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ARTICLE

The Law Review Approach: What the Humanities Can Learn

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Readers of this journal probably know how the peer review process works in the humanities disciplines and at various journals, so I will explain how the law review process generally works and then what the humanities can learn and borrow from the law review process. I will end by advocating for a hybrid law review/peer review approach to publishing.

The law review process is not a panacea for our publishing ills. It has several drawbacks and shortcomings. This essay highlights the positives and notes some of the negatives of the law review publishing process, but a lengthy explanation of all that is good or bad about law reviews is not my aim. Every law review has its idiosyncrasies and methodologies, but most share certain overarching procedures and protocols that can be evaluated in terms of their similarity.

Law Review Procedures and Protocols

To be accepted, most law review articles have to be submitted via ExpressO, an online submission tool similar to Submishmash, which is what creative writers use to submit to multiple literary journals at once and then to manage (i.e., withdraw, revise, resubmit) those submissions. ExpressO allows authors to submit to over 750 journals simultaneously. Authors browse the

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inventory, select which law reviews to submit to, enter payment information (the cost to submit is $2.20 per journal), and then upload the submissions and any accompanying documents such as a curriculum vitae or cover letter. The law review editors instantly receive an electronic copy of the submission, and the competition begins.

Law review editorial boards, made up of law students who, theoretically at least, represent the best and brightest of their class, make decisions about which papers to accept. Each law review has its own criteria for admission onto the editorial board, but the most common of these are first-year grades, a write-on competition, or some combination of both.

Much has been made about the (in)appropriateness of giving students wide latitude to evaluate the submissions of experts, so I will not belabor that point. I'll say only that students usually are not prepared to make these initial decisions because, for the most part, students—especially law students—are not experts in anything, and their acceptance decisions generally are based on surface-level first impressions: a submission via ExpressO is privileged over an email or hard copy submission; a full professor's submission is privileged over one by an adjunct professor; a submission with professional appearance or appealing fonts is privileged over a submission set, say, single-spaced in Times New Roman; and so on. Superficialities and biases can be part of the peer review process as well, but the common peer review practice of "blind" editing goes some length toward eliminating knee-jerk discrimination against young or unknown authors whose scholarship is quite good.

Law review editors-in-chief or managing editors make the first round of acceptance decisions. These editors supposedly earn their titles, but really they are elected by the other members of the review, so the element of a popularity contest is always involved in the rise to power within law review ranks. If these editors approve of a submission, they relay it to a second group of student editors.

This group assumes that the principal content of the submission—the topic that the submission addresses, the premises from which the arguments proceed, and the conclusions those arguments draw—is worthy of publication because the initial editors have supposedly weeded out weak, irrelevant, unwanted, and unreasonable topics, analyses, or arguments, and these editors are supposed to have done so with the help of faculty (if deemed necessary). The "secondary" editors then look for quality arguments, accurate citations, fluidity and clarity of prose, and, among other things, the author's reputation. If this second round of

editors unanimously agrees that a piece is of high quality and fits the needs of the journal, the editors will make a publication offer.

This offer is open for a stated number of days. During this time, an author withdraws his submissions from all of the journals of lesser quality or reputation than the one he has received an offer from, and contacts all of the journals of better quality or reputation and requests expedited review. "Dear editors," this author might write, "I have received an offer from such and such a journal, and I have fifteen days to reply to the editors to accept or reject the offer. Please review my article and get back to me before that deadline." ExpressO allows authors to select a group of journals and then, with one click of a button, to submit a request for expedited review to all those journals selected. ExpressO even has a form letter for making these requests.

If an author receives an offer from a better journal, he will write to the first journal from which he received an offer and politely decline that offer. Now the author has a new offer from a different journal—and also a new deadline to use when requesting additional expedited reviews. At this point, the author is "rushing" journals the way a college student rushes a fraternity or sorority: he is ranking journals and choosing the best fit for his piece. The author competes for the best journal, just as the journals compete for the best articles or authors. Everyone is competing, and that speeds up the publication process.

