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The Rise and Rise of the Specialty Journals at Harvard Law School

by

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THE RISE AND RISE OF THE SPECIALTY JOURNALS AT HARVARD LAW SCHOOL

JENNIFER L. CARTER

I. INTRODUCTION

Harvard Law School has been called “one of the Grand Princes of American legal scholarship”¹ and numerous commentators have noted its profusion of student-edited legal publications, which now number fourteen. Although the *Harvard Law Review* was not the first student-edited law journal,² it is widely agreed that the founding of the *Harvard Law Review* in 1887 initiated the modern law review movement.³ Indeed, Harvard led trends in legal education from the late Nineteenth Century onward. The scientific pragmatism of Dean Langdell’s case-study method is reflected directly in the doctrinalism of the early law review articles, which provided valuable and timely practical information as well as in-depth academic work. Langdell’s legal science gave way

1. Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 EMORY L.J. 659, 644 (1998).

2. Michael I. Swygert & Jon W. Bruce, *The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews*, 36 HASTINGS L.J. 739, 763 (1984).

3. See, e.g., Zimmermann, *supra* note 1, at 670. Zimmermann characterizes the entire movement as “Keeping Up with Harvard.” *Id.* Professor Fred Rodell suggested in 1937 that the problems he saw in the law reviews were a matter of “a polite little game of follow-the-leader with the Harvard Law Review setting the pace.” Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 44 (1937). See also Roger C. Cramton, *The Most Remarkable Institution: The American Law Review*, 36 J. LEGAL EDUC. 1, 2–4 (1986), for a concise overview of the side-by-side development of legal education and the law review.

Although the term “law review” is sometimes used to refer exclusively to the primary student-edited journal of a law school, and “law journal” to refer to all other publications, this paper will use the two terms interchangeably.

to legal realism in the 1920s and 1930s, and with its already strong record of publishing innovative scholarship the *Harvard Law Review* took this shift in stride. The next movement, however, would push the world of legal publications beyond the several dozen law reviews publishing in the 1950s. The rise of legal specialization and interdisciplinary legal studies, would eventually spawn hundreds of specialized journals, spurred by increasing competition within law school student bodies and among law school faculties.

Nowhere was this specializing explosion more pronounced than at Harvard Law School, which now boasts thirteen student-edited law journals in addition to the *Harvard Law Review*. While the intellectual movements of the Twentieth Century have been well and fully documented elsewhere, this paper sets out for the first time a history of the specialty journals at Harvard Law School and places the journals in the context of Harvard Law School events. The present state of the law reviews has likewise been the subject of much commentary—most of it negative, though these complaints are by no means novel.⁴ Thus, this paper will close by assessing the present state of affairs—again, with Harvard Law school as a case study—and considering the future of the law journals.

This paper takes as its premise that three elements are necessary to create and sustain a successful enterprise, academic or otherwise, by Harvard Law School stu-

4. See, e.g., Rodell, *supra* note 3.

dents: a politically or ideologically compelling motivation, a reliable signal for differentiating among generally bright and capable individuals, and a market that is receptive and responsive to the enterprise. The first element explains why the proliferation of the specialty journals commenced during some of the most politically charged years in the law school's history. The second element encapsulates one of the central signaling goals of the elite law school: "getting more than the top half of the class into the top half of the class."⁵ The third element is perhaps the most forgiving, as the law school has proven quite willing to underwrite most student projects, while enterprises that the law school market did not welcome were embraced by the marketplace of the outside world. The interaction of these three principles accounts for much of the history that follows.

II. THE PAST

A. Before the Journal Explosion

This paper's historical focus is on the specialty journals of Harvard Law School, as the history of the *Harvard Law Review* has been well documented.⁶ Yet a few further words about the *Review* are necessary to set the stage for the development and proliferation of the specialty journals.

For most of the first half of the Twentieth Century, membership in one of the three "honor organizations" adequately served as a signal to prospective employers

5. Interview with Detlev F. Vagts, Bemis Professor of International Law, Emeritus, Harvard Law School, in Cambridge, Mass. (Apr. 17, 2006) [hereinafter Vagts interview].

6. See John Jay McKelvey, *The Law School Review: 1887–1937*, 50 HARV. L. REV. 868 (1937), for an early history of the *Harvard Law Review*.

that a student was among Harvard's best. The *Harvard Law Review* enjoyed preeminence among the honor organizations, the other two being the Board of Student Advisers—a group dedicated primarily to administering the annual Ames moot court competition and advising the participants therein—and the Legal Aid Bureau. Indeed, contemporary observers called the law reviews “a perfect aristocracy. One achieves membership exclusively in terms of his performance. Membership carries honor, but the honor that it carries is the duty to work and slave and drive oneself as no other student is expected to.”⁷ Like the other honor organizations, the *Law Review* provided an important educational value in both the work itself and the accompanying opportunity to work closely with faculty members.

Following the Second World War, a “rising tide of admissions applications” fundamentally altered the functioning of the Harvard Law School student body.⁸ For decades, any college graduate might attend the law school but then face a significant probability of failing out. As the quantity and quality of applicants grew, admission rather than graduation became the primary screening-out mechanism. The result of this shift was, naturally, an overall increase in the quality of the student body, and most significantly, an increase in the strength of the students in the middle of each class.⁹ As the middle of the class grew stronger, and graduation alone was no longer an adequate sig-

7. KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 107 (1930).

8. Vagts interview, *supra* note 5.

9. *Id.*

nal of excellence, the limited number of elite honors no longer sufficed to convey the quality of the student body to prospective employers. Yet *Law Review* membership remained as important a credential as ever: “To be editor-in-chief is virtually to assure the student of a good position on graduation, and to be one of the associate editors is a kind of open sesame, at least to the large offices.”¹⁰

Besides the honor organizations and the student newspaper, the *Harvard Law Record* (established in 1947), the Ames clubs constituted the bulk of extracurricular opportunities available to HLS students in the years following World War II. The Ames clubs existed primarily to field teams in the annual Ames moot court competition, but they fulfilled an equally important social function for their members. The most elite clubs sported prominent faculty advisors and also functioned as alumni organizations for the Ivy League colleges, and the recruiting of first-year students—as well as college seniors—by upperclass members of those teams sustained these clubs year to year.¹¹ Students not selected for the elite teams who still wished to participate in the Ames competition were assembled into ad hoc Ames clubs created by the Board of Student Advisers; the social distinction between the two classes of clubs was well known.¹² By the late 1960s, the Ames clubs had all but lost their grip on the law school’s increasingly egalitarian social environment. Meanwhile, other activities had begun to appear: the

10. John E. Cribbet, *Experimentation in the Law Reviews*, 5 J. LEGAL EDUC. 72, 72 (1952).

11. Vagts interview, *supra* note 5.

12. *Id.*

1959 law school yearbook lists, in addition to the Ames clubs and the three honor organizations, the Legislative Research Bureau, the Forum (a speakers bureau), the *Record*, and the yearbook. This early extracurricular growth would spawn the first specialty journals.

A second wave of broad demographic changes would fuel the journals created in the 1970s and thereafter. During the deanship of Erwin Griswold, from 1946 to 1967, Harvard Law School was what has been called a “conservatizing milieu.”¹³ Professors recall that he “set a high moral tone for the law school”¹⁴ and that he favored the old traditions of the law school, noting that Griswold felt that he’d left the deanship “just in time” to avoid the radicalization that took hold in 1968–1969.¹⁵ Yet during his tenure as dean, Griswold had been “the preeminent source of guidance and inspiration for the editors of the Harvard Law Review for most of the journal’s history,” he was also instrumental in supporting the three specialty journals that were founded while he was dean.¹⁶ Meanwhile, though, the political changes that were sweeping the country were dramatically changing the law school’s sociological climate. The *Law Review*’s “position

13. George W. Hicks, *The Conservative Influence of the Federalist Society on the Harvard Law School Student Body*, 29 HARV. J.L. & PUB. POL’Y 623, 632 (2006) (quoting JOEL SELIGMAN, *THE HIGH CITADEL* 89 (1978)).

14. *Id.* (quoting Professor Duncan Kennedy).

15. Vagts interview, *supra* note 5.

16. *In Memoriam: Erwin Nathaniel Griswold*, 108 HARV. L. REV. 979, 979 (1995); *see also infra* note 43.

of favor . . . ceased to be tolerable in more egalitarian times,”¹⁷ and students hungered for opportunities to level the hierarchy among their extracurricular credentials. And the development of progressive legal studies would provide numerous vehicles for doing so.

B. The Specialty Journals Emerge

1. *International Law Journal*

By the early 1960s there was “an enormous proliferation of opportunities to do things” outside of class.¹⁸ A 1960 *Record* cartoon parodied the proliferation in a cartoon depicting a professor, chalk in hand, facing a blackboard covered in event announcements and scratching his head,¹⁹ and a tongue-in-cheek report narrated the harrowing experience of the bright-eyed first-year student running the gauntlet of student organization recruiting.²⁰ Active organizations at the time included special interest groups such as the Bull and Bear Club, the St. Thomas More Society, the Patent Law Club, the Indian American Law Students Association; and activity groups like the Yearbook, the *Record*, the Voluntary Defenders, and the Forum.

17. Vagts interview, *supra* note 5. Professor Vagts was editor-in-chief of the *Harvard Law Review* in 1950 and began teaching at the law school in 1959. As perhaps the best example of the egalitarianism that dominated the law school at this time, student protests led the faculty to offer an optional pass-fail grading system in the 1969–1970 academic year.

18. *Id.*

19. Cartoon, HARV. L. REC., Oct. 13, 1960, at 8. On the blackboard were announcements from, among others, the *Yearbook*, the Forum, Webster Club, and several apparently fictitious organizations. *Id.*

20. *Hearsay*, HARV. L. REC., Sept. 22, 1960, at 2, 2 (“Moral of this Reflection: organization membership drives were better than ever.”).

One young, burgeoning extracurricular activity was the International Law Club, which boasted more than 400 members in the fall of 1960.²¹ The club was just four years old at the time, and its activities quickly expanded from informal discussion to hosting speakers to, finally, publishing a bulletin.²² The first volume of the *Bulletin of the Harvard International Law Club* first appeared in the spring of 1959;²³ its sixteen pages contained a summary of the club's activities that year (including a long list of student and outside speakers, a "Christmas sherry party," and a beer party in honor of a group of Brazilian law students touring the United States),²⁴ a report on the progress of the construction of the new International Legal Studies building,²⁵ an address by a visiting scholar,²⁶ a brief article by a Club alumnus,²⁷ and seven rather personal letters from club alumni.²⁸ It did not take long, though, from the bulletin to morph from a tool for keeping members dispersed all over the globe in touch²⁹ to a formal, law review-style publication. The *American Journal of International Law* had by then been publishing for more than fifty years,

21. *Growth in International Law Club*, HARV. L. REC., Sept. 29, 1960, at 10, 10.

22. *Id.*

23. *International Law Club Distributes New Publication*, HARV. L. REC., Apr. 30, 1959, at 7, 7.

