

# RANKING JOURNALS: SOME THOUGHTS ON THEORY AND METHODOLOGY

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## I. INTRODUCTION

There is no doubt that Americans love rankings—of practically anything.<sup>1</sup> Whether it is the top forty songs of the week,<sup>2</sup> the top twenty college football teams of the season,<sup>3</sup> the twenty-five most intriguing people of the year,<sup>4</sup> the 100 best books of the century,<sup>5</sup> or the 1000 most important people of the millennium,<sup>6</sup> we want to know who is on top and who is not. The reasons for our fascination are probably too varied to even list. To name just a few: our society worships celebrity, so we want to know who deserves our adoration;<sup>7</sup> the

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1. One author calls ranking “an American custom as traditional as price-fixing.” Arthur Austin, *The Top Ten Politically Correct Law Reviews*, 1994 UTAH L. REV. 1319, 1320.

2. See, e.g., *Charts: Adult Top 40*, BILLBOARD, Dec. 12, 1998, at 80. According to *Billboard* magazine, *Lullaby* by Shawn Mullins was the top song of the week.

3. See, e.g., Andrew Bagnato, *AP Top 25*, THE RECORD, Jan. 6, 1999, at S5. The Associated Press ranked the University of Tennessee Volunteers the number one team of the 1998 season.

4. See, e.g., *The 25 Most Intriguing People of '98*, PEOPLE MAG., Dec. 28, 1998, at 48. The magazine ranked baseball slugger Mark McGwire as one of the most intriguing people of the year.

5. For competing rankings, see Random House, *Modern Library/100 Best Novels* (visited Feb. 22, 1999) <<http://www.randomhouse.com/modernlibrary/100best/index.html>> (ranking James Joyce's *Ulysses* the best English language novel of the century), and Random House, *Modern Library/100 Best Novels: Radcliffe List* (visited Feb. 22, 1999) <<http://www.randomhouse.com/modernlibrary/100best/radcliffe.html>> (ranking F. Scott Fitzgerald's *The Great Gatsby* number one).

6. See AGNES HOOPER GOTTLIEB ET AL., 1,000 YEARS, 1,000 PEOPLE: RANKING THE MEN AND WOMEN WHO SHAPED THE MILLENNIUM (1998). Johannes Gutenberg, inventor of the printing press, is ranked number one.

7. See generally ROBERT H. FRANK, THE WINNER-TAKE-ALL-SOCIETY: WHY THE FEW AT THE TOP GET SO MUCH MORE THAN THE REST OF US (1996).

human condition prizes relative status even above absolute achievement,<sup>8</sup> and rankings respond to this desire for hierarchy; and, of course, people love gossip.

Lawyers, law students, and law professors have attachments to our educational institutions, so it follows naturally that any attempt to rank them is sure to attract great interest in the legal community. The most natural subject of such rankings is law school quality. When these rankings become ubiquitous and change so little from year to year that they become predictable, we are bound to look around for some other yardstick by which to measure bragging rights. Law schools' flagship, general-interest law reviews are a likely target, and attempts have been made to rank them. By ranking secondary—or "specialty"—law journals, Tracey George and Chris Guthrie (George & Guthrie)<sup>9</sup> give us another welcome subject to discuss around the water cooler. Rankings of law journals are fun.<sup>10</sup>

Entertainment and diversion have their place, even in realms of such seriousness as the kingdoms of law and of academia. But if entertainment were the only value to be served by the ranking of law journals, the George & Guthrie study would be more appropriately published in a trade magazine, such as the *American Lawyer* or the *ABA Journal*, rather than in a scholarly journal. To justify the study's inclusion in a law review, the endeavor should promise more than titillation—it should serve an important scholarly objective. Journal rankings can serve such an objective by creating status for highly-ranked journals. This, in turn, can lead to competition among journal editors for that status. This competition can then be channeled in a way that encourages authors to produce more valuable scholarship than they might otherwise.<sup>11</sup>

The important question to ask about the endeavor of ranking law journals, then, is not whether rankings are interesting, but how rankings can be devised to encourage the future production of valuable scholarship. This essay attempts to provide preliminary answers

8. See Richard H. McAdams, *Relative Preferences*, 102 YALE L.J. 1, 3 (1992) (reporting that "status" or "relative position" is sought as an end in itself); see also ROBERT FRANK, CHOOSING THE RIGHT POND: HUMAN BEHAVIOR AND THE QUEST FOR STATUS (1985).

9. Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813 (1999).

10. See James Leonard, *Seen' the Cites: A Guided Tour of Citation Patterns in Recent American Law Review Articles*, 34 ST. LOUIS U. L. REV. 181, 187 (1990) ("Ranking academic law reviews is a thoroughly entertaining exercise. It combines the thrill of competition with each reader's deeply held prejudices for his own law school or law review.").

11. See Russell Korobkin, *In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems*, 77 TEX. L. REV. 403, 415 (1998) (describing how rankings can create a status competition among law schools that can raise the quality of legal education).

to this question. Part II describes how rankings can be used to create a status competition among journal editors that can, in turn, provide journal authors with an incentive to produce more valuable scholarly articles. Part III considers the merits of alternative ranking methodologies. It concludes that the desired incentives for editors and authors are best achieved if journals are ranked on the basis of expert evaluations of scholarly value where feasible, and otherwise on the basis of the frequency in which journals are cited in other publications.

## II. THE IMPORTANCE OF JOURNAL RANKINGS: INCENTIVE EFFECTS OF STATUS COMPETITION

An analysis of journal-ranking methodologies should begin with a discussion of the effect that rankings are likely to have on the nature of scholarship published. The cause and effect relationship has two steps. First, rankings can create incentives for journal editors to select certain types of manuscripts. Second, the journal editors' desire to select certain types of manuscripts can create incentives for authors seeking publication in those journals to produce those types of manuscripts.

### A. *Journal Editors*

The incentives for law students<sup>12</sup> to devote time and energy to editing scholarly journals can be divided into two categories: internal rewards and external rewards. Internal rewards consist of the personal fulfillment the editor receives from his or her journal activities. Editors may derive satisfaction from becoming familiar with legal scholarship in a field, from completing editing tasks, from interacting with authors, from working with fellow editors toward a common goal, or, more generally, from having a role in the production of scholarship and the advancement of knowledge.

External rewards associated with journal work could come in the form of monetary compensation, in-kind compensation, or prestige derived from the editor's journal work or position. Few student editors of scholarly law journals are paid for their labor.<sup>13</sup> Some law schools provide in-kind compensation to student journal editors in

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12. The vast majority of law journals are student edited, so the analysis will focus on the incentives of student editors. The handful of faculty law journal editors have somewhat different incentives.

13. To my knowledge, no student editors are paid in cash for their journal work, although some might be granted preferential scholarship or financial aid status. See Richard S. Harnsberger, *Reflections About Law Reviews and American Legal Scholarship*, 76 NEB. L. REV. 681, 684 (1997) (asserting that many "schools grant stipends or scholarships to [law review] editors").

the form of course credit for journal work.<sup>14</sup> My guess, however, is that for most student editors course credit might be a nice “bonus” but is not what drives them to accept an editing position (the widespread belief being that far less work is required to earn a given number of course credits by taking a class than by completing journal work).<sup>15</sup>

For most editors, then, the most important external reward stemming from journal work is prestige. Journal editors are viewed as the elites of the law student world. This status can lead to tangible rewards. Conventional wisdom is that legal employers prize journal editors as employees because journal membership is a signal of quality, employers consider journal experience to be good training for legal practice, or both.<sup>16</sup> For many law students, journal service might be the key to securing desirable employment following graduation.<sup>17</sup> For students at elite schools, journal service is often critical to securing highly competitive positions such as federal court judicial clerkships.<sup>18</sup>

To the extent students agree to undertake journal work for anything other than internal rewards, they almost certainly care about the prestige that accompanies the labor. The position of a journal in a set of rankings that become established and respected in the legal community will greatly affect the level of prestige, or status, associated with holding a position on that journal. Thus, a journal’s rank-

14. Some faculty journal editors might receive a less tangible form of in-kind compensation: credit towards an often ill-defined “service” requirement that is considered by administrators when making decisions on tenure, promotion, and salary increases. This type of compensation may motivate some faculty journal editors to persevere in their duties, but the rewards for such activities in the world of legal academics are probably few. See, e.g., Afton Dekanal, *Faculty-Edited Law Reviews: Should the Law Schools Join the Rest of Academia*, 57 UMKC L. REV. 232, 238 (1989) (arguing that faculty-edited reviews can only succeed if faculty editors are awarded more “brownie point[s]” for journal service); Leo P. Martinez, *Babies, Bathwater, and Law Reviews*, 47 STAN. L. REV. 1139, 1144 (1995) (stating that “a faculty member’s participation as an editor of a law review is little recognized”).

