A HALF CENTURY OF THE MARYLAND LAW REVIEW

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The world has changed mightily since the *Maryland Law Review* published its first issue in 1936.[1] Empires have risen and crumbled, television and computers have changed our daily lives, and men have walked on the moon. Profound changes also have occurred in the law—equal rights (at least in theory) for blacks and women, due process for criminal defendants, the rise of the administrative state, and great changes in the way we think of jurisprudence. Both law schools and the practice of law also have changed dramatically.

Those changes should be reflected in the pages of this journal, and an analysis of those reflections might lead to a better understanding of the legal developments of the past half century. So I decided to use the fifty volumes of this journal as an archaeologist might—to see what its pages tell us about our history, legal and otherwise. I will use footnotes where possible; but if archaeologists can reconstruct an entire civilization from a fragmented jaw bone and two pottery shards, I should be able to give my imagination equally free rein among these pages.

I. AN IN-DEPTH LOOK AT A FEW VOLUMES

Each volume of the *Law Review* can tell us much of the attitudes of those who wrote and edited it. This Essay begins, therefore, by examining three volumes—at the beginning, middle, and end of the half-century—for clues to those attitudes.

A. Volume One: 1936-1937

The first issue of the *Maryland Law Review* was published in December 1936. The impetus seems to have been provided by the Junior Bar Association of Baltimore City. The goal was deliberately parochial: to create "a legal journal devoted to Maryland law and matters of interest to Maryland lawyers."[2] The organization was an

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1. That it has taken 54 years to publish 50 volumes can be blamed primarily on World War II; no publication took place during 1945-47.

2. *Concerning the Maryland Law Review*, 1 MD. L. REV. 51, 51 (1936).

unwieldy amalgam of the bar and a "Student Editorial Board," an arrangement that lasted until 1956.[3] Until then the real decision-makers were the faculty and bar acting through an editorial advisory board. The 1936 format was typical enough: a few articles, a few case notes, and a few book reviews, enlivened with a little news of the local bar and even an unabashed editorial or two. (Tidbits of general news were fairly common in almost all law reviews until quite recently—some of us miss them.)

In contrast to the format, however, the contents and style seem dated to the modern reader. First is the subject matter: Five of the eight articles involve property law, and only one— about service of process on non-resident motorists[4]—sounds remotely modern. The notes are more up to date, with a heavy concentration in domestic relations and civil procedure. There is even a note on constitutional law, critical of the *Curtiss-Wright* decision.[5]

It is the omissions, however, that most interest the archaeologist. There is virtually no mention of the turmoil and vast changes sweeping America at the end of Franklin Roosevelt's first term. Apart from a few case notes on bankruptcy matters, there is no hint of the Depression. Nor is there any indication of the administrative law revolution then under way—no writing on labor law, on social security, on farm policy, or, indeed, on administrative law generally. Although the *Maryland Law Review* was by no means unique in not recognizing the existence of the world outside, news of that world had reached some journals. A glance through the 1936-37 volumes of law reviews at three comparable schools shows that the *Oregon Law Review* had great interest in the New Deal revolution,[6] the *Indiana Law Journal* had a mild interest,[7] and the *North Carolina Law Review* had as little interest as this journal.[8] In the *Maryland Law Review* of 1936, law apparently is thought of as autonomous from the rest of society, existing independently of social forces. Not until volume

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3. *See Concerning the Review*, 15 MD. L. REV. 244, 244-45 (1955).

4. *See* Mullen, *Jurisdiction over Non-Resident Motorists for Suits Arising out of Local Accidents*, 1 MD. L. REV. 222 (1937).

5. *See* Note, *Constitutional Law—Delegation to President of Power to Declare Embargo on Exportation of Arms*, 1 MD. L. REV. 167 (1937) (discussing United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936)). The note did not really address the historical inadequacies of Justice Sutherland's opinion, but it is still quite good.

6. *See e.g.* Administrative Law and Procedure—A Symposium, 16 OR. L. REV. 38 (1936).

7. *See Significance of Administrative Commissions in the Growth of the Law*, 12 IND. L.J. 471 (1937).

