

論説



Student-Edited Law Reviews and Their Role in U.S. Legal Education



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Introduction

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Introduction

For well over a century student-edited law reviews have been a major vehicle for publication of scholarship on law in the United States. At those law reviews, students bear responsibility for nearly all aspects of the publication process, including the vitally important task of selecting what works will be published. Criticisms have been raised over various aspects of this system, but they have not stemmed the rise of student-edited law reviews. Today, such law reviews are firmly entrenched as a central feature of the U.S. legal system; and, facilitated by advances in technology, the number of student-edited law reviews continues to climb. Works published in those law reviews — including notes and comments written by students as well as articles written by scholars — have had great impact on the development of U.S. law. At the same time, law reviews serve as a valuable component of the U.S. legal education system.

After introducing a few facts and figures regarding the position occupied by student-edited law reviews, this Article examines their historical background. The Article then considers the value of law review membership, by reference to a discussion of the tasks performed by members. The Article closes with a discussion of various criticisms and concerns

that have been raised regarding student-edited law reviews.

I . Facts and Figures

In most academic disciplines in the United States, the central vehicle for publication of scholarship consists of peer-reviewed journals. Manuscripts submitted for publication are reviewed by other experts in the field — one’s “peers.” If deemed worthy of publication, the manuscripts then typically are edited by experts in the field.

In the field of law, as well, many peer-reviewed journals exist. The *2006 Directory of Law Reviews* (the most recent version of that directory in print) lists a total of 177 “non-student-edited peer review and trade journals.”¹⁾ As that directory notes, even for these peer-reviewed journals “students often play a variety of editorial roles in proofing and preparing ... works for publication,” but “students do not make principal editorial decisions about accepting and publishing works.”²⁾ Nearly all the peer-reviewed journals specialize in particular fields of law, such as criminal justice or intellectual property,³⁾ or particular disciplinary perspectives, such as law and economics or law and society.⁴⁾

Student-edited law reviews greatly outnumber the peer-reviewed journals, with over 500 student-edited law reviews listed in the *2006 Directory*.⁵⁾ For most student-edited law re-

views, a faculty advisor or a board of advisors (sometimes including practitioners or judges as well as faculty members) provides guidance. In nearly all cases, however, students themselves are responsible for all editorial matters, including selection of works for publication and the often extensive editing of those works prior to publication.

Student-edited law reviews fall into two broad categories: general law reviews and specialized law reviews. Virtually every law school in the United States has at least one student-edited law review. Typically, the first law review to begin operations at a law school bears the name of the school followed by either “Law Review” (e.g., *Harvard Law Review*, *UCLA Law Review*) or “Law Journal” (e.g., *Yale Law Journal*, *Georgetown Law Journal*); and, at most law schools where other specialized law reviews have been established, it is common to refer to the initial law review as the “main” or “flagship” law review. While many of these law reviews from time to time publish special symposia issues or issues devoted to particular topics, almost all publish a wide range of scholarship, and thus they have a *general* rather than a specialized focus. The *2006 Directory* lists 181 such “general” law reviews at accredited law schools in the United States.⁶⁾ Over two-thirds of these general law reviews publish at least four issues per year, including nearly 30 that publish six or more issues per year.⁷⁾

1) MICHAEL H. HOFFHEIMER, 2006 DIRECTORY OF LAW REVIEWS 41-56 (Lexis-Nexis, 2006), available at <http://www.lexisnexis.com/lawschool/prodev/lawreview/> (last visited May 16, 2011). Number of law reviews calculated by author.

2) *Id.* at vii.

3) A considerable number of these journals focus on even narrower niches within specific fields. As examples, journals listed under the “Criminal Law and Procedure” heading include the *Federal Sentencing Reporter* and *Women & Criminal Justice*, HOFFHEIMER, *supra* note 1, at 44-45.

4) For a recent exception to the special focus pattern, see *infra* text accompanying note 70.

5) See HOFFHEIMER, *supra* note 1, at 1-40. Number of law reviews calculated by author.

6) See *id.* at 1-14. Number of law reviews calculated by author. The *Directory* also lists three law reviews at law schools in Puerto Rico.

7) The *Directory* lists frequency of publication. By my count, of the 181 main law reviews listed, 131 publish four or more issues per year, of which 27 publish six or more (including five that publish eight times per year). See *id.*

At many law schools, students have established additional law reviews, focused on particular fields of law or particular disciplinary perspectives. The 2006 *Directory* lists a total of 321 such “special focus student-edited law journals.”⁸⁾ The largest category of such specialized journals is international and comparative law, for which 75 journals are listed. Other large categories include environmental-related (32), science and technology-related (23), gender-related (19), and human rights/civil rights and public policy-related journals (18 each).⁹⁾ Not all law schools have such special focus journals. At some schools, though, several such journals exist; and the number of student-edited special focus journals continues to rise. At Harvard Law School, for example, the 2006 *Directory* listed ten specialized journals, in addition to the *Harvard Law Review*. Since 2006 Harvard Law School students have launched four additional journals.¹⁰⁾ The special focus journals tend to be published on a less frequent basis than the main law reviews; of the 321 special focus journals listed in the 2006 *Directory*, fewer than 50 publish more than three issues per year.¹¹⁾

As the above figures show, student-edited law reviews greatly outnumber peer-reviewed law journals. The student-edited law reviews also dominate the law review rankings.¹²⁾ The most common methodology utilized for rank-

ing U.S. law reviews involves citation studies, based on the number of times works published in those reviews have been cited in journals or judicial opinions. Numerous such studies have been conducted over the years. In an article published in 2002, the author compiled the results from fourteen such studies, conducted between 1930 and 2000, and calculated the average rankings from the various studies.¹³⁾ General student-edited law reviews dominated the resulting list. Three law reviews — *Harvard Law Review*, *Yale Law Journal*, and *Columbia Law Review* — were near the top of all the separate studies; those three occupied the top slots by a substantial margin. General student-edited journals occupied every one of the next seventeen positions, as well. The first special focus journal on the list, at number 21, was *Law and Contemporary Problems* — a faculty-edited journal founded in 1933 and based at Duke University School of Law.¹⁴⁾

Seeking to eliminate the bias in favor of journals that have been in publication for many years, another ongoing effort to rank law reviews takes into account only citations to works published in the most recent eight years, with further weighting for journals that commenced publication even more recently.¹⁵⁾ The data is compiled in a freely available database that provides users great flexibility to tai-

8) See *id.* at 15-40. Number of law reviews calculated by author.

9) See *id.*

10) See Harvard Law School, Student Organizations and Journals, Journals and Publications, <http://www.law.harvard.edu/current/orgs/journals/index.html> (last visited April 26, 2011). That Website lists a total of sixteen student-edited journals, in addition to the main *Harvard Law Review*. Of the sixteen, the *Harvard Law & Policy Review* (2006), the *Harvard Journal of Sports and Entertainment Law* (2010), the *Harvard National Security Journal* (2010), and the *Harvard Business Law Review* (2011) have commenced publication since 2006.

