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# Escape from the Navel-Gazing Academy: A Modest Proposal for Student-Edited Legal Scholarship

Michael Klinger  
*UC Irvine School of Law*

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# Escape from the Navel-Gazing Academy\*: A Modest Proposal for Student-Edited Legal Scholarship

Michael Klinger\*\*

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## INTRODUCTION

My purpose in this brief Essay is to make an incremental contribution to an existing body of work that has long served to critique the various norms of legal academia.<sup>1</sup> I seek to place this critique in dialogue with those of scholars whose

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\* Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 43 (1936) (“Law review writers seem to rank among our most adept navel-gazers.”).

\*\* Michael Klinger, a member of the second class to attend the University of California, Irvine School of Law, served the *Law Review* as a staff editor and later as the Article Selection & Style Chair on the Executive Board. He is an attorney licensed to practice in New Jersey and New York, and lives in New York City.

1. See Susan Bartie, *The Impact of Legal Meta-Scholarship: Love Thy Navel*, 18 GRIFFITH L. REV. 727, 727 (2009) (examining the “role and value” of legal scholarship about legal scholarship); David P. Bryden, *Scholarship About Scholarship*, 63 U. COLO. L. REV. 641, 642–48 (1992) (identifying, and resigning himself to, certain characteristic faults of legal scholarship, including “academic parochialism,” “overemphasis on glamorous subjects,” “not enough empirical research,” “not enough

works suggest normative prescriptions for achieving particular goals through legal scholarship and the legal academy.<sup>2</sup> But I also share the belief of some others that legal scholarship and the production of legal knowledge might be adapted to suit one agenda (say, in one particular journal) without detracting from another (in a different journal), or more generally from the validity of any of the myriad putative goals of legal scholarship and the academy. In other words, I propose that legal scholarship, at least in its traditional law review incarnation, need not be all of a piece.<sup>3</sup> Just as there are many ways to practice law and to teach it, there is room for greater specialization and variety in the production of legal scholarship.

The question of how the legal profession creates knowledge (or, problematically for some, “vets” it)<sup>4</sup> has been discussed and debated for decades.<sup>5</sup> The debate has questioned the role of students in the process of selecting works for publication and editing that work,<sup>6</sup> the lack of a peer review process in most instances,<sup>7</sup> the esoteric nature of some legal scholarship,<sup>8</sup> and the impact that legal scholarship does (or does not) have on the world of legal praxis.<sup>9</sup> The list of scholars who engage in this metacritique is long, featuring judges, law professors,

history,” “not enough innovative teaching materials,” “awful style,” and a tendency toward being “too politically conformist”).

2. To do so is to follow a well-marked path. See Ugo Colella, *Foreword: The Law Review Is Better Than Spinach*, 70 TUL. L. REV. i, i (1995) (explaining the necessity of grounding any discussion of the law review’s vision in an awareness of past critiques: “No discussion of a law review’s mission can begin without understanding the criticisms that have plagued the institution of the law review since the 1930s.”). The foreword goes on to describe the law review, generally, as “the soul of the legal profession.” *Id.* at ii.

3. This is not a new idea. See Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1329 (2001) (arguing that, for all of the many forms that legal scholarship takes, the diversity of approaches has its own value: “All perspectives are partial, and law has done better than most fields in transcending rigid disciplinary boundaries and integrating theory and practice.”).

4. Arthur D. Austin, *The “Custom of Vetting” as a Substitute for Peer Review*, 32 ARIZ. L. REV. 1, 1 (1989).

5. It is not the project of this Essay to catalogue the rich body of scholarship that has grown up around the creation of legal scholarship. Excellent bibliographies collect these works. See, e.g., Mary Beth Beazley & Linda H. Edwards, *The Process and the Product: A Bibliography of Scholarship About Legal Scholarship*, 49 MERCER L. REV. 741 (1997); *The Role of the Law Review: A Select Bibliography*, 39 ALTA. L. REV. 690 (2001).

6. See, e.g., Natalie C. Cotton, Comment, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951 (2005); Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 OHIO N.U. L. REV. 563 (2007); Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131 (1994); Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601 (1999).

7. See Austin, *supra* note 4; Jonathan Mermin, *Remaking Law Review*, 56 RUTGERS L. REV. 603, 606 (2003). See generally Nancy McCormack, *Peer Review and Legal Publishing: What Librarians Need to Know about Open, Single-Blind, and Double-Blind Reviewing*, 101 LAW LIBR. J. 59 (2009).

8. Ronald J. Krotoszynski, Jr., *Legal Scholarship at the Crossroads: On Farve, Tragedy, and Redemption*, 77 TEX. L. REV. 321 (1998); see also Neil Duxbury, *In the Twilight of Legal Realism: Fred Rodell and the Limits of Legal Critique*, 11 OXFORD J. LEGAL STUD. 354 (1991) (reexamining Rodell’s realist legacy).

9. Krotoszynski, Jr., *supra* note 8; Rhode, *supra* note 3; Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835 (1987); Edward L. Rubin, *On Beyond Truth: A Theory for Evaluating Legal Scholarship*, 80 CALIF. L. REV. 889 (1992).

scholars from outside of the field of law, and law students.<sup>10</sup> Underpinning much of these critiques is a battle of norms, and questions over what the purpose of legal scholarship should be. These questions lead to broad (even vague) debates about the role of law in society, or the role of scholarship in law, but to the extent they appear to require an *answer*, this Essay suggests that a better question might be whether there is room for a variety of purposes, methodologies, and products in the creation of legal scholarship.

This Essay proposes one way that a student-run law review might seek to create new knowledge, empower young scholars, and open new spaces for scholarly and practical debate about the means of producing progressive change through the law. Specifically, based on my experience as a law student, a law review member, and an elected leader of a young law review at a young school, I offer a set of concrete proposals for what the institution of law review could do to advance this debate.

