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STUDENT-EDITED LAW REVIEWS SHOULD CONTINUE TO FLOURISH

*Sudha Setty**

A fellow law teacher once suggested that the job of legal scholars is to add to the large and colorful mosaic of knowledge. At its best, each piece of scholarship is a piece of the mosaic, adding to a picture that, we hope, will shed some light on the nature, beauty, flaws, and shifts of the social ordering that is the law. Of course, law reviews have been valued over many decades for their core functions of providing reference material for practitioners, judges, and policy makers; for connecting students to the greater legal profession and academy; and for providing valuable training for students.¹ As an associate dean focused on professional development and research, I also think of articles in student-edited law reviews as utilitarian; these pieces of the mosaic build a record of scholarship demonstrating that a scholar is capable of conducting sustained and useful research. These articles are what gives the scholar the necessary imprimatur that he or she is worthy of hiring, promotion, tenure, a bonus, a book contract, or whatever other achievement or accolade is being sought. In this short essay, I offer three other reasons why student-edited law reviews should continue to flourish despite their shortcomings: they are a core component of the educational mission of law schools, they provide an important filtering mechanism in a world in which information overload is the norm, and they are the sole readily available means of providing the public forum necessary for debating new legal ideas.

As far as shortcomings, scathing critiques of student-edited

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¹ See Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 OHIO N.U. L. REV. 563, 563-64 (2007).

law reviews are basically as old as the reviews themselves;² they are irrelevant³ and nobody reads them;⁴ they are lax in their standards of review and editing;⁵ they compare poorly to peer review standards to which much of non-legal academia ascribes;⁶ students cannot be trusted to make good decisions about which pieces to publish, sometimes accepting pieces primarily based on the popularity of the topic as opposed to the quality of the article,⁷ or sometimes being overly impressed by the prominence of the author or his/her institutions;⁸ they are too elitist,⁹ and there are simply too many law reviews out there, so the quality of content becomes uneven.¹⁰

And those are just the timeworn critiques. Newer broadsides against student-edited law reviews include that they are archaically

² See Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 629 (1996) (The first wave of critique of student-edited law reviews, from the early 1900s through 1940, lamented the proliferation of general law reviews).

³ See *Law Prof. Ifill Challenges Chief Justice Roberts' Take on Academic Scholarship*, AMERICAN CONSTITUTION SOCIETY FOR LAW AND POLICY, <http://www.acslaw.org/acsblog/law-prof-ifill-challenges-chief-justice-roberts%E2%80%99take-on-academic-scholarship> (July 5, 2011) (quoting Chief Justice Roberts as saying, "Pick up a copy of any law review that you see, and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th Century Bulgaria, or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar"). Cf. *id.* (quoting Professor Sherrilyn Ifill's response to Chief Justice Roberts as including the observation that "published law review articles offer muscular critiques on contemporary legal doctrine, alternative approaches to solving complex legal questions, and reflect a deep concern with the practical effect of legal decision making on how law develops in the courtroom").

⁴ In a famously colorful piece from 1936, the author laments: "I suspect that the law reviews will keep right on turning out stuff that is not fit to read, on subjects that are not worth the bother of writing about them." Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 45 (1936).

⁵ Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813, 819 (1999).

⁶ Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1132 (1996) (arguing that law review staff and editors suffer "the handicaps of ignorance, immaturity, inexperience, and inadequate incentives"); cf. Dan Hunter, *Open Access to Infinite Content (Or "In Praise of Law Reviews")*, 10 LEWIS & CLARK L. REV. 761, 764-765 (2006) (arguing that peer review does not necessarily provide better quality control than student-edited law reviews).

⁷ Jason P. Nance & Dylan J. Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 ALB. L. REV. 565, 568-574 (2008).

⁸ E.g., James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 537 (1994). Cf. Hunter, *supra* note 6, at 766 (arguing that student editors generally make good decisions about which articles to accept).

⁹ See Hunter, *supra* note 6, at 766.

¹⁰ See generally Hibbitts, *supra* note 2.

slow in editing and publishing pieces in a world in which every author can post his/her work onto SSRN or another platform and have it instantaneously available at no charge to readers around the globe.¹¹ Further, authors can post shorter works on blogs, journalistic outlets, or in other web-based media that are well respected and are said to be viewed by judicial clerks, agencies and congressional staffers in a position to make use of blog analysis quickly when forming their opinions.¹²

These traditional and newer critiques have been countered in literature on law reviews, but these frustrations explain why some established legal academic authors either bypass the student-edited law review system altogether, or write on multiple platforms to reach a broader audience.¹³ To complement the defenses of the student-edited law review offered elsewhere,¹⁴ I offer three reasons why legal academia still needs the student-edited law review and why law schools and law teachers should work to sustain them.

