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Response

Law [Review]’s Empire: The Assessment of Law Reviews and Trends in Legal Scholarship

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I. INTRODUCTION

The assault on law reviews is continuing apace. Each year brings more commentary on the limitations of law reviews. It is hard to improve on Fred Rodell’s 1936 essay, *Goodbye to Law Reviews*,¹ though Professor Rodell tried.² Judge Richard Posner, among many others, has added to the substantial literature pointing out the problems with student selection and editing of articles.³

Now the pendulum is beginning to swing back. Perhaps some will say that “the empire [of the law review] strikes back.”⁴ Recent scholarship on empires reminds us that they sometimes can be good.⁵ Often, however,

* With apologies to RONALD DWORKIN, *LAW’S EMPIRE* (1986) and E. Joshua Rosenkranz, *Law Review’s Empire*, 39 HASTINGS L.J. 859 (1988).

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¹ Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936).

² Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279 (1962).

³ See Richard A. Posner, *Against the Law Reviews*, LEGAL AFF., Nov–Dec. 2004, at 57. See also James Lindgren, *Student Editing: Using Education to Move Beyond Struggle*, 70 CHI.-KENT L. REV. 95 (1994).

⁴ Martin Stephen Flaherty, *The Empire Strikes Back: Annesley v. Sherlock and the Triumph of Imperial Parliamentary Supremacy*, 88 COLUM. L. REV. 593 (1988).

⁵ See, e.g., Lauren Benton, *Constitutions and Empires*, 31 LAW & SOC. INQUIRY 177 (2006) (reviewing MARY SARAH BILDER, *THE TRANSATLANTIC CONSTITUTION: COLONIAL LEGAL CULTURE AND EMPIRE* (2004)); DANIEL HULSEBOSCH, *CONSTITUTING EMPIRE: NEW YORK AND THE*

they have the hallmarks of corruption: arbitrary rule and concern with the maintenance of their own power.⁶ We see this in areas from antitrust to telecommunications.⁷

There is an emerging scholarship that justifies the “empire” of the law review. That scholarship defends law reviews. Often it just tries to limit the damage: law reviews are not completely useless; they provide a learning experience for students and students are capable of selecting good articles.⁸ Moreover, it contends that students do not even need to pick the best articles. As one recent defense maintained, “[t]he issue is not whether students are competent to select only the ‘best’ articles, but whether student editors are able to determine whether a given article meets a basic threshold of validity, thereby creating a portfolio of valid articles for dissemination to the legal community.”⁹ This is a revealing confession—that law reviews may in fact not select the best articles. And it is disturbing that an editor of one of the leading law journals in the country is willing to so openly embrace the idea that law reviews’ obligations include only publishing articles that meet a basic threshold quality. Sometimes the claim is made that law reviews are actually good because they are more democratic (and thus open to new ideas and to outsiders).¹⁰ I suspect that they are open to different ideas, but better ones? Hard to believe. Perhaps they are open to outsiders. That is likely true of the journals devoted to civil rights, feminism, and race. It may also be true of journals devoted to religion. And it may also be true of lower-ranked journals, which will

TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664–1830 (2005); GARY LAWSON & GUY SEIDMAN, *THE CONSTITUTION OF EMPIRE: TERRITORIAL EXPANSION AND AMERICAN LEGAL HISTORY* (2004).

⁶ And so the detractors of law reviews may prefer to think of them in terms of the British empire on the eve of the American Revolution or on the eve of Indian Independence. For further discussion of empire, see Peter Fitzpatrick, *Righteous Empire*, 2 UNBOUND: HARV. J. OF THE LEGAL LEFT 1 (2006).

Law reviews are one of the subjects that deserved further exploration in Duncan Kennedy’s legendary *Legal Education as Training for Hierarchy*. Duncan Kennedy, *Legal Education as Training for Hierarchy*, in DAVID KAIRYS, *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 40 (1982). We might one day have an essay on “Law Review Editorship as Training for Hierarchy.”

⁷ See, e.g., Eben Moglen, *The Invisible Barbecue*, 97 COLUM. L. REV. 945 (1997).

⁸ Natalie Cotton, Comment, *The Competence of Students as Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 960–61 (2006) (“[B]ecause the article selection process is complex, anyone young and inexperienced will have difficulty with it. The truth is, however, that article selection is not too difficult a task for law students. Deciding whether or not an article is desirable is not an elusive process requiring a refined professional judgment, honed through years of apprenticeship and experience. It is not even like wine tasting or art-gallery visiting, where a certain kind of ‘taste’ or ‘eye’ is needed.”). I would be interested in an empirical test of this. See also Jonathan Mermin, *Remaking Law Review*, 56 RUTGERS L. REV. 603 (2004).

