

CITING THE ELITE: THE BURDEN OF AUTHORIAL ANXIETY

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ABSTRACT

Academic legal writing is known for extensive citation. Generally, scholars who study citation practices are increasingly likely to link citation with authors' attempts to manage their impression. This Note offers an explanation of why authors of law review articles use citation as a means of managing impression. It combines a historical analysis that shows why excessive citation became conventional with a literary analysis that shows why excessive citation was unique in its ability to aid academics in substantively contributing to the bench and bar. It further shows how, because of the historic and literary significance of citation, a norm compelling excessive citation pervades the legal community. Finally, this Note questions this norm's continued value given that excessive citation exacts a collateral price on the legal community and that law review readers are increasingly diverse.

INTRODUCTION

“Had I remained on the Supreme Court, I would have reversed him on [account of his five hundred footnotes] because of the sheer impossibility of reviewing an opinion of this type.”¹ Justice Arthur

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1. Arthur J. Goldberg, *The Rise and Fall (We Hope) of Footnotes*, 69 A.B.A. J. 255, 255 (1983) (referring to a particular circuit opinion he had read after stepping down from the Supreme Court).

Goldberg's sentiments abound among legal readers.² Nevertheless, authors, particularly those of law review articles, continue to cite excessively. In fact, the *New York Law School Law Review* once published an article containing 4,824 footnotes.³ The persistence of excessive citation despite widespread critique begs explanation.

Citation within legal writing is a complex practice that has long attracted commentary.⁴ Some scholars have examined the citation practices of judges to enhance understanding of how judges decide cases.⁵ Other scholars have analyzed citation in academic articles in ways that suggest broad answers to existential questions about the state of the academy and its relation to the broader legal community.⁶

2. For a discussion of the negative impact of excessive citation on writing style, see *infra* Part IV.A.

3. Arnold S. Jacobs, *An Analysis of Section 16 of the Securities Exchange Act of 1934*, 32 N.Y.L. SCH. L. REV. 209 (1987).

4. In recent history, the highest profile study of legal citation is Fred R. Shapiro's work. Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540 (1985); see also Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751 (1996) (providing an update of his earlier findings).

5. See, e.g., Lawrence M. Friedman et al., *State Supreme Courts: A Century of Style and Citation*, 33 STAN. L. REV. 773, 794 (1981) ("Citation patterns thus set forth the authority on which a case rests. . . . Changes in these patterns may be barometers of changes in the way judges think about their roles and about the sources and limits of their power. These patterns may be clues, too, to the role of courts in society."); John Henry Merryman, *The Authority of Authority: What the California Supreme Court Cited in 1950*, 6 STAN. L. REV. 613, 613 (1954) ("The Supreme Court of California is composed of seven judges whose habits of citation of authority differ to some extent, making a study of those habits of interest to legal scholars who like to test theory with practice, to judges themselves, who may enjoy the self-examinations which such a study provides, and to practicing attorneys who wish to know what authority impresses the highest court of the state."); David J. Walsh, *On the Meaning and Pattern of Legal Citations: Evidence from State Wrongful Discharge Precedent Cases*, 31 LAW & SOC'Y REV. 337, 337 (1997) ("The main question posed [in this study] is whether . . . judges use citations as indicators of substantial influence on their decisionmaking . . .").

6. See, e.g., Arthur Austin, *Footnote Skulduggery and Other Bad Habits*, 44 U. MIAMI L. REV. 1009, 1011 (1990) [hereinafter Austin, *Footnote Skulduggery*] ("Authors have recognized that discerning, intelligent—or unethical—manipulation of footnotes can be a significant factor in achieving promotion, tenure, and status."); Arthur D. Austin, *Footnotes as Product Differentiation*, 40 VAND. L. REV. 1131, 1135 (1987) [hereinafter Austin, *Footnotes as Product*] ("Footnoting has evolved from primitive origins and use as a 'pure' reference into an artistic and abstruse discipline that functions as a subtle, but critical, influence in the determination of promotion, tenure, and professional status." (citations omitted)); J.M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 868 (1996) ("Citations are . . . a handy way of establishing some measure of group identity or solidarity. . . . The psychological benefits of reciprocal citation may be particularly important when members of a particular group view themselves as otherwise marginalized by the larger academy."); Charles A. Sullivan, *The Under-Theorized Asterisk Footnote*, 93 GEO. L.J. 1093, 1094 (2005)

In addition, scholars have suggested that academic legal authors cite frequently to manage impression carefully.⁷

Furthermore, in light of the frequency with which most legal authors cite, it appears that there is a consensus that a heavy dose of citation is a *good* way to manage impression. Yet few analyses actually attempt to deconstruct this assumption.⁸ What shared values contribute to a consensus that citation is a good way, or at least an effective way, to manage impression? The answer to such a question is relevant because excessive citation has negative collateral effects, many of which exact a substantial burden on the legal community.