11) See HOFFHEIMER, *supra* note 1, at 15-40. By my count, of the 321 special focus law reviews listed, 49 publish four or more issues per year.

12) For a listing of various methodologies for ranking law reviews, with cites and links to leading examples of each approach, see Mary Whisner & Ann Hemmens, Writing for & Publishing in Law Reviews: Which Are the Best Law Reviews?, <http://lib.law.washington.edu/ref/lawrev5.html> (last visited May 20, 2011).

13) Kincaid C. Brown, *How Many Copies Are Enough? Using Citation Studies to Limit Journal Holdings*, 94 L. LIBR. J. 301 (2002).

14) See About L&CP, <http://www.law.duke.edu/journals/lcp/> (last visited May 3, 2011).

15) See Law Journals: Submissions and Ranking, <http://lawlib.wlu.edu/LJ/index.aspx> (last visited May 20, 2011).

lor searches. Based on that methodology, as well, general student-edited law reviews have continued to dominate the citation rankings.¹⁶⁾

Other efforts to rank law reviews have included assessments of author prominence¹⁷⁾ and surveys of experts.¹⁸⁾ Two of the author prominence studies have focused exclusively on general student-edited journals;¹⁹⁾ other studies of both types have focused on specialized journals. Accordingly, these studies do not attempt to compare general journals to special focus journals. Although the studies of specialty journals have ranked certain peer-reviewed journals highly,²⁰⁾ student-edited journals have dominated most of the top spots in the rankings for specialty journals, as well.

II. History

In 1987, for the one-hundredth anniversary of the founding of the *Harvard Law Review*, Erwin Griswold, who had been president of

that law review sixty years earlier,²¹⁾ prepared a commemorative essay.²²⁾ In the essay, Griswold, who was a strong supporter of the Review for the rest of his life, including the twenty-one years he served as dean of Harvard Law School, commented:

Perhaps the greatest thing about the *Harvard Law Review* is the fact that it has from the beginning depended on student initiative, and has been operated under student responsibility and is, for practical purposes, student controlled. The *Centennial History of the Harvard Law School* states that “[t]he Faculty were invited to take an active part in the management, but thought that the interests of the paper would be more advanced by their remaining in the background.”²³⁾

At the close of the essay, Griswold returned to the theme of student control. “Some people,” he observed, “are concerned that a major

16) Based on searches conducted by the author on April 26, 2011: On the “combined score” (a composite score calculated on the basis of a formula devised by the database compiler), general student-edited law reviews occupied every position through number 24. Similarly, general student-edited law reviews dominated the rankings in terms of journal citations and so-called “impact factor” (based on the number of citations per article published). The one category in which other types of journals appeared high in the rankings was that for citations in judicial opinions. If one limits the search to citations in cases, a peer-reviewed special focus journal, *The American Bankruptcy Law Journal*, ranked number one; another peer-reviewed specialized journal, *The Business Lawyer*, ranked number ten; and two student-edited special focus journals, *American Bankruptcy Institute Law Review* and *American Criminal Law Review*, ranked number five and number eighteen, respectively. Otherwise, even for citations in judicial opinions, all the top thirty spots were occupied by general student-edited law reviews.

17) See, e.g., Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews: An Empirical Analysis Based on Author Prominence*, 39 ARIZ. L. REV. 15 (1997); Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813 (1999).

18) See, e.g., Gregory Scott Crespi, *Ranking International and Comparative Law Journals: A Survey of Expert Opinion*, 31 INT’L LAW. 869 (1997) (hereinafter, Crespi, *International and Comparative*); Gregory Scott Crespi, *Ranking the Environmental Law, Natural Resources Law, and Land Use Planning Journals: A Survey of Expert Opinion*, 23 WM. & MARY ENVTL. L. & POLY REV. 273 (1998).

19) See Jarvis & Coleman, *supra* note 17; Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews by Author Prominence: Ten Years Later*, 99 LAW LIBR. J. 573 (2007).

20) For example, two peer-reviewed journals, *The American Journal of International Law* and *The American Journal of Comparative Law*, rank at the top of the listings for international and comparative journals based on surveys of experts in those fields. See Crespi, *International and Comparative*, *supra* note 18, at 875.

21) See Editorial Board, 41 HARV. L. REV. 69 (1927).

22) Erwin N. Griswold, *The Harvard Law Review — Glimpses of Its History as Seen by an Aficionado*, HARV. L. REV.: CENTENNIAL ALBUM 1 (1987).

23) *Id.* at 14, quoting HARVARD LAW SCHOOL ASSOCIATION, *THE CENTENNIAL HISTORY OF THE HARVARD LAW SCHOOL* 140 (1918).

legal periodical in the United States is edited and managed by students. It is an unusual situation, but it started that way, and it developed mightily from its own strength.”²⁴⁾

How did the *Harvard Law Review* and other student-edited law reviews come to occupy such a central position in U.S. legal scholarship? That is the topic to which I now turn.

Through the mid-nineteenth century, the principal sources of scholarship on law in the United States were treatises and law reports.²⁵⁾ The former, treatises, were lengthy academic works, sometimes extending to multiple volumes, seeking to set forth and explain the legal doctrine in a given field of law systematically.²⁶⁾ The latter, law reports, were the predecessors of today’s case reporters; they reported recent judicial cases, typically including the opinions of the judges together with summaries of the facts and arguments of counsel.²⁷⁾

During the first half of the nineteenth century, there were a number of attempts to establish legal periodicals, which typically included news stories regarded as of interest to lawyers as well as reports on cases and other commentary; but these ventures rarely survived for more than a few years.²⁸⁾ The efforts to establish commercially viable legal periodicals continued, however; and at least two of the commercial ventures established after

1850 had a more academic orientation: the *American Law Register*, founded in 1852, and the *American Law Review*, founded in 1866.²⁹⁾ Both included scholarly articles and reviews of recent books on law, as well as news of legal events. Both also have special significance for the development of student-edited law reviews. Although the *American Law Register* initially was edited by lawyers, in 1896 students at the University of Pennsylvania Law School took over the editing. That journal still exists today, under the title *University of Pennsylvania Law Review*, making it the oldest continually published law journal in the United States.³⁰⁾ The *American Law Review* bears special note because of its connections to the *Harvard Law Review*. Two Harvard Law School graduates who were then practicing law in Boston started the *American Law Review*;³¹⁾ and the students who established the *Harvard Law Review* regarded that *Review* as a valuable model.³²⁾ In turn, it was the *Harvard Law Review* that paved the way for the rise of student-edited law reviews and set the pattern for subsequent reviews in the United States.³³⁾

Three major aspects of the *Harvard Law Review* bear particular note: the process by which it was established, its contents, and its success. Turning first to the process of establishment, in the fall of 1886 a group of highly

24) Griswold, *supra* note 22, at 19-20.

25) See Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 742-750 (1985), and sources cited therein.

26) For an examination of the history of legal treatises, see A.W.B. Simpson, *The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature*, 48 U. CHI. L. REV. 632 (1981).

