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**SCHOOL OF LAW**

**The Law Review Symposium Issue:  
Community of Meaning or  
Re-inscription of Hierarchy**

Jean Stefancic

*63 UNIVERSITY OF COLORADO LAW REVIEW 651 (1992)*

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# THE LAW REVIEW SYMPOSIUM ISSUE: COMMUNITY OF MEANING OR RE-INSCRIPTION OF HIERARCHY?

JEAN STEFANCIC\*

## INTRODUCTION

Since publication of the earliest known law review symposium in 1889,<sup>1</sup> tens of thousands of symposia, colloquies, and special issues have been published. During the period 1980 to 1990 alone, almost 14,000 symposium articles were listed in Legal Resource Index on the LEXIS database. Few issues of the weekly *Current Index to Legal Periodicals* do not contain a listing for at least one symposium. Indeed, there has been approximately a two-fold increase in the number of symposium-type issues in the last decade alone.

What accounts for this increase? Does it reflect some deeper shift in the way we think and write about the law? And does it have implications for the future of legal publishing? This article examines the proliferation of the symposium issue and what that proliferation indicates about the state of legal scholarship.

Part I presents a brief history of the symposium movement in general. In Part II, I explain my guiding hypothesis that law review symposia have become a form of search for meaning. Human beings demand—sometimes crave—meaning, coherence, and order.<sup>2</sup> During times of social crisis and fragmentation, this search is particularly urgent. Moreover, toward the end of any era, society usually demands even more certainty than usual because of a felt need for closure.<sup>3</sup> In

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1. See *Symposium of Law Publishers*, 23 AM. L. REV. 396 (1889) [hereinafter *Law Publishers*]. Before this time few law reviews existed, see ROBERT STEVENS, *LAW SCHOOL 127* n.34 (1983); ERWIN SURRENCY, *A HISTORY OF AMERICAN LAW PUBLISHING* 193 (1990).

2. VIKTOR FRANKEL, *MAN'S SEARCH FOR MEANING* (3d ed. 1984); see also *infra* notes 15-29 and accompanying text.

3. TED PETERS, *FUTURES - HUMAN AND DIVINE* (1978); HILLEL SCHWARTZ, *CENTURY'S END: A CULTURAL HISTORY OF THE FIN-DE-SIECLE—FROM THE 1990S THROUGH THE 1990S* (1990); TIMOTHY P. WEBER, *LIVING IN THE SHADOW OF THE SECOND COMING* (Enlarged ed. 1983).

this last decade of the twentieth century we live in crisis and also approach the end of a millennium.

Law does not escape these social forces. The recent literature is replete with articles by scholars attempting to discover, impose, clarify, and defend meaning in the law. Indeed, a recent scholarly movement holds that "interpretive communities" or "communities of meaning" are, if not the most important factor in legal judgment and interpretation, at least a key element.<sup>4</sup>

Yet, contrasting notions about the relevant meanings, and how to determine them, abound. Are we to be persuaded by strict constructionists or context-dependents? Should we be concerned with adjudication or interpretation? Is legal formalism alive in new forms or has deconstruction irretrievably scattered the pieces? Is social life about community, freedom, order, equality—or something else? There is little consensus on what our core values and meanings ought to be, or even how we are to arrive at them.

Several respected legal commentators have observed that legal scholarship is undergoing the type of ferment associated with a paradigm shift.<sup>5</sup> Following the lead of social philosophers and literary critics, they bring to legal thought postmodern insights in understanding our condition in order to cope with that change. Others are convinced that we need less scholarship of this type, not more.<sup>6</sup> They hold that much recent legal writing strays too far from the canon—i.e., is not grounded in tightly adduced reasoning from the body of legal thought which preceded it. These arguments are played out in the pages of the law reviews.<sup>7</sup>

In a typical symposium, a group of four to fifteen writers sharing a common interest explore, develop, destroy, or build meaning around that subject. For example, consider a symposium focusing on feminist jurisprudence<sup>8</sup> or Critical Legal Studies.<sup>9</sup> The authors will undoubtedly share the conviction that those two movements have something to offer the legal community—if only that they are significantly wrong. The authors will discuss first principles, methodology, the relationship

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4. See *infra* Part II.

5. See *infra* notes 32-45.

6. Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990).

7. Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936) (arguing that there is too much scholarship); David L. Gregory, *The Assault on Scholarship*, 32 WM. & MARY L. REV. 993 (1991); Bruce A. Ackerman, *The Marketplace of Ideas*, 90 YALE L.J. 1131 (1981) (urging more and better legal scholarship).

8. E.g., *Feminist Jurisprudence Symposium*, 24 GA. L. REV. 759 (1990); *Symposium: Excluded Voices, Realities in Law and Law Reform*, 42 U. MIAMI L. REV. 1 (1987).

9. E.g., *Critical Legal Studies Symposium*, 36 STAN. L. REV. 1 (1984).

between their movement and mainstream liberal thought, the movement's basic themes and agenda, its history and future.

Every symposium, then, has a theme or core subject that the contributors explore. Within this thematic framework, symposia appear to break down into three broad time orientations: future, past, and present.<sup>10</sup> Future-oriented symposia bring together writers who wish to establish new meanings or challenge old ones. Past-oriented symposia, anniversary issues for example, celebrate or examine a past event. Contributors share a conviction that this event contains meanings we should preserve because of their continuing value. Finally, present-oriented symposiasts present "developments in" or "current aspects of" the law. For these writers, the relevant search for meaning is pragmatic, concerned with the daily problems of practitioners and clients.

Symposium issues have practical and political dimensions as well. Part III addresses some of them, exploring such issues as who writes? Which law reviews publish symposia? Which subjects are covered, and with what effect? In Part IV, I raise some questions about the future of legal scholarship. Scholarship has become less doctrinal; do symposium issues accelerate this trend? Do symposia succeed in creating new communities of meaning and conferring validity on new movements in the law? How will the electronic revolution in legal scholarship and publishing affect the development of communities of meaning?

## I. HISTORY AND DEVELOPMENT

The symposium takes its name from the title of one of Plato's dialogues<sup>11</sup> in which the tragic poet Agathon gives a banquet to celebrate his victory in a drama contest. Symposium literally means "a drinking party; a convivial meeting for drinking, conversation, and in-

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10. See *infra* Part II. Certain words in symposium titles indicate time orientation. Future-oriented symposia are signaled by the following: and beyond, anticipating, challenge, change, changing, cutting edge, developing, emerging, evolution of, for the 1990s, forthcoming, frontiers, future of, in search of, in transition, new, new directions in, proposals, questions, reform, toward a new, transcending limits, transforming, unfinished agenda.

Titles of past-oriented symposia use different terms such as: anniversary, bicentennial, celebration, centennial, commemorating, founding, fundamentals, history, honoring, memorial, origins, rediscovery of, reflections on, retrospective, review, revisiting, revival of, tribute.

Present-oriented symposia are indicated by words such as: amending, analysis of, annual, applications, contemporary issues, current developments, current importance, current issues, developments in, evaluating, guide to, implementing, implications of, issues in, law and practice, law of, perspectives on, problems and solutions, problems in, reactions to, recent, recent developments, responses.

11. *The Symposium*, in 1 THE DIALOGUES OF PLATO 301 (B. Jowett, trans., 1937).

tellectual entertainment."<sup>12</sup> In Plato's *Symposium*, Pausanias suggests to the other guests, among them Aristophanes, Phaedrus, and Socrates, that they avoid hard drinking; the company agree. Eryximachus proposes that each guest make a speech in honor of Love—a subject they all consider praiseworthy. Each guest, in turn, declares, argues or distinguishes the different ways Love can be valued and understood. Alcibiades arrives drunk and has his say. A band of revelers enters, confusion reigns, and the symposium comes to an end. But the speakers succeeded in creating, if only for a brief time, a community of meaning.<sup>13</sup>

The earliest known American law review symposium issue appears to have been published by the *American Law Review* in 1889, and included responses by Charles C. Soule, John B. West, and James E. Briggs to a query regarding the future of legal publishing in the twentieth century.<sup>14</sup> The role of the editors seems to have been limited to selecting the topic, extending invitations to several law publishers, and a spare editing of the manuscripts. Thereafter, symposia—though not always labeled as such—appeared intermittently. For example, in its first issue the *Yale Law Journal* published a set of four articles solicited from legal educators at Yale, Columbia, N.Y.U. and Harvard on legal pedagogy.<sup>15</sup> In the words of the editors, "[t]hese articles were sought and published to bring before the students . . . some authentic statement of differing opinions."<sup>16</sup>

In 1893, the *Harvard Law Review* published articles in four consecutive months<sup>17</sup> about the Torrens system of land transfer. Each of the writers referred to the others, elaborating on or taking issue with their view of land-transfer law and policy. Although the articles appear without any editorial statement, it is likely that the grouping was

12. See 17 OXFORD ENGLISH DICTIONARY 464 (2d ed. 1989) [hereinafter OXFORD DICTIONARY].

13. That is, despite their disagreement over a few aspects of love, all share the conviction that it is a basic human passion, that it sometimes ennobles and elevates those in its grip - and that it occasionally causes foolish behavior.

14. *Law Publishers*, *supra* note 1.

