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# Why Student-Run Law Reviews

James W. Harper

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# Why Student-Run Law Reviews?

James W. Harper\*

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The question, "Why student-run law reviews?" has two parts.

The first, "Why have law reviews?" seems easily answered. For one, they anchor law schools to the legal profession. They are also a decent way for the profession to disseminate information, including landmark cases, current and historical trends, new books, criticisms, and proposals for judicial and legislative reform.

The second, "Why have students run them?"<sup>1</sup> is not so easily disposed of. Students obviously learn from being on law reviews. Letting students choose a review's format, subjects, articles, essays, comments, and book reviews, however, and then—of all things—letting them criticize and edit the content, seems to be at cross-purposes with many reasons that law reviews exist. Students are, after all, students. They are just learning the topics on which the authors they publish have been working, often exclusively, for years. Doesn't putting students in charge of law reviews disserve the goal of having quality scholarship on legal topics?

The literature on student-run law reviews is almost universally critical. Professor Fred Rodell set the tone in 1936, writing: "There are two things wrong with almost all legal writing. One is its style. The other is its content."<sup>2</sup> Nearly all criticism since then has repainted Rodell's broad brush strokes, though modern critics tend to focus blame for law reviews more acutely on the students who run them.<sup>3</sup> Written for the most part by law professors and others who regularly publish in them, the literature dismisses student-run law reviews for selecting articles badly and editing them even worse.

In all the scholarship to date there have been few assessments of what purposes student-run law reviews serve, so the criticism, based as it is on assumptions, reflects as much bias

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1. As an editor-in-chief during law school, I might have phrased the question "Why am I running this law review?"

2. Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936). In *Goodbye to Law Reviews*, Rodell stated that "this is probably my last law review article." *Id.* Alas, see Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279, 286-87 (1962) (noting, in a law review article, law review articles written over previous 25 years).

3. A thorough review of the criticism can be found in Bernard J. Hibbits, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 628-54 (1996). A review and thoughtful response to much of the criticism can be found in Michael Vitiello, *In Defense of Student-Run Law Reviews*, 17 CUMB. L. REV. 859 (1987).

as analysis.<sup>4</sup> Along with their other widely recognized purposes, student-run law reviews beneficially restrain legal scholarship from its tendency toward abstraction, murkiness, and irrelevance. This ultimately translates into law that is understandable to the ordinary people whom it is intended to serve.

Law reviews are a source of significant interest, and even mystique, in the legal profession and among students. The field has an interesting history and is far from static today. Modern trends in student-run law reviews, including the growth of non doctrinal scholarship and the blossoming of specialty journals, are testing the institution. Some of the traditions of law reviews, if not enlightened or enlightening, are certainly amusing. An overview of student-run law reviews, their history, practices, and foremost purposes, reveals a better answer for why students do—and even should—run them.

### I. A BRIEF HISTORY

Believe it or not, the first student-run law journal was not the *Harvard Law Review*.<sup>5</sup> It was the *Albany Law School Journal*, first published in 1875, and last published around then, too. The *Albany Law School Journal* had a few short articles, reports of moot court dispositions, news items, and information about the law school's clubs.<sup>6</sup>

The second student-run law review was the *Columbia Jurist*, published from 1885 to 1887 by students at Columbia Law School.<sup>7</sup> Though apparently not modeled on the Albany effort, the *Jurist* published similar fare: articles, reprints from commercial law journals, editorials, news items, and notes of class lectures.<sup>8</sup> Both of these student-run journals were in unofficial competition with commercial law reviews. They were received

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4. See Max Stier et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1469 (1992) ("While th[e] complaint literature may be amusing, and occasionally does ring true, the criticisms inevitably are based on personal views supported solely by anecdotal evidence."). The Stier article reports the results of a survey measuring some of the important purposes of law reviews. See *id.* at 1482-1504.

5. See Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 740, 763 (1985).

6. See *id.* at 764.

7. See *id.* at 766, 768.

8. See *id.* at 766-67.

poorly by their professional counterparts<sup>9</sup> and both ceased publication without leaving much of a mark on the field of law review publishing.

The oldest continuously published legal periodical in America is also, surprisingly, not the *Harvard Law Review*. It is the *University of Pennsylvania Law Review*,<sup>10</sup> originally published commercially in 1852 as the *American Law Register*.<sup>11</sup> It had a more scholarly tone than many of its peers,<sup>12</sup> and law students began to edit the *Register* in 1896. It changed its name to the *University of Pennsylvania Law Review and American Law Register* in 1908 and took its current name in 1945.<sup>13</sup> Its conversion to student operation was, however, inspired by the *Harvard Law Review*. University of Pennsylvania Law School Dean William Draper Lewis, a former co-editor of the *Register*, brought that publication into the law school as a prestige-builder in the wake of Harvard and other schools establishing their student-run reviews.<sup>14</sup>

The *Harvard Law Review*, where "talent, inspiration, and support combined to produce a legal publication that has had an enormous impact on the legal profession,"<sup>15</sup> was founded in

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9. "The boys at the Albany Law School have had the enterprise to start a law journal . . . . Altogether it is quite creditable. Of course it is not a man's law journal." *The Albany Law School Journal*, 3 CENT. L.J. 136 (1876), quoted in Swygert & Bruce, *supra* note 5, at 764. Having disputed the proposed Field Code with the *Columbia Jurist*, the editors of the commercial *Albany Law Journal* eulogized the former publication as follows: "[The *Jurist*] succumbed after a long disorder, manifested by an inveterate hatred to codification. The disease lately took a bad form, and with a gasp the *Jurist* expired on January 29th last . . . . The *Jurist* died penitent, and by a singular fact made a public confession of its wicked life and its unholy antipathy to codification." *The Columbia Jurist*, 35 ALB. L.J. 242 (1887), quoted in Swygert & Bruce, *supra* note 5, at 768.

10. See Swygert & Bruce, *supra* note 5, at 756. The first distinctively legal periodical was *Lawyers' Magazine*, published in England from 1761 to 1762. See William O. Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227, 227 (1965). The first American legal periodical was the *American Law Journal*, published from 1808 to 1817. See *id.*

11. See Douglas, *supra* note 10, at 755-56. The first sentence of the first issue of the *American Law Review* was a harbinger of the exciting world of law reviews to come: "The *donatio mortis causa* is one of those perplexed topics in the law which are at once the despair of judges and the delight of law schools." Ronald B. Lansing, *The Creative Bridge Between Authors and Editors*, 45 MD. L. REV. 241, 243 (1986).

12. See Swygert & Bruce, *supra* note 5, at 755.

13. See *id.* at 756-57.

14. See *id.* at 781.

15. *Id.* at 769.

1887. Thanks to support from faculty and alumni, it was a lasting success. Other prestigious law schools quickly followed Harvard in establishing their law reviews, including Yale (1891), Pennsylvania (1896), Columbia (1901), Michigan (1902), and Northwestern (1906).<sup>16</sup> The latter two were originally operated by faculty. Over the years, more and more responsibilities were given to students, until the 1930s saw students in control and faculty in advisory positions. The first student editor-in-chief was chosen at Northwestern in 1932.<sup>17</sup>

## II. MODERN TRENDS

Today, more than 800 law reviews are published.<sup>18</sup> A 1983 survey by the New York University Law Review Alumni Association estimated that the law reviews then existing published approximately 160,000 pages of legal scholarship.<sup>19</sup> Given the growth of specialty journals, today's numbers must be even higher.

### A. THE BLOOMING OF REVIEWS AND SPECIALTY JOURNALS

Indeed, law review publishing is a growth industry.<sup>20</sup> A major trend in student-run law reviews is the specialty and narrow-interest journal. An informal survey of the *Current Law Index* shows that, from 1980 to 1995, the percentage of specialty journals published by law schools increased from about thirty-one to fifty-two percent.<sup>21</sup> The first specialty journals that law schools adopt when they decide to venture into a

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16. *See id.* at 779.

17. *See id.* at 786.

18. *See* Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 928 (1990).

19. *See* Josh E. Fidler, *Law-Review Operations and Management*, 33 J. LEGAL EDUC. 48, 48 (1983).

20. Movement toward desk-top publishing, however, means that the big law review printers are not necessarily increasing business or profits.

21. My survey was informal indeed. I noted the journals that appear to be published by law schools (though not by university presses). These I deemed likely to be run by students. Of this group, I used the title of the journal to determine whether it had a specialization. In the 1980 index of CLI journals, I counted 285 law reviews and 88 specialty journals. *See* CURRENT LAW INDEX, vii-xviii (1980). In the 1995 index, I counted 422 reviews and 218 specialty journals. *See* CURRENT LAW INDEX, vii-xxii (1995). The nearly 50% increase in law reviews overall may be attributable to a number of factors, including the titles recommended for inclusion in CLI by the Committee on Indexing of Periodical Literature of the American Association of Libraries. *See id.* at v.

new publication appear to be environmental and international law journals. Other areas include legislation, public policy, interdisciplinary studies, women's issues, race or creed, and technology. Harvard Law School leads the field with a whopping ten law reviews.<sup>22</sup>

The reasons for the growth of specialty journals are many.<sup>23</sup> One goal must be to capture readership in an increasingly glutted market.<sup>24</sup> Specialty journals can find a reliable audience in individuals with particular practices and interests. Likewise, they provide a forum where authors with narrow specializations may publish. By increasing the number of law reviews, specialty journals give more students the opportunity to participate in law review. Political activism is another apparent goal, as many specialty journals break from "the intellectual pretense of false neutrality" of traditional law classes and law reviews.<sup>25</sup> These specialty reviews are sometimes overtly political or ideological and they are where non-doctrinal scholarship has flourished.