⁹ Cotton, *supra* note 8, at 959.

¹⁰ *Id.* at 958–59 (“Not every article will make every reader happy. Instead of harming legal scholarship, such a system encourages a more robust body of scholarship. When student editors ‘err’ in article selection, this can allow controversial ideas to surface for discussion, allowing alternative perspectives and methodologies to be analyzed and critiqued. This is of great benefit to legal scholarship.”). Ah, so now errors are helpful.

more readily publish works by outsiders to the legal academy. I am less sure that the elite and very good journals—places like the *Columbia Law Review* and the *Connecticut Law Review*—are open to many outsiders. In a quick check of their contents for the last few years, I could find not a single author who did not have access to power (of an academic variety, at any rate). But this is an area on which there certainly ought to be some empirical work.

II. THE PROBLEMS WITH RANKING LAW REVIEWS

As the law review empire is justifying itself, there is also a growing body of scholarship evaluating law reviews. Professor Ronen Perry's very fine paper uses the same data bases as mine, but in a very different fashion. He combines two measures of citation: the overall citations and the impact (citations per article, book review, and note) to create an overall measure.¹¹ Perry's paper is part of the refinement of measurements of law reviews in recent years. And it is *sobering*. For, at base, Perry's conclusion is that there are a handful of journals that are really quite strong.¹² The rest are, well, shall we euphemistically say, not so strong. And once you leave the top twenty or so, Perry suggests there isn't much difference in quality.¹³

My primary interest is in using law review citations as a way of gauging (even if only in rough fashion) the quality of their parent institutions. I want this for two reasons. First, to encourage their parent institutions and the journals themselves to take their job more seriously. Second, to help improve the ranking system of law schools, which I fear is too subject to static prejudices currently.

Perry and I are coming at this with different missions and understandings. Perry points out, quite rightly, that much legal scholarship is never used.¹⁴ In this, he is in agreement with William Henderson and Andrew Morriss, who both suggest that law schools should spend their money in areas like student scholarships rather than faculty development.¹⁵ Henderson and Morriss argue that law faculty scholarship is not much noticed and has little impact on reputation ranking.¹⁶ As I said, Perry's data, like Henderson's and Morriss' on the static nature of law school

¹¹ Ronen Perry, *The Relative Value of Law Reviews: Refinement and Implementation*, 39 CONN. L. REV. 1, 11 (2006).

¹² *Id.* at 27. Jim Chen has recently studied all law reviews, not just schools' main law reviews, and come to a similar conclusion. See Jim Chen, *Modeling Law Review Impact Factors as an Exponential Distribution*, (Minn. L. Stud. Res. Paper No. 06-25, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=905316.

¹³ Perry, *supra* note 11, at 19–25.

¹⁴ *Id.* at 27–28.

¹⁵ William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L.J. 163, 183 (2006).

¹⁶ *Id.* at 192–93.

reputations, is sobering.¹⁷ One might also observe that Perry's refinements of the rankings yield results quite similar to other measures of quality. For example, as shown in appended Table 1, there is a high correlation (.93) between Perry's final score for law reviews and the *U.S. News* peer assessment score for law schools.¹⁸ Table 1 shows some other correlations between Perry's final score and other variables of interest, including the *U.S. News* ratings of schools by lawyers and judges (.89) and citations of journals by courts (.76).¹⁹

While looking at much the same data as Perry, though, I find the data useful for drawing distinctions between law reviews throughout the spectrum. It is these distinctions that I'd like to exploit to help improve the system of ranking. An ordinal ranking of schools from 1 to 100 (to say nothing of 1 to 174) never seemed to make a lot of sense to me. I think that ranking schools into tiers might be best—the elite (something like fifteen or so schools here), very good major public and private schools (another thirty or so), strong regional schools (perhaps another one hundred), and acceptable regional schools (the remaining forty-five). Whatever method of gauging schools one chooses, my hypothesis is that citations may contribute to the rankings mission. They are less subject to manipulation, more objective (though not necessarily more valid), and may be more responsive to what is happening at schools right now, than are the notoriously static peer assessments, which may be based on decades-old reputations.

I continue to believe that the distinctions between the journals can be used to provide some assessment of the quality of the parent institutions. That is not inconsistent with Perry's mission. Our findings lead to several important questions: Can legal scholarship be made better? What is to be done in response to our findings?