24. *Current Club Affairs: Growth in Membership and Activities*, 1 BULL. HARV. INT'L L. CLUB 1, 3 (1959).

25. *Id.* at 4.

26. Peter J. Liacouras, *Some Aspects of International Concession Agreements, an Address by E. Lauterpacht*, 1 BULL. HARV. INT'L L. CLUB 5 (1959).

27. Paolo Bernardi, *Common Market Investment and the American Lawyer*, 1 BULL. HARV. INT'L L. CLUB 9 (1959).

28. *Alumni Contributions—Comments*, 1 BULL. HARV. INT'L L. CLUB 12 (1959).

29. *See Growth in International Law Club*, supra note 21, at 10 ("The Bulletin is the link that unites the members of the society which is the International Law Club.").

and surely the Harvard students sensed that their enterprise could aspire to similar heights Volume 2 of the *Bulletin* was “an enlarged and a more broadly oriented newspaper which [could] be of interest to all law students.”³⁰ Volume 3 achieved the law review form; its two issues consisted of articles, student notes, and student book reviews. The club had also grown, and was now hosting an international law moot court and running a job placement program for foreign lawyers.³¹ Yet it still had growing to do: in its fourth volume, the journal’s two featured articles were two students’ third-year papers.³² In 1967—its eighth year—the journal adopted its current name, *Harvard International Law Journal* (ILJ), a professionally typeset look, and a total of 415 pages in two issues. ILJ has published each year since, and its founders’ Burkean hope that “those who are yet to be born’ will derive interest and encouragement from the pages of the projected Review”³³ has been literally fulfilled.

2. A “Basement Law Review”

In the fall of 1963, a group of professors, including future dean James Vorenberg, teamed up with the Law Review to develop a “basement Law Review” concept: essentially, a new, intramural law review in conjunction with a curricular writing program

30. *New Student Bulletin*, HARV. L. REC., Dec. 17, 1959, at 6, 6.

31. *Editors’ Note*, 4 HARV. INT’L CLUB J. 214, 214 (1962).

32. *I.L.C. Journal Distributed*, HARV. L. REC., Jan. 31, 1963, at 4, 4 (quoting Edmund Burke).

33. GROWTH IN INTERNATIONAL LAW CLUB, *supra* note 21, at 10.

for second-year students.³⁴ The primary motivation for such an undertaking was student-driven and stemmed from student dissatisfaction with the lack of writing opportunity in the law school curriculum. The project was never realized, and in hindsight the failure is not surprising. While the project showed promise from an educational point of view, it is far from clear that it would have provided the prestigious credential that students were craving. As would become clear, both substantive academic interest and a prestigious signaling function would be necessary to start and sustain a new student enterprise.

3. *Journal on Legislation*

The next journal to appear would similarly emerge from an active extracurricular activity. The Harvard Student Legislative Research Bureau had existed since the late 1950s, serving the dual purposes of providing practical research and writing opportunities for students, and the use of this work product by legislators at the state and national levels. In 1963, Bureau members planned to compile their work and publish it as the *Harvard Journal on Legislation* (JOL). JOL was planned to be not just a club bulletin but a regular journal, with semi-annual publication planned from the beginning, yet it would exist as a function of, rather than separate from, the Research Bureau.³⁵ The journal concept was equally a student enterprise, with the Bureau's president serving as the jour-

34. Editorial, *A "Basement Law Review,"* HARV. L. REC., Oct. 17, 1963, at 2, 2.

35. *SLRB Journal Appears Next Month,* HARV. L. REC., Dec. 19, 1963, at 5, 5.

nal's editor.³⁶ According to Dean Griswold, "[T]his has been a student activity. It has received the fostering interest and care of the Law School administration and Faculty. But the work has been done by students, on their own responsibility."³⁷

JOL was conscious of its role in the expanding specialty journal movement, and of the reasons for that movement. In 1967 its editors acknowledged the broad ideological component of the movement, which it characterized as "a spirit of experimentation influenced to some extent by the genuine excitement among both students and faculty at the prospect of continued reform in legal education at the Harvard Law School."³⁸ But there were factors specific to Harvard Law at work as well; in response to the spring 1967 Harvard reform proposal, which included creating a new law review in order to promote student writing, JOL called attention to the opportunities for publication that it provided to the HLS student body.³⁹ By 1969, JOL had stepped out of the research bureau's skin to become "a full-scale law review operation."⁴⁰ It also finally openly admitted its ideological loyalty. "A journal that calls for legislative change will almost inevitably have something of a liberal tilt; at least that's the way it's worked out here."⁴¹

36. *Id.*

37. Erwin N. Griswold, *Preface*, 1 HARV. J. ON LEGIS. 3, 3 (1964).

38. *Journal Commentary*, 5 HARV. J. ON LEGIS. 1, 1 (1967).

39. *Id.*

40. Ronald Patterson, *Legislation Journal*, HARV. L. REC., Feb. 6, 1969, at 4, 4.

41. Larry Zelenak, *Journals Elect Editorial Boards for Next Year*, HARV. L. REC., Apr. 15, 1977, at 1, 9. "The 'Eugene V. Debs Memorial Refrigerator' and the print of Picasso's 'Guernica' in the Journal's office," the *Record* noted, reinforced the perception of its perspective. *Id.*

More important, JOL became the first journal to accept first-year students onto its staff, a now-universal practice among the specialty journals.⁴² Yet not everyone was satisfied with the Journal's shift; in a 1968 letter to its editors, former Dean Griswold complained,

I am still disappointed that you do not include in the Journal more of the drafts and reports prepared by the Harvard Student Legislative Bureau. In the past, some of them appeared to be extremely good, and I felt that it would be a real service to make them widely available. My objective in helping the *Harvard Journal on Legislation* to get started, and then in backing it, was to provide a *Law Review* type of experience for persons not on the *Law Review*, where membership was obtained on the basis of interest and production, rather than on the basis of grades. I find myself a little disappointed that recent discussion at the school, directed to some extent to the *Law Review*, have not recognized the opportunities available on the *Harvard Journal on Legislation*, the *Harvard International Law Journal* and the *Harvard Civil Rights-Civil Liberties Law Review*. They are really a rather remarkable galaxy.⁴³

Griswold's criticism must be understood in light of the dominant Law School controversy at the time: grading. Student activism relating to grading standards had existed for many years, but anti-grading students were about to win their biggest victory ever: the fall of 1969 would usher in a year of optional pass-fail grading. An important function of the specialty journals in this era was credentialing students whose grades did not qualify them for the ultimate resume garnish, *Law Review* membership. The Legal

42. *Id.*

43. *Letter of Erwin Griswold*, 6 HARV. J. ON LEGIS. 1, 1 (1968). The previous year, JOL's editors acknowledged "the enthusiastic encouragement and support which [Griswold] offered the Bureau and *Journal* throughout the years of his tenure as Dean. He has always expressed a strong personal interest in our enterprise and his advice and counsel have been important ingredients in our success." *Journal Commentary*, 5 HARV. J. ON LEGIS. 1 (1967).

Aid Bureau, one of the three “honor organizations” onto which students were traditionally placed on the basis of their grades, abandoned merit-based selection for a completely randomized selection process in the spring of 1969.⁴⁴ The *Law Review*, however, was not quite ready to liberalize its membership standards, and so the law school happily welcomed new credential-building opportunities onto the scene.

4. *Civil Rights-Civil Liberties Law Review*

In 1966, a pair of student research organizations spawned yet another law journal. The Civil Liberties Research Service had existed since the fall of 1960; it had been a vibrant organization since its inception, with seventy-five students joining at its first meeting and assignments from the Department of Justice and C.O.R.E. pending before it fully organized.⁴⁵ Its founders intended the organization to be purely a research service, not an activist group: “[T]he Service [is not] intended to be a vehicle for espousing those causes for which it will prepare memoranda. If the constitutional rights of a White Citizens’ Council were being intimidated, the Service prescribes that it would be obliged to heed its request.”⁴⁶ In adopting this policy, its founders hoped to avoid “a dissipation of energy over questions on the merits” of particular issues.⁴⁷ In the 1962–1963 academic year, for example, the Service drafted a Supreme Court amicus brief and conducted re-

44. John York, *Legal Aid Ends Grade Standard*, HARV. L. REC., May 1, 1969, at 1, 1.

45. *Civil Liberties Researchers Organize*, HARV. L. REC., Oct. 13, 1960, at 5, 5; *Civil Liberties Researchers to Elect Officers Today*, HARV. L. REC., Oct. 20, 1960, at 6, 6.

46. *Civil Liberties Researchers Organize*, supra note 45, at 5.

47. *Id.*

search on individual civil rights cases and broader civil rights investigations, on behalf of government officials and the ACLU.⁴⁸ The Harvard Law Students Civil Rights Auxiliary Group (an ACLU affiliate) was created in the fall of 1963 to assist civil rights lawyers throughout the county with research and litigation projects.⁴⁹ It is unclear why the Civil Rights group developed separate and apart from the Civil Liberties research bureau, but what is clear is that both organizations were prospering by 1965 when they joined forces to create the *Harvard Civil Rights-Civil Liberties Law Review* (CR-CL).

CR-CL was to be “a review of revolutionary law.”⁵⁰ It was founded just at the peak of the civil rights movement, and so student enthusiasm for the project was high.⁵¹ And although the national momentum slowed soon after CR-CL’s founding, the journal “managed to stay relevant while giving up none of its early idealism.”⁵² Indeed, a front-page *Record* story in 1966 insisted that CR-CL and the civil rights movement at Harvard Law remained strong, despite waning national interest and the diversion of activist energies to the Vietnam War.⁵³ In other words, as Professor Horwitz recalls, the reason for

48. See *Civil Liberties Operations*, HARV. L. REC., Apr. 18, 1963, at 12, 12.

49. Donald W. Kramer, *Rights Groups Form*, HARV. L. REC., Oct. 17, 1963, at 1, 1, 9.

50. Preface, 1 HARV. C.R.-C.L. L. REV., at iii (1966).

51. Morton Horwitz, *A Brief History of the Harvard Civil Rights-Civil Liberties Law Review*, 37 HARV. C.R.-C.L. L. REV. 249, 249, 251 (2002).

52. *Id.* at 251.

53. See John Spitzer, *Group Reports: No H.L.S. Backlash*, HARV. L. REC., Nov. 10, 1966, at 1, 1. Indeed, the CR-CL organization was vibrant enough to deadlock over a logo design. The staff had agreed on an image of “a white and black hand grasped in an Indian wrestling position,” but could not agree which hand should be on top. *Id.*

CR-CL's continued success was its progressive bent and its persistence in staying to the left of the Supreme Court.⁵⁴ "In one way, the editors of CR-CL were lucky to have had the Burger and Rehnquist Courts to react to. It has saved CR-CL from the self-satisfied view that history is on our side."⁵⁵

B. Expansion Continues: The 1970s

1. *Environmental Law Review*

The 1970s were a relatively quiet time at the law school, "a time when HLS students withdrew from concern with and involvement in political matters."⁵⁶ But students continued to explore the broadening horizons of the law and associated fields, and three new specialty journals would emerge by the end of the decade.