## B. DOCTRINAL VS. NONDOCTRINAL WRITING

Complimentary to the blooming of journals in number and focus has been the growth of "non-doctrinal" scholarship. Judge Richard Posner points out that, between 1970 and 1990, doctrinal scholarship—writing about what the law is—underwent a dramatic decline in relation to other forms.<sup>26</sup> Judge Posner specifically identifies interdisciplinary and theoretical subfields, such as "economic analysis of [the] law, critical legal studies, law and literature, feminist jurisprudence, law and philosophy, law and society, law and political theory, critical race theory, gay and lesbian legal studies, and postmodernist legal studies" as the most prominent.<sup>27</sup> His observation on how this affects the student editor is entertaining:

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22. See CURRENT LAW INDEX, at xii (1995).

23. See Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 39-40 (1996).

24. See George L. Priest, *Triumphs or Failings of Legal Scholarship and the Conditions of Its Production*, 63 U. COLO. L. REV. 725, 728-29 (1992).

25. See Mike Antoline, *The New Law Reviews: A Burst of Specialty Alternatives*, STUDENT LAW., May 1989, at 27, 30.

26. See Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1133 (1995) [hereinafter *The Future*].

27. See *id.*

How baffling must seem the task of choosing among articles belonging to disparate genres—a doctrinal article on election of remedies under the Uniform Commercial Code, a narrative of slave revolts in the antebellum South, a Bayesian analysis of proof beyond a reasonable doubt, an angry polemic against pornography, a mathematical model of out-of-court settlement, an application of Wittgenstein to Article 2 of the UCC, an essay on normativity, a comparison of me to Kafka, and so on without end.<sup>28</sup>

The growth of nondoctrinal writing presents unique challenges to student-run law reviews and the legal academy. Student editors may not be equipped to digest—much less edit—material from diverse fields. In fact, Judge Harry Edwards has suggested that most law professors are not equipped to write it.<sup>29</sup>

### III. COMMONALITY AND UNIQUENESS AMONG STUDENT-RUN LAW REVIEWS

For all the differences they may have, student-run law reviews share many similarities. Most students join around the end of the first year or the beginning of the second.<sup>30</sup> Most reviews have an “editorial board that coordinates staff assignments, generates topics for student notes or comments, selects lead articles for publication, edits student and outside articles, and

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28. See *id.* Judge Posner is not agnostic about the growing prominence of nondoctrinal scholarship. See Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1113 (1981) [hereinafter *The Present*] (“[D]octrinal analysis, which is and should remain the core of legal scholarship, is currently endangered at leading law schools.”); see also *United States v. \$639,558*, 955 F.2d 712, 722 (D.C. Cir. 1992) (Silberman, J., concurring) (“[M]any of our law reviews are dominated by rather exotic offerings of increasingly out-of-touch faculty members . . .”).

29. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992). Judge Edwards observes that “[o]ur law reviews are now full of mediocre interdisciplinary articles. Too many law professors are ivory tower dilettantes, pursuing whatever subject piques their interest, whether or not the subject merits scholarship, and whether or not they have the scholarly skills to master it.” *Id.*; see also Posner, *The Present*, *supra* note 28, at 1127 (“Much of the recent philosophical work by lawyers is weak. This is also true of the economic analysis of law, some of whose practitioners, and antagonists, know too little economics, or too little law, to make a useful contribution.”). A study inspired by Judge Edwards’s article appears in Michael J. Saks et al., *Is There a Growing Gap Among Law, Law Practice, and Legal Scholarship? A Systematic Comparison of Law Review Articles One Generation Apart*, 30 SUFFOLK U. L. REV. 353 (1996).

30. See Fidler, *supra* note 19, at 55; see also Jordan H. Liebman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 398-402 (1989).



is responsible for publication.<sup>31</sup> The functions carried out by editorial board members can be grouped into six functions: editor-in-chief, managing editor, executive editor, student-works editor, articles editor, and research editor.<sup>32</sup> Most student-run reviews require their members to write a note or comment, and most publish many—but definitely not all—student-written works.<sup>33</sup> While these commonalities are unremarkable, others bear special noting.

#### A. THE MANIA FOR FOOTNOTES

One of the most unusual traditions of the student-run law review is its mania for footnotes. Consistent with good scholarship, law reviews footnote text to move authority, additional sources, asides, and internal references out of the main body. Consistent with editorial zeal, some student editors ask for footnotes to support every factual assertion and reference to doctrine. At least one student editor has asked an author to provide footnote-able authority for an article's central idea and new contribution to the field.<sup>34</sup>

In law review writing, footnotes provide at least one measure of the quality of a work. Indeed, footnoting has been called "an artistic and abstruse discipline that functions as a subtle, but critical influence in the determination of promotion, tenure, and professional status."<sup>35</sup> One of the minimum standards of a passable student-written work can be the number of footnotes the work contains—regardless of how many are *Id.*'s.<sup>36</sup> Authors are not innocent in the frenzy for footnotes. They often contribute to it by carrying on a subdialogue in footnotes, by

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31. Fidler, *supra* note 19, at 57.

32. *See id.* at 58. Mr. Fidler's article succinctly describes the major functions carried out by each of these positions. *See id.* at 58-59.

33. In the New York University Law Review Alumni Association survey, 33% of student-written works were published. *See id.* at 56. The average ratio of students to outside authors published was 3:2. *See id.* at 60.

34. Conversation with Edward J. Damich, Chief Intellectual Property Counsel, United States Senate Committee on the Judiciary (regarding publishing experience while a professor).

35. Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1135 (1987).

36. *See* HASTINGS CONSTITUTIONAL LAW QUARTERLY, 1993-94 HANDBOOK 34 (on file with the author) (requiring minimum 150 footnotes for minimum passable work). The number of sources a student-author brings to bear on his or her subject would be a better proxy for quality.

various kinds of footnote "padding,"<sup>37</sup> or even by burying their best and most interesting points in footnotes.

Judge Abner Mikva roundly criticizes footnotes (mainly those in judicial opinions),<sup>38</sup> saying, "If footnotes were a rational form of communication, Darwinian selection would have resulted in the eyes being set vertically rather than on an inefficient horizontal plane."<sup>39</sup> Professor Rodell scornfully called footnotes the "Phi Beta Kappa keys of legal writing."<sup>40</sup> Professor (of English) James Raymond has an eminently sensible view of footnotes:

If [authors] use footnotes to provide information that any educated person ought to know, they insult their readers. If they stuff footnotes with arcane information, they seem pedantic. Somewhere between the two extremes lies a happy balance, a common sense notion that respects the intelligence of the ordinary reader and yet satisfies the curiosity of those few readers who would appreciate extra documentation or additional information.<sup>41</sup>

Notwithstanding their merits—or the fault for their demerits—footnotes are not the only notable product of law reviews run by students.

## B. EDITING BY MANUAL

Another common anomaly of student-run law reviews is the fealty they swear to any number of editing, citation, or style manuals. In addition to the venerated—or venal—*Bluebook*,<sup>42</sup>

37. Footnote "padding" includes "hat-tipping" to prominent people, seeking respectability by association, and citing friends. See Arthur Austin, *The Reliability of Citation Counts in Judgment on Promotion, Tenure, and Status*, 35 ARIZ. L. REV. 829, 830 (1993) [hereinafter *Citation Counts*].

38. Though his opinion is widely quoted in the literature on student-run law reviews, Judge Mikva primarily objects to footnotes in judicial opinions. One must wonder if the critics of law review footnotes have been lifting theirs . . . .

39. Abner J. Mikva, *Goodbye to Footnotes*, 56 U. COLO. L. REV. 647, 648 (1985). But see Wendy J. Gordon, *Counter-Manifesto: Student-Edited Reviews and the Intellectual Properties of Scholarship*, 61 U. CHI. L. REV. 541, 545 (1994) ("I even like footnotes. . . . [F]ootnotes sometimes give me the feeling that I am looking through a window into someone's head . . . .").

40. Rodell, *supra* note 2, at 40.

41. James Raymond, *Editing Law Reviews: Some Practical Suggestions and a Moderately Revolutionary Proposal*, 12 PEPPERDINE L. REV. 371, 376 (1985).

42. Regarding the recently released sixteenth edition, see A. Darby Dickerson, *An Un-uniform System of Citation: Surviving with the New Bluebook (Including Compendia of State and Federal Court Rules Concerning Citation Form)*, 26 STETSON L. REV. 53 (1996).

there is the *Texas Law Review Manual on Style*,<sup>43</sup> the *University of Chicago Manual of Legal Citation*,<sup>44</sup> the *Chicago Manual of Style*, the *U.S. Government Printing Office Style Manual*, and others.

To hear academics tell it—and they are nearly the only ones telling—student editors unduly treat such guides as sacrosanct.<sup>45</sup> To the extent there is one, the student-editor response is to point out that following standard English and legal citation forms is only difficult for those who do not know them.<sup>46</sup> This debate takes place, of course, only because of the unique role of law students as editors of their seniors in the academy and profession.

### C. STUDENTS EDITING PROFESSORS?!

Far and away, the most noted facet of student-run law reviews—and the one that allegedly causes all their other quirks—is the fact that students run them. Students select articles written by professors, judges, practitioners—their experiential and—hell!—*moral* superiors. Students then edit and criticize these articles (and by implication, their authors), often without reservation and often without the benefit of any experience.

Student selection and editing of law reviews is as uniformly maligned as any other aspect of legal education. In part, this is because the victims remain in academia, while

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43. See generally James Lindgren, *Fear of Writing*, 78 CAL. L. REV. 1677 (1990) (contending the *Texas Manual on Style* is a "bad book"); Charles D. Moody & Arthur S. Feldman, *Greetings From Hell*, 78 CAL. L. REV. 1703 (1990) (responding to Lindgren's attack on the *Texas Manual on Style*); James Lindgren, *Return to Sender*, 78 CAL. L. REV. 1719 (1990) (answering the criticisms of Moody and Feldman).