8. *See generally* 15 N.C.L. REV. (1936-37).

5 does an article appear that reflects those changes.[9]

It is difficult to tell why the *Law Review* did not better reflect the changes taking place in the real world. Certainly nothing in the explanation of its birth suggests why its founders turned a blind eye to a legal world in turmoil.[10] Starting a journal in the middle of the Depression was certainly an act of faith, and, one would think, at least partially inspired by it. Instead, the founders deliberately emphasized that the *Law Review* would focus on local law.[11]

Part of the answer, of course, is implicit in the founders' view that local law needed coverage.[12] Whatever may happen in Washington, in other words, estates still must be probated and property conveyed. Trench work may not be glamorous, but someone has to do it. But I suspect most of the answer can be found in the history of this school and of the Baltimore bar. Maryland had only become a "real" law school—that is, one with full-time faculty and dean—a few years earlier. Accreditation by the Association of American Law Schools did not take place until 1930. The faculty generally was not yet forward-looking or aggressive, although there were some exceptions, including James Casner, who was soon to leave to teach at Harvard, and Russell Reno, whose field was real property. Why that was true of the bar is more puzzling, and, indeed, I lack even a suggestion. The local bar—in those days, the Maryland bar was centered very largely in Baltimore—had some superb individuals who had or were to play significant roles in national law: men like Charles McHenry Howard and William Marbury, Jr. Perhaps their interest in national matters did not translate into activity at the local level. The glitter lay down the highway in Washington, not in Baltimore. And this journal was not the only outlet for local practitioners two generations ago. A look at the index to the first fifty volumes of the *Harvard Law Review* (1886-1936), shows good representation by Baltimore practitioners; there are three articles each by Arthur Machen[13] and Reuben Oppenheimer,[14] and one by William

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9. *See* Oppenheimer, *The Supreme Court and Administrative Law, 1936-40*, 5 MD. L. REV. 231 (1941).

10. *See Concerning the Maryland Law Review*, *supra* note 2. The Editors did note, however, that "[t]here are already sufficient national or general law reviews available for those whose interests run to matters of such broad scope." *Id.* at 53.

11. *See id.* at 52-53, 54.

12. *See id.* at 51.

13. *See* Machen, *The Elasticity of the Constitution* (pts. 1 & 2), 14 HARV. L. REV. 200, 273 (1901); Machen, *Is the Fifteenth Amendment Void?*, 23 HARV. L. REV. 169 (1910); Machen, *Corporate Personality* (pts. 1 & 2), 24 HARV. L. REV. 253, 347 (1911).

14. *See* Oppenheimer, *Infamous Crimes and the* Moreland *Case*, 36 HARV. L. REV. 299 (1923); Oppenheimer, *Rights and Obligations of Customers in Stockbrokerage Bankruptcies*, 37

Marbury, Sr.[15] Many of those seven articles, moreover, are on federal constitutional law.

Finally, the writing in the volume is scarcely more modern than the subject matter. The pieces are decidedly pre-Realist. The Realists argued that law could not (and should not) be separated from policy. Their early leaders were Karl Llewellyn and Jerome Frank, and their identification as a "movement" is usually associated with their debate with Dean Pound in the *Harvard Law Review* in 1930 and 1931.[16] The 1936 *Maryland Law Review* writers focused primarily on case analysis, devoting little attention to statutes or to criticism. Still deep in the Formal period of American jurisprudence,[17] the authors hardly look beyond the bare language of the cases.