### I. THE VISION AND THE GOAL: WHAT LAW REVIEW CAN TEACH

As a student-run publication for legal scholarship, the law-review-as-institution is often a source of discord and debate for the uncomfortable fit that inheres when students, who are not experts or even advanced in the intricacies of the developed academic discourse in any particular school of legal thought, are placed as gatekeepers in a system that determines authority and publication.<sup>11</sup> This is a distracting debate.

A law review can commit itself to providing both a valuable educational and

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10. See, e.g., Beazley & Edwards, *supra* note 5.

11. Austin, *supra* note 4, at 3 (“LAW PROFESSORS ARE EDITED BY LAW STUDENTS!”); Ross P. Buckley, *Stop the Blind from Leading the Sighted: A Proposal to Improve the Quality of U.S. Law Reviews*, 11 SCRIBES J. LEGAL WRITING 97, 97 (2007) (“Most law-review editors in the U.S. system do not know how to edit and, in many cases, do not fully understand what they are editing.”); Day, *supra* note 6, at 563 (“Law reviews are too important to be left to the editorial caprice of callow law students.”); Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 DENV. U. L. REV. 661, 661 (1997) (“People in other fields are astonished when they learn about it; they can hardly believe their ears. What, *students* decide which articles are worthy to be published? No peer review? And the students chop the work of their professors to bits? Amazing. And then they check every single footnote against the original source? Completely loco. Can this really be the way it is?”); James W. Harper, *Why Student-Run Law Reviews*, 82 MINN. L. REV. 1261, 1270 (1997) (“Student selection and editing of law reviews is as uniformly maligned as any other aspect of legal education.”); James Lindgren, *Student Editing: Using Education to Move Beyond Struggle*, 70 CHI.-KENT L. REV. 95, 95 (1994) (“I think we’ve failed as educators of our law review editors. We’ve asked [students] to do a task that they are incompetent to do. And then we’ve given them essentially no supervision.”); Mermin, *supra* note 7, at 606 (“The first concern law professors have with student-edited journals is that law students, who have no real background in legal scholarship, have the power to pass judgment on faculty manuscripts submitted for publication.”); Posner, *supra* note 6, at 1132 (“It should be obvious that in the performance of these tasks the reviews labor under grave handicaps. The gravest is that their staffs are composed primarily of young and inexperienced persons working part time: inexperienced not only as students of the law but also as editors, writers, supervisors, and managers.”).

skill-building experience for students,<sup>12</sup> as well as a mechanism for publishing important and relevant legal scholarship. Specifically, by committing to the educational and skill-building role of the law review, a number of ancillary arguments can be readily dispensed with. For example, quite apart from the distractions of debates over law students' "expertise" or qualifications to perform editorial work are the skills that the law review can inculcate. These include legal and sociolegal cognition at the highest levels, creative design in issue framing and ideological approach, and opportunities for curatorial leadership, helping scholars connect with one another and with new audiences to maximize their scholarly and social impacts.

*A. Engagement with Scholars and Scholarship: Cognition, Creation, and Curation*

Membership on a law review can represent a critical educational opportunity. It can translate immediately for second-year law students (2Ls, in the parlance of law schools) into intensive engagement with new scholarship. It can take form in an invitation to students to activate the passions that first brought them to legal studies by engaging with the existing literature, or to imagine a legal literature where one may not yet exist. The law review can serve as a site for involving a student deeply and richly in the tradition of scholarly inquiry. And having become immersed in one dialect of law's language, it can then spur the creative impulse to bring one body of inquiry into conversation with others, or to apply it broadly to a new or underdeveloped set of questions.

This, of course, is not novel, because it is the work of scholars everywhere. What may be novel is to give greater meaning to the role of students in the process. To give students access to the realm of formation of knowledge—of curation and creation of legal understandings—is to make real the promise of creating professionals and scholars in the law.<sup>13</sup> And to do so neatly sidesteps the typical and unnecessary question of law students' overreach, because it does not place students in the awkward position of evaluative judgment over their professors. Instead, students have an opportunity to engage collaboratively, and to capitalize on the great values of students' exuberance and passion that other models of law reviews may not so deliberately nurture, without succumbing to the

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12. See Leo P. Martinez, *Babies, Bathwater, and Law Reviews*, 47 STAN. L. REV. 1139, 1140 (1994) (crediting law reviews with training students "in careful, albeit anally retentive, reading of minutia" (citation omitted)); John T. Noonan, Jr., *Law Reviews*, 47 STAN. L. REV. 1117, 1118 (1995) (calling student-edited law reviews "the best" kind of education); Cameron Stracher, *Reading, Writing, and Citing: In Praise of Law Reviews*, 52 N.Y.L. SCH. L. REV. 349, 352 (2007) (arguing that the law review's "educational role is at least as important as its scholarly function").

13. See William Twining, *Pericles and The Plumber*, 83 LAW Q. REV. 396, 409 (1967) (discussing Karl Llewellyn's contribution to legal education, in response to the Langdellian focus on doctrinal teaching: "Knowledge of legal rules and ability to extract doctrine from cases form only a part of [the set of crafts in the practice of law]. Lawyers in practice have to employ other skills, many of which are teachable . . .").

oft-noted failures of other law reviews, which suffer by placing students at the mercy of their own inexperience and naiveté.<sup>14</sup>

B. *Life Skills for Success: Communication, Creativity, and Collaboration*

Law review, conceived of as a site of scholarly engagement and collaboration between students as well as between students and scholars, presents a valuable opportunity for participants to learn the critical skills of issue-based problem solving. These are skills that are as important to the lives of attorneys, in almost any setting, as they are rare.<sup>15</sup> That they are rare is a frustration to many, because they are both eminently teachable and eminently learnable. Law schools—even the most traditional of them—increasingly recognize the value of such skills, and respond by adding courses in alternative dispute resolution, negotiation, and multiparty dispute resolution, as well as experiential and clinical components, to their educational programs.<sup>16</sup> A student-run organization like the law review presents an obvious opportunity for student empowerment. Such empowerment can and, I argue, must be turned to greatest effect by training students in the skills that will most benefit them, whether in negotiations with opposing counsel, in navigating difficult relationships with clients, in multiparty litigation environments, or in any of an infinite variety of other settings. Law review, so conceived, presents an opportunity to study, develop, and operationalize such practices.