44. See generally Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1353-68 (1986).

45. See, e.g., *id.* at 1343 (characterizing adherence to the *Bluebook* as "hypertrophy," the mindless elaboration of social practices). Professor James Lindgren casts adherence to standard style manuals as a psychological response to feelings of linguistic insecurity. See James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 531 (1994) [hereinafter *Manifesto*]; James Lindgren, *Student Editing: Using Education to Move Beyond Struggle*, 70 CHI.-KENT L. REV. 95, 97 (1994) [hereinafter *Student Editing*].

46. See, e.g., The Executive Board of the *Chicago-Kent Law Review*, *The Symposium Format as a Solution to Problems Inherent in Student-Edited Law Journals: A View From the Inside*, 70 CHI.-KENT L. REV. 141, 148 (1994) ("[C]laims that student editors are obsessive about footnoting and fidelity to *The Bluebook* would be more credible if authors were more attentive in the first instance.").

perpetrators and would-be defenders of the practice move on each year.

There have been occasional movements to replace student-run law reviews with faculty-run journals.<sup>47</sup> In 1991, Dean Henry Manne of the George Mason University Law School officially did away with that school's student-edited law review, replacing it with two faculty-edited reviews.<sup>48</sup> He cited the traditional complaints about student-run law reviews, and suggested that his plan would solve them. A year later, students announced that they would run their own, "underground" law review.<sup>49</sup> Today, George Mason has four journals, three of them run by students.<sup>50</sup> One professor has proposed publishing law review articles directly on the Internet to circumvent, among other things, student editors.<sup>51</sup> Whether well-founded or not, the sentiment against student-run law reviews should be tempered by weighing against it the purposes that student-run law reviews serve.

#### IV. PURPOSES

Student-run law reviews serve many purposes. They teach students, distinguish among students for employers, do the work of faculty, give faculty a place to publish, boost the school, and assist the development of the law.<sup>52</sup> It is in the context of this final purpose—developing the law—that I propose my new twist on the purpose of law reviews: restraining legal scholarship to something ordinary people can understand.

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47. For a reminiscence on the past influence of faculty at student-run law reviews, see John G. Kester, *Faculty Participation in the Student-Edited Law Review*, 36 J. LEGAL EDUC. 14 (1986).

48. See Sandra Torrey, *George Mason Dean Bucks Another Tradition with Law Review Plan*, WASH. POST, Oct. 21, 1991, at F5.

49. See Lorraine Woellert, *2nd Law Review Another GMU First*, WASH. TIMES, Nov. 16, 1992, at B1.

50. See *George Mason University School of Law* (visited April 14, 1998) <<http://www.gmu.edu/departments/law/lawr.html>>

51. See Hibbitts, *supra* note 3, at 667. For a critique of this idea, see Howard A. Denmark, *The Death of Law Reviews Has Been Predicted: What Might Be Lost When the Last Law Review Shuts Down?*, 27 SETON HALL L. REV. 1 (1996).

52. See generally Closen & Dzielak, *supra* note 23, at 22-25 (discussing the purposes of law reviews); Gordon, *supra* note 39, at 542-46 (analyzing effects of law reviews on students, professors, "meritocracy," the bar and judges, and society as a whole); Scott M. Martin, *The Law Review Citadel: Rodell Revisited*, 71 IOWA L. REV. 1093, 1094-1104 (1986) (assessing benefits of law reviews' products and processes).

## A. TEACHING STUDENTS

An obvious purpose of the student-run law review is the teaching function.<sup>53</sup> By participating in law review, students get a unique, challenging experience in research, writing, editing, critical thinking, and even just working together on a project that carries professional expectations.<sup>54</sup>

One focus of the first year of participation in law review is usually the writing of a note or comment. A "note" analyzes or criticizes a trend in an area or concept of law, while a comment analyzes a recent case and relates it to the surrounding law in the area.<sup>55</sup> An important element of this project is the quest to avoid being preempted. To a greater or lesser extent, students must familiarize themselves with the scholarship in their area and avoid writing something that someone else has written be-

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53. While most contemporary writers acknowledge the teaching function, most still operate on the premise that publishing faculty is the primary purpose of law reviews. For example, Professor Roger Cramton treats publication of faculty writing as an end in itself where he notes the creation of faculty-edited law reviews to meet legal scholars' "scholarly needs." See Roger C. Cramton, "The Most Remarkable Institution": *The American Law Review*, 36 J. LEGAL EDUC. 1, 8 (1986). Compare Priest, *supra* note 24, at 727 ("[T]he primary benefit is as material upon which students may exercise editorial judgment, thus improving their skills . . ."); Ronald D. Rotunda, *Law Reviews—The Extreme Centrist Position*, 62 INDIANA L.J. 1, 4 (1986) ("Law review editing and writing provide valuable experience for law students. This training alone justifies the reviews' existence."); Harold C. Havighurst, *Law Reviews and Legal Education*, 51 NW. U. L. REV. 22, 24 (1956) ("Whereas most periodicals are published primarily in order that they may be read, the law reviews are published primarily in order that they may be written."); Richard H. Lee, *Administration of the Law Review*, 9 J. LEGAL EDUC. 223, 224 (1956) ("The first goal of any review must be to teach . . . . A second . . . is the publication of scholarly articles in the field of law."); Howard C. Westwood, *The Law Review Should Become the Law School*, 31 VA. L. REV. 913, 913-14 (1945) ("[T]he law review is a] method of legal education which involves much of the good in the old fashioned law office training and is entirely susceptible to preserving the good in the class method."). Perhaps the one writing that does not recognize the teaching function at all is E. Joshua Rosenkranz, *Law Review's Empire*, 39 HASTINGS L.J. 859 (1988). In this self-styled indictment of law reviews, Rosenkranz argues that law review participation gives students a "false credential" because selection processes do not bring on students who are necessarily qualified. See *id.* at 891-99. He forgets that *students learn* from law review participation (and that member selection often highlights other qualities worthy of "credential").

54. See Gordon, *supra* note 39, at 543-44. For a survey of how past and current law review participants regard their experience, see Robert E. Riggs, *The Law Review Experience: The Participant View*, 31 J. LEGAL EDUC. 642 (1981).

55. See Fidler, *supra* note 19, at 55 n.29.

fore.<sup>56</sup> One student's writing project may be overseen by other students, who also benefit through the "teaching" they do. The note or comment is usually substantial and, for many, but certainly not all, the student's first paper of any real length.

In addition, the first-year law review participant helps in the editing of works being published. Cite-checking and bluebooking are notorious elements of the law review experience and a traditional source of complaint. These chores develop very narrow, but important, skills for the future litigator. A few first-year members of law review may participate in article selection, but the demand for quick offers on good articles means that real selection may have to be done in an executive process.<sup>57</sup> The thorough review of an article given to a member in his or her first year of participation, though an important opportunity for learning, may often be busy-work.

Depending on their motivation, participants in their second year of law review may just oversee first-year chores or may become more involved in editing and bringing the law review to publication. For those involved in the latter stages of the editorial process, demands are high, and the opportunity to learn and improve through hands-on experience is plentiful.

Consistent with the notion that students learn from law review, many schools now give academic credit for law review participation.<sup>58</sup> It can be an important adjunct to classroom learning. Certainly, the teaching function is an important purpose of the student-run law review.

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56. In at least one case I can recall, this has caused a student writer to take a position he was ambivalent about because the one he agreed with had already been published. For the record, the supposed innovation of my piece (student-run law reviews beneficially restrain legal scholarship) has been at least touched on by a few authors. See Denemark, *supra* note 51, at 21; Gordon, *supra* note 39, at 549-50; Phil Nichols, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122, 1129-30.

57. See Liebman & White, *supra* note 30, at 404 (describing fast-tracking of promising articles).

58. This seems to be in tension with the "tradition" that law review bestowed only honor and prestige, but did so in sufficient quantity to attract the very top students. The academic credit pendulum may have swung a little too far. In my own experience as an editor-in-chief, I was painfully aware that many students participated solely to get nongraded credit. The most cynical of them minimized their work to the extent they could avoid being dropped, and I did drop one student who consistently performed almost no work at all.

## B. DISTINGUISHING AMONG STUDENTS

Another purpose of student-run law reviews, complimentary and subsidiary to the teaching function, is distinguishing among students for legal employers. Participants in law review have traditionally been regarded as the better students because of competitive selection and the training law reviews provide.<sup>59</sup> Knowing who is on law review helps law firms and judges decide who to interview and hire as associates and clerks.<sup>60</sup> An empirical study of attorneys, professors, and judges has found that *all* regard law review participation as an important factor in hiring.<sup>61</sup>

Recent developments have probably reduced the power of law review participation as an indicator of academic superiority. The increased number of law reviews means that participation is not exclusive to top students, or at least that employers must note which law review an applicant is a member of.<sup>62</sup> The increased size of law reviews' staffs<sup>63</sup> may decrease the exclusivity of participation and may also reduce the amount of learning law review provides. Finally, the growth of noncompetitive and "affirmative action" membership<sup>64</sup> may mean that some students start law review with no academic distinction from other students.

## C. DOING THE WORK OF FACULTY

Barely observed in the literature on student-run law reviews, a literature written mostly by—hmmm—*law professors*,<sup>65</sup> is that law reviews do a great deal of work to move arti-

59. The law review as an institution has appropriately been questioned for the apparent unfairness and elitism in giving additional special training to already superior students.

60. See John Henry Schlegel, *An Endangered Species?*, 36 J. LEGAL EDUC. 18, 18 (1986) ("The point of law review from the beginning has been to separate the best from the merely good for the benefit of fancy employers . . .").

61. See Stier et al., *supra* note 4, at 1487-90 (providing statistical figures demonstrating the significance of law review experience in the hiring process).

62. I had one interview during law school where my interviewer told me that "everyone" he had talked to was on law review.