27) For an examination of the history of law reports, see Erwin C. Surrency, *Law Reports in the United States*, 25 AM. J. LEG. HIST. 48 (1981).

28) See Swygert & Bruce, *supra* note 25, at 751-755.

29) See *id.* at 755-758.

30) See *id.* at 756-757.

31) See *id.* at 757.

32) See, e.g., *id.* at 758, 762-763 & n. 205, 776 n. 304.

33) The *Harvard Law Review* was not the first student-edited law review. The first reportedly was the *Albany Law School Journal*, which commenced publication in 1875 but lasted just one year. See *id.* at 764-766. The *Columbia Jurist*, a weekly journal edited by students at Columbia Law School, also predated the *Harvard Law Review*. It began in 1885 but ceased publication midway through its third year. See *id.* at 766-768.

capable and deeply committed students took the lead in efforts to establish the *Review*.³⁴⁾ They approached faculty members with the idea, and received encouragement and strong support from a popular and highly regarded professor, James Barr Ames.³⁵⁾ It is not evident whether the dean at the time, Christopher Columbus Langdell, actively supported the establishment of the *Law Review* at the start;³⁶⁾ but Langdell contributed three works during the first year and a total of twenty-seven articles over the years,³⁷⁾ and soon became a strong supporter of the *Law Review*. A final essential element was financial support. Reportedly at the suggestion of Ames, the students approached leading alumnus (and later U.S. Supreme Court Justice) Louis Brandeis, who contributed funds himself and introduced students to other alumni likely to support the journal.³⁸⁾ The establishment of the *Harvard Law Review* thus involved the interaction of four elements — able and committed students, advice and support from a faculty member, acquiescence (if not active support) by the dean, and outside financial support. With these elements in place, the students commenced publication of the *Harvard Law Review* in the spring of 1887.

All four of the above elements continue to be of great relevance for the successful establishment of student-edited law reviews. If one of the four legs is sufficiently strong, it may overcome weakness in one of the other legs. Thus, for example, if the dean is deeply committed, the law school may provide adequate funding and thus obviate the need for outside support. Similarly, committed and knowledgeable alumni may provide sufficient advice and

support to overcome the absence of a capable and supportive faculty advisor. It is hard to imagine a law review succeeding without at least three of the four legs, however. Needless to say, the most essential component is the existence of a group of able and committed students.

A second noteworthy aspect of the *Harvard Law Review* is its contents. At the start, the *Review* sought to include news about events at the law school, akin to what one might find in newsletters today. Accordingly, for the first few years it included “notes about happenings at the school, reports of moot court arguments, [and] summaries of class lectures.”³⁹⁾ From the beginning, however, the founders’ goal was to establish a scholarly journal. The Harvard students decided to publish eight issues per year — in effect one issue for each month of the academic year. Each issue normally included at least two articles on important legal topics, typically written, in the *Law Review*’s early years, by professors or leading alumni of Harvard Law School. (In reflections on the fiftieth anniversary of the founding of the *Law Review*, one of the early editors commented: “We *knew* that our faculty comprised scholars of the highest standards and accomplishments in their fields. ... We yearned to see the fruits of their scholarship in print.”⁴⁰⁾) From the start the *Law Review* contained a “Notes” section which, in addition to reporting on news relating to the Law School, typically contained discussion of recent developments in the law, often accompanied by analytical commentary. Each issue also usually included a “Recent Cases” section containing comments on recent judicial decisions; initially,

34) *See id.* at 769-770.

35) *See id.* at 770-771.

36) *See id.* at 771.

37) *See id.* at 778.

38) *See* Griswold, *supra* note 22, at 3-5.

39) Swygert & Bruce, *supra* note 25, at 773.

40) John H. Wigmore, *The Recent Cases Department*, 50 HARV. L. REV. 862, 862 (1937) (emphasis in original).

most of the comments simply summarized the cases in question, but a few offered critical commentary on the decisions.⁴¹⁾ Finally, most issues closed with a section of book reviews, most of which offered critical evaluations of the works in question. Notably, the notes, case comments, and book reviews, and on occasion even lead articles, were written by the student editors.

After the first few years, the *Law Review* dropped the reports of moot court arguments and the summaries of lectures,⁴²⁾ and gradually reduced the coverage of law school events. Over time, moreover, the notes and comments (the latter subsequently divided into “Recent Cases,” “Recent Legislation” and “Recent Regulation”) became considerably more elaborate, and certain new features were added. And today the *Harvard Law Review* by no means views its primary role as to disseminate scholarship by authors affiliated with Harvard Law School; to the contrary, for most of its history the *Law Review* has viewed its role as to publish the best scholarship on law, regardless of the authors’ affiliation. On the whole, however, even today the *Harvard Law Review* follows the basic pattern set by the first editors. Moreover, the pattern set by the *Harvard Law Review* has become the norm for most other law reviews in the United States, as well. Most issues begin with lead articles written by legal scholars or knowledgeable practitioners; con-

tain sections of notes or comments on current legal issues or recent cases and legislation, written by student authors; and close with book reviews, some written by scholars and others by students.

A third noteworthy aspect of the *Harvard Law Review* is its success. Within a few years after its establishment, lawyers began to cite articles from the *Review* in their briefs and judges began to cite articles from it in their opinions.⁴³⁾ Law review articles also began to influence legislation.⁴⁴⁾ Lawyers began to look to law reviews as a source of information and ideas.⁴⁵⁾ Law review experience provided valuable educational benefits;⁴⁶⁾ and for that reason — as well as the common practice, discussed further in Part III below, of awarding spots on the law review to those with high grades⁴⁷⁾ — law firms began to treat law review members favorably in hiring decisions.⁴⁸⁾ For the *Harvard Law Review*, the focus in the early years on publication of works by professors and leading graduates of Harvard Law School helped establish the *Review*’s reputation. At the same time, its publication of those works helped enhance the reputations of those professors and graduates, and of Harvard Law School itself.⁴⁹⁾

These potential benefits, of course, were not unique to Harvard; and it did not take long for student-edited law reviews to spring up at a number of other leading law schools. In the

41) See *id.* at 864-865.

42) The summaries of class lectures reportedly were dropped after it was reported that some students had begun relying on those lecture notes and not attending class, see Griswold, *supra* note 22, at 10.

43) See, e.g., Swygert & Bruce, *supra* note 25, at 787-789 and sources cited therein; Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 36 J. LEGAL EDUC. 1, 4 (1986).

44) See Swygert & Bruce, *supra* note 25, at 789 and sources cited therein.

45) See, e.g., *id.* at 789-790 and sources cited therein; Bernard J. Hibbitts, *Last Writes? Re-assessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 622-623 (1996), and sources cited therein.

46) See, e.g., Douglas B. Maggs, *Concerning the Extent to which the Law Review Contributes to the Development of the Law*, 3 S. CAL. L. REV. 181, 184-185 (1930); Hibbitts, *supra* note 45, at 622 and sources cited therein.

47) See *infra* text accompanying notes 88-92.

48) See, e.g., Swygert & Bruce, *supra* note 25, at 789-790 and sources cited therein; Hibbitts, *supra* note 45, at 622-623 and sources cited therein.

