



## Comparative Scholarship: Should Law Students Serve as Gatekeepers for the Academy?

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### I. Introduction

The United States is the only country in the world where it is customary for law students to decide whether law professors' articles should be published in academic journals.<sup>1</sup> This curious custom puts students in the position of serving as gatekeepers for the professional lives of the faculty because an important part of whether professors are hired, promoted, and tenured depends upon their record of scholarship—the number of articles they have published in these student-edited law journals.<sup>2</sup>

This situation is further colored by the fact that there is a pecking order to the journals, and law professors care intensely about this pecking order because articles in high-ranked law journals are more impressive to the decision-makers in matters hiring, promotion, and tenure.<sup>3</sup>

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<sup>1</sup> See Leah M. Christensen & Julie A. 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, 208 (2007-2008); Ronen Perry, *De Jure [sic] Park*, 39 CONN. L. REV. CONNTEMPLATIONS 54, 55 (2007). Available at <http://connecticutlawreview.org/files/2012/04/PerryFinal.pdf> (last visited April 29, 2013).

<sup>2</sup> See Brent E. Newton, *The Ninety-Five Theses; Systemic Reforms of American Legal education and Licensure*, 64 S.C. L. REV. 55, 126, 129, 130 (2012).

<sup>3</sup> *Id.* at 127.

Law journals in the United States were not created to have this kind of power over the lives of professors.<sup>4</sup> The evolution has been gradual and accidental. Law reviews were originally intended to help foster connections with alumni, help to make law students more desirable to employers, and enhance the school's reputation under the theory that law professors "lacked the time and financial incentive" to operate their own law journals; also, at the turn of the century, scholarship was not regarded as important, and professors did not want to compete with professionally-edited journals.<sup>5</sup>

Although professors have criticized the system for decades,<sup>6</sup> there has not been a widespread movement to change it.

Should this system be changed? To understand whether it should be changed, law school professors and administrators should consider the following ten questions, which will be discussed in this article:

- (1) What was the original purpose of law journals?
- (2) Has that purpose changed over time?
- (3) If that purpose has changed, how and why?
- (4) Why would law school administrations allow students to have power over professors?
- (5) Was that the original intention of law school administrations when they first allowed students to edit law journals?
- (6) Is it customary for law schools in other countries to publish law journals?
- (7) Who edits law journals in other countries?
- (8) Whose work do those law journals publish?
- (9) In the United States, do professions other than law allow students to sit in judgment over professors?
- (10) What are the pros and cons of the current system in the United States that allows law students to select and edit professors' articles?

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<sup>4</sup> See Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 622 (1996).

<sup>5</sup> *Id.* The author notes that professors at the turn of the century believed that "It was more polite to have students take the appropriate personal and professional risks," rather than compete with the professionally-published law journals.

<sup>6</sup> See *supra* note 1.

No other profession in the United States shares this practice of student-edited professional journals.<sup>7</sup> Outside the United States, in countries where English-language law journals are published, students are not allowed to sit in judgment over the scholarly lives of their superiors. Instead, foreign law journals either use professional editors or a hybrid system where students edit the articles, but professionals make the final decisions.

In this article, I will discuss the differences between the system in the United States and the systems elsewhere, as well as a four-year-old effort by a small group of law schools in the United States to move away from the traditional model.

## II. Background

In the United States, students edit the majority of the law journals, and there is no professional peer review of articles submitted by professors, judges, and practicing lawyers.<sup>8</sup> Despite this, the professionals continue to publish as much as possible in these journals because their professional status is enhanced by having their writing published; indeed, the hiring, promotion, and tenure of professors at law schools depends on having their writing published.<sup>9</sup> But should students be making these decisions?

In other professions in the United States, professional's articles submitted for publication are evaluated by professionals, not by students.<sup>10</sup>

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<sup>77</sup> See *supra* note 2 at 129, in which the author describes this system as “irrational” and states that it is “contrary to the scholarly rigor” of other disciplines.