¹⁷ Perry's work reminds me that for many generations lawyers survived with a very limited set of secondary works. Historians of the book have taught us that much wisdom can be contained in a very small compass—as in four volumes of Kent's *Commentaries on American Law*, which guided the antebellum courts, or Timothy Walker's *Introduction to American Law*. JAMES KENT, COMMENTARIES ON AMERICAN LAW (1826–1830); TIMOTHY WALKER, INTRODUCTION TO AMERICAN LAW (1837). In an earlier age, only a few hundred pages of manuscript forms provided just about everything needed for the operation of the legal system. See Alfred L. Brophy, *Ingenium est Fateri per quos profeceris: Francis Daniel Pastorius' Young Country Clerk's Collection and Anglo-American Legal Literature, 1682–1716*, 3 U. CHI. L. SCH. ROUNDTABLE 683–84 (1996).

¹⁸ Correlations for normalized journal citations and normalized journal impact scores are equivalent to raw journal citations and raw journal impact because the distribution of normalized and raw scores correlate perfectly. I have run Perry's data using only 173 journals that have been published since 1998, rather than the 186 he uses.

¹⁹ For Perry's final score, see *supra* note 11, at 19–25.

III. REASONS FOR OPTIMISM ABOUT THE FUTURE OF LEGAL SCHOLARSHIP

Despite all the sobering evidence, there are four fortunate trends in all of this that are limiting the power of the law review empire. First and most important, there is the growth of peer-reviewed journals. In particular, there are peer-reviewed journals in areas in which the traditional law school curriculum cannot equip students to make well-informed judgments (like empirical studies, economics, history, literature, philosophy, psychology, and sociology). We have the *Business Lawyer*, *Journal of Empirical Legal Studies*, *Journal of Law and Economics*, *Journal of Legal Education*, *Journal of Legal Studies*, *Journal of Law and Religion*, *Law and History Review*, *Law and Literature*, *Legal Theory*, *Theoretical Inquiries in Law*, *Law and Social Inquiry*, *Law and Society Review*, *Real Property, Probate, and Trust*, *Supreme Court Review*, and the *Tax Law Review*, to name only some of the most prominent peer-reviewed journals.

Peer review has the potential to dramatically improve the quality of legal scholarship. There seems to be a trend toward increasing publication of monographs in the legal academy,²⁰ and the rigors of the peer review process and the steady attention to the bottom line among university presses ensures substantial quality controls. Moreover, the peer review process at journals is, I think, leading to increased attention to the quality of articles.

In legal history, the area I know best, the focus on publishing monographs with major university presses—such as Cambridge University Press, Harvard University Press, Oxford University Press, Princeton University Press, the University of Chicago Press, and Yale University Press—the presence of peer reviewed journals like the *Law and History Review* and the *American Journal of Legal History*, and the presence of people with graduate training in history in the legal academy have ensured an extremely high quality of scholarship.²¹ The peer review process at university presses and history journals weeds out weaker pieces and helps improve others. At the *Law and History Review*, for instance, the typical peer review process involves an initial read by the editor-in-chief, followed by blind reads by three experts in the area of the paper under review,

²⁰ Among the many examples one might cite here are NYU Press Critical America Series which has added dozens of volumes in recent years, edited by Richard Delgado and Deborah Gershenowitz.

²¹ To take only a few examples of the truly outstanding scholarship that is being done in legal history, one might look at STUART BANNER, *HOW THE INDIANS LOST THEIR LAND: LAW AND POWER ON THE FRONTIER* (2004); ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* (2000); I R. H. HELMHOLZ, *OXFORD HISTORY OF THE LAWS OF ENGLAND: THE CANON LAW AND ECCLESIASTICAL JURISDICTION FROM 597 TO THE 1640S* (2004); *THE MANY LEGALITIES OF EARLY AMERICA* (Christopher L. Tomlins & Bruce H. Mann eds., 2000); Christine Desan, *The Constitutional Commitment to Legislative Adjudication in the Early American Tradition*, 111 HARV. L. REV. 138 (1998), in addition to the works cited on empire at *supra* note 7.

followed by revisions in light of those comments.²² University presses typically employ an even more rigorous procedure, which typically has an additional requirement. In addition to extraordinary standards for the quality of scholarship, they must make an assessment about the book's ability to generate enough interest to justify the expense of publication. Such scholarship sets the standard for future historical work and genuinely improves our understanding of history. So it is likely that works that appear in student-edited journals are generally better, because the peer review process raises the bar for work appearing in those journals as well.

