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The Cutting Edge of Poster Law

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Students place tens of thousands of posters around law schools each year—in staircases, on walls, and on bulletin boards. Rarely, however, do formal disputes about postering arise. Students know how far to go—and go no farther despite numerous avenues for postering deviance: blizzarding, megasigns, commercial or scurrilous signs. What is the history of poster law? What are its norms and rules, privileges and procedures? Is poster law efficient? Is it just?

To understand poster practices, legal scholars have traditionally relied on Alexis de Tocqueville's methodology, first proposed in the touchstone postering text, *Democracy in America:*

> From time to time we came to new [law schools]. As all these [schools] are exactly like one another, I will describe the place at which we stopped tonight. It will provide a picture of all the others.[1]

Such an approach generalizes from a quasi-random sample of one and passes off anecdote as empiricism. And why not? In legal academia, a little faux empirical research goes a long way; here, the halls of the University of Michigan Law School provide the case study, but any AALS-member institution could serve equally well. Inculcated with the spirit of data-free theorizing, this article aims to revive poster law scholarship by looking at its cutting-edge practices.[2] In de Tocqueville's words, "the description [below] has nothing but its complete accuracy to recommend it."[3]

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1. Ed. J. P. Mayer, at 730–31 (Appendix 1, Note U) (internal citation omitted) (New York, 1969).

2. In the past year, according to the 1997–98 AALS Directory of Law Teachers, not one law school professor taught poster law. By comparison, 1,635 professors taught constitutional law. (The authoritative AALS List of Law Teachers by Subject even omits poster law, skipping from Oil and Gas to Poverty Law). After a century of desuetude, poster law calls out for scholarship, journals, conferences in Florentine villas, and endowed chairs.

   The plight of poster law is not entirely dissimilar to the status accorded baseball law. See the legendary Aside, The Common Law Origins of the Infield Fly Rule, 123 U. Pa. L. Rev. 1474 (1975). See generally Charles Yablon, On the Contribution of Baseball to American Legal Theory, 104 Yale L.J. 227, 238 (1994) (noting that the Aside and the articles it provoked "demonstrate what happens when finely honed skills of legal analysis and statutory interpretation are applied at extended and sometimes excruciating length to trivial or fanciful questions that have no effect on the real world. In short, these pieces are just like regular law review articles, only funnier.").

3. De Tocqueville, *supra* note 1, at 731.

I. A Brief History of Poster Law

A. The Bulletin Board Rule

1. The Early Years

The Civil War, Reconstruction, and Great Depression years were a difficult period for poster law scholarship.[4] Nevertheless, archival research suggests a rich array of postering-related deviance, including the use of intoxicating beverages, irregular classroom attendance, rowdy rushes, arrests for criminal activity, hazing, frequenting of saloons and houses of ill fame, gambling, a keg party, unwarranted use of motor vehicles, and the "widely-known circumstances of the chorus girls and the Phi Delta Phi [legal] fraternity."[5]

Out of this richly textured cultural milieu emerged the earliest extant postering reference—tantalizing evidence of the birth of modern poster law. In 1883 the noted historian Charles York wrote about the progress of his law school class through the academic year:

> We had got through with the "Rights of Persons," and taken up the "Rights of Things." Time had now elapsed when . . . *a bulletin board was erected which not only held posters of these facts, but of rushes, challenges and other interesting items.* . . . [Later we] began considering "Private and Public Wrongs." The first that we discovered under this head, was *a challenge posted on our bulletin board,* to meet the wild fancies of the Lits' and Medics' eccentric minds for the purpose of a "rush."[6]

2. A New Regime?

What postering regime predated the 1883 bulletin board? Did the bulletin board reflect a formal legal reflex to informal wall postering practices? What "wild fancies" did the first poster propose?[7] Tenuous circumstantial evidence confirms that the *Bulletin Board Rule* coalesced during this period: decanal statements in 1895 defended the "dignity of the Department,"[8] and contemporaneous rules fined students for "walking" on the grass in the law school

4. See Lawrence M. Friedman, A History of American Law, 2d ed., 663 (New York, 1985) ("Informal law (and corruption) do not leave behind the neat and orderly records that official law does."). Because the University of Michigan Law School was founded in 1859, only an understudied single year of antebellum poster history could have occurred.

5. Elizabeth Gaspar Brown, The Uproarious Past of the Law School: Student Conduct and Misconduct, 66 Mich. Alum. Q. Rev. 153, 160 (1959); see also Detroit Free Press, Feb. 22, 1921, at 1 (breaking the story and noting that "the cream of the law school" had been placed on probation); Mich. Daily, Feb. 25, 1921 (reporting the dean's belief in the "innocency" of the episode).

