THE LAW REVIEW REVOLUTION

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Legal scholarship needs to undergo a revolution to contribute to the identification and resolution of pressing modern legal issues. Student-editors of law reviews have the best chance of leading that revolution — a role they so far have not adopted. An ever-growing number of law reviews and journals publish an expanding quantity of longer and more theoretical pieces each year. The supply of legal scholarship exceeds demand at tremendous societal cost.

Law professors spend hundreds of hours on articles that will go likely unread and will generally go uncited. They continually prioritize their scholarship over teaching, mentoring, and serving their community because such scholarship carries more sway over their professional futures. Professors have several reasons not to disrupt this status quo: an individual who bucks the trend of producing pointless scholarship will likely have a short career in academia; professors may like writing more than teaching and value the act of researching regardless of its overall effect on the law or society; and, with respect to faculty members at elite institutions, professors may want to protect an approach they know affords them greater influence and reach.

Law schools authorize the expansion of journals based on the assumption that increasing student participation on such journals will imbue those students with writing and research skills that the school would otherwise have to offer through specific and costly courses. Yet, empirical evidence increasingly suggests the assumed benefits of journal participation may not be realized in practice — and, to the extent that they are, those benefits could and arguably should be afforded in a more equitable manner. Nevertheless, law schools will likely refrain from championing change to the status quo due to a number of factors; in particular, so long as journals serve as a signal of prestige, schools will support their creation and expansion to keep up with other institutions doing the same thing.

Law students hustle to publish as many articles as possible to garner as many citations to the journal as possible and, consequently, bolster the prestige of their participation on that journal. Generally, students have no real incentive to evaluate whether those articles are duplicative, desired, or likely to develop the law. Not only are there clear reasons why students may support an excess supply of legal scholarship, they also have the least to lose from a revolution to the status quo.

This article makes the case for a revolution led by law students to reform and improve legal scholarship. Students have unparalleled and nearly exclusive authority over the selection and

publication of articles. By making structural, stylistic, and substantive changes to that process, students can drastically increase the odds of legal scholarship fulfilling its potential: namely providing substantive, timely, and useful critiques of the law.

INTRODUCTION

I know of no other field in which students are put in positions of authority to make decisions regarding what gets published in the most prestigious journals in their field. In exercising this authority, students on journals have the opportunity to affect scholarly discourse.[1]

A law review revolution is required to save legal scholarship. Since the inception of law reviews, students, faculty, and law schools generally have become increasingly removed from the actual practice of the law — understandably and inevitably rendering legal scholarship less and less useful to the legal community and, by extension, the public.[2] Students must seize their power to "affect scholarly discourse" and reorient legal scholarship. Legal scholarship in its current form serves more as a signal of prestige than an attempt at resolving pressing societal problems.[3] Absent the reorientation of law reviews toward producing fewer articles with better odds of providing substantive, timely, and useful critiques of the

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[1] Lois Weithorn, *Participating on a Law Journal*, U. CAL. HASTINGS COLL. LAW, SAN FRANCISCO, http://journals.uchastings.edu/journals/weithorn/index.php [https://perma.cc/68JN-EH5N]. This article will refer interchangeably to law reviews and law journals. Mention of either refers to a publication edited by law students. This article will also interchangeably refer to legal scholars and law professors. Though not every legal scholar also serves as a professor, this article does not distinguish between the two given the amount of legal scholarship produced by law professors. *See, e.g.*, Adam Chilton, *Law Professors' Research Records Across Time and Law Schools*, SUMMARY, JUDGMENT (Jan. 12, 2022), https://www.summarycommajudgment.com/blog/law-professors-research-records-across-time-and-law-schools (noting the substantial increase in legal scholarship by law professors over time). When this article refers to students, unless otherwise noted, it is referring to the student-editors of law reviews.

[2] *See generally* Olufunmilayo Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941 (2014); Barbara H. Cane, *The Role of the Law Review in Legal Education,* 31 J. LEGAL EDUC. 215, 220 (1981) ("In their efforts to meet higher academic standards law schools increasingly followed Harvard's lead and hired a faculty with strong academic credentials. All law faculties took on a similar look: they are dominated by non- practitioners, most of whom were trained on law review, many of whom were editors.").

[3] *See* Mark Tushnet, *Legal Scholarship: Its Causes and Cure*, 90 YALE L. REV. 1205, 1205 (1981) (describing legal scholarship as "marginal" and residing at "the edges of serious intellectual activity.").

law, these legal journals and legal scholarship as they stand today should cease to exist.[4]

In a world without law reviews, law schools could offer the undisputed educational benefits of journal participation through other means. Rather than rely on legal journals to teach a select few students about the intricacies of legal scholarship, law schools could assume that burden and ensure all students receive more instruction in legal research and writing. Such an alternative has the potential to ensure students learn important skills more effectively and equitably. In the absence of legal journals, law professors could spend more time teaching than negotiating publication offers;[5] and the legal community would eventually fill the resulting gap in legal scholarship that results with work by scholars committed to a research agenda demanded by jurists, practitioners, and other members of the legal community.[6] The justification for the continuation of law reviews would then turn on the value of the legal scholarship they publish. Currently, that justification fails — the limited value of the majority of legal scholarship produced in the current system does not warrant law schools outsourcing substantive legal research and writing instructions to legal journals comprised of subset of the student body.[7] A student-led revolution that alters who selects articles, why they select them, and how they edit and publish them can restore the value of legal scholarship and, in turn, justify the perpetuation of law reviews.

Despite decades of student-edited law review articles providing little to no value to the legal community,[8] the continued proliferation of law

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[4] *See, e.g.*, Michael McClintock, *The Declining Use of Legal Scholarship by Courts: An Empirical Study*, 51 OKLA. L. REV. 659, 660 (1998) ("If student edited law journals do not respond to the bar's requests for 'practical' articles, then the dialogue between practitioners, judges, and academics . . . may soon come to an end.").

[5] Arewa et al., *supra* note 2, at 1011 ("Law schools' research output is closely related to prestige. As a result, despite the fact that faculty research often does not directly benefit students, law schools spend significant resources subsidizing faculty research.").

[6] For an example of alternative outlets of content at least adjacent to legal scholarship consider The Volokh Conspiracy, Reason.com, or the Strict Scrutiny Podcast. Though these outlets do not provide nearly as much content as law reviews nor as in-depth analysis, other outlets could form and help fill the gap. The point is that few barriers to entry exist with respect to publishing content in this digital age, so if the legal community manifests a demand for such content, then it will likely arise in relatively short order.

[7] Arewa et al., *supra* note 2, at 976 n.195, 1012 n.406 (2014) (collecting examples of scholars doubting the value of legal scholarship).

[8] *See* Jeffrey L. Harrison & Amy R. Mashburn, *Citations, Justifications, and the Troubled State of Legal Scholarship: An Empirical Study*, 3 TEX. A&M L. REV. 45, 48 (2015) ("[T]o the extent that constituents other than law professors benefit in practical ways from legal scholarship, those benefits are largely the product of happenstance and individual preferences, rather than an intended

reviews and increase in the length and number of law review articles suggests that the status quo will persist.[9] Though no agreement has been reached on how best to evaluate the responsiveness of legal scholarship to the needs of judges, practitioners, lawmakers, and other legal professionals, consideration of the most common metric — citations — confirms an excess supply.[10] Based on citations in court opinions, judges do not regard

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byproduct of the existing structured system of incentives and disincentives that sustains most of the tenured law professoriate."); Task Force on Law Schools and the Profession, LEGAL EDUC. AND PROF'L. DEV. - AN EDUC. CONTINUUM at 5 (1992) ("Practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns[.]"); McClintock, *supra* note 4, at 670 (1998) ("Judges and practitioners (and some legal scholars) have criticized what they perceive to be the increasing lack of traditional, doctrinal legal scholarship."); Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314, 1314 (2001) ("In recent years legal scholarship has undergone changes so fundamental as to suggest the need for a reassessment of law as an academic discipline, as a subject of study, and as an intellectual institution."); Joshua D. Baker, *Student Work: Relics or Relevant?: The Value of the Modern Law Review*, 111 W. VA. L. REV. 919, 924–25 (2009) ("While scholarship can be very valuable, most of it is not."). *But see* Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HAST. L.J. 739, 789-90 (1985) (arguing that early editions of law reviews positively influenced the development of law through judicial opinions, legislation, and the spread of novel legal theories).

[9] See Geoffrey Preckshot, Comment, *All Hail Emperor Law Review: Criticism of the Law Review System and its Success at Provoking Change*, 55 MO. L. REV. 1005, 1010 (1990); Lawprofblawg & Darren Bush, Law Reviews, Citation Counts, and Twitter (Oh my!): Behind the Curtains of the Law Professor's Search for Meaning, 50 LOY. U. CHI. L.J. 327, 334 n.36 (2018) ("By common consensus, the volume of [legal] scholarship is both huge and too much.") (citing Barry Friedman, Fixing Law Reviews, 67 DUKE L.J. 1297, 1321–22 (2018)); see also Tyler S. B. Olkowski, Despite Alternatives, Student-run Law Reviews Here to Stay, HARV. CRIMSON (Mar. 13, 2014), https://www.thecrimson.com/article/2014/3/13/law-review-student-editors/ (concluding from interviews of Harvard Law School faculty with experience as law review editors that "the student-driven law review model is here to stay").

[10] *See* Dennis Callahan & Neal Devins, *Law Review Article Placement: Benefit or Beauty Prize*, 56 J. LEGAL EDU. 374, 375 (2006) (recording an increase in the average articles per law review volume as well as in the average length of article but a decline in the average number of citations); *see also* McClintock, *supra* note 4, at 660 ("The citation of law reviews in judicial decisions is by no means a complete measure of law reviews' influence on judges, practitioners, or the law. However, a decline in citation, when combined with the pleas of judges and practitioners for more 'practical' articles, is persuasive evidence that the bar is finding legal scholarship less relevant to the practice of law.") (internal citations omitted); *see id.* at 660 n.8 ("Regardless of whether one agrees or disagrees with using the number of citations an article or law review receives as a 'measuring stick,' it is the way (at least superficially) many people, including law school professors, define the success of their articles.").

legal scholarship as useful.[11] Legal scholars likewise place little value on the scholarship of their colleagues according to citations.[12] Practitioners also report that they rarely rely on or even consult legal scholarship.[13] Students may derive an educational benefit from editing and publishing pieces, but surely those ends do not justify an approach to legal scholarship that fails to meet the needs of its intended audience, right?[14]

It seems the answer has and will continue to be, "Wrong."

Members of the legal community have become so accustomed to the minimal value of legal scholarship that it is commonly accepted that "[m]ost writing exists to be read; legal scholarship exists to be written."[15] The perpetuation of relatively worthless legal scholarship comes at great cost: law schools effectively subsidize pointless scholarship;[16] professors allocate time and energy away from legal education toward the production of unnecessary legal scholarship;[17] and the current system prevents

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[11] David L. Schwartz & Lee Petherbridge, *The Use of Legal Scholarship by the Federal Courts of Appeals: An Empirical Study*, 96 CORNELL L. REV. 1345, 1359 (2011) ("Of the 296,098 reported decisions of the federal courts of appeals spanning years 1950-2008, 22,479 (7.6%), or roughly one in every 13.2 decisions, cited at least one law review or law journal article."); *see* Harrison & Mashburn, *supra* note 8, at 73 (concluding that of court citations to legal scholarship only twenty percent reflected the court having been influenced by cited work—the remaining citations were done merely to refer to facts and descriptive elements of the piece or to indicate that the author was one of several people writing on a common topic).

[12] *See* Harrison & Mashburn, *supra* note 8, at 70–76.

[13] *See* McClintock, *supra* note 4, at 659 ("Judges and practitioners increasingly feel that there is a lack of legal scholarship that they can use when they face their daily caseloads.").

[14] *See infra* note 128 (providing examples of law reviews that have identified a segment of the broader legal community as their audience).

[15] See Harrison & Mashburn, *supra* note 8, at 59; Leah Christensen & Julie Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with all the Power - Student Editors*, 59 S.C. L. REV. 175, 201 (2007) (reporting that law review editors almost "universally" acknowledge the receipt of numerous articles of poor quality).

[16] *See* Harrison & Mashburn, *supra* note 8, at 53 (estimating that law schools collectively spend about $240 million on the production of legal scholarship by professors).

[17] But see Benjamin Barton, Is There a Correlation between Law Professor Publication Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study, 5 J. EMPIRICAL LEGAL STUD. 619, 640 (2008). Though the Barton study concludes that empirical evidence does not suggest that research productivity detracts from the quality of teaching, it is irrefutable that an hour spent researching is an hour not spent teaching. If it is agreed that the quantity of legal education needs to increase — perhaps to teach more Zero-L courses (discussed below) — then a reduction in research hours can help facilitate that increase.

brilliant individuals from contributing their thoughts, efforts, and ideas to society's more pressing issues.[18]

Law reviews and legal scholarship generally should not escape the attention of students and others who have increasingly questioned the value of a legal education as a whole in addition to aspects of that education that have gone unquestioned for too long.[19] Amid skyrocketing law school debt, many have questioned if the supposed benefits of law school justify the costs.[20] Questions about the value proposition of law school have also generated sustained calls to shorten its length,[21] change its curriculums,[22] and provide more financial support to students.[23] While questions have previously been raised about the value of legal scholarship, those inquiries ought to be more targeted to lead to substantial reform.[24]

This article contains four parts. Part I contains two sections. The first section briefly covers the history of law reviews, with an emphasis on how law reviews became disconnected from the legal community. The second section argues that the absence of market pressure on those reviews to tailor the style and substance of legal scholarship toward a specific

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[18] *See* Harrison & Mashburn, *supra* note 8, at 79 n.112.

[19] *See* Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 610-11 (2007) ("Professional training programs in other fields have been redesigned many times to reflect current practice, theory, and pedagogy, but we legal educators are still doing the same basic thing we were doing one hundred and thirty years ago.") [hereinafter, Rubin, *What's Wrong*].

[20] *See* Chris Jennison, *The Student Loan Debt Fire Burning Around Us*, A.B.A (Aug. 24, 2022), https://www.americanbar.org/groups/young_lawyers/publications/after-the-bar/student-loans-and-finances/student-loan-debt-fire-aba-young-lawyers/ ("[A] 2020 ABA survey found the average debt for law school graduates has increased to more than $150,000.").

[21] Elia Kazan, *Why Law School Should Be Two Years*, A.B.A. (Apr. 21, 2022), https://abaforlawstudents.com/2022/04/21/why-law-school-should-be-two-years/#:~:text=Two%20years%20of%20law%20school,critical%20and%20analytical%20thinking%20skills; Matt Barnum, *The Two-Year Law Degree: A Great Idea That Will Never Come to Be*, ATLANTIC (Nov. 12, 2013), https://www.theatlantic.com/education/archive/2013/11/the-two-year-law-degree-a-great-idea-that-will-never-come-to-be/281341/.

[22] Courtney Liss, *Want to change the law? Change law school*, A.B.A (June 17, 2020), https://abaforlawstudents.com/2020/06/17/want-to-change-the-law-change-law-school/; Elaine McArdle, *A Curriculum of New Realities*, HARV. L. BULL. (Sept. 2, 2008), https://hls.harvard.edu/today/a-curriculum-of-new-realities/.

[23] Brain Tamanaha, *How to Make Law School Affordable*, N.Y. TIMES (May 31, 2012), https://www.nytimes.com/2012/06/01/opinion/how-to-make-law-school-affordable.html.

[24] *See* Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 629 (1996) ("Criticisms of the law review have historically tended to come in waves, each wave larger and more powerful than the last.").

audience resulted in a long and significant decline in the value of that scholarship. Part II starts by discussing the manifold purposes for law reviews. Part II then asserts that law reviews must identify a primary purpose to ensure that students "affect scholarly discourse" in a positive manner that justifies the opportunity costs of operating law reviews. Part III analyzes legal scholarship as a collective action problem and identifies students as the stakeholders with the best opportunity to lead the revolution necessary to effectuate that primary purpose. Part IV covers several potential reforms to law reviews that could revive legal scholarship and justify the continuation of these centuries-old institutions. Prior to diving into those parts, it is important to finish explaining the current state of legal scholarship.