15. See [Symposium] *Methods of Legal Education*, 1 YALE L.J. 139 (1892), including articles by: Edward J. Phelps (untitled) 139; William A. Keener (untitled) 143; Christopher G. Tiedeman (untitled) 150; John C. Gray (untitled) 159. In 1910, GREEN BAG (a Cambridge-based law review) published a similar discussion about the principles of American law. See Lucien Hugh Alexander, *Memorandum in re Corpus Juris*, 22 GREEN BAG 59 (1910). The volume includes more than 70 opinions by leading figures about the Corpus Juris project.

16. *Editorial*, 1 YALE L.J. 162 (1892).

17. Edward Q. Keasby, *Restrictions Upon the Use of Land*, 6 HARV. L. REV. 280 (1893); H.W. Chaplin, *Record Title to Land*, *id.* at 302; Joseph H. Beale, *Registration of Title to Land*, *id.* at 369; F.V. Balch, *Land Transfer - a Different Point of View*, *id.* at 410; James R. Carret, *Land Transfer - A Reply to Criticisms of the Torrens System*, 7 HARV. L. REV. 24 (1893).

not accidental. In fact, the final author, James R. Carret, implies as much, opening his article with the words, "I have been asked to close for the plaintiff . . . ."<sup>18</sup>

Academic scholarship in the United States was influenced by the German academic tradition. Publishing often took the form of *Festschriften*, collective celebrations honoring a single writer and his work.<sup>19</sup> In 1931, Harvard and Yale, for example, each published a tribute to Oliver Wendell Holmes on the occasion of his ninetieth birthday.<sup>20</sup> Later that year Harvard honored Louis Brandeis in a similar fashion,<sup>21</sup> a practice that still continues. For example, the *Southern California Law Review* recently presented a *Festschrift* symposium examining and honoring the work of Joseph Raz.<sup>22</sup>

By 1933, the symposium was well established. That year the Duke University Law School faculty started the journal *Law and Contemporary Problems* for the sole purpose of publishing symposium issues. The faculty editor and advisory board's stated intent was to broaden perspectives on the law, include non-legal specialists on law-related subjects, and present "contrasts and conflicts as well as . . . reconciliations."<sup>23</sup> Recent issues of *Law and Contemporary Problems* have focused on attorney fee shifting,<sup>24</sup> children with special needs,<sup>25</sup> vice,<sup>26</sup> and the economics of contract law.<sup>27</sup>

After World War II large numbers of students sought admission to the law schools.<sup>28</sup> In response, many law schools that did not have a law review, established one;<sup>29</sup> other schools started a second one. Specialty law reviews began to flourish. The number of reviews catalogued in the *Index to Legal Periodicals* grew from 188 to more than

18. Carret, *supra* note 17, at 24.

19. See 5 OXFORD DICTIONARY, *supra* note 12, at 853.

20. See *Mr. Justice Holmes*, 44 HARV. L. REV. 677 (1931) (including articles and tributes by Charles E. Hughes, C. Sankey, W. A. Jowitt, Benjamin N. Cardozo, Frederick Pollock). See also [Dedicatory Issue: Holmes] 40 YALE L.J. 683 (1931), with the following articles: Harold J. Laski, *The Political Philosophy of Mr. Justice Holmes*, *id.*; Hessel E. Yntema, *Mr. Justice Holmes' View of Legal Science*, *id.* at 696.

21. See *Mr. Justice Brandeis*, 45 HARV. L. REV. 1 (1931), including the following articles: Elemer Balogh, *Mr. Justice Brandeis*, *id.*; Henry Wolf Bikle, *Mr. Justice Brandeis and the Regulation of Railroads*, *id.* at 4; Felix Frankfurter, *Mr. Justice Brandeis and the Constitution*, *id.* at 33.

22. *Symposium: the Works of Joseph Raz*, 62 S. CAL. L. REV. 731 (1989).

23. *Editor's Foreword*, 1 LAW & CONTEMP. PROBS. 1 (1933).

24. *Symposium: Attorney Fee Shifting*, 47 LAW & CONTEMP. PROBS. 1 (1984).

25. *Children With Special Needs Symposium*, 48 LAW & CONTEMP. PROBS. 1 (1985).

26. *Symposium: Vice*, 51 LAW & CONTEMP. PROBS. 1 (1988).

27. *Special Issue: Economics of Contract Law*, 52 LAW & CONTEMP. PROBS. 1 (1989).

28. STEVENS, *supra* note 1, at 205.

29. Barbara H. Cane, *The Role of Law Review in Legal Education*, 31 J. LEG. EDUC. 215, 220 (1981) (rapid growth of law reviews during the period 1941 to 1955).

300 during the period 1946 to 1961.<sup>30</sup> The number of pages to be filled increased; concomitantly, more symposium issues were published. My survey focused only on the years 1980 to 1990, the only period for which computerized databases exist for law review literature. Research on earlier years, done manually, would be prohibitively slow and costly.

Using the LEXIS database, I compiled a printout of every law review citation that contained the words "symposium," "colloquy," "colloquium," or "special issue" for the years 1980 to 1990, one year at a time.<sup>31</sup> For each year, I entered the keyword name of each symposium and the law review issue in which it appeared. Then, using the Filemaker software program, I sorted each file by symposium keyword and also by law review. After that, I created a merged masterlist of all symposia sorted in the same way, and printed it out. This list, and the separate lists for 1984 and 1988, became my basic datalists for research and analysis.

## II. COMPETITION OVER MEANING: PAST, PRESENT, FUTURE

My research disclosed a number of intriguing relations and facts having to do with authorship, impact, and the politics of symposium publishing. Many of these are detailed in Part III. After reviewing thousands of symposium entries, my overall impression is that symposium issues can be seen as competing struggles over what law, the legal profession, and justice are to mean. Leaving aside the issue of whether meaning is embedded in text or context, or whether it is supplied by writer or reader,<sup>32</sup> we can safely say that the more closely two or more persons assent to common norms and values, the more likely they are to interpret text or events similarly. Conversely, the introduction of multiple belief and value systems increases the likelihood that diverse and competing interpretations will result.<sup>33</sup>

Symposium issues in all their variations reflect a wide range of interpretation. Some symposium issues present articles on various aspects of their subject with little conflict or disharmony among the au-

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30. Compare 8 INDEX TO LEGAL PERIODICALS 7 (Aug. 1946) with 12 INDEX TO LEGAL PERIODICALS 5 (Aug. 1961).

31. Citations were taken from the LAWREV/LGLIND (Legal Resource Index) file. Idiosyncratic or general wordings that might indicate a cluster of articles ("focus on," "review of," "survey of," "perspectives on") were excluded. Some groupings of articles, though clearly intended as symposia, were not labeled as such and not retrieved in the search. I included as many of these as came to my attention, but undoubtedly some of these issues must have been missed.

32. STANLEY FISH, IS THERE A TEXT IN THIS CLASS? 303 (1980); E. D. HIRSCH, VALIDITY IN INTERPRETATION 209-44, app. I (1967).

33. Steven L. Winter, *Contingency and Community in Normative Practice*, 139 U. PA. L. REV. 963 (1991).



thors. Other symposia offer conflicting interpretations of what their subject is about. Yet, at some basic level symposium issues are efforts to establish, re-establish, or otherwise emphasize different ways of understanding the enduring issues with which law is concerned. All such meanings are, to a large extent, communal. They require that others be persuaded to think, see, and speak as we do. One cannot easily establish a new meaning or value by oneself. The creation of meaning is communal virtually by definition.

What, then, constitutes "a community" or "a community of meaning?" Robert Post defines a community as "a social formation that inculcates norms into the very identities of its members,"<sup>34</sup> an inculcation that is always partial, "a matter of degree . . . some persons can share some norms but not others . . . the meaning and application of [those] shared norms can give rise to debate and disagreement."<sup>35</sup> The symposium issues I examined illustrated Post's observations.

Sometimes the search-for-meaning is only implied in the timing and structure of a symposium. Other times, the editors lay bare the authors' collective effort to establish, or debate, norms and meanings. This is particularly so in connection with future-oriented symposia. A random survey of Introductions and Forewords revealed the following typical examples: The *Texas Law Review* symposium on Law and Literature "brought renewed debate over the underpinnings of the legal system."<sup>36</sup> The *Stanford Law Review* symposium on Critical Legal Studies "offer[ed] a set of viewpoints, descriptions, and prescriptions that vary substantially from those embraced by the mainstream legal culture."<sup>37</sup> The *Southern California Law Review* symposium on interpretation believed it was "valuable to try to identify whatever common elements can be found, to see how far they may extend across the entire universe of interpretative contexts."<sup>38</sup>

Past-oriented symposia, likewise, undertake a collective search for meaning, but with roots in the past: The *Western Legal History* special issue on the Bill of Rights in the American West stated, "The articles in this issue reflect a common theme that runs throughout the history of the Bill of Rights. . . . They serve to remind us that a true commitment to the Bill of Rights requires eternal vigilance—here and

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34. Robert C. Post, *The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and Hustler Magazine v. Falwell*, 103 HARV. L. REV. 603, 645 (1990). For an earlier explanation or discussion of the role of communities of meaning, see Stanley Fish, *Interpreting the Variorum*, 2 CRITICAL INQUIRY 465, 483-84 (1976).

