The Business of Law Reviews

John Doyle, Washington and Lee University
Essay

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Even articles that have criticized the institution of the law review tend to note some of the benefits of law reviews such as signaling quality students to employers, imparting rigor to the thought and writing of students via the editing process, and enhancing a law school’s competitiveness. Such functions are the inefficient by-products of law reviews. The core business of law reviews—at least prior to recent years—seems to have been one of filtering article quality toward more or less prestigious journals, distributing subsidized funding throughout the industry, and disseminating for access and archival storage the printed copies of articles. Although filtering via the mechanism of reputation is an interesting one, the focus here is on law review economics and the industry’s movement away from print copies.

Plainly, there is a measure of altruism in the publication of law reviews. The self-interest of law schools, authors, and editors is tempered by their perception of a public good. But unavoidably, economics is a powerful force. The economics of legal periodical publishing is heavily influenced by the relentless pressure toward electronic publishing, impacting higher-priced commercial publishers (who aim to sustain profits), subsidized law reviews (which aim not to be a drain on their supporting institutions), and open access publishers (who struggle with the issue of who will pay for free access to journals). Although I take it as given that in a few years we will see most new legal academic articles freely available online in their “post-print” final format, the path to that

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end is not clear. What is clear is that authors and readers drive the market, and publishers must find an economic model between the two, facilitating more open access.

As an example, commercial publishers are experimenting with optional open access where authors—presumably through their institutions—may pay a substantial sum to allow a published article to be made freely available on the publisher’s website. If the entire industry shifted to this kind of commercial access, it would not take many faculty articles before the cost to a law school exceeded the budgeted amount for a typical law review.

One vitally important issue for the law review industry is the current opportunity for price escalation. It is in the long-term interests of law reviews to resist this path. In the fall of 2003, Harvard Law Review recognized that the price inelasticity of demand for its journal was relatively high, and in a fit of hubris, raised its price for libraries from $55 to $95. Many law reviews have entirely resisted price increases. For example, Connecticut Law Review has remained steady each of the past four years at $30, as have Duke Law Journal at $44, Indiana Law Journal at $30, Minnesota Law Review at $40, Ohio State Law Journal at $45, and Southern California Law Review at $36. But in the 2006–2007 academic year, Emory Law Journal increased its price by 14%, and Cardozo Law Review increased its price by an audacious 70%. It is not worth suggesting that authors resist publishing with Harvard Law Review because its price is higher than its competitors, but it would benefit the academic enterprise if authors valued rewarding journals that approach closest to the free open-access model. Certainly authors can do considerable good by steering their article submissions away from the over-priced journals.

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2 Compare 117 HARV L. REV. iv (2004) (showing a one year subscription price of $55) with 118 HARV. L. REV. iii (2004) (showing a one year subscription price of $95 for “nonprofit institutions” and $200 for other institutions). Harvard initially had raised its price to $200 for institutional subscribers but retreated to a non-profit rate of $95 after objections from law libraries.
4 See, e.g., 54 DUKE L.J. (2004); 56 DUKE L. J. (2006).
The following is a list of the top 10 legal periodicals in terms of their cost-effectiveness ranked from highest to lowest. The column to the right shows the average number of citations per year that each subscription dollar purchases:  

<table>
<thead>
<tr>
<th>Rank</th>
<th>Periodical</th>
<th>Cost</th>
<th>Citations</th>
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<tbody>
<tr>
<td>1</td>
<td>Stanford Law Review</td>
<td>$42</td>
<td>13.49</td>
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<tr>
<td>2</td>
<td>Yale Law Journal</td>
<td>$55</td>
<td>12.22</td>
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<tr>
<td>3</td>
<td>Columbia Law Review</td>
<td>$54</td>
<td>11.89</td>
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<tr>
<td>4</td>
<td>Fordham Law Review</td>
<td>$40</td>
<td>10.2</td>
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<tr>
<td>5</td>
<td>California Law Review</td>
<td>$50</td>
<td>9.76</td>
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<tr>
<td>6</td>
<td>University of Chicago Law Review</td>
<td>$45</td>
<td>9.74</td>
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<tr>
<td>7</td>
<td>University of Pennsylvania Law Review</td>
<td>$47</td>
<td>9.44</td>
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<tr>
<td>8</td>
<td>New York University Law Review</td>
<td>$50</td>
<td>9.32</td>
</tr>
<tr>
<td>9</td>
<td>Harvard Law Review</td>
<td>$95</td>
<td>9.27</td>
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<tr>
<td>10</td>
<td>UCLA Law Review</td>
<td>$40</td>
<td>9.07</td>
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This table shows among other things, that Harvard Law Review is over-priced by comparison with other leading law reviews. At a price of $65 however, it would be as cost-effective as Stanford Law Review. Paper copy subscriptions are a declining industry. For example, Harvard Law Review showed an average of 3735 “paid and/or requested circulation” in 2002, which dropped to 2837 by 2006—a loss of 24%. In the same period, Houston Law Review subscriptions declined from 690 to 486—a loss of 30%. Harvard produced a substantial revenue increase with its bottom-line decision, whereas Houston steadily lost revenue during those four years by maintaining its price at $33.26. Houston and other law schools that have restrained their subscription rates may have perceived the undesirability of general price increases, forcing their libraries to pay more and/or subscribe to less, and also may have feared a loss of impact.

