

THE WISCONSIN LAW REVIEW: ONE HUNDRED YEARS OF CREATIVITY, CONTINUITY, AND CHANGE

HIRAM E. PUIG-LUGO*

To Keenen Lind Peck, (November 21, 1960–June 6, 1990)

My Editor-in-Chief

This issue explores the intellectual history and traditions of the University of Wisconsin Law School as the *Wisconsin Law Review* celebrates its 100th anniversary. It represents yet another example of the valuable contributions the *Law Review* has made to academic discourse and professional development throughout its history. I am extremely grateful and honored for the invitation to explore the path that the *Review* has trod since its inception and to consider what its future may hold.

The journey began when faculty and students launched the *Law Review* in October 1920.¹ The previous decades had seen a call for sociological jurisprudence within legal academic circles, and a realist philosophy of the law had begun to take hold at the Law School.² This realist perspective “asked that law be researched and studied always in living relation to the society of which it was a part” and dealt with both “the social functions of law and with the processes of public policy making through law.”³

At the outset, the *Law Review*’s editors intended to “deal primarily with questions of Wisconsin law and with questions of general law which are of special interest to Wisconsin.”⁴ At that time, the *Law Review* was “almost entirely a faculty-run organization,” and faculty members on the Board of Directors authored most leading articles.⁵ To fulfill their stated goals, these faculty editors published articles that fell into five categories:

* The Honorable Hiram E. Puig-Lugo has served on the Superior Court of the District of Columbia since 1999. He is the current President-Elect of the National Council of Juvenile and Family Court Judges and also serves as a U.S. representative to The Hague Judicial Network. Judge Puig-Lugo is a 1988 graduate of the University of Wisconsin Law School, where he was the first Latino member of the *Wisconsin Law Review*.

1. *The Wisconsin Law Review: Fifty Years of Proud Tradition*, 1970 WIS. L. REV. 973, 973.

2. See Willard Hurst, *Changing Responsibilities of the Law School: 1868–1968*, 1968 WIS. L. REV. 336, 338.

3. *Id.*

4. *Announcement*, 1 WIS. L. REV. 1, 1 (1920).

5. *The Wisconsin Law Review: Fifty Years of Proud Tradition*, *supra* note 1, at 973.

(1) professional articles studying Wisconsin law, (2) professional articles discussing national legal issues important to Wisconsin residents, (3) practical articles supporting law practitioners in Wisconsin, (4) tributes recognizing prominent legal figures in Wisconsin, and (5) student case notes analyzing recent jurisprudence.⁶

After the first decade, student contributions to the *Law Review* expanded beyond writing case notes. In 1930, the *Review* “became a more autonomous, student-run organization with less control and influence being exerted by the faculty.”⁷ Five years later, student members were designated as the sole editors, which reduced faculty participation to a designated faculty advisor.⁸ This increased student responsibility for the wide range of administrative, managerial, and editorial tasks necessary to produce the journal.⁹

At the end of World War II, a faculty composed of older members and new recruits “brought to the campus a wide range of experience in wartime administrative agencies”¹⁰ Their experiences provided the realist philosophy with a greater emphasis on how public policy is made through the law.¹¹ The new focus contributed to the “law in action” approach that remains prominent at both the Law School and the *Law Review*.¹² This school of thought studies and analyzes “how law and legal precedents play out in the ‘real world.’”¹³

The expanded focus on how law impacts society guided the *Law Review* as it grew from a journal with a regional focus to a publication with a national and international presence.¹⁴ As it approached its 50th anniversary, the *Review* had already “abandoned its strictly parochial and practice-oriented publication practices, and began to present articles of a more diversified and theoretical nature.”¹⁵ This trend received further

6. Michael H. Wussow, *A Law Review for Wisconsin*, 1995 WIS. L. REV. 1475, 1475–76.

7. See *The Wisconsin Law Review: Fifty Years of Proud Tradition*, *supra* note 1, at 973.

8. See *id.* at 974.

9. See Wussow, *supra* note 6, at 1485.

10. Hurst, *supra* note 2, at 339.

11. See *id.* at 339–40.

12. See *Our Law-In-Action Tradition*, UNIV. WIS. L. SCH., <https://law.wisc.edu/law-in-action/> [<https://perma.cc/W2KN-G4Y8>] (last visited Mar. 1, 2021).

13. John S. Skilton, Speech, *Seventy-Five Years of the Wisconsin Law Review: Turning the Pages*, 1995 WIS. L. REV. 1461, 1465.

14. See generally W. Scott Van Alstyne, Jr., *The University of Wisconsin Law School 1868-1968: An Outline History*, 1968 WIS. L. REV. 321 (discussing the Law School’s institutional history); John E. Conway, *The Law School: Service to the State and Nation*, 1968 WIS. L. REV. 345 (exploring faculty research and service activities).

