

Print or Perish?

Authors' Attitudes toward Electronic-Only Publication of Law Journals*

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An increasing number of U.S. law journals post at least current issues in freely accessible PDF and (in some cases) HTML formats on their web sites. Yet, perhaps without exception, the journals that make their articles freely available on their websites also continue to publish print issues in the face of declining subscription numbers, and law libraries' growing disinterest in collecting and preserving journals in print. As universities reduce staff, freeze open positions, eliminate salary increases, and cut library budgets, why have law schools continued to subsidize print publication of journals that are accessible in electronic formats? Among the reasons suggested for this is the possible impact of electronic-only publishing on a journal's reputation and ability to attract authors. This paper reports on the results of a survey of law journal authors' attitudes toward electronic-only law journals.

Introduction

In the twenty-first century, much of the legal information created by governments, courts and other bodies with law-making authority (information that common law textbooks call 'primary sources of law') is readily available in the U.S. and abroad (at least for English-speaking jurisdictions)¹ and is freely accessible via the Internet through means that meet the

*A version of this paper was presented at the Harvard Law School Conference: The Future of Law Libraries? The Future is Now, Harvard Law School, Cambridge, Mass., June 16, 2011. The results of the survey described here were shared for comments with the recipients of the survey before the paper was written. The authors thank Kelly Leong of the J. Michael Goodson Law Library at the Duke Law School for her research assistance on this project.

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¹ Outside the U.S., there are many examples of free electronic access to legal information through government action. See generally Claire M. Germain, *Digitizing the World's Laws* in RICHARD A. DANNER & JULES WINTERTON, EDS., *INTERNATIONAL HANDBOOK OF LEGAL INFORMATION MANAGEMENT* 181 (2011). In addition, the Free Access to Law Movement, based in the cooperative activities of national and regional legal information institutes provides free access to nearly 1200 databases from 123 jurisdictions

general requirements of open access.² In the U.S. and elsewhere, however, there has generally been less open access to legal scholarship, commentary, and other materials that explain and interpret the law: the things that lawyers in common law jurisdictions call ‘secondary sources,’ a category that includes law journals. In other parts of the world, this may be because law journals (like scholarly journals in other disciplines) are generally published by commercial publishers.

In the U.S., of course, scholarly journals in law are for the most part published at law schools, rather than by scholarly societies, professional organizations, or commercial publishers. The articles they publish are usually selected and edited by law students, and are not peer-reviewed by other scholars specializing in the topic. Student-edited journals in law, like journals in other fields, provide publication forums for faculty to gain promotion, tenure and other professional rewards; disseminate new scholarship; provide space for scholarly discourse; and produce print copies of articles for access and archiving. They also provide educational experiences for students and a valued credential for journal editors entering the job market.³ Journals published at law schools are not expected to earn profits or perhaps even to recover costs. Because the primary market for law school journals is the libraries of other law schools, which also publish, subscription prices are low. The most recent data compiled for a sample of academic law journals by the American Association of Law Libraries suggest that the average annual subscription cost is \$46.65; in contrast, commercially-published law journals (including association journals, bar journals, and joint ventures with academic institutions) average \$352.87 per year.⁴

One source suggests that there are presently about 655 student-edited journals published at US law schools and 993 legal journals overall including those published by societies, bar

worldwide. Access is provided through regional and national sites, and through the World Legal Information Institute (WorldLII) at <http://www.worldlii.org/> (last visited June 9, 2011).

² A generally accepted definition of open access can be found in the 2002 Budapest Open Access Initiative, which calls for:

free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself.

Budapest Open Access Initiative, February 14, 2002, <http://www.soros.org/openaccess/read.shtml>.

For a brief, but useful, introduction to the open access movement and the economics of open access publishing in disciplines other than law, see John Willinsky, *The Stratified Economics of Open Access*, 39 *ECON. ANAL. & POL.* 53 (2009).

³ John Doyle calls the credentialing and educational benefits: “inefficient byproducts” of the law review system and notes that the “abundance of law reviews.....show[s] the breadth of subsidization that law schools are willing to fund.” John Doyle, *The Business of Law Reviews*, *CONN. L. REV. CONTEMPLATIONS*, Spring 2007, at 30, 30, 33, available at <http://works.bepress.com/doylej/1>.