A journal that works quickly and efficiently is more attractive to a scholar than a journal with a reputation for slowness or publication errors. Even within each law review there are incentives for editors to work more quickly and efficiently, so the editors are competing with their fellow editors, the journals are competing with other journals, and the authors are competing with other authors. The result is an extremely quick turnaround in publication and an extremely polished piece, as editors often receive law school grades for their role in proofreading and revising. Unlike with a peer reviewed journal, with a law review there will be few lengthy delays and little waiting on selfish or lazy reviewers to get around to the submission that has been sitting on the desk for months.

A law review must prioritize its submissions. If a journal's top offers are rejected by the authors, the editors must make offers to the "second best" or "third best" submission, and so on, until someone accepts an offer. Editors therefore try to make offers earlier than their competitors. This competition

ensures that the journal will have better odds of publishing a quality article by a recognized academic.

The most famous legal academics—say, Mark Tushnet, Sanford Levinson, Lawrence M. Friedman, Richard Posner, Erwin Chemerinsky, and the like—might have their work solicited by a law review and might enjoy the benefits of name recognition by having their uncompleted drafts accepted for publication. The former possibility usually arises when law reviews produce symposia issues, which consist of lengthier and thoroughly rewritten conference presentations. The latter possibility arises when a prestigious academic submits a piece, and a law review accepts it for publication in order to enhance the name of the journal or to establish a relationship with a notable scholar.

What no published article will reveal, but what every legal academic knows, is that law review editors will take great pains, including ghostwriting substantial portions of an article, to see prominent names published in their journals. I have been told by a law review editor that his journal accepted a piece that was little more than an outline. The reason the piece was accepted, this editor explained, was because his law review needed to gain credibility, and that could be accomplished to some degree by publishing a professor with a named chair and a long publication record. The editor did not mention what was almost certainly an additional motivation: the opportunity for students to network with an accomplished person. This anecdote raises an interesting question, whether a good scholarly contribution consists in the substance and ideas of a piece or, as most humanities scholars and especially most English professors believe, is integrally tied to the writing itself.

The editors of this particular journal ended up writing most of the article for the supposedly renowned academic, and the academic slapped her name on the piece and took all of the credit for the work that she did not do. This type of behavior is, I think, corruption. It is so widespread among law school faculty that if scholars in other disciplines realized the extent of its reach, they might come to think, more than they already do, that law schools are peopled by charlatans and opportunists: an impression justified by the fact that heavy funding for law professors ensures that research assistants bear the brunt of the tedious research and writing—pulling sources from the library, copyediting, looking up relevant quotations, even writing large sections of the final manuscript. Rumors abound regarding law professors who actually hire research assistants to write entire articles under the professors' names, although I do not know any law professors or research assistants who have agreed to such an arrangement.

Once a law review has accepted an article for publication and the author signs his contract, the editing process begins. Law review edits are usually done with "track changes," and they consist of line-by-line edits less about the merits of the argument and more about grammatical and punctuation issues, citation accuracy, and syntactical precision. Law review editors are good about eliminating wordiness and interrogating diction; they are not as adept at tinkering with authorial style. Be that as it may, the finished product is clean and smooth, and the merits of the piece are now left to the evaluations of other academics.

Because there are nearly nine hundred law reviews publishing four to five issues a year,[1] and because law review articles tend to be more than twice as long as peer reviewed articles (I estimate the average law review article runs between forty-five and sixty-five pages of a Microsoft Word document, although that number has fallen in recent years), there is an enormous body of legal scholarship to sift through every season.

Not all law review articles receive attention. Some are completely ignored. Nevertheless, the massive output of law review articles enables ideas and arguments to get sorted out in the marketplace of ideas. If the marketplace of ideas gets flooded with arguments and proposals, the theory goes, following John Stuart Mill's formulation in *On Liberty*, the best arguments and proposals will work their way through decentralized networks of discourse to establish their academic currency. With so many law review articles appearing and with law review editorial boards changing hands each year, the world of legal scholarship is always in flux, and no law review ever monopolizes the marketplace of good ideas—no law review ever becomes *the* journal one must publish in if one is to be taken seriously.