I. HISTORY OF LEGAL PUBLICATION

A brief overview of the history of legal publications contextualizes the extent to which law reviews and, by extension, legal scholarship has diverged from what previously constituted the most valuable legal writing. The first section of this part explores the market forces that sustained commercial legal publications. The second part investigates how the absence of those market forces with respect to legal scholarship published by law reviews has contributed to the declining value of that scholarship.

A. How Market Forces Shaped Commercial Legal Publications and Their Content

Before legal scholarship landed in the hands of students unaffected by the extent to which they meet the needs of the legal community, market forces altered the style and substance of legal publications. In response to "[t]he growth of the common law and the expanding jurisdiction in newly formed states," the legal community demanded "specialized publications so that the bar could stay informed of the rapidly changing laws."[25] The supply of law-related publications increased as a result.[26] Failure to adhere to the specific demands of readers — specifically, members of the bar — led to a publication's demise. For instance, the first three legal periodicals shuttered after brief runs because they produced similar content to case law reporters and did so in a style "too general for practicing attorneys and too technical for lay people."[27] The next wave of legal publications also struggled against economic headwinds — thirty law journals had started by the middle of the nineteenth century, but just a third of them avoided closing shop.[28] On the whole, "[t]he great majority of nineteenth-century legal periodicals failed within a few years for a lack of readers."[29]

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[25] *See* McClintock, *supra* note 4, at 661.
[26] *Id.*
[27] Swygert & Bruce, *supra* note 8, at 752-53.
[28] *Id.* at 754.
[29] *Id.* at 761.

Only those publications that identified an audience and catered the style and substance of their articles to that audience persisted.[30] For instance, the *Albany Law Journal* started in 1870 as a practitioner-focused journal and soon earned the largest circulation of any legal periodical.[31] The journal's success reflected the brevity and quality of its content and the relevance of that content.[32] The *American Law Review* attained similar success by identifying a specific audience ("the intelligentsia of the nation's legal profession"), narrowing its purpose (educating readers on legal developments and principles), and carefully curating its content (publishing quarterly and actively soliciting input from readers on the topics they wanted covered).[33] Other periodicals achieved commercial success by specifically appealing to practitioners in certain fields.[34] These journals met the needs of their audience by publishing on a frequent basis, covering a range of relevant legal developments, and condensing such developments into a digestible form.[35]

The success of these journals indicated a robust market for legal journalism and scholarship — a fact that led to the creation of more legal publications. These publications attempted to corner parts of the market by identifying specific purposes or carving out regional audiences.[36] Many of them succeeded — the number of legal periodicals nearly tripled from 1870 to 1886.[37] This "explosion of commercial ventures in legal periodical publishing" was marked by a "concise and casual style" and content that demonstrated "scholarly insight and historical perception with a professional and practical focus[.]"[38]

B. How the Absence of Market Forces Influenced the Value of Legal Scholarship Published via Law Reviews

The editorial pressures brought on by the relationship between the supply and demand of legal scholarship does not apply to student-edited law reviews.[39] One indication of the absence of such pressure in the

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[30] McClintock, *supra* note 4, at 662 ("As commercial legal periodicals, these journals survived by tailoring their publication to their intended audience and, at the beginning, that audience was lawyers and judges.").

[31] Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 33 (2015).

[32] Swygert & Bruce, *supra* note 8, at 761.

[33] *Id.* at 757-58.

[34] *Id.* at 758-59.

[35] *Id.* at 759.

[36] *Id.* at 760-62.

[37] *Id.* at 762.

[38] *Id.* (internal quotation omitted).

[39] *See* Lawprofblawg & Bush, *supra* note 9, at 338 ("[T]here is nothing about the law review world that resembles a competitive or even well-functioning market."); Harold Havighurst, *Law Reviews and Legal Education,* 51 NW. U.L. REV.

contemporary legal scholarship market is that higher ranked law reviews tend to supply the market with a disproportionate share of theoretical articles — those least likely to elicit demand from the largest group of "consumers," namely practitioners.[40] If law reviews felt more beholden to the demands of practitioners, then the substance of their articles would likely shift.[41]

This theory is borne out in practice based on the content produced by lower ranked journals. In response to difficulties attracting readers, these journals tend to produce articles intended to assist practitioners.[42] Arguably, the content provided by such lower ranked journals achieves higher levels of significance because of the greater odds of such scholarship contributing to the development of the law. Practical scholarship carries more potential for significance by identifying trends in the law, evaluating the merits of such trends, and offering arguments as to whether such trends should continue — and, in doing so, developing the field.[43] Comparatively, as discussed by Professor Edward Rubin, works that lie nearer to the edge of the field may fail the "significance" criterion for legal scholarship "in its entirety."[44] According to Rubin, the low likelihood of "significant" theoretical scholarship falls from the fact that such scholarship must meet a more exacting standard given its aspirations to describe more general ideas.[45]

The production of so many articles of poor quality and limited significance further demonstrates that the contemporary legal scholarship does

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22, 24 (1956) ("[L]aw reviews are unique among publications in that they do not exist because of any large demand on the part of a reading public."). *But see* David A. Rier, *The Future of Legal Scholarship and Scholarly Communication: Publication in the Age of Cyberspace*, 30 AKRON L. REV. 183, 191 (1996) (speculating that only law firms purchase volumes of law reviews but also admitting that "[c]ontemporary law reviews clearly do not go completely unread"). *See generally* Harrison & Mashburn, *supra* note 8 (discussing an oversupply of law review articles).

[40] Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1337 (stating that "the 'high theory' that carries the greatest prestige for legal scholars is of the least interest to practitioners"); Christensen & Oseid, *supra* note 15, at 189 tbl.1, 196.

[41] See Thomas L. Fowler, Law Reviews and Their Relevance to Modern Legal Problems, 24 Camp. L. Rev. 47, 48 (2001).

[42] *See* Christensen & Oseid, *supra* note 15, at 189. *But see* Callahan & Devins, *supra* note 10, at 385 (arguing that meritorious work in lower tier law reviews is increasingly not a "ticket to obscurity" as a result of online databases making articles in all reviews more accessible).

[43] *See* Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CAL. L. REV. 889, 930-31 (1992) [hereinafter Rubin, *Beyond Truth*].

[44] *Id.* at 929.

[45] *Id.*

not have to satisfy any specific criterion.[46] Respondents to a survey conducted by Professor Leah Christensen of the University of San Diego School of Law and Professor Julie Oseid of the University of St. Thomas School of Law reported that their journals received a surprising amount of scholarship lacking in quality.[47] Troublingly, eighty percent of the Editors-in-Chiefs (EICs) of elite journals reported the same findings.[48] Students generally ascribed the lack of quality to duplicative and unoriginal content, a lack of research, and a lack of editing.[49] If there were any meaningful constraints on the production and publication of such poor legal scholarship, it seems likely that the aggregate quality of legal scholarship would improve.[50]

Finally, the disconnect between contemporary legal scholarship and the demands of its audience — to the extent they evidence any demand for legal scholarship — is indicated by the shear supply of articles. Several student-editors informed Christensen and Oseid that they received as many as 2,000 articles per year.[51] One student lamented that the magnitude of supply proved to be "overwhelming."[52] The fact that the legal community has not responded to this supply by investing in more mechanisms for the review and publication of legal scholarship indicates that the community's demand significantly trails scholar's supply. Yet, observers anticipate that the supply of legal scholarship will continue to increase.[53]

Initially, the protection of student-edited law reviews from the demands of the market for legal scholarship made sense given the purpose of the publications: to further the legal education of the students themselves.[54] To avoid directly competing with commercial legal publications

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[46] *Id.* at 889 (listing "intuition" as the primary means of evaluating legal scholarship and claiming that legal scholars have "no theory of evaluation.").

[47] Christensen & Oseid, *supra* note 15, at 201 n.107, 201-02 ("From the Top 15 journals, 4 out of the 5 editors who responded noted surprise about the poor quality of articles. From the nonspecialty law journals, 16 of 31 editors commented about the poor quality of articles. This was the most noted surprise among the nonspecialty law journals. This was also the comment made most frequently by specialty journal editors, with 6 out of 17 responding journals noting the poor quality of articles.").

[48] *Id.* at 202.

[49] *Id.*

[50] *But see* Callahan & Devins, *supra* note 10, at 375 (suggesting some indication of market-like pressures in legal scholarship based on empirical resulting showing that the articles in top reviews receive more citations because of the quality of those articles. In other words, top reviews may attain and retain such a status because they produce higher quality content demanded by the legal community).

[51] Christensen & Oseid, *supra* note 15, at 204.

[52] *Id.* at 204 n.125.

[53] *Id.* at 206.

[54] *See The Albany Law School Journal*, 3 CENT. L.J. 136 (1876)

— a competition that student law reviews lost — they had to develop novel content.[55] In 1875, the *Albany Law School Journal* became the first student-edited law review and published "information about the school's clubs," as well as "a few short articles, reports of moot court dispositions, [and] news items."[56] Likewise, the second student-edited journal, the *Columbia Jurist*, published lecture notes, moot court decisions, and legal news.[57] Even the *Harvard Law Review*, which launched in 1887, was initially started to help students practice writing, share ideas, and report on the events at their school.[58]

In other words, student-edited law reviews did not start with the intent of controlling, let alone contributing to, the general legal journal market. By way of example, the founders of the *Columbia Jurist* compared their publication to those produced by other colleges, not commercial legal periodicals.[59] That is not to say that early student-edited law reviews did not include similar content as commercial legal periodicals — instead, the intent of early student-editors goes only to show that they did not expect nor aspire to have their publications serve the dominant role they do today.[60]

However, the proliferation of law school-based journals, including those operated by faculty members, soon made schools the dominant producers of legal scholarship.[61] Preeminent legal minds turned to their institution's law review, rather than commercial publications, to share their scholarship, regardless of whether a demand existed for that scholarship.[62] For instance, Harvard Law School professors opted to publish their scholarship in the *Harvard Law Review* over other outlets.[63] The student-editors of the *Review* seized this corner of the market and aimed to share "pioneer[ing] work in legal education."[64]

Students later started emulating the content of their commercial counterparts, such as analysis of recent cases.[65] Still, at least in the case of the *Review*, students selected cases based on their connection to topics

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[55] McClintock, *supra* note 4, at 663.

[56] Closen & Dzielak, *supra* note 31, at 15.

[57] Swygert & Bruce, *supra* note 8, at 766–67.

[58] Closen & Dzielak, *supra* note 31, at 34–35.

[59] Swygert & Bruce, *supra* note 8, at 766.

[60] *See id.* at 767.

[61] *See id.*; Callahan & Devins, *supra* note 10, at 385-86 (describing general interest law reviews as having a "scholarship monopoly").

[62] *See* Arewa et al., *supra* note 2, at 954 (describing how the transition of law schools away from practice-oriented curriculums to academic institutions resulted in "the vast majority of law schools [becoming] research universities, where the faculty engaged in scientific legal instruction and academic research").

[63] Swygert & Bruce, *supra* note 8, at 773.

[64] John Wigmore, *The Recent Cases Department*, 50 HARV. L. REV. 862, 862 (1937).

[65] Swygert & Bruce, *supra* note 8, at 777.

discussed in class, rather than a commercial audience[66] — a choice that demonstrates the initially narrow reach of such law reviews. Publishers of commercial legal periodicals quickly realized that the tight connection between student-edited law reviews and legal scholars within law schools could infringe on their own commercial success.[67]

However, those commercial publications had no chance in competing with law reviews with respect to formal legal scholarship given the convenience and expectation of faculty conducting and publishing academic research at their respective institutions.[68] In fact, law schools turned to faculty scholarship as an important means of competition — the more elite schools managed to reduce the teaching loads of faculty so that they could churn out more scholarship.[69]

A substantial drop in the cost of publishing further made it possible for student-edited law reviews — what analysts today would call a "low cost player" — to enter the market.[70] Law reviews launched in part due to "the advent of [the] high-speed rotary printing presses and the near simultaneous development of woodpulp newsprint," according to Michael McClintock.[71] Law reviews had other forms of cost savings over commercial publications that also facilitated the growth and longevity of these sources of legal scholarship: first, their editors — students — worked for free and continue to do so today;[72] second, they had much of their expenses subsidized or covered by their host institutions;[73] and, third, most importantly with respect to dominating the legal scholarship segment of the market, these publications did not need to allocate time or resources toward soliciting content from faculty members.[74] Cumulatively, these factors shielded law reviews from facing the full brunt of financial pressures that caused legal periodicals to fold and enabled them to become the predominant source of legal scholarship.[75] Shielded from such pressure, law reviews could aim to fulfill narrow purposes, such as the spread of campus-specific information — purposes distinct from those the mandated by the market.

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[66] *Id.*

[67] *Id.* at 767, 773.

[68] *Id.* at 773.

[69] *See* Arewa et al., *supra* note 2, at 955-56.

[70] Nirmalya Kumar, *Strategies to Fight Low-Cost Rivals*, HARV. BUS. R. (Dec. 2006), https://hbr.org/2006/12/strategies-to-fight-low-cost-rivals.

[71] McClintock, *supra* note 4, at 662.

[72] Olkowski, *supra* note 9.

[73] *Id.* (discussing the location of the *Harvard Law Review*'s offices on the Harvard Law campus).

[74] Wigmore, *supra* note 64, at 862.

[75] *But see* McClintock, *supra* note 4, at 662-63 (discussing how one of the earliest student-edited journals came to a rapid demise due to commercial competition).

The limited purpose of student-edited law reviews was recognized by law schools as well as judges and practitioners in the field at the turn of the century. Law schools intent on "keeping up with Harvard" followed Harvard's lead in creating student-edited law reviews with the goal of replicating the educational benefit received by student editors.[76] The first batch of schools to emulate Harvard all considered themselves rival elite institutions that wanted to avoid the perception of falling behind the Crimson.[77] Thus, from the inception of student-edited law reviews, the primary motive to publish such reviews reflected competition among law schools, not a desire to further the law.[78]

Given that student-edited law reviews were intended to signal a school's prestige,[79] it is unsurprising that these reviews did not earn the admiration of those in the upper echelon of the legal profession. As late as 1910, jurists such as Justice Oliver Wendell Holmes framed student-edited law reviews as the mere "work of boys."[80] The first citation to a law review article in a U.S. Supreme Court opinion did not occur until 1917.[81]

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[76] Swygert & Bruce, *supra* note 8, at 779.

[77] *Id.*

[78] *See id.*; Arewa et al., *supra* note 2, at 952-53 (discussing how "[a]lmost everyone may have wanted to follow the academic model [initially instituted by Harvard Law School]" and that schools chased membership in the Association of American Law Schools to signal their membership among elite schools). The coinciding adoption and spread of Harvard's pedagogy and law review to other schools reinforce the predominate focus of law schools to act on their "aspir[ation] to be a part of the cream." *See id.* at 951.

[79] *See* Swygert & Bruce, *supra* note 8, at 779 ("[A] law school without a law review was considered a lesser institution."); *see also* McClintock, *supra* note 4, at 663 ("The publications gave the schools prestige and credibility, and established the schools as serious legal institutions."). The use of law reviews as a means to build up a school's reputation and prestige has persisted into modern times. According to Alfred Brophy:

> [L]aw reviews are schools' ambassadors to the rest of the legal academy. Much of what people at other schools know about a school's academic orientation may come from the articles and notes published in the school's law journals. Thus, those schools seeking to advance in reputation may want to pay attention to their law reviews.

The Relationship Between Law Review Citations and Law School Rankings, 39 CONN. L. REV. 43, 55 (2006).

[80] Ronald Rotunda, *Law Reviews – The Extreme Centrist Position,* 62 IND. L.J. 1, 3 (1986) (quoting Justice Holmes).

[81] *Id.* at 4 n.9 (referring to Adams v. Tanner, 244 U.S. 590 (1917) (Brandeis, J., dissenting)). *Contra* Swygert & Bruce, *supra* note 8, at 788 (listing an 1897 case as the first instance in which a U.S. Supreme Court Justice cited a law review article).

In summary, law schools created and supported law reviews for several reasons unrelated to meaningfully contributing to the development of the law: (1) to bolster their institution's perception as elite,[82] (2) to provide their students with a new form of legal education desired by employers,[83] and (3) to create a platform for legal scholarship by their faculty.[84] Unhindered by commercial pressure that otherwise would have capped the supply of general law reviews and legal scholarship,[85] law schools, in rapid succession, started such publications.[86] This trend has continued unabated into the modern era.[87]

II. THE PURPOSE AND POTENTIAL OF LAW REVIEWS

Several purposes can justify the creation of and continued investment in law reviews. This part discusses how the litany of purposes for sustaining law reviews and the type of legal scholarship they publish results in moral hazard — specifically, student-editors can cite one or several of the commonly-cited purposes for law reviews to avoid the consequences of producing unnecessary and undesired legal scholarship.

