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FOREWORD

ONE HUNDRED YEARS OF LAW REVIEWED

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THE one-hundredth volume of the *Virginia Law Review* commences here, and shall continue for approximately nineteen hundred and ninety-nine further pages, more or less—at least as the *Law Review*'s by-laws tell the tale. It is a great honor to be asked to commemorate this remarkable milestone by penning an essay reflecting upon the *Review*'s first hundred years; indeed, the honor has been exceeded only by the abject terror that quickly followed on its heels, of the kind caused by the slow (yet certain) realization that one has undertaken a wholly impossible task.

For how can one recount the history of a law review? The historian's usual narrative crutches are of no service. A traditional historical narrative structure, which might follow a few dynamic personalities whose lives intersected with the *Law Review* for long periods of its history, would be utterly useless. Each volume is edited and published by a new crop of law students, who have an annoying tendency (from the historian's perspective) to graduate and move on to more lucrative pursuits—thereby rendering the pool of those whose narratives might function as a proxy for the *Review*'s own a null set. Nor would a more "modern" examination—which might focus on how broader thematic or structural pressures have affected the *Law Review* throughout the last hundred

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years—be of any more utility than a traditional one; the result would essentially be a thematic history of law in the last century, an undertaking which would far exceed the *Law Review*'s editorial capacity,[1] to say nothing of the author's own abilities.

No, the history of the *Virginia Law Review*'s first hundred years, if one can be said to exist, is contained within its first ninety-nine volumes: that is, the cumulative product of each volume's respective student editors. The mere coincidence of a centennial anniversary cannot invest the modern reader or author with the authority to add or detract from that canon. Thus, the purpose of any retrospective such as this is necessarily selfish, in some sense. It is an attempt to glimpse ourselves—and the issues that we wrestle with—in the imperfect reflections of the past that may be gleaned from discourse about what the law was or should have been. That the modern author or reader may find particular ideas preserved in that record more or less significant than others tells us much more about ourselves than those historical personages who are the putative subjects of the inquiry.

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On March 5, 1913, ten students and four professors met informally to "consider[] the question of establishing a law journal to be published by the students of the Law School."[2] The students in attendance unanimously resolved "to form an association which should undertake the issuing of a law journal, and to that end to invite the co-operation of a limited number of other students of the Law School."[3] To that end, the *Virginia Law Review* was formed on April 23, 1913.[4] The *Review* commemorated the occasion in its Foreword to the first issue:

> With this number the VIRGINIA LAW REVIEW begs to introduce itself to an indulgent public. The editorial work is entirely in the hands of undergraduate students, not one of whom has had previous experience with work of this character. It is hoped that the crudities of this first effort in the line of the published comment on the work of the courts

[1] See, e.g., 3 The Cambridge History of Law in America (Michael Grossberg & Christopher Tomlins eds., 2008) (covering the period between 1920 and the present and spanning over 900 pages).

[2] Foreword, 1 Va. L. Rev. 63, 63 (1913).

[3] Id.

[4] Id.

> may be less glaring in the future numbers when the editors have become more experienced.[5]

Notably, the first issue's content suggests that the first *Law Review* board saw itself as creating a national publication from its very inception. The *Review*'s first effort included articles on issues spanning from the development of Latin American jurisprudence,[6] to the common law of inheritance in the context of marriage in numerous jurisdictions,[7] to the scope of Congress's Commerce Clause power.[8] The notes, written by the students of the *Review*'s editorial board, also addressed issues and cases ranging far beyond Virginia.[9]

The *Law Review*'s national focus may have been a matter of some initial internal debate—this was, after all the Virginia *Law Review*, published by the students of the University of *Virginia*. Indeed, there are hints that the scope issue may have been a cause of concern in the early stages of the *Review*, albeit one which quickly resolved itself. In its Foreword to Volume II, the editorial board thanked the bar for the "kind encouragement received from lawyers in every part of the country [which] led the board to believe that no mistake was made in not confining the work to the local law of Virginia."[10] Noting this positive reception, the board announced that "[t]he policy of commenting on the recent decisions of all the higher courts of this country will therefore be continued."[11]

Of course, this announcement does not necessarily mean that there was any internal debate on the scope issue; the *Law Review* board may have always seen the *Review* as a publication with a national audience, and the purpose of its announcement may have been to answer outside critics now unknown to history. We know that Virginia Law was already

[5] Id. at 63–64.

