

# Texas Law Review Online

Volume 100

Essay

## Making a Legal Academic

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The *Texas Law Review* is a special place. It's where many of us discovered our love for the law and legal inquiry. It allowed us to sate our twin desires for editing ennui and grade-school snacks. And it forged so many of our lasting friendships. For me, *TLR*, more than any other institution, is responsible for helping me realize my dream of becoming an academic.

Bear with my bit of autobiography: Prior to arriving at law school, I was a hapless graduate student. After my undergraduate degree in mathematics, I went to graduate school to pursue a Ph.D. in mathematics. In truth, I wasn't much of a mathematician, except that I enjoyed logic. My research in mathematical logic bore fruit, but it wasn't to my taste. I was obsessive about my work and enjoyed the process but found little joy in the results, and even less meaning. That was surely due to my lack of capacity and imagination, but I wasn't sure how to change *that*.

This led me to seek a shift into philosophy, to study logic and philosophy of language. I held a quixotic hope that there would be more there, at least in terms of meaning. Again, I enjoyed my studies, but I found there was still something lacking. Also, I didn't think I had very much chance to get a good job. I was really at an academic dead end—and when you're at an academic dead end, you go to law school.

My first year of law school was onerous. I was a joint J.D.-Ph.D. philosophy student. Some fellow joint students ahead of me advised me to get ready for a grind. Mentally, however, I remained nine toes in philosophy, wondering what I was doing in law school.

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My mode of legal thinking was to convert all legal questions into philosophical ones. This produced mixed results. Interestingly, when I approached law school under the attitude of “trying to learn the law,” I fared much worse than when I approached law school under the rubric of “trying to placate the law professor.”

But apparently it was good enough for the Law Review. And thank the stars. From our introductory meeting, I felt a sense of belonging at the Law Review. I hadn’t yet experienced that in law school, and so I bought in. Indeed, for way too long, most of my dishes had TLR branding on them.<sup>1</sup>

There were three main ways that the Law Review made me a better legal thinker. *First*, there was the editing work. It was tedious, of course. And I didn’t naturally enjoy it. I was a culprit who delayed our cite checks, instead arguing about the two-envelope paradox<sup>2</sup> and incessantly inquiring the whereabouts of the pizza. But the editing work made me a better writer and thinker. Our insistence on citation—which sometimes borders on pathological<sup>3</sup>—is indelibly etched in my head. I don’t fear or dread that work and I don’t put it off. That’s equipped me to be productive,<sup>4</sup> which in turn allows me to keep doing this. You know the joke: “More pie.”

It’s also helped me to recognize more quickly when to abandon projects because there isn’t enough there. My writing process involves attempting to figure out something new, that hasn’t been said before. Of course, much of what hasn’t been said before hasn’t been said for good reason. So, there can be a lot of false starts and dead ends. Seeing that fast, moving on, and trying again is essential.

Relatedly, a key step in staying on the right path, even when your work is novel, is making sure that what you’re saying is sufficiently tethered to the literature. Scholarship is a conversation, and you don’t want to be mumbling to yourself in a corner. Crafting your work, through research and citation, as part of that greater dialogue helps to ensure your work is relevant and useful.

1. I used the TLR mugs for everything. Who needs a bowl, plate, or fork when you have a mug?

2. See, e.g., Eric Schwitzgebel & Josh Dever, *The Two Envelope Paradox and Using Variables Within the Expectation Formula*, 20 *SORITES* 135 (2008); Ned Markosian, *A Simple Solution to the Two Envelope Problem*, 2 *LOGOS & EPISTEME* 347 (2011); Barry Nalebuff, *Puzzles: The Other Person’s Envelope is Always Greener*, 3 *J. ECON. PERSP.* 171 (1989); John Broome, *The Two-envelope Paradox*, 55 *ANALYSIS* 6 (1995); Ronald Christensen & Jessica Utts, *Bayesian Resolution of the “Exchange Paradox,”* 46 *AMER. STATISTICIAN* 274 (1992); David J. Chalmers, *The St. Petersburg two-envelope paradox*, 62 *ANALYSIS* 155 (2002).

3. Orin S. Kerr, *A Theory of Law*, 16 *GREEN BAG 2D* 111 (2012).

4. Perhaps unfortunately, so much of academia is about production. HANNAH ARENDT, *Values in Contemporary Society*, in *THINKING WITHOUT A BANISTER* (2018). In writing about this phenomenon, philosopher Hannah Arendt observed:

This business of ‘publish or perish’ has been a catastrophe. People write things which should never have been written and which should never be printed. Nobody’s interested. But for them to keep their jobs and get the proper promotion, they’ve got to do it. It demeans the whole of intellectual life.