15. For an alternative view on this point, see James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1273 n.58 (1998) (claiming that “many students” serve on a law journal staff “solely to get nongraded credit”).

16. See Harnsberger, *supra* note 13, at 686 (stating that “[i]n the final analysis, it is true that most students join a law review board because membership is a tremendous asset in the job market,” although general prestige and personal satisfaction are other factors); Martinez, *supra* note 14, at 1140 (calling membership on a law review “that coveted resume entry which opens doors hitherto undreamed”); see also Harper, *supra* note 15, at 1274.

17. See Max Steir et al., *Law Review Usage and Suggestions for Improvement: A Survey of Attorneys, Professors, and Judges*, 44 STAN. L. REV. 1467, 1473 (1992). (“Law reviews that limit their membership based on grades or a writing competition are, not surprisingly, widely perceived as giving their members an edge in the job market, as well as in the race for judicial clerkships and academic positions following law school.”)

18. One study has found that while attorneys, professors, state court judges, and federal court judges consider law journal experience an important criterion in hiring, federal judges rated it a more important criterion than did any other category of employers. See *id.* at 1488 tbl.7.

ing is likely to be very important to many (if not most) journal editors because it can serve as an observable signal to the external world the quality of the editors themselves.<sup>19</sup>

A journal's position in rankings might be even more important to editors of specialty law journals than to editors of general-interest law reviews. Many students who pursue opportunities with specialty journals do so because they have a particular interest in the journal's field of specialty (i.e., international law or environmental law). These students believe either that (a) they will reap greater internal rewards from work on the specialty journal than from work on their school's general-interest law review, or (b) they will reap greater external rewards from such work by signaling their dedication to a particular practice area to employers seeking specialists in that area. It is reasonable to speculate, however, that the majority of specialty journal editors hold their positions because they were not selected for membership on the school's law review.<sup>20</sup> Consequently, the amount of prestige associated with positions on specialty journals is more uncertain than the prestige that comes with law review membership. Most employers probably perceive an editorship with a specialty journal to carry less clout than an editorship on the same school's flagship law review.<sup>21</sup> In fact, one study found that the attorneys, professors, and judges sampled in the study all rated membership in a general-interest journal as significantly more important to their hiring decisions than membership in a specialty journal.<sup>22</sup> But if a specialty journal is among the top-ranked publications in its field nationwide, perhaps recruiters would question their default assumption and find themselves more impressed with an editorship on an "elite" specialty journal.

The relative ranking of a specialty journal is likely to be particularly important at law schools that boast more than one specialty

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19. See Korobkin, *supra* note 11, at 409 (noting that "high-quality" law schools seek ways to signal their quality to legal employers).

20. See generally Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 DENVER U. L. REV. 661, 662 (1998) (observing that "[i]n almost all schools . . . there is the law review; and the second or third journals are, well, second- or third-class citizens"); Jordan H. Leibman & James P. White, *How the Student-Edited Law Journals Make Their Publication Decisions*, 39 J. LEGAL EDUC. 387, 388 (1988) ("Student candidates seeking a marketable credential from their law review service . . . will, as a rule, opt to compete for staff positions on their school's generalist journal.").

21. See Gregory Scott Crespi, *Ranking International and Comparative Law Journals: A Survey of Expert Opinion*, 31 INT'L LAW. 869, 878 (1997) ("Whether justified or not, a fairly widespread perception exists among legal academics that the specialty journals are second-rate operations staffed by students who could not qualify for flagship law review staff membership . . ."); Harper, *supra* note 15, at 1274 (observing that the increased number of law journals means that "employers must note which law [journal at a given school] an applicant is a member of").

22. See Steir et al., *supra* note 17, at 1488 tbl.7 & n.77.

journal. Employers might assume that a school's law review editors are its highest quality students, but how to determine whether the editors of the international, environmental, or public policy journal constitute the school's "second tier" is a perplexing problem. If, for example, the school's environmental law journal holds a high ranking while the other two do not, the implication might well be that the best students (or the best students not on the law review) work for that journal.

To be sure, all of this amounts to little more than obscured signals, cloudy innuendo, and questionable default assumptions. But such is the stuff that guides the all-important annual recruiting dance, during which employers attempt to differentiate between students of relatively comparable qualifications and apparently similar abilities based on a transcript (often reflecting only two semesters of grades), a résumé (usually one page), and an unnatural and unenlightening twenty minute interview on campus followed, perhaps, by a string of equally unnatural and unenlightening twenty-minute interviews at the prospective employer's offices.

Journal editors motivated entirely by the internal rewards of journal work should be less influenced by journal rankings than their colleagues who primarily seek external rewards. Editors can still reap internal rewards of journal service whether their publication is ranked first, second, or 200th, assuming that the journal's ranking does not preclude it from receiving enough article submissions to fill its pages and enough funding from its sponsoring institution to print those pages. But even members of this group are likely to find their behavior motivated by journal rankings. Most authors will prefer to have their articles published in highly-ranked journals.<sup>23</sup> Consequently, a high ranking can afford a journal's editors more choice in the articles they select for publication and the authors they work with—factors that are important to editors who are interested in "job satisfaction" rather than prestige per se.

In short, most student journal editors are likely to take seriously the position of their journal in a respected set of rankings. All other things equal, editors can be expected to respond to such rankings by attempting to solicit and publish the types of articles that will help their journal achieve a high ranking.<sup>24</sup>

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23. For a detailed description of why this is the case, see *infra* Part II.B.

24. A by-product of such a competition might be improvements in the "user-friendliness" of law reviews' selection processes in order to curry favor with authors. See, e.g., Robert F. Lusch, *From the Editor*, 61 J. MARKETING 1 (1997) (implementing a policy of more timely review of submissions in order "to make it attractive for authors of scholarly work in marketing to submit their manuscripts first to [the *Journal of Marketing*]").

### *B. Authors*

The incentives that journal rankings could create for journal editors would have no effect on the quality of law journals if authors of the articles that fill journal pages remained unaffected. Journal editors might alter their selection criteria in an attempt to publish work that would earn their journal a higher ranking, but their competitors would do the same. The identity of the articles most desired by journals would shift in the process. The journals best able to capture the articles prized by the rankings methodology would ascend in the rankings over time, while the less successful competitors would slide. But when the dust settled at the end of the competition, the quality of legal scholarship published by the nation's broad range of law journals (good or bad) would remain the same. Prestige would be distributed differently than it would be in a world without published rankings, but the rankings would have done nothing to affect the overall value of the scholarship that these publications produced.

Rankings have the ability to create social value, however, because the incentives they create for journal editors can be expected to alter the incentives of authors. If journal editors adjust their article selection criteria in an attempt to increase their relative prestige, authors will adjust the content of their articles because they wish to place their articles in the highly-ranked journals.