[6] Hannis Taylor, The Jurisprudence of Latin America, 1 Va. L. Rev. 1 (1913).

[7] Raleigh C. Minor, Curtesy, A Prolongation of the Wife's Inheritance, 1 Va. L. Rev. 19, 37 n.48 (1913) (citing cases from jurisdictions throughout the country, including New York, Pennsylvania, West Virginia, Massachusetts, South Carolina, and Kentucky, among others).

[8] O.W. Catchings, Recent Exercise of Federal Power Under the Commerce Clause of the Constitution, 1 Va. L. Rev. 44 (1913).

[9] See, e.g., Note, Admissibility in Criminal Cases of Evidence Illegally Obtained, 1 Va. L. Rev. 70, 72 nn.15–19 (1913) (citing cases from Illinois, Massachusetts, New York, Kansas, Alabama, Texas, and Indiana); Note, Contract of Corporation with Its Own Director, 1 Va. L. Rev. 66, 67 & nn.3–7 (1913) (citing cases from New Jersey, Missouri, New York, and California).

[10] Foreword, 2 Va. L. Rev. 59, 59 (1914).

[11] Id.

a national law school in 1913; only forty-three percent of its enrollment hailed from the Commonwealth.[12] To be sure, it was primarily a Southern law school; approximately three-quarters of its students were from Southern states.[13] Nevertheless, the school enrolled students from eighteen non-Southern states, including California, Oregon, Washington, New Mexico, Massachusetts, and New York.[14] There was even one student from Brazil.[15] Thus, it may have been entirely natural for the students of the *Review* to create their new publication with a national audience in mind.[16] Or, it may well have been that the scope discussion in Volume II's Foreword was nothing more than a meaningless aside. These are only a few possible explanations; others could be imagined.

My purpose is not to establish why the early *Law Review* boards made the choice to maintain a national scope; it is merely to point out that their choice was a contingent one. They easily could have decided that Virginia law was their natural bailiwick, and decided to select and publish materials regarding that subject alone. It is impossible to know what effect that choice would have had on the later emergence of the *Law Review* or Virginia Law as top institutions in their respective fields; the causal relationship between the reputation of law schools and their flagship law reviews is a hopelessly entangled one. That said, it is at least plausible that the law school might be regarded differently today if the *Law Review* had confined itself to Virginia law.

We know that William Minor Lile, Virginia Law's first Dean,[17] believed that legal publications generally, and the *Law Review* in particular, were some of the law school's greatest assets. In May of 1895, Dean Lile founded the *Virginia Law Register*, along with Judge E.C. Burks of Bedford City, Virginia, and Professor Charles A. Graves of the Washington and Lee University faculty.[18] Graves left the venture in April 1897, and Judge Burks died a few months later, leaving Lile as the sole

[12] The Law School, 1 Va. L. Rev. 64, 64 (1913).
[13] Id. "Southern" refers to states that were once part of the Confederacy.
[14] Id.
[15] Id.
[16] Unfortunately, the *Law Review* recorded only the breakdown of the states of origin for the entire law school class, and did not record the states of origin of the students of the *Law Review*. See id.
[17] William Minor Lile, The Diary of a Dean: Excerpts from the Private Journal of William Minor Lile 61 (Kristen H. Jensen ed., 2011).
[18] Id. at 60.

editor of the *Register*.[19] Lile held this position until 1901, when he convinced George Bryan, a member of the Richmond bar, to join him; Lile would retire from the *Register* a year later.[20] Although Lile complained that the *Register* "added very much to [his] work," and noted that it "pa[id] very little[;] . . . about $100.00 a year," he acknowledged that his efforts had the salutary effect of "keep[ing him] in touch with the profession and [being] a good advertisement for the Law School."[21]

Given his background in legal publishing, it is unsurprising that Dean Lile was one of four faculty members present at the initial meeting of what ultimately became the *Virginia Law Review*.[22] Lile would prove to be a great friend of the *Law Review*. In 1927, the *Review* found itself in significant financial distress: It was $1,000 in debt, with no foreseeable means to raise such a massive amount of cash.[23] (By way of reference, Dean Lile's annual salary in 1927 was $4,500.[24]) Lile, along with Professor Armistead Mason Dobie—who would succeed Lile to the deanship upon his retirement[25]—personally guaranteed the *Review*'s publishing costs and immediately began working to save the *Review*. Lile's diadiary entry of December 23, 1927 notes that he had "sent out an S.O.S. call to a few of the prominent alumni of the Law School . . . . The returns to date aggregate approximately $1,000.00, with several centers yet to be heard from."[26] Lile recorded that the decision to place his own credit and reputation on the line to preserve the *Law Review* was an obvious decision: "The Review is one of the best assets the Law School possesses, giving the Law School a prestige which cannot be measured in shillings or pence."[27]

Dean Lile's actions strikingly parallel the response to the *Law Review*'s recent Centennial Campaign. Although the *Law Review*'s current

[19] Id.