6. Brown, *supra* note 5, at 153 *(quoting* York, the Class of 1883 historian) (emphasis added).

7. The interaction of postering and politics is a pressing area for research. For example, a posted 1908 rush became such a "disgrace," Faculty Meeting Minutes (Oct. 19, 1908), that a faculty resolution in protest was copied to the press and provoked the dean to note: "After an affair of this kind, how can we go to Lansing and ask the legislators to make us appropriations? . . . They say this rush business is unworthy of a state institution, and they are right. . . . We will tolerate no more lawlessness." Mich. Daily, Oct. 21, 1908, *cited in* Brown, *supra* note 5, at 158–59.

8. Brown, *supra* note 5, at 156.

courtyard.[9] Sadly, the record falls silent between the Great Depression and the Vietnam War—the lost prehistory of poster law.[10] Though the rise of the modern administrative state and the Langdellian method transformed elite legal culture,[11] these changes have bypassed poster archives.

B. The Wall Postering Regime

1. Contested Origins

Legal historians fiercely debate when modern poster law, often labeled the *Wall Postering Regime*, first emerged.[12] Reference to the Michigan experience may illuminate this national debate. Adopting an unfashionable historiographical approach, one group of Wall Poster scholars asserts a paradigm shift in 1960.[13] A revisionist school suggests that wall postering may have occurred from time immemorial, that is, from before 1960—"the memory of man runneth not to the contrary"[14]—with both the Bulletin Board and Wall Postering Regimes existing in dialectic tension.[15] Finally, a resurgent and unabashedly conservative wing has proposed that a Bulletin Board Regime of a Persistent

9. What constitutes "walking" is a contested concept in the jurisprudence of law school landscape architecture. See H. L. A. Hart, The Concept of Law 121–32 (Oxford, Eng., 1961) (a classic text exploring the meaning of "no vehicles in the park," a correlative grass-maintaining rule); see also Frederick Schauer, Precedent, 39 Stan. L. Rev. 571, 583 n.27 (1987) (exploring whether a bicycle is a "vehicle" and noting that "any actor always has a choice of whether to follow even a clear rule"). Schauer incorrectly generalizes to *any* actor what has always been a *faculty privilege* to walk or bicycle on grass despite a "clear rule." The fall of the Stay Off the Law School (Court)yard Grass Rule is a key locus for semiotic studies of legal landscape.

10. Poster history may not have been "lost," but rather suppressed. York's elliptical phrase "a bulletin board was erected," Brown, *supra* note 5, at 153, is subtly revealing; its passive construction obscures the role of post–Civil War law faculties in silencing the unrepresented voices absent from law schools. The obscured "posters of dissent" may instantiate and replicate the doubly wounding rhetoric of marginality in elite legal discourse.

11. Friedman, *supra* note 4, at 618 (noting Chris Langdell's argument that the case method was "a separate science . . . distinct from politics, legislation, and the opinions of laymen" and therefore *necessarily* distinct from contemporaneous poster law).

12. This dichotomy between the Bulletin Board and Wall Postering regimes should be understood as an ordinary Weberian ideal-typical model, of course. Max Weber, 1 Economy and Society, eds. Guenther Roth & Claus Wittich, 216 (New York, 1968) ("[N]one of these . . . ideal types . . . is usually to be found in historical cases in 'pure' form.").

13. See, e.g., Gordon S. Wood, The Radicalism of the American Revolution (New York, 1992) (challenging the view that there was a sharp break in pre- and post-1776 revolutionary attitudes towards protest, a decisive moment for postering or "broadside" practice). Cf. Thomas S. Kuhn, The Structure of Scientific Revolutions, 3d ed., 66–210 (Chicago, 1996) (stating the obvious).

14. The common practice nationally is to date law school history by reference to decanal epochs. At Michigan, living memory postdates Dean Stason, who ushered in modern poster law by leaving office in 1960. Cf. Carleton Kemp Allen, Law in the Making 89 (Oxford, Eng., 1930) (noting that English courts interpreted "time immemorial" to refer to usage begun before Richard I's coronation in 1189, the oldest date for legal memory).

15. Lacanian explications of unconscious phallocentric poster practices have yet to be written (or have been suppressed). Cf. Jeanne L. Schroeder, Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property, 93 Mich. L. Rev. 239 (1994) (crystalizing the dialectic tension).

Nature survived intact until the early 1970s.[16] According to this view, early modern wall posters were Exceptions within a flourishing Bulletin Board Regime. Just when the new regime emerged from the tattered remains of the old is a persistent problem for poster law historians.