This part then calls on law reviews to adopt a primary purpose. By identifying a common, overriding purpose, law reviews can better filter legal scholarship and direct it toward a more societally beneficial content. This "Primary Purpose," defined below, would also improve the publication process for all stakeholders.

Once legal scholars recognized the fidelity of student-editors to the Primary Purpose, they would pare their submissions to be more in line with that purpose or seek out alternative publishers. A reduction in the number of submissions as well as an increase in the quality and relevance of submissions would ease the selection process for student-editors. An improvement in quality and relevance of legal scholarship would also benefit the host law school — as their respective law reviews published more useful content, these schools would have more opportunities to highlight the value and impact of their students and their law review. Law professors themselves may also benefit from the adoption of a Primary Purpose — though some would likely object to a reduction in journals that would

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[82] Swygert & Bruce, *supra* note 8, at 786-87.

[83] *Id.* at 789-90.

[84] *Id.* at 772-73.

[85] *Id.* at 785 (noting that the founding editors of the Northwestern's law review acknowledged that "the field for law reviews of a general character is already overcrowded," and that law reviews provided limited value to practicing lawyers — absent publishing content specifically tailored to lawyers in a specific jurisdiction).

[86] *Id.* at 787.

[87] *See* Andrew Yaphe, *Taking Note of Notes: Student Legal Scholarship in Theory and Practice*, 62 J. LEGAL EDUC. 259, 260 n.5 (2012) (estimating the existence of more than 750 law reviews).

consider their bespoke scholarship,[88] a segment of the legal scholars community has signaled their interest in prioritizing scholarship around specific topics.[89]

A. The "Other" Purposes for Law Reviews and Legal Scholarship

The absence of economic pressure has permitted contemporary law reviews to "fill hundreds (if not thousands) of pages each year with… something."[90] According to Andrew Yaphe, that "something" can be "almost anything" that someone with "institutional credibility" submits to a law review for publication, so long as it contains a certain number of "more-or-less Bluebooked" pages.[91] The tendency of law reviews to err on the side of quantity rather than quality of articles may explain why even law reviews at elite institutions lack objective criteria for what constitutes publishable material.[92] Without an overriding purpose to check the excessive supply of legal scholarship addressing "something," student-editors can explain their publication behaviors by citing other purposes for law reviews.

Theoretically, legal scholarship serves numerous purposes. For instance, legal scholarship can critique the law as it presently exists. This purpose has tremendous societal value as mentioned by Professor Sandra Miller, who regards the "uncensored and independent criticism of the law" provided in part by legal scholarship as "central to the functioning of a democracy."[93] Legal scholarship can also keep jurists, clerks, and advocates apprised of trends and developments in the law. The Honorable Julies J. Hoffman, U.S. District Court judge, characterized law reviews as "legal observer[s] [serving to] alert lawyers and judges in the field to those evolutionary trends and revolutionary developments which they may overlook in their preoccupation with specific problems."[94] Legal

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[88] *See, e.g.*, Howard M. Wasserman, *Just a Bit Aside: Perverse Incentives, Cost-Benefit Imbalances, and the Infield Fly Rule*, 164 U. PA. L. REV. ONLINE 145 (2016).

[89] *See* Christoph Winter et al., *Legal Priorities Research: A Research Agenda*, LEGAL PRIORITIES PROJECT, Jan. 2021, at 5.

[90] Yaphe, *supra* note 87, at 260.

[91] *Id.*

[92] *See id.* at 262 n.14.

[93] Sandy Miller, *Editor's Corner: Why Legal Research and Writing?*, 45 AM. BUS. L.J. 693, 697 (2008).

[94] Julius J. Hoffman, *Law Reviews and the Bench,* 51 NW. U. L. REV. 17, 18 (1956). Jurists may rely on secondary sources, such as law review articles, to answer questions unresolved by primary sources of law, including constitutions, statutes, and regulations. Bart Sloan, *What Are We Writing For? Students Works As Authority And Their Citation By The Federal Bench, 1986–1990*, 61 GEO. WASH. L. REV. 221, 223-24 (1992).

scholarship can likewise inform legislators striving to amend or create law.[95] In the aggregate, legal scholarship can indicate how a number of scholars may resolve complex issues. As explained by Richard Lee, law review articles collectively communicate the determination reached by numerous scholars who have "mull[ed] over" a contested problem — the collective determination may eventually become the "structure of our law."[96] And, of course, legal scholarship via student-edited law reviews can serve an educational purpose. As argued by Ronald Rotunda, the main goal of legal scholarship is "training future lawyers, judges, and academics."[97]

Practically, only some of the aforementioned purposes seem to have any pull on the publication decisions of student-editors and the inquiries examined by legal scholars in their submissions. Any purposes related to meeting the needs of legal community members seem particularly weak with respect to influencing legal scholarship. Instead, other purposes for law reviews have crowded out the extent to which "development of the law" can influence the style and substance of legal scholarship. This remainder of this section asks if the limited impact of legal scholarship on the development of the law or any of the other purposes for law reviews vindicate the status quo.

From the outset of law reviews, it has been difficult to establish how, if at all and to what extent, scholars, jurists, advocates, students, and other members of the legal community benefit from law reviews.[98] Today, the plurality, if not majority, of the more than 10,000 law review articles published per year have little or no documented effect on the legal profession.[99] This limited impact undermines the argument that law reviews serve as critical examiners of pressing legal issues — if they did play such

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[95] Lawrence Trautman*, The Value of Legal Writing, Law Review, and Publication*, 51 IND. L. REV. 693, 697 (2018).

[96] Richard H. Lee, *Administration of the Law Review*, 9 J. LEGAL EDUC. 223, 230 (1956).

[97] Rotunda, *supra* note 80, at 4.

[98] Sloan, *supra* note 94, at 222-23.

[99] *See* Thomas A. Smith, *The Web of Law*, 44 SAN DIEGO L. REV. 309, 336 (2007) (reporting that forty-three percent of law review articles receive no subsequent citation and that around seventy-nine percent receive ten or fewer citations). To practice what I preach later in the article, I will refrain from restating the extensive debate over how to measure the reach and impact of a law review article. Some scholars advocate for citations of articles by courts and other scholars as the best means of measurement. Others point to the number of downloads from sites such as SSRN as the most reliable and informative measure. Finally, some argue that the "buzz" generated by an article, perhaps on social media, provides a better source of measurement. The crux of this article is that the more meaningful inquiry with respect to reforming legal scholarship is how to reduce the supply and increase the quality and usefulness of law review articles. *See, e.g.,* Olavi Maru, *Measuring the Impact of Legal Periodicals*, 1976 AM. B. FOUND. RES. J. 227, 230.

a role, then the resulting scholarship would more clearly further the development of the law and advance of the profession.

The question is whether exceptionally impactful articles, namely those that have managed to impact judges, legislators, and other members of the legal community, justify the creation of so much extraneous content. By way of example, it is worth assessing the value of legal scholarship by students to the broader legal community. In some cases, a student's comment or note can substantially advance one of the aforementioned purposes of legal scholarship. Consider that a student's comment in the Fordham Law Review served as "the wellspring of the majority's new theory"[100] of market share liability in a case involving class action injury claims from the manufacturers of a certain drug.[101] However, such example was an exception.

A tally of law review articles published in 2007 identified around 2,500 pieces of student scholarship.[102] Most of those thousands of pieces — each of which required substantial time and attention from their authors and editors — will not impact legal scholarship like the student's comment in the Fordham Law Review. Of 208,000 opinions published by the federal courts over a five-year period, about one percent of opinions cited a student work.[103] Bart Sloan concluded such limited judicial citation suggests that "federal courts do not consider student works a significant source of authority."[104] Moreover, the few citations to student works tended to be "superfluous" in that the citation did little to support the assertation giving rise to the citation.[105] Further, those few citations tended to come from a small group of elite schools — student comments in the *Harvard Law Review* accounted for fifteen percent of all cited student works and comments in the *Columbia Law Review* and *Yale Law Review* each made up eight percent.[106] Nearly fifty percent of all cited student comments came from just seven publications.[107] Scholarship by faculty does not fare much better in terms of shaping judicial decisions — University of Florida Levin College of Law Professors Jeffrey Harrison and Amy Mashburn estimated that "[o]n average, principal articles [from the

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[100] Sindell v. Abbott Laboratories, 607 P.2d 924, 943 (Cal. 1980) (Richardson, J., dissenting).

[101] Sloan, *supra* note 94, at 227 n.38.

[102] Eugene Volokh, *How Often Do Courts Cite Student-Written and Non-Student-Written Articles?*, VOLOKH CONSPIRACY (June 1, 2007), https://volokh.com/posts/1180732668.shtml; *cf.* Josh E. Fidler, *Law-Review Operations and Management*, 33 J. LEGAL EDUC. 48, 50 (1983) (estimating the annual publication of around 7,000 pieces of student scholarship).

[103] Sloan, *supra* note 94, at 230-31.

[104] *Id.* at 231.

[105] *Id.* at 240.

[106] *Id.* at 237.

[107] *Id.*

respective law reviews of the Top 100 Law Schools, as ranked by U.S. News] were cited .63 times each by courts[.]"[108]

It follows that "development of the law" as the purpose for maintaining the current approach to running law reviews fails. Too many students spend too much time reviewing too many pieces from too many scholars to defend the status quo on this purpose. Three influential, alternative purposes for law reviews and legal scholarship crowded out "the development of the law" as a constraint on legal scholarship: first, the pressure on law schools to launch and sustain an ever-growing number law reviews that may create an aura of prestige around the school and potentially provide students with educational experiences sought by employers;[109] second, the willingness among law reviews to publish whatever passes for "legal scholarship;"[110] and, third, the entrenchment of evaluating aspiring and current professors based on the publication of such "scholarship."[111]

The supposed educational benefits of law reviews seem to resonate particularly strongly with those in support of the status quo. However, this purpose for law reviews fails as a justification for continuing the status quo for two reasons: first, assuming law reviews had a purpose of educational instruction, evidence suggests that they fail in providing that instruction; and, second, if law reviews did provide such meaningful instruction, then law schools should make that instruction available to all students through actual courses.

First, law reviews do not fulfill their educational purpose. Professor Lois Weithorn identifies four intended educational benefits of law review participation: broadening legal horizons; developing writing, editing, and Blue-booking skills; heightening critical thinking skills; and, making

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[108] Harrison & Mashburn, *supra* note 8, at 64 (reporting low rates of citation of law review articles by courts); *see* Adam Feldman, *Empirical SCOTUS: With a little help from academic scholarship*, SCOTUSBLOG (Oct. 31, 2018), https://www.scotusblog.com/2018/10/empirical-scotus-with-a-little-help-from-academic-scholarship/ (observing that U.S. Supreme Court Justices disproportionately cite "articles from elite institutions' law reviews," and articles written by their former clerks).

[109] The proliferation of journals, especially specialty journals, resulted not from an increased demand from the consumers of law review articles but rather from an increase in supply of law schools keen on having law review experience. *See* Closen & Dzielak, *supra* note 31, at 16. Observers differ in their estimations of the total number of law reviews. According to Washington and Lee, there may be upwards of 1,600 such publications worldwide and nearly 900 in the U.S. *Law Journals: Submissions and Ranking, 2006–2013, All Subjects, All Countries by Impact Factor Only*, WASH. & LEE L. LIBR.; *see also* Callahan & Devins, *supra* note 10, at 381 (reporting an uptick in the number of articles per volume and the length of those articles).

[110] Yaphe, *supra* note 87, at 260.

[111] *See* Trautman, *supra* note 95, at 708-09 (summarizing the importance of publishing legal scholarship (without reference to the quality and impact of any such publications) to aspiring and current professors).

decisions that can affect the field of law.[112] However, one should not assume that law review participation necessarily imbues a student with those benefits or, to the extent such participation does afford those benefits, that more equitable and reliable avenues for providing those benefits do not exist.

On broadening one's legal horizons, in theory, law review participation can obviously do so by exposing students to a range of legal scholarship. However, it should not be assumed that all, or even most, members of a law review receive this benefit in practice. Rather than spend time pushing the frontier of their legal knowledge, members seem more likely to spend hours "collect[ing] and check[ing] sources, performing technical edits and checking for typographical errors."[113] A more reliable source of exposure to novel and meaningful developments in the law could come through schools offering students more seminars, lectures, and symposiums on such developments — offerings that would be easier to provide if professors did not feel so beholden to publishing legal scholarship. These alternative means of broadening horizons would be more generally available to students and not come with the expectation of attending "Bluebooking parties."

On the development of writing, editing, and citing skills, in theory, it is hard to contest that law review participation would facilitate such development. However, in practice, students tend to spend more time checking sources than evaluating an author's writing and distilling lessons from those evaluations that can improve their own writing.[114] The limited effect of law review participation on lawyering has been reinforced by recent empirical analysis. As determined by Bloomberg Law's Law School Preparedness Survey, fewer than twenty-five percent of practicing attorneys report that "incoming attorneys to their firms who had been on law review were better prepared to practice law than those who weren't."[115] If the Bloomberg survey is accurate, then the perceived need among law schools to create more law reviews to provide as many students as possible with skills that would make them better writers and researchers (and, therefore, better employees) may be thrown into question. Furthermore, these skills ought to be a core part of every student's legal education. Given the rate at which "extremely bright and capable people" graduate from law school without having demonstrated a clear mastery of legal research and

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[112] Weithorn, *supra* note 1.

[113] *About*, GEO. L.J., https://www.law.georgetown.edu/georgetown-law-journal/about/ (last accessed July 21, 2023).

[114] *See, e.g.,* Scott J. Atlas, *Why Did We Do It?,* 75 TEX. L. REV. 9, 9 (1996*).*

[115] Abigail Gampher, *Looking for a Preparation Edge? Reconsider Law Review*, BLOOMBERG (Apr. 6, 2022), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-looking-for-a-preparation-edge-reconsider-law-review.

writing,[116] schools should not depend on law reviews to provide such training to a select few students who have likely already demonstrated the capacity for legal scholarship.[117]

With respect to the development of citation skills, it is not apparent that this "value-add" of law reviews is very meaningful. Citation will soon — to the extent it is not already — be handled exclusively by modern technologies. Websites such as Legalease already claim the capacity to use Artificial Intelligence to provide accurate Bluebook citations in seconds.[118] More generally, the legal education justification for the quantity of law reviews and articles will continue to lose sway as modern technologies replace many of the tasks performed by students, including summarizing legal arguments and performing preemption checks to ensure the novelty of an article.[119]

On developing critical thinking skills, the same analysis that pertains to developing writing and researching skills applies. Again, it is questionable whether law review participation actually develops such skills, and it is highly likely that schools could provide such development more equitably and reliably — especially if more professors would assist with such an effort. For instance, if professors did not need to spend as much of their summer working on scholarship, perhaps they could start or supplement the Zero-L ("0L") programming offered by their schools. Zero-L refers to the summer prior to a student starting their 1L (or first) year of law school. Schools such as Harvard Law School have filled this period with educational programming that aims to give all students the skills and knowledge necessary to be prepared on their first formal day of law school.[120]

Zero-L programs would provide the intended educational benefits of law review participation to all students through summer coursework. These programs would address an increasingly acknowledged flaw in legal education: most law schools allocate too little class time and faculty

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[116] See Susan Hanley Kosse & David T. Ritchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 94 (2003).

[117] *See* Trautman, *supra* note 95, at 709-10 (providing an overview of the academic achievements necessary to earn placement on a law review).

[118] *See, e.g.*, How It Works, LEGALEASE, legaleasecitations.com (accessed on Apr. 16, 2023) ("Our advanced, A.I.-powered algorithms will do the rest, all in seconds. We automatically apply all the Bluebook rules for you. Abbreviations, punctuation, formatting, everything. No more Bluebooking. Save hours of your valuable time and focus on your important legal writing.").

[119] *See, e.g.*, Steve Lohr, *A.I. Is Coming for Lawyers, Again*, N.Y. TIMES (Apr. 10, 2023), https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html.