12 Id.
A journal that significantly increases its price might expect to suffer a loss of subscribers, a diminution in access, and a reduction in citations. Although a subscriber loss may very well occur, a loss of impact is unlikely if the law review is well positioned with access via the Internet, HeinOnline, Lexis, and Westlaw. Electronic avenues for disseminating articles have rendered paper copy subscriptions of diminished importance. The satisfaction of having an impact—including the associated bundle of reputational and salary effects—is an article author’s most substantial reward, and publishing with an over-priced journal—while certainly opposed to the public good—may be sensible for the author if the publisher offers enhanced services that may affect impact. Large commercial publishers such as Oxford, Cambridge, and Blackwell will load articles online prior to issue completion, offer their own databases of searchable articles that most university libraries license as complete units, and allow linking from indexing databases via Digital Object Identifiers and OpenURL servers. These are desirable features that law reviews should work to emulate.

The decline of paper subscriptions appears to be no discouragement to law schools starting new, specialized law reviews. In 2005, U.S. law schools began twelve new specialized journals (one of which was an online journal), and in 2006 another fourteen new specialized journals (two of which were online journals).16 Certainly there is no shortage of optimism, although many new journals not remarkably dissimilar from previous journals may add to the long tail of journals that are rarely cited—there are around 100 U.S. student-edited law reviews that are each cited less than 100th as often as is the Harvard Law Review.17 Still, an abundance of law reviews is a wonderful feature of U.S. legal publishing, showing the breadth of subsidization that law schools are willing to fund. However, when a dean looks for economies, the law library budget that subscribes to those journals is a natural target due to its large size and the uncertain

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17 There are around 100 U.S. student-edited law reviews that are each cited less than 100th as often as is the Harvard Law Review. See Washington & Lee Law School, Law Journals: Submissions and Ranking, http://lawlib.wlu.edu/LJ/index.aspx (select “Jnl” option, then select “Student-edited” option, then follow “Submit” hyperlink) (last visited Apr. 27, 2007).
connection between a dollar decrement and any negative impact on the law school’s mission or U.S. News ranking. The past few years have been ones of budgetary curtailment for U.S. law school libraries, and despite the reasonable prices of most law reviews, there is no reason to suppose that law libraries are willing to substantially increase the amount devoted to law reviews. This, in conjunction with a radical near-term shift in expenditures from print to electronic sources, means that sizeable reductions in print subscriptions will be ongoing.

Publishing paper copies is, in many ways, a negative for law reviews. The primary value of paper is in fixing the copy in a permanent archival format; but with fixity comes rigidity. Law reviews need to vacate the business of printing, instead supplying online graphic image copies of the law review, convenient for viewing, and for efficient printing, at the article, the issue, and the volume level. Law reviews should freely leave to commercial publishers the final production of print-on-demand issues and volumes for those individuals or libraries wishing to purchase and store them.

As an aside, my preference favors law reviews maintaining volume and issue structures even in an electronic era. In my experience with maintaining a law journal tables of contents service on the web, electronic journals that simply add new articles on a rolling basis are difficult to deal with from a control point of view. It is probably a remnant print orientation, but while we remain interested in the journal as a package for articles—and eventually we may not be—it is better to maintain a structural hierarchy through the volume and the issue level. This is a problem for journals when adding articles online prior to an issue being filled. The method used by Oxford University Press is instructive here, where new articles are put into an Advance Access webpage “at regular intervals and are then taken off the Advance Access page once they have been paginated, at which point the issue into which they are incorporated will be posted online.”

Authors should be encouraged to improve online articles after they have been posted. If authors are able to modify online copies post-publication, then some balance needs to be agreed upon to keep archived print copies matched with online content. I suggest that journals should establish a period of two years after online availability, during which time, an author may make changes, and after which fixation occurs and print copies for permanent storage may be made. Thus, until the end of the embargo period, the author could remain engaged with the article and responsive to criticism. At present, much of the total contemporary

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audience for an article has already seen the article in a pre-print form—such as on SSRN or Bepress—in the months prior to formal publication. Law reviews need to recapture that audience by shifting away from a print-centric process.