The very first article provides a good illustration.[18] Learned and well written, it deals with a subject—the rights of a bona fide purchaser of an equitable interest—that half a century later, appears quite arcane. The article begins with a look at early nineteenth century case law, moves to a recapitulation of the views of Chancellor Kent (who is treated as a real authority, rather than an historical footnote) and Professors Beale and Williston, and concludes with a lengthy discussion of Maryland case law. What is missing is any discussion of policy. The author occasionally mentions the pressure on courts to recognize latent equities and goes so far as to observe that the law in Maryland "seem[s] desirable" and has been achieved "in the manner customarily used by a court which is given old legal ideas to adapt to new situations."[19] Nowhere, however, is there any analysis of why the result "[s]eems desirable." This is not to say that the article lacks merit; indeed, judged on its own terms, it is quite good. Rather, it takes everything as a given; it does not ask the "Why" question so beloved of today's professors. Lest I be accused of picking on practitioners, I add that the only academic article in volume 1 is even less policy-based.[20]

HARV. L. REV. 860 (1924); Oppenheimer, *Proceeds of Life Insurance Policies Under the Federal Estate Tax*, 43 HARV. L. REV. 724 (1930).

15. *See* Marbury, *The Limitations upon the Amending Power*, 33 HARV. L. REV. 223 (1920).

16. *See* G. GILMORE, THE AGES OF AMERICAN LAW 136-37 n.25 (1977).

17. *See* K. LLEWELLYN, THE COMMON LAW TRADITION 19-117 (1960) (Maryland was still in the formalist school of opinion writing in the 1920s). *But see* Wigmore, *Grading Our State Supreme Courts*, 22 A.B.A. J. 227 (1936) (placing the Court of Appeals of Maryland in the top category of state courts).

18. *See* Page, *Latent Equities in Maryland*, 1 MD. L. REV. 1 (1936).

19. *Id.* at 30.

20. *See* Arnold, *Conditional Sales of Chattels in Maryland*, 1 MD. L. REV. 187 (1937).

B. Volume 25: 1965

Volume 25 has a decidedly contemporary feel. Each issue begins with two articles, has a middle of student comments (fairly lengthy) and casenotes (short), and finishes off with a brief, nonanalytic book review. There is a nice mix of Maryland and general topics. Quite clearly the New Deal has reached the Free State,[21] and there is a real awareness of trendy legal topics such as skills training[22] and the revolution taking place in choice of law[23] (which to this day has not been recognized by the Court of Appeals). There are fine articles about Maryland topics, ranging from an analysis of fixtures under the UCC[24] to a history of reapportionment in the State.[25]

The analysis is also more modern. First, a much wider range of authority is used. Second, a good bit of the writing is about statutory or constitutional topics—areas that necessarily invite the reader to reflect more on policy. Third, the authors are fully aware of the need to think normatively; policy issues receive a fair amount of play, although perhaps not as much as they would today. The student pieces are not as modern as the articles; perhaps that can be attributed to residual shyness (or good sense) inhibiting student critique of judges.

On the other hand, there is very little that can be called *avant-garde*, apart from the late Professor Asper's article on the need for skills training in law school.[26] Perhaps that is because Asper's was the only faculty article in the volume (although there are several faculty book reviews). The rest of the articles are by practitioners, who apparently wrote on topics that interested them from practice or from law reform efforts. Pushing back legal frontiers through scholarship seems to have been a task best left to the professors—a task they were not performing. (Some were active in law reform efforts but very few were publishing in any journal.)

Volume 25 leaves a mixed impression. There is serious legal

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21. *See, e.g.*, Pokempner, *Employers' Free Speech Under the National Labor Relations Act*, 25 MD. L. REV. 111 (1965).

22. *See* Asper, *Some Old-Fashioned Notions About Legal Education Accompanied by Some Ultra-Conservative Suggestions*, 25 MD. L. REV. 273 (1965).

23. *E.g.*, Note, *Service of Process to an Agent Under Federal Rule 4(d)1*, 25 MD. L. REV. 176 (1965); Note, Lex Loci Delecti *Doctrine Rejected in Torts Conflicts of Laws*, 25 MD. L. REV. 238 (1965).

24. *See* Stiller, *The Maryland Law of Fixtures*, 25 MD. L. REV. 21 (1965).

25. *See* Michener, *The History of Legislative Apportionment in Maryland*, 25 MD. L. REV. 1 (1965).

26. *See* Asper, *supra* note 22.

commentary here. Yet, I have a strong sense that there could be a good bit more. The right questions are being asked; policy analysis has certainly reached the pages of the *Law Review*. Those questions, however, will not transform the legal landscape. Volume 25, in other words, has excellent work in it, but it is still clearly a journal for the practitioner and not the professor.