⁴ AALL Price Index for Legal Publications 2009, <http://www.aallnet.org/main-menu/Publications/products/pub-price/price-index-2009.html> (last visited June 1, 2011) (private listserv; username and password required for access).

associations, and commercial publishers.⁵ Research conducted at Duke in November 2010 suggests that nearly 300 scholarly journals are published at the fifty “Best Law Schools” as ranked by *U.S. News & World Report* in 2010.⁶ Some sense of the number of new law journals being published can be gained by looking at the list of journals selected for indexing by the American Association of Law Libraries’ Committee on Indexing of Periodical Literature. From mid-2008 through mid-2011, the Committee selected 211 new titles, including electronic-only journals.⁷

In her 2006 article arguing for open access publication of law reviews, Jessica Litman noted that: “the first-copy cost of law reviews is heavily subsidized by the academy to an extent that dwarfs both the mailing and printing costs that make up law journals’ chief budgeted expenditures and the subscription and royalty payments that account for their chief budgeted revenues.”⁸

Why do law schools make these investments? As Litman put it, it is “because they view the production of legal scholarship as within their core mission, as important to the legal academy as their function of educating lawyers.”⁹ As her Model Law Journal Budget shows, a law school’s cash outlay in support of its journals goes primarily for the costs of printing and mailing issues, costs which are not covered by revenue gained through subscription income and royalties.¹⁰

In recent years, the primary audiences for law journal articles—legal academics and the legal profession—have enjoyed increased and improved electronic access to both current and older legal scholarship not only through the primary legal databases: LexisNexis and Westlaw, but in the extensive retrospective collections offered by HeinOnline, JSTOR, and other aggregators of journal content. In addition, new law journal articles are increasingly available prior to formal publication via electronic working paper series, such as those supported by the Social Science Research Network (SSRN) and Berkeley Electronic Press (BePress). It seems clear that electronic access has become the preferred means for locating works of legal scholarship at the same time that law libraries are facing increased pressures on their budgets and law schools are looking to library facilities to provide space for expanding programs.

⁵ See Law Journals: Submissions and Rankings, Wash. & Lee Univ. Sch. of Law, <http://lawlib.wlu.edu/lj/index.aspx> (last visited June 9, 2011) (The search for student-edited journals was conducted by selecting “United States” and the category “Student-edited”).

⁶ See Richard A. Danner, Kelly Leong & Wayne V. Miller, *The Durham Statement Two Years Later: Open Access in the Law School Journal Environment*, 103 LAW LIBR. J. 39, 44 (2011). With the help of Duke Law research assistant Lila Zhao ’11, Kelly Leong examined the web presences of scholarly journals published at the top 50 schools. Newsletters, reprint journals, and journals listed, but not yet published, were not counted.

⁷ See Titles Approved and Rejected by the Indexing of Periodical Literature Committee, <http://www.aallnet.org/main-menu/Publications/products/pub-legal-index/Journal-Title-List.html> (last visited July 14, 2011).

⁸ Jessica Litman, *The Economics of Open Access Law Publishing*, 10 LEWIS & CLARK L. REV. 779, 783 (2006) (references eliminated).

⁹ *Id.* at 790.

¹⁰ *Id.* at 785-786.

Since Litman wrote, an increasing number of U.S. law journals have begun posting articles from at least their most recent issues in freely accessible PDF and (in some cases) HTML formats on their web sites, despite the possibility that the postings will affect revenue both from print subscriptions and from royalties paid by HeinOnline, LexisNexis, Westlaw, and other online sources. The ABA's Free Full-text Online Law Review/Law Journal Search Engine website facilitates access to the free full-text of over 400 online versions of law reviews and law journals.¹¹ Our own earlier research suggests that articles in 177 of the 296 scholarly journals published at the *U.S. News* fifty "Best Law Schools" are accessible through law school web sites in PDF or HTML format.¹²

Yet, perhaps without exception, all journals that make their articles freely available on their websites continue to publish print issues, which they circulate to paying subscribers despite the likelihood that the content is seldom read in print issue format. Print issues continue to be published despite declining subscription numbers¹³ and law libraries' growing disinterest in collecting and preserving journals in print.¹⁴ Why has there been no shift toward electronic-only publishing? In her 2006 article Litman described "the legal academy's sloth in adopting open access publishing" in terms that might also explain law schools' continuing publication of print journal issues. She emphasized:

the absence of any demand-side pressure to explore lower cost alternatives to the traditional subscription model. In contrast to the world of nonlegal scholarly publishing, the cost to fill library shelves with legal scholarship is modest. Law journal subscription prices are low, and have risen at less than the rate of inflation for a generation."¹⁵

In 2006, however, the financial impacts of world-wide recession were not yet being felt in the budgets of U.S. law schools. As universities reduce staff, freeze open positions, eliminate salary increases, and cut library budgets, why have law schools continued to subsidize print

¹¹American Bar Association Legal Resource Technology Center, Free Full-text Online Law Review/Law Journal Search Engine website <http://www.abanet.org/tech/ltrc/lawreviewsearch.html> (last visited June 9, 2011)

¹² See Danner, Leong & Miller, *supra* note 6, at 44.