49) See Hibbitts, *supra* note 45, at 623-625.

fall of 1887, just months after the *Harvard Law Review* commenced publication, students at Columbia Law School started a journal.⁵⁰⁾ That journal ceased publication after six years; but in 1901 Columbia students tried again, and the resulting publication, the *Columbia Law Review*, soon became one of the nation's leading law journals. In the meantime, students at Yale Law School launched the *Yale Law Journal* (founded in 1891);⁵¹⁾ and, as mentioned earlier, in 1896 students at the University of Pennsylvania Law School took over the editing of the *American Law Register*.⁵²⁾ In the first few years of the twentieth century, faculty-edited law reviews commenced publication at the University of Michigan Law School and Northwestern University Law School;⁵³⁾ both those journals shifted to student editors by the 1930s.⁵⁴⁾ The number of law reviews continued to rise. By 1928 there were thirty-three law reviews; by 1937 there were fifty;⁵⁵⁾ and by 1951 there were seventy-six.⁵⁶⁾ Over time it came to be assumed that every accredited law school would have at least one student-edited law review.⁵⁷⁾

The rise in student-edited special focus journals occurred considerably later than the rise in general law reviews, but has been even more dramatic. The first law school-affiliated specialized journal was the *Journal of the American Institute of Criminal Law and Crimi-*

nology, established by the Northwestern University Law School in 1910.⁵⁸⁾ Five more specialty journals were established at law schools in the 1930s and 1940s.⁵⁹⁾ All these journals began as faculty-edited journals; in later years four shifted to student editors, while the other two continue to be edited by faculty members.⁶⁰⁾ In the 1950s, nine new specialty journals began at U.S. law schools.⁶¹⁾ Thereafter, the number of specialty journals began to surge. According to a study conducted in early 1998, twenty-seven new specialty journals commenced publication at U.S. law schools in the 1960s, sixty in the 1970s, ninety-one in the 1980s, and 137 between 1990 and early 1998.⁶²⁾ Although no such concrete statistics are available for the first decade of the twenty-first century, new specialty journals continue to appear at a rapid rate. Moreover, as the figures reported in Part I of this Article reflect, a substantial majority of these specialty journals are student-edited.

The development of word-processing software and information technology and, more recently, the advent of online journals have reduced some of the burdens involved. Even so, launching a new specialty journal remains a major undertaking. The same basic elements come into play as for establishing general law reviews — able and committed students; one or more supportive faculty members; law

50) See Swygert & Bruce, *supra* note 25, at 782.

51) See *id.* at 782-783.

52) See *supra* text accompanying note 30.

53) The *Michigan Law Review* was founded in 1902; the *Illinois Law Review*, later renamed the *Northwestern University Law Review*, was founded in 1906.

54) See Swygert & Bruce, *supra* note 25, at 783-786.

55) See Hibbitts, *supra* note 45, at 629 and sources cited therein.

56) See *id.* at 634 and sources cited therein.

57) See, e.g., Joshua D. Baker, Note, *Relic or Relevant?: The Value of the Modern Law Review*, 111 W. VA. L. REV. 919, 924 (2009) ("All 199 ABA-approved institutions sponsor at least one law review and many schools sponsor several.").

58) See George & Guthrie, *supra* note 17, at 816.

59) See *id.*

60) Ascertained by author, by examining the current homepages of the six journals.

61) See George & Guthrie, *supra* note 17, at 818.

62) See *id.* at 818, 821-822 and n. 56 (count "accurate as of January 31, 1998").

school support; and a source for funding, at least for the crucial startup period.

Motivations for starting specialty journals are varied. In some cases, law schools have encouraged the establishment of law journals specializing in fields in which those law schools are strong, thereby seeking to promote those strengths and enhance the law schools' reputation. Thus, for example, the University of Missouri School of Law "launched the *Missouri Journal of Dispute Resolution* as part of the law school's effort to establish itself as a leader in the dispute resolution field."⁶³⁾ In some cases, law schools have encouraged new specialty law journals in order to provide a greater number of students with the opportunity to serve on law reviews. A prominent early example is then-Dean Griswold's support for the establishment of the first three special focus journals at Harvard Law School in the late 1950s and 1960s. As Griswold later explained, "[W]hen I was Dean I took steps to encourage the development of ... serious and substantial publications [in addition to the *Harvard Law Review*] in order to provide vehicles through which other students could have similar opportunities"⁶⁴⁾ In what is probably the most common pattern for the establishment of specialty journals, groups of students with shared interests in particular fields, such as human rights or environmental law, or shared concerns, such as concerns over issues related to gender or race, have pushed to start journals focused on those fields or concerns.

As Griswold hoped, the proliferation of general and special focus journals has provided many students with the opportunity to serve on law reviews. According to a survey of over 6500 third-year law students at 77 U.S. law schools, conducted in the spring of 2010, nearly 35% of the respondents had participated in a law journal or planned to do so prior to graduation.⁶⁵⁾ At law schools with multiple journals, well over half of all students may work on law reviews during their time in law school. Stanford Law School, for example, which currently has eight special focus law journals, in addition to the general *Stanford Law Review*,⁶⁶⁾ reports that 69% of students work on law reviews or journals.⁶⁷⁾

In explaining the dominance of student-edited law reviews, Griswold commented, "it started that way, and it developed mightily from its own strength."⁶⁸⁾ Viewed in that manner, the central position occupied by student-edited law reviews today may be seen as a classic case of path dependence.

Yet that explanation begs the questions of why there was a gap that allowed the rise of student-edited reviews in the first place, and why peer-reviewed or faculty-edited journals did not arise thereafter and displace the student-edited journals. As mentioned above, even after the advent of student-edited journals, a few faculty-edited general law reviews were established, along with a considerable number of faculty-edited specialty journals. Some of those specialty journals survive in the faculty-edited format; in the past few decades

63) *See id.*, at 818.

64) Griswold, *supra* note 22, at 16.

65) *See* 2010 LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, *overview available at* <http://lsse.iub.edu/> (last visited May 17, 2011); relevant pages from analyzed data report prepared for the University of Washington School of Law on file with author.

66) *See* Stanford Law School, Student Journals, <http://www.law.stanford.edu/publications/journals/> (last visited May 5, 2011).

67) *See* Stanford Law School, Law School Facts, Student Activities, http://www.law.stanford.edu/school/facts/#student_activities (last visited May 5, 2011).

68) Griswold, *supra* note 22, at 19-20.

a large number of new faculty-edited specialty journals have begun publication;⁶⁹⁾ and, in a noteworthy recent development, in 2009 faculty members at Harvard Law School launched a new peer-reviewed *general* law journal.⁷⁰⁾ Nevertheless, in the United States it is not uncommon for journals that begin as faculty-edited eventually to shift to student editors.

