

What is Legal Scholarship Worth?

Author : Brian M. Stewart

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I recently had the pleasure of attending the Jotwell (The Journal of Things We Like (Lots)) 5th Anniversary Conference, [Legal Scholarship We Like and Why It Matters](#). This post contains citations (and links) to all of the articles by conference presenters based on the core theme I took away: the value of legal scholarship.

As writers, what is the point of producing legal scholarship? It is a frustrating, time-consuming, generally thankless process.¹ [1. See generally Linda H. Edwards, [A Writing Life](#), 61 Mercer L. Rev. 867 (2010).] As far as fun, fulfilling things you can do as a human person, writing law review articles ranks fairly low on the list. So the question, often asked and never sufficiently answered, is why write legal scholarship at all?² [2. See Robin West & Danielle Citron, [On Legal Scholarship](#), at 2 (“Conferences, colloquia, law review symposia, and informal conversations, to say nothing of tenure meetings and hiring deliberations, are replete with debate over the nature of legal scholarship, its point, and its value.”).]



Erwin Chemerinsky posed and answered the question as follows:

The answer to the question “wry write” is neither intuitive nor obvious. Nevertheless, as a professor who has been writing for almost thirty years, much of which likely never has been read by anyone, I find myself inevitably asking what is worth writing about and for whom.

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In my opinion, as legal academics, we write to add significant, original ideas to the analysis and understanding of the law; as people, we write to understand ourselves and the world in which we live. Ideally, scholarly writing offers insights that are useful to others, but at the very least, it helps the author understand an area better and clarify his or her thoughts.³ [3. Erwin Chemerinsky, [Why Write?](#), 107 Mich. L. Rev. 881, 881–83 (2009).]

Even if playing to an audience of one, the process of producing legal scholarship benefits the author. The worth to the author is surely a function of the motivation to write in the first place, which varies from person to person. Junior faculty members subject to the “publish or perish” paradigm may be motivated by ambition or fear.⁴ [4. Leah M. Christensen & Julie A. Oseid, [Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power—Student Editors](#), 59 S.C. L. Rev. 465, 465 (2008) (“Anyone who enters the legal academy knows the pressure for new law professors to publish or perish.”).] Certainly many authors write out of love for the craft, a desire to effectuate change, or a desire to somehow make the world a better place using only the written word. Angela Mae Kupenda confesses that one of her goals in her academic pursuits is “to influence our society in a quest toward equality for all.”⁵ [5. Angela Mae Kupenda, [Personal Essay—On the Receiving End of Influence: Helping Craft the Scholarship of My Students and How Their Work Influences Me](#),* at 2.^a

^a Citations marked with an * indicate an article by a conference participant made available at [Jotwell](#).^{aa}

^{aa} Yes, I do use sub-footnotes. And sub-sub-footnotes.]

Underlying all of these considerations are the economics of producing legal scholarship. “Perhaps on a theory that writing law review articles is generally insufficiently self-gratifying, law schools—and universities more generally—feel compelled to pay a middling fortune for scholarship.”⁶ [6. Dan Subotnik & Laura Ross, [Scholarly Incentives, Scholarship, Article Selection Bias, and Investment Strategies for Today’s Law Schools](#), 30 Touro L. Rev. 615, 616 (2014).] The cost (in salary and expenses) for a single law review article can range up to \$100,000.⁷ [7. See Debra Cassens Weiss, [What Is the Cost of a Law Review Article by a Top Prof? Estimate Is \\$100K](#), ABA J., April 21, 2011. *But* see Matthew T. Bodie, [Funding Legal Scholarship](#), 4 J.L.: Periodical Laboratory of Leg. Scholarship (4 Opening Remarks) 107, 109–10 (2014) (arguing that those numbers skew high).] In terms of salary allocated toward the production of legal scholarship, a recent article pegs the number at \$78,000, assuming one article produced each year; this number, however, does not include research grants nor other benefits related to the production of legal scholarship.⁸ [8. Subotnik & Ross, *supra* note 6, at 616–17 (“Becoming de rigeur at many institutions, diminished class loads, sabbaticals, leaves, research assistantships, and travel allowances are compounding the problem.”).]