[20] Id. at 62. The *Register* would continue to be published until 1928, when it would be absorbed into the *Law Review*. Id. at 60 n.122; see also O! Tempore, O! Mores—The Curtain Falls, 13 Va. L. Reg. 759, 759 (1928). The *Virginia Law Register* announcement suggests that the merger of the *Register* and the *Review* was precipitated by problems at the *Register*, and was unrelated to the *Law Review*'s financial crisis of 1927, discussed infra text accompanying notes 28–29.

[21] Lile, supra note 17, at 60–61.

[22] Foreword, supra note 2, at 63.

[23] Lile, supra note 17, at 94.

[24] Id.

[25] Announcements, 19 Va. L. Rev. 61, 62 (1932).

[26] Lile, supra note 17, at 94.

[27] Id. at 95.

fundraising efforts in 2013 are geared towards seeding the future of the *Review* in an age of digital print (as opposed to saving the *Review* from imminent collapse, as seemed likely in 1927), the faculty and alumni of the law school have proved similarly generous.[28] The *Review*'s Centennial Campaign has exceeded its one million dollar goal, and its supporters include a former dean of the law school, as well as current and former professors.[29] These donors presumably had little idea that their support of the *Review* was the latest instance of a Virginia Law faculty tradition dating to 1927.

Given Dean Lile's longstanding support of the *Review*, it is perhaps unsurprising that the *Review* published a lengthy retrospective upon his retirement from the law school which particularly highlighted his contribution to legal publishing at the law school:

> It is with a sense of deep loss and a feeling of sincere regret that the REVIEW announces the retirement from active service of Dean William Minor Lile. Dean Lile's association with the University of Virginia began fifty-five years ago, when he came here as a student . . . . [I]n the year of 1895, he became one of the founders and the Editor of the *Virginia Law Register*. He gave his valuable services to this publication, in the capacities of Editor and Contributor, throughout its existence and was largely responsible for the success that it enjoyed.[30]

Today, Virginia Law's most prestigious moot court competition is named after Lile,[31] honoring his longstanding commitment to moot court as an indispensable feature of legal pedagogy.[32] Yet Lile deserves at least as much credit, if not more, for his contributions to the establishment of dedicated academic legal publishing at Virginia.

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[28] Centennial Campaign, Va. Law Review, http://www.virginialawreview.org/announcements/centennial (last visited Nov. 15, 2013).

[29] See, e.g., id. (noting leadership donations of Dean John C. Jeffries, Jr., Professor Paul Stephan, and Professor Emeritus Mortimer M. Caplin).

[30] Announcements, supra note 25, at 61.

[31] See The William Minor Lile Moot Court Competition at the University of Virginia School of Law, http://mootcourtatuva.org/lile-competition (last visited Oct. 21, 2013).

[32] Lile, supra note 17, at x.

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The correspondence archives of law reviews are true treasure troves, and those of the *Virginia Law Review* are no exception. Much of these archives record the mundane, day-to-day activities involved with running a journal, such as correspondence between authors and editors regarding the editing of their pieces. Even these can become interesting from time to time, as on those occasions when an author takes particular offense to edits and pens a withering rebuke. But other times, the interest derives from the context of the correspondence, rather than its text. One such example is a pair of letters drafted in March of 1994 from Elizabeth Magill, an Articles Development Editor with the *Review*, to Professor Pamela Karlan, who was then teaching at Virginia Law. The text of these letters is entirely ordinary; nothing more than an offer of publication and a confirmation of acceptance.[33] But when one considers that Elizabeth Magill is now Dean of Stanford Law School,[34] where Professor Karlan currently teaches,[35] one's opinion of the value of these letters takes on a new hue, for the student editor who wrote them now (nominally, at least) outranks the recipient professor.