63. See Cramton, *supra* note 53, at 6 n.24.

64. See *id.* at 6 (discussing the different selection methods of various law reviews).

65. *But see* Articles Editors of the *University of Chicago Law Review*, *A Response*, 61 U. CHI. L. REV. 553 (1994); The Executive Board of the *Chicago*

cles from manuscript, screed, or back-of-cocktail-napkin form into coherent, publishable, well-supported scholarship.

Though students rarely contribute a wholly new idea to an existing article, they do move authors' ideas forward, test them against other ideas and concepts, and, more than anything else, do the cite-checking and technical editing that turns a manuscript into a law review article.<sup>66</sup>

Of course, many pieces come to the law reviews in a substantially supported and even decently blue-booked fashion. But horror stories exist, and some are true. Presented with only an author's last name, for example, a conscientious law review member may spend inordinate amounts of time sleuthing to find where that author has supported a writer's point.<sup>67</sup>

Student-run law reviews survive despite the criticism they suffer at the hands of the academics who truly control them. This must be in part because of the drudgery<sup>68</sup> they do for those academics.

#### D. GIVING FACULTY A PLACE TO PUBLISH

One purpose of student-run law reviews akin to the drudgery-benefit is the forum they provide to faculty.<sup>69</sup> Publication in law reviews is how law professors talk to each other and the world about developments in the law and just about anything else. The amount and quality of the publishing a professor does, often in law reviews, relates directly or indirectly to that professor's perceived academic prowess. Tenure decisions are affected by publishing—again, often in law reviews.<sup>70</sup>

An important facet of the publishing benefit is the unwritten code that professors should avoid publishing at their home

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*Kent Law Review*, *supra* note 46, at 147; Nichols, *supra* note 56, at 1132 (recognizing various critics of student-run law reviews).

66. See Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383 (1989) ("Yes, we are stuck with the effects of student editors' 'neophytic judgment,' but we gain a source of free labor. Our footnotes wind up checked, rechecked, and polished to a fine gloss . . .").

67. I had this experience. The footnote said only "Bell."

68. See Lee, *supra* note 53, at 227 (referring to technical editing as "drudgery," and suggesting that it be done by paid staff).

69. See Lindgren, *Manifesto*, *supra* note 45, at 535 ("[B]ecause almost no respectable law school can afford not to have a law review, there are many more journals than needed, thus giving us more places to publish. The law schools pick up the tab.").

70. See Austin, *Citation Counts*, *supra* note 37, at 838.



schools' journals, and that journals should not publish their own professors. This is probably because of the apparent conflict publishing at home creates. Professors, after all, give students grades (whether anonymously or not) and have other power over students. Publishing at home may create the appearance that a professor has used this power, or even just personal relationships, to win a place for an article or to get an easy edit.<sup>71</sup> Professors seeking tenure may avoid publishing at home to show that they can win space in a competitive journal with which he or she has an arm's length relationship.<sup>72</sup> The don't-publish-at-home rule tacitly recognizes that students should select articles on their own terms and do strong edits or, at least, that professors should not be able to get out of strong edits by publishing at home.

#### E. BOOSTING THE SCHOOL WITHIN AND WITHOUT

A law review boosts a school's reputation, both within and without.<sup>73</sup> Among alumni and contributors, the legal community as a whole, and potential students, the presence and prestige of a law review are an asset to a law school.

Within the law schools, most students may feel their experience is mediocre, but law review members—particularly editors-in-chief—carry an aura of excellence. Rightly or wrongly, members of the competitive law reviews are seen as an elite who are carrying the school and its traditions forward. This is apparent when law school administrators trot out editors to meet with donors and alumni and to receive special recognition.<sup>74</sup>

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71. See Liebman & White, *supra* note 30, at 405 ("When authors are resident faculty members . . . the pressures on students to say yes [to publication] do exist . . .").

72. See *id.* at 395.

73. See Randy E. Barnett, *Beyond the Moot Law Review: A Short Story with a Happy Ending*, 70 CHI.-KENT L. REV. 123, 128 (1994); Lee, *supra* note 53, at 224 ("A third goal of the average review is prestige for the law school . . ."); Liebman & White, *supra* note 30, at 404 (noting that a law review's reputation "redounds to that of the law school"); Priest, *supra* note 24, at 727 ("A law review represents a continuing reputational investment for a law school's students and for its alumni.").

74. Professor Leo Martinez observes that, "like the champions selected by ancient nations to wage war on the nation's behalf, the original seven Mercury astronauts were lavished with riches based not on actual accomplishments but for the potential each had to accomplish greatness. . . . [L]aw review participation accomplishes much the same." Leo P. Martinez, *Babies, Bathwater and Law Reviews*, 47 STAN. L. REV. 1139, 1140 (1995).

Law reviews also boost a school's reputation among the legal world at large. This is because law reviews typically have the name of the school in them. Essentially, a law review is its school's trademark and a citation is an advertisement.<sup>75</sup> As noted above, a law review rarely adds a new idea to an author's work, but law reviews and schools get partial credit as institutions for publishing authors' good ideas.

#### F. DEVELOPING THE LAW

One of the most important roles of law reviews is developing the law.<sup>76</sup> Law reviews are available as a first resource for students, practitioners, legislators, judges, and some ordinary citizens who want to learn or refresh their knowledge of law and legal doctrine.<sup>77</sup>

Law reviews are indexed and cross-indexed in numerous places. They are catalogued on compact disc. They are in electronic databases and on-line.<sup>78</sup> They are an easy, inexpensive way to learn the generalities and, in the right article, the specifics of a particular area. No lawyer need ever admit that he or she has not heard of the *Noerr-Pennington* doctrine. A few minutes research will find an article that summarizes it.<sup>79</sup> An

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75. For evidence that citations matter, see Colleen M. Cullen & S. Randall Kalberg, *Chicago-Kent Law Review Faculty Scholarship Survey*, 70 CHI-KENT L. REV. 1445, 1446 (1995).

76. On the 50th anniversary of the Northwestern University Law Review, Chief Justice Earl Warren wrote of the "special importance" of law reviews "because they help make the future path of the law." Earl Warren, *Forward*, 51 NW. U. L. REV. 1, 1 (1956).

77. For an empirical analysis of law review usage, see Stier et al., *supra* note 4, at 1480-87. *But see* Barnett, *supra* note 73, at 123 (noting the existence of "moot" law reviews "that few cited, few professors would write for, and few, if anyone, read").

78. For this reason, I encourage authors to make their titles reflect their subjects. *See, e.g.*, James W. Harper, *Attorneys as State Actors: A State Action Model and Argument for Holding SLAPP-Plaintiffs' Attorneys Liable Under 42 U.S.C. § 1983*, 21 HASTINGS CONST. L.Q. 405 (1994). Boolean search is increasingly how law review articles are found.

79. For example, a few minutes of my research turned up Gary Minda, *Interest Groups, Political Freedom, and Antitrust: A Modern Reassessment of the Noerr-Pennington Doctrine*, 41 HASTINGS L.J. 905 (1990), and Robert P. Faulkner, *The Foundations of Noerr-Pennington and the Burden of Proving Sham Petitioning: The Historical-Constitutional Argument in Favor of a "Clear and Convincing" Standard*, 28 U.S.F. L. REV. 681 (1994). Both (judging by their titles, anyway) appear to provide helpful background on the doctrine.

hour or two of reading will make the average lawyer conversant with it.

Though it would be nigh impossible to catalogue or describe every way in which law reviews influence the law's development, a few are worth mentioning. In law school, for example, the textbooks are full of law review references. No one actually reads the articles cited—there isn't time—but the law professors who write the textbooks do. The questions they raise and the latest problems in developing fields are almost always the subject of helpful law review scholarship.

Whether or not they cite them, practicing attorneys surely use law reviews to brush up on current developments or to structure arguments. The attorney with a growing or changing practice is more likely to use law review articles to learn a new field, and the attorney in a changing field is more likely to use law reviews—both as a resource and as an authority.

Judges use law reviews,<sup>80</sup> though they may have cite-worthy influence only in rare cases.<sup>81</sup> Likely, judges are influenced by law reviews where an article has been used by a litigant, with or without citation, to structure an argument. Judges' clerks, like practitioners, may use law reviews (in secret, we might surmise) to learn doctrine that was not covered in school. Many clerks are fresh from the law reviews themselves.

Legislators, their counsels, and their committee staffs use law reviews as they develop the law through legislation. This may be where a law review article can have its most direct influence, because the worst in law reviews is the best for law-making. That pedantic format—introduction, background, legal context, legal problem, legislative solution, conclusion—is a one-stop resource for the busy legislator. Law review articles'

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80. Seventh Circuit Chief Judge Richard Posner writes, "Do not worry that judges do not read law reviews . . . . Law reviews are indispensable resources for judges and their clerks, whether or not the judge's opinion actually cites the article or student note that proved helpful in the preparation of the opinion. Law reviews are indispensable resources for practitioners and law professors, as well. . . ."Posner, *The Future*, *supra* note 26, at 1137-38; see also Douglas, *supra* note 10, at 227 ("I have drawn heavily from [law reviews] for ideas and guidance as practitioner, as teacher, and as judge."); Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915 (1953); Charles E. Hughes, *Foreword*, 50 YALE L.J. 737 (1941).

81. See Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Courts of Appeals: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051 (1991); see also Edwards, *supra* note 29, at 45 ("I often use treatises and law review articles that are not ultimately cited in my opinions.").

arcane subjects frame issues in "legislable" bites. The narrow problem an article addresses will, at some point, injure a constituent or sympathetic interest. The good legislator will declare the problem the scourge of our times, demanding immediate attention, yet it will be small enough to fix without a constitutional amendment, a war, or (war's equivalent) a revival of the abortion debate.

