's producing a substantial work of scholarship, one, it is hoped, that will represent an achievement in itself and also contain the promise of future contributions of high quality. Four or five years is a very short time in which to get one's teaching in hand and to produce a serious piece of writing, and many young people in this situation regard requests from the book review editor as diversions from tasks of much greater importance. If interrogated, many such persons might well add that the older members of the faculty give little weight to book reviewing

4. See F. ALLEN, *LAW, INTELLECT, AND EDUCATION* 88 (1979).

when making tenure evaluations; that the senior members themselves do little reviewing; and that one is moved hardly at all along the path toward academic reputation and status by publishing even good book reviews. In short, for many faculty members, young and old, book reviewing has come to seem a poor investment of time and effort.

These perceptions, although widespread and tenacious, have not often been examined or challenged. I believe that some of the assumptions on which they are based are dubious and that a revival of book reviewing might well result in substantial benefits to the intellectual climate of the law schools. First, let us look at the possible contributions that the book-review habit may make to the development of young legal scholars. There was a time not so very long ago (at least as time is reckoned by the elders of the tribe) when the writing of book reviews was regarded as part of the scholar's apprenticeship. One tried his wings by turning out a review or two before attempting a major contribution. In some cases this proved to be a valuable learning experience, and because of it the quality of later work was enhanced. Although I now tread on delicate ground and am in danger of offending younger members of the craft, I cannot repress the thought that there might be advantages for both writers and readers if some of the former did not feel that they must set the whole scholarly world on its ear their first times out. Nor is this all: I believe that book reviewing may contribute importantly to developing the habit of writing. Let this point be made in the language of an obviously fictitious character, the Sagacious Dean. The Sagacious Dean is speaking to a new faculty appointee: "Young woman/man," he says, "you should arrange your life so as to publish at least one piece each year. I do not assume that everything you publish will be a major contribution. In fact, I regard that prospect as a little frightening. But you need to make writing *and* publication an integral part of your life. You tell me that you are working very hard what with new courses and a date with the tenure committee looming ahead, and I hope this is true. But there is a funny thing about writing that many who have gone through the mill will testify to even though it may sound to you like magic or alchemy. It is this: those who have acquired the habit of regular publication and make it part of their yearly routines seem able to attend to the other obligations of a teaching career with no greater strain than those who have not acquired the habit. And why is regular publication important to you? Well, first, I think that you are bright and talented; you have a contribution to make; we shall all be poorer if it is not fully

made. But there is also the matter of personal satisfactions. Not all faculty members write, at least not after the tenure trauma. Some seem contented to confine their efforts to the classroom, but I have discovered that as the years go by many of these grow increasingly uncomfortable about being part of a community of scholars without being contributing scholars. Most of these persons fail to publish, not because they lack ideas, intelligence, or learning, but most often because yearly publication never became part of their lives. Old Holmes was right or substantially right when he said that if you have not published a major piece by the time you are forty, you probably never will. Age forty is, of course, an arbitrary line; you can give or take a few years. But the point is that the habit must be developed early. It is very difficult, sometimes impossible, to initiate it in middle age. Book reviewing is a proven way of developing the habit."

Do book reviews reveal anything worth knowing about their authors? Rarely if ever would one wish to base a judgment about tenure or hiring wholly on the evidence of the candidate's book reviews. But if the book reviewing is inadequate for these purposes, it is certainly not irrelevant. Sometimes a book review will reveal more about the qualities of the writer's mind, his values and commitments, than can be easily deduced from his more formal and ponderous works of scholarship. The nature of his intellectual reflex may be more apparent, and the way in which he handles the critic's role may often expose not only nuances of thought but also of temperament and character. Some book reviewers seem never to be assigned a bad book; others never review a good one. Puffing and hype, I'm afraid, have invaded the law school world; and the ecstatic jacket blurb is becoming a new art form. The development is both unaesthetic and meretricious. There are, after all, only a limited number of books that can be the greatest in any generation. On the other hand, we all know of reviewers who apparently deplore everything they read. Explanations for the latter posture may be found in Freud, but I prefer the rationale of Voltaire. In *Candide* the protagonist is shown through the opulent library of a Venetian nobleman. Unfortunately, the proprietor is revolted by the contents of his books. " 'Oh! What a superior man!' said Candide under his breath. 'What a great genius this Pococurante is! Nothing can please him!' " A few moments later Candide's companion adds, " 'That is to say, . . . there is pleasure in not being pleased.' " ⁵

Many of the characteristics of reviewers may annoy or amuse,

5. THE PORTABLE VOLTAIRE 311-12 (B. Redman ed. 1949).

depending on the predilections of the reader. Not all of the things revealed are trivial, however. Sometimes a book review discloses how well its author understands the nature of the intellectual enterprise.

IV

Concluding paragraphs are often reserved for moral exhortation, and I shall make my plea in the form of rhetorical questions: on what grounds can it be supposed that law professors, almost uniquely among university faculty people, are relieved of the obligation of bringing new literature to the attention of their profession and of subjecting it to considered appraisal? Can we provide rational justification for slighting a function taken for granted in almost every other intellectual discipline? Upon what does our mysterious immunity rest?

Exhortations and jeremiads seem to have lost their potency in these times, however. If law teachers are to resume the art of book reviewing, it will probably be the result of more gentle persuasions. An effective source of such persuasion is the reviews collected in this issue. I commend them to you.