The analysis of authors' incentives is similar to that of editors' incentives. Authors produce scholarly articles in an effort to secure some combination of internal and external rewards. Internal rewards range from interest in the subject matter of their work to pride in the craft of preparing a scholarly article and personal assessment of its aesthetic quality. For authors who pursue only internal rewards, shifts in the selection criteria of high-prestige journals are irrelevant, assuming that their work is sufficiently consistent with external scholarly norms to be published in some journal.

Since authors of legal scholarship, like journal editors, are not often compensated in cash for their work, the external rewards they seek can be classified as prestige, in-kind compensation, or social influence. All three of these reward categories are affected, to a greater or lesser degree, by the prestige of the journals in which an author's scholarly articles are published. Authors derive prestige in the scholarly and legal communities based partly on the placement of their journal articles. The ability to place an article in one of the highly-ranked journals in a field sends a signal of quality—albeit an imprecise one—to members of the bar or the academy on whom the author might wish to make a favorable impression. The reasons that authors desire to make such an impression range from the intrinsic

value of building a strong reputation in their field to the hope of cultivating future academic, judicial, or political appointments, or client referrals.

Academic authors receive in-kind compensation for publishing journal articles in the sense that such publications are generally important preconditions to tenure, promotion, lateral job offers, and salary increases. Unlike student journal editors, who generally receive the same number of course credits and other in-kind rewards irrespective of the journal's prestige, the prestige of the journal publishing an academic author's article often affects the amount of in-kind compensation received.<sup>25</sup> Whereas one or two articles published in highly prestigious journals might win the author tenure or a healthy pay raise, more articles published in less prestigious journals might be needed to secure the same rewards.<sup>26</sup> Practicing lawyers are often "compensated" for the publication of academic articles in the form of retainers, client referrals, or the appointment to positions in professional organizations or to adjunct professorships. The prestige of the publishing journal can also affect the quality and quantity of practitioners' in-kind compensation.

The prestige of the publishing journal can be important even to authors primarily interested in the social impact of their work, rather than personal rewards. Scholarly articles can have an impact on the legal or social institutions of society only to the extent that they are read. In the United States alone there are at least 172 general-interest law reviews<sup>27</sup> and at least 330 specialty law journals.<sup>28</sup> With well over 500 law journals—and perhaps as many as 800<sup>29</sup>—competition for the attention of a limited number of readers is intense, to say the least. Be they casual readers, scholarly researchers, or practitioners and judges looking for guidance in solving a particular legal problem, readers of scholarly journals are likely to be drawn to more prestigious publications. Consequently,

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25. See, e.g., Crespi, *supra* note 21, at 869 (observing that the reputation of the publishing journal is often viewed as a proxy for the quality of scholarship, and thus, "[f]aculty members who seek tenure and promotion are therefore well-advised to strive for publication of their research in the most prestigious journals possible"); Friedman, *supra* note 20, at 664 ("[T]he law reviews definitely have power—at least within the academy. If the editors of the *Harvard Law Review* accept an article by young Smithers, a brand-new assistant professor at the University of North Dakota Law School, they have definitely given his career a jump-start." (footnote omitted)).

26. This argument would be even stronger if there were an established set of journal rankings for the academic community to rely on, as opposed to the current regime of informal and uncertain word-of-mouth evaluations of a journal's relative prestige.

27. See MICHAEL H. HOFFHEIMER, ANDERSON'S 1997 DIRECTORY OF LAW REVIEWS AND SCHOLARLY LEGAL PERIODICALS 1-11 (1997).

28. See George & Guthrie, *supra* note 9, at 824.

29. See Kenneth Lasson, *Scholarship Amok: Excesses in Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 928 (1990); Martinez, *supra* note 14, at 1142.

more prestigious publications. Consequently, the social impact of a scholarly article is likely to be significantly affected by the prestige of the journal in which it is published.<sup>30</sup> This is likely to be even more true for specialty journals than for general-interest law reviews, as the former group, despite its greater numbers, tend to be cited far less frequently than the latter group.<sup>31</sup>

The importance of published journal rankings to authors who seek to publish in specialty law journals might, in fact, be greater than they are to authors who aim to publish in general-interest law reviews. The reason is that since every accredited law school publishes a general-interest review whose staff is assumed to be the best students at the school, many authors and readers alike probably assume that the prestige of a general-interest law review is closely correlated with the prestige of its sponsoring institution. Most authors would likely assume that the placement of an article in the *Stanford Law Review* is somewhat more prestigious than a placement in the *Virginia Law Review*, which is, in turn, somewhat more prestigious than a placement in the *Northwestern Law Review*. This notion is based entirely on the intuition that Stanford Law School is somewhat more prestigious than the University of Virginia Law School, which is somewhat more prestigious than Northwestern Law School. My personal (and, admittedly, highly anecdotal) experience suggests, however, that the same authors would be decidedly less certain whether an article placed in the Stanford, Virginia, or Northwestern international law journals would be most prestigious—an uncertainty that could result in greater reliance on published rankings.

The conclusion to be drawn from this analysis is that authors of articles destined for publication in scholarly law journals who are concerned with anything other than the purely internal rewards of producing scholarship have an incentive to adjust their scholarly activity in ways that will appeal to the editors of relatively prestigious journals. These editors, in turn, are able to claim and maintain high rankings for their publications only by altering or keeping their selection methodologies consistent with the incentive structure of the dominant rankings methodologies. In short, if journals rankings become established and respected in the legal and academic communi-

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30. See Steir et al., *supra* note 17, at 1474 (speculating that the high relative frequency of citations of elite law reviews in judicial opinions may reflect the fact that judicial clerks often attended these elite schools).

31. See Leonard, *supra* note 10, at 210 (finding in one survey that only three of the 48 most cited law journals were specialty journals, and specialty journals accounted for only 13.5% of the total citations); cf. Margaret A. Goldblatt, *Current Legal Periodicals: A Use Study*, 78 LAW LIBR. J. 55, 61 tbl.4 (1986) (finding that 30.1% of specialty journals were never used during the time period studied while only 16.5% of general-interest journals were never used).

ties, they can have a significant effect on the content of legal scholarship produced nationwide. This conclusion suggests that attempts to rank journals are extremely significant to the scholarly enterprise, in addition to being an interesting topic for cocktail party conversation. Further, this conclusion underscores the importance of carefully assessing the methodologies utilized in the journal-ranking process.

### III. EVALUATING RANKINGS METHODOLOGIES: GOOD INCENTIVES AND BAD

Journal rankings can create status that journal editors and authors wish to capture. Rankings can be socially productive, then, by rewarding editors for selecting (and, therefore, authors for producing) more valuable scholarship than would otherwise be produced.

In the context of law journals, this statement raises two questions, one of ends and the other of means. The former is what constitutes “valuable” scholarship? The latter is what methodology for ranking scholarly journals will best promote the production of such “valuable” scholarship? Answering the first question with a high degree of specificity would require a philosophical undertaking that is beyond the scope of this Article. Fortunately, a broad and uncontroversial answer to the first question can create a sufficient point of departure from which to explore the second question. For the purpose of this discussion, I will assume that “valuable” legal scholarship is that which contributes to a more nuanced understanding of legal rules and institutions or adds new perspectives or insights to arguments about the normatively optimal set of legal rules and institutions. Put simply, “valuable” scholarship is that which is both insightful and original. The second question, then, can be addressed by asking what methodology for ranking journals can best encourage the production and publication of scholarly work that comports with this definition.

