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# FOREWORD

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## FOREWORD

IN the expansion of facilities for all sorts of specialized training during the last fifty years, legal education has had its full share. More noteworthy even than the increase in the number of law schools — of which I believe there are now about one hundred and eighty as against twenty in 1890 — has been the establishment of law reviews. In 1891, when Yale published its first issue, Harvard and Columbia were the only universities having law reviews and these had been started but recently. I understand that now there are about fifty-five of these vehicles of instruction and criticism. The quality of the leading reviews, among which the YALE LAW JOURNAL holds high rank, has won for them wide influence in giving direction to professional thought and thus in shaping the law itself as announced by the courts.

I well remember that thirty years ago Mr. Justice Holmes would refer somewhat scornfully to the "notes" in law school reviews which ventured, not always with modesty, to criticise pronouncements of the Supreme Court. I recall that at one time he admonished counsel who had the temerity to refer to them in argument that they were merely the "work of boys." He thought the limit had been reached when what he had said in his judicial opinions was approved by the students as being "a correct statement of the law." But through the intensive discipline of the law schools and the selection of review editors from the best students, there has been a growing regard for these "notes" as helpful analyses of decisions, while the articles contributed to the reviews by eminent legal experts have given lawyers and judges the benefit of wide research and exploration, not infrequently blazing new trails in preference to old but less desirable paths. It is not too much to say that, in confronting any serious problem, a wide-awake and careful judge will at once look to see if the subject has been discussed, or the authorities collated and analyzed, in a good law periodical. If some members of this "fourth estate" of the law, conscious of their prestige and influence, may seem at times to assume an attitude approaching arrogance, they are at once subject to counter-attack and a balance of sound criticism is attained, with advantage to all concerned. It is idle to expect in legal discussion and judicial opinion, in relation to close questions of

high importance, any greater unanimity of view than we find in other domains of human thought—art, science, or theology. And I think we may assume that a bench composed of law school professors or law review editors, impartially chosen, would exhibit views as varying as those of the judges whose works they appraise.

While we may well wonder why, with all these informing and critical methods, the administration of justice has not come closer to our ideals, we at least may note substantial progress through the years, although it has been slow because of refractory material. In looking the other day at the first volume of the YALE LAW JOURNAL, I observed with interest that the second number had an article on *The Power to Compel Physical Examination in Cases of Injury to Person*,<sup>1</sup> referring to the *Botsford* case<sup>2</sup> decided shortly before—a subject with which we were still grappling in a recent case in which we decided that the new Rules of Civil Procedure had taken care of that matter.<sup>3</sup> The new civil rules have made notable improvements in the procedure of the federal courts and another important advance will soon be made in the field of criminal practice. The Supreme Court is about to undertake the preparation of Rules of Criminal Procedure, before verdict, under the authority granted by Congress. These will supplement the Criminal Appeals Rules promulgated a few years ago. These forward movements in the federal field cannot fail to have repercussions in the sphere of state administration.

When the YALE LAW JOURNAL had completed its first year, it expressed the hope that “sunny years of prosperity” lay ahead for the Yale School of Law. That hope has been abundantly realized and in no small degree through the eminent success of the YALE LAW JOURNAL. I trust that it may continue to enjoy the prosperity it has so well deserved and to maintain, to the benefit of the bench and bar, the highest standards of legal journalism.

CHARLES E. HUGHES †

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1. (1891) 1 YALE L. J. 57.

2. *Union Pacific Ry. v. Botsford*, 141 U. S. 250 (1891).

3. *Sibbach v. Wilson & Co., Inc.*, 61 Sup. Ct. 422 (U. S. 1941).

† Chief Justice, Supreme Court of the United States.