

PROFESSORS, FOOTNOTES AND THE INTERNET: A CRITICAL EXAMINATION OF AUSTRALIAN LAW REVIEWS†

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I INTRODUCTION

“Law review” denotes a law-related publication, edited either by law students, law faculty, or both, which is sponsored or supported at least in part by a law school, which appears at least once each calendar year in a permanent form ...¹

Over the past two years a small body of literature has built up in the United States in relation to the future of the traditional law review in the age of the internet and technological change. A paper by Bernard Hibbitts, entitled “Last Writes? Re-assessing the Law Review in the Age of Cyberspace” was instrumental in provoking this discussion.² Hibbitts’s main thesis is that the dominant form of the North American law review not only should, but is destined to give way in the next decade to a new era of electronic self-publishing.

The issue of law reviews is an important one for academics, judges and students. Law reviews play a central role in the dissemination of scholarly legal knowledge. They perform a gatekeeping function, filtering academic output through a review process. At the same time the review process forms part of the quality assurance role of law reviews, in combination with the editorial process. Publication in law reviews is also an increasingly important determinant in relation to tenure and promotion for academics. Yet to date there has been little examination of Australian law reviews, despite the fact that many of Hibbitts’s

reasons for the demise of the law review are potentially applicable in an Australian setting.

Certain important questions remain unanswered: how well does the Australian law review perform its role; what is the preferable model for the editorial board of an Australian law review; and what is the best way of processing law review articles, from the time of submission to the time of publication? These questions deserve attention if the efforts of authors, editors and readers of law review articles in Australia are to be worthwhile. Law reviews have the potential to have an enduring influence on the development of the law, yet there is a danger that law reviews may deteriorate into no more than a self-serving stepping stone in a lawyer's career. It is only by monitoring their direction and progress that we can ensure Australian law reviews will take the former path rather than the latter. The importance of the undertaking is not diminished by the recognition that if writing for law reviews is a rather academic pastime, writing about law reviews must be remarkably so.

To begin with, this article considers the traditional justifications for law reviews, and contrasts this with the view presented by Hibbitts. The way in which law reviews generally operate in Australia is then distinguished from those in North America, followed by an evaluation of the different approaches that can be used in relation to the composition of the editorial board and the processes for selecting and editing articles. Finally, the impact of the internet and new computer technologies on law reviews in Australia is examined.

II THE TRADITIONAL FUNCTION OF THE LAW REVIEW

One of the original functions of student run law reviews was to train and educate the students serving on the review.³ Editors working on an article are educated in the process, improving their knowledge of the subject of the article, their research skills and their own writing.⁴ This work may also help students in their subsequent careers⁵ by providing an opportunity to undertake legal work to a professional standard.⁶ Working on a law review is in many ways comparable to working in the law as a practitioner, academic or judge: and may involve similar challenges and external influences (eg political or financial constraints).⁸ Moreover, unlike

many other student pursuits in the law faculty such as mootings, work performed on a law review is permanently recorded and has the potential to influence directly the development of the law.⁹

Indeed, another important function of the law review is to affect the development of the law by influencing the judiciary. Chief Justice Earl Warren has said that law reviews “have long served an invaluable function in the development of our jurisprudence.”¹⁰ Although law review articles are not universally well received within the judiciary¹¹ they are commonly cited by the courts and will occasionally have a significant impact on the law.¹² Articles may also be helpful and influential to judges even when not ultimately cited in the decision.¹³ Law review articles can also affect the development of legislation.¹⁴ For example, statute annotators often contain references to law review articles which can then be considered by barristers and solicitors in interpreting the relevant legislation and presenting this interpretation to the court.¹⁵ The legislator may also rely on law review articles in drafting statutory provisions and determining what areas need further statutory regulation.¹⁶

Finally, the law review is intended to provide practitioners, academics and students with a reference source to draw upon in developing a well-formed argument or understanding a legal issue.¹⁷ In the first stage of collecting material, law review articles can reduce the time needed for research by drawing together the cases, legislation and other sources relevant to a particular problem or area of law. Ideally, the articles not only group sources, but also identify the most important among them. Justice Cardozo wrote in 1931 that the courts used law reviews to “canalize the stream [of legal precedent] and redeem the inundated fields.”¹⁸ Given the increasing number of legal precedents made available by information technology, the usefulness of selecting and ordering authority can only be increasing. In the second stage of analysis which involves reasoning and problem-solving, the critique and discussion contained in law review articles can also be a useful springboard.¹⁹

III A REASSESSMENT BY HIBBITTS

Hibbitts’s paper challenges both the purpose and the operation of the traditional law review, suggesting that it is a self-fulfilling

exercise for those involved with no real goal beyond publication itself. He writes:

the law review is the supreme institution of the contemporary American legal academy. Virtually all accredited law schools have one; quite a few have several. Law schools depend upon law reviews for publicity and prestige. Law professors depend upon law reviews for publication and promotion. Law students depend upon law reviews for education and eventual employment.²⁰

This sentiment echoes from as far back as 1936 when Rodell commented:

The leading articles ... are for the most part written by professors ... whose chief interest is in getting something published so they can wave it in the faces of their deans when they ask for a raise ... The students who write for the law reviews are egged on by the comforting thought that they will be pretty sure to get jobs when they graduate in return for their slavery, and the super-students who do the editorial or dirty work are egged on even harder by the knowledge that they will get even better jobs.²¹

Rier has even gone so far as to say that the manifest (or primary) function of the law review is for authors to be published rather than for their articles to be read.²² In contrast to scientific and medical journals,²³ legal publication is a goal in itself rather than a means of informing members of the legal profession of current developments and new ways of thinking.²⁴ This seems to be taken as a given by Closen and Dzielak, who write: “[s]ince law review articles are published to be written but not necessarily read, creating more places in which to publish manuscripts has provided practitioners and students the opportunity to write law review articles and hence experience this educational activity.”²⁵

Hibbitts presents the functions of today’s law review against the backdrop of the historical reasons for its creation, including a need to compete with the publications of other disciplines within the university, and the development of faster, better and cheaper printing and paper-making processes.²⁷ In this context, any “legal considerations”,²⁷ such as a desire to facilitate interaction within the legal community, seem to be merely peripheral. The continuation of the law review in its traditional form therefore cannot be justified on the basis that it serves as an indispensable tool for communication. In addition, Hibbitts highlights several criticisms of law reviews which suggest that they are failing to achieve even the limited goal of giving authors somewhere to write, if not to be read. These include the lack of experience and expertise of student

editors in selecting and editing law review articles, their bias towards certain subjects and styles, and the long delays in publication.²⁸

Hibbitts proposes that, just as in the late 19th century law reviews sprang from advances in printing technology, it is now time to take advantage of “computer-mediated communications technologies” in developing a new age of legal publication.²⁹ However, he argues that simply transposing law review articles from paper to the internet, Lexis/Nexis or Westlaw to enable quicker and easier access to the full text is not enough. The entire “institutional and editorial structures” of law reviews need to be overhauled in order to realise the potential for legal scholarship provided by the new technologies. Hibbitts’s answer is self-publication on the World Wide Web. He suggests that this would allow immediate publication without uncertain delays, and would prevent preoccupation with styles and topics which will be favoured by law review editors and avoid editing by inexperienced students. At the same time, hypertext links could be used to take readers directly to the source referred to by the author (assuming that source is also published on the Web). A more flexible approach to publication could be adopted whereby readers can post comments on the paper and the author can continually adapt it taking into account these comments as well as relevant developments in the law.³⁰

IV AUSTRALIAN LAW REVIEWS

Several aspects of Australian law reviews as a whole distinguish them from the picture of the traditional North American law review presented by Hibbitts. Most importantly, many of Hibbitts’s arguments target student editorship of law reviews and the lack of peer review systems.³¹ However, unlike in North America,³² several leading Australian law reviews are edited by academics³³ and practitioners³⁴ rather than students.³⁵ Moreover, many Australian law reviews, whether student-edited or not, tend to rely heavily on independent review by experts or “referees” in the field.³⁶ Articles written by Australian academics and published in refereed journals are perceived to be of much greater value to the supporting institution (in terms of both finance and prestige) than articles in non-refereed journals. Articles published in refereed

journals are also accorded greater weight when the Department of Employment, Education, Training and Youth Affairs determines the amount of the government grant to be made to the institution.³⁷

