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The Paperless Chase

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THE PAPERLESS CHASE

*Steven J. Mulroy**

Gutenberg ruined everything.

Time was, both writing and reproducing scholarly works took time and reflection. Authors struggled to get the words on paper with quill and ink. This discouraged prolix and required reflection. Scribes lovingly reproduced their work, with appropriate frills and decorations, to create a handcrafted thing of beauty. The results were treasured works of art.

Then came movable type. Writing could be rushed, and sterile copies mass-produced. Books were drained of charm and beauty.

Digital printing ruined everything.

Time was, the printer was a dedicated craftsman; setting the printing plate took skill and patience. He would get ink on his hands, and become personally invested in a quality product. Mid-printing corrections were more than a trivial affair, forcing authors to revise carefully before they declared a work finished.

Then PDFs came, and plates went away. Design was reduced to the lowest common denominator. Printing was drained of charm and beauty.

There is an irresistible “‘Twas ever thus” reaction to the debates concerning the rise of online platforms in law review publishing. From cuneiform on, every development in publishing has had detractors. Not all of them were just curmudgeons: each stage of advancement has its legitimate pros and its cons.

But the debate seems moot, as the developments become inevitable. In our lifetime, all but a few law journals will evolve not

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only to a web-based form, but do away with hard copies altogether.¹ The pros will outweigh the cons. In the process, it will raise legitimate questions about the student-run nature of law reviews—which I think both will, and should be, retained.

I. WE'VE COME A LONG WAY, BABY

As recently as fifteen years ago, the legal academy debated whether offering free online versions of law journals would kill print subscriptions and lead to the demise of the law journal itself.² Commentators predicted that conventional student-run law reviews would become obsolete.³ Now, free online versions of law reviews are commonplace if not universal,⁴ and while subscriptions may have declined,⁵ law reviews are still standing better than they've ever been.⁶

This is not surprising. The readership base for law review articles—judges, law students, and practitioners—already had “free” access to articles via LEXIS, Westlaw, HeinOnline, and similar services. Paid subscribers were few, and subscribed out of institutional practice and inertia (law school libraries) or school loyalty (alumni).⁷

This is clearly the future. Beyond law review-sponsored online platforms, we've seen the rise of the blog, the listserv, and SSRN. Increasingly today, and even more tomorrow, to be a “well-placed” law review article means being available in multiple places at

¹ See, e.g., Brian Leiter, *Three Cheers for On-Line Publication!*, BRIAN LEITER'S LAW SCHOOL REPORTS, (July 26, 2011), <http://leiterlawschool.typepad.com/leiter/2011/07/three-cheers-for-on-line-publication.html> (describing the trend of law journals shifting to cyber-only publication).

² See, e.g., William H. Manz, *Floating 'Free' in Cyberspace: Law Reviews in the Internet Era*, 74 ST. JOHN'S L. REV. 1069, 1070-71 (2000) (arguing that free online versions will not significantly reduce paid subscriptions or render the conventional law review business model unsustainable).

³ See, e.g., Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 687-88 (1996) (predicting the demise of law reviews).

⁴ Aaron Zelinsky, *Why Law Review Should Stop Publishing in Hard Copy*, CONCURRING OPINIONS, (March 18, 2013), <http://concurringopinions.com/archives/2013/03/why-law-reviews-should-stop-publishing-in-hard-copy.html>.

⁵ See Kristen E. Brierley & John E. Fries, *Transforming Your Law Review from Print to Digital*, 30 T.M. COOLEY L. REV. 225, 226 (2013).

⁶ ELTON JOHN, I'M STILL STANDING (The Rocket Record Company 1983).

⁷ Manz, *supra* note 2, at 1079-80. Indeed, the wide availability of articles online apparently has had the positive and egalitarian effect of making it less important how high-prestige a placement an article receives. Quality articles will be widely cited regardless of where they are published. See Dennis J. Callahan & Neal Devins, *Law Review Article Placement: Benefit Or Beauty Prize?*, 56 J. LEGAL EDUC. 374, 375-76 (2006).

once: in the bound volume, on the law review website, on SSRN, and on the author's own website or law school faculty page. The need for wide, multiple-platform distribution takes on even more urgency in an ever-more-internationalizing legal environment.⁸

Just as YouTube forced a change in the business model for pop music, with songs being instantly and universally available for free, so too will these developments force a change in the way law reviews do business. And, just as YouTube didn't kill the pop music industry, neither will these developments make law reviews obsolete.

Another analogy is appropriate. Even though the Internet enabled self-publishing, and everyone with a computer became a potential DIY journalist, there is still a need for, and a demand for, professional editors as gatekeepers of the information overflow, and professional journalists providing trusted content.⁹ So too with law reviews. Individual professors may post to SSRN or their blogs without editorial intermediaries, but researchers wanting to draw upon reliable and professional scholarship will look for the Good Housekeeping Seal Of Approval that is publication by a respected law journal. However, just as the non-top-tier newspapers may migrate over time to digital-only format, providing the same professional content but in a digital-only form, so too may the law review.

II. WHITHER HARD COPY?

The question is no longer whether a law review will have free online platforms. The question is whether law reviews will retain hard copy bound versions at all. Allow me to hazard some predictions. Most likely, the highest-ranked law reviews will continue to produce bound versions for reasons of prestige. For those same reasons of prestige, many law school libraries will subscribe to them.

But for the rest of us, bound copies will go the way of the dinosaur, and that's a good thing. The reasons why this transition makes sense are the reasons why it is likely.

Cost. Digital-only publication is economical. The lion's share of any law review's budget is printing costs.¹⁰ As declining en-

⁸ See Mark C. Rahdert & Laura E. Little, *The Future of Temple Law Review: Stasis And Change*, 75 TEMP. L. REV. 13, 20 (2002).

