
FROM COAL BED GAS TO REGULATING FUNNY: LAW REVIEWS AND LEGAL SCHOLARSHIP

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My homage to *Temple Law Review* on its 90th anniversary has reverberations of a personal memoir. But, although the story I tell has personal elements, its intention is not self-referential. Rather, I focus on the past and future of law reviews and legal scholarship. The personal seeps in because *Temple Law Review* has contributed to a key part of my understanding of law reviews and scholarly life.

My experience with *Temple Law Review* began with a student piece I wrote on a Pennsylvania Supreme Court decision grappling with the question of who owned coal bed gas.¹ Was it a straightforward legal issue? Pretty much. An important issue? Yes. Was it interesting to me? Not really. But I loved the process of producing and publishing it. I quickly embraced another project, one more ambitious and engaging for me: a note combining the laws governing res judicata and full faith and credit,² all mixed in with the doctrine of *Erie Railroad Co. v. Tompkins*.³ This was a difficult undertaking. But once I finished, I was empowered—well, mildly empowered.

Aside from a confidence boost, the law review experience educated me in vast ways: as a staff member and an editor-in-chief, I learned a huge amount about law, publishing, writing, grammar, rhetoric, attention to detail, and managing and motivating others . . . the list goes on. The law review work was not glamorous, nor was it particularly fun. But the work nurtured me and delivered a sense of mission. Who knows, the work might also have had some long-term impact on my fellow law review colleagues and on the law.

Fast forward now thirty-plus years, the last twenty-five years of which I have served as a *Temple Law Review* advisor. In these past twenty-five years, I have watched many individual versions of this evolution from novice to young scholar and skilled editor. What a great experience the law review provides for students entering the rigorous, formal, and word-laden enterprise of law.

But of course student learning is not the only social benefit of law reviews. Law reviews formally preserve knowledge and history. They foster debate and

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1. Laura E. Little, Note, *Coal Owner Holds Rights of Ownership and Development of Coalbed Gas*, 57 TEMP. L.Q. 427 (1984) (analyzing *U.S. Steel Corp. v. Hoge*, 468 A.2d 1380 (Pa. 1983)).

2. Laura E. Little, Note, *The Role of the Erie and Full Faith and Credit Doctrines in the Choice Between State and Federal Res Judicata Law in Consecutive Diversity Actions*, 57 TEMP. L.Q. 159 (1984) (analyzing *Hunt v. Liberty Lobby, Inc.*, 707 F.2d 1493 (D.C. Cir. 1983)).

3. *See id.* (discussing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)).

collaboration. Indeed, law reviews provide a key medium for rigorous idea exchange among academics, practicing lawyers, and judges. Within the context of these law review interchanges, the dialogue's quality benefits from the relative absence of the authors' monetary stake in the message and from limited constraints on the authors' full candor, such as ethical rules or the attorney-client privilege, which might circumscribe legal discourse in other contexts. Academic freedom traditions can also foster creativity by loosening the binds of orthodox thinking. Finally, law reviews can also provide a sense of community among intellectual players who might not necessarily interact in law's formal precincts.

Of course, the future of the precise model followed by *Temple Law Review*—general topic publications, student-controlled article selection and editing, as well as publication in hardcopy print—is up for grabs. Lurking questions proliferate:

- Has the era of the print volume expired?
- Has the model of student control over law reviews run its course? Would the law review process benefit from a peer review system—with expert control of the process of article selection and editing?
- Has the internet obliterated the need for law reviews altogether? Doesn't self-publishing or use of services such as the Social Science Research Network deliver one's ideas to others just as well as law review publishing?
- Have the norms for legal scholarship become excessively theoretical and esoteric? Will empirical work ensure the usefulness of legal scholarship?
- Is there justification for general—rather than topic-specific—publications? In a world with a daily tsunami of writing descending on a legal scholar, isn't written expression best organized according to a well-defined topic?
- Does the law review format reflect an organic flaw in the process of tenure and promotion in U.S. law schools, encouraging unoriginal repetition of existing ideas, laden with heavy footnotes designed to stroke the egos of more senior scholars?

Given the wonderful benefits combined with profound uncertainties about law reviews' current usefulness, what are we to do? No clear answer presents itself. As in other challenges in life, the most appropriate route is the one currently followed by the recent editorial boards of *Temple Law Review*: experiment and innovate.

Online-first presentations such as this current ninetieth year celebration are examples of worthwhile experiments. The virtues of this particular online effort are illustrative. Entries are short and readable. Entries have a common theme, and thus they are able to reach an audience interested in the particular topic. Laborious and often meaningless footnoting is avoided. Little time lag exists between writing and publishing.

Temple Law Review's efforts at experimentation and innovation are not confined to ad hoc online projects such as this one. The Law Review has, and should continue with, consistent online focus on breaking legal developments.

Importantly, in recent years, the Law Review editorial board has also worked hard to present several meaningful and important symposia. The benefits of topic-focused, live symposia are many. These symposia contribute to the intellectual vitality of the law school, while showcasing the Law School to the legal profession and the academy. Symposia attract high-caliber authors to the Law Review's pages. They introduce participants in a field to each other and encourage dialogue about common interests. Finally, they produce a body of written work that is easily located and accessed by those who are most interested in its content.