The typically anonymous review process (whereby the identity of the author is not disclosed to the referee, and vice versa) has several consequences.³⁸ First, the referee need not fear professional retribution from the author for giving an unfavourable, but honest, review of a submission. In addition, the quality of an article can be judged independently of the standing of its author.³⁹ Hence, Supreme Court judges and partners of major law firms may conceivably find their work rejected while law students may be published in their first year at university. This contrasts with the description by Closen and Dzielak of the types of articles published in North American law reviews,⁴⁰ where a clear delineation seems to apply between “non-student” (lead articles, essays, book reviews) and “student” articles (shorter comments and case notes).⁴¹

Student editors and members of the editorial boards of Australian law reviews may differ from students editing North American law reviews. On average, the Australian students would tend to be younger than their North American counterparts, because law is generally taken as an undergraduate rather than a postgraduate degree in Australia in contrast to the system in most North American universities.⁴² Some might argue that this difference makes for less skilful editing and mature decision-making in Australian student-run law reviews.⁴³ On the other hand, the popular combined courses in Australian universities⁴⁴ (eg Commerce/ Law, Arts/Law, Science/Law, Engineering/Law and even Medicine/Law) are generally completed in five rather than the standard three or four years (for straight law courses). This provides a significantly longer period of exposure to law (albeit less intensively during that period) and perhaps a better opportunity to examine legal concepts critically with the broader perspective provided by simultaneous⁴⁵ studies in an unrelated discipline.⁴⁶

Partly as a result of the popularity of five year combined law courses, selection for student membership of Australian law reviews appears to differ somewhat from the procedure used in North American law reviews. Typically, North American law reviews select student members based on a combination of three techniques. These generally⁴⁷ involve selection of second year

students (where the standard law course takes three years) based on: first year results; a writing competition open to those students whose first year results meet a minimum standard, or; a writing competition open to all law students.⁴⁸ In contrast, Australian law reviews tend to select on the basis of results in preceding years in the law school (generally leading to recruitment of students from second to fifth year).⁴⁹ Hence, criticisms that reliance on results in a single year is arbitrary and unreliable⁵⁰ do not generally apply to Australian law reviews.

This article does not purport to contain a comprehensive analysis of the “success” of Australian law reviews. However, if that success is judged by the degree of scholarly influence that law review articles have, the chance of success can be maximised by using the most reliable methods for choosing an editorial board, then selecting and editing articles, as discussed in this article. If an editorial board is biased or inexperienced, worthy articles may be rejected. If the anonymity of referees is not protected they may be inclined to accept undeveloped articles out of loyalty to their colleagues or supervisors. If an article is not properly edited it may be under-utilised because readers find it too difficult to follow or to locate the references it contains. Thus, the suitability of the methods used by a particular law review is likely to correlate directly with the substantive effect which the articles in that review have on the law. The differences between typical North American and Australian law reviews raise several questions about the most appropriate method for publishing legal articles. Tradition alone can no longer justify the choices made in running law reviews, particularly given the additional challenges presented by the new technologies highlighted by Hibbitts.

V THE EDITORIAL BOARD

A *Student Editors*

The main distinguishing feature of student editors is obviously their lack of experience in the law, which is generally regarded as a negative when it comes to running law reviews.⁵¹ Student editors may be faced with a steep learning curve during a relatively short time working on the law review.⁵² They may have few connections with faculty members or other experts in particular fields⁵³ and so lack adequate support in making decisions about how to run the law

review or which articles to publish. There is also a perception that student editors are more apt than faculty editors to struggle with the author about the text.⁵⁴ This struggle may result as much from the students' concern to maintain their authority despite their position (eg they may often be younger and will almost always be less experienced than the author)⁵⁵ as the authors' disdain for suggestions from mere students as opposed to colleagues or superiors.⁵⁶

Despite these criticisms, student editors are in many ways preferable to editors who may be established professionals but who may have little time to spare for the groundwork that students are prepared to undertake. Student editors may have fewer preconceived ideas about the suitability of particular topics,⁵⁷ and more time⁵⁸ to do tedious "footnoting" and careful proofreading.⁵⁹ These tasks will often reveal significant errors of style or substance even by experienced authors.⁶⁰ Students are also less likely to have conflicts of interest or possible bias whereas, for example, faculty editors may work with the author or may even be rivals in a particular field of publication.⁶¹ Finally, students are more likely to be willing and able to complete editorial work for little or no charge. This financial saving translates into lower costs for subscribers⁶² and supporting law schools.⁶³

B *Faculty Editors*

Faculty members obviously have a great deal more experience in legal analysis and legal writing than students, and as such are generally regarded as having superior skills when it comes to editing.⁶⁴ Faculty editors are less often criticised for being overzealous in their editing and for engaging in unproductive and unnecessary struggles with authors over the text of articles. They also tend to have a much broader network on which they can rely for potential referees and a wiser approach when it comes to selecting which topics are worthy of publication. On the other hand, "faculty edited law reviews are extremely vulnerable to being captured by one viewpoint".⁶⁵ In other words, a law review edited by faculty may become dedicated to a particular cause or theory rather than remaining an open forum for quality articles from various perspectives. This is in part due to the fact that the membership of a faculty editorial board may remain completely or

substantially static for some years, rather than changing altogether every few years as student editors complete their studies and move on. In addition, faculty members are more likely than students to have developed particular areas of expertise and interest to the exclusion of other areas. Thus, the benefits of student editing may often outweigh those of faculty editing and it is simplistic to suggest that Hibbitts's criticisms of law reviews could be addressed by a shift away from student editing.

VI THE ARTICLE SELECTION PROCESS

A Student Selection

In the United States, student-run law reviews typically select articles themselves, without the assistance of those outside the law review.⁶⁶ In other words they are non-refereed journals.⁶⁷ It is in this area that students' lack of experience causes the most concern.⁶⁸ Student members of law reviews are underqualified,⁶⁹ inherently cautious and "lack the confidence to distinguish the truly innovative from the foolish."⁷⁰ Student editors themselves realise that this method of article selection is problematic, and may welcome faculty advice in selecting articles even if no formal process of external review is in place.⁷¹ However, even where faculty assistance is sought, the absence of anonymity in the selection process means there is a risk that more established authors will be unduly favoured.

B Peer Review

Unlike most law reviews in the United States, law reviews in Australia generally employ a system of independent peer review.⁷² The peer review process typically operates in the following way. Upon receipt of a manuscript the editor of the review makes a preliminary assessment of its merit. On the basis of this preliminary assessment, the manuscript is either rejected or sent out for external review by a referee. The editor or the editorial board selects a referee "on the basis of [their] expertise and knowledge of the area".⁷³ Sometimes the citations to other scholarship made by the author in his or her manuscript indicate appropriate referees.⁷⁴ Some law reviews include guidelines for the referee indicating evaluation criteria. Referees then return their comments on the

manuscript, sometimes separating comments for the author and for the editor. The editors make the final decision on whether to publish the article or not.⁷⁵

Peer review can be “open” (where the referee and the author are aware of each other’s identity); “single-blind” (where the referee knows the author’s identity but the author does not know the referee’s identity, or vice versa); or “double-blind” (where neither the author nor the referee is aware of the other’s identity). Double-blind reviewing is the most rigorous form of peer review and the form favoured by most Australian law reviews. Anonymity is intended to encourage fearless review so that manuscripts can be assessed without the apprehension of later recrimination,⁷⁶ while reducing the possibility of biases⁷⁷ such as friendship, reputation⁷⁸ and institutional authority.⁷⁹ Given the desire to ensure anonymity, it is generally not appropriate for authors to suggest referees, although it might be quite proper to indicate referees who might not be suitable. It is also generally inappropriate to use a referee from the same institution as the author. Of course, double-blind reviewing is sometimes impossible. In some circumstances, the author is revealed through the work. Particularly in Australia, referees in a specialised area may know each other personally, and will often recognise the work of one of their colleagues. In these circumstances it may be desirable to seek an overseas referee or at least comments from more than one referee. The peer review process is aimed at protecting the quality and reputation of the journal by subjecting manuscripts to a dispassionate evaluation by the author’s academic peers⁸⁰ on the assumption that “work which has merit can be objectively determined by critical minds.”⁸¹ Referees do not receive any monetary remuneration for their work, although there is some scholarly distinction in being asked to review an article.⁸² As such, from the law journal’s perspective, peer review is no less attractive financially than student selection. Ideally, peer review should also be used to offer the author written feedback,⁸³ which is particularly important for the author of a manuscript which has not been accepted for publication or which is accepted subject to revision or particular amendments. Constructive feedback may range from raising questions “at the heart of the author’s scholarly effort⁸⁴ to merely pointing out weaknesses in the structure or style of the manuscript. In any case, formal feedback of this kind from an expert in the field may be crucial in allowing the

author to revise or extend the work so that it is subsequently accepted for publication in the same or a different law review.⁸⁵ In a law review where students select the articles, potential authors cannot be aided in this way.

