The Process and the Product: A Bibliography of Scholarship About Legal Scholarship

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This bibliography of scholarship about legal scholarship was originally prepared for the 1997 Conference of the Association of Legal Writing Directors.1 The Conference explored the rapidly developing area of scholarship by legal writing professors2 and the ways in which this important scholarship3 can be encouraged. Characteristically, when writing teachers turn their attention to a particular kind of writing

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1. The authors are grateful for the capable research assistance of Elizabeth Norman and for the able and cheerful secretarial support of Patricia Schirtzinger.
2. Until recent years, legal writing was taught primarily by students, adjunct faculty, doctrinal faculty paying their curricular dues, or recent law graduates in revolving-door positions. Lack of training, conflicting responsibilities elsewhere, or lack of interest precluded members of these groups from undertaking legal writing scholarship. Now, however, most legal writing teachers are professionals—outstanding law graduates who have significant legal practice experience and who have made a career commitment to the teaching of legal writing. The result has been a rapidly developing body of scholarship in the area of legal writing pedagogy and the beginning of a distinct legal writing voice in the exciting scholarly exploration of the theoretical underpinnings of legal discourse.
3. Like other scholars, legal writing professors explore the substance of their discipline by writing about it. Therefore, legal writing scholarship is important because the “product” plays a fundamental role in defining both the discourse and the pedagogy through which that discourse can be taught. However, for legal writing professors, the “process” of producing scholarship carries a unique value. All scholars learn by writing, but writing teachers learn twice as much, because when we write, we are practicing the very process that we teach.
project, they begin by examining both the genre and the creative activity
the genre employs—that is, the process and the product. This bibliogra-
phy is one result of that study. We hope that it will prove helpful to
anyone interested in legal scholarship, especially to law faculty in the
early stages of their scholarly careers.

Some may criticize this "meta-scholarship" as just so much pointless
navel-gazing. However, serious examination of the genre of legal
scholarship serves at least two important functions: it renders the
scholarly life more accessible to newcomers to the academy, and it
sustains a conversation that can identify and question assumptions that
might otherwise hold the academy captive. If the academy is to remain
open to new ideas, we must critically examine what makes scholarship
valuable and how best to produce that valuable scholarship.

The product and the process of legal scholarship have spawned a large
body of written comment. Consequently, we did not attempt an
exhaustive list of sources. Rather, to keep the bibliography at a
workable length, we selected sources that should be most useful to the
largest number of readers. We did not include the many comments on
the scholarship of particular doctrinal areas. However, we did include
representative articles discussing the value of newly-emerging forms of
scholarship. The implications of these new scholarly schools transcend
doctrinal boundaries, potentially questioning the unstated and unexam-
ined values preferred in traditional doctrinal scholarship. Thus, these
rapidly developing varieties of scholarship merit the attention of any
serious legal scholar.

The first category identifies important text on the subject of scholarly
writing. While it is written primarily for law students, it has much to
offer to faculty scholars as well. The second category lists citations to
relevant websites, while the third lists leading symposia on the subject
of legal scholarship. Some articles included in a symposium are also
listed individually under the appropriate subject category; however,
space would not allow us to list all symposium articles separately.

Categories of individual articles follow the list of symposia. Many
articles could reasonably be listed under several categories, but we have
resisted the temptation to maximize the number of listings for each
article. Instead, we listed most articles under only the most appropriate
category so that each category would better direct a reader to articles
that are most on point. A few articles were sufficiently relevant to
several categories to justify multiple listings. In some cases, articles in
response to other articles are listed both individually and as part of the
listing for the article generating the response.

The first subject category, "How and Why To Do Scholarship," covers
articles whose content is primarily practical, offering suggestions about
how to select a topic, carve out time for writing, solicit feedback, market the finished product, and develop a long-range plan for scholarship over the length of a career. Some of these articles also comment on the value of scholarship to the writers themselves.

The next category, "The Broader Value of Scholarship," identifies articles examining the value of scholarship to the substantive development of law, to law practice, and to law teaching. Many of these articles argue that legal scholarship serves an important function, while some dare to question the assumption that all law teachers should be encouraged to generate article after article for the duration of their careers. In the third subject category, "Comments on Scholarship in General," we list articles that comment on the genre of legal scholarship and on the nature of the enterprise itself. Many of these articles also criticize one or more aspects of current legal scholarship.

The fourth subject category contains articles primarily commenting on the development of emerging forms of scholarship, including interdisciplinary scholarship, clinical scholarship, and empirical scholarship. This category also includes comments on those varieties of scholarship intimately related to particular political positions, such as feminist scholarship, the scholarship of race, critical legal studies, and law and economics.¹

Finally, the last category lists articles that critique the publication process. The subjects of these articles range from the recurring complaints about the domination of student-run journals to the more recent explorations of the implications of electronic publishing.