[120] *For a second year, Harvard Law to offer pre-term 'Zero-L' course to other law schools for free*, HARV. L. SCH. (May 20, 2021), https://hls.harvard.edu/today/for-a-second-year-harvard-law-to-offer-pre-term-zero-l-course-to-other-law-schools-for-free/.

resources to writing.[121] Incoming law school students tend to overestimate their writing skills,[122] which may contribute to law school students spending an inadequate amount of time refining those skills and graduating without developing strong writing abilities.[123] Law schools that justify the current approach to legal scholarship and law reviews by citing educational benefits would provide far more students with the skills required to thrive as a lawyer by reallocating time spent by students and faculty toward Zero-L programming.

Finally, on making decisions that affect the law, it is not clear that students ought to exercise this power and receive the educational benefits tied to making such decisions in light of the current state of legal scholarship. Students have proven to be ineffective gatekeepers.[124] When compared to other graduate and professional students, law school students have unparalleled control over the quantity, quality, and usefulness of scholarship in the profession through their operation of law reviews.[125] No other law school course can offer a comparable opportunity to steer the law. However, as discussed throughout this article, students have not effectively exercised their authority. So even though law review participation can provide this benefit, the allocation of this benefit exclusively to students comes at tremendous cost to the rest of the legal community.

On balance, a review of the benefits of law review participation identified by Professor Weithorn suggests that such benefits can either be obtained from other sources or should not be extended in the first place. Furthermore, assuming the continuation of current trends — increased capacity of technology to perform much of the tasks assigned to students on law review and decreased interest among employers for students with law review participation — the perpetuation of law reviews and the substantial opportunity costs tied to their operation needs justification other than assumed educational benefits.[126]

Law schools can cite several purposes for organizing and subsidizing law reviews.[127] However, this section exposed that law reviews fail to

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[121] *See* Trautman, *supra* note 95, at 701.

[122] *See id.*

[123] *See id.* at 700.

[124] *See* Yaphe, *supra* note 87, at 260.

[125] *See* Weithorn, *supra* note 1.

[126] *See* George L. Priest, *Triumphs or Failings of Modern Legal Scholarship and the Conditions of Its Production*, 63 U. COLO. L. REV. 725, 726 (1992) ("All law journals are subsidized in some way: most by the law schools at which they are published . . . ").

[127] A review of the transition of law schools from practice-based to research-based pedagogy, of entry of law schools into AALS, and of implementation and enforcement of entrance requirements reveals schools acting first out of their concern for the financial and reputational well-being of the institution. This frequent impetus for law school action challenges the explanatory power of student-based reasons for creating and sustaining law reviews. *See* Arewa et al., *supra* note 2,

fulfill those purposes or that alternative, more effective and reliable means of realizing those purposes exist. The current approach to law reviews has not positively developed the law — few articles have any documented impact on the legal community and the few that do tend to come from just a handful of institutions and scholars. Consequently, the status quo cannot be sustained on this basis — it would be far more effective to simply confine the production of legal scholarship to those elite schools and influential individuals.

The current approach also fails to deliver substantive educational benefits to law review participants — they spend more time checking citations (a task technology will eventually render obsolete) than fine-tuning skills that will increase their odds of employment and effectiveness as lawyers. Other purposes for law reviews exist but also fall short of dismissing calls for reform. For example, if institutional prestige is the purpose guiding the status quo, then law schools owe it to their students and faculty to find other means to signal their elite status. Similarly, if evaluating potential and current faculty members serves as the guiding purpose, then schools should similarly seek out alternatives. For instance, schools could place a heavier weight on whether and to what extent faculty members attempted to lend their legal expertise to legislators tasked with drafting and implementing laws. Schools could also track faculty contributions to podcasts and related platforms that are more widely accessible. These alternatives would signal the social value of a faculty's research at a lower cost than the production of entire law review articles.

B. The "Primary Purpose" for Law Reviews and Legal Scholarship

The wide range of possible purposes for legal scholarship contributes to the glut of legal scholarship. Professors can justify writing "something" and students can justify publishing "anything" when neither feels a need to assess the piece against a specific purpose.[128] This section calls for the identification of a dominant purpose for legal scholarship to influence what professors write about and which articles students select for publication. The recognition of an overriding justification for legal scholarship — the "Primary Purpose" for that scholarship — can reduce the production and publication of duplicative or undesired content. Contemporary law review editors and stakeholders should direct their activities around a Primary Purpose that several of their predecessors defined by using similar elements and identifying similar intended outcomes. Enforcement by student-editors of any variant of the Primary Purpose expressed could drastically reform and improve legal scholarship. In other words, editors

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at 947-48; *see also* Reed, *supra* note 69, at 376 (examining how law schools exploit their relative degrees of prestige to their advantage, with little concern for the effect on students and the bar).

[128] *See* Yaphe, *supra* note 87, at 260.

of and stakeholders in the value of any law review should develop their own Primary Purpose based on the unique attributes of that review.

As set forth by the *North Carolina Law Review* in its first issue in 1922, a law review should be "of service to the law students, the law teachers, the members of the bar, and to the judges upon the bench, and, through them, to the people of the state."[129] Furthermore, a law review should provide "those who are daily carrying on the litigation of and the legal work of the state . . . a means of expressing their reactions to, and their constructive suggestions for dealing with, the difficulties encountered in the practical administration of the law."[130] In 1936, the editors of the *Virginia Law Review* justified the existence of a "smaller law review" for similar reasons — "supply[ing] a need" of local attorneys and jurists and becoming "valuable" to them by "special[izing] to a considerable extent in the law of the state where it is published."[131]

Thomas Fowler provides another expression of this Primary Purpose: "[L]aw reviews [] serv[ing] as a vehicle for the 'closer contact and understanding' that might effectively unite the lawyer, the judge, the law student, and the law teacher in 'common effort for the solution of modern legal problems.'"[132] Other scholars provided other variants of this Primary Purpose.[133] In fact, what connects these variants may have more to do with what they exclude — *i.e.*, alternative purposes that they omit or deprioritize — rather than what they include.

In general, these expressions of the Primary Purpose for legal scholarship share several limitations on what passes for publishable content. First, legal scholarship must be "of service" to members of the legal community and, secondarily, the public. Second, legal scholarship should be written by and for those actively involved in the administration of the law. Third, legal scholarship should be focused on resolving problems related to the "practical administration of the law." If a legal scholar wanted to publish a piece beyond those limits, they should look to a publication other than a law review. Student-editors should share those limitations with their likely contributors and enforce them when reviewing a submission.

It may be the case that a few, if not many, law reviews have already declared a similar Primary Purpose.[134] However, these declarations lack

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[129] *Editorial Notes*, 1 N.C. L. REV. 31, 31 (1922).

[130] *Id.* at 31-32.

[131] Joseph G. Werner, *The Need for "State" Reviews*, 23 VA. L. REV. 49, 49 (1936).

[132] Fowler, *supra* note 41, at 51.

[133] *See* Rubin *Beyond Truth*, *supra* note 43, at 929-31; *see generally* John R. Nolon et al., *Towards Engaged Scholarship,* 33 PACE L. REV. 821 (2013) (presenting the views of several professors on the merits of scholarship intended to address issues confronting practitioners and the development of the law more generally).

[134] *See, e.g.*, *About*, WIS. L. REV. https://wlr.law.wisc.edu/about/ (last visited Apr. 24, 2023) (identifying an audience — "professors, judges, practitioners, and

substantive effect based on legal scholarship in the aggregate. Vigorous pursuit of the Primary Purpose by several and, ideally, all law reviews should result in three specific and obvious outcomes. First, there should be evidence of legal scholars conducting more thorough literature reviews and engaging in more consultation with interdisciplinary researchers to identify questions worthy of scholarly investigation. Second, there should be a "trickle-down" effect in which legal scholars — aware of student-editors earnestly sorting scholarship based on its fulfillment of the Primary Purpose — integrate fidelity to that Purpose into workshopping potential scholarship and reviewing drafts. For instance, one could imagine colleagues asking one another how their respective pieces of scholarship will serve a specific need of the legal community and critiquing pieces on that basis. Third, amendment to the submission process in the form of cover sheets or something similar so that authors clearly indicate to student-editors how their piece furthers the Primary Purpose. Such outcomes are by no means obvious — exposing that the Primary Purpose has not been fully adopted and incorporated into the practices of law reviews nor legal scholars.

Law reviews on the fence about whether to prioritize one purpose for their existence and practices over another ought to consider how explicitly adopting a version of the Primary Purpose will actually further some, if not all, of the other purposes. For instance, by orienting the journal around the Primary Purpose each of the four educational benefits identified by Professor Weithorn would be furthered.[135] Regarding the first benefit, rather than broaden the legal horizons of students by introducing them to irrelevant, outdated, and useless legal scholarship, review of scholarship developed with the Primary Purpose in mind would introduce students to concepts and theories they might encounter in their practice as well as in their general democratic participation. Related to the second and third benefits, the likely reduction in the quantity of submissions and increase in quality of submissions resulting from a greater focus on the Primary Purpose would assist in the development of writing and critical learning skills — students would spend less time chasing cites and more time analyzing the soundness of an author's arguments. And, regarding the fourth benefit, students could more easily exercise their authority over the direction of legal scholarship if they initially identified their intended direction and held authors accountable for following that direction.

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others researching contemporary legal topics" — and a type of content — "legal analysis and commentary" on "timely and relevant legal topics" — generally in line with the Primary Purpose); *Contact Us*, NEV. L.J. https://law.unlv.edu/nevada-law-journal/contact (last visited Apr. 24, 2023) (identifying content-analysis of "the law and policy implications of significant case law, legislation, administrative regulations and important legal events" — in line with the Primary Purpose).

[135] Weithorn, *supra* note 1.

Adoption of the Primary Purpose by law reviews would also advance the purpose of building the reputation and prestige of the institutions supporting the reviews.[136] Articles published pursuant to the Primary Purpose would carry far greater potential to be cited, relied on, and read by members of the legal community and, in some cases, the public generally. When compared to the most cited pieces under the status quo — theoretical pieces written by "influential" legal scholars in "elite" journals — pieces composed with the Primary Purpose in mind would appeal to a broader set and greater number of stakeholders and likely have more practical use in a higher number of legal disputes. An increased production of useful articles by a law review would draw attention to the caliber of students at the host institution — an outcome that would bolster the school's reputation for academic excellence and relevant legal training.

If prioritizing the Primary Purpose carries so many benefits, it begs the question why law reviews have not universally done so. The next part explains how the current "rules of the game" incent legal scholars, law schools, and students to support the current approach to legal scholarship. However, students appear to have the will and capacity to change those rules and, in doing so, revolutionize legal scholarship.

III. THE DOMINANT STRATEGIES OF EACH STAKEHOLDER PERPETUATE AN INADEQUATE STATUS QUO

> *[T]he redundancy of student journals does offer one safeguard: it is highly unlikely that any meritorious article will not get published somewhere.*[137]
>
> *The legal publication system is absurd, and no norms have developed to guide publication behavior. Simply stated, the surplus of law reviews has over-saturated the market of legal literature.*[138]

The three groups of stakeholders with the most sway over the content published by law reviews — faculty, law school administrators, and students — face collective action problems with respect to prioritizing the Primary Purpose in legal scholarship. The applicable type of collective action problem in this context "involves a failure to achieve an outcome everyone prefers [here, the production of useful scholarship in line with

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[136] *See* Alfred Brophy, *The Relationship Between Law Review Citations and Law School Rankings*, 39 CONN. L. REV. 43, 55 (2006).

[137] Richard A. Epstein, *Faculty-Edited Law Journals*, 70 CHI.-KENT L. REV. 87, 91 (1994).

[138] *See* Baker, *supra* note 8, at 925 (citing Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 383 (1989)).

the Primary Purpose][139] over the outcome arrived at because each individual wanted to achieve her most preferred outcome without, in essence, paying for it herself."[140]

Legal scholars would prefer to write on whatever topics interest them most or promise, under the current system, the greatest odds of attaining "influence."[141] Law schools would prefer to use legal scholarship as a signal of their prestige[142] rather than undergo a transformation of their pedagogy.[143] Students want their short-tenure on the law review to favorably influence their job prospects, which are tangibly bolstered by serving on a "prestigious" journal,[144] as indicated by citations.[145] Under these respective "dominant strategies," each stakeholder group is "better off not contributing to the [transition to a Primary Purpose approach to legal scholarship] no matter what the others do."[146] However, law students represent the legal community's best hope of bringing a law review revolution. Compared to law schools and faculty, students face the lowest costs and have the most control over the rules of the "game" that is legal scholarship. As a result, students must lead the law review revolution.

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[139] *See* Eric Martinez & Christoph Winter, *Protecting Future Generations: A Global Survey of Legal Academics* (Legal Priorities Project, Working Paper No. 1, 2021).

[140] Vincent McGuire, *The Collective Action Problem*, UNIV. COLO., https://spot.colorado.edu/~mcguire/collact.html (last visited Apr. 24, 2023).

[141] *See, e.g.*, Trautman, *supra* note 95, at 737-38; Arewa et al., *supra* note 2, at 942-43 ("The legal academy places considerable . . . weight on institutional prestige in everything from article placement decisions (both by editors and authors) to hiring, promotion, and tenure.").

[142] *See* Tamanaha, *supra* note 23 ("Law schools at every level (except for unaccredited schools) allocate significant resources to faculty scholarship today because that is the prevailing norm of what it means to be a legitimate law school.").

[143] *See, e.g.*, James Cooper & Kashyap Kompella, *The 19th Century Called – It Wants Its Law School Curriculum Back,* Law.com (Mar. 8, 2023), https://www.law.com/legaltechnews/2023/03/08/the-19th-century-called-it-wants-its-law-school-curriculum-back/?slreturn=20230622090049 (describing reasons for law schools persistently opting not to update legal education and instead relying on courses and methods developed in the 19th century); Steven C. Bennett, *When Will Law School Change?*, 89 NEB. L. REV. 87, *passim* (2010) (discussing instances in which law schools have delayed adjusting their respective curriculums to reflect modern ethical and professional challenges).

[144] *See, e.g.,* Marcus Nemeth, *To Join or Not to Join (Law Review): That Was the Question*, B.C. LAW: IMPACT (Feb. 20, 2018), https://bclawimpact.org/2018/02/20/to-join-or-not-to-join-that-was-the-question/ (covering common reasons why students join law review).

[145] *See, e.g.,* J.M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 849 (1996).

[146] *See* McGuire, *supra* note 140.

A. Professors' Dominant Strategy

The dominant strategy for professors under the status quo approach to legal scholarship involves receiving as many citations as possible to scholarship in as prestigious of a journal as possible. This strategy poses no costs to the professor, as they are not punished for producing duplicative scholarship, and offers the benefits of increased odds of attaining tenure and/or stature in the legal academy.[147] However, this strategy does indeed impose costs on the legitimacy and total value of legal scholarship.

By way of example, longer articles receive more citations, so a professor keen on earning tenure or moving to a more prestigious school may avoid writing a more concise (and, arguably useful) piece for members of the legal community[148] and instead write pieces of more than sixty pages.[149] Articles on "Popular" or "Timely" topics also receive more citations, though this nudge for professors to focus more on such topics may seem to advance the Primary Purpose,[150] in practice, the race to cover whatever is popular can result in duplicative and wasteful legal scholarship.[151] Finally, if attention to an article continues to serve as a proxy for the quality of that article, then authors may advocate an extreme position, rather than offer a feasible, practical approach, simply to lure eyeballs to their SSRN page.[152] Overall, while some tactics that professors employ to attract more citations may further the Primary Purpose,[153] the focus on writing more, longer, and likely-to-trend articles mitigates the extent to

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[147] *See infra* Part IV (discussing legal scholarship output as an easy metric for evaluating aspiring and current faculty members and the fear of professional risk); Yale Kamisar, *Why I Write (and Why I Think Law Professors Generally Should Write)*, 41 SAN DIEGO L. REV. 1747, 1748 (2004); Christensen & Oseid, *supra* note 15, at 179 ("[S]uccess in the legal academy may depend on what, where, and how often they publish in the appropriate law journal.") (internal citations omitted).

[148] Olkowski, *supra* note 9 (sharing a finding from a 2004 study that "nearly 90 percent of readers [of the Harvard Law Review] found law review articles to be too long."); *see* Kamisar, *supra* note 147, at 1748 (acknowledging that law professors wanting "to attract the attention of faculty members at more prestigious law schools" is one explanation for why professors conduct legal scholarship).