The peer review process is not infallible. Editors have a significant degree of power in selecting referees, with the result that certain referees may be used too often and others too rarely. While high profile referees may be particularly experienced, they may not have the time to give a manuscript proper consideration.⁸⁶ In addition, peer review relies on the diligence of editors to recognise and remedy: the misapprehension or ignorance of referees; undisclosed conflicts of interest of referees; and procrastination by referees leading to delays in publication.⁸⁷ If only one referee is used (rather than two or more as is frequent in some other disciplines)⁸⁸ these difficulties can be exacerbated such that in some circumstances the notion of anonymity and impartiality is reduced to a mere fiction. Australian law reviews generally seek only one referee's report for each submission so that the choice of referee can become crucial.⁸⁹ Student editors in the United States have also cited a study by the American Council of Learned Societies which reported that "the peer-review system for deciding what gets published in scholarly journals is biased in favor of 'established' researchers, scholars from prestigious institutions, and those who use 'currently fashionable approaches' to their subjects."⁹⁰ Another problem cited by critics of peer review is a lack of consistency in the review process, with well-known authors favoured over new authors.⁹¹ However, most of these problems (which also exist when students select articles) can be addressed through "double blind" review, or even a policy of using two referees for each submission.

C *Symposia*

Many law reviews occasionally publish a "symposium" on a particular topic or theme. This involves devoting an entire or part of an issue to a particular topic or theme, and soliciting articles and comments on that topic.⁹² In some cases, a general call for submissions on the topic is made and any author is welcome to respond. Alternatively (or in addition), individual authors are invited to submit an article for publication in the symposium. When

such an invitation is made, there is generally an understanding between the law review editors and the author that the law review agrees to publish the author's submission unless it fails to meet some basic standard in terms of quality: "the threshold for withdrawing an invitation will be far, far below the same journal's standard for accepting an article in competitive submissions".⁹³ There is a trade-off in this arrangement. The author is virtually assured of publication with minimal competition, while the law review may secure the work of an author who would otherwise choose to submit his or her work elsewhere. The use of symposia can thus be particularly attractive to lesser-known law reviews.⁹⁴ A symposium issue may be more successful in enticing readers than an ordinary issue because of the focus on a particular issue and the grouping of authors who are experts in that area.⁹⁵ On the other hand, if the authors are selected individually there is the potential for unwanted delays in publication if even one author is slow in preparing their submission or withdraws at the last minute.⁹⁶ In addition, difficulties may arise if a solicited article is for some reason unsuitable for publication. Finally, if there is no independent review of a solicited article there may be a concern about quality, or authors may be reluctant to contribute due to the perception that non-refereed articles are less highly regarded (as noted above).

D Multiple Submissions

Most North American student-run law reviews accept "multiple submissions",⁹⁷ which occur where an author submits the same manuscript to several law reviews at once. In contrast, Australian law reviews typically require that any manuscript submitted for publication must not have been submitted elsewhere. This discrepancy is apparently linked to the more frequent use of peer review systems in Australia than in North America, since the added time, effort and expense of referees in reviewing submissions necessitates a ban on multiple submissions. While it might be considered acceptable for editors (and particularly student editors) to spend time reviewing submissions which are later withdrawn and published elsewhere, this practice becomes much more inappropriate where external professionals are used as referees.⁹⁸

Yet even where the task of selecting articles is undertaken solely by the law review editors, and even where these editors are

students, the practice of multiple submissions is problematic. First, it is open to abuse by authors “using an offer by one review staff as a “bargaining chip” with another law review staff” or withdrawing articles accepted for publication by one law review following a subsequent offer of publication by a more prestigious review.⁹⁹ Secondly, aside from any substantive review undertaken by editors, the mere processing of submissions involves significant amounts of time, effort and expense in terms of written correspondence, telephone calls and database entries. This can be a significant strain on resources if numerous submissions are made and later withdrawn before or after a decision has been made by the law review as to their suitability for publication.¹⁰⁰ Thirdly, this strain on resources is likely to impact on the review process such that authors’ credentials and qualifications become a component or a more important component in the decision of whether or not to accept the submission.¹⁰¹ Reliance on credentials in this manner reduces the resources expended on reviewing the submission, but at the same time introduces bias into the publication process, most likely at the expense of quality and originality. If multiple submissions are allowed at all, it is preferable to limit the practice in terms of the number of submissions of the same article that can be made simultaneously.¹⁰² In addition, an author making multiple submissions should advise each law review of the other reviews to which the manuscript has been submitted, and once the manuscript has been accepted for publication should withdraw it from all the other reviews.¹⁰³ This prevents the practice of “trading up” (waiting for the best offer and then withdrawing the manuscript) and thus reduces the amount of energy expended by the law review editors and referees in the review process. In addition, the author then has an incentive “to make a realistic assessment of the type and quality of journal that his [or her] article belongs in”¹⁰⁴ rather than making indiscriminate submissions to numerous journals. This analysis of the types of selection processes that law reviews can use suggests that Hibbitts’s indictment of student editors may be unjustified. The various processes available compound the issues to be resolved in selecting articles. It is much more than a matter of deciding who should edit the review. Indeed, strict peer review processes together with the use of symposia where appropriate to the status of the journal and the area of law may produce the best results when combined with student editors and a prohibition on multiple

submissions. On that view, Australian law reviews are better able to answer Hibbitts's criticisms as these processes are already widespread.

E Too Many Articles?

The growing number of Australian law reviews might suggest that there are too many law reviews or too many law review articles. However, at the time an article is first submitted to a law review, and even at the time it is first published, it is almost impossible to determine whether or not it will have a significant impact on the development, practice or theory of a particular area of law. It may be many years before the importance of a particular article is revealed or before it is used by others in their research. Thus, if fewer articles were published, and more articles rejected as being of insufficient relevance or "quality" (as determined at the time of submission), there would be a risk of losing access to what might later be discovered to be extremely useful papers. Surely it is better to publish more articles and accept that some will be unread or unimportant than to publish fewer at the risk of missing out on worthy articles in the long run. At the same time (as will be discussed further below)¹⁰⁵ a balance is required to prevent a sea of articles from being published without appropriate tools for evaluating and classifying those articles. A notable feature of the changing character of Australian law reviews is the rise of specialist journals, both in number and influence.¹⁰⁶ In Australia there is a vast range of journals specialising on areas such as public law, corporations law, criminal law, torts, contracts, and taxation.¹⁰⁷ The influence of these journals may be increasing because their readership includes not only academics but also specialist practitioners who may not (due to lack of time or interest) read university law reviews.¹⁰⁸ One advantage of specialist law journals is that they have a greater capacity for succinct communication of ideas because their authors can assume that the reader possesses a certain level of background knowledge in the area.¹⁰⁹ In addition, they play an important role in helping the reader categorise their reading rather than having to wade through articles which are irrelevant to their field of expertise. This shows the importance of assessing the range of law reviews as a whole rather than simply calculating the absolute number of law review articles. When

classified in a manageable way a greater number of articles will prove useful than if there were no such classification system.