35. Post, *supra* note 34.

36. *Editor's Introduction*, 60 TEX. L. REV. 373, i (1982).

37. *President's Page*, 36 STAN. L. REV. 1, i (1984).

38. Christopher D. Stone, *Introduction: Interpreting the Symposium*, 58 S. CAL. L. REV. 1, 7 (1985).

now, each day—lest we are doomed to repeat the violations of the past.”<sup>39</sup> The *Rutgers Law Journal* symposium on the 25th anniversary of the Model Penal Code explained, “The Code has given criminal lawyers everywhere in the country a common language, a common understanding.”<sup>40</sup> The *Albany Law Review* symposium on state constitutional history stated, “Constitutional history is valuable whether or not one subscribes to a jurisprudence of original intent. For those who do, history becomes controlling . . . . For those who reject a jurisprudence of original intent, constitutional history nevertheless helps us to preserve the lessons embodied in the drafting of the provisions at issue.”<sup>41</sup>

The largest number of symposia are oriented in the present; we find the usual search for meaning in this category as well. Symposia in this group explain, interpret, or analyze a current legal problem or trend. They are often intended for practitioners or legislators; their aim is often utilitarian: to clarify a body of law thought important for a region or group of lawyers. The *Rutgers Law Review* symposium on current issues in mental disability law noted, “As recently as twenty years ago there was no systematic body of law that could be labeled mental disability law. . . . Highlighting some of the most significant current issues in mental disability law, the Symposium demonstrates how much this field has grown in a relatively brief period.”<sup>42</sup> The *Law and Contemporary Problems* gun control symposium explained, “Indeed, this symposium tends merely to help bring the discourse closer in balance . . . . The time has come to begin the process of learning more about the issues raised in this symposium, so that future arguments may rely on far more thorough and reliable data.”<sup>43</sup> The *Kentucky Law Journal* equine law symposium stated, “From the days when horse races on Main Street entertained crowds and disrupted life in Lexington and other communities . . . Kentuckians have demonstrated an uncommon devotion to the horse . . . [g]iven what this industry means to the people of the Commonwealth, it is my hope that this issue of the *Kentucky Law Journal* will advance the understanding of legal questions surrounding various aspects of the industry . . . .”<sup>44</sup> The *Idaho Law Review* symposium on legal structures for managing the Pacific Northwest salmon and steelhead explained, “Just as the

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39. Stephen F. Rohde, *Introduction*, 3 W. LEGAL HIST. 175, 177, 178 (1990).

40. Richard G. Singer, *Foreword*, 19 RUTGERS L.J. 519, 520 (1988).

41. Stephen F. Gottlieb, *Foreword*, 53 ALB. L. REV. 255, 258 (1989).

42. Alexander D. Brooks & Bruce J. Winick, *Foreword: Mental Disability Comes of Age*, 39 RUTGERS L. REV. 235, 238 (1987).

43. John Kaplan, *Foreword*, 49 LAW & CONTEMP. PROBS. 1, 3 (1986).

44. Martha Layne Collins, *Introduction*, 74 KY. L.J. 689, 690 (1986).

rivers tie together a geographically diverse region, refusing to recognize ecological or political boundaries, the fish provide a common element. But fish, like rivers, divide as well as unify . . . . New legal structures for managing the fishery have been created within the last decade. Apprising where we are requires some understanding of where we have been."<sup>45</sup>

In short, law like other areas of human endeavor, is a shifting, jostling mass of competing understandings and accounts, some challenging, some blending, others overlapping. Symposium issues illustrate this aspect of law and legal scholarship even more clearly than other forms of faculty scholarship such as publication of casebooks or non-symposium articles. The quest for order, for agreement—for communities of meaning—is the single most dominant impression that emerged from my examination of the thousands of symposia items in the LEXIS database.

### III. PARTICULAR FINDINGS

If I am right that symposium issues do represent an effort to establish communities of meaning, there still remain a set of subordinate questions having to do with the particulars of publishing in the symposium format. Is the search for community generally successful from the perspective of the sponsors, the law review, the writer, or the audience? That is, are symposium issues worth the trouble? How many symposium issues are there and what are they about? Is the number increasing, and if so what accounts for the increase? Is the market becoming saturated?

I divide my treatment of these issues into two parts. In section (A) I look at some of the quantitative questions of symposium publishing; in (B) I survey some of the qualitative issues.

#### *A. Quantitative Issues: What Subjects Are Presented, Who Writes, Who Sponsors, and to What Effect?*

The subject matter distribution of 1,807 symposium issues in the eleven year period is fascinating: in some respects it is a mirror of social and legal issues in our national consciousness in the 1980s. Reaganism and Republican leadership focused considerable attention on federalism, federal courts, and state law alternatives. These subjects generated at least 58 symposia. Related perhaps to the new federal-

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45. Dale D. Goble, *Introduction to the Symposium on Legal Structures for Managing the Pacific Northwest Salmon and Steelhead: The Biological and Historical Context*, 22 IDAHO L. REV. 417, 418, 420 (1986).

ism, 25 symposia concentrated their focus on judges and judicial efficiency.

Rising public concern with environmental quality is reflected in heavy coverage of issues of environmental law. Acid rain, air pollution, energy, land use, toxic torts, waste management, and water quality accounted for 103 entries. Business, governmental, judicial, and legal ethics, as well as white-collar crime, received attention in 47 symposia. Health care, AIDS, bioethics, and elder law accounted for 84 symposia. Reflecting increased integration into the world economy, the topics of international law, transnational law, and law of the sea received over 86 entries.

Traditional bread and butter legal issues, administrative regulation (10), tax (11), torts (14), legal education (8), corporations (14), employment discrimination (4), and labor law (28) received less coverage than one might perhaps expect. At the same time "crisis type" issues such as terrorism (8), poverty (3), homelessness (3), and public interest law (1) received some but not heavy treatment, while crime (7), drugs (11), criminal law (15), and the criminal justice system (36) received more extensive coverage.

Increased concern with the breakdown of the family and the by-products of divorce (15) also brought 18 symposia on the status of children and their rights, while issues dear to the hearts of radicals and reformers—prison law reform, Critical movements of all types,<sup>46</sup> and freedom of speech—received somewhat lighter coverage.

Interdisciplinary "law and" scholarship which some writers have described as in decline,<sup>47</sup> nevertheless produced voluminous scholarship—over 70 entries, seven on Law and Economics alone.

The decade's listing included certain unusual topics or ones of regional concern: one each on whales, lying, excuses, ski law, error, soap operas, tobacco, salmon and steelhead law; and three on equine law.

Each of the time focuses was well-represented. Almost all substantive issues were dealt with in a "current-issues" or "developments-in-the-law" format. These present-oriented symposia were the most numerous; retrospective and the "future of" somewhat less.<sup>48</sup> Many

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46. *E.g.*, Critical Legal Studies, Critical Race Theory, and Feminist Jurisprudence.

47. See Pierre Schlag, *Normative and Nowhere To Go*, 43 STAN. L. REV. 167 (1991). But cf. John Monahan & Laurens Walker, *Teaching Social Science in Law: An Alternative to "Law and Society,"* 35 J. LEG. EDUC. 478 (1985); John Monahan & Laurens Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. PA. L. REV. 477 (1986) (proposing new models for the way courts employ social science materials).

48. See *infra* Table B.

of the substantive symposia contained a mixture of articles, some looking to the future, some to current law.

### 1. Why These Subjects—And Are the Topics Skewed?

Who chooses these subjects, and are they representative—that is, do they differ from the distribution to be found in ordinary, “mixed” issues of law reviews? Occasionally the symposium introduction or foreword will explain how the topic was chosen.<sup>49</sup> Anecdotal evidence suggests that symposium topics come from a variety of sources. A local faculty member or law review sponsor may persuade the law review to publish a symposium on his or her favorite topic. Individual law review editors or groups of them, or outside scholars may propose a topic.

My overall impression, after reviewing hundreds of symposium issues, is that themes lean slightly more toward the concrete, at least in the mid-ranked law reviews, than do topics presented in non-symposium issues. In the relatively few top-tier reviews, the opposite is true—symposium issues tend toward future-oriented or jurisprudential topics, while nonsymposium issues reflect a mix of practical and theoretical writing.

### 2. Who Writes?

Who writes for symposium issues? Reviewing all 13,000 plus entries for 1980-1990, one is struck by a number of patterns. A typical symposium contains between four and nine writers—one contained two,<sup>50</sup> another 84.<sup>51</sup> As might be expected, most are male, a large majority are middle-aged, white, and law professors. Some symposia include more practitioners, political figures, or social scientists than others. Interdisciplinary symposia contain more co-authored articles than others. In general, hard core legal areas such as securities law or intellectual property have a high proportion of male authors; areas such as family and juvenile law, feminist legal theory and pornography, have larger numbers of women.

To focus more narrowly on the composition of symposium issues (as well as on a number of other aspects discussed later) I chose a single year for detailed analysis. I chose 1988 because it contained a large number of entries, as well as a broad cross-section of subject matter and approaches. For instance, that year contained a striking juxta-

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49. See, e.g., Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073 (1989) (law review received letter from two outside authors proposing topic).

50. *Colloquy: Tax Transitions*, 98 HARV. L. REV. 1809 (1985) (two articles and a reply).