A second trend is the democratization of legal knowledge through dissemination in Westlaw, Lexis, HeinOnline, Social Science Research Network (SSRN), and The Berkeley Electronic Press. Once it mattered where an article was published because journals had widely differing distributions. A few elite journals are still available in each school's faculty library, in addition to their main law library, and are circulated to individual faculty members. However, a text will be no more likely to be found in a computer search if it appeared in the *Columbia Law Review*, than if it appeared in the *Alabama Law Review*, or the *Oklahoma City University Law Review*. And in recent years, terrific scholarship has appeared in journals at *U.S. News*' fourth tier schools.²³ This is part of the democratization of legal education, and more generally, of good work being done across the academy and of students at all levels of law school having access to outstanding, energetic faculty.

Another trend is the increasingly serious discussion of law on blogs.²⁴ And while I am generally more inclined to Kate Litvak's view that blogs are not the place for serious discussion,²⁵ I recognize that blogs are serving the function of disseminating ideas. When I was in his administrative law class many years ago, Peter Strauss called the *New York Times* the "nation's best law journal." Virtually every legal idea appears in it long before it appears in any traditional law journal (though perhaps not in as

²² Law and History Review, Note to Contributors (2005), <http://www.press.uillinois.edu/journals/lhrstyle.html>.

²³ Among the many, many examples one might choose, here are three: Danielle Allen, *Law's Necessary Forcefulness: Ralph Ellison vs. Hannah Arendt on the Battle of Little Rock*, 26 OKLA. CITY U. L. REV. 857 (2001); William B. Ewald, *What's So Special About American Law?*, 26 OKLA. CITY U. L. REV. 1083 (2001); Laura Nader and Jay Ou, *Idealization and Power: Legality and Tradition in Native American Law*, 23 OKLA. CITY U. L. REV. 13 (1998).

²⁴ See Lawrence B. Solum, *Blogging and the Transformation of Legal Scholarship* (Ill. Pub. L. & Legal Theory Res. Paper No. 06-08, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898168.

²⁵ Kate Litvak, *Blog as Bugged Water Cooler* (U. Tex. Law Pub. L. & Legal Theory Res. Paper No. 96, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=898186.

much depth).²⁶ I think that blogs are now helping to spread ideas and to discuss them. Of course, blogs serve other, less substantive functions, as well, such as discussion of issues like religion in multi-player online games,²⁷ Wikipedia entries for professors,²⁸ and the question “Is there a left-right division about whether lawprof blogs should stick to law or range over multiple topics?”²⁹ Of course, even when bloggers are exploring substantive ideas, the ideas are generally not explained in the same depth as a law review article—but they may be explored in the depth that is warranted. As we have a developing scholarship on the function of blogs, it is becoming increasingly clear that they are playing a role in gaining attention for new ideas and papers.³⁰ The distribution of attention is rather lumpy, so that some prominent bloggers receive a lot of attention.³¹ Redistribution of intellectual wealth (like SSRN downloads) is a separate issue and something worthy of scrutiny in its own right.³²

A fourth positive trend is the movement towards increased faculty participation in law review decision-making. Taking a cue from the “if you can’t beat them, join them” school of thought, faculty have begun to exert increased roles in the selection of professional pieces and even in the day-to-day operation of law reviews. At many schools, faculty review articles.³³ At the *Alabama Law Review*, for instance, all offers to publish an article must be approved by the faculty advisor, and the editors almost always solicit input from faculty who write in the area of the article under consideration.³⁴ As efforts to rank law schools are refined, one assumes that law reviews will increasingly be used as measures of the quality of

²⁶ Years before victims of the 1921 Tulsa riot filed suit, for example, the *New York Times* discussed the possibility of suit. See Brent Staples, *Unearthing a Riot*, N.Y. TIMES, Dec. 19, 1999, § 6 (magazine), at 63, available at LEXIS, News Library, NYT File.

²⁷ See Posting of Rick Garnett to PrawfsBlawg, http://prawfsblawg.blogs.com/prawfsblawg/2006/02/religion_in_mmo.html (Feb. 26, 2006, 03:23 EST).

²⁸ See Posting of Ethan Leib to PrawfsBlawg, http://prawfsblawg.blogs.com/prawfsblawg/2006/04/to_wiki_or_not_.html (Apr. 18, 2006, 07:34 EST); Posting of Stephen M. to PrawfsBlawg, http://prawfsblawg.blogs.com/prawfsblawg/2006/04/to_wiki_or_not_.html (Apr. 18, 2006, 10:17 EST).

²⁹ Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2006/05/is-there-left-right-division-about.html> (May 1, 2006, 10:35 EST).

³⁰ See, e.g., Orin Kerr, *Blogs and the Legal Academy* (Geo. Wash. Univ. P.L. & Legal Theory Working Paper No. 23, 2006), available at <http://ssrn.com/abstract=896994>.