This Note offers an explanation for the emphasis on citation. It shows how an “anxiety of authority”⁹ has developed, and remains shared among academic legal authors, prompting extensive citation. This anxiety of authority refers to authors’ insecurity about the capacity of their written product to evoke the desired response from their intended audience. Within the academic legal context, this insecurity or anxiety is complicated because judges have been the audience to which legal scholars have often historically addressed their work.¹⁰ Judges, however, constitute an audience bound by a number of conflicting pressures—pressures that generally impede the

(arguing that study of the identifying asterisk footnote that begins most review articles sheds “new light on the legal academy”).

7. See, e.g., Balkin & Levinson, *supra* note 6, at 867 (“Citations, we think, are often just such a form of public relations or impression management.”); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 937 (1990) (“[M]any modern professors tend to toss their excess research into the annotation hopper . . . [I]t’s safer . . . (allowing the writer to straddle any issue by taking a strong position in the text while waffling below) . . . not to mention more ego-gratifying (enabling intricate citation of arcane sources at stupefying length.”); Sullivan, *supra* note 6, at 1113 (“Another possibility, then, is that the use of acknowledgements [via footnotes] is designed to maximize placement success by providing the law reviews with a signals that this piece is *really* important . . .”).

8. See, e.g., Balkin & Levinson, *supra* note 6, at 846 (“We had planned to write an entire essay along these lines, dutifully showing how academic conceptions of merit were constructed by the economy of citation But, after discussing the issue between ourselves for several weeks, we gradually realized that most readers . . . couldn’t care less about our views on these weighty theoretical matters.”).

9. The phrase “anxiety of authority” comes from Michael Bacchus who, in turn, has modified Harold Bloom’s “anxiety of influence.” See Michael Bacchus, *Strung Out: Legal Citation, The Bluebook, and the Anxiety of Authority*, 151 U. PA. L. REV. 245, 249 (2002) (citing, *inter alia*, HAROLD BLOOM, *THE ANXIETY OF INFLUENCE: A THEORY OF POETRY* (1973)). Used here, however, the phrase has a slightly modified meaning. Specifically, the phrase seeks to capture certain insecurities all authors encounter in authoring a piece, but that have become especially acute within the legal context because of legal authors’ audiences.

10. See *infra* notes 24–43 and accompanying text.

influence a law review article might otherwise have over them.¹¹ Thus, within the legal context, the pressures that bind judges actually exacerbate the general anxiety of authority that authors encounter. This Note argues that excessive citation developed as a unique literary device that enhanced the ability of academic authors to play a substantive role in the resolution of issues because of its semiotic force. As a result, heavy citation became, and remains, standard within academic legal writing.

Yet this Note also encourages a fresh and sustained evaluation of citation practices by individual authors in light of the costs and benefits associated with heavy citation. Specifically, if authors' desire to influence judges provided the initial impetus for heavy citation, as this Note argues,¹² then heavy citation may not always be necessary, at least for its historic reasons. Academic legal authors write for numerous purposes, and citation may not be the literary tool appropriate for authors' purposes.¹³ Along these lines, this Note highlights certain costs that citation exacts upon individual writing, potential audiences, and the legal community, to show that there is a particularly pressing need for authors to tailor citation techniques to serve their purposes most effectively.

This Note builds on the theoretical work of Harold Bloom,¹⁴ beginning from the premise that "no [author] . . . speaks a language

11. The pressures under which judges labor might be more simply defined as the distinct pressures not to depart entirely from existing law and to explain why the law justifies the result in the particular case. Both pressures urge judges to resort to precedent and, as a result, to turn away from novel interpretations proffered in academic legal articles. *See infra* notes 49–54 and accompanying text.

12. *See infra* Parts II–IV.

13. For example, given that this Note is a non-doctrinal work, were it written by an established academic, a heavy emphasis on citation might be inappropriate. Such citation would probably only distract from the above-the-line text. Because this is a student-written Note, however, the heavy use of citation is appropriate. Not only do student authors need to establish authority and credibility through the heavy use of citation, students' abilities to scour through sources and manage them properly below-the-line displays an acuity which future employers, particularly the judges for whom students clerk, might find attractive. For these reasons, this Note is only slightly sparing in its citation.