The historical interest and value of other letters in the *Law Review* archives is self-evident. A few of these gems deserve to be shared with the world and posterity:

> December 1, 1981
>
> . . . .
>
> Dear Mr. Merritt:
>
> Thank you very much for your invitation to speak at your Law Review banquet. Unfortunately, February is a very bad time for me since I expect to be undergoing one more major transition in my professional life at that time. I am afraid that I will not have the time to prepare an adequate address.

[33] Letter from Elizabeth Magill, Articles Dev. Editor, Va. Law Review, to Pamela S. Karlan, Professor, Univ. of Va. Sch. of Law (Mar. 14, 1994) (on file with the Virginia Law Review Association); Letter from Elizabeth Magill, Articles Dev. Editor, Va. Law Review, to Pamela S. Karlan, Professor, Univ. of Va. Sch. of Law (Mar. 16, 1994) (on file with the Virginia Law Review Association).

[34] M. Elizabeth Magill, Stanford Law Sch., http://www.law.stanford.edu/profile/m-elizabeth-magill (last visited Nov. 15, 2013).

[35] Pamela S. Karlan, Stanford Law Sch., http://www.law.stanford.edu/profile/pamela-s-karlan (last visited Nov. 15, 2013).

> I am flattered by your invitation and regret very much that I cannot come.
>
> Sincerely,
>
> Robert H. Bork[36]

Six days later, on December 7, 1981, Mr. Bork was nominated to the D.C. Circuit.[37] As predicted, he was confirmed by the Senate on February 8, 1982.[38] To Judge Bork's chagrin, however, this would prove to be the apex of his judicial career.[39]

The following is a letter addressed to former Dean Richard Merrill, but copied to the *Law Review* on account of its subject matter. Due to its length, it is presented here in somewhat abridged form:

> April 16, 1981
>
> . . . .
>
> Dear Dean Merrill:
>
> I am writing to express my concerns about the try-out procedures established for the *Virginia Law Review*. Students applying for membership on the editorial board must remain in Charlottesville for three days following the close of exams to complete a citation and editorial exercise. Those who are successful are invited to return on August 9, two full weeks before fall classes begin, to write a note. A limited number of those who return early will be elected to the *Law Review*.
>
> As you can see, the try-out is quite time consuming. I assume this is to ensure that only students who are serous [sic] about *Law Review* membership apply. Unfortunately, the length of the try-out and the fact that it does not occur during the regular school year make it a very expensive procedure. . . . For many, returning two weeks early means there will not be enough money earned to get through the school year. . . .

[36] Letter from Robert H. Bork, Kirkland & Ellis, to Mark W. Merritt, Editor-in-Chief, Va. Law Review (Dec. 1, 1981) (on file with the Virginia Law Review Association).

[37] Nixon's Solicitor General Picked for Appeals Court, Wash. Post, Dec. 8, 1981, at B4.

[38] Bork Confirmed for Court, Wash. Post, Feb. 9, 1982, at A4.

[39] Edward Walsh & Ruth Marcus, Bork Rejected for High Court: Senate's 58-to-42 Vote Sets Record for Margin of Defeat, Wash. Post, Oct. 24, 1987, at A1.

> Several alternatives exist to the present system. At the very least, the try-out time could be reduced. At best, the *Law Review* try-out could be incorporated into the school year, perhaps by holding the first phase during spring break . . . .
>
> Unless some change is made in the try-out procedure, more and more students will have to excuse themselves from the applicant pool. The integrity and prestige of *Law Review* membership can only suffer if all qualified students are not given an equal opportunity to compete for a position on the editorial board.
>
> Thank you for your attention.
>
> Sincerely,
>
> Janet Napolitano[40]

Of course, Ms. Napolitano would go on to a spectacular career in public service, including election to the governorship of Arizona,[41] appointment as Secretary of the Department of Homeland Security,[42] and most recently appointment as President of the University of California system.[43] The *Law Review* has no records establishing whether Secretary Napolitano completed the *Law Review* tryout. A review of the masthead in the subsequent year indicates that Secretary Napolitano did not join the *Review*[44]—although she has obviously suffered no loss as a result. Although her suggestions were rebuffed at the time,[45] Secretary Napolitano might be pleased to learn that both of her suggestions to reform the tryout have since been implemented: The *Law Review* now permits first-year students to choose one of two weekends to complete its tryout in the spring semester, one of which is always during spring break.