One way of assessing whether there are too many law review articles in Australia and whether they are being taken seriously is to consider how often these articles are actually read and cited. Assuming that an author will generally cite only those articles which he or she has found valuable or a useful source of information, citation analysis provides some evidence of the impact of Australian law review articles. A recent study by Ramsay and Stapleton indicates that in Australia, just over half the citations are to Australian journals, and the five most cited journals are Australian.¹¹⁰ While Australian academics do appear to look internationally for ideas, and particularly for interdisciplinary journals, it seems that Australian law reviews provide an important source of ideas for research by legal academics and a fundamental scholarly influence.

VII THE EDITING PROCESS

Most authors do not mind vigorous editing of citations, and may often appreciate it. Ensuring the accuracy of each citation involves poring “over the sources, searching for minute inaccuracies, detecting mischaracterizations, and discovering the misquoted work or the omitted italics”.¹¹¹ However, insistence on strict compliance with every detail of the “Bluebook” is a constant complaint by North American authors.¹¹² The Bluebook is the common name for *A Uniform System of Citation*¹¹³ which is a book on legal citation published by a number of law reviews led by Harvard.¹¹⁴ It provides a widely accepted standard for legal citation in the United States,¹¹⁵ although its complex and difficult rules have received considerable criticism.¹¹⁶ Posner complains that “[t]he time that law students and lawyers spend mastering and applying the manifold rules of the Bluebook is time taken away from other lawyerly activities, mainly from thinking about what they are writing”.¹¹⁷ Canada also has a uniform citation guide, the Canadian Guide to Legal Citation.¹¹⁸ Australia presently lacks such a guide, but the *Australian Guide to Legal Citation* is attempting to assume that position.¹¹⁹ Aside from citations, editing of grammar and language is accepted as being an important part of the task of law review editors.¹²⁰ However, criticism has been made of overzealous editors

(and particularly student editors)¹²¹ in this regard: “An editor oriented toward smoothing out the prose can easily and unwittingly jar the meaning of a precariously balanced sentence. Sometimes the editor will parse each sentence according to a perverse set of mythical grammar rules ...”.¹²² Another criticism is that even assuming the meaning of a sentence or phrase remains intact, too vigorous editing may destroy the individual voice of the author: the important task of editing a journal is to preserve the distinctive craggy voice of each author for the benefit of readers who quickly tire of homogenized articles written in standard corporate style. ... individuality has to shine through, and ... one of the pleasures in reading a journal is to hear the cadence of familiar authors as you read their prose. Editing should highlight individual styles, not wipe them out.¹²³

In relation to the editing process, it does seem that student editors are more often viewed as wrenching control of the article from the author than are faculty editors. In this regard Hibbitts is probably correct in demanding a reassessment of the way law reviews operate. However, that is not to say that the solution is abandoning law reviews altogether. Rather, it should be acknowledged that student editors need to be wary of over-editing (perhaps less so in Australia than North America due in part to the long absence of a Bluebook equivalent). This may take some prodding from authors and faculty advisors. Once that acknowledgment is made a change in the approach to editing should follow in order to serve better the interests of readers as well as authors.

VIII THE AGE OF CYBERSPACE

A *Electronic Publication*

Several law reviews in Australia are currently published solely by electronic means, including *E Law*,¹²⁴ the *High Court Review*¹²⁵ and the *National Law Review*.¹²⁶ Lexis/Nexis and Westlaw are among the few centralised databases that provide the full text of articles in electronic format. Databases that provide abstracts or key words of articles are more common, eg the Index to Legal Periodicals and Legaltrac. Electronic publication has the potential for customisation¹²⁷ of legal scholarship, meaning that a single article can be presented in different formats or with different

emphases depending on the reader's particular interests. The reader can easily search an electronic publication, eg for key words or case references.¹²⁸ While at the moment searches often have to be phrased using Boolean terms, increasing natural language searching will be possible.¹²⁹ It also does away with the need for physical storage space, and potentially increases accessibility by making distance irrelevant.¹³⁰ Finally, electronic publication is capable of much shorter publication and delivery times than paper publication, and eliminates printing and postage costs.¹³¹ It is true that law review articles are rarely read immediately, instead being filed away for future reference when the practitioner or academic runs into that particular topic.¹³² On the other hand, often an article, case note or comment will be highly topical such that rapid publication is crucial. For example, an important case might be reconsidered or overruled during the period it takes to publish an article on that case, leaving the article uninteresting, out of date or even unfit for publication.

However, electronic publication also has its risks in practice. One risk is that material will not be adequately archived. While archiving practices are established for printed journals, they are not yet fully developed for electronic publications.¹³³ This means that especially as technology changes, access to scholarship published electronically a few years ago may not be possible.¹³⁴ Also, while electronic publishing has the potential in theory to increase accessibility, many institutions and even whole countries lack the infrastructure required to support it, creating an information rich/information poor divide.¹³⁵ Similarly, not all individuals have the technical expertise and equipment to access publications on the Web.¹³⁶ Finally, the reader of an electronically published article is confined to either reading the article at a computer screen, or printing it out.¹³⁷ Many people, particularly the more senior members of what is traditionally a conservative profession, would prefer to read material on paper rather than from a screen. Unless a paper is printed out it is difficult to highlight,¹³⁸ make notes on, read on the train and take home to consider further. If a reader were working in a library it would be even more difficult to read the entire paper from the screen undisturbed.

More perplexing issues arise from the potential for legal writing to be published solely electronically making use of technologies which facilitate hypertext links to other sites. At a basic level,

hypertext can be used to allow the reader to view the text of a footnote by holding the cursor over the footnote reference number. A text box appears showing the contents of the footnote rather than the footnotes being shown at the bottom of the page as would be the case for a paper version. An article published on the internet could also contain links allowing the reader to make bigger “jumps” to other sources mentioned in the text. For example, where the author referred to a statute, case, book or article the reader could click on that reference and be taken instantly to the full text of the source material. Although at the moment relatively few articles and books are published on the internet,¹³⁹ making links to these sources unlikely, publication of this kind is likely to increase in the near future. Moreover, full text of legislation and cases for many countries is available on a number of sites already, and links of this nature are already common between those sites.¹⁴⁰

In many cases, techniques such as those discussed would be very useful to the reader in checking original sources rather than relying on the author to describe them accurately. An article could serve as a springboard for further research in the area by going directly to many relevant materials. However, the convenience of hypertext links should not be allowed to obscure the significant impact this technology would have on legal writing and reading. To begin with, if a reader jumps from one article to a wide variety of sources this reduces the capacity for editorial control, whether a law review editor or the author (as in the case of self-publication) does the editing. It would be virtually impossible for the editor to ensure that each source to which the article linked was accurate, up to date and of sufficient quality.¹⁴¹ More importantly, allowing the author to leave the text and look at other materials in the middle of reading an article involves a disruption to the linear nature of reading.¹⁴² A complex theory can be conveyed in writing only through a sustained narrative and sustained attention by the reader, who thereby engages with the text to the extent of entering a kind of “reverie”.¹⁴³ If the reader is constantly changing direction to view not only footnotes but also source materials the capacity for reverie is lost:

Academic knowledge requires a great deal of contemplative reflection on descriptions of experience of the world. In a computer program the reader does not follow a linear sequence, but tends to move from one bit of information to another, moving across surfaces. This hastening from one site to another does not allow the words to resonate inwardly, nor

does it allow for a sinking into reverie. Depth is replaced by breath of range, and context and chronology are sacrificed. What is highlighted is speed, image, non-rhetorical links. The screen is of indeterminate depth, nothing is fixed on it, and reading becomes skimming, extensive rather than intensive. Narrative becomes an impossibility. There is no beginning, middle or end, no sustained argument with a history, only a collection of fragments of information. The structure of the text is undermined.¹⁴⁴

At the same time, the inability to hold the undivided attention of the reader in these circumstances threatens the centrality of the author and the text. Instead of the author directing the reader in terms of the order of thoughts as written in the article, and the importance of each issue covered, the reader is free to look at any number of sources in quick succession and to make their own decisions about the validity of each.¹⁴⁵ Postmodernist theory may celebrate the consequent collapse of the narrative and the control or domination by the author,¹⁴⁶ yet “domination by the author has been, at least till now, the point of reading and writing”.¹⁴⁷ Particularly in the case of legal articles, the author’s aim is to do more than direct the author to various cases and other articles on a topic. Ideally, the author has a new point to make which develops from earlier materials but which only the author can put together as he or she conceives it. The author’s ideas do not exist independently of the writing, and knowledge gained from those ideas must not be confused with information gained from the pure data of the source material.¹⁴⁸ In addition, the author’s distinct voice is an inherent part of the article, which is why overediting has been so often condemned.