<sup>8</sup> *Id.* Washington and Lee Law School's online data base lists 651 student-edited law journals in the U.S. and 336 peer-edited or refereed law journals in the U.S. (Almost all are not affiliated with law schools.) See <http://lawlib.wlu.edu/LJ/index.aspx> (last visited April 29, 2013). This data base allows readers to rank and tally journals based on each of a number of categories such as “peer-edited” or “student-edited.”

<sup>9</sup> Russi, Luigi and Longobardi, Federico, *A Tiny Heart Beating: Student-Edited Legal Periodicals in Good Ol' Europe*, 10 GERMAN L.J. 1127 (2009); see also *supra* note 2 at 130.

<sup>10</sup> See Cameron Stracher, *Reading, Writing, and Citing: In Praise of Law Reviews*, 52 N.Y.L. SCH. L. REV. 349, 351 (2007-2008) in which the author notes that it is hard to imagine medical students “making or breaking”

### III. History

In the United States, the majority of law journals are published by law schools.<sup>11</sup> The names of some of these journals contain the words “law review” rather than “law journal,” but that is just a semantic difference. That is, there is no difference between a “law journal” and a “law review,” although generally a law school’s primary, general-interest legal journal is colloquially referred to as a “law review” even if its official name contains the words “law journal.” Publishing companies and bar associations also publish law journals, but these are not as numerous as bar journals published by law schools; they also are not generally as prestigious.<sup>12</sup>

Articles published in law journals are known as legal “scholarship.” This scholarly writing is created by law professors, practicing lawyers, judges, and law students. In most of the world—with the exclusion of the United States—authors of scholarly articles about the law submit them to publications that are edited by professionals.<sup>13</sup> In some cases, these professionals are law professors; in other cases, they are professional editors. Also, in most of the world, with the exclusion of the United States, the English-language articles are “peer reviewed,”<sup>14</sup> which means that one or two experts in the subject area review the article, comment on it, and ask the author to make changes—usually to add more information or to clarify information that is already there.<sup>15</sup>

In the United States, however, the custom and practice is quite different. The majority of law journals are published by law schools, and the majority of law journals are edited by law students. And this means that law students have control over

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careers of professionals by being allowed to select articles for publication in prestigious medical journals.

<sup>11</sup> See *supra* note 2.

<sup>12</sup> See <http://lawlib.wlu.edu/lj/>. Washington and Lee University School of Law maintains a web site that lists and ranks law journals by categories such as “student-edited,” “peer-edited,” and “refereed.”

<sup>13</sup> This information was derived from my search of websites of English-language law journals throughout the world.

<sup>14</sup> The term “peer reviewed” is synonymous with “peer edited.”

<sup>15</sup> See *supra* note 11.

which professionals are able to have their articles published. In most cases, there is no peer review.

Law journals have existed in the United States as far back as the 1800s. Legal scholarship at that time was not an academic activity; rather, it was a professional endeavor. Law journals were a vehicle to help judges and lawyers understand case law and its applications.

The University of Pennsylvania Law Review claims its place as the oldest continuously-published legal periodical in the United States. Dating back to 1852, it set the stage for subsequent law publications that were designed to help practitioners rather than serve as a research tool for academics.<sup>16</sup>

Law journals continued to exist primarily to serve professionals for approximately thirty-five years.<sup>17</sup> In 1887, Harvard Law School established the first student-edited law review that continued to publish for more than just a few years. The journal—known as the Harvard Law Review—has been published ever since. Its original goal, as stated in the first issue, was not to analyze cases but to serve as a vehicle to disseminate information about Harvard Law School:

Our object, primarily, is to set forth the work done in the school with which we are connected, to furnish news of interest to those who have studied law in Cambridge, and to give, if possible, to all who are interested in the subject of legal education, some idea of what is done under the Harvard system of instruction. Yet we are not without hopes that the *Review* may be serviceable to the profession at large.<sup>18</sup>

Law schools across the country began to establish student-edited law reviews because the prestigious Harvard Law School had one.<sup>19</sup> Today, almost every one of the 202

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<sup>16</sup> Forty-four years later, in 1896, it became affiliated with an academic institution.