15. See *The Wisconsin Law Review: Fifty Years of Proud Tradition*, *supra* note 1, at 974.

attention when the *Review* celebrated its 75th anniversary and continues to this day.¹⁶

Yet, professional articles have remained the dominant *Law Review* content in recent decades. For the past 25 years, the *Law Review* has published more professional articles than comments, notes, addresses, lectures, and other forms of content combined.¹⁷ One evident trend in content has been a reduction in student case notes, which are works of legal scholarship that analyze a particular court decision and its legal impact. The number of student notes trended from 50 pieces published between 1996 and 2009 to 13 published since 2010. Indeed, there were no student notes published at all in 2010, 2011, and 2012. However, the *Law Review* published an increasing number of student comments, which analyze unresolved or contested legal issues. It would be interesting to compare this development with publication trends across law journals and determine whether an examination of editorial strategies might be advisable.

Simultaneously, the *Law Review* has maintained a central role in facilitating collaboration between legal academia and social sciences. For example, the *Review* published papers presented during a three-day conference on New Legal Realism that the American Bar Foundation and the Law School's Institute for Legal Studies hosted in 2004.¹⁸ The *Review* undertook this effort in collaboration with *Law & Social Inquiry*, perhaps "the first time that a law review and a social science journal have teamed up in this way."¹⁹ This joint venture exemplified the "genuinely interdisciplinary approach to research on law" encouraged through the New Legal Realism.²⁰

Similarly, a recent symposium explored current developments in Critical Race Theory (CRT), a variant of legal realism that focuses on how racial dynamics affect the law, the legal system, and society in general.²¹

16. See Wussow, *supra* note 6, at 1481–82. The author, a Senior Administrative Editor at the time, noted that "it may now be necessary to reexamine what types of articles the *Law Review* should publish in order to achieve its original purpose and fulfill the vision of the founders." *Id.* at 1480.

17. This author's informal review of *Law Review* content since the 1996 volume tallied some 485 articles, 181 comments and 63 notes. The number for addresses, lectures, essays, and other contributions approximated 102 in total.

18. Symposium, *New Legal Realism Symposium on Law, Poverty, and Land*, 2005 WIS. L. REV. 335.

19. Howard Erlanger, Bryant Garth, Jane Larson, Elizabeth Mertz, Victoria Nourse & David Wilkins, *Foreword: Is it Time for a New Legal Realism?*, 2005 WIS. L. REV. 335, 337–38.

20. *Id.* at 338.

21. See generally Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253 (2011). Professor Crenshaw is a leading CRT scholar and was a William H. Hastie Fellow at the Law School, earning her LL.M. in 1985.

In that symposium issue, the *Review* examined how CRT has progressed beyond relying on stories to illustrate racial discrimination, describe policing strategies, and advocate for social justice to incorporating empirical methods that facilitate a deeper interdisciplinary understanding of racial violence, access to health care, environmental issues, and LGBTQ+ rights.²²

Still, law in action remains the philosophical north for the Law School. The “investigative and empirical work in the real world of contracts” of Professor Stewart Macaulay and the “statistical analysis in evaluating the status of the civil justice system” of Professor Marc Galanter,²³ among others, have paved the way for current faculty to advance the tradition. Recent contributions to law in action include Professor Tonya Brito’s “longitudinal study examining the civil justice experiences of low-income parents in child support enforcement cases,” and Professor Mitra Sharafi’s work with “the history of forensic science in colonial India” and the South Asia Legal Studies Working Group.²⁴

As seen in this issue, the *Law Review* recognizes the importance of clinical programs to the Law School’s curriculum. Clinical education “intertwines theory and practice in ways that the classroom alone cannot, and explores problem solving, hypothesis testing, and strategic planning, among other pedagogical benefits.”²⁵ For me, serving as a student attorney in the Legal Defense Project (LDP) combined with membership on the *Law Review* opened career doors that I could never have imagined. The opportunities to participate in LDP, and take part in the *Review*, are experiences for which I will always be grateful.²⁶

Indeed, the *Law Review*’s influence extends beyond providing a forum for academic analysis and legal discourse. Over the past twenty-five years, the *Review* has played a central role in promoting a sense of community through content that memorializes admirable lives and celebrates outstanding careers. It dedicated the 1997 Volume to the memory of María Alexandra López, Class of 1998,²⁷ and recalled the

22. See Symposium, *Critical Race Theory and Empirical Methods*, 2016 WIS. L. REV. 443.

23. See Skilton, *supra* note 13, at 1469–70.

24. Nicole Etter, *Law in Action: Our Foundation, Our Future*, GARGOYLE (Aug. 21, 2019), <https://gargoyle.law.wisc.edu/2019/08/21/law-in-action-our-foundation-our-future> [https://perma.cc/KD2F-326B].

25. Keith A. Findley, *Assessing Experiential Legal Education: A Response to Professor Yackee*, 2015 WIS. L. REV. 627, 630.

26. None of it would have been possible without the support of the Legal Education Opportunities (LEO) program and the encouragement of my contemporaries at the *Law Review*, LDP, and LEO.

27. 1997 WIS. L. REV. iv.