In 1976 yet another student research bureau spawned a new journal: the *Harvard Environmental Law Review* (ELR). In contrast to the other journals, ELR was to be "a practical, decision-making journal, aimed more at practicing lawyers than academics."⁵⁷ Its founders were conscious of the ambitiousness of their undertaking, and they "hope[d] that students interested in environmental law will be attracted to Harvard" because of their journal.⁵⁸ ELR's roots traced back to the fall of 1969, when a group of

54. See Horwitz, *supra* note 51, at 251.

55. *Id.* at 253.

56. Editorial, *The Seventies in Retrospect*, HARV. L. REC., Dec. 7, 1979, at 10, *quoted in* Hicks, *supra* note 13, at 658.

57. Zelenak, *supra* note 41, at 1.

58. *Id.*

students founded the Harvard Law Conservation Society, a research- and activism-based organization with ties to the Sierra Club.⁵⁹ Perhaps foreshadowing ELR, among the group's stated plans was "publication of a report on developments of the law in this field."⁶⁰ Yet Dean Sacks, who penned the preface to ELR's first volume, recalled of the Conservation Society: "These students were not particularly interested in a law review on the environment; rather they wanted to be fully engaged in active causes—to be 'a part of the action.'"⁶¹ Their first volume was indeed a call to action; it praised the outpouring of public enthusiasm since 1970's inaugural Earth Day celebration and laid out the need for a "comprehensive reference tool" for players in the emerging field of environmental law.⁶² ELR "helped push the spirit of the protest actions, the rallies, and the Earth Days, which so appealed to the young and the disadvantaged, into the academic world via serious intellectual discourse and reflection."⁶³

ELR clearly met with enthusiastic support from Dean Sacks and the administration. Its first volume was funded by the law school, the Ford Foundation, and the International Paper Company;⁶⁴ it would later add the Allied Chemical Corporation and the

59. *Law Students Form Conservation Group*, HARV. L. REC., Sept. 25, 1969, at 6, 6. The group apparently changed its name to "Environmental Law Society" fairly soon after its founding. See Bonnie Docherty, *25 Years of HELR: The Invention and Reinvention of Environmental Law*, 25 HARV. ENVTL. L. REV. 323, 323 (2001).

60. *Law Students Form Conservation Group*, *supra* note 59.

61. Albert M. Sacks, Preface, 1 HARV. ENVTL. L. REV., at xv, xv–xvi (1977).

62. Introduction, 1 HARV. ENVTL. L. REV., at xvii, xvii, xix (1977).

63. Charles Haar, Preface, 20 HARV. ENVTL. L. REV. 1, 1–2 (1997).

64. Sacks, *supra* note 61, at xv.

Clorox Company to its list of sponsors.⁶⁵ The founders raised more than \$30,000 their first year⁶⁶ and produced a 700-page volume—massive by any measure.⁶⁷ That first volume was hailed by the *ABA Journal*,⁶⁸ and it continued to have a lasting impact. It was not the first time, nor would it be the last, that a student-driven enterprise would bridge the gap between emerging popular sentiment and legal scholarship.⁶⁹ ELR failed, however, to have its desired impact on the law school. In 2001 its founders expressed their disappointment that ELR had not led to “the establishment of strong environmental program at Harvard Law School”; they felt the law school “has taken a step backward since the journal’s founding.”⁷⁰

2. *Journal of Law & Public Policy*

By 1977 the journal culture was booming: the April Fool’s issue of the *Record* satirically announced the creation of a new journal (the *Harvard Journal of Vested Interest Law*), exclaiming, “Just what the legal community needs! Another journal!!”⁷¹ Mocking the specializing trend, it continued:

65. 4 HARV. ENVTL. L. REV., at ii (1980).

66. Docherty, *supra* note 59, at 323.

67. Volume 2 was just over 600 pages; Volume 3, just over 400. Beginning with Volume 4 ELR has published two books per year of between 200 and 300 pages each.

68. Docherty, *supra* note 59, at 324 (citing Arthur John Keeffe, *Current Legal Literature: Harvard’s New, Big Environmental Baby*, 64 A.B.A. J. 487 (1978)).

69. See Haar, *supra* note 63, at 1 (“Long before casebooks on environmental law appeared, students led the legal-academic community in recognizing the environment as a central problem of our time.”).

70. Docherty, *supra* note 59, at 327.

71. Editorial, *Just What We Need*, HARV. L. REC., Apr. 1, 1977, at 10, 10.

Prominent critics have been cited for the relief that the world would be no worse off if one half of the presently operative law journals simply ceased to exist; we believe that such a view is short-sighted. If nothing else, the new journal, and the influx of green accompanying it, will nurture the growing demand for courses in the Tomato area. Consider this proposition closely—isn't it true that the so-called "topicality" of such knee-jerk publications as the *Yale Law Journal* pales in comparison to biting commentary on Giant Jacks or Sweet Ruby Porters? We are willing to wager that you never considered the problem from this perspective.⁷²

The Record's attentiveness to the journal scene throughout the 1976–1977 academic year indicates that the journal institution enjoyed a prominent place in the student consciousness. A January 1977 editorial written by the president of JOL urged the politicization of journal leadership elections, which was apparently an issue much larger than JOL.⁷³

It was thus, at the height of this boom, that one proposal did not receive an enthusiastic reception from Dean Sacks. A proposal by two students who also served as editors of the "liberal-leaning" *Journal of Legislation*

sought not "merely to add another specialized journal to the long list of periodicals" at the law school. Believing that the existing specialty journals generally maintained a liberal perspective, they instead desired to create a journal that would encompass a broad range of legal, political, and economic topics from a unique editorial viewpoint: one "broadly characterized as conservative."⁷⁴

72. *Id.*

73. Rob Leflar, "Merit" Not Enough in Review Editorships, HARV. L. REC., Jan. 28, 1977, at 4.

74. Hicks, *supra* note 13, at 643 (citations omitted).

Several histories of JLPP have been published in its pages over the years. See generally E. Spencer Abraham, *Introduction: Twentieth Anniversary Volume*, Harvard Journal of Law & Public Policy, 20 HARV. J.L. & PUB. POL'Y 1 (1996); Douglas H. Ginsburg, *Reflections on the Twenty-Fifth Anniversary of the Harvard*

Dean Sacks denied the *Harvard Journal of Law & Public Policy's* (JLPP) request for funding and support, explaining that the school could not subsidize a publication that supported a particular ideological viewpoint.⁷⁵ “The students were somewhat incredulous, given the implication, implausible to them, that publications like the *Civil Rights-Civil Liberties Law Review* adopted a nonideological stance.”⁷⁶

The fledgling organization incorporated in Massachusetts and received tax-exempt status from the IRS⁷⁷—a process that no other journal had had to undertake, as they enjoyed the shelter of Harvard’s tax-exempt umbrella—and began raising funds. The founders faced these early challenges with remarkable lucidity:

[T]he free market place will determine [whether Harvard Law needs another journal]. At a certain point there may come a time when there are not enough people to staff and read all publications. Meanwhile, there’s no need to discourage proliferation of new publications so long as they have quality.⁷⁸

The market’s response was resounding: JLPP raised more than \$10,000 from private donors its first year, more than enough to break even after publishing its first volume, and sold 250 advance subscriptions.⁷⁹ By 1984, its circulation had grown to more than

Journal of Law & Public Policy, 25 HARV. J.L. & PUB. POL’Y 835 (2002); Hicks, *supra* note 13, at 642–46; Alex Kozinski, *Introduction to Volume Nineteen*, 19 HARV. J.L. & PUB. POL’Y 1 (1995).

75. Hicks, *supra* note 13, at 643.

76. *Id.*

77. *Id.* at 643, 644.

78. Bill Ross, *Conservative Law Journal to Appear Next Spring*, HARV. L. REC., Sept. 23, 1977, at 6, 6.

79. Hicks, *supra* note 13, at 644.

1,000.⁸⁰ Through this period of growth, JLPP retained its unique identity and perspective; one editor explained despite its big-tent membership of “libertarians, conservatives, and moderates,” the journal’s “shared values” were a unifying and motivating factor for its staff.⁸¹ JLPP was clearly enjoying and prospering in its independence.

It was an unlikely success story, perhaps: conservative legal thought had all but died out at Harvard Law School. Although Harvard Law students had been involved at the inception of the first modern conservative student movement in 1960,⁸² by the end of the 1970s not even a Republican club still existed at the law school.⁸³ Thus, like ELR, JLPP’s founders viewed their undertaking as a major component in their ideological movement. They realized the need for academic support for their then-fledgling cause: “It was apparent that conservatives could not achieve their objectives by appealing to voters alone; they would have to persuade judges as well. Serious legal research and scholarship would be required to explain the important role conservative philosophies serve in sound jurisprudence.”⁸⁴ JLPP, like most of the other specialty journals at the time, also ran a research bureau to further its policy goals,⁸⁵ although the program died

80. David Price, *Conservative Journal Asserts Independence*, HARV. L. REC., Dec. 7, 1984, at 12.

81. *See id.*

82. *Conservatives Form Political Group*, HARV. L. REC., Sept. 22, 1960, at 8, 8 (reporting on the creation of Young Americans for Freedom).

83. Hicks, *supra* note 13, at 641.

84. Kozinski, *supra* note 74, at 1.

85. Hicks, *supra* note 13, at 645.

young and it is unclear that any other journal still retained its research bureau by the early 1980s.

3. *Women's Law Journal*

1978 also saw the debut of another editorially unique journal at Harvard Law School: the *Harvard Women's Law Journal* (WLJ).⁸⁶ WLJ set out to be the first student-edited specialty journals to focus on gender,⁸⁷ though the *Women's Rights Law Reporter* of the Rutgers School of Law-Newark actually holds that honor, having been founded in 1971 in New York City and transferred to student control at Rutgers in 1974.⁸⁸ The inspiration for a women's law journal at Harvard was the student-initiated celebration of the twenty-fifth anniversary of women students' admission to the law school.⁸⁹ As Celebration 25 took shape, the publication of a commemorative book was planned, but in a moment of inspiration, the event organizers realized that an annual journal would serve better to address the continuing legal challenges they saw facing women.⁹⁰ Dean

86. In 2005 WLJ changed its name to *Harvard Journal of Law & Gender*. See *infra* text accompanying note 180.

87. See J.P. Macon, *Alumni Group Funds First Women's Law Journal*, HARV. L. REC., Sept. 30, 1977, at 5, 5.

88. See *Women's Rights Law Reporter*, Home Page, <http://pegasus.rutgers.edu/~wrlr> (last visited Apr. 4, 2006) (noting Ruth Bader Ginsburg's role in moving the journal to Rutgers); 1 WOMEN'S RTS. L. REP., at i (1971); 2 WOMEN'S RTS. L. REP., at i (1974). At the time of this writing there are at least eighteen student-edited feminist or gender-focused law journals published in the United States. See Washington & Lee Law Library, *Law Journal Submissions and Rankings*, <http://lawlib.wlu.edu/LJ/index.aspx> (last visited Apr. 29, 2006) [hereinafter W&L Rankings].

