the role of academics, researchers and scholars. They are the practitioners of the law who are trained to take a step back and look at the movement from a broader perspective. They are the ones able to tell us what turns law and jurisprudence have made and explain why. But more importantly, they are the ones who help us realize if the shape of the law and its jurisprudence have already gone against the values we hold dear as a nation.

Thus, the *Ateneo Law Journal* performs an important function in our law practice. It gathers the works of men and women who study the law and jurisprudence and explore their progress in order to explain to us what we have done and what we can do to improve our future. As we enter a new phase in our national life, these reflections can only help the country move forward in the right direction.

The Influence of the Law Review on the Bench

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Judges have at last awakened, or at all events a number of them not wholly negligible, to the treasures buried in law reviews.

— Benjamin Cardozo

It has been said quite frequently among the academic community that there are two ways of measuring a law school: first, you look at the faculty list; second, you look at their law journal. Law reviews and law journals embody the prevailing ideas and futuristic thoughts of the school.

Law reviews were begun by law students over a century ago as an academic experiment, and now, these reviews have achieved a prominent and influential position in the legal profession.[1] In the present age, law reviews are a necessary adjunct of any respectable law school. They are priceless institutions which aid greatly in the field of legal scholarship. "The publication of a t least one law review is clearly a prestige symbol that a law school cannot do without. It procures for the school ... a place in the realm of legal scholarship."[2]

Although widely regarded as the first law review, the *Harvard Law Review* was not, in fact, the first.[3] There had been many other "law reviews" by the time that Harvard Law came into existence. Nevertheless, it remains the most prominent of law reviews and, even today, is widely considered to be the cause for the overwhelming number of law reviews in the legal academe.

The growth of legal journalism in the United States of America during the 19th century provided the groundwork upon which law reviews were built.[4] Those early journals typically highlighted recent court decisions, local news, and editorial comments.[5] During the middle to late 1800s, new legal

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1. Michael I. Swygert & John W. Bruce, *The Historical Origins, Founding, and Early Development of Student Law Reviews*, 36 HASTINGS L.J. 739, 740. (1985) [hereinafter Swygert].
2. Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 EMORY L.J. 659, 664 (1998).
3. Swygert, *supra* note 1, at 741.
4. *Id.* (citing DAVID HOFFMAN, A COURSE OF LEGAL STUDY 666 (2d ed. 1836)).
5. Swygert, *supra* note 1, at 741.

periodicals appeared with great frequency.[6] Thus, by the time the *Harvard Law Review* commenced publication in 1887, a total of 158 different legal periodicals had been published in the United States.[7]

The *Harvard Law Review* started out as a student club, known as the Langdell Society (Society), at the Harvard Law School.[8] The purpose of the Society was to discuss legal topics, hold mock trials, and write legal essays.[9] These students decided that they wanted a larger audience for their essays than just the Society, and they created the *Harvard Law Review* to achieve that end. The students approached Professor James Barr Ames, who suggested that the student contact alumnus Louis Brandeis, then Secretary of the Harvard Law School Association and who would later become Justice of the Supreme Court. Brandeis obtained financial support for the project and placed the students in contact with members of the Boston Bar Association.[10] With financial support and the advisement of Professor Ames, the *Harvard Law Review* published its first edition in the spring of 1887.[11] Other law schools soon followed suit and, by the 20th century, prominent law schools developed their own law reviews.[12] Each law school began publishing a law review with the purpose of furthering both the education of its students and the development of the law.[13] Additionally, each law school saw the birth of its law review as a sign of progression in the field of legal education.[14]

To be able to vividly understand the influence of the law review institution, one must take a look at the alumni of such institutions. A cursory glance at the rolls of these reviews would indicate that prominence has been gained by many former student-editors.