First, work on student-edited law reviews develops valuable skills that speak to the core educational mission of a law school. For at least two decades, law teachers have tried to improve the student-centeredness of the law school curriculum in order to give primacy to educational experiences that build skills and prepare students for real-world lawyering.¹⁵ The 1992 ABA MacCrate Report¹⁶ and the 2007 Carnegie Report¹⁷ emphasized the need for skills-based learning in law schools. The MacCrate Report identified ten fundamental law-

¹¹ See Cameron Stracher, *Reading, Writing and Citing: In Praise of Law Reviews*, 52 N.Y.L. SCH. L. REV. 349, 356 (2007-08).

¹² E.g., Heather Singer, *Bench Blogging: Where Should Judges, Lawyers and Court Personnel Draw the Line?* Case in Point, National Judicial College, at 3 (Spring/Summer 2007) (discussing what legal blogs judges write and read).

¹³ Stephanie L. Plotin, *Legal Scholarship, Electronic Publishing, and Open Access: Transformation or Steadfast Stagnation?*, 101 LAW LIBR. J. 31, 37, 39, 50-53 (2009).

¹⁴ E.g., Phil Nichols, *A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton*, 1987 DUKE L.J. 1122 (1987).

¹⁵ Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2007-09, 2013 (2012).

¹⁶ ABA Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report.authcheckdam.pdf [hereinafter MacCrate Report].

¹⁷ William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (2007), http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf [hereinafter Carnegie Report].

ying skills that law schools should focus on, including skills that are common in the work of law reviews: legal analysis and reasoning, legal research, communication, and organization and management of legal work.¹⁸ In 2004, the ABA adopted standards that required “each student receive substantial instruction in other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”¹⁹

Working on a law review builds these skills and is, as such, part of the core educational mission of a law school.²⁰ The research, writing, editing, and citation work that any law review staffer participates in are skill-building activities. Along with the higher-level editorial, managerial, and communicational work that comes with participation on the board of a law review, the development of these law review-based skills are excellent preparation for the world of practice.²¹ This holds for students whose first jobs out of law school will vary tremendously; the skills learned on a law review will benefit judicial clerks, associates at large or small firms, government lawyers, staff to policymakers, and (perhaps especially) solo practitioners. A secondary educational benefit is derived from being an essential part of legal academic discourse, empowering students to be active participants in the conversations that—at their most influential—shape lawmaking and legal academia. Considering these two strands together, we can see the benefit of developing key legal skills while working with authors who are professors, practitioners, and judges. This situation strongly encourages students to be demanding and exacting with themselves, a necessary trait²² for diligent and conscientious lawyers. Based on this aspect of law review work alone, there is a cogent argument to be made that law schools should consider expanding the number of opportunities to serve on a law review—whether on a general law review or a specialty journal—to include a greater percentage of the student body that would undoubtedly benefit from the rigor and skill-building that is inherent to the enterprise.²³

¹⁸ See MacCrate Report, *supra* note 16 at 135.

¹⁹ See ABA Standards and Rules of Procedure for Approval of Law Schools 302(a)(4) (2012-2013)); Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 THOMAS L. REV. 429, 429 (2005).

²⁰ See Stracher, *supra* note 11, at 360 (“[T]he law review is a teaching institution.”).

²¹ See Stracher, *supra* note 11, at 369.

²² See Stracher, *supra* note 11, at 361-62.

²³ See Stracher, *supra* note 11, at 353-54.

Second, law reviews continue to serve a vital filtering role for legal scholars looking to understand a new area of law, understand developments, or simply refine their ideas over time. This function is perhaps more important now than it ever has been in the past. We are inundated with information from a seemingly endless variety of news sources, blog posts, tweets, opinion columns and other online media. These resources inform, update, and provide contemporaneous analysis, which are obviously necessary elements to help legal scholars develop their own analysis and viewpoint on issues within their fields. However, these resources are at best a complement to,²⁴ not a substitute for, the type of information and understanding that can be gleaned from a good law review article. Law review articles require thoughtful, sustained research and writing that engages the author with the material, the subject matter, and the editorial process in ways that generally improve the quality of analysis and writing. Along with books,²⁵ law review articles are the repositories of this deep thinking that will be most helpful to scholars and law students as time passes. Some have argued that this role would be better filled by peer-edited journals;²⁶ however, even setting aside the educational value of student editing work, the scarcity of peer-edited journals presents a serious obstacle to those promoting such a goal.²⁷

That brings me to my third and final point: we are not in an academic discipline that has enough peer-reviewed journals to sustain us and to allow pre-tenure,²⁸ let alone non-tenure and post-tenure faculty members, to contribute to the larger mosaic of in-depth legal scholarship. It would be folly to assume that law professors can take

²⁴ See MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* 264 (2005) (“We live in a world saturated with information. We have virtually unlimited amounts of information at our fingertips at all times, and we’re well versed in arguments about the dangers of not knowing enough and not doing our homework. But I have sensed enormous frustration with the unexpected costs of knowing too much, of being inundated with information. We have come to confuse information with understanding.”).