89. *Why a Women's Law Journal?*, 1 HARV. WOMEN'S L.J., at viii, viii (1978); Macon, *supra* note 87, at 5.

90. See Sheila James Kuehl, *For the Women's Reach Should Exceed Their Grasp, or How's a Law Journal to Be Born?*, 20 HARV. WOMEN'S L.J. 5, 8 (1997) (describing the founding moment by the self-proclaimed "Editrixies").

Sacks extended the administration's approval, as well as "immeasurable assistance and guidance," while the law school's alumni association provided full funding for the issue as well as seed money for future issues.⁹¹

The first volume was an interdisciplinary collection of works by women authors; each piece began with a two-page biographical narrative about the author, exemplifying, perhaps, the "slogan of the women's movement of the 1960s and 1970s," "The personal is political."⁹² Indeed, at least according to one founding "Editrixie," the journal's mission and perspective turned out to be perhaps more radical than its founders initially envisioned. "[M]ost of us [students] did not think much further than a liberal feminist mode," she recalled, "believing that all we needed for equality was to require the law to treat men and women pretty much as equals."⁹³ It was Ann Scales, a fellow member of the Class of 1978,⁹⁴ who urged the Celebration 25 organizers to include a panel on "feminist jurisprudence."⁹⁵

By this she meant, as we came to understand, going beyond treating women as equal only so long as they conformed to men's standards. Instead, the panel was asked to imagine what the law might look like if it treated women and men *differently* in order that the *result* of their treat-

91. *Why a Women's Law Journal?*, *supra* note 89, at ix; Macon, *supra* note 87, at 5.

92. Martha Minow, Introduction, 20 HARV. WOMEN'S L.J. 1, 1 (1997).

93. Kuehl, *supra* note 90, at 9.

94. See Ann Scales, *Disappearing Medusa: The Fate of Feminist Legal Theory?*, 20 HARV. WOMEN'S L.J. 34, 34 n.* (1997).

95. *Id.*

ment by the law would be “equal,” that is, if it took real, and only real, differences into account.⁹⁶

Accordingly, the first volume announced it would seek to explore the law’s “separate meaning for women”—its differing sex-based rights and responsibilities and “different opportunities for participation in the legal system”—as well as to “develop a feminist jurisprudence.”⁹⁷

4. Reining in the Journals

In the last days of his deanship, Dean Sacks informed three journals—ILJ, CRCL, and JOL—that they would no longer be permitted to publish three issues per year, as they had been.⁹⁸ The June 1981 decree cited problems with the quality of journals that were perpetually behind their publication schedule, and expressed concern for the burden on the academic lives of students who were overburdened with playing journal catch-up.⁹⁹ Dean Sacks suggested that further motivation for the decision was his sense that the law school was not getting its money’s worth from the three-issue journals.¹⁰⁰

96. Kuehl, *supra* note 90, at 9. The extent of the radicalism of the Celebration 25 and WLJ projects is admittedly unclear. Kuehl’s retrospective notes both the founders’ initial mainstream liberalism and the revolutionariness of planning “a gathering with the potential to reveal the truth about the phallogentric nature of the law school” and that which was “wrong and twisted in the law.” *Id.* at 6, 7. Yet contemporary reporting on the journal’s founding contains no suggestion of these revolutionary undertones. *See* Macon, *supra* note 87.

97. *Why a Women’s Law Journal?*, *supra* note 89, at viii.

98. Erich Merrill, *Journal Issues Slashed by Sacks*, HARV. L. REV., Sept. 25, 1981, at 1, 1. These were the only three journals publishing three issues per year at that time.

99. *Id.*

100. *Id.* at 14 (quoting Dean Sacks, “They are not inexpensive publications. . . . I’ll say flatly that we should not spend these sums of money on the journals unless the educational value is there.”).

All the student editors quoted by the *Record* stated their disappointment with the decision, and some questioned the eleventh-hour timing of the decree.¹⁰¹ Some editors also complained that they had received no prior warning that there was a problem, while another told the *Record* that she was aware that the Journals Director was recommending the cut.¹⁰² One admitted, however, that his journal had indeed fallen an entire year behind its publication schedule.¹⁰³ In the aftermath of student anger with the decision, Dean Vorenberg appointed Professor Laurence Tribe to be a “one-person task force” (Vorenberg’s term) to explore the subjective student experience of journal work and the objective quality of the journals,¹⁰⁴ but it is unclear that a report was ever produced. To this day, the supported journals remained limited to no more than two issues per year, though a few have secured approval to publish an occasional third issue dedicated to a special symposium. As an unsupported journal, JLPP has published three issues per year since 1985; given JLPP’s complete independence, it is doubtful that the administration could enforce a similar cut in its production.

101. *Id.* Dean Sacks’s explanation likely did not assuage those concerns: “I had built up experience with the journals over a number of years. Vorenberg had none. If I had let my experience go, he would have been in no position to make a judgment for another three or four years.” *Id.*

102. *See id.*

103. *Id.* That editor noted, though, that they had finally caught back up at the time of Dean Sacks’s decree.

104. *Id.* at 15.

It was against this hostile backdrop that students founded what they called an “un-law” journal in the fall of 1981.¹⁰⁵ *DICTA* was to be a creative legal publication “unfettered by the restrictions of a law journal format.”¹⁰⁶ Its founders, pleasantly surprised at the amount of student interest with which the concept met, ambitiously planned to publish to three to four issues per year of law-related “cartoons, political commentaries, short stories, poetry, and humor” and “[a]rtwork and photography.”¹⁰⁷ The project was, however, short-lived.

C. The Turbulent 1980s

1. Harvard Law’s Civil War

In sharp contrast to just two decades earlier, the Harvard Law School of the early 1980s had become a “radicalizing milieu.”¹⁰⁸ Racial issues were at the forefront of student consciousness, generally manifested in the form of protests over a perceived lack of diversity in faculty hiring.¹⁰⁹ At the same time, a separate battle was being waged among the faculty over the decisions whether to extend tenure to several Critical Legal Studies scholars.¹¹⁰ James Vorenberg had come to the deanship of the law school at a

105. See Joyce Tichy, *One Ls Founding “Un-Law” Journal*, HARV. L. REC., Oct. 6, 1981, at 7, 7.

106. *Id.*

107. *Id.*

108. Hicks, *supra* note 13, at 659 (quoting Professor Duncan Kennedy).

109. See generally *id.* at 659–62.

110. See generally *id.* at 666–83.

most difficult time, and he proved to be ill suited to the tasks of breaking through the faculty impasses and resisting student demands.¹¹¹

Aside from, but not unrelated to,¹¹² the ideological infighting among the law school faculty, student activism scored an important victory in 1984: the *Law Review* changed its selection process to deemphasize grades. Specifically, half of the *Review's* class of editors would be chosen solely on the basis of the writing competition, while the other half would be chosen on the basis of a weighted score: seventy percent grades and thirty percent writing competition performance.¹¹³ This change was driven by reformers' self-interested, egalitarian belief that the students who receive the highest grades should not also receive the coveted resume-booster of *Law Review* membership. It was this desire for prestigious opportunity that, at least in part, drove the creation of the Griswold-era journals;¹¹⁴ in this atmosphere, new journals were certain to emerge.

2. Proposals for a Faculty Journal

It was not student activism, however, that caused Dean Sacks's journal chill to thaw. The warming began when Dean Vorenberg asked Professor Richard Stewart to

111. *Id.* at 672 n.281.

112. At least one commentator has identified traditional quantifications of student merit (i.e., grades) as a conservative concept. *See id.* at 631. Indeed, the timing of the rise of progressive activism in the student body coincided with activism relating to grades and *Law Review* editor selection.

113. Louis J. Hoffman, *Review Adopts Changes*, HARV. L. REV., Feb. 17, 1984, at 1, 1. As part of this reform, the writing competition was moved from fall of the 2L year to spring of the 1L year, *see id.*, a schedule that persists to this day, though the *Review* has abandoned the two-round writing competition then in effect.

114. *See supra* note 43 and accompanying text.

prepare a memorandum to the faculty on the creation of a faculty-edited law journal.¹¹⁵

Professor Stewart's recommendations stemmed from the familiar objections to the institution of student-edited law journals:

Many contemporary law review articles are excessively long, turgid, and overly footnoted. . . . Student editors seem to insist on heavy footnoting because they are unsure of the validity of textual assertions and take comfort in finding some authority that assertedly supports it. The overstuffed discourse that prevails in law review articles tends to smother the pointed debate, exchange, and sense of advance in a field that often characterizes scholarly journals in other fields.¹¹⁶

The memorandum went on to propose five possible journal formats ranging from the free-form academic to the strictly practical.¹¹⁷ Stewart expected the faculty to agree on a format and begin realizing the project by the end of the 1984 spring semester.¹¹⁸ Of course, no such action was ever taken.

It is doubtful that, even if one proposal had garnered real enthusiasm, a faculty journal could ever have been realized during the Vorenberg years. Perhaps the logistical issues could have been worked out—although even Stewart recognized the role of students, indispensable in the eyes of professors accustomed to the law review process, to

115. See Bruce Kelly, *Faculty Ponders Alternative Journal*, HARV. L. REC., Feb. 10, 1984, at 6.

116. *Id.* (quoting the Stewart Memorandum).

117. The five proposals were (1) a journal for academics and practitioners, with essay-type scholarly articles; (2) a “journal of ideas and opinion” for policymakers in and beyond the legal profession and academy; (3) a hybrid of the first and second proposals; (4) a journal by Harvard faculty for the Harvard community; and (5) a journal for legal practitioners. *Id.* at 6–7.

118. *Id.* at 7.

“check out or run down sources”¹¹⁹—but that was the least of the faculty’s concerns. For the next several years, the faculty would be too absorbed in ideological infighting to unify behind a single scholarly undertaking. The Stewart Memorandum had alluded to the possible editorial difficulties such a journal could face,¹²⁰ but one wonders if the proposal was merely an effort by the overwhelmed dean to provide a constructive distraction from the raging civil war.

3. *BlackLetter Law Journal*

Meanwhile, after two years of struggle, the club newsletter of the Black Law Students Association was reborn as a national legal periodical—not unlike the creation of the first HLS specialty journal twenty-five years earlier. *Black letter* had been a weekly newsletter in the 1970s,¹²¹ an internal publication of the HLS black community “in the form of essays, interviews, poetry, and news reporting”; the *Harvard BlackLetter Journal* (BLJ) was to be a more professional forum for “scholarly presentations of legal issues of interest to blacks.”¹²² But in keeping with its interdisciplinary heritage, BLJ would be “a ‘law review quality’ publication without some of the stylistic constraints of other law

119. Kelly, *supra* note 115, at 7 (quoting the Stewart Memorandum).

120. *See id.* at 7 (“The memo cites the selection of editors and editorial decisions not to print a colleague’s submission as potential sources of tension and conflict.”).