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14. See, e.g., Lindgren, *supra* note 11, at 95.

15. See Carrie Menkel-Meadow, *The Lawyer as Problem Solver and Third-Party Neutral: Creativity and Nonpartisanship in Lawyering*, 72 TEMP. L. REV. 785, 809 (1999) (“I worry every day that innovative and creative forms of problem solving are being co-opted by the very powerful adversary system. I wonder how we can teach new lawyers to be creative problem solvers, while learning enough legal principles, business and interpersonal skills, and judgment at the same time. I worry that conventional legal training and legal education is so powerful and robust that it has fought off almost every major reform effort (including legal realism and critical legal studies).” (citations omitted)); Carrie Menkel-Meadow, *Why and How to Study “Transnational” Law*, 1 U.C. IRVINE L. REV. 97, 101 (2011) (asserting the value of “teaching the modern lawyer how to be a creative legal problem solver, learning how to use lawyering skills, and a great possible variety of legal (and non-legal!) solutions to different kinds of social, legal, and economic problems,” in that case through a problem-based, transnationally focused legal educational project).

16. The scholarly discourse around law schools as a site for skills training has gone through phases, beginning in the first half of the twentieth century when clinics as a concept were first borrowed from the medical educational context. See Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 917 (1933) (“Suppose, however, that there were in each law school a legal clinic or dispensary. As before indicated, a considerable part of the teaching staff of a law school should consist of lawyers who already had varied experience in practice. Some of these men could run the law school legal clinics assisted by (a) graduate students; (b) under-graduate students; and (c) leading members of the local bar. The work of these clinics would be done for little or no charge. The teacher-clinicians would devote their full time to their teaching, including such clinical work, and would not engage in private practice.” (citation omitted)). But see Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 357, 384 (2007) (noting that differing education and practice contexts between medicine and law strain the analogy of legal clinical experiences to those in the medical context, and generally arguing that clinical models have an opportunity to go far beyond merely training future attorneys in the skill-sets they will need, and to become “a center of activity in the community,” fostering, among other things, political engagement).

C. *Opportunity for All: No Law Student Left Behind*

The opportunity to partake in law review must be open to every student in the law school. This Essay articulates a vision of the law review as one of critical educational opportunities. Thus envisioned, the purpose of the law review, if not the law school more generally, will actually prepare all students for impactful professional lives. Students who seek to grow and improve by participating must not be denied the opportunity to do so.

To the extent that many, if not most, law reviews restrict membership based on a variety of criteria, the mere fact of their practice of exclusion of some students from the organization would appear to indicate a vision of the law review's goals as largely incompatible with the fundamentally inclusive vision articulated here. Such organizations may espouse a vision that artificially restricts membership in order to maintain the desirability and rarity of the appellation of "law review member," and that gives meaning to the experience through manufactured notions of prestige and elite status.<sup>17</sup> The vision of a law review as a marker of status and achievement is realized in virtually every extant manifestation of the institution, and functions as one of many mechanisms to create hierarchy in the legal academy and profession.<sup>18</sup> The vision and goal of a law review that functions in this more traditional way is incompatible with a vision that foregrounds educational opportunity or personal growth and development because it is unnecessarily exclusive and limited to a relative few. It may also be undesirable because, as an inertial force for a well-established status quo, a law review that focuses its efforts on producing prestige for its student members does not also *necessarily* create an environment that fosters critical, active scholarly engagement by students, even if it does so for authors; and because it revisits the failures of generations of previous law reviews on each successive generation of law student and young scholar.<sup>19</sup>

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17. Though perhaps different from, and perhaps at odds with, the vision articulated here, such a vision is no less valid. It merely indicates a different purpose, and would lead, perhaps, to an end result more reifying of existing norms in the legal profession, rather than embracing as an aspirational goal the notion that students and their organized efforts may function as engines of progressive reforms in the legal academy and beyond. Such concepts are well developed in Duncan Kennedy's classic 1983 pamphlet, DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM 65–72 (N.Y. Univ. Press 2004) (1983).

18. E. Joshua Rosenkranz, *Law Review's Empire*, 39 HASTINGS L.J. 859, 911 (1987); Nathan H. Saunders, *Student-Edited Law Reviews: Reflections and Responses of an Inmate*, 49 DUKE L.J. 1663, 1675 (1999) (explaining the reliance on hierarchies and prestige as endemic for students and faculty in a broad educational program dominated by rankings).

19. See, e.g., Lindgren, *supra* note 11, at 95 (noting that law reviews ask student editors to do work they have not been adequately trained or prepared to do); Posner, *supra* note 6, at 1134 (noting that law review editors are "notoriously erratic" in attempting to "improve an author's style": "Academic presses use professional manuscript editors to edit books, but law reviews use amateur manuscript editors, the members of the review's staff, to edit law review articles, book reviews, and notes. These inexperienced editors, preoccupied with citation forms and other rule-bound approaches to editing, abet the worst tendencies of legal and academic writing." (citation omitted)); see also *infra*

## II. WHAT WE HAVE ALREADY ACCOMPLISHED

The *UC Irvine Law Review* was first published in 2011,<sup>20</sup> approximately one year after the arrival of the first class of students at University of California, Irvine School of Law (UCI Law).<sup>21</sup> The law review was founded, after some deliberation, with structural features that were intended, at least, as modifications of the prototypical law review form, if not as actual innovations. To begin with, the students who organized the first instantiation of the leadership decided not to create the traditional hierarchical model, with an editor in chief (EIC) and executive board members. Instead, it created a “flat” executive board structure. In the few years since its formation, the flat structure has largely remained, although it has been debated every year by students, and thus does not yet have the character of a settled rule.<sup>22</sup>

Second, the established bylaws allow for new members to be selected through a “write-on” process, as opposed to a strict “grade-on” process, which some schools use, or a hybrid grade-on/write-on process, which a number of other schools use. This somewhat addresses the concerns that attend when great significance is attached to the first semester grades of a first-year law student. A write-on test, with the addition of an editing component, which was added in the law review’s third year, also allows for a method of selection that perhaps more closely tracks the skills that the law review will ultimately rely on its members to master.