Across the ideological spectrum, few scholars still deny Arthur Miller's role in catalyzing the regime shift, although interpretations diverge regarding his amply corroborated comment that wall posters made Harvard seem a "lively" place. Exception theorists insist that Miller's comment was a challenge to a *still-existing* "dignity of the Department" approach to law school governance generally and the Bulletin Board Rule in particular. According to this view, the Wall Postering Exception did not become the Wall Postering Rule until the early 1970s during a period of broader upheaval in social and postering norms.[17] Others disagree. Although the division of faculty postering postures into "liveliness" and "dignity" camps now seems "natural" and "immutable," the historical record reveals just how socially constructed such categories are—a realization that in turn has suggested a transformative approach among certain poster scholars.[18]

Practice over the last two decades has been evolutionary, not revolutionary, with increasing postering zones, types, and methods, perhaps correlated with a secular rise in the number of student organizations. Today a Wall Postering Regime is in place, established by formal faculty acceptance and through highly articulated informal student postering norms. Recent poster proliferation, along with increases in poster deviance, suggests that certain congestion limits may have been reached—an internal contradiction in the Wall Postering Rule that could signal or provoke a regime shift, from informal norms to formal law, or from standards to rules.

2. Methodological Cautions

Because no surviving records conclusively document the transition from Bulletin Boards to Wall Postering, researchers should be cautioned regarding inferences that may be drawn. A common methodological problem for the study of local postering cultures is the predominance of the oral faculty

16. See Bruce A. Ackerman, Private Property and the Constitution 10–17 (New Haven, 1977) (ascribing this view to Scientific Policymakers with a Comprehensive View) (excess capitalization in original).

17. See generally Friedman, *supra* note 4, at 667 ("These were the years of the 1960s. . . . Every group or class that had been dependent, that had been put down, or put away, or taken for granted, now showed its fangs: blacks, prisoners, poor people, *students* . . . ." (emphasis added)).

18. Cf. Ian F. Haney Lopez, The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice, 29 Harv. C.R.-C.L. L. Rev. 1, 1–3 (1994) (noting race as social construction); Roberto Mangabeira Unger, Social Theory: Its Situation and Its Task 159 (Cambridge, Eng., 1987) (noting transformative politics). Faculty informants suggest three overarching "feelings," the penumbra from which practical poster norms may emanate: (1) The law school is a living institution, not a church or a museum. Posters make for lively atmosphere, especially for "happy" events. (2) The law school is not a high school or frat house; too many posters are tacky. (3) Posters should be put up in a reasonable way and do no harm.

tradition, even in the formal law, with knowledge residing in and being transmitted within faculty clans and through elders.[19]

A second recognized complication in poster theory is that its very study may transform the underlying law: a Heisenberg Uncertainty Principle of social research. In this case, preliminary investigation catalyzed the creation of The Memo, now a core document for poster law centralists.[20] Declaring that "[t]he rules are few in number, but important," The Memo purported to write down preexisting law and to "clarify guidelines" through its authoritative interpretations—a heady mix of law discovery and lawmaking.

II. The Dozen Norms of the Living Law

Despite the catalytic role of The Memo, faux empirical methods reveal, with a high degree of confidence, the following dozen norms—the living law of postering. These norms are drawn from fieldwork undertaken among those innocent of formal poster law knowledge and those directly charged with such knowledge: faculty, administration, the law school historian, and student organization leaders.[21] *No one knows the rules; everyone follows them.*

1. Jurisdiction. Poster law exists within a spatial context of overlapping and contiguous jurisdictions. Whether informal postering norms track the formal jurisdictional boundaries is unclear; further empirical work is warranted. Locally, a geographic divide appears between the richly textured postering regime in the classroom and study buildings and a bright-line No Nonlibrary Poster Rule in the library building.[22] More generally, poster law exists within a

19. For a parallel, see Mark D. West's analysis of sumo wrestling, where elders resist divulging information. Legal Rules and Social Norms in Japan's Secret World of Sumo, 26 J. Legal Stud. 165, 166 (1997) ("Controlling the flow of information . . . helps to preserve the positive image and cultural mystique of sumo."). But see E. E. Evans-Pritchard, The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People (Oxford, Eng., 1940) (describing efficient transmission of oral culture in preliterate and prepostering society).

20. General Guidelines for Posting Notices (Memo from the Law School Administration to Law School Student Organizations) (Oct. 18, 1994) (on file with author) [hereinafter The Memo]. As an aside, this broadside, though styled in the form of a memo, was distributed on 8½-by-11-inch paper—making it an (im)poster.

21. While the norms appear "local" in a provincial sense, this very locality suggests the universal nature of poster law. Each year hundreds of students enter the law school and poster in ignorance of The Memo, according to double-blind surveys. According to this view, students put up posters more or less wherever they see *other posters congregating.* Occasionally they put up deviant posters, but they are not terribly troubled when these strays disappear—either because they do not head back that way or because they do not see any other posters in the area and sense that there may be some policing going on. See Robert C. Ellickson, Order Without Law: How Neighbors Settle Disputes 281–82 (Cambridge, Mass., 1991) ("[P]eople are aware that the legal system is a relatively costly system of dispute resolution and therefore often choose to turn a deaf ear to it. . . . For a wide variety of reasons, legal interventions can flop."). Poster norms may prove more impervious to formal legal intervention than Memo writers may hope.