<sup>17</sup> Some of these early law reviews were edited by faculty. See Fred Rodell *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936).

<sup>18</sup> 1 HARV. L. REV. 35 (1887).

<sup>19</sup> See Afton Dekanel, *Faculty-Edited Law Reviews: Should the Law Schools Join the Rest of the Academe?*, 57 UMKC L. REV. 233, 235 (1989); Lyman P. Wilson, *The Law Schools, the Law Reviews and the Courts*, 30 CORNELL L.Q. 488, 493 (1945); John J. McKelvey, *The Law School Review, 1887-1937*, 50 HARVARD L. REV. 868, 882 (1937).

accredited American law schools publishes a general-interest law review.<sup>20</sup> Most of these student-edited legal periodicals are printed and bound; in recent years, many also have established online versions. In the United States, most law schools produce more than one student-edited publication. In addition to the general-interest journal, the law schools also publish specialty journals such as journals of gender and policy, civil rights, law and technology, environmental law, and international law.<sup>21</sup>

Membership on the staff of the general-interest law reviews generally is, in most cases, more prestigious than membership on a specialty journal because the selection process for the general-interest law review is more rigorous. This selection process begins at the end of the first year of law school when students with excellent grades are allowed to enter a writing competition in which the best writers and researchers are chosen for membership in the general-interest law review.<sup>22</sup> Positions on specialty journals generally do not require a writing competition and generally are open to all students who are interested, regardless of their grades.

Membership in these student-edited law journals is divided into staff members and editors. Second-year students usually begin as staff members rather than editors. The editors usually are third-year students. Most law review members are expected to write a “Note” or “Comment” of publishable quality. They also edit citations in pieces that have been accepted for publication, make sure that footnotes are in proper form, and check to ascertain that the references support the statements that the authors claim they support. Students often receive academic credit for their work on the law review.

Students are assisted by faculty advisors who usually do not edit manuscripts submitted by professionals or choose what should be published. These faculty advisors give general

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<sup>20</sup> At present, there are 202 law schools in the United States that are accredited by the American Bar Association, which is the national organization that accredits law schools.

<sup>21</sup> See <http://lawlib.wlu.edu/lj/>.

<sup>22</sup> In the United States, law school is a graduate program. The full-time programs generally last for three years. The part-time programs generally last for four years.

guidance and assist the law review staff members in writing their Notes and Comments.<sup>23</sup>

This work on the law review has long been viewed by professors and law school administrators as an apprenticeship in legal scholarship, research, editing, and managerial skills. Within the profession, it is considered to be a valuable educational tool that is a historic part of the law school experience in the United States. Originally, when law reviews began to become established at the turn of the 1900s, some law reviews were edited by professors. Professors, however, lacked the time to do this. Also, many may have been disinclined to compete with professionally-edited journals.<sup>24</sup>

The experience of being a law review editor often is a prerequisite for obtaining an interview for a highly-competitive position at big-city large firms, most notably in New York. It is often a prerequisite for obtaining an interview for a job as law clerk to a federal judge. Thus, students are eager to earn a place on the staff of a law review because it can help them to jump-start their future careers. Over the years, many federal judges, as well as partners at some of the country's most prestigious law firms, have come from the ranks of law reviews. It is at these law reviews that students gain a great deal of experience in writing, research, and editing, which helps them develop into proficient practitioners.