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The purposes of student-run law reviews discussed so far are decreasingly served by having students in the equation. Student participation is essential for students to benefit from the teaching function, or for employers to gauge students, and having student editors is pretty important for getting free drudge work. There are alternatives to having faculty publish in student-run law reviews, however, and a school's reputation is not necessarily benefited just because students run the reviews. A faculty journal might be better managed and probably more erudite. So, if we really care about developing the law, should we not banish the frazzled, nonlawyer students from the law reviews and bestow the unalloyed erudition of law professors on the world?

No. Because the best law is not the most erudite. The student's role in restraining legal scholarship helps develop understandable law.

#### G. KEEPING THE LAW UNDERSTANDABLE

A heretofore rarely expressed reason for the student-run law review is the natural rein that students exert on legal scholarship. Students tend to select articles they can grasp, then edit them to maximize their own understanding. Student selection and editing *lowers* the scholarly tenor of the material published in law reviews, making articles readable and understandable by, perhaps, even nonlawyers.

For most areas of study, this would be a tremendous disservice. The student push for accessibility would dull the finest points of a scholar's discovery or insight. As Professor Roger Cramton has written:

Probably it was never true that a second-year law student, on the basis of high intelligence and a year's training in the parsing of cases, could deal with any problem of traditional doctrinal scholarship. But this myth of omniscience clearly has no validity today, when the most experienced and able faculty members do not claim competence over the entire realm of legal scholarship. Law today is too complex

and specialized; and legal scholarship is too theoretical and interdisciplinary.<sup>82</sup>

Professor Cramton can only be so critical of the student-run law review because he is so uncritical of trends in law and legal scholarship.<sup>83</sup> Law is not like other academic pursuits or the sciences, where reification and new levels of abstraction are correctly regarded as improvements.<sup>84</sup>

Look at any definition of law. Implicit or explicit in all of them is the principle that law guides individuals in conducting themselves and arranging their affairs.<sup>85</sup> It follows that law should be understandable. Let lawyers talk to each other in their own language from time to time, but *law* is not served by relying to excess on legal jargon, veering into abstract theory, or rendering legal principles less clear. Lack of clarity frustrates the art of guiding ordinary people's lives.

82. Cramton, *supra* note 53, at 7.

83. Cramton writes: "At present no one can predict whether the increased separation of law schools from the legal profession will lead to tensions and conflict that radically alter future arrangements. All one can say is that the change is underway and that its terminus is uncertain." *Id.* at 10. Compare the views of Judges Posner and Silberman, *supra* note 28.

84. "[I]n [the graduate school] context, the deepening probe into a narrowing horizon may be a necessary and desirable process, beneficial to teachers and students alike. But a [law school] faculty that has lost interest in most of the work of its alumni has also lost interest in its students, and forfeited the legitimacy of its claim for their support." Paul D. Carrington, *The Dangers of the Graduate School Model*, 36 J. LEGAL EDUC. 11, 12 (1986).

85. See, e.g., *United States Fidelity & Guaranty Co. v. Guenther*, 281 U.S. 34, 37 (1930) (calling law "rules of action or conduct"); BLACK'S LAW DICTIONARY 884 (6th ed. 1990) ("That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law."); A DICTIONARY OF LAW 192 (1979) ("The written and unwritten corpus of rules largely derived from custom and formal enactment which are recognized as binding among those persons who constitute a community or state, so that they will be imposed upon and enforced among those persons by appropriate sanctions."); CYCLOPEDIA OF LAW 640 (3rd ed. 1940) ("[Law] is the aggregate of those rules and principles enforced and sanctioned by the governing power in a community, and according to which it regulates, limits, and protects the conduct of members of the community."); RADIN LAW DICTIONARY 184 (2d ed. 1970) ("The most general term for all rules to which people in any society conform, whether by custom or by enforceable governmental regulation."); A MODERN DICTIONARY OF SOCIOLOGY 225 (1969) ("A system of standardized norms regulating human conduct, deliberately established for the purpose of social control."); 7 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 202 (1937) (characterizing law as "coterminous with that of organized legal sanction"). "A sanction is a reaction on the part of the society or of a considerable number of its members to a mode of behavior which is thereby approved (positive sanctions) or disapproved (negative sanctions)." 13 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 531 (1937).

Look at milestones in the development of the law. We hail the origin of written law as an improvement by an order of magnitude on previous practice. The contributions of the great "law-givers"—Hammurabi, Moses, Confucius, Justinian, Mohammed, Grotius, Napoleon, Menes, Solomon, Lycurgus, Draco, Solon, Augustus, Blackstone—truly make modern civilization both *modern* and *civilized*.<sup>86</sup> But writing the law down in ancient times could not have improved it for the mostly illiterate populace.<sup>87</sup> In terms of day-to-day functioning of society, law was then, and probably continues to be, what is widely *understood*.<sup>88</sup>

Look at a sacrosanct principle in the rule of law: due process.<sup>89</sup> Due process exists because it creates the perception that government is likely to get the law and facts right when it disposes of an individual's situation. This makes government action legitimate in the eyes of the people. When government takes life, liberty, or property from an individual, that person's perception of fairness likely hinges on whether or not he or she understands the law's purpose and its effect.

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86. See Raymond I. Geraldson, *Supreme Court Day Address*, 33 AM. U. L. REV. 1, 3 (1983) ("Out of the law and legal systems declared and disseminated by these giants of legal thought, came the recognition and protection of the dignity and freedom of individual human beings, and of the right of the ordinary person to own property, to have a democratic governance, and to be secure against contracts which would deprive them of their basic liberties.")

87. The great Code of Hammurabi, for example, probably served several purposes quite distinct from guiding the affairs of Mesopotamians. See Martha T. Roth, *Mesopotamian Legal Traditions and the Laws of Hammurabi*, 71 CHI.-KENT L. REV. 13, 14 (1995). Professor Roth argues that, among other things, the stela on which the Hammurabic Code is etched reminded subjects of the allegiance owed King Hammurabi, *see id.* at 19, served as a template in generations of scribal training curricula, *see id.* at 21, and reminded subjects of the unity of purpose enjoyed by King Hammurabi and the god of justice, Shamash, *see id.* at 23.

88. As Professor Niels Peter Lemche writes:

The [Code of Hammurabi] does not dictate, as any decent collection of laws should, what happens to a person who has killed another person. Why is this so? Probably because every judge of the kingdom of Hammurabi knew in advance how to deal with a simple murder; he was in no need of the guidelines of a written law. The murderer would have to be put to death or so the "law"—the accepted general opinion of that time—would tell the judge.

Niels Peter Lemche, *Justice in Western Asia in Antiquity, or: Why No Laws Were Needed!*, 70 CHI.-KENT L. REV. 1695, 1699 (1995).

89. "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ." U.S. CONST. amend. V. "No State shall . . . deprive any person of life, liberty, or property, without due process of law . . ." U.S. CONST. amend. XIV.

In the context of the "new property"—status and entitlements bestowed by government<sup>90</sup>—Professor William Van Alstyne writes, "[It is] plausible to treat *freedom from arbitrary adjudicative procedures* as a substantive element of one's liberty . . . ."<sup>91</sup> "Arbitrary," in this context, is the subjective sense of being acted upon by an unrestrained power. Arbitrariness is eviscerated when people understand the purpose and function of the law and thus the restraints on government power.<sup>92</sup>

Professor Laurence Tribe takes Professor Van Alstyne's point to its conclusion:

[O]nce [due process] is unhinged from notions of protecting what *belongs* to the individual, it might as well be recognized that unfairness inheres in the very act of disposing of an individual's situation without allowing that individual to participate in some meaningful way—not simply because more mistakes are likely to be made thereby, but because such treatment seems incompatible with the person's claim to be treated as a human being<sup>93</sup>

A person's participation in, and understanding of, government action are bound together, so due process is animated in large part by the idea that ordinary people should understand the law.

Because good law is understandable law, law reviews do a better job if they publish discussions of law that are clear, simple, and to the point. If the restraining influence of student editors on legal scholarship sends ripples of clarity through our legal institutions, this can foster understanding among the legal laity, and make the law *better*. This is one of the most important, if widely unrecognized, purposes of student-run law reviews.

90. See Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964).

91. William Van Alstyne, *Cracks in "The New Property": Adjudicative Due Process in the Administrative State*, 62 CORNELL L. REV. 445, 487 (1977). Professor Van Alstyne quotes two of our most-respected jurists in support of his thesis:

"The history of liberty," Mr. Justice Frankfurter once recalled, "has largely been the history of observance of procedural safeguards." It was an especially fitting statement for Felix Frankfurter, succeeding as he did to the Supreme Court seat previously held by Benjamin Cardozo, who had expressed a very similar idea: "Fundamental too in the concept of due process and so in that of liberty, is the thought that condemnation shall be rendered only after trial . . . . The hearing, moreover, must be a real one, not a sham or a pretense."

*Id.* (citations omitted).

92. A caveat is in order here. Due process is not satisfied only if each individual understands the government's actions. The spirit animating due process calls for a rough, collective understanding of how law and government works.

93. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW § 10-12, at 713 (1988).

## V. PUTTING OUR PURPOSES INTO PRINT

Having laid out the purposes that student-run law reviews serve, including the unique idea that law reviews appropriately restrain legal scholarship, let us see how we put these principles into action, focusing on areas where student-run law reviews are most often criticized: article selection, editing, and management. Many of the comments that follow are based on my own experience as a student-editor.

### A. IN SELECTING ARTICLES<sup>94</sup>

Though law reviews have moved from publishing mostly doctrinal work to publishing doctrinal work, nondoctrinal work, and other work, the doctrinal work is where the rubber hits the road. It is where the review remains a law review and not a review of law-and-[your area of interest here] or a review of personal stories, political philosophies, and literary forays-that-happen-to-be-written-by-law-professors. It is also where student editors are at their strength when it comes to keeping law understandable. Student editors should prefer doctrinal work that they understand and that they believe can add to legal knowledge.