#### A. *Rankings Based on the Identity of Authors*

George & Guthrie rank specialty law journals based on the average prominence of the authors of its articles. The methodology is straightforward. Authors’ job titles or “positions” are ranked on a point scale.<sup>32</sup> An article written by the president of the United States receives the most points—1000—while thirty-nine other job catego-

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32. See George & Guthrie, *supra* note 9, 827-29 tbl.3.

ries receive a decreasing number of points.<sup>33</sup> Based on this author-prominence scale, each article<sup>34</sup> is given a point score and the journal's relative ranking is determined by calculating its average author-prominence score over five volumes of publication.<sup>35</sup>

Numerous challenges could be raised to the design of the author-prominence scale, borrowed by George & Guthrie from an earlier study of general-interest law reviews conducted by Roger Jarvis and Phyllis Coleman (Jarvis & Coleman).<sup>36</sup> For example, why is a "major celebrity" due 925 points while a leader of "minor foreign nation" registers only 800 points?<sup>37</sup> Or why is such high status granted to articles signed by U.S. Senators—850 points<sup>38</sup>—when such pieces are almost certain to be written by a Senator's staff member rather than the Senator himself and are unlikely to include many original insights? George & Guthrie do not tell us and neither do Jarvis & Coleman. Although justified, such nit-picking is of limited usefulness. Few articles published in law journals are penned by "major celebrities," leaders of "minor foreign nations," or even U.S. Senators, not to mention state governors, CEOs of Fortune 500 companies, U.S. Cabinet Secretaries, appellate court justices of foreign nations, or members of many of the other job categories that are assigned points on the author-prominence scale.<sup>39</sup>

Given that nearly all law journal articles are written by law professors, practicing attorneys, law students, or (to a more limited extent) judges, the following aspects of the author-prominence scale are most important. First, law professors who teach at "first-tier schools"<sup>40</sup> are awarded more points than those who teach at second-, third-, fourth-, or fifth-tier schools (the final category is grouped with unaccredited and foreign law schools).<sup>41</sup> Second, partners at the large law firms (those recognized in the *National Law Journal's* "top 250") are awarded more points than all law professors except for those at "first-tier" schools. All other practicing lawyers are awarded fewer points than any category of law professor, with the exception that "lawyer celebrities" are awarded more points than any law profes-

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33. See *id.*

34. For reasons that are unclear, George & Guthrie do not include articles that are part of symposia, book reviews, or essays, or student notes and comments. See *id.* at 829 n.86.

35. See *id.* at 830.

36. Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews: An Empirical Analysis Based on Author Prominence*, 39 ARIZ. L. REV. 1 (1997).

37. See George & Guthrie, *supra* note 9, at 827-29 tbl.3.

38. See *id.* at 827 tbl.3.

39. See *id.*

40. George & Guthrie borrowed the tier classifications from the *U.S. News and World Report* law school rankings. See *id.* at 828 n.80.

41. See *id.* at 827-29 tbl.3, 828 n.85.

sor.<sup>42</sup> Third, all federal judges and state supreme court justices rank higher than any law professor or lawyer (except for “lawyer celebrities” who trump all but U.S. Supreme Court Justices), but lower state court judges rank lower than first- and second-tier law professors.<sup>43</sup> Fourth, law students rank below any law professor, practicing lawyer, judge, and below even Ph.D. students.<sup>44</sup>

This methodology has two significant shortcomings. First, it fails to provide a *direct* incentive for authors to improve the value of their scholarship; rather, it encourages authors to pursue more prominent job titles. Second, the encouragement of title-mongering cannot plausibly have a significant *indirect* impact on the quality of scholarship. These points will be addressed in order.

Assuming that journal editors pay attention to rankings, the George & Guthrie methodology, if widely followed would provide an incentive for editors to select articles based on the authors’ status rather than on the quality of the scholarly work itself. Articles written by law professors at high-prestige schools would be preferred to those produced by professors at low-prestige schools. Submissions by most judges would be greatly favored and works authored by students or practitioners at all but the largest firms would be virtually unpublishable. Providing this set of incentives for editors hardly would encourage authors to improve the quality of the scholarship they submit to journals. The message would be that judges and professors at top schools will be published in highly-ranked journals even if they produce drivel; students and most practitioners, on the other end of the scale, might as well save the cost of postage, regardless of the quality of their ideas. The failure of the George & Guthrie methodology to directly reward quality scholarship is consistent with the widespread suggestion that law journals would be well served by adopting a policy of “blind-review” of submissions.<sup>45</sup>

This is not to say that the George & Guthrie methodology would fail to provide any incentive for those authors who wish to publish in highly-ranked, specialty law journals. The incentives, however, would not be to create more valuable articles, rather the methodology would encourage authors to garner more prestigious titles. Article placement would not likely be improved by spending extra hours in the library honing one’s arguments, but rather by obtaining an

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42. See *id.* at 827 tbl.3.

43. See *id.* at 827-29 tbl.3.

44. See *id.* at 829 tbl.3.

45. See, e.g., Dekanal, *supra* note 14, at 237 (calling for the establishment of more faculty-edited journals with the decision of whether to publish being made without the identity of the author being known); James Lindgren, *Reforming the American Law Review*, 47 STAN. L. REV. 1123, 1129 (1995) (praising blind article selection policies).

appointment to the federal judiciary or, if that fails, to a top-tier law school faculty.

This system of incentives can have a positive impact on the quality of scholarship published in law journals to the extent that producing high-quality scholarship can help an author to obtain a job title that is more prestigious on the “academic prominence” scale. For example, one of the ways for professors at lower-prestige law schools to obtain appointments at higher-prestige law schools is to write valuable scholarly articles. For the professor who wishes to publish in highly-ranked journals, the George & Guthrie methodology would provide an incentive to produce more valuable scholarship—albeit an indirect one. Writing more valuable articles can help her to secure an appointment at a higher-ranked law school, which can, in turn, help her to place articles in highly-ranked journals.

The improvement in the quality of legal scholarship that this exceedingly indirect incentive might produce is likely to be very small. It is imaginable that some law professors teaching at low-prestige schools might be motivated to produce more valuable scholarship than they otherwise would, on the theory that doing so would help them to compete for a position at a highly-ranked school, which in turn would lead to better article placement. But there are already many incentives for faculty members to compete for positions at more prestigious schools: higher salaries, better institutional resources, more influential colleagues, etc. There are probably few faculty members who are not enticed by these substantial inducements to attempt to move up the law school-prestige ladder, but who would be so induced as a result of the establishment of a journal-ranking regime based on scholarly prominence.<sup>46</sup>

Given that ranking law journals on the basis of author prominence is likely to improve the overall quality of legal scholarship only marginally, there appear to be only two defenses of the use of that methodology. The first, offered directly by George & Guthrie, is that the prominence of the authors who publish in a journal *reflects*

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46. The incentives that the author-prominence approach provide to non-professors is likely to be even smaller. The approach gives law students an incentive to move up the prominence scale to judge, professor, or, at least, practitioner. However, law students already have sufficient incentives to graduate from law school, and it is highly doubtful that the promise of better article placement in journals will cause even a single student to graduate who would not have otherwise. Similarly, many lawyers covet judicial appointments for various reasons, and some might believe that writing valuable scholarly articles would help their chances to secure such a position. But it is highly unlikely that even a single lawyer who would otherwise not put forth the necessary effort to secure a judgeship would put forth the effort because of the promise of more prestigious article placement should she obtain a seat on the bench. Of course, it becomes completely ludicrous to speculate that anyone would seek to become President of the United States, the leader of even a “minor” foreign nation, or even a U.S. Senator because such a title would virtually assure the placement of scholarly articles in highly-ranked journals.

the prestige of that journal.<sup>47</sup> In other words, George & Guthrie disclaim the *normative* goal of attempting to improve the quality of scholarship with their rankings, and instead embrace the more modest *positive* goal of reporting the current perceived prestige of specialty journals. This justification is unsatisfactory for two reasons. First, it fails to justify a higher purpose for the rankings than serving as an interesting topic of casual conversation.<sup>48</sup> Second, it seems an odd way to measure the current, perceived prestige of journals. Surveying the opinions of journal readers about relative prestige seems a far more direct way of fulfilling this goal.<sup>49</sup>

The second possible defense of the author-prominence methodology is that it is tractable. Once the author-prominence scale is established, conducting the necessary empirical analysis is relatively straightforward, although still time consuming.<sup>50</sup> Significantly, student research assistants can implement the data collection methodology with a very high degree of reliability.<sup>51</sup> Tractability is not an insignificant consideration for researchers engaged in the difficult work of data collection and analysis. At the same time, the fact that a particular metric lends itself to measurement is not, in itself, an excuse to draw conclusions from it, at least if other more suitable approaches are possible. The next two sections consider other plausible rankings methodologies that are superior to the author-prominence approach.