Students have been editing law journals in the United States for approximately 126 years. During this time, the nature of the articles in those journals has evolved. Originally, law reviews were created to (a) foster connections between the law schools and their alumni, (b) make students more desirable to employers, and (c) enhance the school's reputation.<sup>25</sup>

Whereas law reviews originally focused on legal doctrine and case analysis, now many articles involve in-depth discussions about subjects such as economics, history, political philosophy, psychology, and statistics. Students, because of their classroom training at law school, were well-suited to

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<sup>23</sup> A "Note" is a student-authored piece analyzing a legal issue; a "Comment" is a student-authored piece analyzing a case, book, article, or piece of legislation.

<sup>24</sup> See *supra* note 4 at 622: "It was more polite to have students take the appropriate personal and professional risks."

<sup>25</sup> See *supra* note 4 at 622.

understand discussions and edit articles about legal doctrine and cases. But law students—the majority of whom are in their early-to-mid twenties—normally do not possess the depth of subject-knowledge, wisdom, and life-perspective to excel at editing these cross-disciplinary articles.<sup>26</sup>

Strangely, law is the only academic discipline in the United States where students serve as the sentries to professional scholarship. In other disciplines, articles submitted to academic journals are reviewed by professionals before being accepted for publication. Scientific journals, for example, generally involve a “peer review” where the reviewers are experts on the specific subject matter of the author’s submission.

Because professional reviewers are busy with their careers, periodicals using professional reviewers generally ask authors to make exclusive submissions—that is, to submit each article to one publication at a time. That way, a reviewer will not spend time reading and commenting on an article only to discover that another journal has accepted it for publication.

But historically, law reviews have operated under a different submission system. Legal scholars are allowed to submit each article to multiple journals simultaneously because the reviewers are not professionals with tight schedules, but third-year law students who presumably have more time to sift through piles of manuscripts.

Unlike their colleagues in other disciplines, legal scholars do not get “acceptances”; they get “offers” to publish. Those who receive an offer have a tight deadline to accept or reject the offer. During that time, the authors can play off one law review against the other to try to obtain the best offer. That is, the authors can contact other law reviews to whom they submitted papers and try to get them accepted there. Authors frequently submit to twenty or more publications at a time, and then try to have their articles published in the most prestigious one. The advent of electronic submission services

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<sup>26</sup> See Arthur Nussbaum, *Some Remarks About the Position of the Student-Editors of the Law Review*, 75 J. LEGAL EDUC. 381 (1955); James Lindgren, *An Author’s Manifesto*, 61 U. CHI. L. REV. 527, 531 (1994); see also Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279, 286 (1962).

such as LexOpus, ExpressO, and Scholastica make submission easy.<sup>27</sup>

Critics charge that this traditional process of review by student editors suppresses the voices of new legal scholars. The suppression occurs because student editors tend to put a heavy emphasis on author's credentials as a method of ensuring that the journal will contain high-quality articles. These credentials include past publications and current institutional affiliation.<sup>28</sup> As a result, prolific writers who teach at top law schools often receive favoritism. This is, of course, particularly unfair to new academics. It is also unfair to legal practitioners who do not have a university affiliation and who wish to publish their articles occasionally. However, there are numerous other outlets for them to publish their articles including bar association journals, although those are considered somewhat less prestigious than the top scholarly law reviews.

Practitioners also can seek publication of their articles in the lower-ranked law reviews or specialty law journals, hoping to amass enough credentials to work their way up to the more prestigious ones. Frequently, though, practitioners prefer to have their writing published in the bar association journals because those are read by their colleagues in the active practice of law, whereas the law reviews typically are read by full-time law professors. Law professors, on the other hand, tend to prefer to have their writing published in academic journals because these journals are read by their peers in academia,

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<sup>27</sup>See <http://lexopus.yiil.org/lexopus/about.aspx>;  
<http://law.bepress.com/expresso/>; [https://scholasticahq.com/law\\_reviews](https://scholasticahq.com/law_reviews).  
These submission services vary in cost from free to \$5 per law review.