³¹ See, e.g., Brian Leiter, *Problems with the SSRN Rankings* (2005), http://leiterlawschool.typepad.com/leiter/2005/08/problems_with_t.html.

³² See Bernard S. Black & Paul L. Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 IND. L.J. 83 (2006) (considering the meaning of downloads for law school rankings).

³³ See, e.g., Harvard Law Review, Guidelines for Submitting Manuscripts, <http://www.harvardlawreview.org/manuscript.shtml> (last visited Sept. 1, 2006) (informing authors that submitted papers may go through “faculty peer review”).

³⁴ Alabama Law Review, About the Alabama Law Review, <http://www.law.ua.edu/lawreview/> (last visited Sept. 11, 2006).

their parent institutions.³⁵ Thus, faculty have a vested interest in making their journals better and in advancing legal scholarship by having better journals.

Another trend that inspires optimism for the future of legal scholarship, though it is not necessarily related to limiting the law review empire is legal scholars' seemingly increased engagement with important, meta-issues. Richard Epstein is one of the best examples here. As James Ely has pointed out recently, Epstein had a significant impact on the way we talk about property rights.³⁶ And if we look around, there are many other examples, from Richard Posner to Bernard Siegan.³⁷ The revolution in legal thought ushered in by the election of President Ronald Reagan was significant and due in part to the well-considered thoughts of very smart legal academics in the 1970s and 1980s.³⁸ Legal scholarship correlates with major changes in judicial and popular thought; and while it is difficult to know which way the arrows of influence are pointing—and obviously legal scholars follow the trends of their day—ideas generated in the academy (like economic analysis of law) significantly influence legal development.

There are many examples one might cite along these lines, across the political spectrum. For instance, many credit Roy Lucas's 1968 *North Carolina Law Review* article³⁹ with presenting "a vital source of ideas for the frontal attack on criminal abortion statutes."⁴⁰ More recently, progressives seem to have begun a serious project of thinking about how

³⁵ Alfred L. Brophy, *The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-07*, U. COLO. L. REV. (forthcoming 2007), available at <http://ssrn.com/abstract=896313>.

³⁶ James W. Ely, Jr., *Impact of Richard Epstein* (Vand. Law Sch. Pub. L. & Legal Theory, Working Paper No. 05-31, 2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=825045. Assigning a weight to the influence is, of course, notoriously difficult. One of the missions of those who work on the "history of the book" is tracing intellectual influence through books. It is an engaging and thrilling project—but very, very difficult to carry off with any precision. See generally Alfred L. Brophy, *The Law Book in Colonial America*, 51 BUFF. L. REV. 1119, 1120–21 (2003) (reviewing A HISTORY OF THE BOOK IN AMERICA: THE COLONIAL BOOK IN THE ATLANTIC WORLD (2000)).

³⁷ RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (5th ed. 1998); BERNARD SIEGAN, *ECONOMIC LIBERTIES AND THE CONSTITUTION* (1980).

³⁸ See Richard A. Posner, *Justice Breyer Throws Down the Gauntlet*, 115 YALE L.J. 1699, 1699 (2006):

In recent years, the initiative in constitutional debate has passed to the conservatives. They have proposed, and to an extent achieved, a rolling back of liberal doctrines (notably in regard to states' rights, police practices, and executive power) and of the methodology of loose construction that enabled liberal Justices to provide a plausible justification for those doctrines. . . . [F]or the most part, [the liberals'] stance, their outlook, has been defensive: defense of the Warren Court and *Roe v. Wade*.

Some attribute this to the Federalist Society as well. See George W. Hicks, Jr., *The Conservative Influence of the Federalist Society Over the Harvard Law School Student Body*, 29 HARV. J.L. & PUB. POL'Y 623 (2006).

³⁹ Roy Lucas, *Federal Constitutional Limitations on the Enforcement and Administration of State Abortion Statutes*, 46 N.C. L. REV. 730 (1968).

⁴⁰ See THE ABORTION RIGHTS CONTROVERSY IN AMERICA 94 (N.E.H. Hull et al. eds., 2004).

common law doctrine can be refashioned in modest but important ways. That is, those seeking reform have begun the difficult task of presenting reasonable, modest, and viable ways of rethinking doctrine.⁴¹ Those changes are necessarily small, but may be more likely to result in changes they seek than wholesale attacks on “the system.”