C. Volume 48: 1989

By volume 48, the *Maryland Law Review* has come of age. First, it's big, well over twice the size of volume 25 (although less than half the size of the Harvard or Texas law reviews). Second, it has an article by a professor from another good law school[27]—you're doing well when faculty from other schools think it to their professional advantage to publish in your journal. Third, there are articles by four members of the Maryland faculty[28]—it is also a good sign when your own faculty believe it advantageous to publish in their own school's journal. Fourth, there is an eye-catching, with-it symposium (on AIDS and health care workers)—trendy symposia help a journal land good authors.[29] Fifth, there is a fine article by a "name" professor at another school,[30] originally given as a Sobeloff lecture.[31]

More important, volume 48 has good stuff in it. The articles cover a wide range of topics—from free speech in Germany[32] to the discrimination inherent in factory relocation.[33] They are interesting, well-thought out, and advance our understanding of law and its relationship with society. All of the articles are on "national" (or non-local) topics.

The student writing, in contrast, focuses on Maryland law.

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27. *See* Lipton, *Mandatory Securities Industry Arbitration*, 48 MD. L. REV. 881 (1989) (Columbus School of Law, Catholic University of America).

28. *See* Rothenberg, *AIDS: Creating a Public Health Policy*, 48 MD. L. REV. 95 (1989); Quint, *Free Speech and Private Law in German Constitutional Theory*, 48 MD. L. REV. 247 (1989); Millemann, *Capital Post-Conviction Petitioners' Right to Counsel: Integrating Access to Court Doctrine and Due Process Principles*, 48 MD. L. REV. 455 (1989); Weiss, *Risky Business: Age and Race Discrimination in Capital Redeployment Decisions*, 48 MD. L. REV. 901 (1989).

29. *See, e.g.*, *Symposium: The Appellate Judiciary*, 42 MD. L. REV. 659 (1983).

30. *See* Soifer, *Freedom of Association: Indian Tribes, Workers, and Communal Ghosts*, 48 MD. L. REV. 350 (1989).

31. Publishing endowed lectures as articles has brought to this journal many contributions by well-known people who might not otherwise publish here. Some of the pieces have been quite good; some have not. An example of the former is Cover, *The Left, the Right, and the First Amendment: 1918-1928*, 40 MD. L. REV. 349 (1981). The reader may supply an example of the latter.

32. *See* Quint, *supra* note 28.

33. *See* Weiss, *supra* note 28.

There is a lengthy analysis of "Developments in Maryland law,"[34] a statistical break-down of the work of the Court of Appeals,[35] and several detailed notes and comments on specific cases or problems. All of those are useful and well done, both in content and style. The long "Developments" piece is particularly nice to see because it permits a fairly large number of students to write (and publish).

The articles, in short, concentrate on national issues, the student writing on local ones. Unfortunately, practitioner writing has all but disappeared.[36]

D. A Comparison

The journey of the *Maryland Law Review* has been fairly straightforward, but it is clearly a trip not yet at an end. Begun to serve the local bar, it gradually has become the official voice of a school with an expanding academic reputation and an increasingly talented student body. As the role of the faculty has expanded, the role played by the practitioner unfortunately has diminished along with the emphasis placed on topics of local interest. The faculty, meanwhile, has become a forward-looking, creative group, interested in serious and innovative scholarship.

The early formal writing, in short, was long ago replaced by Realism, and even more recently, by some post-Realist writing.[37] It is today a more interesting and more prestigious journal, but there is still an ambivalence about its role.

II. SOME DETAILS

A. The Editors

A list of those students who served on the editorial board reads like a *Who's Who* of the Maryland Bar. The staff of volume 1, for example, included William S. James, perhaps the most respected Maryland politician of his generation, and Bernard S. Meyer, later a very respected judge on the Court of Appeals of New York (and a contributor to this issue). Another example is volume 16, which had four titled editors: Mathias J. DeVito (now president of the Rouse Company), Lawrence F. Rodowsky and Robert L. Karwacki (judges

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34. *See Developments in Maryland Law, 1988-89*, 49 MD. L. REV. 509 (1989).