121. Sebastian Hoppe, *Black letter Journal Makes Its Debut*, HARV. L. REC., Oct. 12, 1984, at 2.

122. Joe Mitchell & Lateef Mtima, *New Directions*, 1 HARV. BLACKLETTER J. 3, 3 (1984).

reviews”¹²³ and would be “open to ‘unique’ law perspectives which do not have other outlets for expression.”¹²⁴

Like JLPP a few years before, the BLJ project met with skepticism and resistance from the administration; accordingly, the fledgling journal did not initially receive law school funding or production assistance.¹²⁵ The editors of Volume 1 acknowledged the support of the Harvard Law School Alumni Association and the Harvard Law School Black Alumni Association,¹²⁶ but the editors optimistically stated they would strive to attain the law school’s full support,¹²⁷ which they eventually did achieve.

4. *Human Rights Journal*

The creation of what would become the *Harvard Human Rights Journal* (HRJ) marked an important departure from the then-predominant model of journal organization. The first volume, published in 1988, introduced the *Harvard Human Rights Yearbook* as “a student-directed publication benefiting from the support and cooperation of the Harvard Law School Human Rights Program.”¹²⁸ The Vorenberg years had seen an explosion of school-funded “programs,” the result of administration efforts to keep the

123. *Id.*

124. Hoppe, *supra* note 121, at 2.

125. *Id.*; see also Mitchell & Mtima, *supra* note 122, at 4 (“We are funded entirely by contributions from interested individuals and organizations in the [Black] community.”).

126. *Id.* at 4.

127. See Hoppe, *supra* note 121, at 2.

128. Morris Panner & William J. O’Farrell, *Editorial Preface*, 1 HARV. HUM. RTS. Y.B. 1, 1 (1988).

school at the forefront of trends in legal scholarship,¹²⁹ and the Human Rights Program was one such success.

The first volume of the *Human Rights Yearbook* set out the journal's scope: it was to be "a forum for scholarly discussion of human rights issues," and it would avoid "promot[ing] a particular ideology" or political position.¹³⁰ Its format resembled that of a typical law review, with articles and student notes, but Volume 1 offered a notable innovation: student-written personal narratives based on experiences in internships in international human rights organizations.¹³¹ The editors acknowledged the gift of the Ford Foundation to the Human Rights Program that "made the Program's support of the *Yearbook* possible."¹³² The next year, the journal acknowledged the financial support of two large New York law firms.¹³³ Volume 3 bore the new moniker *Harvard Human Rights Journal*. By Volume 9 (1996) the journal's unique "fieldwork" pieces had disappeared, but student writing continued to constitute an important part of the journal's product.

129. *Dean of Harvard Law to Leave Post in 1989*, N.Y. TIMES, Apr. 28, 1988 (mentioning, among other things, the programs on human rights, law and economics, and international criminal justice).

130. *Editorial Preface*, *supra* note 8, at 1.

131. *Id.*

132. *Id.* at 2.

133. 2 HARV. HUM. RTS. Y.B., at iii (1989).

5. *Journal of Law & Technology*

The same year that welcomed the first student-faculty journal also saw the creation of the law school's second truly independent journal.¹³⁴ The *Harvard Journal of Law & Technology* (JOLT) appeared in 1988 without public fanfare or editorial comment. The law school had fielded a technology-related student organization since the Computer Club was founded in 1966;¹³⁵ the Law and Technology Society, which begat JOLT, had been founded in the fall of 1984.¹³⁶ JOLT received neither law school funding nor word processing and technical support; its first volume acknowledged the support of several law firms and other private sponsors, whose promised support made the administration's approval of the project possible.

Today, JOLT continues its tradition of financial and technical independence. The journal acknowledged twelve law firm sponsors for 2005–2006,¹³⁷ and it continues to handle all of its word processing and business affairs. It has published on average two issues per year since its fifth volume (1991–1992). Notably, it innovated in establishing an expanded web presence, anticipating a movement that would take nearly a decade

134. Though independent of the law school's journal funding structure, HRJ (and, later, the *Negotiation Law Review*) cannot be said to be truly independent in the way that JLPP and JOLT are.

135. See Steven Goddard, *Computers May Do Instantaneous Title Searches*, HARV. L. REC., Oct. 14, 1966, at 13, 13. The Computer Club's interest was in the law's use of technology, not the law of technology; at the time, the Computer Club's founder told the Record, only one book on the former topic even existed at the time. *Id.*

136. See Gregory Klima, *New Technologies Engender Novel Law*, HARV. L. REC., Nov. 30, 1984, at 7.

137. Harvard Journal of Law & Technology, Sponsors: 2005–2006, <http://jolt.law.harvard.edu/sponsors/> (last visited Apr. 2, 2006).

to gain footing among non-technology-focused law journals.¹³⁸ In 1997, its website began to include “timely summaries and commentary on recent developments at the intersection of law and technology” with the goal of “respond[ing] more quickly to legal and technological developments with shorter, more targeted analysis.”¹³⁹ The website no longer contains material not published in the printed volume,¹⁴⁰ but the full text of every article it has ever published is available on the website.¹⁴¹

D. The Moratorium Era: 1988 to the Present

1. A Moratorium on New Journals

On December 17, 1987, just four months before he would announce his resignation from the deanship, Dean Vorenberg declared a moratorium on the creation of new journals.¹⁴² Vice Dean David Smith told the *Record* that the administration’s concern was primarily about the cost of the new journals, noting that each supported specialty journal cost the law school about \$30,000 per year,¹⁴³ and also cited space and personnel shortages.¹⁴⁴ The *Record* noted, however, that the law school’s policy was already to authorize only new journals that would be supported primarily through outside funding,

138. See *infra* text accompanying notes 222–24.

139. Christopher N. Manning, *Letter from the Editor*, 11 HARV. J.L. & TECH., at i (1997).

140. See Harvard Journal of Law & Technology, Home, <http://jolt.law.harvard.edu/> (last visited Apr. 2, 2006).

141. Harvard Journal of Law & Technology, Articles, <http://jolt.law.harvard.edu/articles/> (last visited Apr. 2, 2006).

142. Dorothy Mitchell, *Vorenberg Imposes Moratorium on Journals*, HARV. L. REC., Jan. 15, 1988, at 3.

143. *Id.*

144. *Id.*

and had been so for the past eleven years.¹⁴⁵ In addition, Dean Smith's further comment that the school was concerned about "the educational impact of the journals"¹⁴⁶ suggested that more was at stake than money. Like Dean Sacks's decree to the three-issue journals in 1981, the administration's abrupt decision was clouded by confusing and contradictory public explanations. Perhaps "Stop the madness!" would have been the most succinct and accurate explanation; Professor Detlev Vagts acknowledges that he was asked to head the new Journals Committee and was charged with doing just that.

At the time of the moratorium announcement, five proposals for new journals were on the table at the time. One was to be a faculty-student journal on law and economics;¹⁴⁷ it would have been the first such faculty-student joint venture. Professors Louis Kaplow, Steven Shavell, and Lucian Bebchuk were the faculty advisors to the project.¹⁴⁸ The project was "virtually assured of funding from a grant from the Olin Foundation,"¹⁴⁹ and the students and faculty involved agreed that the moratorium was arbitrary and unfair.¹⁵⁰ Also unfair, suggested Professor Steven Shavell, was the full

145. *Id.*

146. *Id.*

147. *Id.*

148. Mitchell, *supra* note 142. Professor Shavell now barely recalls the project, though he is sure that adequate funding for it existed at the time. E-mail from Steven Shavell, Samuel R. Rosenthal Professor of Law and Economics, Harvard Law School (Apr. 14, 1006, 14:54 EDT).

149. Mitchell, *supra* note 142.

150. *Id.* "[J]ournal proposals should be evaluated in terms of 'their merit and utility to the law school and to the world out there. . . . I think that the procedure for deciding what new journals should be supported

funding received by existing journals: “Every journal that students propose should not be on equal footing.”¹⁵¹ By all accounts, the law and economics journal would have been poised for success, as the program on law and economics was by then well established and successful law and economics journals were flourishing at other law schools.

Also among the five tabled proposals was a journal on American Indian law to be sponsored by the American Indian Law Student Association.¹⁵² The student behind the proposal also suggested that more than money was on the line: “If there is a Black-letter Journal and a Women’s Law Journal, it is a form of discrimination not to allow an American Indian journal,” he stated, adding that he did not intend to ask for funding for the journal, though acknowledging that the project might face staffing shortages.¹⁵³ The other three proposals were for journals on sports and entertainment law, legal issues relating to Latinos, and legal issues relating to foreign graduate students.¹⁵⁴

Only one of these five journals ever materialized, and although the *Latino Law Review* finally began publishing in 1994 and other journals would receive the administration’s approval in that decade, the spirit of the Vorenberg moratorium remains in place.

by the law school, as well as how much support should be given to existing journals, should be based on merit.” *Id.* (quoting Professor Steven Shavell) (alteration in original).

151. *Id.* (quoting Professor Shavell).

152. *Id.* at 3, 6.

153. *Id.* at 6.

154. *Id.* at 3.

2. *Latino Law Review*

Throughout the 1980s, students unsuccessfully attempted to create a Latino-oriented law journal, but the administration repeatedly resisted approving such an undertaking, given its serious doubts about the staying power of such a project.¹⁵⁵ The *Harvard Latino Law Review* (LLR) finally broke through the moratorium on new journals, commencing publication in 1994. Its inaugural volume introduced itself as a “forum for the scholarly discussion of legal issues affecting Latinos and Latinas in the United States.”¹⁵⁶ With its narrow niche, LLR joined the ranks of three other student-edited Latino-focused law journals in the United States, the *Chicano-Latino Law Review* (founded in 1972 at the University of California, Los Angeles),¹⁵⁷ the *Berkeley La Raza La Journal* (first published in 1983), and the *Texas Hispanic Journal of Law and Policy* (founded as the *Hispanic Law Journal* in 1994). Volume 1 of LLR took on a typical law review format, with two articles, two essays, and one student note in 248 pages. Volume 2 did not appear until 1997; it presented more than two dozen short articles in a symposium format¹⁵⁸ and introduced the journal’s motto, “Con Libertad y Justicia para Todos.”

155. Vagts interview, *supra* note 5; see also Mitchell, *supra* note 142. Administrators were concerned that, given the small size of the Latino population at the law school, such a journal might not be able to field a full board of editors each year, and that the quantity and quality of Latino scholarship might not be adequate to sustain an entirely new journal.

156. 1 HARV. LATINO L. REV., at iii (1994).

157. *Chicano-Latino Law Review*, <http://www.law.ucla.edu/cllr/About.htm> (last visited Apr. 2, 2006).

158. The symposium presented the papers and proceedings of the First Annual LatCrit Conference, sponsored by LLR and the California Western School of Law. Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latino/a Self-Empowerment*, 2 HARV. LATINO L. REV. 1, 1 n.* (1997).

Volume 3 appeared in 1999 and returned to a traditional law review format, with three articles and one essay. Volume 4 (2000) was again devoted to a symposium. LLR has published in consecutive years since Volume 5 (2002), and each volume has been a combination of articles, essays, the proceedings of the annual Harvard Law School La Alianza Conference, and an occasional student note.