There is no denying that authors, journals, and aggregators like HeinOnline, Lexis, and Westlaw would face versioning difficulties in a system that maintains flexible content for two years. Journals would need a standard for electronic reporting of version numbers that would allow aggregators to re-load updated versions. An opportunity for extended commentary is more beneficial than any formal peer-review process, and well worth the extra effort. This can be a major selling point in any battle for the minds of authors between peer-reviewed journals and the law reviews. To make such commentary reach its potential, law reviews urgently need to explore online comment features along with social tagging, download counting, and any electronic means of facilitating group assessments. A number of law reviews such as Connecticut, Harvard, Pennsylvania, Texas, and Yale have begun online adjuncts to their print law reviews, and any such experimentation in this area is a welcome development.20

Unfortunately, taken as a whole, law reviews are backward looking, redolent of a dying cottage industry that faces its post-print industrial revolution. The chief problems for law reviews are conservatism caused by rapid student-leadership turnover, and the lack of infrastructure due to small scale operations. On the positive side, law reviews, most of which are low cost and subsidized, are extremely well placed for the inevitable move to open access publishing. It would be a mistake for law reviews to attempt to maintain their existing revenue in the face of falling paper copy subscriptions by increasing prices. It would be better for their deans recognize the need for a full $40,000 subsidy for printing costs, or better yet, to move entirely out of the business of printing and leave the job to print-on-demand publishers who can do the production more efficiently.

In early 2007, there were around forty free U.S. online-only legal periodicals.21 There is no doubt that the majority of current authors have a preference toward publishing their work elsewhere—in print-based journals. It would benefit those online-only periodicals if they gained a greater print orientation, not in the sense of printing issues or volumes themselves, but through a more uniform graphic presentation of their articles, issues, and volumes. A journal that packages articles into an online format that can readily be downloaded and printed allows publisher

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and subscription agents (such as William S. Hein & Co.) to take subscription orders and to produce printed volumes on demand, thus transitioning online-only journals to a print and online format.

Open access publishing implies minimizing royalties, though not necessarily the total elimination of royalties. Libraries will continue to subscribe to aggregator services such as HeinOnline, and no doubt users will continue to search Lexis and Westlaw for their convenience and comprehensive coverage. That said, law reviews are more flexible when not obliged to rely on either subscriber revenue or royalty payments. Editors should talk to their law school’s development department to see what can be done toward raising an endowment fund for more self-sufficient financing.

In a quality comparison between student-edited law reviews and commercial, peer-reviewed law journals, it is not obvious that one is inferior to the other. In a comparison of prices however, student-edited law reviews are vastly superior. Peer-reviewed commercial journals such as *Law & Human Behavior* at $950, *Law & Policy* at $446, *Law & Society Review* at $281, *Law & Contemporary Problems* at $54, *Harvard Journal of Law & Public Policy* at $45 or *Columbia Journal of Law & Social Problems* at $40. Moreover, as a group, these student-edited examples are cited more often in U.S. legal literature than are the peer-reviewed examples. This price advantage positions law reviews well for the future if they are able to leave behind their print publication orientation. Law reviews need to aggressively inject their articles into all avenues of electronic notification and searching, and to cease relying on print subscriptions for impact. As a simple example, law reviews should move to have their most current issues available online at HeinOnline. Sole reliance on insular walled-off legal databases such as HeinOnline, Lexis, and Westlaw however, is not an adequate method of bolstering an article’s impact. Authors want to be read in the wider academic arena, and this is where open access publishing comes to the forefront. This also suggests that law reviews would benefit from joint action in making their articles—particularly more recent articles—searchable and retrievable. Jointly funding a server that

automatically retrieves from individual law school sites, indexing meta-
data and article texts for indexing purposes, seems accomplishable with
little technical difficulty. Such a service could supply linking capacity,
such as an OpenURL server, to compete with the offerings of large,
commercial journal suppliers. In any event, and at minimum, individual
law reviews need to work with existing indexers and aggregators, and
augment their own websites to ensure that their current articles are rapidly
and widely available. Services such as e-mail alerts and RSS feeds should
also be added. It is astonishing how many law review websites even fail to
provide a list of articles from their own current issue.

In sum, the business of law reviews should be minimized. Concentrate
the business tasks in a non-student business manager if there must be one, but otherwise distill the tasks to their intellectual
core, remove the business chores and devolve them to the
commercial sector. Compete with SSRN head-on by offering works-
in-progress. Be an active facilitator in the process of integrating
feedback into the improvement of articles. Cooperatively index and
tag contributions via a centralized online system. Endeavor by any
and all electronic means to offer open access articles via web search
engines, indexing databases and full-text aggregators. Educate law
school deans on the importance of the free flow of legal scholarship,
and the vital current and future role of the law reviews.