22. Three buildings are salient: the Classroom Building (Hutchins Hall), the Study Building (Legal Research), and the Library Building (Library). In a recent skirmish, library workers began enforcing a *No-Postering Regime* along the corridor leading to the library. Student posterers appealed to the author of this article for guidance as to applicable poster law at the Study/Library boundary—another example of the Heisenberg Uncertainty Principle in poster law studies.

university governed by an elected Board of Regents, and *perhaps* under the laws of the state of Michigan.[23] Comparative studies of library postering rules and jurisdictional rules in private law schools are urgently needed.

2. Location. Posters are allowed on the walls in the basement of the study building and the walls of the basement, staircases, and first and second floors of the classroom building.[24] The top two floors of the classroom building, devoted mostly to decanal, faculty, and administration offices, are off-limits even though these floors include high student traffic areas crucial for potential poster placers—especially the career placement and registrar's offices. It is not clear whether the top-floor prohibition is primarily *jurisdiction-based, location-based,* or *surface-based:* because each norm may buttress the others, the top-floor antipostering norms are overdetermined.[25] The spatial interaction of decanal, faculty, administrator, and student "classes" is complex: further study may reveal that the deep structure of poster law revolves around "defensible spaces,"[26] even though the norms are often articulated in class-neutral terms.[27]

3. Surfaces. Posterers post on "safe surfaces," which have come to be understood as stone or glass, not wood or paint. However, this definition is

23. Because of an unusual provision in the Michigan Constitution, art. 8, § 5, state courts have interpreted the University of Michigan to be "[an] independent organ[] of the state government, free from legislative or executive control." Jeffrey S. Lehman, Social Irresponsibility, Actuarial Assumptions, and Wealth Redistribution: Lessons About Public Policy from a Prepaid Tuition Program, 88 Mich. L. Rev. 1035, 1117 n.234 (1990). By implication, the university is free from state intrusion into postering decisions.

24. As an aside, location norms permit posters on a sponsoring organization's basement bulletin board, but *not on other organizations' boards.* It is not known whether postering on the boards of "fellow-traveling" organizations is culturally accepted and what complex norms of reciprocity govern such exchanges. Informal private markets characterized by bulletin board "squatting," "invasion," or "auctions" have not been reported. See generally Hernando de Soto, The Other Path: The Invisible Revolution in the Third World (New York, 1989) (discussing these phenomena elsewhere).

25. Alternatively, law and economics scholars have suggested that students may not bother postering on the higher floors because few "go up" to visit faculty, and it would not be cost-efficient to deploy limited postering resources where so few students ever tread. Richard A. Posner, Economic Analysis of Law, 5th ed., 14–17 (Boston, 1998) (discussing the possibility of efficiency). Econometric modeling has not yet ruled out contrary hypotheses, perhaps because of the sample size (N=1) and thorny problems of heteroskedasicity and multicollinearity. See Richard H. Pildes & Kristen A. Donoghue, Cumulative Voting in the United States, 1995 U. Chi. Legal F. 241, 286 n.189 ("heteroskedasicity is often a problem"); Samuel R. Gross & Robert Mauro, Patterns of Death: An Analysis of Racial Disparities in Capital Sentencing and Homicide Victimization, 37 Stan. L. Rev. 27, 81 nn.135–36 (1984) (multicollinearity may cause "problems").

26. See Oscar Newman, Defensible Space: Crime Prevention Through Urban Design 3–19 (New York, 1973) (defining the term); Oscar Newman, Creating Defensible Space 3, 14–23 (Washington, 1996) (explaining that defensible space is concerned with reassigning areas and responsibilities so that people have more control over their environments).

27. As an aside, in earlier times students were not permitted to "go up" to private faculty offices atop the study building, "intellectual spaces" separate from public faculty offices in the classroom building—a split that echoes faintly of the divide between medieval cathedral and town hall, spiritual and earthly dominion in uneasy tension. When several faculty transgressed this boundary and clustered their primary offices near the faculty lounge, their new space was perhaps not defensible psychologically. A *No Postering Above the Second Floor Rule* may have provided symbolic linkage between the old study building and new faculty lounge pioneers.

peculiar: cursory empirical examination of the stone walls reveals substantial smudging and marking from adhesive tape residue. Tape residue and the "faculty immunity" from surface norms (discussed below) suggest that the safe/unsafe dichotomy may be unstable. Perhaps surface norms developed from an earlier era of heightened custodial vigilance in removing tape residue from stone. Or paint, wood varnish, adhesive tape, and associated wall-cleaning technologies may have shifted since the norms originated: at some point, the differential harm of postering on "unsafe" surfaces may have been more immediately noticeable or less easily remedied.[28] Alternatively, the differential-surface-harm rationale may be a diversion—poster law post-hocery, as it were. Perhaps surface norms emerged as a surrogate for some other, less content-neutral distinction, such as a *No Posters Where Professors Spend Lots of Time Rule*, so that surface norms reflect an unarticulated compromise between the "lively" and "dignity" camps within the faculty. Further empirical study of the differential harms of various tape, surface, cleaning combinations will be essential to maintaining the core claims animating the surface norm.