[149] *See* Rob Willey & Melanie Knapp, *How to Increase Citations to Legal Scholarship*, 18 OHIO STATE TECH. L.J. 157, 167 tbl.1 (2021).

[150] *See id.* (encouraging professors to write articles on "trending topics[.]").

[151] *See, e.g.*, Winter et al., *supra* note 89, at 8-9 (pointing out the excess of legal scholarship on *Chevron* deference).

[152] *See* Rotunda, *supra* note 80, at 1.

[153] Willey and Knapp identify several tactics to improve the readability and relevance of an article — a few of which, such as publishing in widely accessible journals, would further the Primary Purpose by making it easier for more member of the legal community and public generally to read legal scholarship). *See* Willey & Knapp, *supra* note 149, at 167-68 tbl.1.

which the tactics can make legal scholarship more responsive to the needs of the legal community and, by extension, the public.

Those unfamiliar with legal scholarship and legal academia might expect some law professors — the ones who would prefer to focus on teaching —[154] would mount a challenge to this approach. Yet, professors generally refrain from challenging their being evaluated on their production of legal scholarship and instead appear to acquiesce to participating in the "game" that is trying to amplify the attention paid to their legal scholarship.[155] In a piece marked by dry humor, Lawprofblawg and Darren Bush identified tenure and tenure-track law professors as having "the power to change the world of legal academia," but concluded that they "will not."[156] Others reached the same conclusion and supplied more reasoning. Jeffrey Harrison and Amy Mashburn, for instance, argue that professors have "no financial incentive" to alter the status quo approach to legal scholarship — in fact, they speculate that professors may face penalties for making their research focus too practical.[157]

No professor wants to stick their neck out by refusing to play by the current rules for landing a teaching role, earning tenure, and eventually lateralling to a more prestigious school. The willingness of aspiring and current professors to engage in a legal scholarship arms race is clear — over time, professors acquiesced to having to produce more and more scholarship.[158] As explained by Professor Adam Chilton, "[i]n 1970, law professors published about 4 law review articles in the decade after tenure; by 2007, it was about 8 law review articles."[159] Chilton detected a doubling in pre-tenure publication as well.[160] On the whole, professors have become captive and responsive to the fact that "[h]iring, promotion, pay, collegial recognition, societal prominence, and intellectual satisfaction is mainly a function of the production of scholarship."[161]

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[154] *See* John F.T. Murray, *Publish and Perish—By Suffocation,* 27 J. LEGAL EDUC. 566, 566-67 (1975) ("My sole complaint is that the valuable contributions are hard to locate in the vast sea of outpourings added to the literature-not as a result of inspiration and concern, but because of coercion and tradition.").

[155] *See generally* Lawprofblawg & Bush, *supra* note 9.

[156] *Id.* at 327.

[157] Harrison & Mashburn, *supra* note 8, at 47; *see also* Callahan & Devins, *supra* note 10, at 386 (speculating that the inability of student-editors to understand "good interdisciplinary scholarship" may result in those pieces "slip[ping] to lower journals[.]"); Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 319 (1989) (discussing the focus of prominent law reviews on less practical topics).

[158] *See, e.g.*, Chilton, *supra* note 1.

[159] *Id.*

[160] *Id.*

[161] John S. Elson, *The Case Against Legal-Scholarship or, if the Professor Must Publish, Must the Profession Perish?*, 39 J. LEGAL EDUC. 343, 354 (1989).

Even those law professors unconcerned with climbing the ranks by publishing more content and attracting more citations have reason to oppose a law review revolution that prioritizes the Primary Purpose. The adoption of the Primary Purpose would hinder the freedom of law professors to write on any topic that they find interesting, regardless of its connection to pressing legal problems. For instance, Assistant Professor Mike Koehler "*enjoys* adding [his] voice to the marketplace of ideas through writing."[162] Those like Koehler may have few qualms with the overproduction of legal scholarship because it is a system that permits them to do something they find pleasurable. This is the approach of individuals such as Jasper Tran, who admits that he has "no research agenda" and writes "mostly about what I want to read that has yet to be written."[163]

Other professors may oppose any change to the law review system because they *believe* their work already has a strong chance of contributing to the development of the law and the needs of the legal community. Koehler's remarks support an inference that legal scholars anticipate their work will have some effect on "the marketplace of ideas[.]"[164] Despite strong empirical evidence suggesting that any article published in anything other than a top-ranked review will, with few exceptions, go uncited and unread, hope springs eternal for the scholar.[165] Motivated by the *mere possibility* of influencing that marketplace, scholars seem to have collectively suspended disbelief and ignored the fact that the odds of their article having an impact are decreasing due to the creation and submission of more content.[166]

It follows that professors can rely on several different reasons to persist with their dominant strategy of playing the "game." However, some professor might opt to participate in the law review revolution. Professors whose backgrounds correlate with lower rates of publication (especially in top journals) may be especially likely to support changes to the status quo.[167] For example, women in the legal academy have historically been

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[162] Trautman, *supra* note 95, at 737-38 (quoting an email sent to the author from Mike Koehler) (emphasis added).

[163] Jasper Tran, *If Research Agenda Were Honest*, 24 YALE J.L. & TECH. 317, 321 (2022).

[164] Trautman, *supra* note 95, at 737-38 (quoting an email sent to the author from Mike Koehler).

[165] *See* Smith, *supra* note 99, at 336 (reporting that forty-three percent of law review articles receive no subsequent citation and that around seventy-nine percent receive ten or fewer citations); *see also* Callahan & Devins, *supra* note 10, at 375 ("In citation count terms, articles have become bloated, not better.").

[166] *See* McClintock, *supra* note 4, at 660 (reporting "a 47.35% decline in the use of legal scholarship by courts over the past two decades," and that "many academics argue that non-doctrinal scholarship is the most effective tool to influence the development of the law.").

[167] *See* Arewa et al., *supra* note 2, at 1012 ("Placement of articles, not surprisingly, tends to replicate existing hierarchies, and faculty at more highly ranked

published on a less frequent basis than their male colleagues.[168] Similarly, faculty at lower ranked schools may have cause to assist the revolution. Articles Editors may decline to read a submission simply due to ranking of the author's institution.[169] Nevertheless, given the historical failure of efforts to upend law reviews,[170] this cadre of academics would likely only contribute to the revolution rather than lead it or ensure its success.

If students do not lead the revolution to reform legal scholarship, legal scholars could take it upon themselves to lead a partial revolution. Generally, a law professor — whose time is finite and of immense value when spent on the educating their students and participating in legal service — should ask three questions before allocating their institution's resources toward legal scholarship: First, have I identified a discrete audience?[171] Second, do I have sufficient evidence to suggest that my article will address a specific need of that audience?[172] Third, have I consulted with members of that audience to determine what stylistic and substantive choices will produce the greatest odds of the article meeting the audience's needs? If these questions can be answered affirmatively, then the professor should start drafting their article.

Consider a hypothetical article on the applicability of Section 230 of the Communications Decency Act to ChatGPT.[173] On the first question, the author could identify a discrete audience including, but not limited to: U.S. Supreme Court Justice Neil Gorsuch, who raised the question during

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schools and those with strong network connections to faculty at highly ranked schools are generally believed to have greater ability to place articles at more highly ranked law reviews.").

[168] James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI.-KENT L. REV. 781, 807 (1996).

[169] Christensen & Oseid, *supra* note 15, at 178-79 nn.9-10 (collecting examples of legal scholarship being denied on the basis of an author's institution); *see* Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601, 607 (1999).

[170] See Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 629 (1996).

[171] *See* Trautman, *supra* note 95, at 734 (listing the identification of an intended audience as a necessary condition for successful writing).

[172] *See id.* at 744 (restating the definition of a "home run" article provided by David Ciarlo, the former Editor-in-Chief of the *Southern California Law Review*, as one that "deftly appl[ies] a novel, nonobvious perspective to a murky legal question . . . [and] identif[ies] a problem and articulate[s] workable solutions while addressing potential counterarguments.").

[173] This hypothetical article is an example of a piece of scholarship covering a specific issue likely to be the subject of adjudication or legislation in the near future. The demand for such practical pieces is likely higher than the demand for theoretical pieces — the supply of each kind of article should reflect that difference. In other words, because the demand for practical pieces will be higher, the supply should be as well — but that does not mean the supply of theoretical pieces should cease.

oral argument;[174] the other members of the U.S. Supreme Court; as federal court judges;[175] all the litigators who may represent parties in such disputes; and, all the legislators considering whether to amend Section 230. On the second question, the author could offer Justice Gorsuch's query, the resulting attention paid to his query in the media, and the significant legal, economic, and political interest in ChatGPT as evidence that litigation on this question is likely and that the article will help inform the parties to and adjudicators of such litigation. On the third question, the author could write in a style conducive to the practitioners likely to rely on the article's contents and the author could omit unnecessary and duplicative information, such as a drawn-out analysis of the legislative history of Section 230.[176]

The very act of a professor and their colleagues asking these questions should significantly cut down on the creation of articles with little to no chance of providing any insights to members of the legal community. In particular, the second question will filter out a great number of articles. A paper that addresses the specific needs of a discrete audience will help avoid duplicating preexisting scholarship and will omit coverage of extraneous content. While professors can help reorient legal scholarship through employing these methods, legal scholarship requires a more substantive reorientation involving the leadership of students as the "gatekeepers."

B. Law Schools' Dominant Strategy

Law schools have little to gain and much to lose by any meaningful reform to legal scholarship. If the quantity of law reviews decreased, then some law schools may lose a journal and the educational benefits it provides to student members. If law reviews attempt to increase article quality by involving faculty members in the selection and editing of articles, then schools may find their faculty less willing to perform other tasks. If law reviews adopt a practice of collective agenda setting — *i.e.*, journals across a state, region, or even the nation agreeing to each focus on specific, discrete, and distinct issues facing a subset of the legal community — then professors with random, highly-theoretical ideas for scholarship may fail to publish, depriving law schools of one way to evaluate their professors.

The magnitude of the losses law schools could suffer from a law review revolution is heightened by consideration for just how much law schools have come to depend on the status quo. Law schools have "managed to place themselves astride the entrance to a highly prestigious,

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[174] *See* Stephanie Condon, *ChatGPT's latest challenger: The Supreme Court*, ZDNET, https://www.zdnet.com/article/chatgpts-latest-challenger-the-supreme-court/ (last visited Feb. 21, 2023).

[175] *See id.*

[176] A search for "legislative history" and "section 230" on Lexis returns 706 Secondary Materials.

influential, and lucrative profession, and thus can teach whatever they want and maintain their economic viability."[177] In this protected position, they have avoided meaningful and costly institutional changes in light of concerns about the value and applicability of a legal education as well as the qualifications and capacity of current faculty members to provide a more practical education.[178] Though legal community members such as Albert Blaustein and Charles Porter have long called for the "moderniz[ation] of old courses, the raising of qualitative standards for admission to and from law schools, and higher requirements for membership in the bar,"[179] law schools have not diverged from their preferred approach.

As a matter of fact, law schools have deepened their reliance on the status quo, even when the value of their education has been challenged. Schools have continually invested in scholarship in ways that detracts from the possibility of faculty providing more educational support[180] — for example, by reducing the teaching load of faculty members. This investment in scholarship or, on the other side of the ledger, divestment from education aligns with the recommendation of the institutions steering modern legal education, such as the Association of American Law Schools (AALS). When complaints about resource scarcity within law schools became prevalent, the AALS did not urge law schools to evaluate how they could more effectively, efficiently, and comprehensively educate students as one might expect. Instead, the AALS, as summarized by Professor Olufunmilayo Arewa of Temple University and a team of other scholars, urged struggling schools to focus "on enhancing the research orientation of the faculty by reducing teaching loads, increasing pay, expanding library resources, and improving student quality to allow more sophisticated teaching methods."[181] Most schools followed that advice by trying to increase their production of legal scholarship.[182]

Schools have turned to law reviews to fulfill other institutional needs unrelated to service of the legal community. In particular, law reviews have proven to be useful recruiting devices.[183] "Between 1962 and 2004, at least fourteen law schools changed the title of one of their journals to include the name of the law school sponsoring the journal," based on Alena Wolotira's research.[184] Those name changes illustrate the penchant of law schools to perceive law reviews as an arm of their fundraising,

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[177] Rubin, *What's Wrong*, *supra* note 19, at 611.

[178] *See* Arewa et al., *supra* note 2, at 955-57.

[179] ALBERT P. BLAUSTEIN ET AL., THE AMERICAN LAWYER: A SUMMARY OF THE SURVEY OF THE LEGAL PROFESSION 174 (1954).

[180] Arewa et al., *supra* note 2, at 955.

[181] *Id.* at 957.

[182] *Id.*

[183] Alena L. Wolotira, *From a Trickle to a Flood: A Case Study of the Current Index to Legal Periodicals to Examine the Swell of American Law Journals Published in the Last Fifty Years*, 31 LEGAL REFERENCE SERVS. Q. 150, 160 (2012).

[184] *Id.*

recruitment, and marketing strategies, rather than as a means to serve any broader, societally-beneficial purpose.

Change to the status quo might also threaten the cost-savings schools receive by effectively treating law review as an advanced legal writing and research course. Students on law review do an incredible amount of work at minimal or no cost to the submitting scholar or host law school.[185] Any alternative to free student editing and publishing would impose costs on every member of the legal community. Namely, law schools would have to directly or indirectly compensate any faculty participation on a law review; legal scholars would likely face higher submission fees to offset those costs; and readers would perhaps to have to pay for access to the scholarship.[186] The uncertainty around who would pay for reforms and how much gives Christensen and Oseid cause to believe that "student-edited law reviews will be around for a long while."[187] In short, even if law review participation is truly "priceless," [188] schools do not want to bear any of that price.

A law review revolution could also prove costly to law schools by disrupting how they evaluate aspiring and current faculty members. The more an applicant or current faculty member publishes, the more information law schools can consider in hiring and tenure decisions.[189] However, quantity rather than quality of legal scholarship appears to be the easiest method of evaluating this additional information.[190] To the extent law schools try to evaluate the quality of scholarship, they likely resort to unreliable metrics such as citations.[191] Though some legal scholars regard citations as the best indicator of an article's responsiveness to a pressing legal question,[192] others note that the number of citations a paper receives may be a product of variables unrelated to quality such as the length of the article and its placement in certain law reviews.[193]

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[185] *See* Christensen & Oseid, *supra* note 15, at 213.

[186] *See id.* at 201.

[187] *See id.* at 213.

[188] Baker, *supra* note 8, at 929.

[189] Chilton, *supra* note 1.

[190] *See id.* (using quantity of legal scholarship as a proxy for a professor's capacity to be a "star" at any law school); *see also* Rhode, *supra* note 40, at 1355 ("[T]he fragmentation of faculty expertise and the lack of consensus about what constitutes the most useful scholarship have placed a premium on quantity over quality.") (internal citation omitted).

[191] David P. Bryden, *Scholarship About Scholarship,* 63 U. COLO. L. REV. 641, 643 (1992); *see* Willey & Knapp, *supra* note 149, at 161-62 (discussing the frequent use of citations in evaluating law professors as well as law schools).

[192] *See, e.g.,* Adam Chilton et al., *Rethinking Law School Tenure Standards*, 868 COASE-SANDOR WORKING PAPER SERIES IN LAW AND ECONOMICS 1, 5 (2019) ("Although citations to academic publications are an imperfect proxy for academic impact, they are the standard way to measure impact in the academy.").

[193] *See* Willey & Knapp, *supra* note 149, at 166.

Despite the flaws of using legal scholarship as a factor in hiring and tenure decisions, scholarship seems to be an entrenched part of those decisions.[194] The alternatives would require overcoming the convenience of the status quo as well as developing new criteria for other means of evaluation. For instance, if promotion and tenure committees agreed to include the extent to which a professor's scholarship has made a difference, then they would need to determine how things such as presentation of that paper at a panel and reference to the paper in popular media would weigh in that analysis.[195]

The disincentives to alter the current approach to legal scholarship are particularly strong among elite institutions — those that have the most influence over law school curriculum, norms, and institutions.[196] Alumni of elite law schools dominate legal scholarship, as "graduates of [Yale, Harvard, NYU, Stanford, and the University of Chicago] account[ed] for nearly seventy percent of the publications in the top ten law reviews in 2017."[197] Articles in those elite journals account for a disproportionate share of citations by courts and other legal scholars.[198] It follows that neither graduates of those institutions nor the institutions themselves would support disrupting the status quo.[199] Absent the support of elite institutions, law schools will not serve as the impetus of the law review revolution.