[40] Letter from Janet Napolitano, to Richard Merrill, Dean, Univ. of Va. Sch. of Law (Apr. 16, 1981) (on file with the Virginia Law Review Association).

[41] Tom Squitieri, Democratic Attorney General Fought Hard in 'Ugliest Race', USA Today, Nov. 12, 2002, at 8A.

[42] Shailagh Murray & Paul Kane, Obama Picks Confirmed, But Clinton Is on Hold, Wash. Post, Jan. 21, 2009, at A22.

[43] Philip Rucker & Sari Horwitz, Napolitano Leaving Obama Cabinet, Wash. Post, July 13, 2013, at A2.

[44] See Masthead, 69 Va. L. Rev. 1301 (1983).

[45] Letter from Mark W. Merritt, Editor-in-Chief, Va. Law Review, to Janet Napolitano (Apr. 24, 1981) (on file with the Virginia Law Review Association).

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If commemoration is a somewhat egocentric exercise—at least in a collective, generational sense—then can there be any value in it? Consider the thoughts of Judge Posner regarding the centennial of a certain prominent Yankee law review:

> Being of a skeptical cast of mind, I at first declined the editors' invitation to contribute to this issue commemorating the hundredth anniversary of the founding of the *Harvard Law Review*. That the *Review* is 100 years old has no significance. Even the fact that I live in a house that is eighty-two years old has greater significance: it has implications for problems of maintenance and repair, and it tells one something about the architectural and structural features of the house. But as a journal has no natural life span, the fact that it is 100 years old should interest only people who have a superstitious veneration for round numbers. The reason the *Harvard Law Review* is 100 years old is that it was started 100 years ago; the law reviews of all the major law schools are still being published, and if they had been started 100 years ago they too would be 100 years old.[46]

Judge Posner is certainly literally correct, in that the *Virginia Law Review* itself is indifferent to its own anniversaries: Although corporations are persons,[47] they have yet to be observed engaging in such sentimental social behaviors as birthday celebrations. But what of those who have edited, are editing, and will yet edit the *Review*? What of its readers and contributors, past, present, and future—is there really no value to them in marking the *Review*'s centennial? If pressed, Judge Posner might well concede that there is in fact some value to retrospection as a means to introspection: After all, he ended up accepting the *Harvard Law Review*'s offer to commemorate its centennial, using the occasion to con-

[46] Richard A. Posner, The Decline of Law as an Autonomous Discipline: 1962–1987, 100 Harv. L. Rev. 761, 761 (1987) [hereinafter Posner, Decline of Law].

[47] See Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania, 125 U.S. 181, 188–89 (1888) ("The inhibition of the [Fourteenth] amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. Under the designation of person there is no doubt that a private corporation is included.").

sider both its future[48] and those of student-edited law reviews more generally.[49]

Posner's prognostications are generally negative on both counts; indeed, he predicts that "faculty-edited journals may one day control the commanding heights of advanced legal scholarship."[50] In another article, Posner posits that the "Golden Age . . . for student-edited law reviews[] drew to a gradual close between 1970 and 1990."[51] This decline has been caused by the rise of "new forms of legal scholarship—interdisciplinary, theoretical, [and] nondoctrinal,"[52] categories that Posner defines to include subfields such as economic analysis of law, law and society, and law and philosophy.[53] According to Posner, the core problem is that these subjects are beyond the ken of student editors,[54] who must overcome the "handicaps of ignorance, immaturity, inexperience, and inadequate incentives."[55] Posner posits that these deficiencies have driven scholars "to realize that [student-edited] law reviews are not well-equipped to select, and through editing to improve, articles outside of the core of legal doctrinal analysis."[56] The result, according to Posner, is that "the focus of scholarly publication at the academic frontier is gradually shifting from student-edited to faculty-edited, faculty-refereed journals."[57]

The passage of time has shown that Posner's concern for the future of student-edited law reviews was overblown. A cursory review of issues published by top student-edited law reviews in 2013 reveals that both

[48] See Posner, Decline of Law, supra note 46, at 761 ("[A]n apt subject for anniversary reflections[] is that the *Harvard Law Review* . . . may have reached the peak of its influence . . . .").

[49] Id. at 779–80.

[50] Id. at 780.