⁹ Clay Calvert, *And You Call Yourself A Journalist?: Wrestling with A Definition of "Journalist" in the Law*, 103 DICK. L. REV. 411, 412-13 (1999).

¹⁰ E-mail from Greg Wagner, Editor-in-Chief, Univ. of Memphis Law Review, to author (Feb. 5, 2016) (on file with author).

rollment further puts the budgetary squeeze on law school resources,¹¹ this cost-saving measure will be hard to resist.

Speed. Authors often complain about the long lag time between final edit and publication.¹² While this can be partially solved by having a “Draft” version of the article on SSRN, it is undeniably better to have the final, published version out as soon as possible. This is particularly the case with time-sensitive topics in rapidly developing areas of the law.¹³ And, it is precisely those in-flux areas that are more likely to be overtaken by events, reducing the need for having a permanent, bound edition.¹⁴

Flexibility. Having online versions allows continual updating and editing. Again, the more of a “hot topic” the article discusses, the greater the need for this feature.

Environmentalism. The drive to go paperless generally is an ecologically sound one. There is no reason law reviews should be immune.¹⁵ In fact, given the ubiquity of multiple online points of access for this content, the argument for killing trees here is weaker than in many other publishing contexts. People still like to spill coffee on their newspapers, and it’s good to have a fist full of real estate circulars when you’re driving around scouting out new houses. But few have a romantic attachment to the bound version of a law review article. Even those who prefer to work off a hard copy can print off a more portable version from their computer.

Efficiency. Perhaps the best reason for abolishing hardbound copies is that no one reads entire law reviews. Even law professors, students, practitioners and judges use computer-assisted-legal-research to hone in on specific articles on a given topic from a wide variety of journals. Given this fickleness, subscribing to an entire journal is a waste of money and shelf space.

¹¹ See, e.g., Peter Schworm, *Waning ranks at law schools: Institution fear recession's effect could be lasting*, BOSTON GLOBE, (July 6, 2014), <https://www.bostonglobe.com/metro/2014/07/05/law-school-enrollment-fails-rebound-after-recession-local-colleges-make-cuts/fR7dYqwBsrOeXPbS9ibqtN/story.html>.

¹² Rahdert & Little, *supra* note 8, at 19.

¹³ Rahdert & Little, *supra* note 8, at 19.

¹⁴ Rahdert & Little, *supra* note 8, at 19.

¹⁵ See Brierley & Fries, *supra* note 5, at 226-27 (asserting that paperless law reviews help promote environmental sustainability).

III. STUDENTS R US?

The ability to self-publish, and publish directly to the web, is tied up with related calls for the abolition of *student-run* law reviews. Criticism of the student-run nature of law reviews is longstanding. Justice Holmes famously called law reviews “the work of boys”¹⁶--which, at the time, was more accurate than sexist. More recently have come calls for a move to publish law review articles directly to the Internet and avoid student editing.¹⁷

The connection between paperless and student-less law review publishing is rather strained, with the arguments for the latter much weaker than for the former. Just as moving to web-only newspapers will not warrant the elimination of journalists and editors, a move to web-only law reviews will not reduce the need of student-run journals.

Certainly, student-run journals have their downsides. It is indeed a bit counterintuitive to see graduate students with several years of schooling and no practice experience editing the work of professionals decades their senior. But most of that editing comes in the form of fact-checking, cite-checking, and other “quality control” services which any intelligent law student is capable of doing, and for which most full-time academics have little time or patience. Content-based second-guessing of academics by students is the exception, and deference to the author on substance the rule.

Of course, the more this is true, arguably the greater need for peer review. For that reason, the rise of peer-reviewed law journals¹⁸ is a salutary thing. Peer-reviewed journals have a role to play in supplementing traditional law reviews. But we should not confuse baby with bathwater.

Others have ably summarized the value of having student-run law reviews. It helps the students by giving them valuable teaching experience, and a chance to distinguish themselves.¹⁹ It helps faculty by having a source of labor for the time-consuming process of editing

¹⁶ See Charles E. Hughes, *Foreword*, 50 YALE L.J. 737 (1941).

¹⁷ Hibbitts, *supra* note 3, at 667; Richard A. Wise, Lucy S. McGough, James W. Bowers, Douglas P. Peters, Joseph C. Miller, Heather K. Terrell, Brett Holfeld & Joe H. Neal, *Do Law Reviews Need Reform? A Survey of Law Professors, Student Editors, Attorneys, and Judges*, 59 LOY. L. REV. 1, 4 (2013).

¹⁸ Wise et al., *supra* note 17, at 29.

¹⁹ James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1272-279 (1998).

and cite-checking, which gives law review scholarship its deserved reputation for thoroughness and accuracy²⁰ while freeing up time for the authors to focus on substance. And, it prevents academics from becoming too arcane and incomprehensible as they speak to each other without clarity-seeking (*clarity-needing*) intermediaries.²¹

As a practical matter, given the time demands on most faculty, moving to a faculty-run-only system would drastically reduce the number of law review articles published annually. While some might see that as a salutary thing, the heavy use of law review scholarship by judges and practitioners²² belies that view. And, most importantly of all, it certainly would make life difficult for law professors trying to gain tenure and promotion.

IV. CONCLUSION

Thanks to the prestige attached to the Touro Law Review, I have hope that this symposium issue will not fade to oblivion as the decades pass. Instead, this volume will be retained for its historical value. Future (student) editors of the law review will likely chuckle at the quaintness of the outdated debate over publishing platforms—as they skim this volume online, the only form in which it is retrievable.

²⁰ *Id.*

²¹ *Id.*

²² Manz, *supra* note 2, at 1075 (discussing the large number of law review citations in opinions by the Supreme Court, lower federal courts, and state appellate courts).