C. Student-Editors' Dominant Strategy

The dominant strategy for student-editors under the status quo is to bolster the reputation of their journal and consequently the potential professional benefits associated with their participation.[200] Articles editors, those tasked with selecting legal scholarship for publication, may consider attributes of the Primary Purpose when making their selections, but they also heavily weigh unrelated factors that in some cases may detract from

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[194] *Id.* at 158 (internal citation omitted).

[195] *See* Christensen & Oseid, *supra* note 15, at 212.

[196] *See* Swygert & Bruce, *supra* note 8, at 786-87 (describing the influence of "leading law schools" on other schools).

[197] Lawprofblawg & Bush, *supra* note 9, at 336.

[198] *See* Harrison & Mashburn, *supra* note 8, at 64 (concluding from a survey of law review articles that "[p]ublishing in a top-15 review doubled the likelihood that a work would be cited by a court").

[199] *See* Lawprofblawg (@lawprofblawg), TWITTER (Apr. 16, 2023, 2:39 PM), https://twitter.com/lawprofblawg/status/1647701376850329600 (suggesting that elite law schools do not want to reform the status quo in legal scholarship).

[200] *See* Hadriana Lowenkron, *Making Law Review Is Career Gold., But NYU Students Want Cash Too*, BLOOMBERG (Apr. 6, 2023), https://www.bloomberg.com/news/articles/2023-04-06/making-law-review-is-career-gold-nyu-students-want-cash-too#xj4y7vzkg; Dexter Samida, *The Value of Law Review Membership*, 71 U. CHI. L. REV. 1721, 1721 ("[T]he idea that law review membership boosts an applicant's job prospects seems nearly universally accepted.").

the Primary Purpose.[201] For instance, an Articles Editor for the *Florida Law Review* emphasized that they consider "how much interest [an article] will garner immediately, and whether it can continue to garner interest for eight years."[202]

Additional surveying of editors reveals that they likely use estimations of citations to an article as a proxy for "interest" and acknowledge that pieces addressing "controversial topics" will likely elicit more citations.[203] This emphasis on short- and long-term interest measured in citations may dissuade an Articles Editor from selecting a piece that addresses a pressing legal question that has yet to garner widespread attention from the legal community and the public. For instance, Professor Jim Rossi of Florida State University pointed out in 2011 that state constitutional law remained understudied and undertheorized.[204] His call for an increase in such scholarship went relatively unheeded until recent U.S. Supreme Court decisions reminded legal scholars of the need to research state constitutional law. Relatedly, Christensen and Oseid found that scholarship on important but unpopular topics such as professional responsibility and law school pedagogy have diminished odds of publication.[205] Alternatively phrased, student-editors react to what seems most likely to garner citations, rather than proactively solicit content tailored to emerging and ongoing problems related to the administration of law.

Another editor listed the experience of the student reading the article as the "most important" factor in their journal's decision as to whether to extend a publication offer to the author.[206] Though this emphasis may increase the odds of more "readable" pieces being selected, there is a chance that a student's experience reading an article will not favor pieces that

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[201] *Compare* McClintock, *supra* note 4, at 660 (stating that student-editors have "unbridled discretion" over article selection and use "few, if any, standards for evaluating articles[.]") *with* Joseph G. Werner, *The Need for "State" Reviews*, 23 VA. L. REV. 49, 50-52 (1936) (listing six suggestions for editors of state-based law reviews to refine their content).

[202] Trautman, *supra* note 95, at 744-45 (quoting an email from Anna Hayes, then-Executive Articles Editor of the *Florida Law Review*).

[203] Christensen & Oseid, *supra* note 15, at 195; Russell Korobkin, *Ranking Journals: Some Thoughts on Theory and Methodology*, 26 FLA. ST. U. L. REV. 865 (1999).

[204] See generally Jim Rossi, *Assessing the State of the State Constitutionalism*, 109 MICH. L. REV. 1145 (2011).

[205] Christensen & Oseid, *supra* note 15, at 196. The low publication rate of pragmatic topics — especially legal pedagogy — indicates just how far law reviews have diverged from their original purpose. Recall that the *Harvard Law Review* stated as one of its goals the spread of Harvard's approach to legal education. Closen & Dzielak, *supra* note 31, at 34.

[206] Trautman, *supra* note 95, at 745 (quoting an email from Samuel Boro, then-Senior Articles Editor of the *American University Law Review*).

address uncomfortable, complex, or unclear questions facing the legal community and otherwise serve the Primary Purpose of legal scholarship.

Some editors evidenced a tendency to treat their journal in a manner akin to a commercial publication more so than as a platform for whatever legal scholarship advances the Primary Purpose. A former Editor-in-Chief of *The George Washington Law Review* expressed their preference for articles addressing "topics with a broad appeal[.]"[207] This filter prioritizes the reach of an article, rather than its intended and likely effect on a specific part of the legal community. The former Editor-in-Chief of the *Hastings Law Journal* indicated a similar focus, aiming to compile a collection of articles that constituted a "well-rounded portfolio[.]"[208] The Editor-in-Chief's focus followed their characterization of a volume of the law review — rather than individual articles — as the "product" produced by their staff.[209] A conception of law reviews as "products" and as sums of individual articles will almost inevitably conflict with a view of law reviews as platforms for legal scholarship necessary for the administration of the law.

When a law review becomes a "product" rather than a fundamental part of a larger legal and democratic conversation, certain flaws with the selection, editing, and publication process become excusable. For instance, it is widely acknowledged that "law reviews are often staff[ed] by very busy, overachieving law students who are probably already stretched too thin."[210] If students, faculty, and the larger legal community held higher expectations of law reviews, then pressure would mount to end this staffing shortage — especially given the substantive effects of such a shortage. Law review participants admit a preference, all else equal, for pieces that appear easier to edit.[211] Likewise, some former law review participants urge legal scholars to focus on the quality and content of the first few pages of their submission out of recognition that student editors might not get much further when initially screening submissions.[212]

The tendency of editors to select articles for reasons other than the quality of an article and its fulfillment of the Primary Purpose likely increases with a growing number of submissions.[213] This dynamic creates a perfect storm that chips away at the quality of the most frequently read

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[207] *Id.* at 746 (quoting an email from Charles H. Davis); *see* Christensen & Oseid, *supra* note 15, at 195.

[208] Trautman, *supra* note 95, at 746 (quoting an email from Dane Barca).

[209] *Id.* (quoting an email from Dane Barca).

[210] *Id.* at 747 (quoting an email from Kara Altenbaumer-Price).

[211] *Id.* at 746–48 (quoting an email from Kara Altenbaumer-Price).

[212] *See id.*

[213] *See, e.g.*, Posting of Randy Kozel, LEGAL AFFAIRS DEBATE CLUB, https://www.legalaffairs.org/webexclusive/debateclub_posner1104.html (Nov. 15, 2004, 9:00 EST) (responding to Richard A. Posner's criticisms of the law review selection and editing process) via Christensen & Oseid, *supra* note 15, at 178 n.9.

pieces of legal scholarship. The more prestigious a journal becomes, the more submissions it receives, the less time an editor has to assess submissions, which all increases the likelihood that a high-profile article was selected based on factors such as the prominence of an author or of their institution.[214] Such a perfect storm has already formed: "higher ranked journals rely more heavily on author credentials than lower ranked journals. Specifically, editors at higher tiered law schools were highly influenced by where an author has previously published."[215]

According to a 2006 survey of factors that shaped publication decisions made by law reviews, five factors tend to have the greatest influence on editors (listed by the magnitude of their influence): (1) the author's influence, (2) the article's coverage of a gap in the literature, (3) the likely interest among the general public in the article, (4) the author's prior record of publication, and (5) the institution of the author.[216] Of those factors, only the second and third most influential factors tend to further the Primary Purpose. Perhaps more problematically, the most influential factor — specifically, whether "[t]he author is highly influential in her respective field" — is substantially more influential than the others.[217] The revolutionary goal is to upend the order of those factors. Thankfully, that is a goal that students can achieve.

D. How Student-Editors Can Initiate Collective Action

The resolution of a collective action problem requires "changing the game so the dilemma is more easily resolved or eliminated."[218] Student-editors of law reviews are the "gatekeepers" of legal scholarship.[219] They

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[214] *See id.*; *see also* Christensen & Oseid, *supra* note 15, at 179-80 (noting the pressure on professors to publish in the most prestigious journals and an "increased competition for publication space[.]").

[215] Christensen & Oseid, *supra* note 15, at 180.

[216] Jason Nance & Dylan Steinberg, *The Law Review Article Selection Process: Results from a National Study*, 71 ALA. L. REV. 565, 583-84 Table 2 (2008); *see* Adam Liptak, *The Lackluster Reviews That Lawyers Love to Hate*, N.Y. TIMES (Oct. 22, 2013), https://www.nytimes.com/2013/10/22/us/law-scholarships-lackluster-reviews.html (summarizing research by Professor Richard Wise of the University of North Dakota indicating that "[l]aw professors were particularly critical of how students selected articles to publish, saying they lacked the knowledge to pick the best articles and relied instead on authors' reputations and the prestige of the law schools where they teach."). *But see* Christensen & Oseid, *supra* note 15, at 200-01 (suggesting a different ranking and magnitude of factors).

[217] Nance & Steinberg, *supra* note 217, at 583-84.

[218] Douglas D. Heckathorn, *The Dynamics and Dilemmas of Collective Action*, 61 AM. SOCIO. REV. 250, 250 (1996).

[219] Christensen & Oseid, *supra* note 15, at 177; Ronen Perry, *De Jure [sic] Park*, 39 CONN. L. REV. CONTEMPLATIONS 54, 55 (2007) ("Law students are the gatekeepers and ultimate fashioners of legal scholarship. They appraise the

review the majority of legal scholarship[220] and have exclusive authority over that review.[221] The power to change the game resides in student-editors.

Comparatively, law schools and law professors have less control over what legal scholarship gets published and why. Law schools exercise little to no power over the decisions made by student-editors and generally sign-off on whatever scholarship their faculty members want to produce, so long as it gets published and, ideally, cited. These institutions are also beholden and responsive to whatever factors shape law school rankings — so long as those evaluators include the number of journals and the quantity of faculty scholarship in those rankings, then law schools will do whatever they can to score well in those categories.[222] Theoretically, law professors wield some power over the rules of the game because they provide the content that shapes scholarship. However, so long as students dictate the standards against which legal scholarship is assessed, professors will have to comply with those standards. The alternative — relying on well-meaning professors to self-regulate and voluntarily hold themselves to higher standards — would require professors to tank the odds of their work being published, turning them into immediate "losers" in a game that requires they publish as much as possible.

Since collective action also requires overcoming "the start-up problem," students are best poised to lead the revolution. As discussed by Douglas Heckathorn, collective action will never begin "[u]nless a critical mass of strongly motivated individuals is willing to absorb" the costs associated with initial contributions to collective action despite minimal returns for their efforts.[223] Many students enter law school with such motivation. Indeed, the AALS reported a strong uptick in undergraduate students considering attending law school for "public-spirited factors."[224] However, the drive among students to leverage their legal education in support of the public interest usually gets diverted. A range of studies determined that "approximately forty percent of students who begin law

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relative worth of numerous submissions, select a handful for publication, and edit them.").

[220] Christensen & Oseid, *supra* note 15, at 177.

[221] *See* Trautman, *supra* note 95, at 717-19 (describing the role of Articles Editors and their responsibility for selecting articles).

[222] *See* Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403, 415 (1998) (noting that law schools engage in a status competition through rankings); Havighurst, *supra* note 39, at 24 ("Since such a publication [law review] is regarded as a necessary adjunct of legal education, without it a school would lose status.").

[223] Heckathorn, *supra* note 218, at 251.

[224] *See AALS/Gallup Report: College Students' Reasons for Attending Law School Focus on Public Service and Opportunity to Make a Difference*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS (Sept. 20, 2018), https://www.aals.org/aals-newsroom/aals-gallup-before-the-jd/.

school with the intention of working in public interest change their mind by their third year[.]"[225] Law schools have attempted to stem such "public interest drift" by providing students with more resources and information; however, such efforts face stiff odds of success. By way of example, Yale Law has a full webpage dedicated to students considering public interest careers but acknowledges that many students who initially pursue such careers often get lured away by better paying jobs in the private sector.[226]

Notwithstanding the deterioration of this mindset, the well-documented intent of law students to effect change during and after law school could be harnessed into the law review revolution.[227] First- or second-year students — those with the least depleted stores of public-interest energy — could motivate their fellow classmates to champion the Primary Purpose and institute some of the revolutionary reforms discussed below.[228] The probability of junior students leading this revolution is further heightened by the fact that they have the greatest prospect of seeing gains from their revolutionary contributions. Whereas third-year students will graduate before seeing the full effect of some of the reforms discussed below, their more junior colleagues may see one or two years of revolutionary change. Still, third-year students — given their positions of power within law reviews — will necessarily have to join such a reform effort for it get off the ground.

The start-up problem poses a much greater barrier to law schools and law professors. Both stakeholders, as discussed above, lack much motivation for aiding a law review revolution. Furthermore, it is less clear whether any one particular institution or individual professor will benefit from whatever contribution they make to the revolution. Imagine a lower-ranked law school strongly advocating their journals to adopt the Primary Purpose — in the short run, this advocacy could dissuade law professors from applying to or staying at the school out of concern about its divergence from a comfortable and predictable approach to legal scholarship.

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[225] *Public Interest Drift*, STATE BAR OF CALIFORNIA at 1 (2019), https://www.calbar.ca.gov/Portals/0/documents/accessJustice/California-Law-Student-Survey.pdf.

[226] *Fact vs. Fiction: Public Interest Careers*, YALE LAW SCHOOL (last visited Apr. 25, 2023), https://law.yale.edu/student-life/career-development/students/career-pathways/public-interest/fact-vs-fiction-public-interest-careers.

[227] See Laura M. Schachter, *Making It and Breaking It: The Fate of Public Interest Commitment During Law School*, 88 MICH. L. REV. 1874, 1874 (1990) ("Many students come to law school believing that after their three years of legal education they will be prepared to save the world by doing legal work in the public interest.").

[228] Note that the greater expectation among more junior students that their efforts will succeed and that their participation will make a difference may also help spur collective action. *See* Bert Klandermans, *Union Action and the Free-Rider Dilemma,* 10 RSCH. SOC. MOVEMENTS, CONFLICTS & CHANGE 77, 87 (1988).

The uncertainty surrounding any potential gains will diminish the motivation of any law school or law professor to initiate the revolution.

Whether student-editors seize this power depends on their ability to overcome classic barriers to initiating collective action and on their success in designing and enforcing new game rules.

IV. THE STEPS STUDENT-EDITORS CAN TAKE TO REVOLUTIONIZE LAW REVIEWS AND LEGAL SCHOLARSHIP

The next part of this article outlines in more detail how the students running law reviews can lead an overdue revolution. The revolutionary reforms below, presented in order of likely effectiveness, all change the rules of the "game" with the goal of collective adoption of the Primary Purpose of legal scholarship. Prior to exploring these revolutionary ideas further, it is important to identify what decisions could undermine the success of this revolution.

First, students must act swiftly to organize as many journals around as many reforms as they can agree to. Students must initiate collective action "relatively rapid[ly] . . . to avoid being crushed" by those stakeholders aligned against change.[229] If students move too slowly, then law schools and law professors may intervene to prevent their respective "home" law reviews from joining any revolutionary effort. Second, students should prioritize reforms that build group identity and solidarity. Research performed by Bruce Fireman and William Gamson revealed that such group development can impact the odds of resolving a collective action problem.[230] Third, students should make clear the value of Primary Purpose-oriented legal scholarship as soon as possible because as the perceived value of a collective good increases, so does the ease of initiating and sustaining collective action.[231] Each group of stakeholders must believe that their short- and long-term interests can be furthered by taking the community's preferred option.[232]

Building on this research, the next section offers several possible options for student-editors to revolutionize legal scholarship, presented in order of likely impact on directing legal scholarship toward the Primary Purpose. None of the revolutionary proposals below lie beyond the authority and power of student editors, and all of the proposals address the three circumstances — lack of time, expertise, and independence — that result in editors defaulting to making decisions based on the prominence

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[229] *See* Heckathorn, *supra* note 218, at 275.