Rounding the circle now, how does this all this relate to my starting point of the law review service's unique educational benefits? One approach to this question is to return to the personal and check back with what happened to that bumbling law student who sought to produce a writing combining the laws of res judicata and full faith and credit with the doctrine of *Erie Railroad Co. v. Tompkins*.⁴ So far, the story is not so bad for that law student: after clerkships and some law practice, I joined a law faculty. I have taught and written on Conflict of Laws and Federal Courts for twenty-eight years and counting. (Here's to hoping my scholarly persona became more sophisticated!) I have also written many handfuls of articles on Conflicts, Federal Courts, and other topics, as well as produced a casebook on Conflict of Laws⁵ and a Federal Courts book.⁶ The American Law Institute seems to have approved, having appointed me as an Associate Reporter for the Restatement (Third) of Conflict of Laws.⁷

But that's not the end of the story. The scholarly inclinations cultivated at *Temple Law Review* inspired me—the fledgling scholar—to develop an academic alter ego, creating a discipline studying humor and the law. An intensely interdisciplinary effort, this humor and the law enterprise encompasses speeches at academic conferences around the world, several articles⁸ and scholarly book contributions,⁹ as well as an upcoming hybrid trade/scholarly book.¹⁰ The interdisciplinary component here is indispensable: interaction with scholars from other disciplines and learning from each other's research is an important benefit

4. *Erie*, 304 U.S. 64.

5. LAURA E. LITTLE, CONFLICT OF LAWS: CASES, MATERIALS, AND PROBLEMS (2013).

6. LAURA E. LITTLE, FEDERAL COURTS: EXAMPLES AND EXPLANATIONS (3d ed. 2013).

7. Professor Laura Elizabeth Little, AM. L. INST., <http://www.ali.org/members/member/424829/> [perma: <http://perma.cc/BNX6-5Z2H>] (last visited Oct. 1, 2018).

8. Laura E. Little, *Laughing at Censorship*, 28 YALE J. L. & HUMAN. 161 (2016); Laura E. Little, *Just a Joke: Defamatory Humor and Incongruity's Promise*, 21 S. CAL. INTERDISC. L.J. 95 (2011); Laura E. Little, *Regulating Funny: Humor and the Law*, 94 CORNELL L. REV. 1235 (2009).

9. Laura E. Little, *Judicial Regulation of Humour in the United States*, in JUDGES, JUDGING, AND HUMOUR (Jessica Milner Davis & Sharon Roach Anleu eds., forthcoming 2017); Laura E. Little, *Legal Restriction and Protection of Humor*, in 2 ENCYCLOPEDIA OF HUMOR STUDIES 477 (Salvatore Attardo ed., 2014); see also Laura E. Little, *Food, Humor, and Law*, 6 STUDYING HUMOUR (forthcoming 2019); Robert Mankoff, *Judging Humor*, NEW YORKER (Mar. 20, 2013), <http://www.newyorker.com/online/blogs/cartoonists/2013/03/judging-humor.html> [perma: <http://perma.cc/Y47C-8M84>].

10. LAURA E. LITTLE, GUILTY PLEASURES: COMEDY AND LAW IN AMERICA (forthcoming 2018).

of modern academia, having been fueled by increased prevalence of cyberspace interactions and research. That benefit is a key opportunity to the future of law reviews.

To be sure, legal scholarship must approach other disciplines mindful of two concerns: (1) an understanding that the technical details of another discipline are often beyond the reach of casual scholarship and (2) vigilance of the problematic temptation to cherry-pick only the most appealing or beneficial aspects of other disciplines. But current Internet technology and the law review format can easily combine to bring together scholars from multiple disciplines providing an opportunity for synergy not paralleled in the past. And after all, it takes the work of many fields to understand the mysteries of the modern world.

Law has been laudably entrepreneurial in mining knowledge from other fields for several decades now. In choosing the future direction of law review efforts, editorial boards are well advised to continue this interdisciplinary orientation—with those trained in law making use of another discipline's knowledge. But as ably observed by Professor Robin West, interdisciplinary work is not confined to projects originated in and controlled by the legal academy's norms.¹¹ The information flow should proceed in two directions. Much benefit can arise from studies that are created by academics in other disciplines for which legal scholars contribute legal knowledge and analysis. In this context, the methodology and values followed by nonlegal disciplines will drive the project.¹² The consequence of this inward flow of legal expertise is not only to enhance the ultimate product and to ensure that the law is “correctly described,”¹³ but also to educate the legal scholar on alternative perspectives and professional techniques.

What's the message from these personal and collective stories? Answer: Growth. Growth should be the guiding theme for law reviews and legal scholarship. Growth comes in the form of communities developed, bridges built, risks taken, and new paths forged. Interdisciplinarity, innovations in format, and theme-organized symposiums are key ingredients. Congratulations to *Temple Law Review* for forging a path that makes possible exciting new experiments with these enterprises.

11. See Robin West, *The Contested Value of Normative Legal Scholarship*, 66 J. LEGAL EDUC. 6, 10 (2016).

12. See *id.*

13. *Id.*