### B. Rankings Based on Journals' Usefulness

An alternative to basing journal rankings on the identity of the authors who publish in them is to create rankings on the basis of the usefulness of the ranked publications to their users. This can be done by assessing journals' usefulness to the creation of future scholarship through citation frequency analysis, or by assessing the extent to which journals are physically consulted by readers. Although the former method is far from perfect, it is superior to the latter method on both theoretical and practical grounds. And it creates more desir-

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47. See George & Guthrie, *supra* note 9, at 826.

48. See generally *supra* Part I.

49. See Crespi, *supra* note 21, at 871-72, 880 (measuring the academic reputation of 88 international and comparative law journals directly by surveying professors who had taught in those fields in the previous 10 years).

50. This task is not completely ministerial. Collecting the data does require the researchers to make some judgments, such as who is a "major celebrity," who is a "lawyer celebrity," and what foreign nations are "minor." See George & Guthrie, *supra* note 9, at 827-29 tbl.3.

51. See, e.g., *id.* at 813 n.\*\* (thanking their research assistants for their data collection efforts).

able incentives for the production of valuable scholarship than does the author-prominence methodology.

### 1. Citation Frequency

In academic disciplines other than law, journals are often ranked based on the frequency that their articles are cited in other scholarly work.<sup>52</sup> Attempts to rank general-interest law reviews also have been based, most often, on citation frequency.<sup>53</sup> Citation frequency is not as simple to tabulate as author-prominence, but it is still a relatively tractable methodology, and it provides an objective measure of quality.<sup>54</sup> More importantly, it provides authors with a direct incentive to produce scholarly work with a particular characteristic—call it “citability”—that is associated rather closely with scholarly value. That is, all other things equal, work that is more valuable, in terms of insight and originality, will be cited by future scholars more than work that is lacking in these characteristics.<sup>55</sup> Rankings based on citation frequency give editors the incentive to select articles that they believe are most likely to be cited by scholars in the future, which in turn provides authors with the incentive to write articles most likely to be cited by future researchers.

There are a number of reasons, however, why citation frequency is not a perfect proxy for scholarly value and, consequently, is a far from perfect basis for ranking journals. While a citation to an article can signify that the article was particularly insightful or original, it might just as easily signify one or more of the following characteristics:

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52. See generally Arthur Austin, *The Reliability of Citation Counts in Judgments on Promotion, Tenure, and Status*, 35 ARIZ. L. REV. 829, 829 (1993) (“Cite counts are an accepted way of life in the sciences.”).

53. See, e.g., Colleen M. Cullen & S. Randall Kalberg, *Chicago-Kent Law Review Faculty Scholarship Survey*, 70 CHI.-KENT L. REV. 1445, 1446-49 (1995); Janet M. Gumm, *Chicago-Kent Law Review Faculty Scholarship Survey*, 66 CHI.-KENT L. REV. 509 (1990); James Lindgren & Daniel Seltzer, *The Most Prolific Law Professors and Faculty*, 71 CHI.-KENT L. REV. 781 (1996); Louis J. Sirico, Jr. & Beth A. Drew, *The Citing of Law Reviews by the United States Courts of Appeals: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051 (1991).

54. See Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540, 1543 (1985); cf. Olavi Maru, *Measuring the Impact of Legal Periodicals*, 1976 AM. B. FOUND. RES. J. 227, 229 (asserting that “only citation count provides a measuring tool for the evaluation of scholarly literature that is conveniently available and lends itself to quantitative analysis”); Richard A. Mann, *The Use of Legal Periodicals by Courts and Journals*, 26 JURIMETRICS J., 400, 401 (1986) (quoting Maru, *supra*, at 277).

55. See Shapiro, *supra* note 54, at 1543 (claiming that “large numbers of citations to a publication are strong evidence of its scholarly influence”).

- the article states a basic and unoriginal argument found in many sources, but it happened to be on the current author’s desk or easy for the current author to access;<sup>56</sup>
- the article states a commonly accepted fact that the current author wishes to make but for which he believes unsophisticated journal editors will demand unnecessary support;
- the author of the article is a friend<sup>57</sup> or political ally<sup>58</sup> of the current author;
- the author of the article is someone with whom the current author hopes to impress or curry favor;
- the author of the article is well known and the current author hopes to achieve respect by association;<sup>59</sup>
- the article states a position or proposition that is opposed or refuted by the current author;<sup>60</sup>
- the article makes a unique but completely implausible argument that the current author does not take seriously;
- the article is on the same general topic as the current article and thus can be used to increase the current article’s citation count or citation density, but otherwise has little in common with it;<sup>61</sup>
- the article makes a point that the current author finds interesting but is entirely tangential to the current article’s argument; or
- citation to the article helps create a bibliography of related sources that might be useful to researchers even though it did not directly affect the development of the current article.<sup>62</sup>

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56. See Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 754 (1996) (noting that an article might “become[ ] a convenient or reflexive cite long after it has ceased to influence scholars or even to be read”); Linda C. Smith, *Citation Analysis*, 30 LIBR. TRENDS 83, 88 (1981) (noting that articles are often cited “because it happened to be on the citer’s desk”).

57. See Frederick C. Thorne, *The Citation Index: Another Case of Spurious Validity*, 33 J. CLINICAL PSYCHOL. 1157, 1160 (1977) (criticizing “[c]onspiratorial cross-referencing”); see also Leonard, *supra* note 10, at 190.

58. See Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN’S L.J. 1, 4-5 (1988) (calling citation a “political act” and advocating making a special effort to cite the work of like-minded scholars).

59. See Thorne, *supra* note 57, at 1159 (calling these “[h]at-tipping” citations).

60. See Leonard, *supra* note 10, at 190 (noting that negative citations could mean either that a work is important and controversial or that it is poor).

61. See Austin, *supra* note 52, at 832 (calling the “numbers and density” the most “insatiable” motive for including citations among law professors); Thorne, *supra* note 57, at 1160 (criticizing “over-detailed citations”).

62. Many of the citations in this Article were consciously included to serve this goal. That is, the sources did not influence my thinking, but their subject matter makes them potentially interesting to future scholars interested in the subject of journal rankings and their citation in this Article will make it easier for these future scholars to locate them.