4. Elevators. No posters in elevators—simple? Perhaps not. This rule appears to be an accidental mistranscription of the surface norm. The study building elevator was *wood paneled* during an earlier era: therefore elevator postering was covered by the general *No Wood Surface Rule.* Nevertheless, an independent no-elevator norm emerged and now persists, even though the elevator became a safe surface—*plastic wood veneer*—twenty years ago. The *Elevator Rule* exemplifies yet another example of incautious legal reasoning by analogy.[29] Perhaps the *Elevator Rule* could be assimilated to the *No Postering Above the Second Floor Rule* because elevators do travel "up to" higher floors. Alternatively, differential rates of elevator and stair usage among faculty and students suggest that the *Elevator Rule* may be a covert instantiation of an unspoken *No Posters Where Professors Spend Lots of Time Rule.*[30] Regardless of its origin, the *Elevator Rule* now reflects an emerging, expressive norm against coerced confrontations with posters in a closed, moving space—the *No Involuntary Poster Viewing Rule.*

5. Multiples. Multiple posters for an event may not be placed close together—no "blizzarding" or "plastering," in the hallway patois. The informal

28. The effect of technological change on the evolution of norms has drawn substantial scholarly attention. Jesse Dukeminier & James E. Krier, Property, 4th ed., 28–30 (New York, 1998) (noting scholarship concerning the interplay of whaling law and norms).

29. For example, the Supreme Court recently held that interest follows principal "as the shadow [does] the body." Phillips v. Washington Legal Found., 118 S.Ct. 1925, 1930 (1998) (quoting Beckford v. Tobin, Ves. Sen. 308, 310, 27 Eng. Rep. 1049, 1051 (Ch. 1749)); see Michael A. Heller & James E. Krier, Deterrence and Distribution in the Law of Takings, 112 Harv. L. Rev. 997, 1016 (1999) (excoriating such "shady reasoning"). Similarly, oil and gas law drew on analogies to wild animals. Carol M. Rose, Possession as the Origin of Property, 52 U. Chi. L. Rev. 73, 75 (1985) ("These cases are not entirely silly.").

30. Certain scholars suggest that although the initial appearance of the rule may have been accidental, it persists because transaction costs of modifying the rule exceed expected efficiency gains—a voguish "path dependency" argument. Cf. Mark J. Roe, Chaos and Evolution in Law and Economics, 109 Harv. L. Rev. 641 (1996) (overlooking the strictly vertical path dependence inherent in the elevator mode of transportation).

norms are murky on the definitions of "multiple" and "close together." Multiple postering appears to be a relatively new and growing phenomenon policed by custodial staff and disaffected faculty on an ad hoc basis. Policing has not resulted in student complaints, suggesting that multiple posterers may recognize that they are testing the limits as they glide down the Slippery Slope (or is it the Sticky Staircase?) of the *Multiples Norm.*

6. Commercial Notices. Commercial posters may not be placed above the basement. Recently, bar review and legal database companies with some "relation to" students have been postering up the staircases and have hung banners in the hallways when company representatives are in town. The definition of "relation to" is in flux, implicating jurisdictional, standing, and First Amendment aspects. Little scholarship has focused on how commercial posters first penetrated the basement, allowing the emergence of a quintessential "poster underground."

7. Size. Large posters are a particularly fruitful area for study of poster law development. Size matters. The informal practice seems to be toward increasing numbers of large posters, perhaps to rise above the visual fray generated by deviant blizzarding. Large commercial posters seem to be the most discouraged; Law School Student Senate banners, the most tolerated. Increasingly large posters could serve as an index of regulatory failure: the informal system may not be able to cope with common pool resource problems efficiently when the number of student organizations and events increases beyond the carrying capacity of the resource.[31] Destructive "overfishing" of staircase space may be occurring. This hypothesis suggests a secular rise in organizations and events that drives rational individuals collectively to overuse existing resources—a trend that requires time-series and cognitive psychology testing. Alternatively, scholars suggest that there is a "large poster" culture among previously marginalized groups of students. When such oppressed voices speak truth to power, the law reconstructs their claims by labeling their posters as unacceptably "large" and removing them in favor of "small" ones.