3. *Negotiation Law Review*

In 1996, another Vorenberg-era program gave birth to a journal: the Program on Negotiation's *Negotiation Law Review* (NLR). Unlike the *Human Rights Journal*, though, NLR aimed to be the first true student-faculty joint journal at the law school. Professors would review submissions, select articles for publications, and supervise student writers, while students would do traditional cite checking and line editing tasks.¹⁵⁹ The faculty advisors emphasized, however, that the project was student-initiated, though fostered by active faculty encouragement.¹⁶⁰ It was the strong showing of faculty support, however, along with the promise of full financial support from the Program on Negotiation, that enabled the proposal to gain the confidence of the Journals Committee and break through the moratorium.

159. Christopher M. Thorne, Preface, 1 HARV. NEGOT. L. REV., at v, v (1996). It is unclear which of the typical administrative and managing roles were intended to be handled by students, as NLR has always published only an undifferentiated list of "Members." See, e.g., 1 HARV. NEGOT. L. REV., at iii (1996).

160. See Robert H. Mnookin & Frank E.A. Sander, Foreword, 1 HARV. NEGOT. L. REV. 1, 1 (1996).

4. A Failed Proposal

One longstanding journal initiative met what appeared to be its demise in 2003, when the Journals Committee denied the student Committee on Sports & Entertainment Law's (CSEL) journal proposal. Such a project had been on the table in 1987 at the time of Dean Vorenberg's moratorium,¹⁶¹ and the student club had devoted one of its board positions to the journal project since at least 2001.¹⁶² The *Harvard Journal of Sports & Entertainment Law* would have been a traditional student-edited, school-funded, school-produced journal, and it would have been the first such journal approved since 1994.

The Journals Committee formally denied CSEL's journal proposal in 2003, citing resource and space constraints in its decision.¹⁶³ The explanation was legitimate: the existing journals already filled every available space in the basement of Hastings Hall. Furthermore, the Publications Center staff who produced and business-managed the supported journals, already worked in very close quarters in that basement. The CSEL proposal has been resubmitted and denied three times in the last two years,¹⁶⁴ but in

161. See *supra* Part II.D.1.

162. See Harvard Committee on Sports & Entertainment Law, CSEL Board 2001–2002 (Sept. 16, 2002), <http://www.law.harvard.edu/students/orgs/csel/board0102.html>.

163. See Clinton Dick, *Unbound On-line Journal Receives Approval*, HARV. L. REC., Apr. 23, 2003, at 1.

164. Interview with Elaine McArdle, Director of Student Journals, Harvard Law School, in Cambridge, Mass. (Apr. 18, 2006) [hereinafter McArdle interview].

light of these very real practical constraints, the moratorium—at least as applied to fully funded and supported journals in the traditional mode—has retained its force.

5. *Unbound*

In 2003, the Journals Committee approved a new kind of law journal. *Unbound: Harvard Journal of the Legal Left* would publish online only. The novel format would not only avoid the expense of paper publishing that the HLS-supported journals required, but it would also not require funding or professional staffing to manage its finances and subscriptions.¹⁶⁵ Thus, *Unbound* became the law school's newest journal, joining the growing ranks of online law journals worldwide.

At present, a total of thirty-four student-edited specialty journals are published online only.¹⁶⁶ All of these journals have emerged over the past decade; nearly half are journals specializing in technology or intellectual property law, and their use of the Internet medium is understandable. *Unbound's* Internet-only presence was born of a different motivation, however. Its founder explained: “*Unbound* will utilize the creative possibilities of the e-journal format in order to facilitate a discourse for law school students’ interest in various critical approaches to understanding law.”¹⁶⁷ For *Unbound*, the print medium itself is inseparable from ideology, with print representing “the con-

165. See Dick, *supra* note 163 (quoting Professor Martin).

166. See W&L Rankings, *supra* note 88.

167. Dick, *supra* note 163.

straining language of liberalism.”¹⁶⁸ Escaping that medium, its editors wrote, would enable the young journal to avoid “having to justify [its] existence to unsympathetic critics.”¹⁶⁹ Although the substantive content of *Unbound* departs somewhat from the conventional analytical law-review form, its format is that of a traditional print journal rather than the progressive format of a multimedia or hypertext journal. In any case, it was not ideology that prompted the administration’s skepticism about the project’s success, and only time will tell whether the law school’s concerns over the staying power of the project and the scholarly utility of an online-only publication will be borne out.

III. THE PRESENT AND THE FUTURE

A. The State of the Journals

Among student-edited specialty journals, many of Harvard’s law journals are leaders in their fields. Table 1 lists the specialty journals, in order of their founding, and gives their ranking both within their specialty and among the entire body of student-edited specialty journals.

168. *Unbound: Harvard Journal of the Legal Left*, About Unbound, <http://www.law.harvard.edu/students/orgs/unbound/about.php> (last visited Apr. 2, 2006).

169. *Id.*

Table 1. Ranking of HLS Student-Edited Specialty Journals¹⁷⁰

<i>Journal</i>	<i>Rank in specialty</i>	<i>Rank among SESJs</i>
International Law Journal (ILJ)	4	12
Civil Rights-Civil Liberties Law Review (CR-CL)	1	8
Journal on Legislation (JOL)	1	11
Environmental Law Review (ELR)	2	30
Journal of Law & Public Policy (JLPP)	1	2
Journal of Law & Gender (JLG)	3	107
BlackLetter Law Journal (BLJ)	2	196
Human Rights Journal (HRJ)	2	68
Journal of Law & Technology (JOLT)	2	16
Latino Law Review (LLR)	3	262
Negotiation Law Review (NLR)	2	96
Unbound ¹⁷¹	n/a	n/a

The journals' national rankings reflect remarkably well their relative success within the HLS community. JLPP, for example, ranks second in citations among all student-edited specialty journals and is Harvard's largest journal in both output and circulation; it consistently publishes between 1,000 and 1,200 pages per year over three issues¹⁷² and boasts more than 9,000 subscribers. Along with JLPP, CR-CL, ILJ, JOL, and JOLT also enjoy large and stable staffs and relatively consistent quality year-to-year. CR-CL, ELR, ILJ, JOL, and JOLT publish two issues each year, totaling between 400 and

170. Rankings derived from W&L Rankings, *supra* note 88.

171. W&L Rankings, *supra* note 88, actually ranks *Unbound* last among SESJs because it received no citations after in the six months after its first volume appeared.

172. JLPP began to publish three issues per year in 1984, and with the exception of the occasional special symposium issue from one of the two-issue journals, JLPP remains the only journal to publish three issues. As an unsupported journal, JLPP was immune to the 1981 moratorium on three-issue publishing that remains in effect. *See supra* Part II.D.1.

600 pages. HRJ and NLR have generally smaller staffs, though they still reliably publish their one issue per year; *Unbound* recently released its second volume, weighing in at 125 virtual pages.

BLJ struggled throughout the 1980s¹⁷³ but continues to publish annually as one of the law school's smallest journals. *BlackLetter* formally abandoned its early commitment to publishing works by and for African-Americans, broadening its scope, as explained in the 1990 issue, to "topics of interest to persons of color, generally, and to the African-American community, specifically."¹⁷⁴ Its continuing success may be based on broadening that scope further still, having "expanded its mission to encourage publication of work by minority authors" and having broadened its scope to "focusing on the intersection of race, class, gender, sexuality and the law."¹⁷⁵

LLR struggled even more seriously in its early years, as described in Part II, but despite its early struggles, LLR has successfully published each year since 2002. It continues, however, to be challenged by the inherent limitations of its narrow scope.¹⁷⁶ It receives few unsolicited manuscripts of publishable quality, and it suffers from a perpetual shortage of student editors and depends upon the generosity of larger journals

173. Vagts interview, *supra* note 5.

174. 7 HARV. BLACKLETTER J., at vi (1990).

175. Harvard BlackLetter Law Journal, Home Page (Sept. 25, 2004), <http://www.law.harvard.edu/students/orgs/blj/>.

176. These problems were not unanticipated; *see supra* Part II.C.3

who loan staffers to LLR.¹⁷⁷ In light of the smallest journals' similar difficulties, there have over the years been whispered proposals to merge LLR and BLJ, or to subsume both journals into CR-CL.¹⁷⁸ It is clear, however, that if such a proposal came from the law school administration, or perhaps even from students, it would spark an uproar with repercussions reaching well beyond the administration of student journals.¹⁷⁹

In 2005 WLJ changed its name to *Harvard Journal of Law & Gender* (JLG). The change was in part substantive, suggesting that the journal would take on a broader scholarly scope; but it was also ideological, with ramifications for the journal's editorial viewpoint:

Choosing the Harvard Journal of Law & Gender as our new name indicates our unwillingness to rely upon essentialist arguments based on biological sex or to demarcate any set of issues within the legal terrain as exclusive to women. At the same time, problems that disproportionately affect women are gendered issues, and as such, they will continue to be the central focus of our Journal. Our new name also more broadly encompasses our concerns with other mechanisms of power—such as race, class, and sexuality—that intersect with gender in rich and complicated ways.¹⁸⁰

177. McArdle interview, *supra* note 164.

178. *Id.*

179. The last schoolwide conflict over race was the speech code debate in the 2002–2003 academic year, sparked by the use of a racial epithet in a student's course outline in the public outline database and driven by student leaders of the Black Law Students Association and sympathetic faculty. *See generally* ANDREW PEYTON THOMAS, *THE PEOPLE V. HARVARD LAW: HOW AMERICA'S OLDEST LAW SCHOOL TURNED ITS BACK ON FREE SPEECH* (2005). That conflict ultimately "died in committee," *id.* at 192, and race relations at the law school have been remarkably static ever since.

180. Harvard Journal of Law & Gender, *Announcing Our New Name* (Feb. 9, 2006), <http://www.law.harvard.edu/students/orgs/jlg/general/name.php>.

The new JLG also secured approval to publish two issues per year instead of one.¹⁸¹ It has done so, publishing nearly 500 pages in the two issues of its Volume 28 (2005), and its ranking will likely improve to reflect that increased volume.

Finally, at the time of this writing, a new journal is under serious consideration. In early 2006, the Harvard chapter of the American Constitution Society for Law and Policy (ACS), a national progressive legal organization,¹⁸² received a promise of funding and support from the mother organization to start a new journal at Harvard Law School. If approved, its business model will be unique among HLS journals: Rather than securing funding from the law school, a law school program, or individual private contributors,¹⁸³ the national ACS organization will fund all of the journal's expenses. The ACS students envision a counterpart to the JLPP: a national, widely circulated generalist law and policy journal, but with a consciously liberal editorial viewpoint.¹⁸⁴ The proposed title is the *Harvard Law and Policy Review*.¹⁸⁵ The administration is presently considering the proposal.

181. *Id.*

182. American Constitution Society for Law and Policy, About the American Constitution Society, <http://www.acslaw.org/about/> (last visited Apr. 4, 2006).