Justice Oliver Wendell Holmes was an editor for the *American Law Review*. U.S. Supreme Court Justices Felix Frankfurter, Edward Sandford, Stephen Bryer, Antonin Scalie, and Ruth Bader Ginsburg[15] and Judge

6. *Id.*
7. *Id.*
8. Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Tradition*, 30 AKRON L. REV. 15, 36 (1996) [hereinafter Closen].
9. *Id.* at 37.
10. *Id.*
11. *Id.*
12. *Id.* at 40.
13. *Id.* at 41.
14. Closen, *supra* note 8 at 41.
15. Madame Justice Ginsburg holds the proud distinction of being the first woman to have served in good standing on two low reviews: the *Harvard Law Review* and the *Columbia Law Review*. *See*, Supreme Court of the United States, The Justices of the Supreme Court, at http://www.supremecourtus.gov/about/biographiescurrent.pdf (last accessed July 28, 2007).
16. Michael J. Madison, *The Idea of the Law Review: Scholarship, Prestige and Open Access*, 10 LEWIS & CLARK L. REV. 901, 911 (Winter 2006).
17. Peter Stein, *Law Reviews and Legal Culture*, 70 TUL. L. REV. 2675, 2677 (1996) [hereinafter Stein].

Richard A. Posner were editors of the *Harvard Law Review*. Current U.S. Supreme Court Chief Justice John G. Roberts, Jr. was likewise an editor of the *Harvard Law Review*. Supreme Court Justices Fortas and Samuel Alito came from *Yale Law Journal*, while Justice William O. Douglas was an alumnus of the *Columbia Law Review*.

The list of prominent legal professionals who began their career as law review editors of the *Ateneo Law Journal* is also as noteworthy as American counterparts — sitting members in the Supreme Court, Justices Adolfo Azcuna and Renato Corona, were both editors of the *Journal*.

The training given in a law review, the workload and the heavy requirements of deadlines, all add up to prized experiences which will place one in good stead after law school. Thus it has been said, "Law review membership used to signal that someone was not only willing to work hard byt had also learned something of substance about reading, writing, and analyzing the law."[16]

Hence it is a given that members of a law review find themselves placed in an excellent position to influence the law, whether as a member of the bar or as a member of the bench. But how does this happen in a law review institution? What do these student-editors learn exactly that make them so valuable later on in their careers? One professor would describe the effect of the law review experience on student-editors, and the significance of that experience, in this manner:

Even more significant than the effect that student editors have on the law reviews is the effect that the law review experience seems to have on the editors themselves. The experience of working to deadlines as a team seems to produce a kind of belonging to an elite group of meritocrats, a happy band of brothers and sisters dedicated to making obscure scholarship accurate, accessible, and intelligible. The experience produces a respect for scholarship akin to that which is traditionally characteristic of the civil-law culture.[17]

The law review, as a "happy band of brothers and sisters" of meritocracy, raises the bar of legal scholarship a notch higher. With prodigious effort, these servants of the law bend even lower so that the majesty of the law can be further highlighted. It is no surprise then that the discipline and legal reasoning one learns as an editor of a law review lends

itself well to a legal and even judicial career later on. As one eminent author noted,

American judges want the best students to be their clerks, and the best students by definition are former editors of law reviews. They were admitted to that exclusive club by their mastery of the special techniques and prejudices of the academic lawyers who were their teachers and who gave them their high grades. So when they become clerks they continue to apply the attitudes that proved to be so successful in law school. As editors they rewrote other people's drafts. Now they write the drafts themselves for their judges to revise, and their drafts are, of course, replete with references to law review articles.[18]

Thus, "[t]he work that engages law review students is unique to any other work or activity they encounter in law school because of the direct influence it has on the law."[19]

Law review articles, in their quest for outstanding legal scholarship, greatly impresses upon and influences the decisions of the Courts, whether here or abroad. In 1931, Justice Benjamin Cardozo of the U.S. Supreme Court, once said that,

Judges and advocates may not relish the admission, but the sobering truth is that leadership in the march of legal thought has been passing in our day from the benches of the courts to the chairs of universities .... [T]he outstanding fact here is that academic scholarship is charting the line of development and progresses in the untrodden regions of the law.[20]

Cardozo referred to academic scholarship referring principally to the articles appearing in law reviews of the law schools during that period in time.[21] This is no less true in Cardozo's time that it is now. In fact, in a time where difficult cases and events inevitably craft "hard law," law reviews, especially in the Philippine setting, may play an even more important role in the realm of legal scholarship. They can serve as a guiding light in a sea of murky and often unclear law, where lawyers and judges may fear to tread.