8. Policing. Custodial and noncustodial policing norms are particularly obscure, although few would deny that there has been a cutback in Warren Court protections. Norms are enforced mostly through un-self-reflective student compliance, and in part through active repression of deviance by custodial staff and, occasionally, by professors. There are a declining number of faculty enforcers, perhaps because of efficient administrative policing, or entrenchment of self-policing norms. Self-help by students is heavily sanc-

31. In a similar phenomenon, fishing fleets resort to ever-more-effective capture technology as stocks of fish decrease—a potentially vicious circle that is often described as a tragedy of the commons. See Garrett Hardin, The Tragedy of the Commons, 162 Science 1243, 1244–45 (1968) (introducing the metaphor); Harold Demsetz, Toward a Theory of Property Rights, 57 Am. Econ. Rev. 347, 350–53 (1967) (suggesting why a shift to a private property regime may be efficient when informal norms fail). But see Michael A. Heller & Rebecca S. Eisenberg, Can Patents Deter Innovation? The Anticommons in Biomedical Research, 280 Science 698 (1998) (arguing that too much private property may also be inefficient). The tragedy of the hallways neatly captures the posterers' dilemma.

tioned, particularly content-based removal or defacing of posters.[32] This norm inspires fervent defense when violated and detected, perhaps because of its connection to "poster speech" norms.[33] Poster-policing abuses appear rare, reflecting perhaps widespread compliance with postering norms and consistent sanctions on deviance.[34] However, scholars have recently suggested that apparent conformity may be masking suppression of dissent.[35]

9. Removal. Self-help removal of posters after an event has occurred is uncontroversial despite the posters' continued advertising value. Nevertheless, there does not appear to be any consistent postevent poster-removal norm; careful research has not proven the hypothesized *Clean Up After Yourself, Who Else Do You Think Is Going To Do It? Rule* or a strong *Reap What You Sow Norm.*[36] It remains unclear how old posters are removed, though removed they are—a fruitful area for research.

10. Political Campaign Exception. Following First Amendment jurisprudence more generally, there appears to be a political campaign exception to the formal rules and informal norms. During the period immediately preceding Student Senate elections, political posters by candidates appear in many prohibited locations and surfaces, including archways, doors, and floors. It is possible that no political poster exception exists, but deviant blizzarding during a compressed campaign season (one or two days) overwhelms informal policing norms.

11. Administrative Transgression. During the Bulletin Board Regime, small notices under glass on certain bulletin boards constituted constructive notice to students on *all* administrative issues. Over the years, as student postering rules evolved, administrators have engaged in creeping posterism. For example, the library posted notices—even on elevators, doors, and paint walls—notifying students of particular administrative deadlines. These transgressing posters have spurred, perhaps reflected, the demise of the constructive notice regime. Students now argue on due process grounds that they should be able

32. Negative truthful gossip is an effective sanction among close-knit communities of law students with multiple opportunities for monitoring and policing deviance. Ellickson, *supra* note 21, at 57–58 (noting role of "negative truthful gossip" in analogous communities). As an aside, content-neutral defacing—such as tearing off a piece of a poster to jot down a phone number—is less severely sanctioned, particularly when the poster's "message" is unaffected.

33. See generally PruneYard Shopping Ctr. v. Robins, 447 U.S. 74, 84 (1980) (discussing First Amendment implications in analogous physical setting).

34. See James M. Acheson, The Lobster Gangs of Maine 73–76 (Hanover, 1988) ("[F]ishermen touch another's gear only with great reluctance, knowing that their own gear is vulnerable to retaliation. . . . The norms are therefore widely obeyed, and although the entire coast is patrolled by only a few wardens, there is little trouble."); see also Jon Elster, Norms of Revenge, 100 Ethics 862, 866–83 (1990) (describing Balkan revenge norms).

35. See, e.g., Deborah L. Rhode, Whistling Vivaldi, AALS Newsletter, Aug. 1998, at 1, 3 ("Women student organizations['] . . . posters, along with those of gay and lesbian groups, have been removed or defaced.").

36. International News Serv. v. Associated Press, 248 U.S. 215, 239 (1918) (criticizing INS for "endeavoring to reap [news] where it has not sown"). But see Douglas G. Baird, Common Law Intellectual Property and the Legacy of *International News Service v. Associated Press*, 50 U. Chi. L. Rev. 411, 413 (1983) ("Wheat and information are fundamentally different from one another.").

to rely on administrative conformance with student poster norms *(including* garish color choices) for notice: small notices under glass no longer suffice. Of course, detailed study of the constructive notice regime forms an independent project.