[51] Richard A. Posner, The Future of the Student-Edited Law Review, 47 Stan. L. Rev. 1131, 1133 (1995) [hereinafter Posner, Future]. Posner's assertion that the decline of student-edited law reviews began in the 1970s may be related to the fact that his term as president of the Harvard Law Review ended in 1962, Masthead, 75 Harv. L. Rev. 350 (1961), a period he has described as "the heyday of the student-edited review." Posner, Future, supra, at 1131.

[52] Posner, Future, supra note 51, at 1133.

[53] Id.

[54] Id. ("These developments beached not only a number of doctrinal scholars but also most law review editors. They were now dealing with a scholarly enterprise vast reaches of which they could barely comprehend . . . .").

[55] Id. at 1132.

[56] Posner, Decline of Law, supra note 46, at 779.

[57] Id.

empirical[58] and interdisciplinary[59] scholarship remain well-represented. Scholars' continuing submission of empirical and interdisciplinary pieces to student-edited reviews may be regarded as an endorsement of the quality of student editing by the market.[60] Additionally, the fact that a wide range of top student-edited journals continues to accept such pieces indicates that these journals' editors feel themselves qualified to select and edit these pieces.[61]

Yet Posner's critique of student-edited law reviews is a recurring one, which has recently appeared even in mainstream media. In 2013, the *New York Times* published an article that posed essentially the same question that Posner did: "[W]hy are law reviews, the primary repositories of legal scholarship, edited by law students?"[62] If, as I contend, student-edited law reviews continue to dominate the marketplace, why does the "lack-of-expertise" criticism of student-run reviews continue to be raised?

One answer is that assailing law reviews is a long and storied tradition in the legal profession and academy. In a 1936 *Virginia Law Review* article, Professor Fred Rodell famously quipped: "There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground."[63] But Rodell did not level

[58] E.g., Sara Sternberg Greene, The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair, 88 N.Y.U. L. Rev. 515 (2013); D. James Greiner, Cassandara Wolos Pattanayak & Jonathan Hennessy, The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future, 126 Harv. L. Rev. 901 (2013); David S. Law & Mila Versteeg, Sham Constitutions, 101 Calif. L. Rev. 863 (2013).

[59] E.g., Jordan M. Barry, John William Hatfied & Scott Duke Kominers, On Derivatives Markets and Social Welfare: A Theory of Empty Voting and Hidden Ownership, 99 Va. L. Rev. 1103 (2013); Kurt T. Lash, The Origins of the Privileges or Immunities Clause, Part III: Andrew Johnson and the Constitutional Referendum of 1866, 101 Geo. L.J. 1275 (2013); Saikrishna Bangalore Prakash, The Imbecilic Executive, 99 Va. L. Rev. 1361 (2013).

[60] On the other hand, this phenomenon might mean only that professors continue to seek tenure. Nevertheless, the fact that student-edited reviews are seen as more prestigious for tenure purposes might also be understood as the market speaking to the relative quality of student- and faculty-edited reviews.

[61] That said, one must always be mindful of the fact that an entire industry may behave unreasonably. Cf. The T.J. Hooper, 60 F.2d 737, 740 (2d Cir. 1932) (Hand, J.) ("Indeed in most cases reasonable prudence is in fact common prudence; but strictly it is never its measure; a whole calling may have unduly lagged in the adoption of new and available devices. It never may set its own tests, however persuasive be its usages.").

[62] Adam Liptak, The Lackluster Reviews That Lawyers Love to Hate, N.Y. Times, Oct. 22, 2013, at A15.

[63] Fred Rodell, Goodbye to Law Reviews, 23 Va. L. Rev. 38, 38 (1936).

his main criticism at legal writing; his true targets were law reviews themselves. Every stakeholder in law reviews, Rodell argued, has an interest in their continuation as a going concern: Professors seek to get "something published so they can wave it in the faces of their deans when they ask for a raise";[64] the students who staff them are "egged on by the comforting thought that they will be pretty sure to get jobs when they graduate in return for their slavery";[65] the "super-students" who join law review managing boards "are egged on even harder by the knowledge that they will get even better jobs";[66] and finally, the law firms who occasionally read the law reviews "are tickled pink to have somebody else look up cases and think up new arguments for them to use in their business, because it means that they are getting something for practically nothing."[67] While Rodell's critique of the occasionally pompous style of law review articles still rings true today,[68] his substantive criticism seems to be that law reviews commit the dastardly sin of delivering value to their consumers and producers.