[230] Bruce Fireman & William A. Gamson, *Utilitarian Logic in the Resource Mobilization Perspective*, *in* DYNAMICS SOC. MOVEMENTS 8, 21-26 (Mayer N. Zald & John D. McCarthy eds., 1979).

[231] Heckathorn, *supra* note 218, at 274.

[232] Louise Sadowsky Brock, *Overcoming Collective Action Problems: Enforcement of Worker Rights*, 30 U. MICH. J.L. REFORM 781, 782-83 (1997) (incorporating research findings by Russell Hardin).

of an author and their institution.[233] The proposals also all demonstrate the hallmarks of traditional guidance with respect resolving collective action problems.

A. Annual Legal Scholarship Priorities Assembly

The first action of incoming EICs of general law reviews should be to coordinate the inaugural Legal Scholarship Priorities Assembly (LSPA).[234] LSPA would further the Primary Purpose by helping bring to an end the "elite academic sector of the American legal profession [defining] itself as distinct from its practitioner wing."[235] LSPA attendees would include EICs, other law review staff, and invited practitioners, lawmakers, interdisciplinary scholars, law professors, and others impacted by and involved in the administration of the law.

1. LSPAs and the Primary Purpose

Attendees would collaboratively identify the 100 most pressing "modern legal problems" or the 100 Legal Scholarship Priorities for that year (hereinafter, Problems or Priorities). The process of identifying these Priorities could include facilitated conversations, polling, and other participatory tools.[236] EICs would then sign their journal up to publish scholarship pertaining to the resolution of *one* of those Problems. The order of this "draft" for Problem selection could depend on several factors — use of blind review in their submission process, use of a Priorities-based Selection Panel, adoption of a style guide in line with the Primary Purpose, and, when applicable, years of continual LSPA participation.

This draft would result in several journals sharing a Problem. The EICs with common Problems in conjunction with other LSPA attendees with knowledge of that problem would further deliberate to see if they

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[233] *See* Charles W. Collier, *Intellectual Authority and Institutional Authority*, 42 J. LEGAL EDUC. 151, 172 (1992); Callahan & Devins, *supra* note 10, at 386 (theorizing that student-editors may lack the requisite expertise to review certain kinds of legal scholarship).

[234] A similar gathering specific to specialty reviews should also take place. The EICs and legal communities surrounding these reviews would likely identify a different set of problems specific to their specialty. By prioritizing a gathering of general reviews, the selected problems and corresponding published pieces would garner more interest from a broader range of legal community members. This approach aligns with Heckathorn's recommendation that collective action efforts have a speedy start to thwart opposition. *See* Heckathorn, *supra* note 218, at 275. If specialty reviews attempted to led the first LSPA, then opposition forces may prevent general reviews from ever taking it on.

[235] G. Edward White, The American Law Institute and the Triumph of Modernist Jurisprudence, 15 L. & HIST. REV. 1, 28 (1997).

[236] *See, e.g.*, Kevin Frazier, *Crowdsourced State Constitutional Revisions Can Revive Our Democracy*, 74 RUTGERS U. L. REV. 1463, 1485 (2022) (providing an overview of participatory tools).

could identify sub-problems for their respective journals to investigate. At this stage, these Priority cohorts could also discuss their plans for disseminating their pieces — *i.e.*, they could discuss the feasibility of hosting a joint symposium and of publishing one joint volume. The resulting scholarship would undoubtedly align the Primary Purpose by encouraging law reviews to only publish scholarship tied to a broadly-recognized issue of concern.

2. LSPAs and Collective Action

The LSPA would check off at least two of the essential elements to solving collective action problems. First, in line with the fact that smaller groups can more easily solve collective action problems,[237] the LSPA reduces the entire population of legal scholarship stakeholders into just EICs of general law reviews and, through the problem drafting process, further reduces the EICs into groups of three to five with common Problems.

Second, following the observation that fewer sub-coalitions can more easily overcome start-up barriers to collective action, priority cohorts could form with relative ease and jointly develop strategies to attract excellent and topical scholarship.[238] Priority cohorts and their publications will present a diverse and broad range of stakeholders with a higher expectation of benefits from contributing to this revolution. For instance, law schools and law faculty could host events around the Problem drafted by their journal, garner local or even statewide media on their Problem, and leverage the reputations of the other members of their cohort to bolster their own reputations. Given that no formal efforts exist with respect to the prioritization of legal research,[239] all stakeholders involved in the inaugural LSPA should receive quite a bit of attention.

Concerns about the feasibility of prioritizing legal scholarship inquiries may hinder collective action. Some may argue that "it is too intractable to reasonably determine or estimate which forms of legal research are more impactful than others."[240] The Legal Priorities Project acknowledges this concern but argues that "it seems feasible to significantly increase the expected positive impact of legal research" by engaging in prioritization efforts.[241] That increased expectation alone merits experimentation with prioritization. Moreover, as students and other LSPA attendees improve their ability to prioritize, the magnitude of the expected positive impact will only grow.

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[237] Heckathorn, *supra* note 218, at 274.
[238] *Id.*
[239] *See* Winter et al., *supra* note 89, at 5.
[240] *Id.* at 12.
[241] *Id.*

3. The Effect of LSPAs on Students

The LSPA will also address the three circumstances — time, expertise, and independence — associated with student-editors selecting pieces for reasons other than the contribution of the piece to the Primary Purpose. Regarding time, by directing each journal to address their Priority, the LSPA will allow the selection team to quickly eliminate out-of-scope submissions and, therefore, spend more time reviewing the submissions tailored to their Priority. On expertise, the inclusion of diverse and knowledgeable legal community members and the possibility of consulting members of journals with the same Priority provides student-editors with more resources to evaluate whether a submission would provide novel and meaningful commentary. On independence, the LSPA process would reduce the odds of student-editors feeling pressured to publish the work of certain authors, such as members of their school's faculty or "influential" scholars, because those authors may lack the expertise necessary to comment on the Priority in question.

Besides the significant effect the LSPA would have on the Primary Purpose of legal scholarship, this prioritization exercise would also further the educational purpose of law review. Regarding the first of the four main educational benefits listed by Professor Weithorn,[242] the LSPA would substantially broaden the legal horizons of students by making them active participants in one of the most consequential gatherings in the legal profession. Consider that unlike members of the legal academy who likely have little to no professional experience with experts in STEM-related fields in their day-to-day work,[243] student LSPA attendees would have practice deliberating with and learning from such experts (assuming they would be LSPA attendees themselves) prior to even taking the bar exam. This experience would significantly increase the exposure of students to how the most pressing modern legal problems relate to other non-legal fields.

On the development of skills relevant to the practice of law — the second and third benefits identified by Professor Weithorn[244] — LSPA participation would inevitably push students to fine-tune skills related to argumentation, research, and communication as students work through the process of identifying the Priorities for that year. Moreover, as a result of their respective law review volumes focusing on specific inquiries, it is likely that student-editors will have to spend less time fussing over whether an author sufficiently introduced a new topic and more time

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[242] Weithorn, *supra* note 1.

[243] *See* Winter et al., *supra* note 89, at 6 ("[N]ot a single entry-level tenure-track professor in the last five years was reported to have held a doctorate in a STEM-related field.").

[244] Weithorn, *supra* note 1.

substantively engaging with the legal arguments they make.[245] The Prioritization identification process would also facilitate the fourth benefit — making decisions that affect the field of law.[246] More so than any other student-editors before them, LSPA attendees would orient the interest and research of legal scholars across the United States.

4. Implementation of LSPAs

The narrowing of topics worthy of scholarly investment and law review ink ought to be the first goal of revolutionaries. Christoph Winter and the Legal Priorities Project note that "[t]he importance of such prioritization arises from the mismatch between the myriad problems in the world and the paucity of resources available to solve them."[247] Once this mismatch is acknowledged, all stakeholders must discipline themselves to allocate their resources to specific problems and to only use the most appropriate means to resolving those problems.[248] An informal approach to this prioritization has not worked in legal scholarship. Law schools, law professors, and law students have proven incapable of reducing the scope of inquiry explored through legal scholarship. This is profoundly irresponsible and wasteful, hence the need to formalize the process of prioritizing legal research.

Prior efforts by law reviews to identify a common theme or topic in the form of symposiums illustrates the feasibility of the LSPA process and indicates its potential to help resolve meaningful legal questions. Evidence from symposiums suggest that topic-specific articles are more likely to facilitate beneficial dialogue and comprehensively cover a topic.[249] Symposium articles may also have a better track record of influencing the thinking of lawyers, judges, and scholars[250] because those volumes provide a credible, centralized source of information on a specific topic. Familiarity with the symposium process among students, scholars, and other legal community members also portends rapid adoption and understanding of Priority-focused volumes and events.

Rather than try to organize a national LSPA from the get-go, law reviews may first focus on statewide LSPAs. For instance, imagine Florida's law schools organizing an LSPA with the goal of identifying and assigning the ten most pressing legal issues facing the state. This LSPA would serve

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[245] Epstein, *supra* note 137, at 88 (suggesting that journals focused on specific topics require fewer citations to and explanations of ideas and institutions common to that topic).

[246] Weithorn, *supra* note 1.

[247] Winter et al., *supra* note 89, at 5.

[248] *Id.*

[249] Jean Stefanic, *The Law Review Symposium Issue: Community of Meaning or Re-inscription of Hierarchy?*, 63 U. COLO. L. REV. 651, 666-67, 678-79 (1992).

[250] Closen & Dzielak, *supra* note 31, at 20.

several functions: it would allow for community building across the Florida bar; it would foster a network of student-editors; and it would result in law reviews advancing the Primary Purpose by setting a clear research agenda for the state's scholars and then providing a platform for those scholarly pieces. If the Florida law reviews succeed in such an effort, law reviews in other states may feel more assured of the feasibility of hosting a LSPA.

In summary, "national, near-term, and unidisciplinary research questions" have received excessive attention from legal scholars. This excess may reflect "a lack of available information regarding which issues are the most important (and how best to work on them), or simply a lack or loss of motivation to pursue such issues."[251] In place of hoping that scholars abandon their habit of writing whatever interests them and student-editors publishing whatever seems most likely to boost their journal's profile,[252] student-editors should revolutionize legal scholarship by hosting an annual Legal Scholarship Priorities Assembly, or LSPA. This interdisciplinary gathering would ensure legal scholars know the important issues and have sufficient motivation to conduct research on those issues given the certainty that journals would welcome submissions on those issues. However, additional revolutionary steps would accentuate those favorable outcomes.

Note that broad participation in the LSPA and the resulting focus of law reviews on specific priorities would complicate the process of ranking law reviews. For instance, to the extent such rankings consider how many times an article has been downloaded, law reviews assigned to address more "popular" priorities would receive a disproportionate boost from this factor. If such metrics remain a part of rankings, then law reviews assigned to priorities less likely to grab headlines would have an incentive to interpret their topics broadly to increase the odds of attracting readers. This behavior would undermine the point of the LSPA and suggests that law review rankings might inherently contradict the aims of the proposed revolution. A full examination of what ranking system, if any, would avoid such an outcome is beyond the scope of this paper but deserves scholarly attention.

B. Create Scholarship Selection Panels

> *In general . . . my impression of student editors is that they do a good and conscientious job. They are diligent, often to a fault on footnotes, and they catch the elementary grammatical mistakes that I continue to make. But their work is hampered by limitations*

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[251] Winter et al., *supra* note 89, at 9.

[252] Some individual legal scholars might regularly attempt to prioritize their research questions, but the current dearth of institutional processes to assist with that prioritization likely means that these scholars are acting "on the basis of intuition alone." *See id.* at 11.

> *that stem from their inexperience in dealing with substantive issues*.[253]

EICs could also contribute to a collective effort to further the Primary Purpose by creating Scholarship Selection Panels (SSPs) compromised of practitioners, judges, interdisciplinary scholars, and other legal community members who student-editors can consult when unsure if a piece helps resolve a modern legal problem or instead is unnecessarily duplicative or incorrectly analyzes a complex topic. This reform would make collective action more likely by giving more stakeholders a meaningful opportunity to contribute to the revolution of legal scholarship. And, SSPs would provide students with more time to select and edit pieces, as well as more expertise and greater independence when doing so.

Students unfamiliar with substantive issues related to the law should not have exclusive control over the selection and editing of legal scholarship. Though student editors exhibit zeal and knowledge in certain areas, they lack the legal experience and education necessary to evaluate the responsiveness of a submission to a complex legal question.[254] Students also lack a network of members of the legal community that they could consult to supplement analysis of a certain piece.[255] If "[g]ood legal writers must educate themselves well enough to recognize — and to expose — lies or misleading arguments based on another discipline," as argued by Yale Kamisar,[256] then surely their editors must do the same. Such extensive education seems out of reach for first- and second-year law students who likely feel bombarded by their preexisting educational obligations.

SSPs would operate akin to a court's maintenance and use of a list of expert witnesses. Student-editors would research, interview, and select panelists would then serve as an "on-call" resource to student-editors. Journals sharing a Problem identified by the latest LSPA could collaborate on the creation of such a list. When reviewing a complex or controversial submission, student-editors would consult one or more experts to review the piece and provide them with guidance on whether to select the piece and, if so, what edits may improve the piece. If neither a student nor a current panelist had the proper background to a review a piece, then

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[253] Epstein, *supra* note 137, at 88. This lack of knowledge may generate other negative externalities (beyond the production of unresponsive articles) on legal scholarship, law professors, and members of the legal community. Epstein speculates that students attempt to make up for their lack of substantive knowledge with excessive editing for citations and grammatical errors — as a result, professors may spend time fusing over these inconsequential edits rather than on more valuable uses of their time. *See id.*

[254] *See id.* at 87.

[255] *See id.* at 91.

[256] Kamisar, *supra* note 147, at 1755.

panelists could dive into their more extensive networks to identify someone to help.[257]

1. SSPs and the Primary Purpose

SSPs would further the Primary Purpose by reducing the publication of duplicative and useless content. Submission review by experts familiar with preexisting scholarship in a certain field would result in more pieces being denied. In response to this heightened standard of review, legal scholars would have to work harder and longer on submissions, further reducing the overall quantity of legal scholarship and directing it toward more useful issues. Another benefit from SSPs could emerge if faculty and tenure committees included participation on such panels in their decision-making process. In this situation, legal scholars would have an alternative way to demonstrate their expertise besides the production of more and more content. SSPs could also foster the sort of "common effort" that is central to the Primary Purpose.[258] And, if SSPs included a wide range of legal and interdisciplinary scholars and practitioners, then legal scholarship would have a better chance of being grounded in the actual administration of the law — ending a long process of legal scholarship divorcing from the practice of law.

Note that SSPs should not completely usurp the role of student-editors in the selection process. Ideally, SSPs would filter out the preponderance of pieces unlikely to contribute to resolving modern legal problems and then provide students with support as they review the remaining pieces. This would mark an improvement on the current process for at least two reasons. First, by allowing panelists to initially review pieces, they may use their expertise to offer suggestions — such as the merger of two pieces — that student-editors would miss or not even attempt.[259] Second, by maintaining some authority over selection, legal scholarship will benefit from the fact that student-editors "may be willing to take risks on new approaches or new scholars that faculty experts may not be willing to take."[260]

2. SSPs and Collective Action

Adoption of SSPs may spur broader collective action with respect to revolutionizing legal scholarship. For instance, inclusion of SSP participation in hiring and tenure decisions could accelerate a transition away from the status quo. By giving faculty members more means to bolster their credentials and demonstrate their knowledge, SSPs would have the effect of making collective adoption of the Primary Purpose more

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[257] *See* Epstein, *supra* note 137, at 89-91.

[258] Fowler, *supra* note 41, at 51.

[259] Epstein, *supra* note 137, at 91-92.

[260] Christensen & Oseid, *supra* note 15, at 208 n.142 (citing Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1356-57 (2002)).

beneficial to a broader range of stakeholders, as well as mitigate the likelihood of staunch opposition from faculty members. Opposition from law schools could also be diminished if faculty participation on SSPs became a sign of a school's research capacity and prowess. If that were the case, then history suggests that schools would quickly come to champion SSPs and encourage faculty participation.[261]

3. The Effect of SSPs on Students

Another outcome is that student-editors who created SSPs would have more time to analyze submissions, more expertise to inform that analysis, and more independence from their host institutions and faculty. In terms of time, SSPs could handle the initial review of submissions, thereby substantially cutting down the total number of pieces in need of review by student-editors. On expertise, as mentioned above, student-editors could easily tap into the knowledge of their panelists when unsure of the merits of an author's argument. Finally, on independence, by granting SSPs the initial check on submissions, student-editors would no longer feel undue pressure to accept pieces submitted by a faculty member at their school.