Are law schools getting the appropriate bang for their buck? What is the measure? Is it the transmission of legal knowledge?⁹ [9. See James Grimmelman, [Scholars, Teachers, and](#)

[Servants](#),* at 9 (“[T]he standard law review article is an absurdly inefficient way of transmitting legal knowledge.”).] Is it the impact (or lack thereof) an article makes on lawmakers?¹⁰ [10. See Neil H. Buchanan, [Legal Scholarship Makes the World a Better Place](#),* at 2 (“[S]cholars might have to settle for making the world a better place in ways that have nothing to do with (directly) changing the way policy makers think.”).] Is it whether the work “fills an important gap in the literature?”¹¹ [11. See Mark Tushnet, [The Federal Courts Junior Scholars Workshop](#),* at 2 (“Junior scholars seeking to place their articles have to persuade law review articles editors that the pieces they are submitting are worth publishing, and what’s more worth publishing than an article that fills an important gap?”).] Is it whether the article speaks truth to power?¹² [12. See Jeanne L. Schroeder & David Gray Carlson, [Improve Yourself; Not the World](#),* at 1 (“The university’s discourse is a more subtle or veiled exercise of power. It is the claim to expertise. . . . Unlike the positivist who claims merely to recognize existing law, the expert explains and justifies what the law should be in light of a societal goal.”).] Is it a function of law review impact factors and citation rates?¹³ [13. See James Chen, [Modeling Law Review Impact Factors as an Exponential Distribution](#),* at 2 (“Law review impact factors and citation rates are among the most salient and least manipulable sources of evidence bearing on the impact of law schools as research institutions.”).] Should citations in court opinions be weighed disproportionately?¹⁴ [14. See Partick Arthur Woods, [Stop Counting \(Or at Least Count Better\)](#),* at 12 (“[C]itations in judicial opinions should not only be weighted, but weighted heavily.”).]

Moreover, how is it possible to measure the immediate worth of a scholarly work? SSRN downloads may be a strong indication of interest, but creep up slowly over time. An article may be a transcendent work in the canon of legal scholarship,¹⁵ [15. See, e.g., Margaret Jane Radin, [Market Inalienability](#), 100 *Harvard L. Rev.* 1849 (1987) (cited 1,728 times according to Google Scholar).] but it may be difficult to evaluate the true worth of a recent article that has yet to withstand the test of time.¹⁶ [16. See Steven L. Winter, [When Things Went Terribly, Terribly Wrong Part II](#),* (developing a canon of legal scholarship that “could serve as a *lingua franca* for the profession,” but omitting any books or articles published after 1999).] This can be particularly troublesome in an era marked by a desire for instant gratification.¹⁷ [17. See generally Brian M. Stewart, Note, [Chronolawgy: A Study of Law and Temporal Perception](#), 67 *U. Miami L. Rev.* 303 (2012) (discussing how changes in how we experience time lead to the desire for faster results).]

To make matters worse, the structure of the law review article may dilute an author’s effectiveness.¹⁸ [18. See Frank Pasquale, [Symbiotic Law & Social Science: The Case for Political Economy in the Legal Academy, and Legal Scholarship in Political Economy](#),* at 13 (“The vast majority of our articles are designed to have a “normative bite,” even if the standard apparatus of literature review, footnotes, and anticipation of objections leaves many proposals closer to nibbles.”).] This may be countered by the flexibility offered in the new era of digital publication, but the majority of journals follow the same format online as they do with their print publications.¹⁹ [19. See Benjamin J. Keele, [Improving Digital Publishing of Legal Scholarship](#),* at 1–2 (“Digital legal scholarship is, for the most part, comprised of black text on a white background with footnotes, typeset and paginated for publication in a print issue.”).] Digital publication allows for incorporation of non-traditional elements, such as memes, but is it possible to complement scholarly literature with such features without undermining its seriousness?