<sup>28</sup> Law review editors also tend to favor authors whose publications contain catchy or controversial titles that are likely to catch the attention of readers and lead to increased numbers of citations, which, in turn, will increase the rank of the law journal. One such controversial title is "F\*CK" (asterisk not included in actual title) by Christopher M. Fairman of the Michael E. Moritz College of Law at Ohio State University. The article discusses the legal implications of the taboo word. As of April 30, 2013, the article had been downloaded 33,125 times from the Social Science Research Network, an online repository of academic scholarship. The article was published as Ohio State Public Law Working Paper No. 59 (March 2006) and is available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=896790](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=896790).

which enhances the authors' status within academia and assists in hiring, tenure, and promotion.<sup>29</sup>

#### IV. Criticism of the United States Method

The custom and practice of allowing students to decide which articles to publish has come under fire from academics whose articles were rejected for publication by high-ranking law reviews. Additionally, the custom and practice of allowing students to exercise unfettered discretion in editing these articles has received considerable criticism from professors who have been asked to spend a great deal of time making changes that the professors believe do not contribute to the clarity or accuracy of the article.<sup>30</sup> American law reviews have been criticized for their inordinate number of footnotes, and some critics have said that it seems as though the student editors want authors to footnote absolutely every statement, often including those that seem self-evident.<sup>31</sup> Also, student editors often seem to pay an obsessive amount of attention to the correct form of citations and footnotes.<sup>32</sup> This may account for the fact that articles in U.S. law reviews are approximately double the length of articles in legal journals in most of the rest of the world.<sup>33</sup>

Law reviews in the United States typically allow articles to contain as many as 25,000-35,000 words including

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<sup>29</sup> See *supra* note 1.

<sup>30</sup> See *supra* note 4 at 642. (The author notes complaints about students editing mistakes into articles.)

<sup>31</sup> This is what I refer to as “the live lawyers” rule. That is, many law review editors probably would require a citation for the statement “Live lawyers usually are breathing,” even though it seems self-evident that if lawyers are alive, those lawyers usually are breathing.

<sup>32</sup> One of my students, a law review editor, proudly told me that he and another editor had spent half an hour debating about whether to italicize a comma in a citation. It is unclear why any commas should ever be italicized or why italicizing a comma would contribute to a reader's ability to find a reference any more easily than if the comma were not italicized.

<sup>33</sup> To be fair, the U.S. obsession with footnotes has its origins in our culture's belief that stating someone's idea without crediting that person is stealing—also known as plagiarism. In some other cultures, however, copying the ideas of others is regarded as a form of flattery.

footnotes.<sup>34</sup> In contrast, articles in legal journals in most countries outside the United States are less than half that length—generally from 8,000 to 12,000 words. The only exception to this is in Canada where some of the leading law journals allow up to 15,000-20,000 words—a length that lies between the norm in the U.S. and the norms in the rest of the world.

Recently, some United States law schools have moved to shorten the length of their law review articles. In December 2004, the Harvard Law Review surveyed nearly 800 law professors at United States law schools and found that more than 85 percent of them considered law review articles to be too long.<sup>35</sup> As a result, the Harvard Law review adopted a policy limiting article length to 30,000 words and stating that a 25,000-word maximum was preferred.<sup>36</sup> But this still is substantially longer than law review articles in most of the rest of the world. Nonetheless, it is a step forward. Eleven leading law journals across the country followed Harvard and also committed to play an active role in moderating the length of law review articles. They were Columbia, Cornell, Duke, Georgetown, Harvard, Michigan, Stanford, Texas, University of Pennsylvania, Virginia, and Yale.<sup>37</sup>

Criticism of law reviews in the United States has been “particularly strident in recent years.”<sup>38</sup> Critics of the United States custom of having students edit law reviews say that students are not well-equipped to decide whether articles deserved to be published in legal journals because students have at most two years of editing experience, and more often only one year or less. Thus, the critics ask, how can the student-editors judge whether an article on a topic is technically accurate or makes a substantive contribution to the

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<sup>34</sup> Five thousand words fill approximately 10 pages of a law review, so a 25,000-word article would fill approximately 50 pages. A 30,000-word law review article would fill approximately 60 pages.