This section will not review the positive educational benefits tied to establishing an interdisciplinary body to assist with the selection and publication of legal scholarship because the analysis would mirror that of the effects of LSPAs on education.

4. Implementation of SSPs

The similarity of SSPs to other concepts suggested or used by legal scholars suggests that panels could form relatively quickly and with minimal pushback from law schools and law professors. Well-known scholars such as Harvard Law Professor Jonathan Zittrain have already indicated their support for variants of SSPs.[262] Zittrain's "review-a-thon," during which faculty would "consult with editors who have questions on the work they're reviewing,"[263] contains the essential elements of SSPs. Peer-reviewed journals also use a similar process for selection decisions.[264] Greater inclusion of faculty members and other experts in reviewing submissions would also align with the approach taken by law reviews in Israel, Australia, and Canada that rely on students and faculty to select, edit, and publish legal scholarship.[265]

The revolution of legal scholarship would be drastically furthered by the combination of an annual LSPA to identify Priorities for law reviews

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[261] *See* Swygert & Bruce, *supra* note 8, at 779.

[262] Olkowski, *supra* note 9.

[263] *Id.*

[264] *See, e.g.*, *Article Submissions*, STANFORD L. REV., https://www.stanfordlawreview.org/submissions/article-submissions/ [perma.cc/PG5U-WB9X].

[265] Perry, *supra* note 219, at 57-58.

and SSPs to help identify pieces that address those Priorities. However, even in the absence of LSPAs to initially set the agenda for law reviews, student-editors could drive legal scholarship toward the Primary Purpose by inviting interdisciplinary experts to help students exercise their gatekeeping authority. Panelists tasked solely with rejecting submissions that duplicate preexisting analysis would improve legal scholarship by cutting down on the total number as well as the length of published pieces.

C. Update Submission Standards

Journals have already indicated an ability to coordinate on altering the style and substance of legal scholarship by enforcing a word limit on submissions — albeit only after a prominent journal has managed to convince others to follow its lead.[266] Another collective effort to update law review submission standards could help revolutionize legal scholarship. In particular, law reviews should require authors to comply with the following "Submission Standards":

(1) complete a submission form prompting authors to identify the modern legal problem addressed by their submission, explain how their submission contributes to its resolution, and list other scholars familiar with the problem and the proposed solution;
(2) label background sections in their article so the editing team can consider whether to replace that information with an instruction to the reader to read the original sources of that background information; and
(3) submit their teaching evaluations.

The submission form would provide student-editors with an easy way to assess if the scholar understands the Primary Purpose and to verify the scholar's answers by reaching out to those listed who are familiar with the problem at issue. Some law reviews already ask scholars to submit a cover sheet or abstract, but these prompts may not direct scholars to explicitly detail how their paper would further the Primary Purpose.

The requirement to identify background content would give student-editors a chance to decide if a paraphrased version of prior scholarship needs to be repeated in the submission or if simply directing readers to consult the cited pieces would suffice. The current approach to legal scholarship incentivizes authors to err on the side of verbosity and to fill pages with information that has likely been adequately expressed in easily accessible sources. For instance, one paper cited above included that footnote that said, loosely,[267] "The main source of this portion of the article is

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[266] Micah, *Changes in Legal Publishing*, Out of the Crooked Timber (Feb. 17. 2005), https://crookedtimber.org/2005/02/17/changes-in-legal-publishing/.

[267] I do not want to call anyone out for simply following norms — no matter how broken those norms may be.

John and Jane Doe's article; consequently, the analysis in this section relies extensively on their thorough research." In other words, the author identified a perfectly adequate source of the same information but nevertheless felt the need to reword that information and extend the length of the article. At least the author had the decency to admit their duplication. Student-editors should have acted on their admission by replacing that entire portion with [*see* John & Jane Doe, *Better, Original Content*, 1 Concise L. Rev. 2, 3 (1993) (detailing the information the author initially tried to reword here)]. If this became standard practice, everyone would win: scholars could spend time solely on their original content, students could spend less time checking eighteen consecutive cites to the same article, and readers could have the option of digging deeper into a problem, rather than being forced to read through page after page of duplicative background content.

By mandating that scholars share their teaching evaluations, student-editors can see if scholars have been fulfilling their primary responsibility: educating students. As soon as teaching evaluations become a factor in selection decisions, law professors will feel a strong compulsion to spend sufficient time and energy on what should be their first obligation. If student-editors observe that a legal scholar has not lived up to the expectations of their students, then the editors should do their peers a favor by rejecting the paper and, in doing so, sending a signal to the professor and their institution that their primary responsibility is not producing an ever-greater amount of scholarship. Note that authors with no such evaluations, including aspiring professors and current practitioners would necessarily receive an exemption from this requirement. The upshot is that students should use their gatekeeping powers to remind administrators that law schools are academic institutions first and legal think tanks second.

1. Submission Standards and the Primary Purpose

Each of the three novel submission standards would advance the Primary Purpose. Compelled by the submission sheet to think about scholarship that would address a modern legal problem, scholars are more likely to engage in more frequent conversations with practitioners, judges, and scholars in other fields. This preliminary outreach would help reverse the separation of the legal academy from those who actively administer the law. The identification of background content would demand that scholars thoroughly study and acknowledge prior scholarship. Not only would this additional research produce more novel content, it would also facilitate more meaningful dialogue between scholars addressing similar inquiries and carry the potential to make articles more readable and therefore useful to a broader range of the legal community.[268] Finally, the inclusion of

[268] Epstein, *supra* note 137, at 93 ("The comprehensive recounting and documentation so often required in student journals is quite unnecessary, and only clutters the page and impairs the readability of the article.").

teaching evaluations in the submission process will provide a meaningful wake up call to administrators and professors who have continually downplayed the importance of actual education. Furthermore, this requirement might limit the quantity of submissions from those keen to employ strategies akin to those used in search engine optimization with the goal of climbing the SSRN ranks.

2. Submission Standards and Collective Action

"Difficulties organizing collective action emerge . . . when an individual perceives her costs of participation as outweighing her benefits."[269] Here, the costs of journals collectively enforcing the Submission Standards are low and student-editors may perceive the benefits as quite high. Many journals could easily adopt a uniform submission sheet, and the start-up barrier to collective action would not apply. The ease of the sheet's spread and application would also foster collective action by providing journals with a faster and clearer way to reject submissions. The costs of enforcing identifying background content also pale when compared to the benefits. Student-editors could merely add this check to their submission review checklist, resulting in another means to quickly reject submissions and thereby providing more time to review qualifying articles and creating an easier editing process. For the same reasons — low implementation costs and the benefits obtained from fewer pieces receiving an in-depth review — the teaching evaluation requirement could catch on easily among law reviews.

If LSPAs were adopted, nationwide or at a smaller scale, the ease of updating and spreading the Submission Standards would increase. One could imagine a part of the Assembly agenda being dedicated to reviewing these Standards and ensuring law reviews had the requisite means to enforce them. Furthermore, if law reviews focused on a single Problem, student-editors could more easily identify background content across submissions and reduce the odds of unnecessary repetition in their published pieces.[270] SSPs would also foster collective action by further reducing the costs of enforcing Submission Standards. Panelists, for instance, could lean on their expertise when assessing if a scholar adequately identified background information ripe for replacement by a reference or if a better source could serve as a reference.

3. Submission Standards and Effect on Students

The Submission Standards could further the educational purpose of law reviews and ameliorate some of the issues with student-based editing. Enforcement of the Submission Standards would give students more time to review the substance of pieces aligned with the Primary Purpose by facilitating the prompt rejection of non-compliant pieces. If a journal had

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[269] Brock, *supra* note 232, at 782.

[270] *See* Epstein, *supra* note 137, at 88.

been assigned a Problem at the latest LSPA, then this sheet would facilitate more rejection even more quickly. With this additional time, students could conduct more background research to evaluate the piece's novelty and usefulness, or they could use that time to confer with experts (ideally, SSP panelists). Students could also exercise greater independence by neutrally and universally applying the Submission Standards.

Submission Standards also "score" well when reviewed under Professor Weithorn's four benefits of law review participation.[271] Submissions tailored to the Primary Purpose would expand the legal horizons of students in a productive way. They would spend more time learning about practical, relevant concepts. A reduction in the amount of background content would likewise increase the amount of time students spend reading legal analysis and argumentation rather than summary information, thereby improving their writing and critical thinking skills. And, students would have much better odds of shaping the direction of the law if scholars provided content intended to push the law in a certain direction.

4. Implementation of Submission Standards

The facts underlying the widespread adoption of word limits by law reviews demonstrate the possibility of coordinated action to alter the style and substance of articles.[272] After the *Virginia Law Review* set a presumptive word limit of 20,000 words, a dozen top law reviews followed suit a year later.[273] Other journals soon fell in line with the norms developed by their top-ranked peers.[274] This was not some minimal change in the status quo. Observers anticipated that these caps would have "serious implications" on the substance of publications.[275] Student-editors nonetheless forged ahead and instituted a major change at their own volition. Given this precedent, journals can and should enforce the Submission Standards.

While some law schools and law professors would oppose the Submission Standards, their opposition would likely not deter their adoption across law reviews. Law schools might lobby particularly hard against the sharing of teaching evaluations. Withholding this information, though, would expose the extent to which law schools have abandoned holding faculty accountable for teaching. Students could rally popular support against such schools by calling out their refusal to help students collectively protect the educational interests of their fellow students. These schools may also come to realize the "startling truth" that "with the exception of a few dozen law professors, [faculty members'] ideas will

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[271] Weithorn, *supra* note 1 (listing the following four benefits: broadening legal horizons; developing writing, editing, and Blue-booking skills; heightening critical thinking skills; and making decisions that can affect the field of law).

[272] Micah, *supra* note 266.

[273] *Id.*

[274] *Id.*

[275] *Id.*

improve the world more through [their] students than through [their] writing."[276] This realization could alter how schools measure "influence" and cause them to deprioritize the quantity of legal scholarship produced by their faculty.

Law professors may object to the inclusion of their evaluations as well. They may repeat the common refrain that evaluations do not actually measure teaching quality.[277] Students could welcome this critique and challenge law professors to provide an alternative metric to determine if professors have struck the appropriate balance between their professorial duties and research aspirations.

If law reviews solely adopt the Submission Standards and none of the other reforms, then the "revolution" would likely fall short of its goals. Sure, the change would produce an observable effect, but nothing transformative. Submission Standards would likely expedite the rejection of the most egregious submissions — those with no tie to modern legal problems, chock full of duplicative background information, or submitted by scholars with a record of prioritizing quantity of scholarship over quality, yet who have managed to dodge the wrath of the students they have disappointed in the classroom. For similar reasons, the sole adoption of the Legal Scholarship Priorities Assembly or Scholarship Selection Panel may not revolutionize legal scholarship to meaningfully further the Primary Purpose. Thankfully, this list of revolutionary reforms is far from exclusive, so students unable to adopt one or any of the aforementioned three steps should consider other revolutionary measures.

D. The Revolutionary Agenda

Students keen on upending legal scholarship should begin by formally adopting the Primary Purpose as the stated mission of their law review. Then, they should coordinate with as many of their colleagues as feasible to put together a LSPA where they would identify and assign a list of modern legal problems to address, work on the identification of panelists that could review submissions related to those problems, and develop an updated set of submission standards that make it easier for panelists and student-editors to focus only on submissions that meaningful address the Problem assigned to the journal. That is an ambitious agenda. But it is a vision worth sharing given that even the scholars that benefit most from the status quo have come to regard the dominance of law reviews over

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[276] Kent Syvergud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247, 259 (1993).

[277] *See* Colleen Flaherty*, Even 'Valid' Student Evaluations Are 'Unfair,'* Inside Higher Ed (Feb. 26, 2020), https://www.insidehighered.com/news/2020/02/27/study-student-evaluations-teaching-are-deeply-flawed.

legal scholarship as a "historical hangover," and to speculate that "everyone recognizes that [law reviews'] importance is less than it once was."[278]

Less ambitious steps would also improve legal scholarship and merit consideration by student-editors. Rather than fully examine each of those steps, this section introduces two other reforms and explores their potential effect

First, blind review. Thirty years ago, Professor James Lindgren encouraged law reviews to require that authors submit their articles without any identifying information — commonly referred to as "blind review."[279] Thirty years later, few editors and law reviews have followed his suggestion.[280] Blind review would provide student-editors with more independence over the selection of scholarship by reducing the pressure to select work submitted by their institution's faculty.[281] Theoretically, it would also help students weigh the merits of the content of the submission more heavily than things like the perceived influence and prestige of the author. In practice, though, submissions tend to have identifying attributes that students can use to narrow the list of potential authors[282] — diminishing the value of this reform. Nevertheless, blind review would mark an improvement over the status quo and may be relatively easy for law reviews to adopt. The fact that prestigious law reviews including *Yale Law Journal* use a blind submission process suggests that this reform has the potential to be adopted elsewhere.[283] Moreover, the idea of blind evaluation of someone's work should be familiar to students. Many law students have their exams anonymously graded.[284]

Second, lobby ranking institutions to omit scholarship from their calculations. Russell Korobkin speculates that if rankings no longer valued scholarship, then students, employers, and law schools would no longer place so much emphasis on the production of scholarship.[285] Research by Olufunmilayo Arewa et al., adds weight to Korobkin's theory — they show how law schools have time and again altered their pedagogy, faculty requirements, and student expectations to earn higher positions in rankings.[286] If citations to scholarship, the quantity of scholarship, and similar

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[278] Olkowski, *supra* note 9 (quoting Joel Peters-Fransen).

[279] James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 538 (1994); *see also* Christensen & Oseid, *supra* note 15, at 207 n.138 (stating that blind review entails "authors [] remov[ing] all identifying information from the article [and] a law review administrative assistant would then assign an anonymous number to the author's submission.").

[280] Christensen & Oseid, *supra* note 15, at 207-08 n.139.

[281] Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 420-21 (1989).

[282] Olkowski, *supra* note 9.

[283] Christensen & Oseid, *supra* note 15, at 207-08 n.139.

[284] *See id.* at 207-08 n.138.

[285] Korobkin, *supra* note 203, at 852.

[286] *See generally* Arewa et al., *supra* note 2.

metrics fell out of such rankings, it stands to reason that law schools would invest more heavily in the remaining factors, hopefully resulting in legal scholars feeling less pressure to produce "something" and more freedom to focus on scholarship aligned with the Primary Purpose.

Both of these reforms, though, would rest on the hope that legal scholars would informally prioritize their scholarship to address pressing legal problems. As discussed above, that hope is unfounded. By virtue of a lack of education on the topic and the limited pressure to prioritize, legal scholars "are likely to be unfamiliar with many of the prioritization methods and may be reluctant to adopt the cutting edge of other research fields."[287] Absent any real effort to help scholars prioritize their research (an effort most scholars would welcome or, at a minimum, not actively oppose),[288] legal scholarship will likely continue to provide little value to the legal community and public.

CONCLUSION

The solution to a glut of content is not to create more content — even great content.[289] Instead, a revolution must occur that makes students effective "gatekeepers" of legal scholarship by encouraging the study of pressing modern legal problems.[290] Absent change, the significance of law reviews and the legal scholarship they publish may continue their downward trend.[291] Those inclined to wait for the demise of law reviews and rebuild from scratch should not hold their breath — it is far more likely that law reviews will persist despite the limited value of pieces they publish.[292]

Now is the time for the Law Review Revolution. Law students begin their legal education with hopes of improving society. This paper gives an outline of one way to do just that.

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[287] Winter et al., *supra* note 89, at 7.

[288] *Id.* at 10 n.10.

[289] *See* Rotunda, *supra* note 80, at 2.

[290] *See, e.g.*, Christensen & Oseid, *supra* note 15, at 177.

[291] *See* Olkowski, *supra* note 9 (sharing Joel Peters-Fransen's opinion that the continued predominance of law reviews amounts to a "historical hangover" and that "everyone recognizes that their importance is less so than it once was.").

[292] *See, e.g.*, Christensen & Oseid, *supra* note 15, at 213 n.158 (2007) (discussing how some, such as Fred Rodell, have anticipated the failure of law reviews only to be proven wrong again and again).