¹³ See generally Ross E. Davies, *The Dipping Point: Law Review Circulation 2010*, GREEN BAG ALMANAC AND READER 2011, at 547.

¹⁴ In 2010, the Harvard Law School Library issued a new collection development policy for law journals, which states that the library will acquire in print and maintain print archives for only Harvard Law School publications, publications that are only available in print, and publications where the library has library of record responsibilities for Harvard University. Harvard Law Sch. Library, Collection Development Policy 2 (Feb. 17, 2010), available at http://www.law.harvard.edu/library/about/collections/collection_development_policy.pdf. Other law libraries are making similar decisions: some not to purchase new law journals; others to rely on outside sources for long-term access to back files.

¹⁵ Litman, *supra* note 8 at 791. Stephanie Plotin explains U.S. law journals disinterest in open access publishing in terms of a lack of economic incentives, coupled with the pressures of an academic value system in law favoring publication in prestigious journals that, so far, have not moved toward open access. See Stephanie L. Plotin, *Legal Scholarship, Electronic Publishing, and Open Access: Transformation or Steadfast Stagnation?* 101 LAW LIBR. J. 31, 43-45 (2009).

publication and distribution of journals that are already accessible and more likely to be used in electronic formats?

The Durham Statement on Open Access to Legal Scholarship

The Durham Statement on Open Access to Legal Scholarship, which was promulgated in February 2009, was drafted by a group of academic law library directors. The Statement calls for two things: 1) open access publication of law school-published journals; and 2) an end to print publication of law journals.¹⁶ Specifically, it urges US law schools to stop publishing student-edited journals in print and to rely instead on publication in “stable, open, digital formats.”¹⁷ In support of the call to end print publication, the Statement argued that:

It is increasingly uneconomical to keep two systems afloat simultaneously...

In a time of extreme pressures on law school budgets, moving to all electronic publication of law journals will ... eliminate the substantial costs borne by law schools for printing and mailing print editions of their school’s journals, and the costs borne by their libraries to purchase, process and preserve print versions.¹⁸

The major objections to the proposal to end print law journal publication focus on the current or future availability of the “stable, open, digital formats” called for to make the transition to electronic-only publishing feasible. In her posting to a law library directors discussion list under the heading “Why I Did Not Sign the Durham Statement,” Margaret Leary wrote:

The answer is simple: I do not agree with the call to stop publishing in print, nor do I think we have now or will have in the foreseeable future the requisite “stable, open, digital formats.” As long as we believe legal scholarship is worthy of permanent retention, we should encourage the existence and retention of paper, in addition to digital, copies.¹⁹

Similarly, in his blog: The Life of Books, Richard Leiter focused on the roles of print and paper in the scholarly process:

¹⁶ In May 2011, the Council of Canadian Academic Law Library Directors unanimously passed the Calgary Statement on Free Access to Legal Information, which urges Canadian law school to commit to electronic publication of their journals and to making definitive versions of their journals and other scholarship produced at the school available in publication in stable, open, digital formats. See http://library.osgoode.yorku.ca/documents/Calgary_Statement.pdf (last visited July 6, 2011).

¹⁷ The Durham Statement is posted on the web site of Harvard University’s Berkman Center for Internet and Society. Durham Statement on Open Access to Legal Scholarship, <http://cyber.law.harvard.edu/publications/durhamstatement#statement>. The site includes background information on the Statement, a list of signatories, and an FAQ. (last visited July 12, 2011).

¹⁸ Durham Statement, *supra* note 17.

¹⁹ Margaret A. Leary, Why I Did Not Sign the Durham Statement, LawLibDir Archives (Mar. 6, 2009), <http://lists.washlaw.edu/mailman/private/lawlibdir/2009-April/005968.html> (private listserv; username and password required for access) (on file with authors). See also Margaret A. Leary, *A Response to The Durham Statement Two Years Later*, 103 LAW LIBR. J. 281 (2011).