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See

[http://www.harvardlawreview.org/law\\_review\\_usage\\_survey\\_results.pdf](http://www.harvardlawreview.org/law_review_usage_survey_results.pdf).

<sup>36</sup> See <http://www.harvardlawreview.org/submissions.php>.

<sup>37</sup> See [http://www.harvardlawreview.org/PDF/articles\\_length\\_policy.pdf](http://www.harvardlawreview.org/PDF/articles_length_policy.pdf).

<sup>38</sup> Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S. C. L. REV. 55, 126 (2012).

body of literature in that field? The problem is not a lack of intelligence but a lack of experience and expertise.<sup>39</sup>

Not only do student editors lack subject matter expertise, but the student editorial boards also completely change every year as third-year student-editors graduate. Thus, the “institutional memory” and accumulated subject matter expertise changes every year. European law journals and United States journals in other disciplines—such as the physical sciences—don’t suffer from this shortcoming because editors are either permanent employees or serve for multiple years at a time.

## V. Comparison with Other Countries

In general, law reviews in continental Europe use professional editors rather than students to edit the academic writing of professors and practicing lawyers.<sup>40</sup>

In the United Kingdom, all the leading law reviews are edited and run by professors. The leading law reviews are: *Law Quarterly Review*, the *Modern Law Review*, the *Cambridge Law Review*, and the *Oxford Journal of Legal Studies*. None is student-run or edited. Unlike the United States law reviews, they require exclusive submission—to one journal at a time—and, unlike the United States law reviews, they provide “blind” peer review. This means that the reviewers do not know the author’s name, institutional affiliation, or any other information about the writer. Further, these journals differ from the United States ones in that they discourage excess footnoting. In the United States, not only do law reviews editors often become overzealous about wanting additional citations, but they encourage the practice of having entire side conversations in the footnotes.<sup>41</sup>

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<sup>39</sup> In his article, *The Future of Student-Edited Law Reviews*, 47 *STAN. L. REV.* 1131, 1133 (1995),

Richard A. Posner offers the following solution to this problem: Allow students to edit articles containing only doctrinal scholarship, and use scholar-specialists to edit scholarship that contains discussions about subjects other than law.

<sup>40</sup> See *supra* note 7 at 1128.

<sup>41</sup> This is like watching a sporting event on television while also watching a different, but vaguely related, sporting event on a small portion of the same

There is a law journal in England that is edited by students, but it publishes writing only by students—not by professors. Like law journals in the United States, this journal affords law students the opportunity to acquire research and editing skills. The difference is that the British journal does not allow student editors to sit in judgment over professors' writing. The journal is called the King's Student Law Review. It is published by the School of Law at King's College in London, and was started in 2007. The law review seeks student papers of 9,000-12,000 words including footnotes, which is considerably shorter than articles in most United States law reviews, yet long enough to give students ample room to express their research and analysis in a reasoned and articulate manner.<sup>42</sup>

A small number of student-run law reviews that publish only student writing also have been established during the past few years in Germany and the Czech Republic. And a student-run publication recently was established in Italy that accepts working papers, but not final articles, from students, academics, and practitioners. It is a law review known as Bocconi Legal Papers.<sup>43</sup> The students are assisted by faculty members, but there is no peer review. This publication was established in 2008 by the Bocconi School of Law in Milan, and is Italy's first publication to be edited and operated solely by law students.

Law reviews in Canada and in Australia are largely a hybrid of the United States and the European models. As with the United States law reviews, these journals publish the writing of law professors, professionals, and judges, as well as some student writing. In Australia, students edit articles in their law school's journals, but the articles also go to professional peer reviewers before being sent back to the student editors for a final decision about publishing.