A major reason why a gap existed to allow the rise of student-edited journals in the first place and why a fair number of faculty-edited journals shift to student editors lies in incentive structures.⁷¹⁾ Thorough editing, of the sort on which U.S. law reviews pride themselves, is highly time-consuming. For student editors, the rewards of law review membership include training in research, writing and other skills; at many law schools, academic credits; and, in what are almost certainly the most prized benefits, prestige and enhanced job prospects.⁷²⁾ Given these benefits, most students are willing to provide their services for free. Indeed, students typically feel honored to be offered that opportunity. In contrast, the incentive structure for faculty members works against their receptiveness to journal editing. For faculty members at U.S. law schools, conducting research and publishing articles are regarded as the most important factors for attaining academic positions, achieving promotion and tenure,⁷³⁾ and receiving research funds. Journal editing, on the

other hand, typically is accorded little weight in those decisions. Furthermore, journal editing usually does not pay very well. For these reasons, faculty members have relatively little practical incentive to take on the burdens of editing law journals.

Of course, if student-edited law reviews were not regarded as worthy vehicles for the publication of scholarship, faculty members would have a shared interest in establishing and maintaining well regarded journals. As noted earlier, however, in the United States the top student-edited journals are accorded great respect. For purposes of such matters as hiring, promotion and tenure, U.S. law schools do not demand publication of articles in peer-reviewed journals. If anything, U.S. law schools tend to accord greater weight to publication of articles in highly ranked general student-edited law reviews than in specialty journals, whether peer-reviewed or not. Accordingly, the combination of positive incentives for students and negative incentives for faculty members helps ensure the dominance of student-edited law reviews.

III. The Value of Law Review Membership

Within a few years after student-edited law reviews appeared, law firms began seeking to hire students who had served on those re-

69) See George & Guthrie, *supra* note 17, at 819-820.

70) The new publication, the *Harvard Journal of Legal Analysis*, is an online journal aimed at publishing legal scholarship from all fields of law and from all disciplinary perspectives. See Harvard Law School, News & Events, Spotlight at Harvard Law School, Faculty Research, *Ramseyer and Shavell launch peer-reviewed law journal, with open access online*, <http://www.law.harvard.edu/news/spotlight/faculty-research/ramseyer.shavell.html> (last visited April 26, 2011). This journal is available free online at <http://jla.hup.harvard.edu> (last visited August 22, 2011).

71) For an examination of the rise of the American law review that focuses on the incentives for law schools, law professors, and alumni to support the establishment of student-edited law reviews, see Hibbitts, *supra* note 45, at 617-626.

72) For a discussion of the value of law review membership, see *infra* Part III.

73) For a discussion of the hiring process at U.S. law schools, see Daniel H. Foote, *Beikoku rō sukūru no uchigawa: kyōin no gakureki/shokureki tō no tōkei bunseki wo tsūjite* [An Inside View of U.S. Law Schools: Based on a Statistical Analysis of the Academic and Occupational Backgrounds of Faculty Members], 121 HŌGAKU KYŌKAI ZASSHI 1285, 1301-1311 (2004).

views.⁷⁴⁾ In later years, the view became widely accepted that law review members, especially those who had been selected for the main law review, enjoyed an advantage with respect to hiring as associates by law firms and hiring as law clerks by judges,⁷⁵⁾ and that law review experience also was an important credential for those seeking careers as law professors. Empirical studies have confirmed these perceptions.⁷⁶⁾

In 1991, students at Stanford Law School conducted surveys of attorneys, judges and professors regarding their views on and usage of law reviews.⁷⁷⁾ They found that “[m]ost former law review members ... highly value their law review experiences, both for improving their skills and for enhancing their employment prospects.”⁷⁸⁾ On the hiring side, they found that “[l]aw review membership is an important criterion in hiring decisions, [with] employers valu[ing] law review membership not only as a certification of ‘eliteness,’ but also for the education that law reviews impart.”⁷⁹⁾ This finding applied to all three groups of participants, with attorneys regarding law review membership as an important factor in hiring associates, judges in hiring law

clerks, and professors in hiring new faculty members.⁸⁰⁾ Professors, the study found, accorded especially great weight to law review membership.⁸¹⁾

Another study, the results of which were published in 2004, examined the impact of membership on the main *University of Chicago Law Review* on the careers of graduates of the University of Chicago Law School.⁸²⁾ The study found that, “[h]olding [grade point average] constant, *Law Review* membership dramatically increased the likelihood of completing a clerkship in a federal court”,⁸³⁾ and it also found a greater likelihood for those who had served on the *Law Review* to enter teaching careers.⁸⁴⁾

Similarly, in an examination I undertook of the backgrounds of over 500 faculty members at U.S. law schools, among the traditional tenure-track faculty members (a category that is largely equivalent to *kenkyūsha kyōin* at Japanese law schools) in the sample, nearly 60% had served on a law review, with higher percentages at higher rated law schools.⁸⁵⁾ At Harvard Law School, of the traditional tenure-track faculty members for whom biographical information was included in a national directo-

74) See Swygert & Bruce, *supra* note 25, at 790 and sources cited therein.

75) In the United States, some law school graduates serve as law clerks for federal or state court judges after graduation, and a select few go on to serve as law clerks for justices at the U.S. Supreme Court. These positions are highly prestigious. For a discussion of the law clerk system, see Daniel H. Foote, *Reflections of a Former Law Clerk*, in MATSUO KŌYA SENSEI KOKI SHUKUGA RONBUNSHŪ, GEKAN [Essays in Honor of Professor Kōya Matsuo on the Occasion of His Seventieth Birthday, Vol. 2] 796 (Kuniji Shibahara, Noriyuki Nishida and Masahito Inouye eds.) (Yūhikaku, 1998).

76) For a summary of various empirical studies, see Dexter Samida, Comment, *The Value of Law Review Membership*, 71 U. CHI. L. REV. 1721, 1721-1724 (2004).

77) Max Stier, Kelly M. Klaus, Dan L. Bagatell & Jeffrey J. Rachlinski, Project, *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Judges, and Professors*, 44 STAN. L. REV. 1467 (1992).

78) *Id.* at 1468. The relevant results are discussed in more detail in *id.* at 1490-1492.

79) *Id.* at 1468. The relevant results are discussed in more detail in *id.* at 1487-1490.

80) *Id.* at 1488.

81) *Id.*

82) See Samida, *supra* note 76.

83) *Id.* at 1728.

84) *Id.* at 1729-1730.

85) See Foote, *supra* note 73, at 1326-1327.

ry of law teachers for 2007-08, nearly 80% had served on a law review.⁸⁶⁾

As the author of the University of Chicago study observed, one reason for the correlation between law review membership and judicial clerkships may be that law review members are more inclined to pursue clerkships than other students.⁸⁷⁾ Much the same might be said for the correlation between law review membership and faculty positions. The work of both judicial clerks and law professors involves extensive research and writing, just as does work on law reviews. It seems safe to assume that those who have experienced research and writing through law reviews — at least those who have found the experience enjoyable — are more likely to seek clerkships and faculty positions. In the case of judicial clerkships, another likely factor is the information network law reviews provide. It is typical for law schools to offer informational sessions and guidance for students considering judicial clerkships, but law review members often have access to more detailed information about the best strategies for securing clerkships, passed down from former law review members through the internal law review grapevine.