51. *Local Government Law Symposium*, 15 STETSON L. REV. 649 (1986).

position of the past-oriented Federalist Society symposium on the revival of classical jurisprudence<sup>52</sup> and the future-oriented symposium on African-Americans and the evolution of a living Constitution.<sup>53</sup> In addition, there were three classics of the celebration genre: two on the foundation of the Federal Rules of Civil Procedure<sup>54</sup> and one on the Model Penal Code.<sup>55</sup> Two symposia focused on the problem of change and reform in the law.<sup>56</sup> New movements and issues, such as surrogacy,<sup>57</sup> Law and Literature,<sup>58</sup> and "voice" scholarship<sup>59</sup> were represented, as were examinations of past events of American history and society such as a retrospective on the Reagan years<sup>60</sup> and another on the Republican revival.<sup>61</sup> Symposia in 1988 reflected the legal community's continuing interest in judicial review, accountability, and selection.<sup>62</sup>

The year contained a slightly larger proportion of articles written by women and minorities than had earlier years. Nevertheless, male authors dominated the tables of contents of symposium issues, 1412 men to 244 women. Women thus contributed about one-seventh of all symposium articles published that year—a significant underrepresentation given that in 1988 women constituted 23% percent of the law professorate,<sup>63</sup> and tended to be younger—and hence probably more active writers—than men in general. As was generally true in all years, women authors were invited to write in areas of law concerned with care-giving; family and juvenile law, health care and aging.<sup>64</sup> The number of authors of color was even smaller—fewer than 30 known

52. *Federalist Society Sixth Annual Symposium on Law and Public Policy: The Crisis in Legal Theory and the Revival of Classical Jurisprudence*, 73 CORNELL L. REV. 281 (1988).

53. *Symposium: Afro-Americans and the Evolution of a Living Constitution*, 12 UPDATE ON LAW-RELATED EDUCATION 3 (Fall 1988).

54. *Symposium: The Fiftieth Anniversary of the Federal Rules of Civil Procedure*, 63 NOTRE DAME L. REV. 597 (1988); *Symposium: The Fiftieth Anniversary of the Federal Rules of Civil Procedure*, 62 ST. JOHN'S L. REV. 399 (1988).

55. *Symposium: The 25th Anniversary of the Model Penal Code*, 19 RUTGERS L.J. 519 (1988).

56. *Symposium: Coping With Change in the Law*, 36 CLEV. ST. L. REV. 495 (1988); *Symposium: The Modern Practice of Law: Assessing Change*, 41 VAND. L. REV. 677 (1988).

57. *Colloquy: In re Baby M*, 76 GEO. L.J. 1719 (1988); *Special Issue on Surrogacy*, 22 FAM. L.Q. 119 (1988); *Symposium: Baby M and Its Aftermath*, 18 SETON HALL L. REV. 827 (1988).

58. *Symposium: Law and Literature*, 39 MERCER L. REV. 739 (1988).

59. *Colloquy: Human Voice in Legal Discourse*, 66 TEX. L. REV. 577 (1988).

60. *Special Issue: A Retrospective Examination of the Reagan Years*, 33 ANTITRUST BULL. 201 (1988).

61. *Symposium: The Republican Civic Tradition*, 97 YALE L.J. 1493 (1988).

62. *Symposium on Judicial Discipline and Impeachment*, 76 KY. L.J. 633 (1988); *Symposium on Judicial Election, Selection, and Accountability*, 61 S. CAL. L. REV. 1555 (1988).

63. Telephone Interview with Kathy Grove, A.B.A. (Nov. 25, 1991). By 1990 the figure had grown to 25%.

64. See, e.g., *Symposium: New Directions in Family Law*, 28 UCLA L. REV. 1125 (1981) (all five articles authored by women).

minorities in over 1600 entries.<sup>65</sup> The most male-dominated symposia were in areas such as jurisprudence, constitutional law, and antitrust law. Even when the subject was an aspect of "left" or radical law, women and minorities were poorly represented.

The patterns I found in 1988 seemed to hold true generally. The 1985 *Southern California Law Review* interpretation symposium,<sup>66</sup> for example, featured 26 white male authors. Of five symposia on Critical Legal Studies,<sup>67</sup> only two included a woman author, and those included only one each.<sup>68</sup> Constitutional, particularly Bicentennial, symposia of the kind that began to appear around 1986 were equally unisex; few included women—one included a minority, Vine DeLoria, a Native American scholar.<sup>69</sup> In two symposia on law and community, where one might expect to find more women writers, the author mix reflects the six-to-one male/female ratio found in symposia subjects generally.

### 3. Who Publishes?

In general, the top tier law reviews published fewer symposia than those outside this group. For the eleven year period studied the top twenty law reviews<sup>70</sup> published 116 symposia, while a comparison group<sup>71</sup> produced 172 as shown in Table A.

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65. This figure was compiled by showing the list to colleagues familiar with minority legal scholars and scholarship and asking them to confirm known writers of color.

66. *Interpretation Symposium*, 58 S. CAL. L. REV. 1 (1985).

67. *Critical Legal Studies Symposium*, STAN. L. REV. 1 (1984); *A Symposium of Critical Legal Studies*, 34 AM. U. L. REV. 927 (1985); *Symposium on Critical Legal Studies*, 6 CARDOZO L. REV. 691 (1985); *Professing Law: A Colloquy on Critical Legal Studies*, 31 ST. LOUIS U. L.J. 1 (1986); *Constitutional Law From a Critical Legal Perspective: a Symposium*, 36 BUFF. L. REV. 211 (1987).

68. *A Symposium of Critical Legal Studies*, 34 AM. U. L. REV. 927 (1985) (including an article by Mary Joe Frug); *Constitutional Law From a Critical Legal Perspective: A Symposium*, 36 BUFF. L. REV. 211 (1987) (including a co-authored article by Elizabeth Mensch).

69. *A Bicentennial Symposium—The Constitution and Human Values: The Unfinished Agenda*, 20 GA. L. REV. 811 (1986).

70. See *Chicago-Kent Law Review Faculty Scholarship Survey* 65 CHI.-KENT L. REV. 195, 204 (1989).

71. I constructed the comparison group as follows: From the masterlist of symposia, I selected 20 law reviews that had published at least four (the average number) symposia during the 1980-1990 period, choosing only from law reviews that fell outside the top 20 in the Chicago-Kent 1989 ranking. Within this larger group I selected a representative sample. I aimed at diversity and chose a mix of public and private, secular and religiously affiliated, as well as schools from all regions of the country. The final list included: Albany, Arizona, Cardozo, Case-Western, Connecticut, Denver, George Washington, Georgia, Iowa, Loyola-LA, Maryland, North Dakota, Notre Dame, Nova, Rutgers-Newark, St. Louis, Tennessee, Tulane, U.C. Davis, Wisconsin.

TABLE A  
TIME ORIENTATION IN NUMBERS AND PERCENT FOR SYMPOSIA  
PUBLISHED BY TOP TWENTY AND COMPARISON GROUP LAW REVIEWS  
DURING 1980-1990

LAW REVIEWS	PAST	PRESENT	FUTURE
Top Twenty	22 19%	70 60%	24 21%
MID-TIER COMPARISON GROUP	17 10%	127 74%	28 16%

As Table A shows, the time orientation varied considerably between the two groups. Law reviews outside the top tier published more symposia and with a more pragmatic focus than did those in the top group. One can only speculate why this is so. It may be that law reviews outside the top tier reflect the orientation of their schools which tend to be more practice-oriented than schools with top tier reviews.<sup>72</sup> It may also be that faculty and law review advisors encourage them in that direction. Also, many middle tier law reviews have a traditional annual symposium, sometimes in a specific area of law.<sup>73</sup>

What explains the larger numbers? Less prestigious law reviews may use the symposium to increase the quantity and quality of articles they publish. Every year Harvard and Yale receive thousands of submissions while other journals receive barely enough to fill their pages. Targeting particular authors, especially ones that have some connection to their schools or the subject of their symposia, greatly increases the editors' chances of receiving a manuscript of publishable quality.

With bar journals and faculty-edited or special interest law reviews, the reason for symposium treatment is even clearer. Particular substantive areas are apt to undergo sudden change in response to new legislation or case law. Frequently, law reviews of these types cover the changes for the benefit of their readers, mostly practicing attorneys.

72. STEVENS, *supra* note 1, at 272-73 (top-ranked law schools tend to be more theoretical or policy oriented, mid-ranked schools tend to be more practice oriented).

73. *E.g.*, the University of San Francisco Law Review publishes an annual nonprofit organizations symposium; Louisiana Law Review presents a yearly faculty symposium on developments in the law. For an early precursor of this type of symposium, see *Progress of the Law, 1918-1919*, 33 HARV. L. REV. 1, 236, 255, 420, 556, 688, 813, 929, 1058 (1919-20); *The Progress of the Law 1919-1920*, 34 HARV. L. REV. 50, 282, 388, 508, 639, 741 (1920-21). Within a few years, student writers took on this task in an annual *Developments of the Law* feature.



#### 4. Growth in Number

As I mentioned in the Introduction, the number of symposium issues is rising rapidly. In reviewing symposia published during the eleven year period, I noticed two remarkable trends. As Table B shows, between 1980 and 1990 all symposia in general moved away from the present-oriented, and moved toward future orientation.