B *Self-publication on the World Wide Web*

An important argument for self-publication on the Web or otherwise is that it naturally eliminates the possibility of rejection by a third party editor, enabling the author to reach the reader directly. However, the case for self-publication is not so clear-cut. Assume that no piece of legal writing is so “bad” that it does not deserve to be published anywhere.¹⁴⁹ It is true that one or more review editors may nevertheless reject an article because of funding concerns or because it is not in tune with the rest of the review or the particular standards the review has adopted. However, if that occurs, the author is free to submit the article to other reviews, and generally would find a place for publication eventually.¹⁵⁰ Self-

publication is thus not the only solution.¹⁵¹ Furthermore, apart from the basic function of choosing which articles to reject or accept, editors also play an important role in editing those articles that have been accepted for publication.¹⁵² Self-publication on the Web sidesteps that process and quality potentially suffers as a result.¹⁵³

Self-publication would dramatically increase the number of articles available to the interested reader,¹⁵⁴ without the screen of law reviews to act as a classification tool. As mentioned above, some law reviews specialise in particular areas of law¹⁵⁵ while others accept legal articles on any topic.¹⁵⁶ A reader may be more interested in a particular law review because of its specialist focus, its prestige¹⁵⁷ or its typically theoretical or practical¹⁵⁸ slant. The use of expert referees by particular law reviews may also indicate to the reader the general “standard” of articles published by those reviews. All these differences enable the reader to choose which articles to read where time and resource limitations necessarily prevent the reader from reading all articles published.¹⁵⁹ In contrast, without a relatively sophisticated index or classification system¹⁶⁰ on the internet which is generally accepted by authors across the globe,¹⁶¹ the reader would have greater difficulty isolating those self-published articles that are likely to be of interest and importance. Ironically, the creation of a classification system of this kind would involve a “classifier” stepping in between the author and reader, in a manner analogous to an editor selecting and rejecting articles for publication in a traditional law review. It is precisely this capacity for third party control that Hibbitts seeks to escape.

C Continuous Updating of Electronic Articles

Hibbitts’s proposal that self-published articles be constantly updated and reviewed based on reader feedback notes posted on the Web is theoretically both plausible and commendable. This process would involve the readers taking on the traditional editorial role of editing the article in every respect. It would allow for greater interaction between author and readers, which would aid the author in improving not only the subject article but future articles based on readers’ feedback. In addition, continuous updating of this kind could potentially eliminate the need for readers to update their information through additional research to cover the period after

publication of the article, since the author would do all the necessary updating instead. The goal would presumably be to keep reworking the article until it reached perfection, and then to keep reworking it to take into account new developments in the law.

However, there are a number of difficulties with Hibbitts's vision. Just as over-editing by (student) editors prior to publication can extract the novelty and individual voice from an article, so too can over-editing by the author in collaboration with readers destroy an article. In addition, the unrestrained feedback provided by readers who may be anyone from students to professors to non-lawyers is unlikely to be of much greater value than a concentrated critique by an expert in the relevant field, which is provided through the peer review process. A number of practical difficulties would also arise in terms of citing different versions of a particular article.¹⁶² If the later versions write over the original version, how will the reader distinguish between them? What if the reader wants to read about the law as it stood at a particular time? As for continuous updating, this would generate an enormous amount of work for the author, who may well be the author of a number of other articles that also require continuous updating, with presumably no hope of finality¹⁶³ until the end of the author's career.

IX CONCLUSION

There are a number of potential difficulties with the publication of law reviews, and Hibbitts has identified many of them. However, most of his criticisms are more properly directed at the way in which most law reviews currently operate in North America than at law reviews themselves. While student editors are in some ways preferable to faculty editors, selection of articles for publication by students alone is problematic to say the least. A double-blind peer review process generally eliminates problems associated with bias and inexperience, while prohibition of multiple submissions ensures that the valuable time and effort of editors as well as referees is not wasted. Australian law reviews are often edited by students, but many are edited by faculty or practitioners or a combination of these. This mix of editorial styles may allow different law reviews to fulfil the needs of different readers. More importantly, double-blind peer review is widely used in Australia

and multiple submissions are generally prohibited. These key features of Australian law reviews should allow them to survive well into the next century, despite Hibbitts's gloomy predictions.

Hibbitts points to the internet as evidence that the era of the traditional law review has come to an end. However, the internet is better regarded as a challenge than a threat to predominant modes of law review publication. While the new technologies provide an opportunity to publish legal articles in new formats and to reach wider audiences, the traditional law review is not ready to be discarded altogether. Publication by law reviews acting on advice of independent referees allows articles to be thoroughly edited prior to publication and then provides some means of sorting the articles according to topic, quality and perspective. It would be difficult for self-publication to perform these tasks to the same standard. The possibility of electronic self-publication may induce law review editors to be more circumspect in making changes to the text of articles, so that editing is limited to correction of errors and minor improvements while leaving the chosen style and substance of the article intact. This may come as a relief to many authors, and would be preferable to the proliferation of self-published articles on the internet.

It may well be that law reviews are important for the reputation of law schools and academics, but their worth is not restricted to these areas. Ongoing scrutiny of the methods of operating law reviews should ensure that high standards of quality and integrity are maintained in the publication process. This in turn should cause law review articles to be read rather than merely written. While it is certainly an overstatement to suggest that “[l]aw reviews play a vital role in the preservation of society”,¹⁶⁴ they remain valuable tools for the education of students, communication within the legal profession, and development of the law.