What the Humanities Can Take from the Law Review Process

I have more than implied that the law review process is not ideal, but peer reviewed journals and editors can draw from what makes the law review process efficient and thorough, not to mention what makes law review articles appealing to audiences beyond a small circle of hyper-specialized academics. Before proceeding further, I wish to acknowledge that it is

[1]Washington and Lee University School of Law ranks all law reviews, and its database contains 1674 entries; however, many of these publications are not law reviews, and many are affiliated with foreign law schools and focus on such specialized areas that I would hesitate to number them among other law reviews. The Washington and Lee database is available at http://lawlib.wlu.edu/LJ/index.aspx.

difficult to generalize about humanities journals. There are hundreds of them, each with varying practices even when they share one of the major presses. Judgments about the quality of editing or the attention to writing will differ widely depending on the tradition of a journal, the editor's investment in style, or the preferences of the managing editor. Blind submission is just one example of a policy that is practiced rigorously among some publishers, casually among others, and even not at all. Moreover, the focus of peer review, while shaped by the questionnaires that editors generally send with a manuscript, depends heavily on individual peer reviewers.

Anyone in a field for any length of time will have some experiences to share, though even these do not add up to more than anecdotal evidence. It would take an expansive survey of editors, reviewers, and contributors to be able to construct a comprehensive account of editorial practices, and I suspect that those who have spent many years contributing to journals and serving as a peer reviewer could speak confidently about only the journals they have worked with and only within the time period during which they worked for them. This piece does not conduct such an expansive survey, but merely relies on my personal experiences with peer reviewed journals. These experiences, however limited, indicate to me that the humanities could learn several things from the law review publication process:

1. **The law review submission process is quick and easy, and authors can submit to as many journals as they wish**. If humanities scholars were able to submit to several journals at once, we would not have to wait as long for publication, and hence for tenure decisions and the like. We could also have the opportunity to shop around our articles rather than choosing to submit to a more prestigious journal and then wait months or years for a response. I recently published three peer reviewed articles: one took two years to be published, and the other two took seven months and nine months, respectively.

   By contrast, I recently had a law review article published in the *Michigan State Journal of International Law*, and the publication process took two and a half months. I submitted the article via ExpressO to over seventy journals; within twenty-four hours I began to receive rejections. A week later, the first acceptances came in. Two weeks after that, I decided which publication offer to accept; a month later, I received the editorial galleys, and a few weeks later the publication was complete. The speed of

this process could help young, untenured professors or accomplished graduate students in the humanities to add to their CVs and to achieve some name recognition. Theoretically at least, more power would be placed in the hands of the individual author as against the old bureaucratic systems that have sustained and reproduced procedures and protocols that keep writers at editors' mercy.

2. **There are many law reviews, each producing issues frequently, the norm being four or five times a year.** The law review editorial selection process—acceptances and rejections—happens fast, as do editing and publishing. Pieces accepted for publication in a law review will appear in print within two or three months, or at most four months. This turnaround can be especially beneficial to young professors, who need important publications for tenure purposes.

3. **The line-by-line copyediting and citation checking for a law review article are far more scrupulous than for a peer reviewed article.** A law review will not run a piece if *multiple* editors have not located and confirmed the exact source and exact page number for every single citation. Citations in a law review appear in nearly a third of the sentences in any given paragraph. Law reviews therefore publish with fewer errors than do peer reviewed journals; law reviews will not settle for the "take my word for it" routine. The downside to this accountability is that student editors not yet initiated into academic discourse will require detailed explanations for any term whose meaning is not self-evident. The word "discourse" would itself require a lengthy footnote and probably several citations to Foucault.