There can be little question, however, that the most important reasons law review membership confers benefits with respect to hiring lie in the prestige membership affords and the experience it provides.

Selection to the main law review is widely regarded as one of the highest honors for law school students in the United States. Traditionally, selection to most main law reviews

was based primarily on law school grades. In the early years of the *Harvard Law Review*, when vacancies occurred, members of the *Review* selected other students to fill those vacancies; grades evidently were important, but some subjectivity remained.⁸⁸⁾ By the early 1920s, the *Harvard Law Review* had moved to a system of selection based exclusively on grades; membership was reserved for students with the highest grade point averages.⁸⁹⁾ That approach persisted for about a half century; and during that period being “on law review” automatically meant one was at the top of his or her class.

In the 1970s, the *Harvard Law Review* switched to a system in which approximately half the members continued to be selected on the basis of grades, with the remaining members selected on the basis of performance in a writing competition.⁹⁰⁾ (In a telling indication that some law firms valued law review membership in large part as a proxy for high grades, at that time it was not uncommon for interviewers to inquire whether an interviewee had “made” law review “on grades” or had “written on.”) Since the 1980s, the *Harvard Law Review* has adjusted the selection process further, utilizing a range of considerations including grades, performance on the writing competition, and other factors.⁹¹⁾

Many other law schools also moved away from exclusive reliance on grades in determining membership. According to one empirical study, by the early 1980s the main law reviews at many law schools did not consider grades at all, and instead utilized systems in which applicants were evaluated on the basis of perfor-

86) See YUKIO YANAGIDA AND DANIEL H. FOOTE, HĀBĀDO: TAKUETSU NO HIMITSU — HĀBĀDO RŌ SUKŪRU NO EICHI NI MANABU [Harvard: Secrets to Its Preeminence — Learning from the Wisdom of Harvard Law School] 215 (2010).

87) See Samida, *supra* note 76, at 1727.

88) See Griswold, *supra* note 22, at 6.

89) See *id.* at 7.

90) See *generally id.* at 16.

91) For a summary of the current membership selection process, see Harvard Law Review Membership Selection Policies, http://www.harvardlawreview.org/hlr_477.php (last visited May 15, 2011).

mance on a writing competition or other factors.⁹²⁾ Furthermore, the standards for selection to special focus law reviews typically are less rigorous than for the main law reviews. Some special focus reviews utilize a writing competition or other competitive selection process; at others, membership is left entirely up to student choice. Even with the relaxation in standards, though, selection to a law school's main law review, and, in many cases, to a specialized law review, typically continues to signify high grades and/or excellence in research and writing.

The second major reason law review membership is important to prospective employers, and a key benefit of law review membership quite apart from any advantage it might confer in the search for employment, lies in the experience itself.⁹³⁾

Ordinarily, students are selected to law review prior to the start of their second (2L) year of law school.⁹⁴⁾ Early in that year, their responsibilities tend to involve so-called "cite-checking" and proofreading of pieces prior to publication. Both are time-consuming and tedious. In cite-checking, for example, the cite-checker must track down every source that is cited. Although many materials are now available online, the need to track down sources means that even today cite-checkers often must spend many hours in the bowels of the law library and frequently must visit other libraries; and they must become adept at using a wide range of research tools. If a quote is used, the cite-checker must ascertain that it corresponds precisely to the original, right down to the punctuation. If a source is cited as support, the cite-checker must make sure it truly supports the proposition for which it is

used. Under the prevailing law review philosophy, close is not good enough; the cited source must support the proposition exactly. (A further element of the prevailing law review philosophy is that support should be provided for all factual propositions. Typically, however, responsibility for pointing out propositions that require additional support is viewed as resting with the editor, rather than the cite-checker.) In addition, the cite-checker is expected to make sure the citation form is correct. As this description reflects, while tedious, cite-checking hones research skills; and both cite-checking and proofreading foster care and attention to detail.

As mentioned earlier, aside from book reviews, law reviews typically consist mainly of two categories of work: "notes and comments" — short pieces, generally no longer than twenty-five pages long, written by the student members of the law review, and typically focused either on a major recent case or piece of legislation or an emerging issue of law, and "articles" — works, often over fifty pages long, written and submitted by legal scholars (faculty members from one's own and other law schools and, from time to time, judges, practitioners, S.J.D. or LL.M. candidates, or even J.D. students).

For many members much of the 2L year is spent researching and writing the student's own note or comment. That process usually begins with a frantic search for an appropriate topic. Faculty members, other law review members, and alumni sometimes suggest topics; but the prospective author must take responsibility for finding a viable topic, and then must undertake a thorough "preemption check" to make sure no other law review has

92) See Josh E. Fidler, *Law-Review Operations and Management: An Empirical Study of the New York University Law Review Alumni Association*, 33 J. LEGAL EDUC. 48, 52-53 (1983).

93) The following account is based in part on my own experience as a member of the *Harvard Law Review* from 1979 to 1981, my experiences in publishing works at over a dozen U.S. law reviews, and my conversations with law review members at several law schools, as well as numerous sources cited in this article.

94) See Fidler, *supra* note 92, at 52-53.

published a piece dealing with the same topic.⁹⁵ The topic search and preemption check heighten students' attentiveness to new cases and legislation and emerging legal issues, and their awareness of recent legal scholarship.

Once the 2L member has located an appropriate topic, he or she undertakes extensive research and then writes and rewrites the piece numerous times under the intensive guidance of a third-year (3L) law review editor. A professor who specializes in the relevant field typically also serves as faculty advisor for the note or comment; but the 3L editor usually is far more demanding than the faculty member. Before the student author begins writing, the 3L editor typically expects a detailed outline; at that stage, the editor may note aspects that require further research and may suggest — or demand — significant changes in organization or focus. The editor usually keeps close tabs during the drafting process, often carefully reviewing each section as it is completed. After a full draft has been completed, it is common for the editor to undertake two or more major edits focusing on matters of substance and organization. Finally, even after the editor is satisfied that the piece is generally acceptable, the author and editor typically undertake at least two more full edits, in which they sit side-by-side and go through the entire piece line by line, reexamining matters of style and substance.

In the 3L year, the primary responsibility

for many law review members is to supervise 2Ls on their notes and comments. That is the editorial side of the process described above. Another group of 3L members bears responsibility for selecting and editing articles submitted by scholars. At many law reviews, especially recently established or lower-ranked law reviews, an important task for members of the articles office is to attract a sufficient number of articles worthy of publication; to do so, editors often must solicit articles or recruit potential authors. At higher-ranked law reviews, in contrast, a major task for the articles office is to sort through the articles submitted to determine those most worthy of publication. Apart from specially solicited articles or invited articles prepared for symposia issues, law reviews typically publish no more than ten to fifteen articles per year. To fill those slots, by the 1980s leading law reviews already were receiving several hundred submissions per year.⁹⁶ Aided by the rise in services permitting submission of articles online, the number of submissions has soared since then. According to a recent survey, it is common for law reviews at law schools ranked in the Top 50⁹⁷ to receive 1500 to 2000 articles per year, and often more.⁹⁸ Given this flood of submissions, selecting articles is difficult and time-consuming.⁹⁹ That is only the first step in the editing process, however. After they have accepted an article, the students themselves edit it meticulously prior to publication. While it generally

95) Even if another publication has addressed the same case, legislation or topic, if the proposed approach or orientation is sufficiently different from any previously published works, the law review editors may authorize the student author to proceed with research and writing. Even if a topic is not preempted at the start, though, for most student authors a constant fear is that the topic will be preempted — by another law review or by a new case or new piece of legislation — before the note or comment is published.