TABLE B  
TIME ORIENTATION BY YEAR IN PERCENT FOR ALL SYMPOSIA  
PUBLISHED DURING 1980-1990

	Past	Present	Future
1980	7	89	4
1981	5	89	6
1982	6	86	8
1983	6	88	6
1984	5	83	12
1985	6	81	13
1986	5	83	12
1987	8	77	15
1988	6	79	15
1989	6	77	17
1990	5	78	17

Indeed, in almost every year the percentage of future-oriented symposia increased. Why the steady increase? The current fragmentation in legal scholarship noted by Winter and others<sup>74</sup> may have caused an intensified need for coherence, for redefining communities of meaning, and for a return to solidarity. It seems likely as well that the coming end of the century, heralded by the approach and passing of 1984, has brought with it a need for closure.<sup>75</sup> One exception stands out: the percentage of past-oriented symposia increased markedly in 1987 re-

74. Winter, *supra* note 33; see also Kathryn Abrahms, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991).

75. For examples of the growing literature on this subject see *supra* note 3 and accompanying text (end-of-millennium behavior); see also WILLIAM JOHNSTON, *CELEBRATIONS: THE CULT OF ANNIVERSARIES IN EUROPE AND THE UNITED STATES TODAY* (1991) (studies the impact of the bimillennium by examining the cultural anniversaries that will precede it).

flecting a nationwide focus on national origins and the foundations of our political system.

### *B. Qualitative Issues: Publish and Flourish?*

Some of the questions one might ask about the symposium vehicle are less subject to quantitative determination. Among them are: (1) Do symposium issues attract a stronger cast of authors? (2) Are the articles better? (3) Are there insider groups of writers? (4) What is the effect of symposium issues on new movements? (5) Is a writer's symposium work as thoughtful and well-rendered as his or her other work?

#### 1. Stronger Cast of Authors?

Can apt selection of a symposium topic (one that catches a cresting wave of legal writing) coupled with diligent solicitation of authors enable a mid-ranked law review—one outside the top 20—to attract more renowned writers than would ordinarily be the case? Measuring the prestige of writers is difficult and subjective. I chose two simple, readily determined measures—the rank of an author's institution,<sup>76</sup> and his or her general reputation in the community of legal writers.

Examination of the year 1988 disclosed that a number of highly visible and accomplished scholars were indeed publishing in law review symposia sponsored by law reviews outside the top ten. For example, a symposium on reason, passion, and "The Progress of the Law" sponsored by *Cardozo Law Review*<sup>77</sup> contained the following list of authors: Monroe Price, William Brennan, Edward de Grazia, Martha Minow, Elizabeth Spelman, Charles Reich, Richard Weisberg, Lynne Henderson, Charles Yablon, David Rudenstine, Stephen Wizner, Julius Cohen, George Anastaplo, and David Cole. A symposium sponsored by *Mercer Law Review* on Law and Literature<sup>78</sup> featured: James Boyd White, William Ian Miller, Peter Teachout, Robin West, Teresa Phelps, and John Cole. A third symposium sponsored by *Northwestern Law Review* on law and social theory<sup>79</sup> contained another remarkable cast including J. M. Balkin, Robert Hayden, Jürgen

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76. Robert J. Morse & Elizabeth A. Wagner, *Top 25 Law Schools*, U.S. NEWS AND WORLD REP., Apr. 29, 1991, at 74 (ranking the top 25 law schools as follows: (1) Yale, (2) Harvard, (3) Chicago, (4) Stanford, (5) Columbia, (6) Michigan, (7) NYU, (8) Virginia, (9) Duke, (10) Penn., (11) Georgetown, (12) California-Berkeley, (13) Cornell, (14) Northwestern, (15) Texas, (16) USC, (17) Vanderbilt, (18) UCLA, (19) Iowa, (20) Hastings, (21) Wisconsin, (22) George Washington, (23) Minnesota, (24) Notre Dame, (25) North Carolina). Most of the authors discussed in this section teach at one of these highly ranked law schools.

77. *Reason, Passion, and Justice Brennan: a Symposium*, 10 CARDOZO L. REV. 1 (1988).

78. *Symposium: Law and Literature*, 39 MERCER L. REV. 739 (1988).

79. *Symposium: Law and Social Theory*, 83 NW. U. L. REV. 1 (1988).

Habermas, and David Van Zandt. Finally, *Notre Dame Law Review* sponsored a retrospective on the fiftieth anniversary of the Federal Rules of Civil Procedure.<sup>80</sup> Many of its well known authors ordinarily publish in law reviews of the very top tier: Jack Friedenthal, Paul Carrington, Geoffrey Hazard, Mary Kay Kane, Stephen Burbank, Robert McKay, and Arthur von Mehren.

It appears, then, that a law review may indeed attract a stronger group of authors for a symposium issue than non-symposium issues of that same review. This is especially so just outside the top tier of the 10 or 20 most prestigious reviews. In these "strong second-tier" reviews, intelligent selection of an appealing topic will, sometimes at least, enable the journal to attract leading authors.

It may be that, for these reviews at least, the work entailed in thinking of the symposium topic pays off by getting the attention of the established writer and persuading him or her that the review's editors are discerning and serious. It may be also that authors simply like to be asked. It may be that the editors, by extrapolating from a particular writer's most recent work and identifying the next topic he or she logically might write about, often simplify his or her task, earning the writer's gratitude at the same time.<sup>81</sup>

It may also be, simply, the pull of community. The life of a writer even at the top level is apt to be a lonely one. The lure of participating with others, even at distant institutions, in forging a new approach to a social or scholarly issue, may be powerful. This presumably is particularly so if, as sometimes is the case, the law review or law school hosts an on-site conference of authors who then have the opportunity to meet one another, the editors, and the discussants, and to present their topics in a collegial atmosphere.<sup>82</sup>

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80. *Symposium: The Fiftieth Anniversary of the Federal Rules of Civil Procedure*, 63 *NOTRE DAME L. REV.* 597 (1988).

81. For an equally tantalizing hypothesis, see Part III B.3, showing that law reviews even lower in the hierarchy—well outside the top 50—may attract top authors by the simple device of targeting those high in "communitarianism," that is, those with a demonstrated propensity to write for symposium issues. Symposia in law reviews outside the top 50 that were successful in attracting three or more well-known writers were: *Symposium: Judicial Review and the Constitution—the Text and Beyond*, 8 *DAYTON L. REV.* 443 (1983). *Symposium on Judicial Activism: Problems and Responses*, 7 *HARV. J.L. & PUB. POL'Y* 1 (1984). *The Constitution as an Economic Document: A Symposium Commemorating the Bicentennial of the United States Constitution*, 56 *GEO. WASH. L. REV.* 1 (1987). *Symposium on Post-Chicago Law and Economics*, 65 *CHI.-KENT L. REV.* 3 (1989). *Symposium [Constitutional Interpretation]*, 6 *CONST. COMMENTARY* 19 (1989). *Property: the Founding, the Welfare State, and Beyond. The Eighth Annual National Federalist Society Symposium on Law and Public Policy-1989*, 13 *HARV. J.L. & PUB. POL'Y* 1 (1990). *Symposium: Language, Law, and Compulsion*, 2 *YALE J.L. & HUMAN.* 89 (1990). Each of these writers was one who had contributed extensively to symposia in the top reviews as well.

82. The pull of community is limited, however, to what I call "strong second-tier reviews." Although there are a few exceptions, few top authors seem to write below this level.

## 2. Are the Articles Better?

A related question is whether symposium articles, in general, have a broader impact than non-symposium articles. One easily ascertained measure of an article's impact is the number of references or cites by other writers or judges that it garners in a designated period.<sup>83</sup> To carry out this comparison, I selected 1984 because it is far enough in the past so that patterns of citation would be evident. Within that year I chose a random sample employing a table of random numbers, of thirty symposium issues.<sup>84</sup> Then, using the LEXIS LAWREV/ALLREV, GENFED/COURTS, and STATES/OMNI file libraries, I compared both types of articles—symposium and non-symposium—appearing in the volume year for each of the thirty reviews. I calculated the rate of citation per page for each type of article.

The results are striking. As Appendix I shows, symposium issues attracted a larger numbers of citations, but only in the top, or high middle-tier reviews. For reviews outside this group, the reverse effect was frequently found—*non-symposium* articles in these reviews were cited more frequently than symposium articles. The lesson is clear. Symposium publication, even with the added pull of community, is no guarantee of success for a middle-tier law review—at least as measured by citation impact. Far from having a “catch-up” effect to raise a law review's visibility, symposium publication may only result in the rich getting richer, while middle-tier reviews remain at the same level.