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- ¹ Law Review Code of Ethics (1992) 75 *Marq L Rev* 509, at 510.
- ² B Hibbitts, Last Writes? Re-assessing the Law Review in the Age of Cyberspace (1996). Several versions of the paper have been published both electronically (eg <<http://www.law.pitt.edu/hibbitts/lastrev.htm>>) and in printed form. The present paper relies on the extended abstract published in (1996) 30 *Akron L Rev* 175. See also: B Hibbitts, E-Journals, Archives and Knowledge Networks: A Commentary on Archie Zariski's Defense of Electronic Law Journals (1997) 2 *First Monday* <http://www.firstmonday.dk/issues/issue2_7/hibbitts/index.html>; B Hibbitts, Goodbye to All That?: The Provenance and Prospects of the Law Review (1997) 28 *Law Libr* 134.
- ³ R Rotunda, Law Reviews — The Extreme Centrist Position (1986) 62 *Ind LJ* 1, at 5; E Warren, Message of Greeting to the UCLA Law Review (1953) 1 *UCLA L Rev* 1; K Bailey, Legal Education in the United States: A Traveller's Notes for a Sketch (1935) 1 *Res Judicatae* 293, at 300.
- ⁴ Rotunda, *supra* note 3, at 8; M Swygert & J Bruce, The Historical Origins, Founding, and Early Development of Student-Edited Law Reviews (1985) 36 *Hastings LJ* 739, at 779; D Maggs, Concerning the Extent to Which the Law Review Contributes to the Development of the Law (1930) 3 *S Cal L Rev* 181, at 183; Z Cowen & D Derham, Australian Legal Education: A Dissent (1956) 9 *J Legal Educ* 53, at 56.
- ⁵ Riggs, The Law Review Experience: The Participant View (1981) 31 *J Legal Educ* 646, at 650 cited in J Gordon, Law Reviews and the Modern Mind (1991) 33 *Ariz L Rev*, 265, at 270.
- ⁶ Gordon, *supra* note 5, at 270.
- ⁷ Of course, the practitioner, academic or judge is the person primarily responsible for writing advice, articles or judgments whereas the student editor is largely involved in reviewing other people's work.
- ⁸ M Closen, A Proposed Code of Professional Responsibility for Law Reviews (1988) 63 *Notre Dame L Rev* 55, at 56; J Leibman & J White, How the Student-Edited Law Journals Make Their Publication Decisions (1989) 39 *J Legal Educ* 387, at 388; cf E Jensen, The Law Review Manuscript Glut: The Need for Guidelines (1989) *J Legal Educ* 383, at 383.
- ⁹ Closen, *supra* note 8, at 55.
- ¹⁰ *Id.*
- ¹¹ Justice Oliver Wendell Holmes considered law review articles were the "work of boys": J Kaye, One Judge's View of Academic Law Review Writing (1989) 39 *J Legal Educ* 313, at 316 cited in M Closen & R Dzielak, The History and Influence of the Law Review Institution (1996) 30 *Akron L Rev* 15, at 25.
- ¹² H Denmark, How Valid Is the Often-repeated Accusation That There Are Too Many Legal Articles and Too Many Law Reviews? (1996) 30 *Akron L Rev* 215, at 225–6; Rotunda, *supra* note 3, at 3–4; S Martin, The Law Review Citadel: Rodell Revisited (1986) 71 *Iowa L Rev* 1093,1095–6.
- ¹³ R Posner, The Future of the Student-Edited Law Review (1995) 47 *Stan L Rev* 1131, at 1137.
- ¹⁴ Closen & Dzielak, *supra* note 11, at 23–24.
- ¹⁵ See for example, LBC, *Commonwealth Statutes Annotations To February 1997* (Sydney: LBC, 1997) 692 which includes "'Variation of nuptial settlements under the Family Law Act' (1986) 16 *UWAL Rev* 309" in its articles section under the *Family Law Act* 1986 (Cth).
- ¹⁶ Closen & Dzielak, *supra* note 11, at 23–24.
- ¹⁷ *Id.* at 24; Leibman & White, *supra* note 8, at 397.
- ¹⁸ Benjamin Cardozo, Introduction in G Thompson et al, *Selected Readings in the Law of Contracts* (1931) ix cited in Closen & Dzielak, *supra* note 11, at 28.
- ¹⁹ Leibman & White, *supra* note 8, at 397.
- ²⁰ B Hibbitts, Last Writes? Re-assessing the Law Review in the Age of Cyberspace (1996) 30 *Akron L Rev* 175, at 175; see also Samad, *Preface (1967) 1 Akron Law Review*, cited in Closen, *supra* note 8, at 61; Swygert & Bruce, *supra* note 4, at 779; Closen, *supra* note 8, at 62.

- ²¹ F Rodell, Goodbye to Law Reviews (1996) 26 *W Austl L Rev* 100, at 106 (first published in (1936) 23 *U Va L Rev* 38); see also Bailey, *supra* note 3, at 301; Rotunda, *supra* note 3, at 5; Gordon, *supra* note 5, at 266.
- ²² D Rier, The Future of Legal Scholarship and Scholarly Communication: Publication in the Age of Cyberspace (1996) 30 *Akron L Rev* 183, at 188–9.
- ²³ *Id* at 188,194.
- ²⁴ *Id* at 192.
- ²⁵ Closen & Dzielak, *supra* note 11, at 39–40.
- ²⁶ Hibbitts, Last Writes?, *supra* note 20, at 176.
- ²⁷ *Id*.
- ²⁸ *Id* at 177.
- ²⁹ *Id*.
- ³⁰ *Id* at 178–9; G Nossal & J Marshall, Monographs, polygraphs, papers or multimedia, in J McCalman ed, *The Future of Academic Publishing* (Canberra: The Australian Academy of the Humanities, 1996) 17.
- ³¹ See also Rotunda, *supra* note 3, at 2; Posner, The Future, *supra* note 13, at 1134.
- ³² Rotunda, *supra* note 3, at 6.
- ³³ For example, the *Sydney Law Review*, *Public Law Review*, *Australian Journal of Labour Law*, *University of Queensland Law Journal*, *Adelaide Law Review* and *Federal Law Review* all have faculty editors. Some also receive editorial assistance from students.
- ³⁴ For example, the *Australian Intellectual Property Journal*, *Trade Practices Law Journal* and the *Australian Business Law Review*.
- ³⁵ Student-run law reviews in Australia include *Melbourne University Law Review*, *Monash Law Review*, *University of New South Wales Law Journal* and *University of Tasmania Law Review*.
- ³⁶ For example, the *Journal of Banking and Finance Law and Practice*, *Australian Tax Review* and *Competition and Consumer Law Journal*.
- ³⁷ See <<http://www.deetya.gov.au/highered/highered/research/index.htm>>.
- ³⁸ This form of peer review is known as ‘double-blind’ review. See the discussion below: *B Peer Review*.
- ³⁹ Cf Posner, The Future, *supra* note 13, at 1133–4.
- ⁴⁰ Although the *Queensland University of Technology Law Journal* has separate sections for articles by undergraduate and postgraduate students.
- ⁴¹ Closen & Dzielak, *supra* note 11, at 17–20; see also Martin, *supra* note 12, at 1101.
- ⁴² M Ellinghaus, Some Aspects of Australian Legal Education (1968) 20 *Ala L Rev* 280, at 281.
- ⁴³ A Goodhart, The Jubilee of the Iowa Law Review (1964) 50 *Iowa L Rev* 1, at 3.
- ⁴⁴ Ellinghaus, *supra* note 42, at 282–3; Bailey, *supra* note 3, at 297. Both the proportion of students taking combined courses and the range of combined courses available have increased in recent years.
- ⁴⁵ North American law students would of course often have a similar perspective by virtue of studies already completed in their undergraduate degree.
- ⁴⁶ Cf R Weisberg, Some Ways to Think About Law Reviews (1995) 47 *Stan L Rev* 1147, at 1155.
- ⁴⁷ F Ramos, Affirmative Action on Law Reviews: An Empirical Study of its Status and Effect (1988) 22 *U Mich JL* 179, at 181.
- ⁴⁸ Martin, *supra* note 12, at 1102; *Id* at 188.
- ⁴⁹ For example, see The Editors, *Melbourne University Law Review Handbook 1988* (Parkville: Melbourne University Law Review, 1998) 21 for the practice of the Melbourne University Law Review. The practice of the University of New South Wales Law Review is detailed at <<http://law.unsw.edu.au/publications/journals/unswlj/>>.
- ⁵⁰ Martin, *supra* note 12, at 1103; Ramos, *supra* note 47, at 191.
- ⁵¹ R Epstein, Faculty-Edited Law Journals (1994) 70 *Chi-Kent L Rev* 87, at 87.
- ⁵² I Lupu, Six Authors in Search of Character (1994) 70 *Chi-Kent L Rev* 71, at 72.
- ⁵³ Epstein, *supra* note 51, at 91.
- ⁵⁴ *Id* at 89; G Maggs, Just Say No? (1994) 70 *Chic-Kent L Rev* 101, at 108.
- ⁵⁵ Maggs, *supra* note 54, at 101,106.