The bottom line is this: Part of the value of articles published in these journals is that they are a record of a scholar's ideas and thoughts about a legal issue. The ideas may be inspirational, challenging, enlightening, wrong, controversial, revolutionary, evolutionary, or all of the above and more. But, part of the process of scholarship is committing them to "paper", or some medium in which the author can be held accountable and called to defend them. It doesn't necessarily have to be paper. But it must be in a format that is permanent. To date, nothing in any computer format can even begin to approach anything resembling the permanence of a printed book.²⁰

Yet, as noted above, many law journals are now making at least their current content accessible through journal web sites, without apparent concern for the kinds of concerns raised by Leary and Leiter. It is at least conceivable that, with their web presences established, some of these journals will in the future cease publishing print issues. How then will the works they publish be preserved?

In October 2010, the Duke Law School and the Harvard Law School Library co-sponsored a workshop at Duke under the title: Implementing the Durham Statement: Best Practices for Open Access Law Journals, in order to create opportunities for dialogue among the primary players in the journal publishing system.²¹ The workshop was aimed primarily at law review editors, but was open to law librarians, law review advisers, publishers, journal printers, and others interested in open access and legal publishing. The day-long program covered issues and best practices for law journals to consider as they move into electronic publishing. The 75 participants included 33 law review editors from 19 U.S. law schools, five of which were ranked in the US News top 15 at the time. The workshop was webcast to a number of law schools. Peter Suber from Harvard's Berkman Center offered the concluding session via video conference.

One session on "Traditional and Open Access Business Models for Law Journals" featured comments by the 2010-2011 editors of the *Duke Law Journal*, *Georgetown Law Journal*, *Northwestern University Law Review*, and the *Texas Law Review*.²² While generally supportive of open access electronic publishing of law journals,²³ the editors were cautious about ending print publication of their own journal, at least in part because of concerns about the reputational effects of the decision, and the possibility that a move to electronic-only publication would reduce readership and make a journal, even the lead journal at a prestigious law school, less attractive to important scholars than one which continued to publish in print.²⁴

²⁰ Richard Leiter, *The Durham Statement*, Life of Books (June 25, 2009, 2:34 p.m.), <http://thelifeofbooks.blogspot.com/2009/06/durham-statement.html> .

²¹ Video, along with other information about the workshop, is available at Implementing the Durham Statement. <http://www.law.duke.edu/libtech/openaccess/conference2010> (last visited 12 July 2011).

²² See generally comments of Anthony Arguijo, *Texas Law Review*; Rocky Collis, *Georgetown Law Journal*; Stephanie Kissel, *Northwestern University Law Review*, Phil Rubin, *Duke Law Journal*, at id.

²³ Each of the lead journals of the highest-ranked sixteen makes its articles freely available on the journal's web site.

²⁴ Representative comments from the editors:

How much do we know about what authors think? How important is it for the creators of legal scholarship to see their works published in print journals?

The Authors' Survey

To gain a sense of law journal authors' attitudes toward publishing their works in electronic-only law journals, we developed a short, anonymous nine question survey.²⁵ The email and the survey are reproduced in the appendices to this paper. A link to the survey was sent via email in January 2011 to authors of articles published in the last two completed volumes (as of 31 December 2010) of the lead journal at the sixteen US law schools ranked in the top fifteen by *US News* in March 2010.²⁶ In order to focus on unsolicited works of faculty scholarship published

"Would it affect our readership? And if it affected our reputation, if we did it alone or something, would it affect our ability to get authors? having a successful journal and getting the kinds of authors you want to publish with you." Comment of Phil Rubin (*Duke Law Journal*)

"We still have authors who choose us over an online journal perhaps because of the prestige factor that they associate with it." Comment of Stephanie Kissel (*Northwestern University Law Review*).

²⁵ Several recipients were concerned about possible bias in how the questions were structured, perhaps because one of the authors of the survey was a drafter and signatory of the Durham Statement:

"I think your cover letter might bias your results. Maybe you want that, but a scholarly journal might voice an objection if you try to publish the findings...."

"A survey in which the researchers advise respondents of the ax they hope to grind doesn't seem to have much validity."

"I strongly prefer that journals continue to publish print issues and note that the questions in this survey have been crafted in such as [sic] way as to make it impossible for me to express that preference."

"I'm sure you are aware that there is no way for someone to indicate that print publication would be a factor in a placement decision and could even be determinative in some cases. All the relevant questions set up the choice as whether electronic publication would always be decisive against a journal - or at least that's how I read it."

I don't particularly care, but I just wanted to indicate that there was no way to express suggestions of my view that print publication would have some positive weight in my decisions among the listed journals but not necessarily decisive weight in all cases. But I imagine you designed it that way on purpose.