There was a time when “legal scholarship,” or scholarship critiquing law, appeared in places like newspapers and novels. Harriet Beecher Stowe’s *Uncle Tom’s Cabin* is in many ways a critique of the law of slavery, not just a critique of slavery. Stowe’s book (which we would now call a narrative) helped shape the debate on considerations of duty to law and cost-benefit analysis in the years leading into Civil War.⁴² So did non-fiction books by abolitionists, like William Goodell’s 1853 *The Slave Code in Theory and Practice*.⁴³ And in the early decades of the 20th century, much outsider scholarship appeared in sources like the black press and in novels.⁴⁴ One looking for the origins of the civil rights revolution of the 20th century ought, I think, look to places like W.E.B. DuBois’ *Crisis*, which published monthly articles critiquing judicial decisions and pointing the way to a meaningful equal protection doctrine.⁴⁵ There, one may find the origins of what Ralph Ellison called “the Great Constitutional Dream Book.”⁴⁶ Although Stowe and DuBois had no formal legal training, their scholarship on law helped remake how people thought about law—just as Richard Epstein, Richard Posner, and Bernard Siegan helped remake law more recently.

⁴¹ See, e.g., Emily M.S. Houh, *Toward Praxis*, 39 U.C. DAVIS L. REV. 905, 907–08 (2006) (proposing the creation of a common law, good faith antidiscrimination claim); Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 827–28 (1997).

⁴² See Alfred L. Brophy, “over and above . . . there broods a portentous shadow,—the shadow of law”: *Harriet Beecher Stowe’s Critique of Slave Law in Uncle Tom’s Cabin*, 12 J. L. & RELIGION 457 (1995–96).

⁴³ See WILLIAM GOODELL, *THE AMERICAN SLAVE CODE IN THEORY AND PRACTICE* 1–3 (1853). Goodell focused on the “legal relation” of slavery. That is, he looked to the slave code and how it was applied. Then, after showing the harshness of the law, Goodell argues that the legal relations structure the actual practice of master-slave relations. His theory of slave law was that it influenced treatment of slaves and that then harsh treatment of slaves in turn influenced statutes. So harsh treatment went from law to norms to law. As Goodell said, the slave code is a “truthful exponent and vigilant guardian of ‘the legal relation of master and slave.’” *Id.* at 314. In Goodell’s view, the role of law was to protect the weak, though in the case of slavery it failed to do so. *Id.* at 285–86.

⁴⁴ See, e.g., Alfred L. Brophy, *RECONSTRUCTING THE DREAMLAND: THE TUSLA RIOT OF 1921* at 1–23 (2002) (detailing ideas of law and critique of legal systems in black press).

⁴⁵ See, e.g., *The Vigilance Committee: A Call to Arms*, 6 CRISIS 26–29 (1913) (discussing objectives of NAACP, including advocating for anti-discriminatory legislation, gauging the levels of discrimination, and seeking legal redress); *Some Frank Facts*, 8 CRISIS 40–42 (1914) (discussing unequal treatment of blacks and whites in southern states); *American Logic*, 8 CRISIS 80–81 (1914) (comparing treatment of blacks and whites by newspapers).

⁴⁶ See RALPH ELLISON, *INVISIBLE MAN* 280 (1952).

IV. FURTHER REFINEMENTS OF LAW REVIEW RANKINGS

There are other tactics one might use to help refine the use of law journal citations to gauge the quality of their parent institutions. One thing that neither Perry nor I have yet talked about is the use of secondary journals as a gauge of a school's quality. There has been some thoughtful work on ranking secondary journals.⁴⁷ Additionally, the presence of secondary journals might be used to assess the vibrancy of the intellectual culture of law schools.

Secondary journals may also provide a way of gauging the general quality of schools. Assuming that the law review experience is important, as law reviews often claim, then many prospective students will want to know their chances of serving on a law journal. Schools with more journals and hence more opportunities will be more attractive to students, and presumably schools that are able to field a number of quality secondary journals will also be ones with stronger student bodies. The full mining of this rich data must await another article, but even a preliminary analysis discloses some interesting results. Table 2 lists the schools that have at least one secondary journal among the 100 most cited secondary journals.⁴⁸ A small number of schools predominate. Harvard is the leader, with eight secondary journals that are in the top-100, followed by Columbia (6); Georgetown (5), California (4), University of Virginia (4), and Yale (4). Nine other schools have three each; another nine schools have two. Together, those twenty-four schools account for seventy-five of the top-100 secondary journals, which are listed in Table 3. Another twenty-four schools account for the remainder of the top-100 secondary journals. Of the twenty-four schools with more than one top-100 secondary journal, twenty-two are ranked in the top-40 by *U.S. News*. Indeed, only eleven of the forty-eight schools with top-100 secondary journals are outside of the *U.S. News* top-50. Only four of those schools are outside of the *U.S. News* top-100 (Albany, John Marshall, Nova, and

⁴⁷ See, e.g., Tracey E. George & Christopher Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813, 814-15 (1999).