- ⁵⁶ Epstein, *supra* note 51, at 91; Lupu, *supra* note 52, at 71–72.
- ⁵⁷ In addition, the more rapid turnover of student editors, while disruptive in some respects, means a student-run journal is unlikely to adopt a single viewpoint in any definitive sense: P Nichols, A Student Defense of Student Edited Journals: In Response to Professor Roger Cramton [1987] *Duke LJ* 1122, at 1127; see also Rotunda, *supra* note 3, at 11.
- ⁵⁸ Rotunda, *supra* note 3, at 6.
- ⁵⁹ Posner, The Future, *supra* note 13, at 1134.
- ⁶⁰ R Delgado, Eliminate the “Middle Man”? (1996) 30 *Akron L Rev* 233, at 233–4.
- ⁶¹ Cf Maggs, *supra* note 54, at 105; Ellinghaus, *supra* note 42, at 289; J Lindgren, Student Editing: Using Education to Move Beyond Struggle (1994) 70 *Chi-Kent L Rev* 95, at 96.
- ⁶² Journal subscription costs have dramatically increased. “The Association of Research Libraries, an organisation of 121 American academic libraries, estimates that its members were spending 124% more on journals in 1996 than in 1986, but getting 7% fewer titles for their money”: Publishing, perishing, and peer review (1998) January 24 *Economist* 81, at 81.
- ⁶³ Gordon, *supra* note 5, at 266; see also, H Perritt, Reassessing Professor Hibbitts’s Requiem for Law Reviews (1996) 30 *Akron L Rev* 255, at 257.
- ⁶⁴ Maggs, *supra* note 54, at 108.
- ⁶⁵ Nichols, *supra* note 57, at 1127. See also Rotunda, *supra* note 3, at 9.
- ⁶⁶ Rotunda, *supra* note 3, at 2.
- ⁶⁷ *Id.*
- ⁶⁸ R Cramton, “The Most Remarkable Institution”: The American Law Review (1986) 36 *J Legal Educ* 1, at 7–8; D Richardson, Improving the Law Review Model: A Case in Point (1994) 44 *J Legal Educ* 6, at 9.
- ⁶⁹ Leibman & White, *supra* note 8, at 420.
- ⁷⁰ J Kester, Faculty Participation in the Student-Edited Law Review (1986) 36 *J Legal Educ* 14, at 17.
- ⁷¹ Nichols, *supra* note 57, at 1128; Lindgren, *supra* note 61, at 98.
- ⁷² National Board of Employment, Education and Training, *Determining Measures of the Quality and Impact of Journals* (Murphy Report) (Commissioned Report No 49) (Canberra: AGPS, 1996) 61.
- ⁷³ *Id.* at 12.
- ⁷⁴ *Id.*
- ⁷⁵ *Id.*
- ⁷⁶ *Id.* at 13.
- ⁷⁷ *Id.* at 44.
- ⁷⁸ *Id.* at 15.
- ⁷⁹ C Collier, Intellectual Authority and Institutional Authority (1992) 42 *Legal Educ* 151, at 168; cf Leibman & White, *supra* note 8, at 420 n 101.
- ⁸⁰ *Murphy Report, supra* note 72, at 12.
- ⁸¹ *Id.* at 15.
- ⁸² Cf Rotunda, *supra* note 3, at 9.
- ⁸³ Leibman & White, *supra* note 8, at 423.
- ⁸⁴ Richardson, *supra* note 68, at 11.
- ⁸⁵ Murphy Report, *supra* note 72, at 13.
- ⁸⁶ *Id.* at 14.
- ⁸⁷ *Id.* at 15. Nichols, *supra* note 57, at 1127, (citing Rotunda, *supra* note 3, at 6) suggests that peer review often takes over a year. One to two months would be more usual.
- ⁸⁸ For example Analytical Chemistry: Murphy Report, *supra* note 72, v.
- ⁸⁹ However, the practice of external reviewing by at least two reviewers has been adopted by a number of law journals. They include the *Griffith Law Review* and *Legal Education Review*.
- ⁹⁰ The Chronicle of Higher Education, Aug 6, 1986, at 1, col 2 cited in Nichols, *supra* note 57, at 1127.
- ⁹¹ D Peters & S Ceci, Peer-Review Practices of Psychological Journals: The Fate of Published Articles Submitted Again (1982) 5 *Behav & Brain Sci* 187 cited in Nichols, *supra* note 57, at 1127; see also Rotunda, *supra* note 3, at 8. See also S

- Harnad ed, *Peer commentary on peer review: a case study in scientific quality control* (New York: Cambridge University Press, 1982).
- ⁹² Leibman & White, *supra* note 8, at 395.
- ⁹³ Lupu, *supra* note 52, at 78.
- ⁹⁴ Leibman & White, *supra* note 8, at 395; R Barnett, Beyond the Moot Law Review: A Short Story with a Happy Ending (1994) 70 *Chi-Kent L Rev* 123, at 126.
- ⁹⁵ Leibman & White, *supra* note 8, at 395; Barnett, *supra* note 94, at 1254.
- ⁹⁶ Lupu, *supra* note 52, at 78; Barnett, *supra* note 94, at 130.
- ⁹⁷ S Bradford, As I Lay Writing: How to Write Law Review Articles for Fun and Profit (1994) 44 *J Legal Educ* 13, at 28; Leibman & White, *supra* note 8, at 387.
- ⁹⁸ Lindgren, *supra* note 61, at 98; Jensen, *supra* note 8, at 384–5; Richardson, *supra* note 68, at 10.
- ⁹⁹ Law Review Code, *supra* note 1, at 523.
- ¹⁰⁰ Jensen, *supra* note 8, at 383–5.
- ¹⁰¹ *Id.*
- ¹⁰² Clearly it would be very difficult to police a specific limit on the number of submissions made. The same difficulty arises with a prohibition on multiple submissions. Ensuring compliance with these restrictions would largely depend on trust, although some law reviews require authors to sign a publication policy (including a term regarding multiple submissions) once a submission is made.
- ¹⁰³ Law Review Code, *supra* note 1, at 523.
- ¹⁰⁴ Jensen, *supra* note 8, at 386.
- ¹⁰⁵ See ‘VIII The Age of Cyberspace: B Self-publication on the World Wide Web’.
- ¹⁰⁶ I Ramsay & G Stapledon, A Citation Analysis of Australian Law Journals (1997) 21 *Melb UL Rev* 676, at 688.
- ¹⁰⁷ For example, the *Public Law Review*, *Journal of Judicial Administration*, *Company and Securities Law Journal* and the *Australian Journal of Family Law*.
- ¹⁰⁸ Ramsay & Stapledon, *supra* note 106, at 689.
- ¹⁰⁹ *Id.*
- ¹¹⁰ *Id.* at 687.
- ¹¹¹ A Althouse, Who’s to Blame for Law Reviews? (1994) 70 *Chi-Kent L Rev* 81, at 81.
- ¹¹² See, eg. Gordon, *supra* note 5, at 267.
- ¹¹³ Harvard Law Review Association, *The Bluebook: A Uniform System of Citation* 16th ed (Cambridge: Harvard Law Review Association, 1996).
- ¹¹⁴ The other Law Reviews are the *Columbia Law Review*, *University of Pennsylvania Law Review* and the *Yale Law Review*.
- ¹¹⁵ However, rival guidelines to legal citation do exist in the United States. For example, the University of Chicago has published the *University of Chicago Manual of Legal Citation*: see J Metaxas, University of Chicago waves “Goodbye to the Bluebook” (1987) 9 *Nat’l L Rev* 4; H Chiang, Chicago, Harvard in color clash on legal citations; with 14th edition, Ivy School’s Bluebook gets a maroon rival; Cambridge too rigid? (1987) 100 *LA Daily J* 1; D Shawler, In defense of the Bluebook (1992) 6 *CBA Rec* 18.
- ¹¹⁶ See for example, L Savell, The Bluebook blues (1995) 17 *Nat’l LJ* A19.
- ¹¹⁷ R Posner, Goodbye to the Bluebook (1986) 53 *U Chi L Rev* 1343, at 1348.
- ¹¹⁸ McGill University Law Review, *Canadian Guide to Uniform Legal Citation* 3rd ed (McGill: McGill University Law Review Association, 1992).
- ¹¹⁹ A Mitchell (gen ed), *Australian Guide to Legal Citation* (Parkville: Melbourne University Law Review Association, 1998). In the tradition of the United States and Canadian guides it is published by a student-run law review. Commercial guides to legal citation include: A Stuhmcke, *Butterworths Guides: Legal Referencing* (Sydney: Butterworths, 1998) and C Fong, *Australian Legal Citation — A Guide* (St Leonards: Prospect, 1988).
- ¹²⁰ Law Review Code, *supra* note 1, at 518; Maggs, *supra* note 54, at 101.
- ¹²¹ Lindgren, *supra* note 61, at 97–9; Maggs, *supra* note 54, at 109.
- ¹²² Althouse, *supra* note 111, at 81; see also Epstein, *supra* note 51, at 88; Maggs, *supra* note 54, at 106.
- ¹²³ Epstein, *supra* note 51, at 92; see also Maggs, *supra* note 54, at 109; Lupu, *supra*