"Interesting, but given that the survey is framed in terms of the Durham statement, which already has a position, I'm not sure how much you can rely on the responses. I suspect that the responders were disproportionately agree-ers and the non-responders disproportionately disagree-ers."

We thought our questions were straightforward and fairly designed to determine the importance of print issues to the authors we surveyed. Despite the comments, the response rate and answers seem to support that position.

²⁶ UCLA and Texas tied for 15th place. See *Schools of Law in AMERICA'S BEST GRADUATE SCHOOLS 2011* ED. 40, 40 (2010). In the 2012 ed. (2011) rankings, UCLA dropped to 16th place.

in those journals, we tried to exclude articles identifiable as parts of symposia or festschrift, tributes, postscripts, responses, replies, lectures, book reviews; and student-written pieces.

An email linking to the survey was sent to 469 authors initially on January 19 with a reminder on January 31. Five surveys were returned as undeliverable.²⁷ The email was sent successfully to 464 authors, two of whom had published articles in two of the journals during the covered period.²⁸

Recipients of the Survey

Of the 464 recipients, 227 authors were affiliated with one of the top sixteen law schools with journals included in the survey. Overall, 274 authors were affiliated with a U.S. law school ranked 1-25 by *U.S. News*; 332 with a school in the top 50; 51 with a school ranked 51-75; and 24 with a school ranked 76-100. Twenty seven were affiliated with law schools falling in *US News*'s lower tiers without numerical rankings. Twenty nine were affiliated with foreign law schools or non-law departments of U.S. or foreign universities. One author at the time was unaffiliated.

Those authors accounted for 408 articles in the two volumes examined for each journal: 362 were written by single authors; 38 by two authors; 8 by three authors. Of the 46 co-authored articles, 12 were written by authors from the same institution.

Respondents to the Survey

By the time the survey was closed on February 4th, 238 responses had been received, a response rate of 51.3 percent. The number of responses to individual questions ranged from 235 to 238.

Thirty four percent of the respondents had been teaching law for 6 or fewer years; 29 percent for more than 6 but fewer than 10 years; 34 percent for more than ten. Only 14 percent of the respondents were members of the faculty at the university which published their articles.

Eighty five percent of the respondents had posted their articles on SSRN or otherwise made them available electronically before their formal publication in one of the journals. Only 31 percent were familiar with the Durham Statement.

Results

The key questions in the survey (Appendix 2) were nos. 2, 3 and 4. As discussed in greater detail below, question 2 focused specifically on the article the author had published in one of the

²⁷ Several emails prompted 'away from the office' messages. Those were counted as successfully sent; the undelivered mails were not.

²⁸ The survey asked any authors who had published more than one article in in the journals covered by the survey to respond only once, for "the journal which published the article you consider most important."

journals during the period covered; questions 3 and 4 were gauged to test more generally the effects of prestige on the authors' attitudes about electronic publication, attempting to determine how important it was to the authors whether a journal continued to publish traditional print issues for subscribers. The phrasing did not rule out continuing production of article offprints of the sort many journals offer, or print-on-demand alternatives.

Did Print Matter in the Choice of Journal for this Article?

Table 1 shows that for 68 percent of the respondents continuing publication of print issues would not have affected their decision to publish the article in the specific journal where it appeared.

Table 1

| Would you have published your article in this journal if the journal no longer published print issues? | N | % |
|--|-----|-------|
| Yes. I would have still published in the journal. | 162 | 68 % |
| No. I would have submitted my article to a print journal instead. | 75 | 32 % |
| Total | 237 | 100 % |

But, while slightly over two-thirds of the responding authors would have published in the journal if it had been electronic only, one-third would not have. For journal editors competing with journals at peer schools for articles and authors, the number of authors for whom print issues remained the deciding factor might seem very high.

Would Print Matter in Choosing among High-Ranked Journals?

Questions 3 and 4 asked the authors not about the specific article they had published, but whether print issue publication would be the deciding factor in choosing among offers from more than one of the 16 journals listed. Question 3 assumes that publication in any one of these journals is equivalent to publishing in another of them and does not take into account the authors' senses of which among them might be more prestigious.

Table 2

| If you had offers from more than one of any of the journals on the list, would a journal's continuing publication of print issues be the deciding factor in choosing which offer to accept? | N | % |
|---|-----|-------|
| Yes. | 92 | 39 % |
| No. | 143 | 61 % |
| Total | 235 | 100 % |

The responses in Table 2 are fairly close to those in Table 1. Faced with a decision to choose among unspecified journals on the list, continuing publication of print issues would not be the deciding factor for 61 percent of the survey respondents.

Would Print Matter in Choosing among Journals other than the Most Prestigious?