⁴⁸ The data on citations come from John Doyle's website at the Washington & Lee Law Library. Washington & Lee Law School, Law Journals: Submissions and Ranking, <http://lawlib.wlu.edu/LJ/> (last visited June 15, 2006). For purposes of this study, I have defined the main journal as the most prestigious student-edited journal at each school. "Secondary journals" are all the other student-edited journals. This was important for two schools: Franklin Pierce and Widener University. In the case of Franklin Pierce, I considered the *IDEA Journal* as their main law review, even though since 2002 they have also published the *Pierce Law Review*. In the case of Widener University, I have considered the *Delaware Journal of Corporate Law* as their main law review, even though since 1994 they have also published the *Widener Law Review*. Both would appear on this list of most-cited secondaries if they were classified as secondary journals. I have also considered the American University's *Administrative Law Review* to be student-edited for these purposes, even though they work in conjunction with the ABA's Administrative Law section. I considered *ILSA*, published at Nova, as a secondary journal, even though it receives more citations than the *Nova Law Review*.

Santa Clara). Almost all of the *U.S. News* top-30 schools have at least one secondary journal ranked in the top-100. Essentially, having at least one top-100 secondary journal is a marker of a distinguished law school. As we look more deeply at these issues, I think that citations in main law reviews as well as secondary reviews will play an increasing role in the assessment of law school quality. Changes are brewing in legal education and so are the indicators of quality.

So soon I may be telling Bernard Hibbets,⁴⁹ “I don’t know why you say goodbye, I say hello, hello, hello.” Then again

⁴⁹ See Bernard J. Hibbets, *Last Writes?: Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 616 (1996) (questioning the future of law reviews).

APPENDIX

Table 1. Correlations of Perry's Final Score, *U.S. News* Peer and Lawyer/Judge Assessments, Journal Citations and Impact, and Courts Citations

	Final Score (Perry)	<i>U.S. News</i> Peer Assessment (2006)	<i>U.S. News</i> Lawyer/Judge Assessment (2006)	Journal Citations (1998–2005)	Journal Impact (1998–2005)	Court Citations (1998–2005)
Final Score (Perry)	–	.93	.89	.96	.98	.76
US News Peer Assessment	.93	–	.96	.89	.90	.71
US News Lawyer/ Judge	.89	.96	–	.86	.87	.69
Journal Citations	.96	.89	.86	–	.91	.82
Journal Impact	.98	.90	.87	.91	–	.70
Court Citations	.76	.71	.69	.82	.70	–

N = 173

Table 2. Number of Secondary Journals in the top-100 in Citations at each Law School

Law School	Number of Secondary Journals in Top-100
Harvard	8
Columbia	6
Georgetown	5
California	4
Yale	4
University of Virginia	4
Boston College	3
Fordham	3
Hastings	3
University of Michigan	3
University of Pennsylvania	3

Law School	Number of Secondary Journals in Top-100
American	3
New York University	3
University of Texas	3
William and Mary	3
Boston University	2
Brooklyn	2
Cornell	2
Chicago	2
Duke	2
Indiana University	2
Iowa	2
Minnesota	2
Stanford	2
Albany	1
Arizona	1
Cardozo	1
Case Western	1
Colorado	1
Connecticut	1
Emory	1
George Washington	1
Houston	1
Kansas	1
John Marshall	1
University of Missouri	1
University of North Carolina	1
Northwestern	1
Notre Dame	1
Nova	1
Ohio State	1
Santa Clara	1
Temple	1
Tulane	1
UCLA	1
Vanderbilt	1
Washington University	1
Wisconsin	1

Table 3. Top-100 Secondary Journals (By Citations in Journals, 1998–2005)