I can only speculate why this might be so. It may be that the middle-ranked reviews lack access to the networks that would enable them to target the right topics or writers. It may be that the market is saturated, so that prestigious authors receive more symposium solicitations than they can accept, and turn down offers from all but top or strong second-tier reviews. Finally, it may be that an invitation to become a part of a community whose members one has never heard of

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83. Many other measures are possible. For example, a symposium on the rights of the institutionalized (prisoners), or marginalized (the homeless), may attract relatively few citations, but nevertheless may have a substantial impact on the welfare or morale of members of these groups. I chose citation count mainly because of its easy quantifiability. In so doing I do not mean to minimize the importance of other more intangible factors. See Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540, 1540-44 (1985); Fred R. Shapiro, *The Most-Cited Articles from The Yale Law Journal*, 100 YALE L.J. 1449, 1453-58 (1991) (both discussing the rationale of citation analysis); Edward Rubin, *On Beyond Truth: A Theory of Evaluating Legal Scholarship*, 80 CAL. L. REV. (forthcoming 1992), (proposing that the legal community evaluate scholarship according to normative clarity, significance, applicability, and persuasiveness—and that divergent or insurgent scholarship be evaluated according to its ability to engender doubt and anxiety).

84. I am grateful for the assistance of Professor Edwin S. Shapiro, Professor of Quantitative Methods, University of San Francisco for help in designing this methodology.

is inherently less attractive than one to join with persons one knows, if only by reputation.

### 3. Intellectual Incest? Insider Groups and the Danger of Group-Think

Community may be ennobling, even necessary, but it may also pose the risk of conformity and group-think.<sup>85</sup> Thus, a question one may have about symposium publishing is whether the same authors predominate, resulting in insider networks and exclusion of new fresh voices.

I did find some evidence that this may be happening. Of the more than 13,000 symposium articles published during 1980-1990, a high percentage of authors appeared only once or twice, but a small number appeared several times. Equally interesting is that certain authors tended to appear together often. Is there an "imperial communitarian" phenomenon in which like-minded communitarians nominate each other making it difficult for an outsider to break in?<sup>86</sup> Symposium editors do seem to take pains to solicit divergent views—the landmark *Stanford Law Review* symposium on Critical Legal Studies (CLS), for example, contained several articles critical of that movement. Yet most of them were written by "insiders"—well known mainstream scholars whose reactions to CLS were fairly predictable. Few mavericks or new writers were included.

#### THE "SOCIOGRAM"

Groupings of symposium authors yielded a sharp, well-defined "sociogram" of who publishes with whom—perhaps one of the most striking results of my entire survey of law review symposium publishing. The twenty most frequent writers and the number of symposia in the top twenty law reviews in which they appeared during 1980-1990 were: Mark Tushnet (13), Richard Epstein (12), Michael Perry (11), Cass Sunstein (11), Richard Posner (10), Sanford Levinson (9), Jonathan Macey (9), Frank Michelman (9), David A. J. Richards (9), Frederick Schauer (8), Lea Brilmayer (8), Paul Brest (7), Frank Eas-

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85. E.g., Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?* 22 HARV. C.R.-C.L. L. REV. 301 (1987) (community and dialogue can be repressive); Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture*, CORNELL L. REV. (forthcoming 1992) (dominant narrative changes more slowly than we might like to think); Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929 (1991).

86. Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984).

terbrook (7), Judith Resnik (7), Milner Ball (6), and Martin Shapiro (6).

The sixteen symposia in the top twenty law reviews with the densest cluster (three or more) of these writers were used for the sociogram.<sup>87</sup>

The linking of authors is shown graphically in Table C. To read the chart, one should pick any writer and read across the columns to see with which other authors the writer appeared in various symposia.

As one can see, certain authors frequently appeared together. For example, Tushnet appeared with Brest and Richards three times each, with Perry and Schauer four times each. Perry and Richards appeared together three times. Carter, Epstein, Kennedy, Levinson, Michelman, Posner, Shapiro and Sunstein each appeared with another twice. Brilmayer and Resnik, high-publishing women, were nearly isolated—none of the top male symposiasts appeared with either of them more than once. Among minorities, only Carter appeared in as many as six symposia, and the number of times his work appeared linked with others of the top group was small: twice with Shapiro, once with one of seven others.

Given that there are over 6,000 law professors, many of whom could be considered highly distinguished, I found the frequency chart (Table C) and sociogram (Figure 1) surprising.

What accounts for these clusterings in which authors appear over and over again in the top symposia, many of them together? Each of the authors is, of course, outstandingly eminent—but so are many others, including women and minorities. Expertise alone also seems unable to account for the patterns I found; many of the authors who achieved renown in an area such as constitutional law were solicited to

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87. *Symposium on Efficiency as a Legal Concern*, 8 HOFSTRA L. REV. 485 (1980); *Symposium: Constitutional Adjudication and Democratic Theory*, 56 N.Y.U. L. REV. 259 (1981); *Symposium: Judicial Review versus Democracy*, 42 OHIO ST. L.J. 1 (1981); *Symposium on Legal Scholarship: Its Nature and Purposes*, 90 YALE L.J. 955 (1981); *Symposium on the Legacy of the New Deal: Problems and Possibilities in the Administrative State; Part 1-2*, 92 YALE L.J. 1083 (1983); *Symposium: The Conceptual Foundations of Labor Law*, 51 U. CHI. L. REV. 945 (1984); *Interpretation Symposium*, 58 S. CAL. L. REV. 1 (1985); *[Symposium] Religion and the State*, 27 WM. & MARY L. REV. 833 (1986); *The Federalist Society Symposium: Federalism and Constitutional Checks & Balances: A Safeguard of Minority and Individual Rights*, 1987 B.Y.U. L. REV. 719; *[Symposium] 1787: The Constitution in Perspective*, 29 WM. & MARY L. REV. 1 (1987); *The Federalist Society Sixth Annual Symposium on Law and Public Policy: The Crisis in Legal Theory and the Revival of Classical Jurisprudence*, 73 CORNELL L. REV. 281 (1988); *Symposium on Judicial Election, Selection and Accountability*, 61 S. CAL. L. REV. 1555 (1988); *Symposium: The Republican Civic Tradition*, 97 YALE L.J. 1493 (1988); *[Symposium] Contractual Freedom in Corporate Law*, 89 COLUM. L. REV. 1395 (1989); *[Symposium] Conceptions of Democracy: The Case of Voting Rights*, 41 FLA. L. REV. 409 (1989); *Symposium: Michael J. Perry's Morality, Politics, and Law*, 63 TUL. L. REV. 1283 (1989). Twenty-three symposia in the top twenty, pairing only two of these authors, were not included.