12. Faculty Privileges and Immunities. As in many areas of law school governance, there are broad faculty privileges and immunities that trump *all* other postering rules and norms.[37] Postering for certain events, such as faculty seminars, *routinely* violates many of the rules on prohibited surfaces and locations. Faculty posters are seen on wooden doors, on the third and higher floors, on painted walls, and in elevators. For example, faculty have long blizzarded posters of final examination grades on the Weeping Wall,[38] creating a fifteen-foot (five-meter) immiseration zone within which student posters never flourished. Recently papered over and festooned with pens of color, the space was occupied by students, who recreated it as a Democracy Wall.[39] Will the Wall survive? Compare China, where authorities jailed or shot Democracy Wall posterers, with Yale Law School, where they have not.[40]

The *Faculty Privileges and Immunities Norm,* exemplified by deviant door postering, undercuts both aesthetic and harm-based rationales for the student-restricting norms. It could be argued, though it will not even be suggested in the present study, that the Faculty Privileges and Immunities Norm exposes postering law as a covert method for reinforcing hierarchy (and patriarchy?), assuaging feelings of inferiority present among competitive and narcissistic law faculties, and subtly preparing students for their future work environments.

III. Crystals of Poster Law

A. The Memo: Rosetta Stone or Rashomon?

Against this lush norm-tapestry, whence comes formal poster law? All scholars concede that The Memo is the hard-edged ur-postering text, the only extant version of written poster law. In a difficult straddle of the faculty's dignity/liveliness dichotomy, The Memo aims to "achiev[e] a balance be-

37. Studies of faculty privilege in other areas may shed light on postering norms. For example, for decades faculty have exercised a privilege of bringing their dogs to school despite bright-line university dog law to the contrary. Indeed, professorial dogs have long played a storied role in constituting the oral "culture of resistance" among elite law faculties. Students may not bring dogs, except seeing-eye dogs, to school.

38. A New Role for the Weeping Wall, [Mich.] Law Quad. Notes, Spring 1999, at 20–21.

39. *Id.* at 21 (noting the questions of the week).

40. Poster norms at the Yale Law School are salient for comparativists. Cf. Kate Zernike, Students Debate Opening Elite Yale Law Journal to All, Boston Globe, Mar. 25, 1999, at A1 (debate over law review competition standards "has been carried out on postings and petitions on 'The Wall,' a free-speech bulletin board in the narrow main corridor of the law school in New Haven"). Both Michigan and Yale were built around the same time, blending Collegiate Gothic stone and ornate wood in the same imitative Anglophilic style. Norm convergence between these schools appears to strengthen neo-Marxist claims that stress the materialist base of poster law production.

tween aesthetic concerns, information distribution, and building maintenance"[41] by recasting mushy norms into crystalized rules:[42]

(1) No posting on painted surfaces,
(2) No posting on wood surfaces,
(3) No posting in elevators,
(4) No posting above the second floor,
(5) No posting on outside entrance doors,
(6) No multiple postings of the same notice within a small area, i.e. no "blizzarding" or "plastering" of corridor walls,
(7) Questions regarding size have rarely arisen; common practice has limited the use of huge poster/banners.[43]

The Memo is a curious document: seven is a deeply unstable number of rules (here comprising five Commandments, one Mushy Standard, plus one Proto-Rule). Scholars expect that, in time, The Memo's rules will asymptotically approach Ten Commandments framed as "Thou shalt nots . . . ," thus crystalizing an unconscious cultural authority lacking in the current version. The ordering and selection of rules is perplexing as well. Placing the specific Elevator Rule third (after technocratic surface norms) is a puzzling strategic choice; perhaps it deflects scrutiny away from the expressively charged Location Rule that follows. Indeed, the Elevator Rule could be governed by the Location Rule: *elevators travel above the second floor.* The specialized Outside Entrance Doors Rule is baffling because it omits *inside* doors and is covered by the Wood Surfaces Rule. Most telling of all, why is there no reference to Faculty and Administration Privileges and Immunities?

The Multiple Postering Mushy Standard is intriguing because it is not yet reduced to bright-line form. Its embrace of vernacular postering language and reliance on a reasonableness test reveals the standard's recent origin—a status not reflected in The Memo's relentlessly ahistorical presentation. To the extent that the law is administratively determined and centrally enforced, scholars posit that a safe harbor will likely emerge that economizes on policing costs—such as one poster per ten feet of corridor.

The Questions Regarding Size Proto-Rule is extraordinary; observing it is like watching a nebula coalescing into a star. In time, the Proto-Rule may ascend to become the seventh rule ("No large . . .") or fade if informal sanctions or lack of student interest restrain large posters. In its present form, the Proto-Rule makes explicit the law's reference to evolving norms within the postering community, mimicking the relationship between the Uniform Commercial Code and merchant communities.[44] Like the UCC's principal drafter,

41. The Memo, *supra* note 20, at 1.

42. See Carol M. Rose, Crystals and Mud in Property Law, 40 Stan. L. Rev. 577, 577–78 (1988) (contrasting the "hard-edged doctrines that tell everyone exactly where they stand" with "fuzzy, ambiguous rules of decision").