Third, the law review uses a rotating assignment structure so that junior members have opportunities to lead and to follow, to work closely with an author, and to work closely with senior staff members.

Those are the steps that the student leaders of the law review have taken over the course of its first three years.<sup>23</sup> But the faculty of the young law school has played a critical role as well. All but four of the issues of the law review have been based on symposia that have been held at UCI Law and organized by faculty members.<sup>24</sup> Faculty members have invited their peers to present, and then to

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note 39 for some scholars’ perspectives of how the present institution of law review (writ large) fails to advance legal discourse or the creation of legal knowledge.

20. *Foreword*, 1 U.C. IRVINE L. REV. i, i (2011).

21. *About UCI Law*, U.C. IRVINE SCH. L., [http://www.law.uci.edu/about\\_uci\\_law.html](http://www.law.uci.edu/about_uci_law.html) (last visited Aug. 23, 2014).

22. In January 2013, the *UC Irvine Law Review* Board received a proposed amendment to the organization’s bylaws. The amendment proposed to place an EIC atop the board as it was then structured. It was the third time in three years that the same basic proposal was debated, and although the proposal failed to garner sufficient support to pass in a subsequent vote by the full membership, it nevertheless ignited the passions of at least some students on either side of the debate, and thus suggested that the debate would return again at some point.

23. They are the same steps that I hopefully acknowledged could create an environment in which the law review would function as a force for progressive change. See Michael Klinger, *The Law Review as a Force for Progressive Change*, URSA VOICE (Mar. 26, 2012), <http://ursavoice.wordpress.com/2012/03/26/the-law-review-as-a-force-for-progressive-change>.

24. The exceptions are issues based on student-organized symposia. Each year, the school’s



contribute to the law review based on their presentations. As a result of this assistance from faculty, the law review has published scholarship from some of the most highly regarded authors in their respective fields of study.<sup>25</sup>

### III. HOW TO ACHIEVE THE GOALS: A ROADMAP

While founding or formational planning conversations at the institution certainly questioned *how* the work of a law review would be done, they did not—or did not adequately, at least—interrogate *why* such work should be done. In other words, the formation of the law review did not build on a clear articulation of what the work of a law review is or should be. Had such an articulation emerged through a more robust foundational conversation, to the extent it would have yielded a set of shared goals and a unified vision, it would also be largely determinative of many subsequent questions, including, for example, those raised by repeated proposals to instantiate an EIC-led hierarchical governance structure. Acknowledging that the strategic plan of one law review may differ from any other, and indeed that perhaps it should differ from one institution to the next, what follows is a set of practical steps that the *UC Irvine Law Review* could take to realize the vision of an inclusive and progressive student-directed institution.

#### A. *A Proposed Method of Content Selection*

This Essay proposes that, each August, the law review membership would meet to welcome new members, introduce all of the members to one another, engage in traditional editorial training, and identify some preliminary themes that members would like to explore in the next year's volume of issues. The second-year students who participate in this meeting would, in other words, be selecting

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administration plans to fund one such event, and the law review hopes to invite the event's presenters to contribute to a symposium issue based on the event. In other words, the scholars who contribute to this issue will have been invited by students, not by faculty members.

25. Benefiting from the support of faculty members, the law review has already demonstrated success by the traditional measurement of publishing renowned contributors. As of the spring of 2013, it had published a prominent roster of established and rising scholars, including Erwin Chemerinsky; Joseph F.C. DiMento; Carroll Seron; Ann Southworth; Catherine L. Fisk; Carrie Menkel-Meadow; Jennifer M. Chacón; Carrie Hempel; Beatrice Tice; Elizabeth F. Loftus; Gilbert Geis; Christopher Tomlins; Katherine J. Strandburg; Jeanne C. Fromer; Fiona E. Murray; Joshua S. Gans; Mackey L. Craven; Coleen V. Chien; Geertrui Van Overwalle; Robert W. Gordon; Steven Wilf; Laura F. Edwards; Kunal M. Parker; Roger Berkowitz; Marianne Constable; Christopher W. Schmidt; Norman W. Spaulding; Barbara Young Welke; Peter Goodrich; Shai J. Lavi; Assaf Likhovski; John Fabian Witt; Paul Frymer; Mariana Valverde; Roy Kreitner; Ritu Birla; Christopher Tomlins; John Comaroff; Mariano-Florentino Cuéllar; Ingrid V. Eagly; Jennifer Gordon; Pratheepan Gulasekaram; Ernesto Hernández-López; Bill Ong Hing; Kevin R. Johnson; Hiroshi Motomura; Juliet P. Stumpf; Michael J. Wishnie; Sal Humphreys; Melissa de Zwart; Trey Hickman; Kristin E. Hickman; Mark A. Lemley; Laura A. Heymann; James Chang; Farnaz Alemi; Eric Goldman; Yong Ming Kow; Bonnie Nardi; Joshua A.T. Fairfield; A. Mechele Dickerson; Harry First; Christopher R. Leslie; R. Anthony Reese; Margaret V. Sachs; Bob Solomon; Shaubin Talesh; Stephanie M. Wildman; Margalynne Armstrong; Beverly Moran; Alejandro E. Camacho; Michael Robinson-Dorn; Holly Doremus; Barton H. Thompson, Jr.; Joel R. Reynolds; and Damon K. Nagami.

the thematic programming that they would then be responsible for producing in their third year. There is no end to the creative ways that themes might be established. Law reviews have frequently established themes for a given issue—in fact, the symposium-based model is one version of this, as each contribution responds to the call from the symposium organizer.<sup>26</sup> There are calendar-based methods, such as pegging a single issue to the twenty-fifth anniversary of *McCleskey v. Kemp* and asking critical questions about its continuing impacts.<sup>27</sup> There are also doctrinal bases for certain themes, as when an issue may focus on an anticipated Supreme Court ruling, or political bases, as when an issue may focus on an upcoming or recent political election.<sup>28</sup> There are also critical academic fields that may entice students to focus—for an issue or even an entire volume—on various features of, say, Queer Theory.