Many law review editors will not have much choice. The mushrooming of law reviews' numbers without a concurrent expansion in doctrinal scholarship (or the need for it) means that most law reviews must fall back on lower quality doctrinal work, nondoctrinal work, and—ugh—lower quality nondoctrinal work.<sup>95</sup> Many law reviews benefit, and many more could, by focusing on doctrinal developments in the home state of the law school.<sup>96</sup> States, too, have supreme courts, constitutions, and legislatures.<sup>97</sup>

One thing law review editors—smart and interested as they are—should keep in mind is that law is emphatically *not* philosophy. Where philosophy adheres to a rigorous logic, law is an art whose central aesthetic is the direction of ordinary people's lives. Of course, there is room for a philosophy of

94. This discussion deals with the content of articles selected. For a discussion that includes the processes student-run law reviews undertake in selecting articles, see Liebman and White, *supra* note 30, at 402-10.

95. Is anyone *not* getting published? . . .

96. See, e.g., *Review of Selected 1995 California Legislation*, 27 PAC. L.J. 349 (1996); Liebman & White, *supra* note 30, at 395 n.37 and sources cited therein.

97. Professor James Lindgren has studied student article selection and found it "skewed . . . toward . . . interests that disproportionately serve elite segments of the corporate bar and the federal courts." Lindgren, *Manifesto*, *supra* note 45, at 533.



law,<sup>98</sup> but this pursuit advances philosophy more than law. The positivist on the Clapham omnibus<sup>99</sup> is not more likely to obey laws than the natural-law adherent if neither understands what the law actually is. Tempting as legal philosophy is—and many of the top law reviews are giving in to temptation<sup>100</sup>—it is not what student-run law reviews are for.

The philosophy I put into practice as a law review editor was this: *Law is for the people.*<sup>101</sup> In selecting articles, I preferred those that I understood, and I assume my colleagues did the same.<sup>102</sup>

## B. IN EDITING

A similarly useful—if immodest—maxim that I followed as an editor was this: *If I don't understand it, it's either badly written or it's wrong.*<sup>103</sup> My options, accordingly, were two.

98. See, e.g., RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977); H.L.A. HART, *THE CONCEPT OF LAW* (1961); HANS KELSEN, *GENERAL THEORY OF LAW AND STATE* (1961); JOSEPH RAZ, *THE AUTHORITY OF LAW* (1979).

99. See *Hall v. Brooklands Auto Racing Club*, 1 K.B. 205, 224 (1932). Though originating in the tort cases as a shorthand for the reasonable prudent person, see *id.*; GUIDO CALABRESI, *IDEALS, BELIEFS, ATTITUDES, AND THE LAW* 23 (1985), ridership on the Clapham omnibus now connotes reasonableness of all kinds, including moral reasonableness, see *Rosen v. Louisiana State Board of Medical Examiners*, 318 F. Supp. 1217, 1240 n.25 (E.D. La. 1970) (citing H.L.A. Hart, 62 *LISTENER* 162, 163 (July 30, 1959)); SIR PATRICK DEVLIN, *THE ENFORCEMENT OF MORALS* 16 (1959), and judiciousness, see, e.g., R. Grant Hammond, *Interlocutory Injunctions: Time for a New Model?*, 30 *U. TORONTO L.J.* 240, 272 (1980) (referring to “level-headed men called judges on the Clapham omnibus”). Alternative formulations include “the man in the street”; “the man who takes the magazines at home, and in the evening pushes the lawn mower in his shirt sleeves,” *Hall, supra*, at 224; and “the good father of the family,” Calabresi, *supra*, at 23 n.93. If continuing the masculine theme can be forgiven, I offer as my contribution to the lexical trove the slightly less dignified, but supremely American, “Joe Six-Pack.”

100. See Edwards, *supra* note 29, at 34 (“[M]any law schools—especially the so-called ‘elite’ ones—have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy.”).

101. “Law is for the people” is among a number of phrases I bandied about the editorial offices. Others, less relevant here, included, “If you’re gonna have a beard, keep it neat,” and, referring to my journal, “If we don’t look good, we don’t look good.”

102. I was obliged, of course, not to prefer articles with which I agreed. Noting that law reviews exist as much to teach students as to disseminate scholarship, Professor George Priest asks, “[W]hy shouldn’t students accept for publication articles that they prefer to edit?” Priest, *supra* note 24, at 728.

103. See Executive Board of the *Chicago-Kent Law Review, supra* note 46, at 149 (“If law review editors are unable to discern what an author means, . . . the passage needs to be rewritten.”); Raymond, *supra* note 41, at 379 (“Ideal [law review] editors . . . have the courage to demand a revision of anything they cannot understand.”).

My first option was to note or correct the flaw in the author's argument. If I felt an author had missed an important point, fudged, or just gotten something wrong, I was obliged at least to raise a flag. Usually, I attempted to fix the problem. In doing this, I was limited by my own understanding of the concepts with which I was dealing, many for the first time.<sup>104</sup>

My second option on coming across a point I did not understand was to conform the writing to the author's concept. In this, I was necessarily heavy-handed. Law is for the people, and legal writing is served only by clarity.

Authors may think student-editors are automatons, mindlessly destroying their distinctive writing style, choice of words, and sense of humor. Without question, however, law review editors *should* destroy anything that detracts from a piece's clarity. Law students, less-well-versed in the law as they are, recognize common clarity better than authors steeped and steeping in legal jargon. Journeyman lawyers are a closer approximation of the citizenry guided by law than are professors and professional legal authors.<sup>105</sup>

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104. Often, it seemed that authors submitting their L.L.M. theses were nearly as murky on the concepts as I. Editing such pieces, I felt at times as if I was the second blind man placing hands on the elephant to learn what it is. By doubling the number of hands, I helped the author describe more of his or her thesis than the author could alone. Between us, though, the author and I limited the scholarly tenor of the piece to the lowest common denominator.

105. See Denmark, *supra* note 51, at 21 ("Law review students are a good surrogate for the legal profession because they are the epitome of legal generalists."). While Professor Denmark argues that student editing makes law reviews useful to the profession, he does not reach the conclusion I do—that student editing ultimately makes good law.

As close to the people as I am, I recommend never allowing the words "deconstruction," "epistemology," or "heuristics" to appear in legal print. See John T. Noonan, Jr., *Law Reviews*, 47 STAN. L. REV. 1117, 1121 (1995) ("This monster [deconstructionism] raised its head in literary studies in the seventies. . . . [I]t is subversive of law. A few articles in the reviews sampled the programmatic aspects and seemed to like the taste, but the reviews did not succumb. The serious damage done in departments of literature did not occur in law schools. The reviews deserve part of the credit."); see also John E. Nowak, *Woe Unto You, Law Reviews!*, 27 ARIZ. L. REV. 317, 321 n.2 (1985) ("There was a time when the word hermeneutics was used infrequently because it was used only in a technically correct manner in the disciplines of theology and philosophy. Today the term is used by everybody who wants to teach constitutional law at a good law school, or who wants to impress their peers in academe. . . .").

In her essay, *Editing*,<sup>106</sup> Professor Carol Sanger writes, “[L]aw review editors . . . find it hard to understand that authors sometimes need to state complicated and subtle points in complicated and subtle prose.”<sup>107</sup>

*Wrong.* If a point is too complex and the prose too subtle for a student-editor, it is too complex and too subtle for legal writing.

Professor Sanger directly and indirectly suggests that law review editing is like editing in other fields, including fiction.<sup>108</sup> “The best book possible,” she quotes from editor Maron L. Waxman, “is the book in which the author says what he has to say as clearly, as forcefully, and as gracefully as he can.”<sup>109</sup> The best law review article, however, is the law review article that says what it has to say as clearly, clearly, and clearly as it can.<sup>110</sup> Clarity is both force and grace in legal writing.

Professor Sanger writes that critical reading, an important and acceptable part of editing, must be tempered by the recognition that a law review’s audience is familiar with the law:

Audiences for law reviews are rarely the reading public,<sup>111</sup> but rather those who are already familiar with the issues and vocabulary of the

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106. Carol Sanger, *Editing*, 82 GEO. L.J. 513 (1993). I first read the manuscript for this piece when my editors and I considered it for publication. Rediscovering it as a published work, I must thank Professor Sanger, who prompted me to start thinking on these subjects long before I thought of writing this piece.

107. *Id.* at 517.

108. Professor Sanger’s essay quotes several correspondences and writings from editors and writers of fiction. *See id.* at 513, 526 (quoting a Maxwell E. Perkins’ letter to F. Scott Fitzgerald, a William Faulkner letter to Ben Wasson, and Dorothy B. Commins’ comments on editing Theodore Dreiser). She also writes, “law review editing [is] like editing elsewhere in the academic and literary worlds” and later “a responsible conception of law review editing . . . more closely approximates editing practices elsewhere in the publishing world.” *Id.* at 513, 527. The comparisons are inapt.

109. *Id.* at 516 (quoting Maron L. Waxman, *Line Editing: Drawing Out the Best Book Possible*, in EDITORS ON EDITING: WHAT WRITERS NEED TO KNOW ABOUT WHAT EDITORS DO 153-54 (Gerald Gross ed., 3d ed. 1993)).

110. *See* Gordon, *supra* note 40, at 544 (“Only the constant admonition of my student editor—to simplify, simplify, simplify—finally made the article’s argument linear and satisfactory.”); Raymond, *supra* note 41, at 379 (stating that the best legal writers “are capable of clarity without any compromise in precision”).