   Even this burden has its upside: an author might find that jargon whose signification is taken for granted—say, the words "fetishized" or "deconstruct" or "discourse"—has a traceable history that is worth tracing. Sometimes even experts need to be reminded of the etymologies of their field. A passing reference to "binary opposition," for example, would probably prompt a law review editor to demand lengthy references to Marcel Mauss, Levi-Strauss, and Jacques Derrida, and however toilsome it may be for an established academic to revisit these figures and then explain to a general audience what they mean by binaries and why, the process is also edifying—not just for the reader who is learning the lexicon but also for the writer who is learning how he *learned* the lexicon.

4. **Law reviews, more than peer reviewed journals, reach nonacademic audiences.** This upside to law reviews probably has more to do with the general public interest in law than with any part of the editorial process. Law reviews traditionally addressed practicing lawyers, judges, and the legal professoriate, but over the past few decades they have become more esoteric and less concerned with the everyday practice of law than with abstract theory. They have also become more interdisciplinary and have undertaken subjects previously reserved for scholars outside of the legal community: literature, psychology, and economics, to name just three. Nevertheless, Supreme Court justices, judges, and practicing attorneys continue to cite law review articles in briefs, arguments, motions, and the like.

   Law reviews are read by nonacademics and do have a great deal of influence. Few if any humanities journals can make this claim. That may be a result of the dense terminologies and needless complexities of humanities scholarship, especially among literary theorists, or it may be because the ideas themselves are complex and intellectually demanding. I suspect that most humanities scholars would gladly elaborate their arguments and define their terms if they thought their work might be more widely read or influential. In any case, journals about applied theory or about the practices of the workaday world are bound to gain a wider audience than journals not tied to some profession or industry outside the university.

The downsides to the law review process are many. With peer reviewed journals, the article selection process is done exclusively by experts in the field. Not so with law reviews, which are student-edited and faculty-advised. Most of the time, not even faculty advisers can claim expertise in the areas covered by a given submission.

Peer reviewed journals usually return a reviewer's report to the author of a submission. This report allows authors to revise a piece if it is not accepted for publication. Law reviews do not have the time or resources to explain why a piece was accepted or rejected. They are inundated with articles, in part because their efficiency draws so many submissions. On the other hand, every year brings a new crop of editors for each law review, so an author may resubmit the exact same piece to the exact same journal, and chances are the piece will be revisited by a fresh set of eyes.

Seasoned professors and specialists edit peer reviewed journals; therefore, acceptance or rejection of submissions to these journals depends, in theory, upon merit, especially in the case of "blind" review whereby reviewers will not (or should not) know the identity of the authors. Law reviews are edited by students who are not particularly good at judging quality and who therefore rely too heavily upon credentials. Student suggestions and revisions are also often of low quality, and a professor from an esteemed institution will be published over a professor from a "lesser" institution, despite the strength or weakness of each submission.

The biggest problem with law reviews, as I see it, is that law professors increasingly draw from sources outside the legal field, and they often do so carelessly and misguidedly and without the oversight of experts in those fields. Students, especially law students, are not able to judge the relevance of a scholar's citations to work in different fields. Some of the most celebrated works in law and literature would seem shockingly dated to literary scholars, and surely by now literary critics do not have to go into overlong explanations at the mention, for example, of the New Criticism or metaphor or irony—terms for which law review editors are likely to demand qualification.

Toward a Hybrid Peer Review/Law Review

The University of South Carolina Law Review (*SCLR*) recently experimented with a hybrid law review/peer review approach, and other law journals are following suit. This development ought to be applauded. I am not inclined to agree with Richard Posner often, but his introduction to the inaugural peer reviewed issue of *SCLR* strikes me as spot on.[2] Posner points out that that the hybrid model allows a student-edited law journal to submit articles to faculty or practitioners for review, as is done in faculty-edited journals, in contrast to the more limited faculty involvement in the law review model.

Furthermore, Posner writes, the hybrid approach "is likely to increase not only the quality of the articles published by the journal but also the quality of the articles it rejects on the basis of the reviews, for negative reviews can help an author to revise, whether or not the journal that turned down the article would be willing to consider a revised version."[3] As explained above, traditional law review student editors usually do not take the time to elaborate their reasons for rejection, in contrast to editors of publications in the humanities.