183. E-mail from Michael Negron (Feb. 22, 2006, 14:59:55 EST).

184. The proposal seems to aspire to be analogous both to JLPP's niche in generalist conservative legal scholarship and to that journal's relationship with the national Federalist Society. However, JLPP preceded the Federalist Society by six years; its early existence was shaped by the student editors' experience of raising funds and selling subscriptions on their own; and the Federalist Society does not write a blank check to support the entire journal operation. In fact, JLPP is the only HLS journal that consistently covers its expenses solely based on its subscriptions and royalties income.

185. McArdle interview, *supra* note 164.

One final, recent change bears mentioning: In the spring of 2005, the hyperlink to the listing of law school publications (including, but not limited to, the student-edited law journals) was removed from the main Harvard Law School web page and replaced with a link to information on public service programs at the law school.¹⁸⁶ The change was made by the law school's web committee, chaired by Michael Cicone, who for years served as the director of student journals. "When it became a priority to include a link to Public Service on the home page," Cicone explained, "something else had to be removed. After much discussion we decided on the Publications link, since information about HLS publications is available in other places on the site and should be found easily by interested visitors."¹⁸⁷ This decision makes it clear that the journals no longer occupy the preeminent position they once enjoyed among extracurricular activities, at least in the view of the administration's recruiting design. Many law schools now have multiple journal opportunities; in the Dean's current vision for Harvard, it is other opportunities, including public service, international legal studies, and grooming for the academy that will attract students who are considering attending Harvard's competitor schools. This change in attitude has not, however, diminished the importance and prominence of the journals in day-to-day student life.

186. See Harvard Law School, Home Page, <http://www.law.harvard.edu/> (last visited Apr. 29, 2006); see also Harvard Law School, Harvard Law School Publications (Sept. 19, 2005), <http://www.law.harvard.edu/about/publications.php>.

187. E-mail from Michael Cicone (Apr. 28, 2005 12:25 EDT); see also E-mail from Mike Armini (Apr. 28, 2005 07:20 EDT); E-mail from Elena Kagan (Apr. 27, 2005 19:36 EDT).

B. Physical Challenges

Many of the challenges facing both new and existing journals at Harvard Law are physical and logistical challenges specific to Harvard. For example, the law school's supply of space and staff to run the supported journals, however, has not increased since the CSEL proposal was denied in 2003, and given these constraints a new journal proposal requesting administrative, business, and production support is unlikely to be approved.¹⁸⁸ The space concern, at least, is set to be alleviated in 2009 when construction is completed on a new law school student center. The center will, among other things, house the student journal offices as well as the Publications Center staff offices. Current architectural plans show office space for more staff and journals than presently exist, suggesting that, at least for the first couple of years in the new space, a longstanding logistical constraint will be lifted.¹⁸⁹

The second concern facing any new journal will not be so easily ameliorated. So long as the student body retains its present size, new journals will face problems in staffing their journal. As the administration foresaw, some existing journals have con-

188. Ms. McArdle would favor providing such support to the currently unsupported journals for two reasons: first, because requiring students to perform administrative and production tasks does not obviously support the journals' educational mission, and second, because the unsupported journals frequently suffer from serious problems caused by administrative and production errors, omissions, and sloppiness. McArdle interview, *supra* note 164. No such proposal, however, is currently under consideration, because of the resource constraints described *supra*, and because it is unclear that the unsupported journals would opt into the Publications Center regime given the opportunity.

189. It is difficult to imagine, however, that the law school would permit valuable office space to go unused for long.

tinuing, built-in staffing shortages because of their narrow niche. Journals with a broader scope may avoid this problem, but journals with an especially broad scope or one that overlaps significantly with that of existing journals might actually create staffing problems for the existing journals. The ACS proposal for a progressive law journal is particularly troubling in this regard, given the claim of one existing journal to be “the nation’s leading progressive law journal”¹⁹⁰ and the progressive orientation of several other existing journals;¹⁹¹ its staff would certainly be drawn mostly from the editor pools of those journals.¹⁹²

The journal market at Harvard is so saturated that staffing is a zero-sum equation, or very close to it, given how many students currently work on the journals. The administration currently caps first-year students’ journal participation at ten hours per semester: a limit that is, fortunately for the journals, as unenforceable as it is unenforced. In the spring of 2004, the faculty proposed a more serious and enforceable means to rein in students’ journal hours: a complete ban on first-year students’ working

190. Harvard Civil Rights-Civil Liberties Law Review, Home Page (May 18, 2005), <http://www.law.harvard.edu/students/orgs/crcl/>.

191. See, e.g., Harvard BlackLetter Law Journal, *supra* note 175 (“The vision of the Harvard BlackLetter Law Journal is to advance progressive legal scholarship.”). It is doubtful that the editors of JLG and ELR would dispute characterization of their journals as “progressive,” and *Unbound* should certainly be included in this list, though it may draw from a different pool of students.

192. The ACS journal proposers have candidly told the administration that several high-ranking CR-CL editors would leave CR-CL to work on the ACS journal. McArdle interview, *supra* note 164. At least one high-ranking CR-CL editor believes, however, that it is JOL and not CR-CL that will likely sacrifice staff to the ACS journal.

on journals.¹⁹³ Such a drastic change would surely have decimated some of the smaller journals and fundamentally altered the way that others operate; fortunately for the journals, the moratorium did not gain serious traction before it was abandoned.¹⁹⁴

The Publications Center surveyed the editors-in-chief of the twelve specialty journals in November 2005 and found that the journals employed 1,200 students that fall.¹⁹⁵ That number is the sum of each journal's reported staff count, so it does not account for students' simultaneous participation in multiple journals. This author estimates that the number of first-year students working on a journal approximately equals the twice number of second-year students working on that journal, and approximately four times the number of third-year students working on that journal; and that second- and third-year students generally do not participate in multiple journals simultaneously. Thus, even if all 557 first-year students¹⁹⁶ participated in at least one journal, at least 129 of them were doing double duty on two journals. That double-duty number is in reality surely much higher: perhaps 240, if eighty percent of first-year students participate in journals (a realistic estimation, in this author's view).

193. McArdle interview, *supra* note 164.

194. The Director of Student Journals recalls, "Whoever was pushing this had no understanding of how the journals work." *Id.*

195. E-mail from Elaine McArdle, Director of Student Journals, Harvard Law School (Nov. 30, 2005, 18:53 EST).

196. Harvard Law School Admissions Office, First-Year Class Profile (Oct. 5, 2005), <http://www.law.harvard.edu/admissions/jd/body.php>.

The significance of all this is that even in the face of symbolic hour caps, which are already flouted by more than half of the first-year students who work on journals, students devote large amounts of time to journal work. And even if the 1,200 figure is artificially bloated, the more realistic figure of 960 journal volunteers schoolwide (not including the 85 or so *Harvard Law Review* editors) is still staggering. One wonders whether the law school can field enough editors to staff an additional journal without inflicting serious harm on the existing journals.

The final challenge facing new journals is perhaps the most serious one, and the one to which the least attention has been paid. The 1988 moratorium on new journals is still officially in place, yet four new journals have nonetheless pushed their way through the approval process; the current fast-tracking of the ACS proposal will bring this number to five.¹⁹⁷ The current Director of Student Journals, Elaine McArdle, is concerned about the lack of standards for approving new journals. Part of this problem is administrative: the merger of the Journals Committee into a new Committee on Student Journals, Organizations, and Activities in 2005 meant that no one with experience with or knowledge of the specialty journals remained in a decision-making position.¹⁹⁸ The analogy of student journals to other law school student organizations is a poor one, Ms. McArdle insists: organizations may come and go as student interest waxes and wanes,

197. Yet several proposals have been repeatedly denied since 1988, including the proposal for a journal on sports and entertainment law. *See supra* Part II.D.4.

198. *Id.*

but a journal, once created, cannot be killed off if it becomes defunct or substantively irrelevant.¹⁹⁹ While not conceding that the journal scene has become a zero-sum game, as this paper argues, McArdle recognizes the law school's obligation to the existing journals when it considers proposals for new journals.²⁰⁰

But the most serious problem with this ambiguous regime, Ms. McArdle explains, is that if adequate outside funding is all a proposed journal need demonstrate, any donor can purchase the Harvard brand and virtually unlimited student manpower for \$20,000 per year. "Are we for sale?" McArdle wonders.²⁰¹ She queries, for example, whether the CSEL proposal would be approved if a Los Angeles law firm, or several, were to underwrite the journal.²⁰² In this author's view, a similar "Harvard for sale" phenomenon will occur if the ACS journal is approved; with its grant of full funding for the operation, the national ACS organization will have secured both the prestigious Harvard moniker as well as the use of its talented students. Ms. McArdle suggests that an alternate regime, in which new journals may be approved to begin publication, yet denied use of the Harvard brand, may be one solution to this ongoing conundrum.²⁰³ This seems feasible; while every Harvard Law journal currently bears the Harvard

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* She notes that at least one member of the faculty favors this view. *Id.*

name, many other leading student-edited specialty journals do not bear their law school's name.²⁰⁴

C. Systemic Challenges

A more profound and enduring state of affairs poses a more serious challenge to the hegemony of student-edited law journals. The nature of the problem has not been put more succinctly than this 1937 exposition: "There are two things wrong with almost all legal writing. One is its style. The other is its content."²⁰⁵ More recent commentators have elaborated: "Our scholarly journals are in the hands of incompetents. . . . [S]tudent editors are grossly unsuited for the jobs they are faced with."²⁰⁶ And: "Welcome to a world where inexperienced editors make articles about the wrong topics worse."²⁰⁷ Judge Posner's view, that "The Reviews Have Not Adapted to Changes in Legal Scholarship,"²⁰⁸ insightfully contends that students were adequate editors of the doctrinal articles that once filled the law reviews, but with legal scholarship's substantive shift

204. For example, *American Criminal Law Review* (ranked fifth among SESJs, published at Georgetown University Law Center), *Administrative Law Review* (ranked eighteenth, published at Washington College of Law), *The Journal of Corporation Law* (ranked nineteenth, published at University of Iowa College of Law), *The Journal of Criminal Law and Criminology* (ranked twentieth, published at Northwestern University School of Law), and *Ecology Law Quarterly* (ranked twenty-fourth, published at Boalt Hall School of Law (University of California, Berkeley)). See generally W&L Rankings, *supra* note 88. However, because of possible confusion with the non-ideological *Stanford Law & Policy Review* and *Yale Law & Policy Review*, the ACS journal might be better advised to choose a more distinctive name if it is denied the Harvard tag.

205. Rodell, *supra* note 3, at 38.

206. James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 527 (1994).

207. Richard A. Posner, *Against the Law Reviews*, LEGAL AFF., Nov.–Dec. 2004, available at http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp.

208. Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1131 (1995).

toward interdisciplinary studies and “law and . . .” fields, students are increasingly ill equipped to select and edit their professors’ work.²⁰⁹

One Harvard professor, noting the success of the peer-reviewed law-and-economics journals,²¹⁰ suggests that if an elite law school such as Harvard were to start a peer-reviewed general law journal, it would be an instant success and would likely cause the student-edited law reviews to “wither away.”²¹¹ On the other hand, another commentator has persuasively described the magnitude of the revolution that would have to occur in order to move away from a student-edited regime, emphasizing the self-interest of both faculty and students that holds the current regime in place.²¹² Another professor believes the problem is not so much in the lack of peer review or the forces of inertia, but rather in the law review format itself.²¹³ Professor Vagts suggests that a periodical formatted like the German weekly *Neue Juristische Wochenschrift* and featuring short, timely articles might be read and discussed by ordinary legal readers.²¹⁴

209. *Id.* at 1132–34.

