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## Foreword

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# FOREWORD

*Jeffrey S. Lehman\**

Why celebrate?

Some people hate law reviews. They would think it unseemly to celebrate a centennial such as this. They might compare it to a 1448 celebration of the first hundred years of the Bubonic Plague.

Their criticisms are familiar. Why do we entrust the development of the scholarly canon to second- and third-year law students? Why do law reviews publish really bad things and reject really good things? Why do they encourage a style of argument in which each article must begin by summarizing all that has been written before? Why do they insist that any assertion of fact, no matter how trivial, be supported by a citation, while being so willing to accept for the purpose any published authority, including a Marvel Comic Book? And what about that silly Bluebook?

In the following Essay, I will endeavor to provide a unified field theory of *Michigan Law Review* exceptionalism. Part I summarizes the familiar criticisms of law reviews generally. Part II explores the distinctive history of the *Michigan Law Review*, a history that is different from the history of other law journals. Part III considers several reasons why it might be appropriate to celebrate the centennial of the *Michigan Law Review* even if it might not be appropriate to celebrate the centennial of the Bubonic Plague. And Part IV offers some concluding observations.

[Editors' Note: We know you think we made Dean Lehman put that "roadmap" paragraph in. But we didn't. He put it in to tease us. By the way, we don't actually think it is a good roadmap paragraph. For one thing, it's in the wrong place. He put it in *after* what he calls "Part I." And he doesn't do what he says he will do in Parts II and III. But he won't let us edit it. He won't even let us add footnotes! Sigh.]

According to Elizabeth Brown's book, *Legal Education at Michigan* (1959), the sequence of events that launched the *Michigan Law Review* went like this. First, an entrepreneurial law student named Gustavus Ohlinger urged then-dean Harry Burns Hutchins to found a law journal at Michigan. Hutchins liked the idea and took it to the faculty. His colleagues concurred and volunteered to submit their

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articles for publication without compensation, deciding instead that profits from the venture should go towards expansion of the library.

The purpose of the *Review* was described in the November 1902 inaugural issue as follows:

[T]o give expression to the legal scholarship of the University, and to serve the profession and the public by timely discussion of legal problems, and by calling attention to the most important developments in the field of jurisprudence. . . . It will be the aim to make the journal practical without usurping the functions of the text-book or the digest, and scholarly without becoming so academic in its character as to be out of touch with the needs and aims of the lawyer of today. It will not be local in its character or be confined to the discussion of law-school problems.

The faculty was to be responsible for its management and publication: "The magazine will be under the editorial management of a member of the faculty, assisted by an Advisory Board, but all of the other members of the faculty will co-operate in conducting it."

Things obviously didn't work out quite as originally planned. The *Michigan Law Review* loses money every year. Editorial management was largely handed over to a board of student editors before the first fifty years were up. And the articles published today only rarely hold practical professional interest for lawyer-subscribers; most legal scholarship, like most other scholarly writing, is written for an academic audience.

Still and all, it makes sense for us to keep investing in the *Michigan Law Review*, and it is reasonable to predict that the *Michigan Law Review* will still be here in 2102, albeit with even fewer subscribers to the print version. Here are some of the reasons that I find most compelling.

First, despite the whining one sometimes hears about law review editorial style, I believe that the *Michigan Law Review* on balance, publishes articles that are *vastly* better than the submissions it receives. (I believe that of some other law journals as well.) To be sure, some articles get worse through editing, and often editors will make suggestions to authors that would worsen the article. But at the end of the day, sometimes after debate and struggle and tension, I believe the articles are much better. And the level of improvement is far greater than what one sees in any discipline that relies on faculty or professional editors, which is to say every other discipline.

Second, the *Michigan Law Review* provides a remarkable educational experience to its editors. Preparing a note, and surviving the ordeal of close editing from a hypercritical note editor, do wonders for students' writing skills. By shouldering the responsibility of publishing eight issues a year, they have an unparalleled opportunity to learn about group endeavor, motivation, and morale.

Third, the *Michigan Law Review* enhances our understanding of the law and legal institutions. Student notes may not be read as often

as their authors might wish, but they are read more often than is sometimes believed. And topical conferences and symposia stimulate law professors to take their thinking on a given topic to the next level.

That is all especially true of this Centennial Issue. The editors recruited seven different members of the Michigan faculty to reflect on issues in American law that are at the core of the past century's legacy to contemporary society. They have been true to the tradition of the first hundred years of the *Michigan Law Review*, and they have furnished a superb beginning for the second hundred years.

So why not celebrate?