In careful hands, a law journal can be a very sharp instrument in dissecting a legal issue. Because they are guided by the rigid rules of scholarship, every publication is burdened with the presumption of thoughtful analyses, meticulous research, and organized writing. The first instance of a law review article directly influencing a judicial decision came

18. *Id.* at 2678.

19. Closen, *supra* note 8, at 25.

20. BENJAMIN N. CARDOZO, *Introduction to* SELECTED READINGS IN THE LAW OF CONTRACTS vii, ix (George J. Thompson, et al. eds. 1931).

21. Closen, *supra* note 8, at 15.

in 1897, in the United States, "when for the first time a United States Supreme Court Justice cited to a law review article in one of his written opinions. The justice was Edward White, and in his dissenting opinion in the case United States v. Trans-Missouri Freight Assoc., he cited an article published in the Harvard Law Review titled On Contracts in Restraint of Trade."[22]

Justices and judges show a favourable bias towards careful reasoning and legal scholarship by reading and citing works in law reviews. Some of the early advocates of the law review institution among the judiciary would be Justices Louis Brandeis and Benjamin Cardozo. Justice Cardozo considered law reviews as the "repositories of much modern legal scholarship,"[23] and found "law review articles of conspicuous utility in the performance of [his] judicial duties,"[24] while Justice Brandeis saw law reviews as "both stimulating discussions in themselves and as potential educators of the legal community."[25] As a mark of the respect Justice Brandeis held for law reviews, he would "not rely on the parties' briefs to obtain citations to law review articles. Rather, Brandeis had his law clerks search law reviews for relevant information."[26]

Interestingly enough, an article written by Justice Brandeis before he became a judge would have a profound impact on the judiciary. Brandeis and Samuel Warren, a former law partner of his, collaborated on an article published in December of 1890 in the *Harvard Law Review*, entitled 'The Right to Privacy."[27] The article was so well done that Dean Roscoe Pound said that it did "nothing less than add a chapter to our law."[28] The article would later be cited by a New York judge, who apparently based his opinion on its contents, in holding that a right to privacy did exist and allowed recovery based on that right.[29] A higher court, the New York Court of Appeal, would later rule in another case that no right to privacy existed,[30] thereby repudiating Brandeis and Warren's proposition.

22. *Id.* at 2678.

23. George J. Thompson, *et at.*, *Preface to* SELECTED READINGS ON THE LAW OF CONTRACTS v (George J. Thompson, *et al.* eds. 1931).

24. Douglas B. Maggs, *Concerning the Extent to Which the Law Review Contributes to the Development of the Law*, 3 S. CAL. L. REV. 181 (1930);

25. PHILIPPA STRUM, LOUIS D. BRANDEIS: JUSTICE FOR THE PEOPLE 354 (1984).

26. *Id.* at 363.

27. Alpheus Thomas Mason, Brandeis: A Free Man's Life 70 (1946).

28. *Id.*

29. Manola v. Stevens, N.Y. TIMES, June 15, 18, 21, 1890 (N.Y. Sup. Ct. 1890); *See*, Swygert, *supra* note 1, at 788.

30. Robertson v. Rochester Folding-Box Co., 64 N.E. 442, 443 (N.Y. 1902).

Nevertheless, Brandeis was vindicated as, subsequently, the right to privacy became widely recognized, and in 1905, the Georgia Supreme Court, in the case of *Pavesich v. New England Life Insurance Co.*, rejected the doctrine of New York Court Appeals decision and accepted Brandeis and Warren's view by recognizing that a right to privacy exists.[31]

Professor William Prosser would later state that "The Right to Privacy... has come to be regarded as the outstanding example of the influence of legal periodicals upon American law."[32]

What began as an article later became jurisprudence.