Once students have had the opportunity to conduct this group exercise (perhaps by breaking into caucus groups and operationalizing what they may be learning in courses that train them in running meetings, creating decisional structures, accommodating others' ideas, achieving consensus, etc.), then the next phase would begin. Students would consider the ways in which they want to address the theme or themes they have identified, perhaps by extending offers to particular scholars, or by putting out a call for papers on the topic or topics they have identified. They may approach particular practitioners for contributions, or they may reach out to journalists to collaborate on feature stories highlighting a particular issue.

One way of organizing a specific issue, based on this process, could be to include an introduction, perhaps to be written by the student or students who took leadership roles in creating the issue. The issue might, for example, include scholarly articles by authors identified as voices of interest on the topic (possibly a senior scholar and a junior scholar, or possibly scholars whose works are in conversation or even tension). It might include shorter pieces by legal practitioners, highlighting the needs—legal or otherwise—that they see as existing and unaddressed. It might include a commissioned creative work by an artist, a poet, a writer, or a schoolchild—any form that the student organizers of the issue feel would be effective as a way of understanding an issue from a multidisciplinary, holistic perspective.<sup>29</sup>

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26. See, e.g., Douglas A. Berman, *McCleskey at 25: Reexamining the "Fear of Too Much Justice,"* 10 OHIO ST. J. CRIM. L. 1, 3 (2012) (celebrating the twenty-fifth anniversary of the *McCleskey* decision: "Though they provide dynamically different perspectives on what *McCleskey* still means and how we should respond to the opinion a quarter century later, all the contributions to this symposium highlight that it may not have been merely a 'fear of too much justice' that explains the *McCleskey* outcome.").

27. *McCleskey v. Kemp*, 481 U.S. 279 (1987).

28. See generally *Preliminary Matters*, 27 GA. ST. U. L. REV. i (2011) (full issue devoted to discussing impacts of the United States Supreme Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)); Symposium, *Introduction*, 1 FAULKNER L. REV. i, i (2009) (based on a symposium focused on "the effect of the election of Barack Obama on the legal profession").

29. None of these proposals are new. Law reviews often include a practitioner's perspective,

B. *Production Process: 2L*

Under this vision for a law review, second-year law students would meet in August, brainstorm and ultimately settle upon a group of three or four themes or topic areas to explore in the volume of the law review that would then be published in their third year. After selecting the group of issues, all 2L members would discuss and agree to an editorial calendar, with each issue assigned its own production timetable. For instance, the first issue might have a submission deadline of July 15, so that the papers could begin the editing processes at the next year's training session in early August. While that issue would be set for publication early in January, the second issue's submission date might be September 1, so that papers for that issue might enter the editing process in late September, with an ultimate publication timeframe in February, and so on.

Each issue would be the ongoing responsibility of a workgroup of 2L editors, composed of between ten and fifteen students, who would have the responsibility of creating their own management structure and dividing their tasks amongst themselves. In order to implement my broad vision for the law review, I need not express an opinion as to how each workgroup might structure itself. It is likely that a traditional hierarchy would serve the groups well, so that an individual or a small group would make assignments and decisions, as well as set schedules and agendas for regular meetings.<sup>30</sup> It is also possible that role definitions might not conform to traditional hierarchical models.<sup>31</sup> Each workgroup would also designate one member (although this responsibility could rotate on a regular basis)

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as well as shorter editorial pieces. But there is a small innovation involved in taking the editorial prerogative to make each issue operate with this creative, flexible format, and devote it to a single theme.

30. The notion that collaboration in legal practice is of critical importance is not a recent development, but the lack of training in collaboration is a continuing source of criticism of legal education. See Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162, 1164 (2011) (arguing that working with others is an important legal skill, and citing the 1992 MacCrate Report for the proposition that cooperation among coworkers is necessary in order to "organize and manage legal work efficiently," and also noting that, despite general agreement that collaborative skills may be an important learning objective, many faculty members view the prospect of teaching collaboration skills as "impractical" (citing ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992))); see also Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 819 (2009) (calling learning a "social phenomenon" and citing literature on collaborative learning in law schools). But cf. Dorothy H. Evensen, *To Group or Not to Group: Students' Perceptions of Collaborative Learning Activities in Law School*, 28 S. ILL. U. L.J. 343, 346 (2003) (distinguishing the "collaboration" that takes place in the study groups for which the law school experience is sometimes known).

31. It is even possible that a group might experiment with different forms of governance. The value of the exercise of law review, under this broad vision, does not depend on how a given group answers the question of how it will govern itself. Workgroup members will gain the valuable experience of working within whatever structure they create, and will learn the lessons of what works best for them through the process.

to attend meetings of the law review administrative committee, more about which will follow.

As 2Ls, the remainder of their academic year as junior members of the law review would be spent in two ways: first, they would be responsible for the traditional editorial work that 2Ls on law reviews everywhere engage in. They would do this work as staff on the themed issues being supervised and shepherded by their senior colleagues (the current 3L class members of the law review). Those tasks would surely include source collection, cite checking, and editing for conformance with a standard grammar and style convention.