210. *E.g.*, J.L. ECON. & ORG. (Yale Law School); J. LEGAL STUD. (University of Chicago Law School); AM. L. & ECON. REV. (American Law & Economics Association).

211. Interview with an Anonymous Harvard Law Professor, in Cambridge, Mass. (Apr. 20, 2006).

212. Thomas R. Bruce, *Swift, Modest Proposals, Babies, and Bathwater: Are Hibbitts’s Writes Right?*, 30 AKRON L. REV. 243 (1996).

213. Vagts interview, *supra* note 5. This format, Professor Vagts acknowledges, reflects a certain “comfort” (in recapitulating the literature, footnoting every assertion, etc.) on the part of inexperienced student editors. *Id.*

214. *Id.* The German legal periodicals, or *Zeitschriften*, “are an important way to access German legislation and case law. In addition to news and articles about the law, these periodicals often contain full-text or abstracts of cases, and notices of new legislation. *Zeitschriften* are often published faster than other

No such project, however, is currently on the table at Harvard Law. Given the relatively placid current state of the law school and its faculty, and the current dean's ambition in bringing Harvard back to the vanguard of legal education, the climate might be right for such a prospect to flourish. The powerfully conservative forces of inertia and self-interest, however, along with the unparalleled prestige that still attaches to publishing in or editing an elite student-edited review, would easily be enough to stifle the suggestion of a new project.

D. Technological Challenges

Most of the challenges described above—the physical limitations of the law school and its resources, and the scholarly objections to the student journal form—are not new, and at least at Harvard, they have failed significantly to impact the student journals climate over the past several decades. A more recent phenomenon, however, may turn out to be the last straw: modern information technology and an accompanying ideological commitment to free information (known as the “open access” movement) threaten to eliminate altogether the need for the law journal medium.

The technology argument against the law journals goes something like this:²¹⁵ Scholarship is about promoting the development of knowledge through the free ex-

sources.” Harvard Law School Library, Introduction to German Legal Research (Apr. 29, 2004), http://www.law.harvard.edu/library/services/research/guides/international/germany/german_legal.php.

215. See generally Dan Hunter, *Walled Gardens*, 62 WASH. & LEE L. REV. 607 (2005).

change of ideas; therefore, mechanisms that impede the free flow of ideas, such as paper journals and pay electronic services, are bad for scholarship.

An important variant on this argument incorporates substantive anti-law-review sentiments; its logical extension is scholarly self-publication. Bernard Hibbitts suggests:

[L]egal scholars should follow the physicists' lead and opt for disintermediated electronic publication of their own scholarly works outside the formal journal context. Supported by peer comments and author revisions, the resultant corpus of papers—centrally-archived or hyperlinked from a central clearinghouse for easy location, searching and reference—could eventually displace the law reviews in both their print and electronic forms.²¹⁶

Hibbitts makes no attempt to disguise the substantive motivations behind his view: scholars who self-publish “need not worry any more about whether the subject of a piece is too esoteric, too doctrinal, too complicated or even too impolitic for law review editors.”²¹⁷ Indeed, respected professors such as Harvard Law’s Lucian Bebchuk have undertaken a form of self-publication with success, though no respected scholar has abandoned seeking publication in the journals.²¹⁸ In addition, the website of the Social

216. Bernard Hibbitts, *From Law Reviews to Knowledge Networks: Legal Scholarship in the Age of Cyberspace*, 25 SERIALS REV. 1 (1999).

217. *Id.*; see also Bernard Hibbitts, *Last Writes? Re-assessing the Law Review in the Age of Cyberspace* (Feb. 5, 1996), <http://www.law.pitt.edu/hibbitts/lastrev.htm>, reprinted in 71 N.Y.U. L. REV. 615 (1996).

218. See Lucian Arye Bebchuk, Pr. Bebchuk’s Web Site (Feb. 2006), <http://www.law.harvard.edu/faculty/bebchuk/>. Professor Bebchuk’s site contains the full text of most of his published articles since 1980 as well as twenty unpublished working papers.

Science Research Network (SSRN)²¹⁹ has become a popular online venue for the free posting and sharing of unpublished (and, in some cases, published) legal scholarship.

Arguably, the recent profusion of legal web logs is the next logical step in the progression of the free exchange of legal ideas. Group blogs like *The Volokh Conspiracy*²²⁰ present well reasoned legal commentary and exchange in almost real-time as the law develops.²²¹ Traditional law reviews, taking a cue from the popularity of “blawgs,” have also created online forums for providing timely commentary on recent developments. *The Yale Law Journal* was first with *The Pocket Part*;²²² the *Harvard Law Review* soon followed suit with *The Forum*.²²³ Both web sites offer commentary that is more lengthy and formal than that found on the legal blogs, but shorter and less formal than traditional law review articles.²²⁴

But despite the well established presence of the Internet and the growing appeal of the open access movement, less has changed than it might seem. Because just about

219. <http://www.ssrn.com>. SSRN is “devoted to the rapid worldwide dissemination of social science research and is composed of a number of specialized research networks in each of the social sciences,” not just law. *Id.*

220. <http://volokh.com>.

221. One professor, however, believes that blogs just “increase the anarchy.” Vagts interview, *supra* note 5.

222. <http://www.thepocketpart.org>. *The Pocket Part* “features op-ed length versions of *Journal* articles and responses from leading practitioners, policymakers, and scholars” and publishes online monthly. *Id.* (last visited Apr. 29, 2006).

223. <http://www.harvardlawreview.org>. “*The Forum* is an online extension of our printed pages that is intended to allow for a more robust scholarly discussion of our Articles.” Harvard Law Review, About the Forum, <http://www.harvardlawreview.org/forum/aboutforum.html> (last visited Apr. 29, 2006).

224. See, e.g., *id.*

everything that gets written gets published somewhere, there is “an incredible amount of [scholarship] that confronts you” when conducting legal research.²²⁵ Indeed, it is now a simple matter for a researcher using Westlaw or similar electronic services to turn up dozens and even hundreds articles on any given topic. With so much information available, the name of the law review in which an article was published provides much-needed value, signaling to the prospective reader the relative quality of articles. It is clearly not a truism that law reviews viewed as more prestigious publish higher-quality articles in every case, but the generalization is believed widely enough to translate into a signaling function that retains its power even when the paper journal is unavailable.

Ironically, it is the Internet and electronic publication of law journals that has made comparing the relative prestige of the journals vastly easier in the past several years.²²⁶ Although it is now easier than ever for authors to submit electronic manuscripts to massive numbers of journals for consideration,²²⁷ the result of this regime has

225. Vagts interview, *supra* note 5.

226. Washington & Lee Law School’s web site hosts the leading ranking service, which offers various ranking methodologies by which the user can rank the journals or a subset of them. *See* W&L Rankings, *supra* note 88. The web site’s database is fueled by data collected from strings of Westlaw searches. Washington & Lee Law Library, Law Journal Submission Information—Explanation, <http://lawlib.wlu.edu/LJ/method.asp#methodology> (last visited May 1, 2006).

227. Washington & Lee’s service generates free mass e-mailings to the journals of an author’s choosing: authors need only check the box next to the name of each journal to which they wish to submit, usually after narrowing the field of journals by using the site’s ranking functions. Another electronic submission service, The Berkeley Electronic Press’s ExpressO, *see* <http://law.bepress.com/expresso>, combines a similar functionality with a highly functional submissions management interface for law review editors. ExpressO charges \$2 per submission e-mail, but because the fee is the same for all journals, and because at most law schools, the school underwrites an account with ExpressO, incentives abound for faculty (and at

not been notably equalizing.²²⁸ Indeed, the ease of comparing citation frequencies is beginning to spawn a thoughtful literature on the merits of the various systems for ranking the journals.²²⁹ The popularity of SSRN is also beginning to have an effect on the traditional law review publication process. One important feature of SSRN's website is its tracking and display of the number of times an article's abstract has been viewed and the full-text article downloaded. Some authors now provide their SSRN download statistics in cover letters accompanying their submissions to the law journals, in an attempt to bolster their chances of acceptance.

In sum, the traditional signaling function served by the student-edited law journals has, in many ways, been enhanced rather than undermined by the freer flow of information. Authors' interest in publishing in the most prestigious journal possible does not yet appear to be altered by the egalitarian forces of the Internet. It is, however, these forces that, in combination with the well weathered substantive arguments against the law reviews, have most the potential to derail the current system.

some schools, including Harvard, students who are covered by the ExpressO account) to submit to too many journals and to journals that are a significant quality mismatch for their work.

228. Arguably, the primary effect of over-submission has been the creation of additional submissions-review work for low-ranked journals, as higher-ranked journals often read and select articles only after receiving "expedited review" requests from authors who have received publication offers from lower-ranked journals. See generally Paul H. Edelman, *Law Clerks, Law Reviews & Some Modest Proposals*, 7 GREEN BAG 2D 335, 338-39 (2004).

229. See, e.g., Ronen Perry, *The Relative Value of American Law Reviews: A Critical Appraisal of Ranking Methods*, 11 VA. J.L. & TECH (forthcoming 2006), available at <http://ssrn.com/abstract=806144> (concluding that comparing citations per word is the best ranking method).

IV. CONCLUSION

Though the two waves of progressive ideology that swept through Harvard Law School in the late 1960s and early 1980s have become either mainstream or have abated, enough political energy still persists to inspire at least the critical mass of students needed to lead each of the specialty journals. Indeed, that new journals are continually being proposed despite the administration's well known reluctance to approve a new enterprise suggests that student passion is nowhere near exhaustion.

With an enormous number of first-year students working on more than one journal, the climate at Harvard Law is one wherein the value of journal work remains well known and valued. So long as the research and writing component of the law school's formal curriculum remains weak, the journals will continue to provide a sought-after and needed service in training students in these basic, essential functions. As long as there remain fewer super-elite legal jobs than graduates of the top law schools, students will continue to demand the signaling function that journal affiliation provides, at least until another such opportunity becomes available in sufficient quantity.

Despite heavy criticism of the student-edited law journal regime by scholars spanning decades and disciplines, the marketplace of legal ideas remains virtually insatiable. The remarkable pressure on legal academics to publish prolifically, and professors' consequent reliance on students to edit their manuscripts, serves only to reinforce

the demand for the journals' services. And although Harvard has shown since 1988 that its willingness to fund new enterprises is not unlimited, the limitless nature of electronic publication and open access make the market constraints even more negligible.

Thus, the trinity of forces—ideology, student credential-building, and market receptiveness—that motivated the founding of the specialty law journals at Harvard Law School remain largely as prevalent and as important as ever. Although the technology that enables open access to scholarship poses the most serious threat yet to the law reviews, it will likely take much more to overthrow these journals.