[2]Richard Posner, "Forward: The Peer Review Experiment," *South Carolina Law Review* 60 (2009): 821–22.
[3]Ibid., 821.

It may seem paradoxical for me to claim agreement with Posner when he is advocating for a move away from law review editorial processes whereas I am arguing for a move toward them. Really, though, we are arguing for the same thing: the happy medium between law review and peer review. Posner indicates that the "principal negative" of incorporating peer review protocols into the law review process is delay, a negative only "compounded by the near-universal practice of forbidding authors to submit an article to more than one journal at a time."[4] If multiple, simultaneous submissions were allowed through electronic media such as ExpressO, and if authors and journals were able to bargain and negotiate over potential publications, competition would ensure that the peer review process moves more quickly than it does in current practice. Journals would not want to fall behind their competitors, and authors would regain some of the agency that now falls disproportionately on the side of editors. The law review production process might operate more slowly in this hybrid model, but it would enjoy the benefits of enhanced quality and interdisciplinary credibility.

SCLR did, in fact, allow authors to submit to other journals. It has since revised its model so that authors submit pieces for particular consortium issues, thereby reducing the inflow of submissions and allowing editors to find qualified reviewers for each submission.

The Peer Reviewed Scholarship Marketplace, which goes by the acronym PRSM, has followed in the wake of *SCLR*'s innovation. It is a new phenomenon created precisely to facilitate a hybrid approach, and at present it serves just the legal community. On its website, PRSM declares that it "exists to provide student-editors with peer evaluations of legal-scholarship manuscripts and to assure the publication of quality articles."[5] It further explains that "PRSM connects authors and journals with subject matter experts, who through their reviews provide editors with the information they need to make informed decisions regarding article selection."[6] PRSM is, in short, the middle man. Although similar to ExpressO regarding the process of electronic submission, it differs from ExpressO in that administrators arrange for double-blind peer review of each manuscript. These reviews accompany the manuscript that is circulated among student editors at several journals.[7]

[4]Ibid.

[5]PRSM, http://www.legalpeerreview.org/, accessed January 24, 2013.

[6]Ibid.

[7]PRSM, "About," http://www.legalpeerreview.org/about.php, accessed January 24, 2013.

Eighteen law reviews have joined PRSM. More are bound to follow. Rivalry among law schools has for decades ensured that few ever settle into one way of doing things, at least not for very long, and law reviews will not risk falling behind a growing trend.

We in the humanities too often persist in counterproductive practices; in the publishing arena, we pooh-pooh electronic and open access journals as being substandard, despite the obvious financial incentives for that form of publication and despite the vast audiences that that form of publication reaches. We insist on depleting our already limited funds by producing journals that do not even cover the costs of production. Such waste seems to justify complaints in other disciplines that humanities departments are not worthy of increased funding because they fail to generate significant, if any, returns on investment. Reconsidering peer review is only a minor step in the direction of reaffirming a demand in humanities scholarship; nevertheless, with more demand comes more money, so it behooves humanities scholars to cultivate open competition among journals, editors, and ideas—not that competition does not exist among these people and entities, only that it could be facilitated in more constructive ways and possibly even encouraged by editors and reviewers.

Law review procedures and protocols could help peer reviewed journals—each of which acts independently to gain readership and credibility and to secure the best scholarship—to adopt practices that are efficient and economical and therefore favorable to editors and writers alike. The law review process is too quick and efficient for us to forego at least some experimentation with its methods, but in light of the drawbacks mentioned earlier, the hybrid approach seems like the option that, above other options, would maintain high levels of professional scrutiny while enabling publishing efficiency.

I am not wedded to the hybrid approach, and if someone were to present a better alternative, I would welcome it. As yet I have heard no better options. Until we experiment with the approach, we cannot confirm or disconfirm its advantages and viability. Let us test the approach and find out by experience whether it will work.