Figure 1

THE SOCIOGRAM

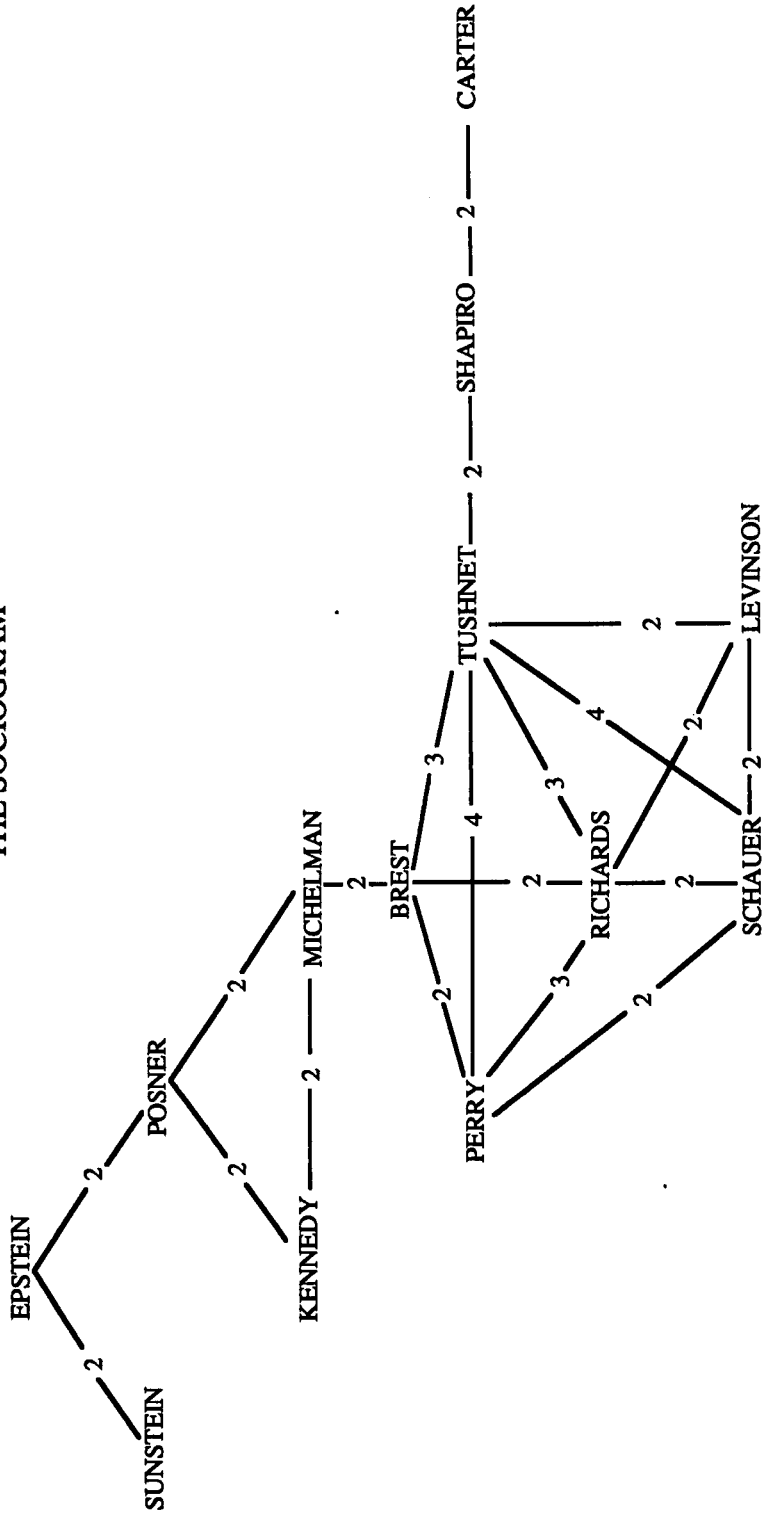


TABLE C  
LINKING OF TOP WRITERS IN TOP REVIEWS CONTAINING THREE OR  
MORE OF THESE WRITERS

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Ball																X
Brest			X	X			X						X			
Brilmayer									X	X						
Carter					X			X								X
Easterbrook											X			X		
Epstein					X	X					X	X				
Farber															X	X
Fischel						X								X		
Kennedy	X			X												
Levinson							X			X						X
Macey													X	X		
Michelman	X	X		X									X		X	
Perry		X	X				X	X								X
Posner	X			X		X					X					
Resnik												X				
Richards		X	X				X			X						
Schauer							X	X		X		X				
Shapiro				X	X											X
Sunstein						X			X				X			
Tushnet			X	X			X	X		X		X				X

write for symposia in other, not closely-related, areas such as law and religion or interpretation.

Two possibilities occur to me. As was mentioned earlier the top authors may nominate each other, neglecting to call attention to promising newcomers, mavericks, women and minorities.<sup>88</sup> Or, more

88. Cf. Richard Delgado et al., *Fairness or Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359 (informal procedures and networks increase the likelihood of bias); Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991).



innocently, it may simply be a product of name recognition. When one's name begins to appear frequently on the "symposium circuit," editors and faculty advisors think of one as a possible contributor for their own symposium. It may also be a product of the insecurity or "herd mentality" of unimaginative student editors.

Whatever the explanation, the clubby quality of law review symposium publishing in the 1980s is troubling. If law review symposium publishing, as I have hypothesized, is a means of stating, declaring, and defining community, the broad contours of that community have some striking exclusionary overtones.

#### 4. Effect on New Movements—Acceleration or Death Knell?

A further question one might have concerning symposium publishing is its effect on new social or legal movements. Does symposium publishing validate and give impetus to a new movement or school, or does it have the opposite effect, somewhat in the manner of biological species that "reproduce and die"? Does a symposium issue cause a movement to ossify?

I found little evidence that symposium publishing sounds the death knell for new schools of thought. Of four legal movements—law and literature, the Republican revival, Critical Legal Studies, and Feminist Jurisprudence—that rose to prominence in the period I studied, each generated at least one symposium. Yet in the years following that symposium, there was no discernible reduction in the number of articles published concerning that subject; indeed, many of the symposia were followed by others. Before the Texas symposium on Law and Literature in 1982,<sup>89</sup> few articles about "law and literature" referred to it as a movement. After 1982, Law and Literature became a thriving subgenre of legal scholarship resulting in additional symposia<sup>90</sup> and scores of articles in regular issues of law reviews during the next eight years. Likewise, the term "feminist jurisprudence," found only once in a law review title before 1985,<sup>91</sup> became a term of art shortly after the *Australian Journal of Law and Society* sponsored a special edition on feminist legal issues.<sup>92</sup> Separately published articles steadily increased throughout the decade, culminating in two symposia in

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89. See *supra* note 36.

90. See *supra* note 58; *Symposium: Law, Literature, and Social Change*, 43 VAND. L. REV. 1665 (1990).

91. Ann C. Scales, *Towards a Feminist Jurisprudence*, 56 IND. L.J. 375 (1981).

92. *Special Issue: Feminist Legal Issues*, 3 AUSTRALIAN J.L. & SOC'Y 5 (1985).

1990.<sup>93</sup> For both of these emerging movements, the symposium format seemed to legitimize its name and direction.

The Critical Legal Studies movement played out in a different way, and may illustrate a way in which symposia capture a movement and define its boundaries and community of meaning. The first CLS symposium in 1984, was preceded by seven separately published articles during the four years prior to it, and was then followed by at least four other CLS symposia within the next two years.<sup>94</sup> About six to eight articles on CLS appeared every year thereafter, some historical, many critical, and others simply guides to using critical legal methods in other areas of law. In general, though, there seems to be no "shoot-ing star" syndrome.

##### 5. Is a Writer's Symposium Work as Valuable as His or Her Other Work?

Are symposium articles by a given author as valuable, as carefully crafted, as his or her other nonsymposium work? In other words, if a law review does manage to attract a noted writer to contribute to its symposium, is the resulting article likely to prove as thorough and well-reasoned as that author's previous work—the work that brought his or her name to the review's attention? Is there, as Lash LaRue puts it, a "shlock effect"<sup>95</sup> in which noted authors dispatch hastily drafted, less intensively researched work for the symposium issue? This supposition gains plausibility, for once an author agrees to write for a symposium, most reviews will feel obligated to publish whatever he or she sends. The editors realize the other symposium authors may have agreed to write in reliance upon the noted author's inclusion; rejecting his or her article may cause disappointment or a sense of betrayal on the part of these other writers.

To address this possibility, I selected ten authors whose work appeared frequently in symposium issues in 1980-1990.<sup>96</sup> As might be expected, each of these authors also published widely in a non-symposium format. I then examined and compared their articles appearing in (a) mid-tier symposium issues, and (b) nonsymposium issues of top reviews. Employing this admittedly small sample, I did find some of the symposium contributions were briefer and more im-

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93. *Feminist Jurisprudence Symposium*, 24 GA. L. REV. 761 (1990); *Symposium on Feminist Jurisprudence*, 25 TULSA L.J. 657 (1990).

94. See *supra* note 67.

95. I thank Lewis Henry LaRue for alerting me to this possibility. For a definition of "shlock," see LEO ROSTEN, *THE JOYS OF YIDDISH* 349 (1968) (1. a shoddy, cheaply made article; 2. a defective or fake article; an object one was cheated over).

96. See *supra* Part III.B.3 (discussing possibility of "in-group" effect).

pressionistic<sup>97</sup> than the author's usual (non-symposium) pieces, and garnered fewer citations. To be sure, other symposium articles by those authors were as lengthy, and cited as frequently as their non-symposium work—in a few cases even more so.

This effect diminished, but did not disappear when I compared (c) symposium issue articles from top reviews and (d) non-symposium issue articles in top reviews—both written by the same author. While many of the authors' symposium articles received roughly the same number of citations as their non-symposium work, slightly over sixty percent received fewer.

#### IV. FUTURE TRENDS: LEGAL SCHOLARSHIP IN THE NEXT CENTURY

My study of symposium issues raises a number of questions touching on the future of legal scholarship. I will point out a few trends regarding the direction of legal scholarship, the success of symposium issues in creating communities of meaning, and the effect of new technologies for publishing. Each has implications for law—as a search for community, for common meanings, for the symposium ideal.

##### 1. Do Symposium Issues Accelerate the Decline in Doctrinal Scholarship?

Since the 1960s, legal scholarship has steadily become less doctrinal. Mainline law reviews no longer fill the major portion of their issues with lengthy articles of case analysis. Authors focus increasingly on law's meaning, law's method, law's place, law's constituencies, law's direction, law's authority—in effect, law's anthropology.<sup>98</sup> Legal scholarship has become more interdisciplinary, importing theory and methodology from philosophy and literary criticism<sup>99</sup> as it once did from the social sciences, especially economics and sociology. Symposium publishing reflects the growing interest and ability of some legal scholars to cross traditional boundaries; the increase in "law and" symposia indicates this trend most likely will continue. One observer has noted that with less time available, busy academics and lawyers may use symposium issues as a way of getting an overview of an emerging or technical field, similar to using a nutshell.<sup>100</sup>

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97. I am grateful to Robert Berring for bringing this possibility to my attention.

98. See *supra* notes 32-45 and accompanying text.

99. *Id.*; see James B. White, *Law and Literature: "No Manifesto,"* 39 *MERCER L. REV.* 739 (1988) (literature is a way of reading texts and focusing on language, making it useful for law).

100. George L. Priest, *Triumphs or Failings of Modern Legal Scholarship and the Conditions of its Production,* 63 *U. COLO. L. REV.* 725 (1992).

Not all interdisciplinary or cross-boundary work is theoretical. Many of the interdisciplinary symposia were published in specialty law reviews and bar journals and included such topics as: AIDS;<sup>101</sup> law and aging;<sup>102</sup> law and outer space;<sup>103</sup> medical issues and the law;<sup>104</sup> and, poverty and the law.<sup>105</sup>

Legal implications of a growing number of social problems require the participation of lawyers and legal academics in policy discussions. As society is confronted with a multiplicity of competing interests and increased questioning if not disregard of traditional rules, it turns to law for answers. Present-oriented symposia, by far the largest portion, will undoubtedly continue to explore ways to solve social problems. The symposium format itself may discourage doctrinal writing; the articles are generally shorter and more interactive, more informal, and the approach increasingly interdisciplinary.