Survey question 4 was designed to gauge the impact of prestige on an author's decision by eliminating the journals he or she considered most prestigious. Thus, for example, if an author considers the *California Law Review*, the *Duke Law Journal*, and the *Harvard Law Review* to be the most prestigious journals on the list, the opportunity to be published in one of those journals might trump concerns about publication of print issues. If those journals did *not* accept the article, however, how would continuing publication of print issues affect the decision to choose among offers from other journals on the list?

Table 3

| If you had offers from more than one of the journals on the list, <i>other than those you consider to be the most prestigious</i> , would a journal's continuing publication of print issues be the deciding factor in choosing which offer to accept? | N | % |
|--|-----|-------|
| Yes. | 120 | 51 % |
| No. | 116 | 49 % |
| Total | 236 | 100 % |

As Table 3 shows, with the author's most prestigious journals eliminated from the calculation, publication of print issues becomes the deciding factor for 51 percent of the respondents. The results suggest the importance of prestige and that publication in print becomes more important to authors' decisions regarding where to publish, even among lead journals at top-ranked law schools, if the article is not accepted at one of the journals they consider most prestigious. If legal scholars have a shared sense of which journals are most prestigious,²⁹ the results provide a strong incentive for journals outside that group to continue publication of print issues as they compete for articles.

²⁹ *Washington & Lee's Law Journals: Submissions and Ranking* page, *supra* note 5, allows users to rank journals using several criteria, in combination or individually. On law review rankings generally, see e.g., Alfred L. Brophy, *The Signaling Value of Law Reviews: An Exploration of Citations and Prestige*, 36 FLA. ST. U. L. REV. 229 (2008-2009); Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35, 35-36 (2007); Ronen Perry, *The Relative Value of American Law Reviews: Refinement and Implementation*, 39 CONN. L. REV. 1, 28-32 (2006); Kincaid C. Brown, *How Many Copies Are Enough? Using Citation Studies to Limit Journal Holdings*, 94 LAW LIBR. J. 301 (2002).

What Would Make Electronic-Only Journals More Appealing

Survey question 5 sought insight into what would make it more appealing to authors to publish in a journal without print issues. The question listed four possible factors: continuing availability of article off-prints or print-on-demand issues; a journal's commitment to preserving its electronic content for future readers; quicker publication without waiting for all articles in an issue to be edited; and opportunities for readers to comment on the article electronically, presumably on the journal website. In addition, the respondents were given the opportunity to suggest other factors.

Table 4

| Which if any of these factors would be of importance to you in deciding to publish your article in a journal that no longer published print issues? (Please check as many as apply.) | N | % |
|--|-----|------|
| The journal was published electronically but provided off-prints of individual articles to authors, or would produce print-on-demand issues upon request. | 178 | 75 % |
| The journal has in place a plan to archive and preserve the electronic version of your article for future readers. | 177 | 74 % |
| The journal would publish your article electronically as soon as it was ready for publication, without waiting for all articles in an issue to be ready. | 101 | 42 % |
| The journal offers online opportunities for readers to comment on your article and for you to respond. | 61 | 26 % |

The results shown in Table 4 suggest that continuing access to offprints and print-on-demand issues were important to 75 percent of the respondents, while a nearly identical percentage valued highly a journal's commitment to archiving and preservation of their scholarship. Quicker publication was of importance to significantly fewer respondents (42 percent), while fewer still (26 percent) attached importance to improved abilities for readers to comment online about their work.

Factors mentioned by the respondents included: assurances that their work was preserved by libraries in print or PDF formats, inclusion of active links to sources cited, automatic distribution to interested readers and institutions, and wide (and free) availability of the electronic versions.

Conclusions

Our survey was offered to a group of authors each of whom had recently published at least one article in the lead journal of a top-ranked law school. Their responses may not be typical of

the much larger number of authors publishing in others of the over 600 student-edited U.S. law journals or other forums available for their work.

But because scholars in all disciplines try to place their works in the highest ranked journals in their field, it is important to consider the perspectives of legal scholars who have published in the primary journals of the top-ranked law schools. Over two-thirds of the respondents to our survey said they would have published their article in the journal where it appeared even if that journal no longer published print issues. However, as a general matter, given the chance to publish in more than one of these prestigious journals, *other than those they considered to be the most prestigious*, more than half of these authors indicated that continuing publication of print issues would be the deciding factor in choosing which offer to accept.