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screen. This causes the viewer to lose concentration on the main event because the viewer is constantly being drawn to the distracting secondary event. As someone who has been trained in direct journalistic writing, I find these constant digressions unfathomable. If something is important or interesting enough to write in my article, it belongs in the main text, not in a "by-the-way" side conversation adjacent to it.

<sup>42</sup> See <http://www.kslr.org.uk>.

<sup>43</sup> See <http://www.bocconilegalpapers.org>.

At the Melbourne University Law Review, which is published by the Melbourne Law School at the University of Melbourne in Australia, students make the final decision about what articles to publish, but the articles are reviewed by at least two professional peer reviewers. Articles are required to be between 8,000 and 12,000 words including footnotes, which is similar to the length of articles in European law reviews.<sup>44</sup>

At the Sydney Law Review, which is published by the Sydney Law School of the University of Sydney, Australia, the editorial board is composed of students, but each article is reviewed by at least one academic “referee” who is a professional with expertise in the field of the article. Articles must be between 8,000 and 12,000 words including footnotes.<sup>45</sup>

One other noteworthy Australian law journal is the student-edited Melbourne Journal of International Law.<sup>46</sup> It is considered to be extremely prestigious and influential. Articles in this journal receive professional peer-review and cannot exceed 10,000 words in length.

In Canada, student-edited law journals allow articles up to 20,000 words at some of the better-known Canadian law journals. Although these articles are longer than those in the European and Australian journals, the articles still are shorter than many of the ones in the United States journals.

One example of this is The Queens Law Journal, which is one of Canada’s most highly respected law journals. It is edited by students, but all submissions must pass through a blind external assessment by at least two outside referees who are scholars in the relevant subject area. The journal is published by the Queens University Faculty of Law in Kingston, Ontario.<sup>47</sup>

Another example of this hybrid system is the McGill University Law Journal in Montreal, Canada. The editorial board is student-run, and there are external referees. An article must pass an internal evaluation before being sent for external review by a professional. Articles cannot exceed 20,000 words.<sup>48</sup>

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<sup>44</sup> See <http://www.law.unimelb.edu.au/mulr>.

<sup>45</sup> See <http://sydney.edu.au/law/slr/>.

<sup>46</sup> See <http://www.law.unimelb.edu.au/mjil>.

<sup>47</sup> See <http://law.queensu.ca>.

<sup>48</sup> See <http://www.lawjournal.mcgill.ca>.

The Osgood Hall Law Journal, published by the Law School of York University, in Toronto, Canada, is similar in its operation, with a first review by the student-run editorial board and then an external review by experts. Articles must not exceed 20,000 words.<sup>49</sup>

In the United States, law reviews have resisted adding a layer of professional peer review. Those who oppose it have argued that a professional review takes the power away from student editors and deprives them of a valuable educational experience.<sup>50</sup> But in the Australian and Canadian models, students do not surrender decision-making power to professional peer reviewers. Nor do the students lose the educational experience of editing articles written by learned professors. Instead, they gain an additional educational experience because they learn how to critique effectively from the professional peer reviewers. The students also learn from seeing the shortcomings of the authors that are identified by the professional peer reviewers. These are shortcomings that the students typically would not have been able to identify because of the students' lack of experience. Student editors still make the final decisions and are not bound by reviewers' evaluations, although they give them great weight. Thus, in this hybrid system, student editors retain their powers of discretion while also learning more about legal scholarship by being able to review the comments of professional reviewers.

Although the hybrid system can be more time-consuming because the professional editing adds another layer to the article-review process, the hybrid system provides a better educational experience than the traditional student-editing process for these reasons:

(1) Student editors who work in a hybrid system can see rigorous and thoughtful scholarly criticism first-hand and emulate it. Just as judicial clerks learn how to write better briefs by working with experienced judges, law review editors will learn to become better scholars by working with experienced professional editors.

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<sup>49</sup> See <http://www.ohlj.ca>.

<sup>50</sup> A multitude of law review websites state that participating on the law review is a "valuable" educational experience.