BOOKS

ELIZABETH FAJANS & MARY R. FALK, SCHOLARLY WRITING FOR LAW STUDENTS (1995). Though written primarily for law students, this wonderful book can teach us all a great deal about how to undertake a scholarly writing project.

WEBSITE INFORMATION


Wake Forest University Professional Center Library for Law & Management <http://www.law.wsu.edu/library/copyright/> (a website

¹ We include law and economics under this category because we view it as both a variety of interdisciplinary scholarship and a variety of scholarship intimately linked with a particular political perspective. While a reasoned argument can be made that law and economics is free of political affiliation, we are not persuaded.
containing links to publishers' & journal copyright permission pages; designed to facilitate contacting copyright holders for permission to use copyrighted materials, including scholarly writing and teaching materials).

**SYMPOSIA ON LAW REVIEWS OR LEGAL SCHOLARSHIP**

The citations below list symposia, projects, colloquia, and forums relevant to legal scholarship. Citations to articles from many of these issues are listed also in various other categories below. The citations are listed in reverse chronological order and alphabetically by title within each year. The page number listed is the first page of the introduction, if any, or of the first article in the symposium.


*Colloquy on United States Legal Scholarship*, 81 IOWA L. REV. 1467 (1996).


Symposium, *Legal Education*, 91 MICH. L. REV. 1921 (1993) (Although the theme of this symposium is legal education generally, many of the authors are responding to Judge Harry Edwards's article *The Growing Disjunction Between Legal Education and the Legal Profession*, published at 91 MICH. L. REV. 34 (1992), and discuss the place of legal scholarship as part of that response).


**ARTICLES**

*How and Why To Do Scholarship*


Comment, Originality (Writing an Original Law Review Article), 6 CONST. COMMENT 1 (1989).


Elizabeth Fajans & Mary R. Falk, Comments Worth Making: Supervising Scholarly Writing in Law School, 46 J. LEGAL EDUC. 342 (1996) (Though written primarily for law teachers supervising student writing, this article is helpful to authors as well.).


Mary Kay Kane, Some Thoughts on Scholarship for Beginning Teachers, 37 J. LEGAL EDUC. 14 (1987).


Heather Meeker, Stalking the Golden Topic: A Guide to Locating and Selecting Topics for Legal Research Papers, 1996 UTAH L. REV. 917 (primarily for students, but helpful for faculty authors as well; includes representative pre-emption policies).


*The Broader Value of Scholarship*


Jane B. Baron, Self-Criticism (Reflection on Being a Legal Professor; Tenure, Legal Scholarship, and Critical Legal Studies), 60 Temp. L.Q. 39 (1987).


Roger C. Cramton, Demystifying Legal Scholarship, 75 Geo. L.J. 1 (1986).


John S. Elson, *The Case Against Legal Scholarship or, If the Professor Must Publish, Must the Profession Perish?*, 39 J. Legal Educ. 343 (1989).


Rennard Strickland, Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show, 20 U.S.F. L. REV. 491 (1986).

Colin C. Tait, Scholarship and Service to the Legal Community: Doing as Well as Teaching, 28 CONN. L. REV. 287 (1996).


Comments on Scholarship in General


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Rennard Strickland, Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show, 20 U.S.F. L. REV. 491 (1986).


Dennis J. Turner, Publish or Be Damned, 31 J. LEGAL EDUC. 550 (1982).


Geoffrey Wilson, English Legal Scholarship, 50 MOD. L. REV. 818 (1987).


Comments on Emerging Forms of Scholarship


Arthur Austin, Race & Gender Exclusivity in Legal Scholarship, 4 U. CHI. L. SCH. ROUNDTABLE 71 (1997).


Arthur Austin, Evaluating Storytelling as a Type of Nontraditional Scholarship, 74 NEB. L. REV. 479 (1995).


Alex M. Johnson, Jr., *Defending the Use of Narrative and Giving Content to the Voice of Color: Rejecting the Imposition of Process Theory in Legal Scholarship,* 79 Iowa L. Rev. 803 (1994).


Critiques of the Publication and Editorial Process

Edited Transcript of the Comments of the Panel at the AALS Proposed Section on Scholarship and Law Reviews, 70 CHI.-KENT L. REV. 117 (1994) (Symposium on Law Review Editing: The Struggle Between Author and Editor Over Control of the Text).


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Chris Goodrich, Professor, Edit Thyself; Faculty-Edited Law Reviews Are Threatening to Take Legal Scholarship Out of the Hands of Babes, 6 CAL. LAW. 48 (July 1986).


Mark V. Tushnet, *The Death of An Author; By Himself*, 70 CHI.-KENT L. REV. 111 (1994).