“intellectual excellence and productivity” of Professor Willard Hurst.²⁸ It mourned the departure of Professor Frank J. Remington, a beloved criminal law professor and supporter of clinical education.²⁹ The *Review* also recognized the invaluable contributions of Professor James Jones, Jr., a champion for diversity initiatives, the driving force behind the Legal Education Opportunities (LEO) program, and the creator of the William H. Hastie Fellowship to promote inclusion in academia.³⁰ Additionally, it celebrated Professor Neil Komesar for the comparative constitutional analysis that he pioneered to better understand the interface between law and public policy,³¹ shared reflections on how Professor Stewart Macaulay has influenced legal scholarship,³² and applauded Dean Emeritus Kenneth B. Davis, Jr., for his stellar stewardship during a fifteen-year tenure.³³ Outside the immediate Law School community, the *Review* has recognized the legacies of the Honorable Thomas E. Fairchild, who served as Judge on the United States Court of Appeals for the Seventh Circuit and as Justice of the Wisconsin Supreme Court,³⁴ and the Honorable Robert W. Kastenmeier, who represented the State of Wisconsin and its residents in the United States House of Representatives for thirty-two years.³⁵

Moreover, the *Law Review* has been proactive in adapting to technological change and accessing new platforms to disseminate content. Through its online sibling, the *Wisconsin Law Review Forward*, the *Review* provides a forum for “topical and timely pieces that would otherwise be delayed by [the] production schedule for print issues.”³⁶ Recent articles have covered diverse topics ranging from college football in the age of COVID-19³⁷ to the State of Wisconsin’s ability to

28. Shirley S. Abrahamson, *Eulogy for James Willard Hurst*, 1997 WIS. L. REV. 1125, 1127.

29. See Walter J. Dickey, *Frank J. Remington—The Lawyer*, 1997 WIS. L. REV. 233.

30. See generally 2013 WIS. L. REV. 693 (celebrating Professor Jones as a professional and role model).

31. See Symposium, *30 Years of Comparative Institutional Analysis: A Celebration of Neil Komesar*, 2013 WIS. L. REV. 265.

32. See Elizabeth Warren, *Stewart Macaulay: A Few Personal Reflections*, 2013 WIS. L. REV. 1295.

33. See John A. Kidwell & R. Alta Charo, *Tribute to Dean Emeritus Kenneth B. Davis, Jr.*, 2011 WIS. L. REV. 729, 730.

34. See generally 2007 WIS. L. REV. 1 (address and tributes celebrating Judge Fairchild’s life and career).

35. See generally 2015 WIS. L. REV. 557 (tributes and memorials honoring Representative Kastenmeier’s legacy).

36. *WLR Forward*, WIS. L. REV., <https://wlr.law.wisc.edu/wlr-forward> [<https://perma.cc/9PQV-HLEK>] (last visited Mar. 1, 2021).

37. Thomas A. Baker III, Marc Edelman & John T. Holden, *College Football in the Time of COVID-19*, 2020 WIS. L. REV. FORWARD 20, <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2020/07/Download-PDF-COVID-Football.pdf> [<https://perma.cc/4ZC8-LDKR>].

immediately appeal injunctions³⁸ to sexual misconduct and hiring practices in higher education.³⁹ Similarly, outgoing EIC Olivia Radics and incoming EIC Anya Gersoff ventured into the “Law in Action: A UW Law School Podcast” in May 2020 to discuss the *Review*’s future plans, publications, and upcoming events.⁴⁰ Both initiatives underscore the *Review*’s creativity in negotiating change.

In sum, the *Law Review* has a long, proud, and distinguished history of academic excellence and professional service. Stepping into the future, it will be tested to define its content as the country moves into a decade where structural barriers to equality and inclusion refuse to die, where the law must respond to technological, environmental, public health, and economic developments, and where unfolding social dynamics might trigger unexpected challenges. Along the way, the *Review* should consider how to grapple with the myriad and complex issues surrounding social justice and professional inclusion, how to discuss the paradoxical power of the law to both protect civil rights and to subvert democracy, and how to reconcile the law as the protector of the common good and as the guardian of individual privilege. And as the *Review* negotiates that terrain, understanding how law translates into action will provide a priceless point of departure.

38. Jeffrey A. Mandell, *The Wisconsin Supreme Court Quietly Rewrote the Legal Standard Governing Stays Pending Appeal, Leaving Circuit Courts Effectively Powerless to Enjoin Unconstitutional Statutes*, 2019 WIS. L. REV. FORWARD 29, <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2019/11/Stays-Pending-Appeal.pdf> [<https://perma.cc/XKJ9-6ALA>].

39. Neal Schlavensky, *Sexual Misconduct, Employment References, and Hiring in Higher Education: Is it Time for the Duty of Care to Evolve?*, 2019 WIS. L. REV. FORWARD 1, <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2019/08/PDF.pdf> [<https://perma.cc/A9MY-R6GM>].

40. See Law in Action: A UW Law School Podcast, *Wisconsin Law Review EICs Interview: Episode 10*, UNIV. WIS.-MADISON L. SCH. (May 13, 2020), <https://soundcloud.com/wilawinactionpodcast/wisconsin-law-review-eics-interview-episode-10> [<https://perma.cc/YM73-B9XF>].