(2) Professional peer review requires student editors to use scholarly criticism to make publication decisions, rather than relying on the credentials of the authors.

For these reasons, eighteen United States law reviews have moved to the kind of hybrid system that is widely used in Canada and Australia. These student-edited law journals have joined a consortium known as the Peer Reviewed Scholarship Marketplace (PRSM).<sup>51</sup> PRSM began in 2009 with the Peer Review Pilot Program, an experiment started by the South Carolina Law Review. As with the Canadian law journals, which require exclusive submissions, authors seeking manuscript review by PRSM must submit their articles exclusively. PRSM arranges for a double-blind peer review of each article. Approximately six weeks later, law reviews that are members of PRSM receive a copy of each article with its reviews. These reviews help the student-editors to make publication decisions.

Each law review affiliated with PRSM makes its own offers to authors. The authors are free to accept or decline. If an author is not satisfied with the offers—or if the author does not receive an offer after a specified date—the author is free to submit the manuscript elsewhere. The system of multiple journals using one set of peer reviewers is substantially faster than multiple journals each using independent reviewers. In the latter system, the amount of time between submissions and publication can be quite lengthy if authors are required to submit their articles to each publication exclusively and then wait to see if that publication rejects the article, which would require the author to submit the article elsewhere and go through the lengthy peer-review process again.<sup>52</sup>

Participation in PRSM is open to all United States law reviews at no cost. The eighteen law journals that now participate are: Akron Law Review, Alabama Law Review, Arizona State Law Journal, Drexel Law Review, Florida Law Review, Fordham Law Review, Georgia Law Review, Hastings Law Review, Louisiana Law Review, Loyola of Los Angeles Law Review, Mississippi Law Review, Nevada Law Review, North

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<sup>51</sup> See <http://www.legalpeerreview.org>.

<sup>52</sup> This is the chief criticism of the kind of exclusive-submission peer-review system used at student-edited law reviews in Canada.

Carolina Law Review, Rutgers Law Journal, South Carolina Law Review, Valparaiso University Law Review, Wake Forest Law Review, and Washington & Lee Law Review.

It should be noted that the PRSM system differs slightly from the Canadian and Australian models in that student editors in those countries review articles before professional peer review. In the PRSM system, student editors review articles after professional peer review.

## VI. Conclusion

The purpose of law reviews in the United States has evolved over time. So, too, should their method of operation. Now that the processes of hiring, promotion, and tenure for law professors gives heavy weight to their record of publications, the editorial review of articles submitted for publication in law journals should be professionalized.

The PRSM consortium is a step in the right direction, but more law schools are not likely to move to that model until faculty advisors of law reviews persuade the student editors to go there. The law review editors are not likely to embrace a new system unless they believe that it will make their job easier or make their publication more prestigious. Adding a layer of professional peer review before student editing will not only assist the law review staff members with their job, but it will help to cut down on the time it takes staff members to research matters relating to the content of professors' articles because the professional reviewers in each field would, presumably, be well-acquainted with the subject matter. Additionally, the status of a student-edited law review is likely to increase when it uses peer reviewers because this gives an aura of professionalism to the publication—particularly to a publication that is not at the top end of the ranking system.

The system is unlikely to change if the decision is left to the students who run the publications because they will perceive the professional peer reviewers as a threat to the students' authority on their publication. Additionally, the students are likely to view their potential interactions with these reviewers as extra work.

The system also is unlikely to change if the decision is left to the general population of faculty members at law schools

because they are too busy teaching and writing to have time to try to change a system that has existed for more than 100 years. Similarly, law school administrators have no incentive to try to change the current system because it is not harming the operation of the schools.

The law review's faculty advisors, however, are in a position to change the system because they work closely with the student staffers and are able to earn their respect. Thus, the faculty advisors are in a position to suggest the PRSM model to law review editors and urge them to try it. Absent this effort, law students will continue to guard the gates of the academy, and the antiquated tradition of law students holding power over professors will persist.