The editorial function provided by the labor of law review staffs is at once the work that students most vociferously dread,<sup>32</sup> and also the work that law professors most value in the transactional relationship that has come to characterize the professor-staff relationship.<sup>33</sup> Whatever students may say about this piece of their law review experience, it is the piece that provides a basic standard on which future employers rely. The ability of a law school graduate to properly Bluebook a brief or other document is a fundamental prerequisite for many legal positions, and that ability is especially prized by judges who hire post-graduate law clerks.<sup>34</sup> Traditional law reviews are able to leverage the value of the resume line they offer students precisely because it is the resume line that stands in, at least in the minds of many elite employers, for a student's expertise in the workaday skills of cite checking and Bluebooking. My proposal for a newly envisioned law review does not deviate from the traditional model in this regard: at least until employers look to different signifiers for their prospective employees' bona fides, the law review must remain a site where such valuable professional training is a significant piece of the experience.

Second, and on a parallel track, 2L staff members would continue to lay the foundation for the production of the themed issues that they began to plan in August. These plans would unfold on a timeframe such that they would receive articles about four weeks before the production process would begin (utilizing the next class of 2L junior editors). In other words, the 2L members, having decided

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32. See Mermin, *supra* note 7, at 612 (discussing the time-consuming nature of the *Bluebook* "obsession"); Michael O'Donnell, *A Year in the Life of a Law Review Editor*, 12 BOS. C. L. SCH. MAG., Apr. 1, 2004, at 14, 17 (calling the *Bluebook*-driven citation-check process one that "every journal member at BC Law incessantly bemoans"); cf. J.C. Oleson, *You Make Me [Sic]: Confessions of a Sadistic Law Review Editor*, 37 U.C. DAVIS L. REV. 1135, 1143 (2003) ("[M]any law review members take a perverse pride in their neuroses. With wry, self-deprecating humor, members brag about their twisted infatuation with the editing process and discuss their favorite *Bluebook* rules."); Saunders, *supra* note 18, at 1671 (finding instrumental value in the skill building around cite checking).

33. Posner, *supra* note 6, at 1134 (calling the value added by student editors in their cite checking roles a "partially redeeming factor," and noting that it is a "useful service rarely offered by faculty-edited journals and never by publishers of books").

34. See Max Stier et al., Project, *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1487-90 (1992) (examining and documenting the importance that judges and other employers place on law review membership as an element to consider in hiring).

that they would produce an issue focusing on, for example, the increasing application of empirical studies in critical race theory, would identify several scholars whose input they would seek as they proceed with planning. They might identify a scholar on the UCI Law faculty, or they might reach out to scholars at other schools. These preliminary stages of brainstorming and then planning would put students, in their 2L year, into contact with leading scholars, both through their communication, as well as through the attendant work of familiarizing themselves with the body of scholarship to which they were proposing amendment.

With the guidance of their scholar mentors, they would then—perhaps in September of the 2L year—begin to send out invitations to particular individuals, whether scholars, elected officials, industry leaders, activists, legal practitioners, judges, or others. These invitations would ask for submissions no later than the agreed upon submission deadline, and would provide prospective contributors with a basic set of expectations, including what work the student editors would do to assist in cite checking and Bluebooking, as well as a tentative publication date. More importantly, however, the 2L editors would have some time to get to know their contributors, and to work with them to develop articles or submissions.

These prospective submissions could take any of several forms. The issue could include traditional scholarly pieces (the students could ask a scholar what article they would most like to write on a given topic, for example); personal reflections (especially appropriate if, for instance, a retired Supreme Court justice was writing a narrative about how a certain opinion was written at the Court); book reviews (already a very common piece of many law reviews, and an excellent way to tie-in current published scholarship and commentary by leading scholars); political prescriptions (a former U.S. President may wish to lay out a broad plan; a retired diplomat may have unimplemented ideas); case studies by legal practitioners or advocates that serve to highlight a current, on-the-ground issue and the role of law in addressing it; activists' stories of politicization; policymakers' stories of coalition building; and artists' stories of inspiration or collaboration with the movement.

The course of the 2L year would thus include editors functioning in two ways: one, as junior editors, honing the trade skills associated with legal research and writing; and the other, as curators of a polished, unified work of legal scholarship and social significance. The project of collaborating with authors and contributors on their themed issue would build many of the skills that thinkers, organizers, and leaders more generally all must possess. And in the process of conceiving and developing the issue and all of the relationships that it grows out of, the 2L students would transition neatly into the leadership roles that the law review would rely on them to fill in their third year.

### *C. Production Process: 3L*

In August, returning third year students once again would have two

responsibilities. First, they would welcome and train the incoming class of 2L staff members. This generally means organizing and conducting training sessions on the basic editorial tasks that the law review depends on the 2L class to perform. Second, they and their fellow workgroup members would assemble teams to do the editorial work on the issues that they have been working to develop since the previous August.

At some point during the spring semester of the 2L year, workgroup members would have to plan their transition. Whether this would entail formalizing their management structures or changing them, the workgroup would have to make a plan for executing the many various tasks involved in producing their issue. These tasks would include: training and oversight of 2L editors; ongoing communication with individual authors; managing the production timetable (probably an elaborate spreadsheet) to track progress on individual articles; scheduling and running meetings with 2L staff; scheduling and running meetings with 3L staff; and determining who, from among the workgroup, would represent the issue on the law review administrative committee. This proposal assumes that 3L students who serve on the administrative committee would have limited duties on their issue, because the responsibilities they have as senior members of the committee would be tremendously time-consuming.

#### D. *Organizational Structure*

It makes sense to introduce the administrative structure of the law review at this point,<sup>35</sup> because under this proposal, the structure grows out of the needs of the organization, and forms a “bottom-up” administrative mechanism. By conceiving first of the goals of the institution (education and engagement), then of the methods to achieve those goals (creative collaboration and workgroups), and finally of the need for some organizational instrument that will allow for smooth operations (administrative committee), the law review would strike a balance between operational need and creation of hierarchy. And to the limited extent that this vision for a law review does create hierarchy, its function is one of limited governance, closely connected to the proposed mission of the organization.