96) See Fidler, *supra* note 92, at 60 (in survey conducted in 1981, 8.9% of the 126 responding law reviews received over 300 article submissions per year).

97) The authors of the study utilized the 2006 law school rankings, as determined by the publication *U.S. News and World Report*. See Leah M. Christensen and Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power — Student Editors*, 59 SO. CAROLINA L. REV. 175, 180 n. 14 (2007).

98) See *id.* at 203-206.

99) For discussions of the article selection process, see, e.g., *id.*; Natalie C. Cotton, Comment, *The Competence of Students as Law Review Editors: A Response to Judge Posner*, 154 U. PA. L. REV. 951 (2006).

is not practicable for a student to sit down with a professor or practitioner for a line-by-line edit, the process of editing an article is often nearly as rigorous as the process of editing a student piece. On occasion student editors suggest changes to virtually every sentence in an article or even insist on major structural changes.

Book reviews constitute another standard element for most law reviews. Typically, though, in the law reviews of today relatively few books are reviewed. The *Michigan Law Review* stands as a striking exception to this pattern. Every year that *Review* devotes one entire issue to a survey of books related to the law, and the “book review issue” has achieved a well-earned reputation for excellence. Along similar lines, other law reviews have established traditions for special annual features. The *Harvard Law Review*, for example, has two such annual traditions. Ever since November 1949, that *Review* has devoted much of the first issue of each year to an examination of the preceding term of the U.S. Supreme Court.¹⁰⁰⁾ In addition to commentary by prominent scholars, the annual Supreme Court issue contains case comments on many of the Court’s decisions from the prior term, prepared by 3L members of the *Review*, as well as relevant statistics. In an annual spring tradition that also began in 1949, the *Harvard Law Review* has devoted much of one issue each year to a special feature entitled “Developments in the Law,” for which a team of 2L members, supervised by a team of 3Ls, explores various facets of a major current legal issue. In recent years, the Developments topics have included “Mental Illness and the Law” (February 2008) and “Access to Courts” (Feb-

ruary 2009).

Whether 3L law review members edit notes and comments or articles, work on book reviews or special projects, or serve as officers with broad supervisory authority, the responsibilities normally entail staying abreast of recent scholarship in a wide range of fields, intensive research, extensive writing and editing, and careful attention to detail. Law review is also very hard work. During peak periods, it is not unusual for members to spend 40-50 hours or more per week on law review responsibilities. Furthermore, law review work fosters teamwork. Perhaps the single greatest benefit of law review membership, though, is the intellectual stimulation it provides. In the keynote address for a 1995 conference on law reviews hosted by Stanford Law School, federal judge John Noonan, Jr., captured that quality well:

[Law reviews] provide the best — I am tempted to say the only — kind of education: education by peers. ... One can be self-taught by reading and one can be instructed by lectures. But to enter the heart of a discipline such as law, one has to exchange ideas on a plane of equality, argue for ideas, and point out to others the logical implications, the missing factual foundations, and the underlying assumptions of their ideas. One has to engage in intellectual combat; and the law review is, or can be, the most stimulating of environments for this civil conflict.¹⁰¹⁾

Given this wide range of educational benefits, one easily can understand why law firms, judges, and professors might value law review experience in hiring decisions, quite apart

100) The work of the U.S. Supreme Court is clearly demarcated into annual “terms.” The traditionally accepted starting point for each term is the first Monday in October, when the first oral arguments of that term take place. Ordinarily, the last oral arguments of the term are heard the following April. With rare exceptions, by mid-July the Supreme Court issues decisions for all cases that were argued during the term.

101) John T. Noonan, Jr., *Law Reviews*, 47 STAN. L. REV. 1117, 1118 (1995).

from the prestige associated with membership. One also can appreciate Griswold's desire to extend the experience to more students by supporting the establishment of special focus journals. Over sixty years ago a lawyer from a leading law firm suggested going even further. The title to his essay asserted, quite simply, "the law review should become the law school."¹⁰²

IV. Criticisms and Concerns

Notwithstanding the benefits of student-edited law reviews, criticisms abound.¹⁰³ One frequently voiced criticism is that there are too many law reviews. This criticism dates back at least as far as 1906, when there evidently were still fewer than ten law reviews in the entire United States. That year, in explaining why they had decided to focus exclusively on issues of the law of the State of Illinois, the founders of a new law review at Northwestern University proclaimed, "Undoubtedly the field for law reviews of a general character is already overcrowded."¹⁰⁴

A criticism with even older roots questions the very ability of students to operate a high quality law review. Virtually as soon as the first student-edited law review appeared in 1875 at Albany Law School, the editors of a nearby commercial journal commended "the boys" for having started a "quite creditable"

journal, but then added, "Of course it is not a man's law journal."¹⁰⁵ Over the intervening years, many other critics have attacked the competence of student editors. The litany of perceived inadequacies is long and varied.¹⁰⁶ One frequent target is article selection. According to the critics, students do not have sufficient knowledge or experience to assess whether articles are worthy of publication, or, in a variant on the same theme, to assess which articles are most worthy of publication. Another commonly voiced set of complaints relates to editing style and editing ability. In the view of many critics, student editors "are obsessed with form to the detriment of substance, fixated with footnotes and the *Bluebook* [style guide]."¹⁰⁷ Among the many other criticisms are complaints over delays, insufficient communication or poor communication style, and other aspects of management or operation.¹⁰⁸

There is some truth to all these criticisms. Yet it is important to keep them in perspective.

In retrospect, it seems hard to believe that the field for general law reviews might have seemed overcrowded in 1906, when there were still only a handful of law reviews. Today, however, with over 500 student-edited law reviews, that concern seems much more justified. Hundreds of thousands of pages appear in law reviews every year, and no one has the time or energy to read all of them. Indeed, it

102) See Howard C. Westwood, *The Law Review Should Become the Law School*, 31 VA. L. REV. 914 (1945). Westwood was a partner in the prominent Washington, D.C., law firm Covington & Burling. See N.Y. Times, Obituaries, *Howard C. Westwood, Expert in Airline Law*, 84, March 21, 1994, available at <http://www.nytimes.com/1994/03/21/obituaries/howard-c-westwood-expert-in-airline-law-84.html> (last visited May 17, 2011).

103) For a bibliography of selected works on law reviews, containing many of the prominent works criticizing law reviews and many of the prominent works praising or defending them, see *The Role of the Law Review: A Select Bibliography*, 39(3) ALBERTA L. REV. 690 (2001) (compiled by Tracie Scott).