If an article is cited for *any* of these reasons, the fact that it was cited provides little or no evidence of its scholarly value.<sup>63</sup>

The existence of these citation motives make citation frequency an imperfect method for ranking journals in any scholarly discipline, but the problems tend to be worse in legal scholarship than elsewhere. Compared to legal scholarship, scholarly articles in other disciplines tend to have relatively few citations.<sup>64</sup> When use of citations is circumscribed, scholars must choose carefully what sources to cite, and citations are, therefore, likely to reveal accurately the intellectual genesis of the proposition that the citation supports. Law journals tend to be so heavily footnoted that citations are anything but a rare commodity.<sup>65</sup> Citations are rarely removed by journal editors, and publication is denied to few if any articles for containing too many citations.<sup>66</sup> In journals in which citations are not a scarce commodity, the chance that any particular cite does not signify that the earlier article was particularly valuable to the creation of the later article increases markedly. The uselessness of many citations is illustrated by the finding of one study of citation practices that there is no correlation between the density of citations within a particular journal and how often that journal is cited.<sup>67</sup> If every citation reflected scholarly value, publications with the most scholarly value

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63. One citations counter claims that "citation analysis provides a direct link between a source and its subsequent use as scholarly authority" and that "[o]ne may reasonably assume that a citation means an author has read the source and considers it significant enough to warrant a reference." Leonard, *supra* note 10, at 189. In the world of law journals, these assumptions seem clearly naïve. See Joseph Goldstein, *Commentary*, 100 YALE L.J. 1485, 1485 (1991) (arguing that citation frequency of an article "bears no relationship to scholarly merit . . . . It is not even a reliable indicator that the work cited was read, let alone understood by the citer.").

64. Cf. Austin, *supra* note 52, at 832 ("Where else but law does one encounter hundreds of footnotes attached to articles?"); David A. Kaplan, *The Article in a Law Review That Included the Most Footnotes Is . . .*, NAT'L L.J., Mar. 18, 1985, at 4 (claiming that the record is 1247 footnotes). Why law journals brim with citations is a complicated question. Lawrence Friedman suggests that part of the reason may be that there are so many law journals and so many pages to fill, articles need not be "lean and spare" to be published. Friedman, *supra* note 20, at 663. Another reason is probably that the student editors of law journals believe that a large number of footnotes and citations signal the quality of a submission, whereas professional editors of journals in other fields are sufficiently confident in their ability to identify the "good" submissions without relying on such signals.

65. Cf. Kenneth Lasson, *Commentary, Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 940 (1990) (claiming that the "core of the [footnote] problem is the lack of moderation"); Abner J. Mikva, *Goodbye to Footnotes*, 56 U. COLO. L. REV. 647, 647 (1985) (calling footnotes in law reviews "an abomination").

66. One commentator claims that "[u]nder the law journal system authors have total discretion over their citation agenda." Austin, *supra* note 52, at 832. I believe it is more accurate to say that an article's citation count is a one-way ratchet, with editors often demanding more citations but virtually never demanding, or even suggesting, a reduction in the number of citations. See Harper, *supra* 15, at 1268 (stating that "some student editors ask for footnotes to support every factual assertion and reference to doctrine").

67. See Leonard, *supra* note 10, at 214 (noting that none of the 20 most-cited law journals in his study were among the 25 journals with the highest citation density).

would include the highest density of citations *and* would be cited by other scholars most frequently.<sup>68</sup>

Despite these many reasons that an article's citation frequency might not equate with its scholarly value, citation frequency remains a viable methodology for encouraging improvement in the overall quality of scholarship for a number of reasons. For starters, some of the reasons for citations that do not imply scholarly value are randomly distributed and create no undesirable incentives for journal editors seeking to select the most citable articles. For example, articles are sometimes cited because they happen to be accessible, or "handy," when an author is looking to support an uncontroversial proposition. When journal editors select articles, however, they have no way of determining which articles are most likely to be "handy" in the future. Thus, the fact that articles are cited because they are handy to a future author does not create an incentive for editors to select articles on a basis other than scholarly value.

When articles win cites for some other reasons, there is a risk that journal editors' publication decisions will be motivated by undesirable incentives, but these incentives are *less undesirable* than those created by an author-prominence ranking approach. Holding quality constant, an article by a well-known author is more likely to be cited than one by an unknown author, because citing the work of a well-known author can be a way to ingratiate one's self with the author or to claim respectability by association. Thus, citation-frequency rankings give journal editors an incentive, on the margin, to select the work of more famous authors. The incentive to do so,

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68. Another problem with ranking law journals on the basis of citation frequency is that there is no agreement within the academy about which citations should "count" and how much they should count. See generally Austin, *supra* note 52, at 835-38 (describing the problem). Should rankings based on citation frequency count only cites in law journals, only cites in scholarly publications, only cites by courts, or all of the above? See generally Sirico & Drew, *supra* note 53 (ranking journals by citation frequency in U.S. circuit court opinions). Compare Cullen & Kalberg, *supra* note 53, at 1446-49 (ranking law reviews on the basis of the number of times they were cited in *Shephard's Law Review Citations* or the *Social Sciences Citation Index*, each of which omits some journals), with Gumm, *supra* note 53 (ranking reviews only on the basis of citations in *Shephard's Law Review Citations*). Should cites in any journal or court opinion carry the same weight, regardless of how prestigious the citing journal or court, and no matter how extensively the cited article is discussed? Cf. Anumpa Phene & Stephen Guisinger, *The Stature of the Journal of International Business*, 29 J. INT'L BUS. STUD. 621, 625 (1998) (creating a "prestige index" that allows publications to be evaluated based on the quality of the citing journals in addition to the number of citations). Citations are generally used with more restraint and circumspection by judges writing judicial opinions than by scholars writing articles; so perhaps a citation in a court opinion should count for more than a citation in even a highly-ranked journal. On the other hand, this might inappropriately undervalue the scholarship that has a first-order effect on other scholarship and, through other scholarship, an important second-order effect on the thinking of lawmakers.

however, is far less severe than the incentive created by the author-prominence methodology.

In addition, most of the attempts to rank general-interest law reviews on the basis of citation frequency show that this methodology produces large discrepancies between clusters of journals,<sup>69</sup> suggesting that imperfections in the citation process are unlikely to have large effects on resulting relative rankings.

The citation-frequency ranking methodology might be especially useful in the context of specialty law journals because these publications are less plagued than general-interest law reviews by one undesirable incentive that using such a methodology creates. An article's citation count is based in large part on the popularity of its subject matter among other authors.<sup>70</sup> For example, an article on the Equal Protection Clause of the Constitution will probably be cited more frequently than a superior piece of scholarship on a section of the federal bankruptcy code simply because more scholars write about the former than the latter.<sup>71</sup> No matter how brilliant and important one's analysis of the bankruptcy code may be, it is unlikely to be cited by scholars with no interest in bankruptcy law. The upshot is that if general-interest law reviews are ranked on the basis of citation frequencies, journal editors will have an incentive to choose (and authors will have an incentive to produce) mediocre articles on popular subjects such as constitutional law, rather than more valuable articles on less popular subjects such as bankruptcy law.<sup>72</sup> Similarly, they also will have an incentive to select theoretical articles of broad scope that might be relevant to a wide range of future articles rather than superior articles that focus on resolving a spe-

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69. See, e.g., Leonard, *supra* note 10, at 191-92 (finding a geometric citation progression—that is, the number two and number three journals together had approximately as many cites as the number one journal—in a study of a small sample of articles); Mann, *supra* note 54, at 407-10 tbls.III, IV; Maru, *supra* note 54, at 233 (finding that 50% of all citations to journals are to 23 “high-impact” titles, while the bottom 207 “low-impact” journals account for only 25% of citations); Louis J. Sirico, Jr. & Jeffrey B. Margulies, *The Citing of Law Reviews by the Supreme Court: An Empirical Study*, 34 UCLA L. REV. 131, 135 (1986) (finding that the top 10% of journals most frequently cited by the U.S. Supreme Court accounted for 56% or more of all journal citations during two time periods of study and that the bottom 50% of journals accounted for 10% or less of all citations).

70. See Phene & Guisinger, *supra* note 68, at 623 (observing that “good articles in areas of the field that currently generate low levels of interest are less cited as compared with average articles in areas of the field that are generating substantial interest”).