## 2. Do Symposia Create Communities of Meaning, and How Can Law Reviews Achieve That Effect?

Most symposia create "communities of meaning" for the participants at some level: 1) they give presenters and commentors opportunities to interact; 2) they validate the expertise of the authors;<sup>106</sup> (3) they legitimize a subject area in which a handful of committed people might be working.<sup>107</sup>

Perhaps the classic symposium, however, is one that focuses on a new way of ordering reality (CLS),<sup>108</sup> delineates new perspectives on the law (Excluded Voices),<sup>109</sup> or maps out a paradigm shift (Normativity).<sup>110</sup> Often, in such cases, a cluster of writers previously working in relative isolation become identified with, or identify themselves as, a new movement. They become part of a community; they create, intentionally or de facto, a community of meaning.

The significance of a symposium is sometimes not seen until long

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101. *Symposium: AIDS; at the Limits of the Law*, 34 VILL. L. REV. 755 (1989).

102. *Special Issue: Law and Aging*, 69 MICH. B.J. 526 (1990).

103. *Symposium on the Law and Outer Space*, 4 J.L. & TECH. 1 (1989).

104. *Symposium: The Cutting Edge—Emerging Medical Issues and the Law*, 3 N.Y.L. SCH. J. HUM. RTS. 7 (1985).

105. *Symposium: Poverty, Legislation, and Law*, 16 J. LEGIS. 127 (1990).

106. See *Colloquy: Responses to Randall Kennedy's "Racial Critiques of Legal Academia,"* 103 HARV. L. REV. 1864 (1990).

107. In 1985 the first AIDS symposium was published by Hofstra as "Acquired Immune Deficiency Syndrome." By 1988, three law reviews, *Journal of Legal Medicine*, *Nova Law Review*, and *St. Louis University Public Law Review*, all published symposia, by then, using the acronym AIDS.

108. See *Critical Legal Studies Symposium*, 36 STAN. L. REV. 1 (1984).

109. *Symposium: Excluded Voices, Realities in Law and Law Reform*, 42 U. MIAMI L. REV. 1 (1987).

110. *Symposium: The Critique of Normativity*, 139 U. PA. L. REV. 801 (1991).

after its publication. A future-oriented symposium, years later, is often seen as a benchmark or signpost—"we have come this far,"<sup>111</sup> "we are going this way."<sup>112</sup> With a few inspired exceptions, the top-tier law reviews seem more able to pinpoint cutting edge subjects for their symposia, and given their resources will likely continue to do so.<sup>113</sup>

One symposium, not included in the survey, is an outstanding example of how one law review defined the community in which it is located. In its Spring 1991 issue the *Buffalo Law Review* published a symposium titled: "Buffalo: Change & Community."<sup>114</sup> The issue and the conference which preceded it defined community with "intentional ambiguity" to address economic development and strategic change, not only for Buffalo itself, but for western New York and southern Ontario as well.<sup>115</sup> It was an ambitious, innovative, and far-reaching attempt to engage the school with the larger society around it; one that other middle-tier, regionally-oriented law reviews might find advantageous to follow.

### 3. Will the Electronic Revolution in Legal Scholarship and Publishing Affect the Development of Communities of Meaning?

Electronic technology (word processors, fax machines, computer assisted legal research) has reconfigured the world of legal scholarship in the last decade.<sup>116</sup> Technology can deliver vast amounts of difficult-to-retrieve data. But such technology is costly to use and can fracture the community in a geographic sense when scholars choose to access computer databases from remote sites. Yet, it can create a new kind of community via electronic bulletin boards, networks, and conferencing.

What will the electronic symposium of the future look like? Will we participate in symposia primarily via video teleconferencing, and only rarely through a physical convening?<sup>117</sup> One example of an

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111. *Symposium: The Legal System and Homosexuality—Approbation, Accomodation, or Reprobation*, 10 U. DAYTON L. REV. 445 (1985).

112. *Symposium: Law and Literature*, 39 MERCER L. REV. 739 (1988).

113. See *supra* notes 72-73 and accompanying text.

114. *Symposium: Buffalo: Change & Community*, 39 BUFF. L. REV. 313 (1991).

115. *Id.* at 318.

116. Robert Berring, *Full-Text Databases and Legal Research: Backing Into the Future*, 1 HIGH TECH. L.J. 27 (1986); Robert Berring, *Legal Research and Legal Concepts: Where Form Molds Substance*, 75 CAL. L. REV. 15 (1987); Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories? Law Reform, Critical Librarianship and the Triple Helix Dilemma*, 42 STAN. L. REV. 207 (1989).

117. For a discussion of electronic conferencing see Beverly Watkins, *Scholars, Librarians, and Technologists Urged to Join in Using Electronic Information*, 38 CHRON. HIGHER EDUC., Nov. 27,

electronic symposium occurred inadvertently on the recent law librarians' computer conference, an electronic forum for daily communication between law librarians throughout the world.<sup>118</sup> Someone posed the question, "What are the most significant changes you think will occur regarding computer assisted legal research between now and the year 2000?"<sup>119</sup> By the next day, answers from leading thinkers in the field were posted for anyone to read.<sup>120</sup> It became, in the words of one law librarian, "a cocktail party anyone could join"—which takes us back full circle to the original intent of Plato's symposium.<sup>121</sup>

## CONCLUSION

In this article, I noted that symposium publishing has both practical and theoretical aspects. The practical aspects of interest to the community of legal scholars include: who publishes in symposium issues, on what subjects, with what effect, and whether or not there exists an "in-group" network that dominates the pages of the most prestigious symposia.

The theoretical insight, which grew in certainty as my work progressed, is that these issues are in a highly significant sense searches for communities of meaning. Authors who share a common concern or perspective bring their work together to analyze, clarify, or advance that way of seeing law. Past-oriented symposiasts find meaning and solidarity arising out of some past event or individual. Present-oriented writers discuss a problem or issue of immediate current concern, frequently of a practical nature. Future-oriented symposium contributors are concerned with change, with introducing or defending new meanings and with new values in law and legal scholarship. Regardless of the type of symposium I detected, however, a troublesome tendency on the part of editors and authors to state the same themes, and invite the same participants. Perhaps community and exclusion are inextricable—unless strenuous and intentional efforts are made to reduce the latter.

My final section analyzed whether, and how, the symposium movement is likely to shape legal thought into the future. I predicted that the format may change under the impact of technology; but as our culture continues to fragment and social change increases in pace,

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1991, at A21. See generally DIRECTORY OF ELECTRONIC J. NEWSL. AND ACAD. DISCUSSION LISTS (1991) (containing a comprehensive list of electronic journals available on various academic networks).

118. Lawlib Conf. Info.; Law Librarians Computer Conference INTERNET.

119. *Id.* (Oct. 29, 1991) Query by David Badertscher.

120. Responding were Blair Kauffman, Thomas Bruce, Carole Hafner, Ethan Katsh, Dan Dabney.

121. See *supra* note 11.

the need for commonality and for dialogue will only heighten. So long as symposium issues are seen to answer this need and give shape to the communitarian impulse, they are likely to remain a vital, growing force in legal scholarship and publishing.

APPENDIX 1  
RATIO OF CITATION FREQUENCY BETWEEN SYMPOSIUM AND  
NON-SYMPOSIUM ARTICLES IN THE SAME VOLUME

LAW REVIEW	SYMPOSIUM ARTICLES	NON-SYMPOSIUM ARTICLES	RATIO*
37 Arkansas Law Review	.010	.047	.213
72 California Law Review	.567	.277	2.047
32 Cleveland State Law Review	.052	.074	.703
17 Connecticut Law Review	.007	.071	.099
14 Environmental Law	.020	.058	.345
20 Gonzaga Law Review	.000	.029	.000
11 Hastings Constitutional Law Quarterly	.118	.127	.929
7 Hastings International and Comparative Law Review	.000	.007	.000
7 Houston Journal of International Law	.012	.029	.414
17 Indiana Law Review	.003	.000	.003
1984 International Journal of Law & Psychiatry	.000	.003	.000
9 Journal of Corporation Law	.000	.072	.000
34 Journal of Legal Education	1.122	.173	6.486
45 Louisiana Law Review	.126	.117	1.077
67 Marquette Law Review	.127	.074	1.716



16 New York University Journal of International Politics	.146	.012	12.167
60 North Dakota Law Review	.010	.003	3.334
11 Northern Kentucky Law Review	.079	.051	1.549
63 Oregon Law Review	.014	.144	.097
58 St. John's Law Review	.026	.078	.334
15 St. Mary's Law Journal	.050	.074	.676
14 Seton Hall Law Review	.006	.102	.059
35 Syracuse Law Review	.269	.030	8.967
62 Texas Law Review	.824	.250	3.296
51 University of Chicago Law Review	.710	.382	1.859
55 University of Colorado Law Review	.071	.048	1.479
34 University of Toronto Law Review	.075	.012	6.250
17 Vanderbilt Journal of Transnational Law	.000	.018	.000
29 Villanova Law Review	.090	.096	.938
30 Wayne Law Review	.099	.032	3.098

\*In this column, a ratio larger than one indicates that the law review garnered more citations per page for symposium than non-symposium articles; a ratio less than one indicates that for those reviews the symposium articles were less cited than non-symposium articles.