104) *Editorial Notes*, 1 ILL. L. REV. 39 (1906).

105) *The Albany Law School Journal*, 3 CENT. L.J. 136 (1876), quoted at Swygert & Bruce, *supra* note 25, at 764.

106) For an excellent summary of the standard criticisms, together with thoughtful rejoinders to those criticisms, see Cameron Stracher, *Reading, Writing, and Citing: In Praise of Law Reviews*, 52 N.Y. L. SCH. L. REV. 350, 354-365 (2007/08).

107) *Id.* at 360.

108) See, e.g., *id.* at 363-365; Hibbitts, *supra* note 45, at 642-645.

seems safe to say that many articles, not to mention notes and comments, are read by only a relatively small circle of people. Thus, when viewed strictly in terms of legal scholarship, a strong case could be made for limiting the number of law reviews. That said, one would be hard-pressed to try to establish an appropriate dividing line. Even in lower-ranked or relatively obscure journals, one frequently finds nuggets of excellence — valuable articles, thoughtful notes and comments, and outstanding symposia issues.¹⁰⁹⁾ Moreover, publication of legal scholarship is not the only relevant consideration; law reviews also play an important role in legal education, which simply cannot be replicated in classes or seminars.

Turning to article selection, it is true that students' limited exposure to certain fields, lack of practice experience, or insufficient knowledge regarding prior scholarship may mean they are less likely to recognize the value of some works or the weaknesses of others. Along similar lines, pointing to empirical studies, critics have charged that students are inclined to accept works in certain popular fields or fields viewed as readily accessible by student editors (such as constitutional law or criminal procedure),¹¹⁰⁾ or that, despite their claims to seek the best scholarship regardless

of author affiliation, students are highly brand conscious: law reviews at the top schools tend to accept works by faculty members at their own schools or other top-ranked schools,¹¹¹⁾ “thereby silencing voices from below.”¹¹²⁾

In response to the latter criticism, since the mid-1990s a number of highly ranked law reviews have instituted “blind” reviews of articles, in which the authors' names, affiliations and other identifying information are not disclosed to those making the evaluations.¹¹³⁾ As to the former criticism, it bears note that the proclivities with which student editors have been charged have shifted over time. In 1936, in what to this day remains the most famous critique of law reviews, Yale Law School professor and leading Legal Realist Fred Rodell attacked law review articles for focusing almost entirely on narrow doctrinal topics,¹¹⁴⁾ while ignoring broad themes relating to the law's potential for “solving the myriad problems of the world.”¹¹⁵⁾ By 1992, the perceived failings had changed dramatically. That year, federal judge (and former law professor) Harry Edwards chastised law reviews for including few doctrinal works and instead devoting most of their space to “impractical” scholarship consisting of “theory wholly divorced from cases.”¹¹⁶⁾ To their credit, neither Rodell nor Edwards blamed the law review editors as

109) To offer just one example, a publication that occupies a prominent place in my collection of works on legal education is a special symposium issue, containing articles on developments in over a dozen nations around the world, published in 2002 in the *South Texas Law Review*. On the combined score for citations over the past eight years, as of May 20, 2011, that *Law Review* ranked only number 265 in the United States (search conducted by author, utilizing Law Journals: Submissions and Ranking database, *supra* note 15).

110) See Stracher, *supra* note 106, at 355 and sources cited therein.

111) See Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601 (1999).

112) *Id.* at 606.

113) See, e.g., Hibbitts, *supra* note 45, at 650-651 (describing the then-newly instituted blind read policy at the *Yale Law Journal*). Paradoxically, the blind evaluation approach also may help insulate law review editors from pressure at their own law schools in the event they reject articles by faculty members from the school — a situation that is not uncommon.

114) Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 42-43 (1936).

115) *Id.* at 43.

116) Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 46 (1992).

such for the states of affairs they decried. As both seemed to recognize, while the law reviews — and, by extension, the articles they select — may help to entrench certain modes of legal scholarship, it is primarily the legal scholars themselves who set the trends.

Virtually everyone who has published articles in student-edited law reviews in the United States can offer anecdotes about problems in the editing process: stiffness in style, revisions that alter the nuance or even the basic meaning of a phrase or section, or even grammatical or typographical errors introduced by the editors.¹¹⁷⁾ And virtually every author also can provide numerous examples of the “footnote fetish” common at U.S. law reviews: the notion that every proposition, no matter how patently obvious it may seem, requires a footnote containing a cite to some document in support.

Yet, for me — and, I would suggest, for any author who appreciates feedback, the positive experiences vastly outweigh the negative ones. Over the years, student editors have caught many citations that ended up in the wrong place when I made revisions, along with a considerable number of grammatical errors, typographical errors, and mistakes in citation form. They have pointed out sentences or paragraphs that seemed perfectly clear to me, but would have been confusing to readers. When I have written about Japanese law, as is usually the case, editors have alerted me to aspects of Japanese law or society that I take for granted, but that many American readers would not be familiar with. Even more importantly, on occasion editors have suggest-

ed changes in organization, thereby improving the flow, or have pushed me to explore related issues or expand my analysis. In doing so, they have strengthened my articles.

In reading the criticisms of student editors, I cannot escape the feeling that some article authors regard nearly every proposed revision of their works as an affront or insult, which they attribute to the incompetence of the students. That attitude, I would submit, all too often places the blame in the wrong place. If, for example, student editors have proposed a revision that changes the nuance or even the basic meaning the author intended, it probably means the nuance or meaning was not sufficiently clear in the first place.

Many of the critics also seem to assume that, if only all law journals were peer-reviewed or faculty-edited, the article selection process, the editing process, and all other aspects of law review management and operation would be vastly improved, if not perfect. That, of course, is a highly questionable assumption.¹¹⁸⁾ It is understandable that authors who receive drafts back from student editors with suggestions for major structural changes or proposed revisions to nearly every paragraph sometimes feel resentful. Yet that level of attention requires a tremendous investment of time and energy, which, given the existing incentive structures, faculty members simply could not match.

The care and attention by the student editors also reflect great commitment and dedication, based on a genuine desire to make the article as strong as possible. In my humble opinion, as authors we should be grateful, and

117) My personal near-nightmare involved the first footnote of one of my first major articles, in which I thanked several prominent Japanese scholars for their advice and assistance. In the later stages of the editing process, inexplicably, and without explanation or mention, someone involved in the editing process altered the spelling of their names. To my horror, as I was reviewing the final page proofs for the last time, I realized that the names of those I was seeking to honor were now misspelled. This was in the days before the Internet. When I called the journal I was told the pages already had been sent to the printer. To my great relief, after two or three more frantic phone calls I reached the editor-in-chief, who called the printer and made sure the page proofs were corrected.

118) See Hibbitts, *supra* note 45, at 653-654.

not resentful, to have such an important resource at our disposal. And, as educators, we should be proud to have a self-governing and self-sustaining system that provides such valuable education for so many students.

(Daniel H. FOOTE)