71. Cf. Fred R. Shapiro, *The Most-Cited Articles from the Yale Law Journal*, 100 YALE L.J. 1449, 1460 (1991) (observing that among the 30 most-cited articles in the *Yale Law Journal*, approximately a dozen deal with constitutional law while no other subject matter can boast more than three of the most-cited articles).

72. One author claims that the highly regarded *Yale Law Journal* has not published a single article on the subject of wills in his lifetime. See James Lindgren, *An Author's Manifesto*, 61 U. CHI. L. REV. 527, 532 (1994).

cific, narrow problem.<sup>73</sup> An observable trend in this direction<sup>74</sup> has already led to a sharp rebuke of the legal academy by respected jurists,<sup>75</sup> as well as scholars.<sup>76</sup>

This problem is substantially avoided in specialty journals, where the journal by definition publishes articles only in a single field. No matter how generally unpopular a particular subject—say, insurance law—might be, the editors of a journal devoted to insurance law would not substitute articles on the Equal Protection Clause in an effort to garner more citations. Of course, the editors would still have an incentive to select articles that deal with relatively popular, rather than unpopular, areas of insurance law (perhaps even constitutional issues in insurance law) and to publish articles with a broader, rather than narrower scope, but the subject matter restrictions of specialty journals at least place clear limits on this serious incentive problem.

## 2. Usage Studies

Rather than ranking journals on the basis of citation frequencies, journals could be ranked on the basis of how often they are consulted by users. Scholars have attempted to use this methodology by monitoring the activities of law library patrons.<sup>77</sup> In effect, this methodology awards a journal a “point” each time one of its issues is taken off of the reserve shelf and examined in a particular library. Similar to citation frequency studies, usage studies tend to result in large disparities between clusters of journals. A few journals are consulted

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73. Cf. Shapiro, *supra* note 56, at 759 (speculating that a decline in the citation frequency of law and economics articles is due to the fact that the movement has matured, and thus, its scholarship focuses on narrower issues).

74. See Harnsberger, *supra* note 13, at 693 (claiming that the ratio of “practical” to “theoretical” articles in law reviews has declined from 4-5:1 to approximately 1:1).

75. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 319 (1989) (claiming that most academics write for each other); *United States v. Six Hundred Thirty-Nine Thousand Five Hundred and Fifty-Eight Dollars (\$639,558) in United States Currency*, 955 F.2d 712, 722 (D.C. Cir. 1992) (Silberman, J., concurring) (“I suppose, now that many of our law reviews are dominated by rather exotic offerings of increasingly out-of-touch faculty members, the temptation for judges to write about issues that interest them—whether or not raised by the parties or constituting part of the logic of the decision—is even greater.”).

76. See, e.g., Sirico & Drew, *supra* note 53, at 1057 (concluding from the infrequent citations of law journals in U.S. circuit court opinions that “legal scholarship is overwhelmingly an academic endeavor of little immediate perceived value to the rest of the profession”).

77. See Margaret A. Goldblatt, *Current Legal Periodicals: A Use Study*, 78 L. LIBR. J. 55 (1986); Nancy P. Johnson, *Legal Periodical Usage Survey: Method and Application*, 71 L. LIBR. J. 177 (1979).

extremely frequently, and many are consulted only rarely or not at all.<sup>78</sup>

Usage statistics might be useful as part of a composite journal ranking methodology, but standing alone they seem inferior to citation frequency on both theoretical and practical grounds. As to the theoretical, journals score points in usage studies when they are consulted even if the reader finds their content utterly lacking in value. An unusually provocative article title or one that is very broad so as to suggest it is relevant to scholars in many different fields might score journal usage points that are undeserved from a scholarly value perspective.<sup>79</sup> Requiring that an article be cited by another scholar to earn points is not a panacea for this problem—law journal authors often cite articles that they do not believe have much scholarly merit for myriad reasons—but, at least the citation frequency methodology places the bar somewhat higher: another scholar must at least go to the trouble of adding a citation to his work for the article to score a “point.”

The practical problems with usage studies are perhaps even greater than the theoretical. It is quite time intensive to record each time a physical copy of a journal is used. The existing law journal usage studies were conducted at a single library.<sup>80</sup> Studying usage at a single library, or even a sample of libraries, will almost certainly produce skewed results, since some journals with a regional focus will be consulted frequently in their home region and rarely elsewhere.<sup>81</sup> Even more importantly, journals are often consulted in a manner that would not be recorded in library usage studies. Today, many journals are consulted online. Scholars in specialized fields often consult off-prints of journal articles provided by their colleagues, never consulting a library's actual or an online service's virtual copy of the journal. Devising a methodology that would capture all of these uses would be extraordinarily difficult and resource intensive, if not impossible.

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78. See Goldblatt, *supra* note 77, at 60 tbl.3 (charting the steep decline in use from more popular to less popular titles); see also Johnson, *supra* note 77, at 183 (finding that 10% of the titles accounted for 40% of total usage and that the *Harvard Law Review* alone accounted for 5% of total usage). General-interest law reviews are consulted more frequently than specialty law journals.

79. Cf. Goldblatt, *supra* note 77, at 71 (finding that no correlation between the frequency with which a journal was used and opinions of scholars on the usefulness of various journals).

80. See *id.* at 55; Johnson, *supra* note 77, at 178.

81. See, e.g., Johnson, *supra* note 77, at 179 tbl.1 (finding that the *University of Illinois Law Forum*, the *Illinois Bar Journal*, the *DePaul Law Review*, and the *Chicago-Kent Law Review* were among the top 20 titles consulted at the University of Illinois).

### C. Rankings Based on Direct Analysis of Content

Rather than basing rankings on indirect proxies for the value of scholarship such as author prominence or citation frequency, rankings could be derived from a direct analysis of the quality of journal content. At a theoretical level, direct analysis of quality is clearly desirable since it would not create incentives for journal editors to select (and, therefore, for authors to write) articles based on factors that might not indicate quality, such as an author's job title or the citability of the article's subject matter. The question is whether it is possible to create rankings that are directly based on scholarly quality. The answer is almost certainly "no" for general-interest law reviews, but it might be "yes" for certain categories of specialty law journals.

#### 1. User Surveys

The most obvious methodology for directly assessing journal quality is to survey the users of law journals—perhaps a combination of practicing attorneys, judges, and law professors<sup>82</sup>—asking them simply to evaluate the competing journals' scholarly quality. If such survey responses were to consistently bestow high status on journals that published the most valuable scholarship, this methodology would be ideal. Editors would have an incentive to choose the most valuable articles submitted, and authors would have a maximum incentive to improve the value of their articles in order to have them selected by the highest ranked journals.

This approach would face two substantial problems. First, few law journal users would be familiar enough with more than a handful of journals in any particular year to seriously rank their quality relative to each other.<sup>83</sup> If survey responses were haphazard, the incentives to improve the quality of scholarship that the rankings could create would be severely undermined; editors would quickly learn that publishing more "valuable" scholarship would not likely improve their journals' rankings. Second, even if users were knowledgeable about the journals they were asked to evaluate, their judgments of scholarly value might be inconsistent and vary from year to

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82. These were the groups of users chosen as subjects for a major study in the early 1990s on law review usage. See Steir et al., *supra* note 17, at 1477. This survey did not elicit subjects' opinions on the relative quality of different journals.

83. A similar criticism was recently levied within *U.S. News and World Report's* annual rankings of law schools by an article in *The American Lawyer* magazine. The article alleged that there could be little validity to the popular law school "reputation rankings" since most survey respondents could not possibly have even heard of all the schools they were asked to rank, much less know anything specific about them. See Roger Parloff, *Who's Number One? And Who's Number 52, 91, and 137?*, AM. LAW., Apr. 1, 1998, at 5.

year. Such variability also would severely undermine the incentives of editors to publish the most "valuable" articles submitted, because the type of articles judged to be "valuable" this year might not be the same type of articles rated as valuable last year.