That number, considered along with the 32 percent of all respondents who would *not* have published in the journal that published their article if the journal were not publishing print issues, is large enough to give pause to law journal editors thinking about eliminating print issues. In the short time they serve as editors, students without long term investments in publishing legal scholarship are unlikely to make far-reaching decisions to change publishing formats for their journal, whatever their personal reliance on print resources in their own research.³⁰

The difficulties are significant for any single journal, other perhaps than the very most prestigious, to move on its own to electronic only publishing. Several faculty respondents to the survey commented on the need for collective action:

It seems to me that any residual reluctance to publish in an electronic-only journal would diminish considerably if the Top 15 journals (or, say, at least 12 or 13 out of them) moved en masse to electronic-only status. What we have is a collective action problem: No one wants to go alone for fear that they will become the marginalized outlier.

You probably already realize this, but it seems to me that the key to your effort is getting multiple journals to switch simultaneously. For example, I personally couldn't care less whether any of the top journals stopped publishing print, but I would be concerned that others would, and that therefore the prestige of the journal would diminish in the short term.

As I am sure you realize, this does pose something of a prisoner's dilemma problem. My suspicion is that most people would be in favor of electronic publication if most journals used electronic publication instead of paper publication. But the problem is how we change the baseline to get from here to there. If Harvard and Yale became electronic

³⁰ Several of the editors at the Duke/Harvard workshop in October 2010 expressed their concerns about making decisions about format that would tie the hands of their successors and might be irreversible. See comments of law journal editors, *supra* note 24.

only, that would probably do the trick. This suggests that getting a collection of fancy journals to make the change at the same time might be a sensible strategy.³¹

Yet, it may be that because of their large print subscriber bases, or endowments and other sorts of outside income or funding, the “fanciest” journals feel the least pressure to discontinue publication of print issues.³²

At the institutional level, it would seem that in a time of tight budgets law school deans would look harder at how much funding is poured annually into publishing little-used print journals with declining subscription bases. The Durham Statement emphasized the costs to law schools of maintaining two publication systems. Yet, as discussed above, law schools have both continued to publish existing journals in print and to authorize new print journals for publication.

If neither student editors nor law school publishers seem likely to move away from publishing print issues of law journals despite little use of the format and declining subscriptions for most journals, it may be up to the creators and primary consumers of legal scholarship. Will the authors, who are mostly law school professors, lead a move away from publication of journals in print format?

Our results suggest that many authors continue to favor print journal publication and that few seemed to know about the Durham Statement, but the data also provide some evidence of a shift. Table 3 shows that over 50 percent of the respondents to our survey answered yes to the question: “If you had offers from more than one of the journals on the list, *other than those you consider to be the most prestigious*, would a journal’s continuing publication of print issues be the deciding factor in choosing which offer to accept?” Yet, as Table 5 shows, when the answers to that question are broken down by years of teaching, generational differences become apparent.

³¹ The importance of collective action was also emphasized by the student editors at the 2010 Durham Statement workshop. *See supra* note 21.

³² There is at least some evidence suggesting that the journals considered in our study have larger numbers of subscribers than other journals. *See generally*, Davies, *supra* note 13. Four of them (Columbia, Harvard, Penn and Yale) also receive income from print and electronic editions of the *BlueBook*.

It is also interesting to note that the web sites of 11 of the lead journals published at the 16 top 15 law schools use .org or .com domains, suggesting that the sites are not hosted on their law school’s own web site and that they have the resources to develop and maintain their own web presences. Nine journals (Berkeley, Columbia, Georgetown, Harvard, Michigan, Stanford, UCLA, Virginia, Yale) use .org domains; two (Penn, Texas) use .com; the others (Chicago, Cornell, Duke, Northwestern, NYU) use .edu.

Table 5

| How many years have you been teaching at a law school? | If you had offers from more than one of the journals on the list, other than those you consider to be the most prestigious, would a journal's continuing publication of print issues be the deciding factor in choosing which offer to accept? (Percentages) | |
|--|--|-----------------|
| | Yes | No |
| 6 years or less | 38% (31) | 62% (50) |
| More than 6, but less than 10 years | 49% (34) | 51% (35) |
| More than 10 years | 66% (53) | 34% (27) |
| Not Applicable | 20% (1) | 80% (4) |
| <i>Total</i> | <i>51% (119)</i> | <i>49%(116)</i> |

The data show that authors with 10 or more years of teaching answered yes to the question at a rate of 66 percent. For authors who had been teaching at a law school for six or fewer years, however, the percentage answering yes dropped to 38 percent. Considering that authors who have taught for fewer than 7 years are likely to be untenured and to have the most interest in placing their work in the most prestigious journals they can, the relative unimportance so many of them already assign to print may be significant in future in moving the legal academy away from its historic reliance on print journals. In addition, law librarians and others perhaps need to be more active in educating deans and faculties about the changing environment of legal scholarship.³³

³³ See Danner, Leong and Miller, *supra* note 6 at 54.