*Second*, the Law Review provided me with so many opportunities to deeply engage with legal scholarship, and with legal scholars. In my second year at *TLR*, I became Volume 88's Book Review Editor. The title could use some work,<sup>5</sup> but it really was the best position for me. I was tasked with commissioning book reviews by law professors. Now, most of the work we publish is submitted to us, and we sift through myriad submissions of varying quality. Here, I was to come up with proposals for books that I thought would be worth reviewing and ask law professors if they'd be willing to do it. Sometimes the professors would build on my suggestions to construct broader projects, involving a group of responsive authors or multiple books. It was intellectually stimulating and rewarding. It allowed me to delve into various legal issues and to unearth interesting perspectives and voices that needed to be addressed and noticed.

At the same time, it was frightening. It was, in a sense, more of a grab bag. Specifically, even if law professors agreed to complete a project, they might just not, or the work may not be as insightful or elucidating. Not to be dramatic, but I was—and I felt the weight of that responsibility. Consequently, I opted to take on a more involved editorial role with the book-review authors. Some of them were annoyed by my intrusions. Others welcomed the collaboration; we spoke about their projects, and I was a wall to bounce ideas off of. Being involved in their projects provided me with some insights on how to craft creative projects in legal academia and how to build a robust research agenda.

And then there was a more critical lesson for my own development. Many of our book review authors were interdisciplinary scholars. Working with these scholars on their projects, I first saw in focus this point: Legal academia is foremost about the law. The “law-and” fields are in service of learning about the law.<sup>6</sup>

In truth, it took me a decade to heed this lesson. My early projects (many failed and abandoned) were of the following form: “Here's a little philosophical puzzle embedded in the law, isn't that interesting?” The answer was almost always: “No, not to anyone who's actually thinking about the law.” It was when I realized that I had to put the legal question first that my work

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5. I would have preferred a simpler “Reviews Editor.” Or “Emperor of Books.”

6. One example of this, I shall never forget. It involved a beloved genius of UT Law, Prof. David Robertson. I asked Prof. Robertson to review a legal philosopher's opus on causation in the law. Prof. Robertson's review was forthright. His review emphasized that the analysis of causation failed to grapple with the legal realities. It didn't go over well with the causation scholar; he submitted to the Law Review a list of grievances and he asked for a retraction. When I went to his office to discuss, Prof. Robertson was playing his guitar. Shortly after, Prof. Robertson submitted a letter, calmly responding to each point, informed by his ground-view perspective of how the law actually operates. He was a superlative legal thinker and a better person.

became much more useful and meaningful. And the genesis of that realization is firmly rooted in my work for the Law Review.

I also took advantage of the Law Review's opportunities to engage with legal scholarship through my own writing. I ended up writing two notes for *TLR* that served as the basis for full-length articles I have written as a grown academic.<sup>7</sup> Indeed, one of those papers got me my first tenure-track job.

*Finally*, and truly most importantly, *TLR* made me a better thinker and person by bringing together some of the most brilliant, genuine, and excellent people I know. Sitting at the big table for hours each day with the Law Review crew—whether we were talking about the (de)merits of formalism, textualism, and originalism; the travails of bureaucratic miasmata<sup>8</sup>; or the identity of the Shadow EIC<sup>9</sup>—you were in store for marathon debate, peppered with hilarity and mirth. Silence was rare, conversation was welcome if not obligatory, and no statement went unquestioned. My Law Review friends challenged me to always put truth—and proof—on a pedestal: “Precision is no man’s enemy.”

Underlying all of our interactions was a deep respect and love for each other. People instinctively picked up the slack when others were slammed.<sup>10</sup> Law school, and life while in law school, were rough, with sinusoidal ups and downs. My fellow editors were there for each other—and for me. These friendships have carried me through tumultuous times and these friends have always been there with me to celebrate joyful ones. I know that our legal society can be one of truth, humanity, and compassion. I have seen us build that together in *TLR*. I hold that dear to my heart and, for me, that is the core triumph of the first one hundred years of the *Texas Law Review*.

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7. My paper, *For Judicial Majoritarianism*, 22 U. PA. J. CONST. L. 1201 (2020), followed on from a note that I coauthored with my brilliant Volume 88 classmates Shane Pennington, Michael J. Stephan, and Jon N. Reidy, *An Elementary Defense of Judicial Majoritarianism*, 88 TEXAS L. REV. SEE ALSO 33 (2009). My forthcoming paper, *The Futility of the Recidivist Premium* (2021) (unpublished article) (on file with author), followed on from my note *He Went Back, Jack, and Did It Again: Thoughts on Retributivism, Recidivism as Omission, and Notice*, 88 TEXAS L. REV. SEE ALSO 91 (2010). This one isn't published yet <hint, hint>. Having a little book-review fiefdom within the Law Review, I also managed to smuggle in my book review note to our Volume, circumventing the Notes Office. Sorry about that, Notes Editors. (It was good though, so not that sorry.)

8. Along with the question of what the proper plural form of “miasma” is. MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/miasma>.

9. As we all realized at the time, it was Mike Stephan.

10. We washed each other's dishes—sometimes. “[CU] this mug.”