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# Eliminate the Middle Man

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# ELIMINATE THE "MIDDLE MAN"?

by

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The Editors of the *Akron Law Review* have asked me what I think of Bernard Hibbitts's suggestion that legal scholars do away with the law review as an institution and publish their work directly on the Internet, as he has done.

I like the idea of publishing one's work directly on the Internet. Self-publishing has a long and honorable history. Indeed, our early colonial patriots surreptitiously typeset tracts and pamphlets like *Common Sense* in homes and small back-alley print shops and distributed them themselves — a method that could be likened to today's desktop and Internet publishing. Even in our day, one reads of self-publishing or vanity press books that outsell ones put out by mega-presses like Oxford or Princeton. Many such books boast a spontaneity and originality the products of these other presses cannot match.

For all these reasons, no one should object to a scholar's publication of occasional pieces on the Internet. Hibbitts would go further, however, and do away with the traditional outlet for legal scholarly articles, the law review, entirely. With this part of his suggestion, I have some reservations. Publishing on the Internet eliminates the middle man. Indeed, that seems to be one of its main advantages for Hibbitts. But, elimination of the editor may also turn out to be its main disadvantage. Editors may, from time to time, commit the many sins Hibbitts mentions — slavish devotion to the *Bluebook*, too much (or little) caution in selecting articles, and so on. But they do catch errors in our work. I personally shudder to think of the many mistakes student editors have saved me from over the years.

I would bet most authors have had the same experience. Hibbitts's fine article, for example, contains two misspellings ("accomodate" and "subtlely") on the first page alone. His footnote form is a little idiosyncratic. No big deal; but scan, for example, the range of signals he uses. Of nearly 260 footnotes, virtually all are cited as direct authority (i.e., no signal), or else as very weak authority ("see also" or "see generally"). Would not some call for a signal of intermediate strength, such as "see" or "cf."? A good editor would have raised this question.

Or, consider the matter of style. Like many writers, over the years I have written many sentences that were perfectly clear to me, but which other people

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(in particular, the editors) perversely refused to understand. Editors would insist that I reframe these sentences. I would grudgingly consent, only later realizing that I was much better off for the change.

Consider the following passage from the Hibbitts article in between footnotes 5 and 6.[1]

> First in focusing (however understandably) on the particularities and personalities of Harvard, it downplays the extent to which the law review served the general interests of the university-based law school as an institution seeking to advance itself in late nineteenth and early twentieth century America; even as confined to Harvard, it presents the law review as the creature of narrow legal consideration where there is at least circumstantial evidence to suggest that broader scholarly concerns might also have animated Ames, the colleagues who supported him, and perhaps his precocious band of law students.

Hibbitts understands this sentence. Did you?

Here's another that I found in the footnotes, along with *attornies* disgusted with the law reviews as sources of information (footnote 215) and scientists who specialize in "entymology" (the origin of insects?) (footnote 69):

> The footnote "problem" in particular has also been exacerbated by the traditional absence of bibliographies in law review articles, which helps to explain, inter alia, why far more footnotes appear in law review articles than in other academic journals. (footnote 170).

I think the author means that he prefers bibliographic footnotes, ones that appear at the end of the article rather than at the bottom of the page. But this is by no means clear. And, if this is what Hibbitts means, it would seem to call for argument. *Why* is a footnote system that places, for example, Delgado 1982, in a parenthetical in the body of the text with the full cite ("Words That Wound: A Tort Action for Racial Slurs, Epithets, and Name Calling," etc.) in a long list at the end of the article better than one that puts them all in full at the bottom of the page where they first occur?

This brings me to the last point — the matter of argument. Editors challenge our reasoning, pushing us to flesh out and justify it to others. An annoying process, to be sure, and full of inherent tensions, but, as with the other two types of corrective measures, often absolutely indispensable.

With Bernard's indulgence, I'll pick on him again. One standard justification that one hears for law reviews is that the student editors learn some-

1. Hibbitts's Internet article, of course, lacks page numbers, making critical references like this one difficult. For this reason, I use footnote call numbers to refer to passages of Hibbitts's text.

thing from working on them. Hibbitts points out that at least one student found his own experience on the review a waste of time. From this, Hibbitts generalizes that it may be so for many others, and urges that we consider doing away with this time-consuming institution. But surely, service on the law review is not regarded by all student editors as a waste of time — at least compared to other things they might be doing. One solution to the waste-of-time problem would seem to be for students who do not find working on the law review profitable to opt not to perform it. The possibility that free choice might take care of the problem of wasted time is not discussed by Hibbitts. If he had submitted his article to a top law review, I am sure it would have been accepted — it is an important and provocative piece. But one can be reasonably sure his editor would have pushed him on the waste-of-time point.

Or, take his mistaken-judgment argument. Law review editors, being tyros, sometimes accept articles that should have been rejected, and reject ones that were really good. But of course, an author who is turned down has a market corrective — namely, sending the article to another review. Most authors (myself included), have been turned down many times. Eliminating law reviews entirely to save us from the humiliation of an occasional rejection seems like an excessive reaction.

Because of the lack of an intermediary, material published on the Internet is apt to be of more variable quality than that which appears in printed law reviews that have editors. Those who browse the Internet will find some first-rate material, like Hibbitts's article (perhaps with a few cosmetic blemishes), as well as a lot of poorly written stuff. Internet publishing could easily wind up like TV — a mass of indigestible material with a few gems thrown in.

In conclusion, scholars can now publish on the Internet, or in print. Why not let the two vehicles compete? In time, the free market should show us which offers the greater advantages to readers and writers alike. It will also show which vehicle is best suited to what kind of discourse. For myself, I'm not ready to eliminate the middle man. I need all the help I can get.