One Federal Circuit Court Judge, which, in our jurisdiction, would be equivalent to a Court of Appeals Justice, from the second highest court of the land, stated that law review articles have helped him greatly in a variety of subject matters.[33] In one case, that of *In Re Owen Corning*,[34] Judge Thomas L. Ambro had to deal with a particularly intricate matter of American Bankruptcy law. Unable to find jurisprudence on treatises that could aid him in answering the legal issues involved, he went looking for articles[35] and found two articles which directly dealt with the legal issue. Judge Ambro even went so far as to state that he felt he "had found the Rosetta Stone."[36]

In the Philippines, a prominent example of a law review article that became ruling case law is the incisive commentary of known civilist Justice J.B.L. Reyes on article 809 of the Civil Code.[37] Criticizing that provision as "liberalization running riot,"[38] the great civil law expert suggested a possible rewording[39] of that provision so as to provide sufficient guidelines to limit

31. Pavesich v. New England Life Insurance Co., 50 S.E. 68 (Ga. 1905).

32. William L. Prosser, *Privacy*, 48 CAL. L. REV. 383, 384-85 (1960).

33. Thomas L. Ambro, *Citing Legal Articles in Judicial Opinions: A Sympathetic Antipathy*, 80 AM. BANKR. L.J. 547, 549 (2006) [hereinafter Ambro].

34. *In Re Owen Corning*, 419 F. 3d 195 (3d. Cir. 2005).

35. Ambro, *supra* note 33, at 550.

36. *Id.*

37. An Act to Ordain and Institute the Civil Code of the Philippines, Republic Act No. 386, art. 809 (1950).

    Article 809. In the absence of bad faith, forgery or fraud, or undue and improper pressure and influence, defects and imperfections in the form and attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of article 805.

38. RUBEN F. BALANE, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION) 105 (2006 ed.) [hereinafter BALANE].

39. *Id.* The rewording which Justice J.B.L. Reyes suggested is as follows,

the discretion of judges in applying the law.[40] His commentary was published in the *Lawyer's Journal* in 1950, shortly after the New Civil Code was promulgated.[41] His thoughts on the matter would later be adopted by the Supreme Court, in an exhaustive *ponencia* by Justice Florenz D. Regalado, in the case of *Caneda v. Court of Appeals*.[42] In that case, the Supreme Court even quoted Justice J.B.L. Reyes' comments on article 809 extensively and used examples that the Justice had written.[43]

Justice Azcuna, a present brother in the Court, once wrote an article for the *Journal* on an obscure legal animal — the Writ of *Amparo*. The Writ of *Amparo* is a remedy to enforce fundamental rights. He wrote that,

Among the different procedures that have been established for the protection of human rights, the primary ones that provide direct and immediate protection are *habeas corpus* and *Amparo*. The difference between the two writs is that *habeas corpus* is designed to enforce the right to freedom of the person, whereas *Amparo* is designed to protect those other fundamental human rights enshrined in the Constitution but not covered by the writ of *habeas corpus*.[44]

The Writ of *Amparo* may well find its place in our Rules of Court as part of our remedial law, and sooner, as part of our jurisprudence.

The influence of law reviews is evident, and in the Philippines, a number of Justices of the Supreme Court have written decisions with citations to law reviews, specifically to that of the *Journal*. If a personal reference may be cited, my *ponencia* in *Estrada v. Escritor*,[45] had made reference to the *Journal*.[46]

Article 809. In the absence of bad faith forgery or fraud, or undue and improper pressure and influence, defects and imperfections in the form and attestation or in the language used therein shall not render the will invalid *if such defects and imperfections can be supplied by an examination of the will itself and* it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

40. *Id.* at 105 (citing LAWYER'S JOURNAL, Nov. 30, 1950, at 566).

41. BALANE, *supra* note 38, at 105.

42. Caneda v. Court of Appeals, 222 SCRA 781 (1993).

43. *Id.*

44. Adolfo S. Azcuna, THE WRIT OF AMPARO: A REMEDY TO ENFORCE FUNDAMENTAL RIGHTS, 37 ATENEO L.J. 13 (1993).

45. Estrada v. Escritor, 455 Phil. 411 (2003).

46. Edilwasif T. Baddiri, *Islam and the 1987 Constitution: An Issue on the Practice of Religion*, 45 ATENEO L.J. 161, 208, n. 308 (2001).