35. *See The Work of the Maryland Court of Appeals, 1988-89*, 49 MD. L. REV. 863 (1989).

36. There are no articles by members of the practicing bar in volume 48, and volume 47 has practitioner contributions only in the two symposia.

37. *See, e.g.*, Klare, *Traditional Labor Law Scholarship and the Crisis of Collective Bargaining Law—A Reply to Professor Finkin*, 44 MD. L. REV. 731 (1985) (critical legal studies).

of the Court of Appeals of Maryland), and Roger D. Redden (an eminent practitioner). A quick flip through the books reveals many other prominent names. Juanita Jackson Mitchell (famed civil rights advocate); Barbara Safriet (associate dean of the Yale Law School); Larry Katz (dean of the University of Baltimore School of Law); Kathryn Lovill (now a clerk for Justice Byron White); and many leading practitioners and judges. Obviously, the *Law Review* has performed well its task of preparing students for the legal profession.

The record concerning women and minorities is mixed. Although the number of women editors was small until the mid-1970s, in 1942 Dorothy Holden became the *Law Review*'s first female "chairman" of the student editorial board for volume 7.[38] By 1981, however, seven of the eleven titled editors of volume 40 were women.[39] But for volume 49 the number fell to five of fifteen[40] and only three of the last ten editors-in-chief have been women,[41] although the student body has been half female during that period.[42] The record with respect to minorities is much worse—only five blacks are known to have been members of the editorial board.[43] Finally, students in the law school's evening division have been noticeably under-represented on the masthead; although the current editor-in-chief is an evening student, she is the first editor-in-chief from the evening division in a quarter of a century.[44]

One marked change in the student cadre of the *Law Review* has been the size and style of the editorial board. In its early years, the board rarely had as many as twenty students.[45] Since volume 40 was

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38. *See Concerning the Review*, 6 MD. L. REV. 304, 304 (1942). Dorothy Holden was immediately succeeded by another woman in 1943 when the chair of the student editorial board became a co-chair and Annarose Sleeth was elected to one of the leadership positions. *See Concerning the Review*, 7 MD. L. REV. 322, 322-23 (1943).

39. *See* 40 MD. L. REV. mastheads (1981).

40. *See* 49 MD. L. REV. mastheads (1990).

41. *See* 41 MD. L. REV. mastheads (1981) (Ray L. Earnest); 44 MD. L. REV. mastheads (1985) (Anne F. Ward); 50 MD. L. REV. mastheads (1991) (Linda M. Thomas).

42. *See, e.g.*, UNIVERSITY OF MARYLAND SCHOOL OF LAW, 1984-1985 2 (catalog notes 48% female students); SCHOOL OF LAW 1990-91, UNIVERSITY OF MARYLAND AT BALTIMORE 3 (catalog notes 51% female students).

43. This information was provided by the *Law Review*. *See* letter from Greg D. Mack to Linda Thomas (Mar. 13, 1990) (concerning the low minority membership of the *Law Review*) (copy on file at *Maryland Law Review*).

44. The editor-in-chief of volume 41 was a part-time day student.

45. The *Law Review* masthead grew dramatically in the four years immediately prior to 1973: the final issue of volume 33 listed 44 members. *See* 33 MD. L. REV. masthead (1973). This is not to say, however, that the membership expanded quite as suddenly. The "Editor's Note" in that issue explained that:

> The perspicacious reader will notice that we have added to the masthead the names of all of those who are presently members of the *Review*. We have

published in 1981, the editorial board and its staff have generally numbered between fifty and sixty, and there are many more titled editors.[46] The present volume 50, for example, has fifteen titled editors.[47] Part of this change reflects the enhanced prestige among the students of *Law Review* membership—it is now seen as a valuable resume item. It also reflects the fact that the journal has grown in size and that the jobs of writing and editing are probably a good bit more difficult today than they were fifty years ago. I wonder, however, whether there is too much of a good thing? Does it really require sixty people to run the *Maryland Law Review*? Or have things changed since my own law review days (admittedly long, long ago) when twenty or so persons put out a volume? Perhaps the large amount of student writing in the "Developments of Maryland Law" issue requires a substantial number of students.[48]

B. The Practicing Bar

The *Law Review* originally was established as a scholarly journal for the local bar and it kept that status for many years.[49] The decline of law review writing by members of the bar requires several explanations. First, standards for law review writing have changed dramatically, and more work is required to produce an acceptable article today. The articles in early volumes are generally much shorter than are articles today. That is not necessarily an improvement, but it is a fact of life.