111. My own experience is different. I did research using law reviews in college. Moreover, in nearly every law library I have frequented, I have recognized the nonlawyers—earnest, lacking a confident air, perhaps disheveled, or even clearly indigent—trying to figure out their legal problems without paying my profession’s unnatural fees. Informally, a law librarian at the Li-

substantive area under discussion. In this sense, the assumed congruence of identity between editor and reader is mismatched; the editor necessarily reads as an ingenue while the actual reader—likely a professor, lawyer, or judge—will already have the basics in hand.<sup>112</sup>

Professor Sanger is right, but she misses one crucial proviso. Works of legal scholarship—including whatever complexity and murkiness makes it past student editors—translate into legal doctrines and rulings, which form the basis of the orders handed down by judges, the advice given by lawyers, the practices of police departments, and the actions of governments, businesses, and, yes, everyday people. Where better to guard against complexity and murkiness in the law than uniquely suited student-run law reviews?

In the end, student editing is really about the character of authors: their capacity to accept and respond to criticism by their juniors of material that, for many, has career implications.<sup>113</sup> Student editors should be sensitive to this, but it is reason for courtesy and thoughtfulness, not for “light” or minimal edits. While the author should have the last word,<sup>114</sup> the author should also, if necessary, have to defend his or her material down to the last word.

Legal scholarship should have little room for complexity and almost none for creative writing. Simplicity and clarity, instead, are the hallmarks of good legal scholarship.<sup>115</sup> Those who find writing for law reviews boring should publish else-

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brary of Congress recently estimated for me that his patrons were 10-20% congressional staff, 10-20% private lawyers or persons affiliated with law firms, and the rest were from the lay public. This proves nothing about the readership of law reviews, but suggests quite a lot. See Gordon, *supra* note 39, at 548 (noting that law reviews’ long expositions and footnotes make them “accessible to a fairly wide audience of legal professionals”).

112. Sanger, *supra*, note 106, at 519.

113. See *Edited Transcript of the Comments of the Panel at the AALS Proposed Section on Scholarship and Law Reviews—Topic: The Struggle Between Author and Editor over Control of the Text*, 70 CHI.-KENT L. REV. 117, 119 (1994) (statement of Richard Epstein) (“Writing is a very emotional process. Family comes first, and so too bodily security. But after that I think most people, or at least most academics, define themselves by their published work.”); Ira C. Lupu, *Six Authors in Search of a Character*, 70 CHI.-KENT L. REV. 71, 72-73 (1994) (describing the interaction between authors and student editors); Gregory E. Maggs, *Just Say No?*, 70 CHI.-KENT L. REV. 101 (1994) (discussing the law review editorial process).

114. See Articles Editors of the *University of Chicago Law Review*, *supra* note 65, at 558; Executive Board of the *Chicago-Kent Law Review*, *supra* note 46, at 148.

115. See Liebman & White, *supra* note 30, at 423 (“With scholarly writing the paramount goal is clarity, not cleverness.”).

where if they want to express their bright, unique personalities and flair.<sup>116</sup> Students, meanwhile, should go ahead and edit with guts.

### C. IN MANAGING

There is no "student" approach to managing law reviews. Student-run law reviews are probably generally less well-organized than they could be. Their editors could stand to recognize the importance of on-time publishing, courteous and fruitful work with authors, and efficient use of resources, *especially paper*.

Poor organization at student-run law reviews should not, however, create an inference that faculty-run law reviews would be better. The following list, compiled and posted in our offices during my year as a law review editor, should suggest why:

#### *Top Ten Excuses Used by Authors This Year*

10. My research assistant bailed on me.
9. My answering machine was stolen.
8. The secretaries for the older faculty work in Microsoft Word for Windows unless they are working for other professors, in which case they use WordPerfect, but sometimes they mix up the two.
7. My roof leaked, so I couldn't get the manuscript to you.
6. I was in the Ukraine last weekend.
5. I've been having chest pains.
4. I couldn't find my research assistant.
3. The Religious Freedom Restoration Act just mooted half my article.
2. I read the article you're concerned about, and I don't think the article preempts my piece.
1. I was tired and I didn't feel like going to the library.

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116. Professor Ann Althouse encourages her fellow authors to "develop a genuinely original voice." Ann Althouse, *Who's to Blame for Law Reviews?*, 70 CHI.-KENT L. REV. 81, 84 (1994). This, she argues, will break student editors from the practice of conforming articles to "the standardized template." *Id.* at 83-84. If all, or even most authors did this, the law reviews might become good literature, but they would not be good law reviews.

Between student-run and faculty-run law reviews, the devil we know is, at least, the devil we know. Nonetheless, there are many would-be reformers of the student-run reviews.

## VI. REFORMING THE LAW REVIEWS

Among the numerous criticisms of student-run law reviews, there are a few proposals to improve or replace them. One of the most recent and consistent critics of student-run law reviews is Professor James Lindgren.<sup>117</sup> Professor Lindgren has written that “[m]ost student editors have no background that would make them suitable for selecting articles, editing prose, or publishing,”<sup>118</sup> and his most recent work is a call for various reforms.<sup>119</sup> His proposals, well-intended though they are, do not recognize or accommodate all the purposes that student-run law reviews serve.

### A. THE EDITORIAL SEMINAR MODEL

“The best way to ameliorate the three problems of student-edited law reviews—editing, selection, and supervision,” says Professor Lindgren, “is the Editorial Seminar Model.”<sup>120</sup> This proposal involves weekly or bi-weekly seminars for student editors taught by the law review advisor. Students would not only discuss the law review’s tasks, but also present manuscripts, discuss them with professors, and ultimately choose the manuscripts to be published. Additionally, the seminar would include teaching on legal scholarship and law review style editing. Professors could help “fill in gaps” in the students’ knowledge.<sup>121</sup> Aside from the myriad practical problems

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117. See Lindgren, *Manifesto*, *supra* note 45, at 528 (calling for an end to student-run law reviews); Lindgren, *Return to Sender*, *supra* note 43, at 1719 (lambasting the student editors of the *Texas Law Review Manual on Style*); Lindgren, *Fear of Writing*, *supra* note 43, at 1677 (same).

118. Lindgren, *Student Editing*, *supra* note 45, at 99-100. Admittedly, Professor Lindgren writes in the polemic form, a practice he defended in *Return to Sender*. See Lindgren, *Return to Sender*, *supra* note 43, at 1719-20. While polemic is good for starting an argument, see, e.g., Rodell, *Goodbye to Law Reviews*, *supra* note 2, at 38, it does not take things much further. Professor Lindgren should limit himself to one polemic per subject.

119. See James Lindgren, *Reforming the American Law Review*, 47 STAN. L. REV. 1123 (1995) [hereinafter *Reforming*].

120. *Id.* at 1125. Professor Lindgren published these ideas in a more germinal form in Lindgren, *Student Editing*, *supra* note 45, at 98-99.

121. See Lindgren, *Reforming*, *supra* note 119, at 1126. The Executive Board of the *Chicago-Kent Law Review* has given a student perspective on an editing session conducted by Professor Lindgren. Executive Board of the *Chi-*

associated with implementing such a proposal,<sup>122</sup> it corrodes two major benefits of the student-run law review: the teaching function and the development of good, understandable law.

As far as the teaching function, the great risk of the Editorial Seminar Model is that it might work. If a faculty advisor took an active interest in the operations of the law review, the articles it selects, and the editing it does to them, this would stamp out about half the learning students get from law review. In large part, law reviews teach by throwing students into cold water, and many may prefer hands-on learning and the challenge of dealing with real problems. Conducting a class that addresses the practical problems of law review publishing, and holding the hands of post-graduate students through all the law review publishing stages, is a little too parental and a little too likely to strangle "real" learning.

On the other hand, the Editorial Seminar Model enhances the drudgery benefit of law reviews. Bringing a professor in to make the final cut on articles and having students "taught" what legal scholarship is (and how to edit it when they find it) is a way of getting the drudge work out of students without getting the pesky questions.

Alas, the pesky questions are what guides scholarship toward clarity, tangibility, and relevance. The Editorial Seminar Model would weaken this principle benefit of student-run law reviews and law reviews would find themselves less and less relevant to law and law practice. The seminar classes that most pleased their law professor patrons would serve up highly theoretical or highly artistic work that is hard to understand and that veers from the task of expounding law.

## B. THE FACULTY SYMPOSIUM MODEL

Professor Lindgren offers the Faculty Symposium Model<sup>123</sup> as a tonic for the woes of "those law reviews not in the top forty

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*cago-Kent Law Review*, *supra* note 46, at 150-51.

122. Professor Lindgren notes several, including faculty resistance to additional work. See Lindgren, *Reforming*, *supra* note 119, at 1126. I must add that it would be difficult to ask student editors to devote even more time by requiring additional classes and that the model assumes reviews have plenty of time to select articles. As mentioned elsewhere, article selection is often done in an executive process, and a good manuscript can be lost if it takes more than 48 hours to make an offer.

123. See Lindgren, *Reforming*, *supra* note 119, at 1127. See generally Liebman & White, *supra* note 30, at 394-95 (explaining the advantages of the symposium format to lesser-known journals); Jean Stefancic, *The Law Review*

or fifty.<sup>124</sup> With the top law reviews attracting the cutting edge legal scholarship, reviews lower in the hierarchy can make themselves useful by focusing each issue on a particular field. This has been done by the *Chicago-Kent Law Review* with apparent success.<sup>125</sup>

Gratuitously, however, the Faculty Symposium Model throws in "faculty."<sup>126</sup> The model calls for a "law review oversight committee," composed of three faculty and two students, which chooses symposium topics and editors. Some symposium editors are faculty, and faculty solicit papers and write a foreword for the issue. Students have a role, thankfully. They "deal with the authors, edit the manuscripts, and work with the publisher, much as any law review would."<sup>127</sup>

The "symposium" half of the Faculty Symposium Model has legitimate benefits. Collecting articles on a single topic or theme can make an issue of a law review more attractive and more useful. The symposium issue is often-used, whether a review does all symposia or only one symposium issue a year.