43. The Memo, *supra* note 20, at 1.

44. Lisa Bernstein, Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms, 144 U. Pa. L. Rev. 1765, 1765–68 (1996).

Karl Llewellyn, the Memo writer seeks to discover "immanent business norms" without recognizing how codification alters practice.[45]

So, is The Memo the Rosetta Stone or the Rashomon of poster law? According to some scholars, The Memo transparently reports already existing law; others claim it discovers the law based on evolving practices; finally, it could be making law under the guise of codification. Even as a formal matter, there is controversy regarding poster lawmaking. Under the current constitutional structure,[46] the university's elected Board of Regents has apparent authority to regulate the time, place, and manner of law school posters, but it has not done so. Despite careful inquiry, the source of formal poster law authorizing The Memo remains opaque; it may be entirely ultra vires.

B. Law, Norms, and Cutting-Edge Reforms

As poster entrepreneurs induce norm bandwagons and cascades,[47] poster law rapidly evolves, though the resulting mix may be neither efficient nor just. Discrete poster communities may continue to be disproportionately burdened by existing postering norms: for example, there may be generational or other cultural lacunae in student ability to absorb information from competing, brightly colored visual images—an instance of the *MTV Effect*.[48] Reified norms may dissuade students from adopting improved poster technologies and practices such as nonslip floor posters or targeted posters outside the Placement Office.[49]

Because there are no coordination rules for lining up posters, much wall space is frankly wasted, and the unnecessary visual clutter harms all posterers (perhaps propelling the multiple/large poster spiral). Students may not be able informally to implement pareto-optimal poster norms as free riders, common pool dilemmas, and information asymmetries increase congestion

45. *Id.* at 1769 ("[W]hile the drafters of the Code sought to incorporate these norms into the law . . . they failed to recognize that this approach would fundamentally alter the very reality they sought to reflect."); see also Richard A. Epstein, Principles for a Free Society: Reconciling Individual Liberty with the Common Good 58 (Reading, Mass., 1998) ("[L]egal intervention [often] weakens social sanctions that have operated well outside of the glare of the law.").

46. See Lehman, *supra* note 23, at 1117 (discussing these quirks in the Michigan Constitution); cf. note 37, *supra* (noting that faculty privilege trumps university dog law).

47. See Cass R. Sunstein, Social Norms and Social Roles, 96 Colum. L. Rev. 903, 909 (1996) ("Norm bandwagons occur when small shifts lead to large ones, as people join the 'bandwagon'; norm cascades occur when there are rapid shifts in norms. Successful law and policy try to take advantage of learning about norms and norm change.").

48. The MTV Effect is typically measured as a function of *proliferation of student organizations* competing for limited student attention (measured in the better econometric studies by the ratio of journal pages to the lagged log of students per annum), *technological changes* affecting the cost structure of multiple, large, and garish posters, and more fundamental *sociocultural shifts* in student comfort levels with visual stimulation.

49. Intermodal communication linkages (web-based and e-mail) threaten to render obsolete a wide swath of poster law. Much may be lost. Postering serves a wider array of signaling and expressive functions than mere transmission of dates and times of events; recall, for example, its (potential) role in instantiating faculty privilege. Research on the cultural consequences of this seemingly "technocratic" shift from bricks to bytes is an urgent area for international conferences.

costs. In time, formal law may prove necessary to create "rules of the wall" that would benefit all poster placers by overcoming poster market failures. Certain scholars are sure to suggest that wall space be privatized and "tradable postering permits" auctioned to help promote conservation—though close attention would need to be given to allocating initial entitlements.[50] The Memo's lawmaking approach, by reifying current practice and creating regulatory rigidities, could stifle emerging norms that have in the past repeatedly offered creative solutions to potential tragedies of poster proliferation.[51]

Conclusion

Poster law demonstrates either the centrality of formal law or its irrelevance: further study will be necessary to sharpen these findings.

50. For an analogous solution in the environmental context, consider tradable emissions allowances. See Clean Air Act, 42 U.S.C. §§ 7651–7651o (1990) (creating tradable pollution allowances in sulfur dioxide).

51. Elinor Ostrom, Governing the Commons: The Evolution of Institutions for Collective Action 182–84 (Cambridge, Eng., 1990) (discussing sustainable informal management of commons resources); Carol Rose, The Comedy of the Commons: Custom, Commerce, and Inherently Public Property, 53 U. Chi. L. Rev. 711, 746–47 (1986) (noting how common property may promote efficient use while it helps inculcate communitarian values).