Posner and other advocates of faculty-run journals are surely correct that student-run reviews are not perfect, but to ask whether they are perfect is to ask the wrong question. The real issue is whether they deliver more value than peer-reviewed journals. The reason that student-edited journals continue to set the standard in legal academic discourse is simply that legal scholarship (at least as it exists today) utterly depends upon the free labor of law students. Law professors today face the same fundamental problem that William Minor Lile did with respect to the *Virginia Law Register*: how to obtain the salutary benefits of journal publishing, such as "keep[ing] . . . in touch with the profession and [being] a good advertisement for [their] [l]aw [s]chool[s]," while avoiding the problems that come with journal editing—namely, that it "adds very much to [one's] work," while "pay[ing] very little."[69] The legal profession has answered that dilemma by having students fill the void, a solution that, while not perfect, provides reasonable value to each group of

[64] Id. at 44.
[65] Id. at 44–45.
[66] Id. at 45.
[67] Id.
[68] Id. at 39 ("Long sentences, awkward constructions, and fuzzy-wuzzy words that seem to apologize for daring to venture an opinion are part of the price the law reviews pay for their precious dignity.").
[69] Lile, supra note 17, at 60–61.

stakeholders in legal publishing (as noted by Professor Rodell),[70] and perhaps most importantly, shifts the costs of academic legal publishing away from law schools and faculty.[71] Small wonder, then, that Lile staked his own finances on keeping the *Virginia Law Review* alive; small wonder that he felt "[t]he Review [to be] one of the best assets the Law School possesses, giving the Law School a prestige that cannot be measured in shillings or pence."[72]

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Although the death of the student-edited law review has been much exaggerated, its future is far from certain. The advent of digital publishing has created unprecedented access to law review content while simultaneously creating considerable downward pressure on law review revenues. The vast majority of content is now accessed à la carte via online searches, rather than through paid print subscriptions.

Whatever the future may hold for student-edited law reviews, this much is clear: The law review of one hundred (or even fifty) years hence will be far more different from today's law review than today's law review is from the law review of 1913. To pick an obvious example, it seems certain that law reviews will transition from the printed page to all-digital publishing within the decade.[73] But such transitions are occurring throughout the legal profession today. Indeed, law schools, law pro-

[70] See supra notes 64–68 and accompanying text.

[71] The *Virginia Law Review* is an independent corporation and is separate from its parent school. See Virginia Law Review Association, Va. State Corp. Comm'n, https://sccefile.scc.virginia.gov/Business/0113523 (last visited Jan. 1, 2014). However, even in the case of law reviews that are part and parcel of their parent schools, and whose parent schools pay their publication costs, it is undeniable that the use of student labor (as opposed to faculty or other paid employees) in the editing process represents a significant cost saving.

[72] Lile, supra note 17, at 95.

[73] Hence the recent trend among top law reviews to rebrand their online supplements with more sober titles, in lieu of the light-hearted sobriquets they used to bear. For example, the *Virginia Law Review* has rebranded its online publishing arm as *Virginia Law Review Online*, a more serious appellation than the former *In Brief*. Compare A.E. Dick Howard, Ten Things the 2012–13 Term Tells Us About the Roberts Court, 99 Va. L. Rev. Online 48 (2013), with Virginia Law Review Launches Online Magazine "In Brief," Univ. of Va. Sch. of Law (Jan. 26, 2007), http://www.law.virginia.edu/html/news/2007_spr/in_brief.htm. Similarly, the *University of Pennsylvania Law Review* recently rebranded their online portal as simply the *University of Pennsylvania Law Review Online*, replacing the punny *PENNumbra*. See Online Exclusives, Univ. of Pa. Law Review, http://www.pennlawreview.com/online/index.php (last visited Jan. 1, 2014) ("The *University of Pennsylvania Law Review Online*, formerly known as *PENNumbra* . . . .").

fessors, and law firms are all struggling to adapt and deliver value in rapidly changing environments; student-run law reviews are hardly alone in that respect. While these disruptions pose real challenges for the profession, they are hardly existential ones. Society still needs law; and so long as society needs law it shall also require lawyers; and so long as society needs lawyers it shall also require law professors; and so long as society needs law professors it shall also require law reviews.

So here's to the next hundred years of the *Virginia Law Review*, and the student editors that will make it all happen. Godspeed.