The structure of the administrative committee envisioned here is simple: it would comprise representatives of each of the 3L workgroups whose issues would be at various stages of production, as well as representatives from each of the 2L workgroups that would be in the earlier stages of their issues’ development. This committee would have a mandate to secure institution-wide support for the

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35. The instantiation of hierarchy through student-controlled organizations like journals is so thoroughly entrenched that it may seem impossible to readers who have served on a law review to produce four issues in a year without a group of people “calling the shots.” *See generally* Saunders, *supra* note 18. This proposal sits in opposition to that assumption. Use of the word “administrative” is not intended as either a pejorative or euphemistic reference to leadership. It is an instrumental word choice, connoting the managerial function the group, comprising representatives from each working group, and charged only with doing what it must to keep the organization functioning.

workgroups, in the form of tasks that may include: ongoing trainings; managing distribution lists for the final, printed publication; collaborating with school administration on questions of shared responsibility, including budgeting and accounting; convening subcommittees to organize events (speaker series, debates, film screenings, social events); and other duties.<sup>36</sup>

This proposal need not take a position on how the administrative committee would structure itself. The key feature of the administrative committee would be its composition by representatives from the workgroups, and although individual committee members may not have intensive demands on their time from their specific issue workgroups, they would not be as purely detached as a more conventional executive oversight board. Instead, this proposed administrative committee crucially is conceived as a representative decisional body, and its members would represent the interests of their respective issues, in addition to those of the law review more generally.

It is also not within the scope of this proposal to fully develop how the different workgroups may interact with one another during the course of the 3L year. However, I will note that a law review tends to require the services of all members all of the time. So to the extent that one issue is bound to be published before another, the 3L workgroup that is first across the finish line would likely be tapped to perform some of the senior editorial functions for subsequent issues. Conversely, as issues scheduled for publication later in the year wait to begin their processes, they may be tapped to provide those same services to the earlier issues. Determining the different ways in which the 3L staff members can best assist one another and one another's various issues is an ideal task for the administrative committee.

#### CONCLUSION: WHERE WILL CHANGE COME FROM, AND WHERE WILL IT LEAD?

My vision for a student-run journal for legal scholarship is to build an institution devoted to skill-building opportunities for students, as well as opportunities to curate a coordinated, holistic approach to discrete social and legal questions.<sup>37</sup> At least at UCI Law, the law review can become a critical part of the professional training that may traditionally have been lacking in a legal education.<sup>38</sup>

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36. It may be worth noting that, in any law review that would seek to create a limited opportunity for membership (though this proposal manifestly rejects such limitations), the administrative committee would likely also be the group responsible for devising a membership selection mechanism, such as a write-on exam. Because this proposal recommends universal access to participation, it provides for no such mechanism.

37. It is tempting, but not necessary, to describe this vision in the negative. The vision is *not* a method for creating hierarchy in the student body, nor is it a method for signaling reward for unrelated academic achievement.

38. See William H. Simon, *Homo Psychologicus: Notes on a New Legal Formalism*, 32 STAN. L. REV. 487, 488 (1979) (noting a trend, in the late 1970s, to critique legal education as failing to train students in the "practical skills of lawyering," and discussing the value and function of clinical legal education

For instance, the institution could afford students the opportunity to learn to collaborate in large groups with a goal of deciding on editorial themes and methods of shedding light on those themes. That process, alone, would fill a gap in the legal education experience by forcing students—each motivated by their own set of interests and expertise—to handle the kind of negotiations that pit their preferences against those of others.

Practitioners, organizers, artists, academics from other disciplines, policymakers, community members, and perhaps others could be among those invited to contribute to the production of knowledge. And the finished product could take form in the traditional style of a law review; in the increasingly common form of an online forum; joint publications with academic journals or other law schools' law reviews; film or video productions; or in any number of other ways.

Many scholars have noted that systemic change—particularly reform-minded change—is a tall order in the legal academy.<sup>39</sup> But while change is always challenging to bring about, and admittedly destabilizing to institutions that may not feel the pressing need to change, it is achievable. Acknowledging that reforms to the process by which production of legal knowledge occurs will most likely not

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programs as addressing this need); *cf.* Ashar, *supra* note 16, at 371 (noting that clinical education has by now moved “from the fringe to the center” of the law school experience).

39. One area where many agree that reform would be welcome, but where it seems most unlikely to occur, is in the area of article selection. The nature of the selection process is a topic of seemingly constant interest (and deep frustration) for scholars—particularly young scholars whose tenure prospects depend not only on publication, but also on publication in journals of a particular level of prestige. *See* Martinez, *supra* note 12, at 1142; *see also* James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 533 (1994) (examining whether student editors' selections may reflect those editors' own interests, and thus may limit the spectrum of frequently-published topics to a fairly narrow subset, largely privileging constitutional law and corporate law, and further noting that these proclivities may “correspond to specialties where lawyers disproportionately represent major corporations, practice in firms rather than solo, make large incomes, and come from elite law schools” (citation omitted)). But if the prospect of law students making gatekeeping choices about what scholarship has value and is therefore worthy of publication (and, implicitly, what scholarship lacks such value) strikes many as odd or as simply obtuse, efforts to reform this system are also fraught. The system has created its own ecology of competitive behaviors and coping mechanisms. Mike Dorf, *Game Theory of Basketball and Legal Scholarship*, DORF ON LAW (Mar. 14, 2011, 12:13 AM), <http://www.dorfonlaw.org/2011/03/game-theory-of-basketball-and-legal.html> (advising established scholars to take advantage of the submission cycle by submitting early (when decisions will be made on the most superficial details, like their fame or prestige, as opposed to the strength of their particular submission) and junior scholars to send their submissions first to less competitive journals, and later to more elite journals, in the hopes that any acceptance they get from the former will then be timed perfectly to parlay into a request for expedited review at the latter). But that plan may only work if journals do not begin to game the system, themselves. Mike Dorf, *Game Theory of Law Journal Deadlines*, DORF ON LAW (Apr. 4, 2011, 12:30 AM), <http://www.dorfonlaw.org/2012/04/game-theory-of-law-journal-deadlines.html> [hereinafter Dorf, *Game Theory of Law Journal Deadlines*] (discussing a group of journals' (“[f]irst-tier flagship journals; . . . [t]hree good-but-not-top-15 journals; and . . . eight specialty journals at Harvard and one at Yale”) new policy of giving authors seven days to decide whether to accept or reject an offer. The policy was ostensibly a response to some journals' use of so-called “exploding offers,” a policy that generally inures to the benefit of less competitive journals).