Rank	Secondary Journal Name	Citations
1	Berkeley Technology Law Journal	1935
2	Harvard Journal of Law & Public Policy	1520
3	Fordham Urban Law Journal	1408
4	Law and Contemporary Problems (Duke)	1327
5	Virginia Journal of International Law	1272
6	American Criminal Law Review (Georgetown)	1148
7	Fordham International Law Journal	1146
8	Harvard Civil Rights-Civil Liberties Law Review	1100
9	The Georgetown Journal of Legal Ethics	1088
10	American University International Law Review	1027
11	Harvard Journal on Legislation	1012
12	Harvard International Law Journal	1002
13	Yale Journal of International Law	970
14	Michigan Journal of International Law	949
15	Vanderbilt Journal of Transnational Law	934
16	Harvard Journal of Law & Technology	922
17	University of Pennsylvania Journal of Constitutional Law (1998-)	911
18	Administrative Law Review (American University)	900
19	The Journal of Corporation Law (Iowa)	856
20	The Journal of Criminal Law and Criminology (Northwestern)	814
21	Columbia Journal of Transnational Law	796
22	Washington University Journal of Law and Policy	770
23	Brooklyn Journal of International Law	765
24	Ecology Law Quarterly (California)	746
25	Yale Law & Policy Review	726
26	Ohio State Journal on Dispute Resolution	717
27	University of Pennsylvania Journal of International Economic Law	713
28	Stanford Law & Policy Review	703
29	Cornell International Law Journal	699
30	Harvard Environmental Law Review	692
31	Columbia Human Rights Law Review	688
32	Chicago Journal of International Law (2000-)	677
33	Fordham Intellectual Property, Media & Entertainment Law Journal	658

Rank	Secondary Journal Name	Citations
33	Indiana Journal of Global Legal Studies	658
35	William & Mary Bill of Rights Journal	656
36	Texas International Law Journal	655
37	University of Michigan Journal of Law Reform	648
38	Cardozo Arts & Entertainment Law Journal	644
39	Cornell Journal of Law and Public Policy	620
40	New York University Journal of International Law and Politics	617
41	Notre Dame Journal of Law, Ethics & Public Policy	612
42	Federal Communications Law Journal (Indiana)	593
43	Arizona Journal of International and Comparative Law	581
44	The John Marshall Journal of Computer & Information Law	560
45	The Journal of Gender, Race, and Justice (Iowa)	553
46	Georgetown Immigration Law Journal	545
47	Georgetown Journal of International Law	534
47	Michigan Journal of Race & Law	534
49	The Review of Litigation (Texas)	530
49	University of Chicago Legal Forum	530
51	Minnesota Journal of International Law	524
52	Columbia Business Law Review	509
53	The Georgetown International Environmental Law Review	503
54	University of Pennsylvania Journal of Labor and Employment Law (1998-)	497
55	Yale Journal on Regulation	490
56	Duke Journal of Comparative & International Law	488
57	Berkeley Journal of International Law	487
58	Kansas Journal of Law & Public Policy	486
59	Santa Clara Computer and High Technology Law Journal	485
60	Boston College Environmental Affairs Law Review	472
61	Houston Journal of International Law	470
62	Emory International Law Review	469
63	Stanford Environmental Law Journal	466
64	Hastings Constitutional Law Quarterly	462
65	Texas Review of Law and Politics	461

Rank	Secondary Journal Name	Citations
66	Harvard Human Rights Journal	460
67	George Washington International Law Review	450
68	American University Journal of Gender, Social Policy & the Law	449
69	Berkeley Journal of Employment and Labor Law	446
70	New York University Annual Survey of American Law	443
71	Albany Law Journal of Science & Technology	438
72	Colorado Journal of International Environmental Law & Policy	429
73	Columbia Journal of European Law	424
74	Columbia Journal of Environmental Law	420
75	Law and Inequality [Minnesota]	415
76	Tulane Journal of International and Comparative Law	412
77	Boston College International and Comparative Law Review	410
78	Hastings International and Comparative Law Review	408
78	The Journal of Law & Politics (Virginia)	408
80	Boston College Third World Law Journal	406
81	Hastings Communications and Entertainment Law Journal (Comm/Ent)	404
81	William & Mary Journal of Women and the Law	404
83	The Virginia Journal of Social Policy & the Law	397
84	North Carolina Journal of International Law and Commercial Regulation	394
85	Connecticut Journal of International Law	392
86	Journal of Law and Policy (Brooklyn)	386
87	Boston University Public Interest Law Journal	385
88	Yale Journal of Law & the Humanities	384
89	ILSA Journal of International and Comparative Law (Nova)	383
90	The Columbia Journal of Law & the Arts	381
91	Boston University Journal of Science & Technology Law	380
91	Wisconsin International Law Journal	380
93	Harvard Negotiation Law Review	379
94	William and Mary Environmental Law and Policy Review	378

Rank	Secondary Journal Name	Citations
95	UCLA Journal of International Law and Foreign Affairs	376
96	Journal of Dispute Resolution (Missouri)	374
97	New York University Review of Law & Social Change	371
98	Case Western Reserve Journal of International Law	370
99	Temple International and Comparative Law Journal	366
99	Virginia Environmental Law Journal	366