- note 52, at 73; Edited Transcript of the Comments of the Panel at the AALS Proposed Section on Scholarship and Law Reviews (1994) 70 *Chi-Kent L Rev* 117, 119; Bradford, *supra* note 97, at 31.
- ¹²⁴ <http://www.murdoch.edu.au/elaw/>. This generalist journal was established in 1993 and is published by the Murdoch University School of Law. The Editorial Board consists of academic staff and students. The articles section of the journal is refereed. Apart from the internet, it is also available via email and anonymous FTP. Some of the history of E Law is given in the Appendix to A Zariski, "Never Ending, Still Beginning": A Defense of Electronic Law Journals from the Perspective of the E Law Experience (1997) 2(6) *First Monday* <http://www.firstmonday.dk/issues/issue2_6/zariski>. See also A Zariski, Knowledge Networks or Discourse Communities (1997) 2(8) *First Monday* <http://www.firstmonday.dk/issues/issue2_8/zariski/>.
- ¹²⁵ <http://www.bond.edu.au/bondlaw/hcr.htm>. This faculty-run journal was established in 1995 and provides commentary on cases that are before the High Court.
- ¹²⁶ <http://www.nlr.com.au/>. The *National Law Review* is a wholly electronic and refereed law review. Apart from the internet, it is also available on THEMIS (the Queensland Law Foundation's electronic communications network). It is run by practitioners and academics.
- ¹²⁷ E Predavec, Legal Publishing in 2001 (1997) 5 *Austl Law Libr* 57, at 63.
- ¹²⁸ Nossal & Marshall, *supra* note 30, at 17.
- ¹²⁹ Predavec, *supra* note 127, at 59.
- ¹³⁰ Nossal & Marshall, *supra* note 30, at 17.
- ¹³¹ Richardson, *supra* note 68, at 7 estimates the 'rapid publication schedule' of a paper law review at around three months; *Id.*
- ¹³² Rotunda, *supra* note 3, at 3.
- ¹³³ Libraries have begun archiving projects for electronic publications. For example, the National Library of Australia's PANDORA project, which commenced in 1996, is "a digital archive dedicated to the preservation of and long term access to Australian online publications of national significance." See <<http://www.nla.gov.au/pandora/>>. However, such archiving projects are not yet as comprehensive as those that exist for paper publications where legal deposit requirements exist. Legal deposit is a statutory provision which obliges publishers to deposit copies of their publications in libraries in the country in which they are published. Under the Copyright Act 1968 (Cth) and various state Acts, a copy of any work published in Australia must be deposited with the National Library of Australia and the appropriate state library.
- ¹³⁴ Nossal & Marshall, *supra* note 30, at 18. Certain solutions to this problem have been suggested. See eg, Hibbitts, Goodbye, *supra* note 2, at 138.
- ¹³⁵ Nossal & Marshall, *supra* note 30, at 19; J Fox, "The Unbearable Lightness of Being": Words, Reading, Books and On-line Publishing, in J McCalman ed, *The Future of Academic Publishing* (Canberra: The Australian Academy of the Humanities, 1996) 122. Of course, it is arguable that such a divide already exists by virtue of the costs of subscription to traditional paper journals.
- ¹³⁶ Perritt, *supra* note 63, at 256.
- ¹³⁷ Nossal & Marshall, *supra* note 30, at 17-18.
- ¹³⁸ However, it may be possible to download the file into a word processing database and highlight the text from there. In addition, some electronic databases such as those designed with Folio Views allow on screen highlighting, but most web browsers and on-line databases do not.
- ¹³⁹ For an illustration of the extent and kinds of publications found on the internet see <<http://etext.lib.virginia.edu/>>.
- ¹⁴⁰ The importance of these sites may be reflected in the High Court's decision to introduce paragraph numbers into the body of judgments to allow vendor neutral citation. See <<http://www.hcourt.gov.au/short.htm>>.
- ¹⁴¹ Fox, *supra* note 135, at 122-3.
- ¹⁴² The authors acknowledge that there is no accepted theory of reading and that debate about reading processes and psychology is very active.
- ¹⁴³ Fox, *supra* note 135, at 119; S Birkerts, *The Gutenberg Elegies: The Fate of*

- Reading in an Electronic Age* (Boston: Faber and Faber, 1994) 27.
- ¹⁴⁴ Fox, *supra* note 135, at 119–20.
- ¹⁴⁵ *Id* at 120.
- ¹⁴⁶ *Id* at 119.
- ¹⁴⁷ Birkerts, *supra* note 143; *Id* at 120.
- ¹⁴⁸ Fox, *supra* note 135, at 120.
- ¹⁴⁹ Cf Denmark, *supra* note 12, at 221–2, 224, 232; Martin, *supra* note 12, at 1093.
- ¹⁵⁰ R Buckley, Legal Scholarship for New Law Teachers (1997) 8 *Legal Educ Rev* 11, 40; Rotunda, *supra* note 3, at 8.
- ¹⁵¹ Delgado, *supra* note 60, at 235.
- ¹⁵² As discussed above: *V11 The Editing Process*.
- ¹⁵³ Delgado, *supra* note 60, at 233–4.
- ¹⁵⁴ Perritt, *supra* note 63, at 256; Denmark, *supra* note 12, at 224.
- ¹⁵⁵ For example, the *Criminal Law Journal*, *Journal of Industrial Relations*, *Torts Law Journal*, *Journal of Contract Law*, *Australian Journal of Administrative Law*.
- ¹⁵⁶ Most university law reviews are generalist journals.
- ¹⁵⁷ T Hardy, Review of Hibbitts's *Last Writes?* (1996) 30 *Akron L Rev* 249, at 251: "Generally, the leading law schools have the leading law reviews". See Ramsay & Stapledon, *supra* note 106, at 676.
- ¹⁵⁸ *Law Institute Journal*, *Australian Bar News*, *Australian Law News*.
- ¹⁵⁹ Denmark, *supra* note 12, at 218; Weisberg, *supra* note 46, at 1152.
- ¹⁶⁰ Some web sites called search engines allow the user to search the internet. Many of these (including the popular Excite and HotBot search engines) use automated software called *web crawlers* or *spiders* which move through web sites and pages, logging each site's title, URL and some of its content. The program then generates a database of web sites, which users search by typing in a keyword or phrase. The results are based on the existence of particular words within a site, and may often be unintelligent or over-inclusive. One sophisticated approach to web searching involves an HTML tag known as the *META description tag* which allows users to search site descriptions and keyword tags written by the "Webmaster" that created the relevant sites in order to produce a more accurate search result (for further information see <http://purl.oclc.org/metadata/dublin_core/>). However, only some search engines (such as Infoseek and AltaVista) use this method, and not all Webmasters use keyword tags. This, combined with the limited experience of many users in conducting searches of on-line resources, assures the popularity of paper based resources for the moment. For more information on search engines see: <<http://aet.com/Content/Reviews/Compamre/Search2/>>.
- ¹⁶¹ This kind of standardised index would be more usehl than, for example, lists of pointers to favourite articles on individuals' home pages or ad *hoc* searches performed by the reader: T Bruce, Swift, Modest Proposals, Babies, and Bathwater: Are Hibbitts's *Writes Right?* (1996) 30 *Akron L Rev* 243, 246.
- ¹⁶² See Hardy, *supra* note 157, at 250–1.
- ¹⁶³ On the need for finality see *id* at 251.
- ¹⁶⁴ Law Review Code, *supra* note 1, at 509; cf Bradford, *supra* note 97, at fn 6: "One wonders how society was preserved in the millennia prior to the introduction of law reviews. Probably roots and berries."