## 2. *Analysis of Scholarly Value*

A superior methodology would be to appoint a panel of experts, such as law professors, to read and rank journals each year. The consistency problem could be avoided by structuring the panel so that each member would have a multi-year appointment and terms were staggered. The knowledge problem could be avoided if panel members would agree to read, in its entirety, each journal that they were asked to rank. This condition, however, would make ranking general-interest law reviews in this manner impractical. It is unlikely that gluttons for such punishment could be identified, even if it were humanly possible for referees to read each issue of each review, which it probably is not.

Another problem with using experts to evaluate and rank general-interest reviews is that few, if any, potential evaluators are actually experts in the broad range of subject areas covered in those reviews. Asking a professor with an expertise in contract and commercial law, for example, to evaluate a journal that has published in the last year articles on constitutional, environmental, and criminal law is not likely to lead a rankings regime in which "scholarly value" is uniformly rewarded. Citation frequency analysis, for all its drawbacks, is likely to do a better job of rewarding quality. That methodology at least has the advantage of permitting scholars in a particular field to evaluate the quality of scholarship in that field, at least to the extent that articles in, say, bankruptcy law are most likely to be cited by scholars in bankruptcy law.

For some types of specialty journals, however, expert evaluations might be a feasible rankings methodology. There are only twelve "law and public policy" journals,<sup>84</sup> for example, most of which do not publish more than two issues per year. A panel of experts might be able to knowledgeable rank these journals relative to each other. If the large number of journals in a particular category or the small number of available referees made it infeasible for referees to read every page of each journal, the burden could be lessened by requiring each journal that wished to be ranked in a category to select its top articles and top student notes of the year for the ranking competition.

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84. George & Guthrie, *supra* note 9, at 824 tbl.2.

More importantly, since specialty journals publish articles only in a single subject area, it would be possible to select evaluators who are, more or less, expert in the full range of articles that particular journals would publish in a given year. For example, experts in environmental law could be tapped to evaluate environmental law journals. Of course, even a professor with many years of experience in environmental law will not be an expert in every one of the field's subspecialties, and even the most expert of scholars will have her own personal biases and eccentricities; therefore, expert evaluations will not be a perfect proxy for a journal's inherent scholarly value. Nonetheless, expert evaluations of journals that focus on a limited scope of subject matter might prove a better proxy for scholarly value than will citation frequency.

#### IV. CONCLUSION: LOST VALUE IN THE CURRENT SYSTEM

Attempts to rank law journals are highly entertaining, but this fact should not obscure the intellectual significance of such efforts. Rankings have the potential to create incentives for journal editors to select (and, therefore, for authors to create) more valuable scholarship than the academy would otherwise enjoy. The comprehensive rankings of specialty journals created by George & Guthrie<sup>85</sup> provide an opportunity to seriously debate what methodology or methodologies would ensure that rankings create as much scholarly value as possible.

Theoretically, the optimal way to rank journals is by directly evaluating their scholarly value. This provides journal editors with an incentive to select the most valuable submissions, which in turn provides authors with an incentive to produce scholarship with the highest possible value. Where a limited number of publications specialize in a specific, defined area of legal scholarship, direct evaluation may be accomplished by subject matter experts with actual knowledge of the scholarship published by all the competing journals. In the case of general-interest law reviews and perhaps the more popular or broader specialty journal subject areas, such as international law, this approach is not feasible, and another ranking methodology must be selected.

Of the methods for indirectly evaluating a journal's scholarly value, citation frequency analysis promises to create the best incentives for the production of more valuable scholarship. This methodology gives journal editors the incentive to select articles for publication that are most likely to be cited in the future. This methodology

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85. A recent study attempts to rank a subset of specialty journals—those specializing in international or comparative law. See Crespi, *supra* note 21.

is imperfect, as the most cited articles are not necessarily the most valuable ones. The methodology creates an incentive, for example, for journals to publish articles on popular subjects, even if this means accepting pieces of marginally lower quality than available articles on less popular topics. This incentive, however, is substantially mitigated in the context of specialty journals by virtue of the journals' own subject matter limitations.

Ranking journals on the basis of author prominence is the least desirable methodology. Although this approach provides some very indirect incentives for authors to improve the quality of their scholarship, the primary incentive that it creates is for authors to seek out higher-status job titles.

The positive effect that an established and respected set of rankings can have on the quality of legal scholarship suggests, by implication, that potential value is not being captured in a world without such a set of rankings. To date, the legal academy has failed to adopt a consensus-rankings methodology for law journals, and a leading set of rankings, comparable to the *U.S. News and World Report* rankings of law schools, has failed to emerge. In the absence of clear status incentives for law journal editors to publish scholarly articles with certain attributes, editors can be expected to seek to maximize their internal rewards from journal service by selecting articles that they find most interesting and would, therefore, prefer to edit.

The personal preferences of journal editors probably drive the current law journal article selection process. Although this is a difficult assertion to prove, it is consistent with empirical studies and the conventional wisdom among professors who routinely publish in law journals. One study of law review editorial practices found that different reviews maintain varied article evaluation standards, if they maintain any particular standards at all.<sup>86</sup> The same study found that the typical law review executive board selects the editors responsible for making publication decisions based more on personality and managerial ability than on interest in scholarship or intellectual ability.<sup>87</sup> A study of law review scholarship found that highly-regarded reviews tend to publish a disproportionate number of articles by faculty members at their own institutions.<sup>88</sup> None of these

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86. See Leibman & White, *supra* note 20, at 414-15.

87. See *id.* at 398-99. The authors of the study recommended that the qualifications of student editors who make the publication decisions be improved by separating the selection and production functions of law reviews and appointing those editors responsible for selection on the basis of interest in scholarship and intellectual ability, as determined from grades and faculty recommendations.

88. See Ira Mark Ellman, *A Comparison of Law Faculty Production in Leading Law Reviews*, 33 J. LEGAL EDUC. 681, 684-85 tbl.2 (1983). Ellman notes correctly that his data leave unclear whether there is a "significant relaxation of normal evaluative procedures for

findings are consistent with the premise that law journal editors attempt to maximize their prestige by selecting articles that satisfy an external standard of quality. Neither is the general sense among scholars who publish in law journals that whether a strong article will be selected by a particular journal is largely random and that the best articles are consequently distributed among many journals.<sup>89</sup>

If the lack of a respected set of rankings of law journals minimizes editors' incentives to select articles that satisfy some agreed-upon proxy for scholarly value, thereby increasing incentives for editors to maximize the internal rewards of journal service, one consequence is that the scholarship being published by law journals might not be as valuable as it could be.<sup>90</sup> It follows that the academy stands to capture the rewards of improved scholarships if it is able to debate and reach consensus on an approach to ranking law journals.

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home faculty submissions," *id.* at 692, but it seems unlikely that "home" faculty members provide such a disproportionate amount of the most valuable scholarship that the journals studied have the ability to publish.

89. See, e.g., George L. Priest, *Triumphs or Failings of Modern Legal Scholarship and the Conditions of Its Production*, 63 U. COLO. L. REV. 725, 727-28 (1992) (asserting that the selection of articles by law journals is based more on editor preferences than merit, leading to an element of randomness of article allocation among journals); Martinez, *supra* note 14, at 1142-43 (claiming that "there is a real perception that the selection of articles is not scientifically weighted toward the best a particular journal can publish" and that "any sense of purpose is overwhelmed by the randomness which reigns").

90. Although virtually no one questions that some law journal scholarship is very valuable, the average or overall quality of legal scholarship is often questioned. See, e.g., Robert L. Bard, *Scholarship*, 31 J. LEGAL EDUC. 242, 244 (1981) (questioning the quality of 90% of what is printed in law journals and claiming that "the idea content of most legal scholarship is extremely thin").