Appendix A: Invitation Email

Dear Professor_____:

You may know something about the Durham Statement on Open Access to Legal Scholarship (<http://cyber.law.harvard.edu/publications/durhamstatement>) which was issued in February 2009. The statement calls for law school-published journals to stop publishing print issues and rely instead on electronic publishing platforms.

In conversations about the Statement, law review editors often express sympathy with its goals, which is not surprising, since they rely on print materials so little themselves. Yet, the editors are also hesitant to stop printing their own journal in part because they feel that prospective authors continue to favor print and would turn to another journal if their journal of choice became an electronic-only publication. As one of the drafters of the Durham Statement, I wish to test this proposition.

My Duke colleague, Marguerite Most and I have designed a VERY SHORT research survey that we are sending to authors who have published an article in at least one of the last two completed volumes of the lead journal of the US News top 15 law schools. Since you fall into that category, we will very much appreciate it if you are willing to complete the survey, which should take between five and ten minutes of your time. The survey is both short and anonymous. Although we would greatly appreciate your full participation in this study, your participation is voluntary. You do not have to answer every question and can choose to stop participating at any time by closing your Internet browser.

You can reach it at:

https://survey.oit.duke.edu/ViewsFlash/servlet/viewsflash?cmd=page&pollid=kkk4!Authors_Survey.

If you have comments, please feel free to send them to me in response to this email. We plan to publish the results of the survey and will let you know when they are available.

Thank you again for your participation.

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Appendix B: Survey

Legal Scholarship Authors Survey

Some suggest that legal scholars will not publish their scholarship in all-electronic versions of law reviews if comparable print journals are available as alternatives. This brief anonymous survey is designed to gather information about attitudes toward electronic publication of scholars who have recently published articles in leading law reviews.

If you have questions or comments on the survey or the project, please contact [Professor Richard A. Danner](#).

If you agree to participate in this research, please click “Next” below to begin the survey. You do not have to answer every question and can choose to stop participating at any time by closing your Internet browser.

1. From the list below, please select the journal in which you published an article in the journal's last two completed volumes. If you published in more than one journal on the list, please select the journal which published the article you consider most important.

- California Law Review
- Columbia Law Review
- Cornell Law Review
- Duke Law Journal
- The Georgetown Law Journal
- Harvard Law Review
- Michigan Law Review
- New York University Law Review
- Northwestern University Law Review
- Stanford Law Review
- Texas Law Review
- UCLA Law Review
- The University of Chicago Law Review
- University of Pennsylvania Law Review
- Virginia Law Review
- Yale Law Journal

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2. Would you have published your article in this journal if the journal no longer published print issues?

- Yes. I would have still published in the journal.
- No. I would have submitted my article to a print journal instead.

Page Break

3. If you had offers from more than one of any of the journals on the list, would a journal's continuing publication of print issues be the deciding factor in choosing which offer to accept?

- Yes.
- No.

Page Break

4. If you had offers from more than one of the journals on the list, *other than those you consider to be the most prestigious*, would a journal's continuing publication of print issues be the deciding factor in choosing which offer to accept?

- Yes.
- No.

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5. Which if any of these factors would be of importance to you in deciding to publish your article in a journal that no longer published print issues? (Please check as many as apply.)

- The journal was published electronically but provided off-prints of individual articles to authors, or would produce print-on-demand issues upon request.
- The journal would publish your article electronically as soon as it was ready for publication, without waiting for all articles in an issue to be ready.
- The journal has in a place a plan to archive and preserve the electronic version of your article for future readers.
- The journal offers online opportunities for readers to comment on your article and for you to respond.
- Other (please specify)

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6. Did you post the article on SSRN or another electronic source prior to its publication?

- Yes
- No

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7. How many years have you been teaching at a law school?

- 6 years or less
- More than 6, but less than 10 years
- More than 10 years
- Not Applicable

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8. At the time you submitted the article, were you a faculty member at the university which publishes the journal?

- Yes
- No
- Not Applicable

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9. Are you familiar with the Durham Statement on Open Access to Legal Scholarship, which was issued in 2009 by a group of academic law library directors, and which calls on law schools to stop publishing print versions of their journals? <http://cyber.law.harvard.edu/publications/durhamstatement>

- Yes
- No