

# REVISING LAW REVIEW

Journals Struggle for Relevancy  
in a Field Redefined by the Internet

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**O**N A SUNDAY NIGHT AT THE end of February, Paul L. Caron, who teaches tax at the University of Cincinnati College of Law, got an e-mail from the editor-in-chief of the *Yale Law Journal*. Caron happened to publish the TaxProf Blog, a heavily hit online source for news, updates, and informa-

tive articles on tax policy and legislation.

And it happened that in a few days the U.S. Supreme Court would be hearing oral arguments in a big tax case.

*Yale Law Journal* editor Curtis J. Mahoney asked if Caron would put a link on his Web log to the journal's new online publication, *The Pocket Part*, for an article on the case. The link was to an op-ed-style version, with comments from others, of a full-length article yet to be published in the more traditional way.

Caron, whose institution earned a respectable enough No. 53 in the most recent *U.S. News & World Report* law school rankings that pegged Yale No. 1, obliged.

"The *Yale Law Journal* is as big a cheese as there is in the law review business," Caron says. "For them this was a way of making law reviews more relevant—trying to protect the franchise. In the old days, that article wouldn't have been available till after it was in print. Now it has real-time access, and it makes scholarship more current and influential."

While this anecdote may not illustrate a complete reversal of fortune, it does indicate a fast melting in what has been a glacial habitat for law reviews and scholars—with the intermediate intellectualism of the Internet heating things up.

The example of the *Yale Law Journal* going for immediacy and impact is in part an answer to growing unhappiness with law reviews. Recent critics have included Judge Richard A. Posner of the Chicago-based 7th U.S. Circuit Court of Appeals and Judge Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit.

Their complaints concerned, among other things, emphasis on theoretical rather than practical articles, too much reliance on selection and editing by second-year law students with little or no faculty supervision, and a lack of peer review.

"We definitely noticed the criticism of law review articles," says Mahoney, who recently finished his tenure as editor-in-chief of the *Yale Law Journal* and who graduated this spring. "A lot of students share those concerns. What we see when sitting for exams or when working a summer job seems pretty far removed from what professors have been increasingly writing about."

The imminent demise of law reviews was predicted a decade ago by Bernard J. Hibbitts, who teaches at the University of Pittsburgh School of Law. Hibbitts believed then, and now, that the Internet is as great or greater an engine for revolutionary change as Gutenberg's printing press once was.

## 'WHERE ARTICLES GO TO DIE'

WHILE EVENTS HAVEN'T MOVED AS FAST OR AS FAR AS Hibbitts predicted, he's holding to it and hasn't published in a law review in 10 years. He is, however, all over the Internet, including as publisher and editor-in-chief for Jurist, which he describes as a real-time legal news and research service.

"The most prestigious law reviews are still published by the most prestigious law schools, in predictable order," Hibbitts says. "That much is still true. But they don't serve the same function. They're no longer the pri-



Paul Caron: "There's no evidence yet that bloggers are all hat and no cattle."

mary way we circulate our ideas."

Some of the criticism is answered by adaptations such as Yale's *The Pocket Part*, which is named for the pockets on the backs of legal publications that hold updates. Others are responding by turning to the Internet, hosting online forums and posting preprints of working papers on Web sites.

"By the time a paper reaches the print stage now, it

probably has been seen already by a lot of people and the wave has passed," Hibbitts says. "Law reviews are where articles go to die."

While the Internet can easily knock out the traditional law review functions of publishing and cite checking, both of which have become less expensive and less labor-intensive, one function might be irreplaceable, notes Eugene Volokh, a UCLA School of Law professor whose well-known blog, *The Volokh Conspiracy*, is renowned for its legal and libertarian ideas and research. That function is article selection.

"It's funny how we all pooh-poo second-year law students who don't know what's good or bad, what's novel or not, and maybe that's right—but we rely on it," Volokh says. "When you do a search and come up with 50 articles, the first ones you look at are printed in the top journals. You need a proxy for quality, and legal academics aren't going to do it."

But then there is the growing cachet of SSRN, the Social Science Research Network ([www.ssrn.com](http://www.ssrn.com)). It is a free, searchable database of research papers in 10 academic fields, including law, that has earned a reputation for offering tomorrow's research today thanks to its structure, which allows scholars to put up early drafts of their work and ask for comment. Although concerns have been raised that shoddy work could be cached forever and come back to bite the author, the site's policy of self-policing is expected to keep quality high.

"The whole point of legal scholarship is to have it read, and technology is making that easier," says Caron, the TaxProf blogger. "With SSRN, now people all over the world are reading articles, and that's far removed from the old days when the *Harvard Law Review* would be available in law libraries and the big law firms, with no easy access for the average person."

Caron and another law professor experimented last year with yet another way to rank law schools—getting counts of articles posted and downloaded via SSRN. He found that the best professors from the best schools tend to dominate.

"It turns out the proof is in the pudding," he says. "You come up with the people you would expect to do well by those measures."

### BLOGS ADD BUZZ

STILL OTHER, NEWER FORCES MIGHT BE AT WORK, TOO. Blogs add to the buzz for certain articles, and the better-known blogs tend to belong to the better-read academics.

"There's no evidence yet that bloggers are all hat and no cattle," says Caron, who recently conducted a symposium, *Bloggership: How Blogs Are Transforming Legal Scholarship*, at Harvard Law School's Berkman Center for Internet & Society. "One reason they're popular is that they're good scholars, and people take what they say on blogs seriously."

But the old way still dominates for the newest scholars—because tenure committees remain interested in traditional scholarship. "Classical scholarship is not going to change much, except to the extent people get distracted

and spend more time blogging," says Ethan J. Leib, who comes up for tenure in 2008 at the University of California Hastings College of the Law. "That's why junior professors don't spend as much time blogging. I don't think you can realistically hope to be successful without attempting to build scholarship, and a blog's never going to cut it."

Leib, who also holds a doctorate in political science, is dutifully cranking out the articles. But he also recently joined the popular *PrawfsBlawg*. "We've been experimenting with posting short excerpts of articles on the blog, hoping readers will give substantial feedback in the comments section," Leib says.

What that means to the traditional law reviews remains to be seen. But don't underestimate those 2Ls still running them. One rap on the traditional law review and its ties to the tradition-bound profession is the slow adaptation to technological advances.

The *Yale Law Journal's* recent editor-in-chief, Mahoney, points out that most everyone passing through law schools since the early 1990s—including the young tenured faculty—is proficient with computers. He was involved in developing *The Pocket Part* for a niche "between a free-flowing blog off the top of somebody's head and the extensively edited print publication." Mahoney adds: "Whatever resistance there has been historically, technology will rapidly erode." ■

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