Pun Dog summarizes Pat Gudridge’s conference article, [Past Present](#)*

As legal scholarship moves to a primarily digital format, how legal scholarship is written, digested, and utilized is likely to further confuse the already difficult quantification of scholastic worth. A blawg post may be considered subordinate to a journal article in general,²⁰ [20. See Kevin O’Keefe, [Do Legal Blogs Generate Citations of Legal Journals and Publications?](#), Real Lawyers Have Blogs, Nov. 12, 2014 (“Legal scholars and legal publishers often look at legal blogs as off on the side and not relevant to their more ‘learned’ work. More demeaning yet, law blogs are often looked at as merely advertising or marketing.”)] but a good blawg post may be

more influential in swaying policy makers than an average journal article.²¹ [21. *Id.* (“Open online and democratic dialogue is where the world is headed. Legal scholars and publishers no longer have a monopoly on legal dialogue.”).] If not through a single post, blogging can be transformative over time, as witnessed most recently by the overwhelming outpouring of love, respect, and admiration for the late [PrawfsBlawg](#) founder, Dan Merkel. Merkel, for his part, viewed blogging as instrumental in community building and dissemination of ideas:

[O]ne of the best things about blogging as a medium is that it enables you to find new readers and interlocutors for your work and ideas. And as writers, you win your readers one by one by one. This point about community building seems especially salient in light of the fact that law professors live a largely monastic existence in their offices. Blogging helps as an antidote to that vocational loneliness. Finally, I think we are obligated to make some efforts to get our ideas out there. As scholars, we spend years trying to generate intellectual capital. We are paid to do so by virtue of the generosity of public legislatures and private tuition and donations. Accordingly, I think we owe our benefactors our efforts to disseminate our hard work beyond the typical and sometimes closed channels of distribution that we often rely upon.²² [22. Dan Merkel, [Why I Blog \(as a Law Professor\)](#), PrawfsBlawg, Jan. 12, 2012.]

One consideration in evaluating the worth of legal scholarship online is not whether it fills a gap in the literature, but whether it fills a void in the legal academy. Is material being presented in a way never before possible? Does the work serve as a tool for future scholars? Does it lead proverbial legal horses to water? Could it go viral? Could it effect change? Does it build upon the lessons of our predecessors to help describe and deal with an increasingly complex world?²³ [23. See Winter, *supra* note 16, at 4.]

Jotwell, a purely digital publication, offers a significant contribution to the legal academy “[by creating a space where legal academics can go to identify, celebrate, and discuss the best new scholarship relevant to the law.](#)” The reviews (“jots”) are short scholarly works in and of themselves, but their worth cannot be measured in terms of citation counts or traditional impact factors. A significant amount of work goes into [producing and publishing jots](#), but how do you measure its worth compared to traditional legal scholarship?

The worth of legal scholarship, in the current scheme, can to a certain extent be determined by a placement in a well-respected journal, as that is a goal of writing legal scholarship in and of itself. But for scholars who don’t work at a top-ten law school, the chances of getting published in a top-ten or top-twenty-five law journal are not good. 23% of articles in top-ten journals are written by in-house authors; 56% of the articles in those journals are written by authors at one of those ten schools.²⁴ [24. Subotnik & Ross, *supra* note 6, at 628. Those 10 schools are Yale, Harvard, Stanford, Columbia, Chicago, NYU, Penn, Virginia, California, and Michigan.] Professors from those schools composed an average of 77% of all articles in top-twenty-five journals.²⁵ [25. *Id.*] Even worse, these percentages are trending upward; it is harder for scholars who are not already prestigious to get prestigious article placements.

Once the top journals are out of the picture, the question of worth takes on even more

importance. How should the scholar spend their time and their research budget? What is the worth of a placement in a niche student-edited journal as opposed to a collection of self-published works online? Is a short work written for a respected blog such as [SCOTUSBlog](#) or [How Appealing](#) more valuable to an author or a law school than a longer piece published in a lower-tier law journal? Can the goals of legal scholarship be more effectively and efficiently achieved by abandoning the traditional law review format?

I don't believe there are answers to these questions yet. Perhaps in the not-too-distant future we will have metrics to more accurately measure the worth of legal scholarship written specifically for the web. Until then, it seems the best way to measure the worth of online legal scholarship is the old-fashioned way: to read it.

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