"But cf. . . ."

The idea for this column began as a sort of hybrid between two rather unlikely parents—*Scientific American*'s "50 and 100 years ago" feature, and *The New Yorker*'s "Talk of the Town." In each issue, we will offer interesting and sometimes amusing tidbits from judicial opinions, old law reviews, and historical works.

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Since this is our first issue, we thought we'd begin by looking at the early issues of some other law reviews.

The obvious place to begin is the *Harvard Law Review*. Their first issue appeared on April 15, 1887, almost a century before ours. Although our bound library copy does not contain the original cover, word has it that Harvard's cover then was as stunningly attractive as today's cover. One striking difference is in the length of the articles. The opening piece by Professor Ames (a commentary on "Purchase for Value Without Notice") runs only 16 pages. Today, even many book reviews are longer than that. Like Ames's piece, virtually all of the articles in the first volume are on private law topics. The article following his, for instance, is about the law of railroad tickets.

The volume does contain a few rather interesting pieces on constitutional issues. In one article, Professor Thayer discusses at some length the question whether the United States can constitutionally print paper money. Another essay argues that the motivation of the legislature should be the sole test of whether a state statute violates the commerce clause. In the same bound volume, William Dunbar argues that the Supreme Court was insufficiently brusque in rejecting an appeal by some convicted anarchists. Another article, by Lowell, counsels the Supreme Court to ignore public opinion.

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Having looked at Harvard, it seemed natural to look next at Yale, whose first issue came out four years later in 1891. The lead article deals with corporate voting trusts, though the author (Professor Baldwin) is billed as "Professor of Constitutional law."

The next article is on the "natural right of property in intellectual production." The author was the Commissioner of Patents. Next is a four-page speech on the secret ballot by one George Hill. A student editorial then complains of the lack of *esprit de corps* among Yale graduates. (At the close of the bound volume, another editorial complains that too few alumni subscribe to the *Journal*!) Another editorial warns:

> The influences in modern life tending to sap and destroy men's independence of character are very strong. The substitution of *finesse*, and of a certain animal shrewdness for straightforward action and courageous declaration of principles are unfortunately not the monopoly of politics alone. Everywhere the instincts of the fox are at a premium; the instincts of the true man at a disadvantage . . . . The danger of losing all sap and becoming greedy time-servers is the greater because it is insidious. It is in the air we breathe. It will destroy all manliness unless men are on their guard. (pp. 216-217)

It would be interesting to know precisely what threat to their manhood triggered this stirring defense of legal machismo.

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Our next selection was the *Columbia Law Review*, which first appeared in 1901. Although the first article was on specific performance of contracts, constitutional law does seem to have received a greater share of the editors' attention than in the other journals. The issue includes an article on the delegation problem and a casenote on the constitutional rights of Puerto Ricans.

The fight to defend legal manhood seems to have continued unabated, with Darwinian overtones. An article on legal education proclaims that tougher standards for admission to the bar

> . . . will keep out no young man who is fit to succeed, but the very increased effort will make him a stronger and better man, and more worthy and likely to win in the struggle for place and for reputation. We need not fear for such men. No severity of preparation or length of study will scare them away. (p. 103).

The same article expresses great apprehension about the overcrowding of the legal profession.

Near the end of the volume we find a book review on what is said by the reviewer to be the first treatise on the fourteenth amendment. Unfortunately the reviewer was unimpressed by the efforts of the author, Judge Henry Brannon of the West Virginia Supreme Court. He complains that the book contains "nothing either thorough or methodical, scarcely anything that can be termed either analysis or classification." The arrangement of the book is called "loose and perplexing." The reason for these defects is soon disclosed. The problem seems to be Judge Brannon's

"method of preparing the book by elaborating the ideas in his own mind first and then writing them out before examining the authorities." (p. 498) This method of writing remains in common use today, but few writers these days have Judge Brannon's honesty in admitting it. Unwilling to write a wholly negative review, the reviewer closes by saying that "the book contains a great deal of eloquent language, which will cheer, if it sometimes fails to enlighten, the reader." We thought that we'd file that line away for use in our first review of a book on constitutional jurisprudence.

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For our final selection, we turned to the *Chicago Law Review*, whose first issue—dedicated to Ernst Freund—appeared in 1933. It contained articles on the Federal Tort Claims Act; the status of the child and the conflict of laws; the trustee's duty with regard to conversion of investments; and a symposium on legislation. The Great Depression received a passing mention on page 99. Student comments concerned a procedural issue relating to motions for new trials, the entrapment defense, another procedural issue relating to suppression motions in criminal trials, and five similar technical matters. Nothing in the issue would alert the casual reader to the fact that the country was in the midst of the greatest economic crisis in its history.

By the time the second issue came out in November, word of the Depression had apparently reached the editors. (Still, half of the issue is devoted to an examination of the new Illinois Civil Practice Act). Though displaying some sympathy toward the New Deal and calling for a more liberal attitude from the Supreme Court, the authors of the major constitutional piece (two Wisconsin law professors) were concerned that "drastic government control over industry teems with perils." They also warned that some government acts might be directed, "not to the welfare of society as a whole, but to ignoble ends of partisanship and class favoritism," which would (they said) violate the fourteenth amendment. They noted the possibility that if the justices proved inflexible, some method of packing the Court might be tried. The next article, by a St. Paul lawyer, argued in favor of the constitutionality of mortgage moratoria. Much of the rest of the issue was devoted to a symposium on New Deal legislation.

The next issue returned largely to private law questions. The following issue contained an interesting article by Robert Hutchins advocating that law students be given more of an education in "Law and Politics." Finally, the last issue in the bound volume

(May, 1934) contained a fascinating article by Douglas Maggs on the constitutionality of the New Deal. His argument, quite simply, was that the Supreme Court was free under existing doctrine to do pretty much anything it wanted about the New Deal. Its actions would therefore be determined by statesmanship (or a lack thereof) rather than doctrine.

By the way, it is interesting to note that as compared to the 35 cent cover price of the first Harvard issue, the first Chicago issue cost 60 cents. On the other hand, the Chicago issue was over three times as long.

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So much for our survey of the competition. We can only hope to live up to the examples they set in their early issues—though, alas, inflation prevents us from matching their prices.