²⁵ It is noteworthy that many books written by legal academics are based, at least in part, on articles that those academics initially published in student-edited law reviews. For example, parts of Patricia Williams’ groundbreaking and profound book, *The Alchemy of Race and Rights*, were based on her previous writing published in the *Harvard Civil Rights and Civil Liberties Law Review*. See Robin West, *Murdering the Spirit: Racism, Rights and Commerce*, 90 MICH. L. REV. 1771, 1774-75 (1992). The ability to test ideas in the forum of the student-edited law review is, no doubt, of enormous benefit to authors of subsequent books that cover some of the same ground.

²⁶ See Stracher, *supra* note 11, at 359-60.

²⁷ See Stracher, *supra* note 11.

²⁸ George & Guthrie, *supra* note 5, at 819.

on peer review responsibilities in the magnitude necessary to compensate for a lack of student-edited law reviews, particularly when a decline in law school enrollments has led to reductions in the number of faculty members at many law schools²⁹ and, therefore, an increase in administrative and teaching obligations placed on individual professors.³⁰

It is a good thing that we are not winnowing down our law reviews to a number that can be sustained only by peer review. We need a multiplicity of general law reviews and specialty journals³¹ that give voice to the writing of professors, judges, practitioners, policymakers and students alike. Particularly, we want to allow for publication and dissemination of articles on controversial topics that might not be published elsewhere.³² We live in a world in which most articles can find a home for publication; some suggest that this has inundated the legal scholarship space with too much writing, but the number of and range of subjects covered by law reviews is a positive development in legal academia. The high number of law reviews,³³ and particularly the number of specialty journals,³⁴ in existence allows for dissemination and legitimation of scholarship that might otherwise be rejected altogether by many general student-edited law reviews or by peer-edited journals.³⁵ Many student-edited law reviews allowed for the public airing and testing of ideas like critical race theory, narrative scholarship, queer theory, and other

²⁹ See Elizabeth Olson & David Segal, *A Steep Slide in Law School Enrollment Accelerates*, N.Y. TIMES, (Dec. 17, 2014), <http://nyti.ms/1Ad2LjS>.

³⁰ See Day, *supra* note 1, at 584-86 (discussing the costs associated with hiring a professional editor for law reviews or to provide faculty members with course relief or other compensation that would help ameliorate the significant additional workload associated with peer-editing a law review).

³¹ See George & Guthrie, *supra* note 5, at 820.

³² Consider the stated ambition of the founding editors of the Harvard Civil Rights-Civil Liberties Law Review, to “be a review of revolutionary law.” *Preface*, 1 HARV. C.R.-C.L.L. REV. iii (1966).

³³ Professors Allen Rostron and Nancy Levit have cataloged 205 student-edited general law reviews as of mid-2015. Allen Rostron & Nancy Levit, *Information for Submitting Articles to Law Reviews & Journals*, Social Science Research Network, (August 4, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1019029.

³⁴ The database of law reviews and journals maintained by Washington and Lee University School of Law’s Law Library indicates that there are over 400 student-edited specialty law journals in the United States. Law Journals: Submissions and Ranking, 2007-2014, <http://lawlib.wlu.edu/LJ/index.aspx> (last visited Aug. 4, 2015).

³⁵ See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984) (taking note of a pronounced lack of critical scholarship by racial minorities published and cited in leading general law reviews).

outsider scholarship³⁶ before they gained mainstream credibility. Some have opined that having a multiplicity of ways in which to assess and analyze the law is a negative development; luckily, we have plenty of space in student-edited law reviews to debate that question.

Law schools, through student-edited law reviews, are subsidizing the core of the shared intellectual enterprise that helps broaden and refine the mosaic of legal scholarship and knowledge. The institution of the student-edited law review can no doubt be improved upon in a number of ways, but the existence of the student-edited journal should be sustained, nurtured and grown by law school administration and faculty. Indeed, helping student-edited law reviews improve and flourish should be part of our mission as teachers, scholars, and lawyers committed to providing a skills-based education, for an intellectual discourse, and a service to the legal community.

³⁶ See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); see also Keith Aoki & Garrett Epps, *Dead Lines, Break Downs and Troubling the Legal Subject or "Anything You Can Do, I Can Do Meta,"* 73 OR. L. REV. 551 (1994) (an early example of Professor Aoki's graphic scholarship).