Second, the tradition of the writing practitioner is in decline; all evidence suggests that today's practitioner, faced with a heavily competitive market for her services, must spend much more time marketing her services and practicing than did her predecessor.[50] As a result less time is available for writing. That result is especially unfortunate, because in many areas of the law (such as financing)

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made this change in order to recognize the great contributions made by all of the members of the *Review*.

Editor's Note, 33 MD. L. REV. 376, 377 (1973). Obviously, somewhere along the line, the *Law Review* had decided only to include titled editors and staff on the masthead. Thus, the total membership during any given year is impossible to ascertain from the masthead alone.

46. *See* 40 MD. L. REV. masthead (1981).

47. *See* 50 MD. L. REV. masthead (1991).

48. *See supra* note 34. The third issue of volume 49 contained 330 pages of student writing. My colleague, John Brumbaugh, observes that faculty involvement in Student Review writing was a good bit more prevalent thirty years ago.

49. *See supra* text accompanying note 2.

50. *See, e.g.*, Graham, *Where the Big Dollars Are*, A.B.A. J., May 15, 1987, at 22.

the really creative work is being done by practitioners in their day-to-day practice—work that generally does not appear in law reviews.

Finally, there clearly has been a sea-change in what law review editors wish to publish. The increasing separation of practice from academic law means that those issues that interest the bar are not likely to be the ones that interest the editors. Law review editors interested in law and economics or critical legal studies are less likely to appreciate the writing of those who actually practice law; the latter want to write about the world they work in, the former about a world they wish existed.

This is not a good development. Law reviews benefit from the work of those who daily work with the law. The roles of critic, reformer, and commentator are very proper for lawyers to play in legal journals. This is especially important for respected senior practitioners whose views carry real authority.[51] More should play that role.

C. *The Articles*

One of the delights of preparing this Essay was the opportunity it afforded me to renew my acquaintance with some fine, but not well-publicized contributions to this journal. These include (among many) David Bogen's excellent work on the first and fourteenth amendments,[52] Walker Lewis' fine pieces on the legal history of Maryland,[53] and Lawrence Jones' little-appreciated application of Realist thinking to property law.[54] Many student pieces deserve special mention, but I shall mention only two: the first is a comment on the thorny problem of when a writer of fiction can be held liable in defamation,[55] and the second is an extended note on the Court of Appeals' highly controversial decision in *Attorney General v. Waldron*.[56]

Taken as a group, the scope of the writing in the *Law Review* is

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51. A good example is Sykes, *A Modest Proposal for a Change in Maryland's Statutes Quo*, 43 MD. L. REV. 647 (1984).

52. *See* Bogen, *The Supreme Court's Interpretation of the Guarantee of Freedom of Speech*, 35 MD. L. REV. 555 (1976); Bogen, *The Transformation of the Fourteenth Amendment: Reflections from the Admission of Maryland's First Black Lawyers*, 44 MD. L. REV. 939 (1985).

53. *See, e.g.*, Lewis, *The Great Case of the Canal vs. the Railroad*, 19 MD. L. REV. 1 (1959).

54. *See* Jones, *Vested and Contingent Remainders, A Suggestion with Respect to Legal Method*, 8 MD. L. REV. 1 (1943).

55. *See* Comment, *Defamation by Fiction*, 42 MD. L. REV. 387 (1983).