originate at the journals that are most highly ranked, and similarly acknowledging the intuitive, though regrettable, belief that meaningful direction will not come from individual journals that are not considered to be highly ranked, there seem to be two options. First, a broad coalition of journals from across the ranking spectrum could unite to shift the submissions and editorial model of the field. Second, a highly regarded—if not top-ranked—journal could take on the mantle of leadership.<sup>40</sup>

UCI Law has been decades in the making.<sup>41</sup> In addition to overcoming the many stumbling blocks that face any large-scale, intensive fundraising project, the creation of the school faced additional dramas of various kinds.<sup>42</sup> But beyond the foundation narrative, the story of the school's beginnings also includes a year in which the dean and founding faculty worked together without students,<sup>43</sup> having the sorts of foundational conversations that signal a concerted attempt to make structural and institutional reforms (for example, Dean Chemerinsky, explaining, after the fact: "I felt from the outset that if we simply replicated other law schools we will have failed.")<sup>44</sup> The school subsequently attracted a class of inaugural students who were widely recognized to be a group of risk-takers themselves.<sup>45</sup> In their first year of law school, on top of the course load that all first-year students typically handle, they created a culture,<sup>46</sup> and a part of that culture was a law review that was, in its rudimentary structures, both traditional and innovative.<sup>47</sup>

40. Buckley, *supra* note 11, at 104 (explaining, although in the context of arguing for faculty-edited journals to replace the student-edited norm, that "[t]he answer may well be leadership, by a leading journal. It's unlikely to come from the journals ranked one, two, and three in the nation, because they will probably feel they have more to lose than gain from change. But leadership may well come from journals that rank a bit lower and want to ascend the ladder.").

41. Joseph F.C. DiMento, *UCI Law: The First Half Century*, 1 U.C. IRVINE L. REV. 25, 26 (2011) ("The contemplation of a law school at Irvine is as old as the campus itself." (quoting Memorandum, History of Law School Proposals at UCI)).

42. *Id.* at 25–48 (recounting the competition between U.C. Irvine and other U.C. campuses over where to site a new public law school); *see also* Erwin Chemerinsky, *The Ideal Law School for the 21st Century*, 1 U.C. IRVINE L. REV. 1, 3 (2011) (recounting the rescinding of the offer of position as dean, then the un-rescinding—"It is tempting at this point to skip what happened next, but it is too much a part of the DNA of the law school to ignore it.").

43. Chemerinsky, *supra* note 42, at 16.

44. *Id.* at 13; Carroll Seron, *A Law School for the 21st Century: A Portrait of the Inaugural Class at the University of California, Irvine School of Law*, 1 U.C. IRVINE L. REV. 49, 57 (2011) (noting that the opening of the new law school "presents an opportunity to revisit the topic of professional socialization," and "to design a curriculum that places the concept of practice at the center of legal education").

45. Rachel M. Zahorsky, *Irvine by Erwin*, 95 A.B.A. J. 46, 49 (2009) ("It was much harder for the students who accepted our offer of admission to choose us by default," says Victoria Ortiz, U.C. Irvine's director of admissions. "To go to a brand-new school that is not yet accredited takes a leap of faith").

46. *See* Seron, *supra* note 44.

47. *UC Irvine Law Review* Executive Board, *Foreword*, 1 U.C. IRVINE L. REV. i, i (2011) ("We settled on an unconventional and egalitarian structure, creating small, fixed editing teams with leadership duties rotating within the team for each article . . . . The membership also elected a six-member governing board free of any individual titles or other hierarchy to oversee the initial set-up and administration.").

And as a student-directed institution, it held out to subsequent classes, including mine, the tantalizing opportunity that it would be subject to student capture, and available as a site of innovation beyond even that available to the broader school institution. The strictures on an innovative dean,<sup>48</sup> or on any individual school, acting alone are as real as they are unfortunate.<sup>49</sup> But those that bind a law review to tradition are different. And where—as is true at a brand new institution—“tradition” is literally whatever we say it is, the opportunity for the law review to create not only a new culture, but a fresh approach to the production of knowledge, is simply too attractive and too important to squander by recreating the status quo.<sup>50</sup> The *UC Irvine Law Review* can provide the next important step forward in bringing legal scholarship closer to academics in other fields, to communities of need in the United States and abroad, and to a critical role in the development of engaged, new attorneys.

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48. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 17, 2011, at BU1 (reporting on the ways in which Richard Matasar, as Dean of New York Law School—despite a long record of sharp critiques of the legal academy—“can’t act unilaterally,” and how “unlikely it is that the system will be reformed from within”).

49. *Id.* (“What’s happened [at New York Law School] is, for the most part, standard operating procedure. What sets N.Y.L.S. apart is that it is managed by a man who has criticized many of the standards and much of the procedure.”).

50. It is also pointless to seek a reinstatement of the status quo if we have aspirations to attract scholarship that is truly important, and to curate interesting and meaningful scholarly conversations, for all of the reasons that Professor Dorf intimates in his chronicle of the “gaming” that typifies how scholars (and particularly young scholars) seek placements in journals. *See, e.g.*, Dorf, *Game Theory of Law Journal Deadlines*, *supra* note 39.