Superimposing the involvement of faculty, however, seems, like the Editorial Seminar Model, corrosive of many benefits of student-run law reviews. Professor Lindgren's description—including as it does what is essentially "left over" for students—reveals that the Faculty Symposium Model is another version of getting drudge work out of students without pesky questions.<sup>128</sup>

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*Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy?*, 63 U. COLO. L. REV. 651 (1992) (discussing the increasing use of symposia in law reviews).

124. *Id.* at 1127.

125. See Randy E. Barnett, *Beyond the Moot Law Review: A Short Story with a Happy Ending*, 70 CHI.-KENT L. REV. 123, 128 (1994) (noting the increasing number of citations to the revamped *Chicago-Kent Law Review*). Indeed, I have found *Chicago-Kent's* symposium format quite useful in preparing this article. But see Stier et al., *supra* note 4, at 1468 (noting that "readers find symposia less useful").

126. It is worth noting that Professor Lindgren is a faculty advisor to the *Chicago-Kent Law Review* and was Symposium Editor (and, simultaneously, an author) in that review's symposium on law review editing. See *Symposium on Law Review Editing: The Struggle Between Author and Editor Over Control of the Text*, 70 CHI.-KENT L. REV. 71 (1994); Lindgren, *Student Editing*, *supra* note 45. The introduction to the symposium recounts the struggle and confusion between Lindgren and the journal's editor-in-chief over the content of the introduction itself. See Lupu, *supra* note 113, at 71 ("So much for the Chicago-Kent model of a law review in which the faculty direct the substantive core of the enterprise?").

127. Lindgren, *Reforming*, *supra* note 119, at 1127.

128. A cowed Executive Board at the *Chicago-Kent Law Review*, not recognizing the role of the student in restraining legal scholarship, contends that



No part of the model improves the experience of students,<sup>129</sup> educational or otherwise. A law review's faculty advisor, meanwhile, would get power over his or her peers who are trying to publish.

The Faculty Symposium Model preserves the role of students in editing, so it would be only half as bad as the Editorial Seminar Model, which dulls down student editing, too. The benefits of the symposium model need not be joined to the burdens of faculty participation, so the Faculty Symposium Model has some redeeming value, if law reviews' usefulness to the development of law matters to us.

### C. THE SPECIALTY JOURNAL MODEL

The next step after the (Faculty) Symposium Model is the Specialty Journal Model—as Professor Lindgren points out, a “ubiquitous” form.<sup>130</sup> A specialty journal is basically a permanent symposium, though a specialty journal could certainly have a symposium issue which covers a narrow topic within its specialty.

Professor Lindgren advocates this model—for poor reasons, however. The specialty journal can improve article selection and the lack of supervision at student-run law reviews, he says, because “[s]tudents who are interested in a particular field generally know more about that field than other students,” and because “[s]pecialization breeds competence.”<sup>131</sup>

The first point is nearly a non sequitur.<sup>132</sup> In fact, many students join law reviews just to be on a law review. With the top students filling out a general interest ‘name’ review at a typical school, other students fall in line below and behind them on the specialty journals.<sup>133</sup> While some certainly gravi-

“unfettered student control purely for the sake of student control does not, in our opinion, weigh heavily.” Executive Board of the *Chicago-Kent Law Review*, *supra* note 46, at 145.

129. *But see* Barnett, *supra* note 125, at 130 (noting the “substantially improved educational experience” at *Chicago-Kent*'s faculty-symposium-modeled law review). I suspect it is morale as much as education to which he refers.

130. Lindgren, *Reforming*, *supra* note 119, at 1128.

131. *Id.* at 1128. The phrasing—“Specialization breeds competence”—is similar to, but not as persuasive as, Judge Cardozo's classic line from first-year torts: “Danger invites rescue.” *Wagner v. International Ry. Co.*, 133 N.E. 437, 437 (N.Y. 1921).

132. It is saved only, perhaps, by the word “generally.”

133. *See* Robert M. Jarvis, *Maritime Legal Scholarship by Women: A Bibliography*, 27 J. MAR. L. & COM. 369, 369 n.3 (1996) (“[L]aw students often have little or no interest in the subject matter of the journal on which they

tate to specialty journals because of subject-matter interest, most do not, but rather take what they can get or what sounds interesting among what is available.

Lindgren's second point ("specialization breeds competence") may be true, so that, at the end of a year on a specialty journal, a student is competent in that field. What Lindgren fails to recognize is that this point is equally applicable to a student's particular role on law review. With law review members typically specializing during the second year of participation (into editing, article selection, desk-top publishing, management, etc.), does Professor Lindgren suggest that they do not improve at these tasks? He seems to undermine a large part of his complaint about student editing by allowing broadly that specialization does, indeed, breed competence.

#### D. THE REFORMED STUDENT CONTROL MODEL

The "least reformist" of Professor Lindgren's proposals is the Reformed Student Control Model,<sup>134</sup> where members of a traditional law review would just do their jobs better. In principle, this cannot be a controversial idea.

Professor Lindgren's central suggestion, though, is that students should do less aggressive edits. This weakens the teaching function, of course, and undermines a central benefit of student editing: bringing shameless clarity to legal scholarship. To the extent 'reform' moves law reviews away from strong edits for clarity, it runs counter to the law-improving purpose of student-run law reviews.

Other ideas subsumed by the Reformed Student Control Model include blind article selection, faculty input, and presumptive page limits. All are salutary, in moderation.

#### E. THE FACULTY-RUN LAW REVIEW

A final proposal, advocated by Professor Richard Epstein,<sup>135</sup> is the faculty-run law review. Though not necessarily intended to supplant student-run reviews—he notes that faculty- and student-run reviews coexist at the University of Chicago—this form eliminates many of the problems associated with student-run reviews. For example, article selection is profes-

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serve . . .").

134. Lindgren, *Reforming*, *supra* note 119, at 1128.

135. See Richard A. Epstein, *Faculty-Edited Law Journals*, 70 CHI.-KENT L. REV. 87, 88 (1994).

sionalized and centered around the preferences of one or a limited number of faculty.<sup>136</sup> As far as editing, Epstein suggests a light one. This is probably all that is necessary when editing the articles selected by a Professor Epstein at a University of Chicago, but it is not necessarily appropriate for law reviews at schools out of the top twenty.

Though it may eliminate many problems, the faculty-run law review definitely eliminates nearly all the benefits of the student-run review. Obviously, no teaching takes place, and faculty lose the benefit of students doing their work. Employers lose a basis by which to distinguish potential hires. Most importantly, faculty reviews do not restrain legal scholarship. As Professor Epstein points out himself (with reference to not needing many footnotes), the object of a faculty-run journal "is to highlight the *increment* to knowledge."<sup>137</sup> In other words, faculty-run law reviews can publish material with little reference to basic doctrine, allowing innovation to stack on innovation. Thus, faculty-run law reviews would allow law to develop around professors' understandings—not in service to law practice and the ordinary people governed by law.<sup>138</sup>

This is, of course, at fundamental conflict with the law itself. It is not a model to which the legal academy should aspire. Indeed, the academy must do significantly more thinking before it tinkers heavily with student-run law reviews.

## CONCLUSION

The literature on student-run law reviews would lead one to believe that they are undergoing a serious crisis. Criticism leveled at law reviews and calls for reform by the professoriat have grown and increasingly focused on the students who run them. If the article selection and editing that students do is as

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136. Professor Epstein boasts: "If I sense that an author and I will not get along—whether because of differences in temperament or in intellectual orientation—I will not accept an article." *Id.* at 89. Later: "I decided that it was not necessary to consult a referee . . . Instead, when I read a paper I really liked, I just accepted it by mail." *Id.*

137. *Id.* at 93.

138. See Gordon, *supra* note 39, at 546 ("It has . . . been argued that taking the law reviews away from students would make the reviews so theoretical that lawyers and judges would stop reading them. I think that is a possibility."); Denemark, *supra* note 51, at 23 ("The experience in other disciplines . . . suggests that [without student editing] scholarship would . . . become increasingly encoded in a language particular to one of its many scholarly subdivisions.").

harmful as the critics say, we would expect the institution of student-run law reviews to be on the wane.

To date, however, student-run law reviews have demonstrated staying power, and even a penchant for growth, in the face of such criticism. Their abolishment, modification, or replacement has yet to seriously materialize. This may reflect the many purposes, relatively unrecognized in the literature, that they serve. These purposes include teaching students, distinguishing among students for employers, boosting the home law school, and assisting the development of the law.

While the criticism of student-run law reviews often rests on the assumption that they exist primarily to serve faculty publishers, student-run law reviews are at odds with academe because their selection and editing practices restrain legal scholarship from soaring into irrelevance, veering into abstract theory, or being just plain unreadable. This is a good thing: it translates into legislation, court rulings, and, ultimately, law that better serves its purpose—guiding the lives of ordinary people.

Any 'crisis' in law reviews may reflect the significant changes legal scholarship has undergone—like the growth of non-doctrinal writing. The objections to student-run law reviews may truly be animated by the desire to redefine legal scholarship in ways that student-run law reviews have largely resisted. While student-run law reviews have changed—most notably by specializing and publishing non-doctrinal scholarship—they still appear to have rejected the path down which some writers would take them. And, in general, they should.

Student editors should prefer writings that they think will contribute to the corpus of legal knowledge and they should edit sufficiently to maximize their own understanding of such writings. The understanding of law students is an adequate proxy for the understanding of the people whom law serves.

If change is to be warranted, the critics of student-run law reviews must address themselves to what they want from law reviews, and systematically compare what they want to the purposes student-run law reviews currently serve. Any 'solution'—whether it be the reforms proposed by Professor Lindgren, faculty-run law reviews as advocated by Professor Epstein, or something else—must be justified in terms of this kind of analysis.

Until this is done, the question "Why student-run law reviews?" has several satisfactory answers.