56. *See* Note, Attorney General v. Waldron—*The Maryland Judiciary's Expansive Power to Regulate the Bar Under the Separation of Powers Article; Intermediate Scrutiny Under Maryland's New Equal Protection "Clause,"* 41 MD. L. REV. 399 (1982) (*Waldron* appears at 289 Md. 683, 426 A.2d 929 (1980)).

impressive. Not much that has happened, or might happen, in the law has escaped attention.

Law review writing style has changed, becoming more readable over the years. It is by no means always reminiscent of vintage Hemingway, however, and much of Professor Henry Schlegel's criticism of it in this issue is well-founded.[57] Too much law review writing *is* turgid, a comment especially true of student writing. Why "scholarly" must equal "boring" has always been a mystery, although one cause certainly is that many professors, judges, and lawyers write poorly (or at least boringly). Clear writing requires clear thinking and lots of effort. There is also the overuse of jargon ("reify" and "normative" are the words I hate most), passive voice, footnotes, and new terms (which means you're always trying to remember what "narrative/determinative" means), together with a simple unwillingness to tell a story in fewer than forty pages. On the other hand, I do not believe that this journal has been a prime offender; Professor Schlegel is surely correct that the "fancy" reviews can be even more "pompous."[58]

D. Faculty Scholarship

The early paucity of faculty scholarship in these pages is striking. Volumes 1-5 contain only four articles by members of the full-time faculty, although there are a large number of book reviews by faculty members. The explanation tells us much about the changing role scholarship has played in academic life, and about the perception of what role the *Maryland Law Review* should play.

For most of the period covered by this Essay, scholarship at this law school played a secondary role in hiring and promotion decisions. It perhaps played even less of a role in salary decisions. Merit raises have only become common in the past dozen years or so. Indeed, it was quite possible to receive tenure without having written anything at all. Not surprisingly, writing played a minor role in the professional lives of the faculty; it was a hobby, rather than an imperative. As a result, scholarship was the work of the few, not the many, and the faculty of this school (and of many comparable schools) published correspondingly few pieces in the pages of their own review.

That changed a decade ago. Beginning in 1978, scholarship became a serious criterion for promotion at Maryland. (It is, of

57. *See* Schlegel, *Better than No Teeth at All*, 50 MD. L. REV. 231 (1991).
58. *Id.* at 237.

course, only coincidence that this change took place the year after I became a full professor.) Somewhat earlier, the conditions for scholarship—reduced teaching load and strong support in the form of research assistance and secretarial help—were established. Later, scholarship became an important factor in salary decisions. The effect of faculty scholarship on the *Law Review* has been striking. Fourteen faculty articles appear in volumes 44-48. The faculty, of course, is much larger (by a factor of six) than it was in 1936. On the other hand, there is much more Maryland faculty writing published in other journals. In fact, the best faculty publication often does go in other reviews.[59] The reasons are obvious: publishing elsewhere spreads the word about how good the Maryland faculty has become (we hope). If we publish in more prestigious journals we also enhance the prestige of the School. That, however, raises a fundamental question: If the *Maryland Law Review* is not designed to showcase (the best) faculty as well as student writing, what is it designed to do?

III. QUO VADIS?

The *Maryland Law Review* after a half century resembles a fair number of other reviews. It publishes good, even cutting-edge scholarship on important topics of national interest. At the same time, it maintains a decent amount of student commentary (occasionally supplemented by others) on local topics. It is, in short, a journal of mixed functions. Should the future be any different?

In a companion essay, Professor Schlegel offers one vision of what the *Maryland Law Review* might become.[60] He would have it become a forum for discussion of social ills that cause legal problems. Writing that only addresses the legal consequences of social ills, he believes, is not what the *Review* should be publishing.[61]

Professor Schlegel makes his point by referring to volume 48. He objects to the AIDS symposium, for example, because it "only" addresses the rights and duties of HIV-positive health care personnel and patients. Similarly, he objects to an article on procedural safeguards in capital punishment cases. Neither article, he suggests,

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59. *See, e.g.*, Luban, *Difference Made Legal: The Court and Dr. King*, 87 MICH. L. REV. 2152 (1989); Quint, *The Separation of Powers Under Nixon: Reflections on Constitutional Liberties and the Rule of Law*, 1981 DUKE L.J. 1 (1981); West, *Progressive and Conservative Constitutionalism*, 88 MICH. L. REV. 641 (1990).

60. *See* Schlegel, *supra* note 57, at 236-38.

61. *Id.* at 235.

gets at the underlying social concerns that make each issue a major legal headache. Law reviews should analyze "the great social forces that are attempting to re-institute capital punishment . . . ."[62]

That argument is a decidedly narrow way of looking at legal concerns. Law, after all, is a way of addressing society's problems, of controlling and channeling them until solutions can be achieved. Law also facilitates private ordering, enabling people to work together better. Surely, writing that develops and criticizes methods for achieving those ends is worthwhile. The world can be made better even if it will not be made perfect.

Too much concentration on fundamental social problems also encourages superficiality. Lawyers and law professors are trained in analyzing (and manipulating) legal doctrine on the basis of a set of facts and a background body of law. Only fortuitously are they trained in history, sociology, psychology, or economics. The kind of writing Professor Schlegel calls for is simply beyond our reach. I once asked a philosopher friend of mine what he thought of a law professor's attempt at philosophy: "Not bad," he opined, "for someone trying to crack a second field he knows nothing about." I feel the same way when political scientists, for example, write about substantive legal issues. Although technically accurate, their writing generally lacks the richness of an analysis by someone who *really* knows the area.

Judge Posner in a book review[63] has given an excellent response to the type of writing Professor Schlegel advocates:

> That system is academic law, which does not today, if it ever did, contain the answers, or the resources for generating the answers, to the profound social questions that engage [the author's] interests.
>
> The reason is that the focus of most academic law is not on social problems at all, let alone on the tools of analysis required for the understanding and amelioration of such problems (let us not fool ourselves into thinking that profound social problems are actually solvable). It is on legal texts, and on the techniques for interpreting and manipulating such texts and the ideas in them. [The author] is not a narrow lawyer. She has read widely in philosophy, history, sociology, and other fields, and she is steeped in feminist scholarship; what she is not is an expert

62. *Id.*

63. Posner, *Us v. Them*, THE NEW REPUBLIC, Oct. 15, 1990, at 47 (reviewing M. MINOW, MAKING ALL THE DIFFERENCE, INCLUSION, EXCLUSION AND AMERICAN LAW (1990).

on mental retardation, labor markets, physical handicaps, or public finance.[64]

That reality should not embarrass us. We may not know everything but we should know how the law relates to important issues of the day. It may not sound like an earth-shattering task worthy of the great minds of the professorate, but it has its uses occasionally. The desegregation of the public schools might provide an example.

Another vision of the future would see that a faculty and student body rapidly appreciating in quality will place this School among the ranks of the finest in the nation. That status could lead the *Law Review* to show that it is the product of a national law school by jettisoning its substantial involvement with local topics. After all, the law reviews of the universities of Michigan and Texas do not pay very much attention to local issues. Both of these states, of course, are much larger than Maryland and have a number of other schools in the state whose reviews do pay attention to local issues.

I hope coverage of local issues does not decline. I would miss many of the works by local practitioners and all of the engaging local historical pieces now seen in the *Law Review*. More important, this is a *state* law school, and I believe we have an obligation to write of state matters, to develop, reform, and criticize the laws of Maryland. The issue of the *Law Review* devoted to discussing current developments in Maryland law, in particular, contributes significantly to local legal culture.

CONCLUSION

The *Maryland Law Review* in its fiftieth year is a good journal. Recently, it was found to be one of the twenty-five most cited law reviews.[65] It publishes interesting articles by its own faculty and others. Very little of the writing seems to be of interest only to ideologues or tenure committees. The student writing is good. Although it cannot yet attract top names without the inducement of a symposium or of an endowed lecture, it does publish good articles by faculty at other good schools. As the students and faculty at this law school improve, the *Law Review* no doubt will change. It will do so on a very solid base that has been half a century in the making.

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64. *Id.* at 50.

65. *See Study*, 65 CHI-KENT L. REV. 195, 204 (1990).