14. Bloom's ideas regarding the causes and anxieties prompting authorship are particularly useful for thinking about citation practices in academic legal writing. When Bloom describes the new poet's experience—"[i]nitial love for the precursor's poetry is transformed rapidly enough into revisionary strife, without which individuation is not possible[]"—he describes a process by which a linguistic heritage is both established and modified within literary traditions. HAROLD BLOOM, *A MAP OF MISREADING* 10 (1975). This Note, in some ways, fleshes out how a particular linguistic heritage, that of excessive citation, has become conventional within the academic legal tradition.

free from the one wrought by his precursors.”¹⁵ This makes the history of academic legal writing particularly relevant, given that preceding authors have compiled, pruned, and shaped the language used within the genre.¹⁶ In other words, because the assumptions and anxieties under which authors have historically labored have slowly molded a linguistic tradition sustained, often unknowingly, by contemporary heirs, the historical context that might explain the emergence of those assumptions is relevant to understanding why authors write (and cite) as they do.

Part I of this Note sets up the historical context in which the dominant medium of legal scholarship, the student-edited law review, developed. It further shows how authors of legal scholarship, even at the most prestigious institutions, readily placed themselves within a tradition which sought to aid judges in resolving actual conflicts among litigants. Part I describes this tradition as a common enterprise among academic legal authors and the bench. Part II demonstrates how the purposes of this shared enterprise sharpened the anxiety of authority and how citation became a useful device to manage this anxiety. Part III argues that this anxiety has become standardized within the academic legal community. Part IV rehearses and embellishes upon various critiques of citation to highlight that despite the benefits that may adhere to this convention, it is not without substantial cost. Finally, Part V suggests that, in light of the fact that judges no longer predominate the audience of academic authors, authors should directly address the issue of footnoting before writing an article. Such direct attention to footnoting would help prevent authors from unconsciously and unnecessarily adopting authorial personas freighted with anachronistic anxieties.

I. THE HISTORY AND CLASSIC FUNCTION OF THE STUDENT-EDITED LAW REVIEW

Contemporary legal scholars are the heirs of a linguistic tradition, conspicuously present in the law review,¹⁷ that underwent its most significant period of development at a time when legal scholarship constituted one component of a common enterprise that

15. BLOOM, *supra* note 9, at 25.

16. *See infra* Part II.

17. *Cf.* Lasson, *supra* note 7, at 928 (“Legal scholarship is largely illustrated by the law reviews which, conversely, both contribute to and reflect the value system by which the academy is governed.”).

unified the legal community.¹⁸ Yet it was not always this way, and the importance of the student-edited law review grew slowly over time.¹⁹ Although legal periodicals first emerged in America early in the nineteenth century, the development of the student-edited law review would have to wait for the better part of the century.²⁰ It was not until 1887 that Harvard published its first issue, becoming the first successful student-edited law review still in publication today.²¹ Within the next twenty years, however, Yale, Pennsylvania, Columbia, Michigan, and Northwestern all followed suit.²² Soon thereafter, the number of student-edited law reviews mushroomed.²³

18. Although legal scholarship is always evolving, Edward L. Rubin's 1988 description of "standard legal scholarship" evidences the importance of the relationship between the academy and the bench throughout the history of law reviews and legal scholarship:

When viewed as an academic discourse, the most distinctive feature of standard legal scholarship is its prescriptive voice, its consciously declared desire to improve the performance of legal decisionmakers. . . . [T]he point of an article about a judicial decision is usually to remonstrate with the judge for the conclusion reached and for the rationale adopted. The point of an article about a statutory provision or regulation is to expose the errors made in drafting it, and to indicate what should have been done instead.

Edward L. Rubin, *The Practice and Discourse of Legal Scholarship*, 86 MICH. L. REV. 1835, 1847–53 (1988). Implicit throughout this description is the understanding that a particular audience of lawmakers makes up the audience of the scholarship. Another way of understanding this implication is to say that authors of "standard legal scholarship" perceive themselves, in no small part, as playing an integral role alongside other lawmakers to improve the legal system.

19. Michael D. McClintock, *The Declining Use of Legal Scholarship by Courts: An Empirical Study*, 51 OKLA. L. REV. 659, 661 (1998). In fact, in 1956 Judge Julius J. Hoffman wrote:

Law Reviews had yet to gain the status they enjoy today and in an era when age insistently demanded respect without always according reciprocal consideration to youth, writers and editors in the law schools not infrequently had to fear the derogation, skepticism and, at times, the resentment of some judges and lawyers.

Julius J. Hoffman, *Law Reviews and the Bench*, 51 NW. U. L. REV. 17, 17 (1956).

20. See Michael L. Closen & Robert J. Dzielak, *The History and Influence of the Law Review Institution*, 30 AKRON L. REV. 15, 30–38 (1996) (reviewing the history of early legal periodicals).

21. *Id.* at 35. The University of Pennsylvania also claims to have the first continuously published law review, tracing its roots back to the publication of the *American Law Register* in 1851. McClintock, *supra* note 19, at 663 n.29; see also Joseph P. Flanagan, *Introduction*, 100 U. PA. L. REV. 69, 69 (1951) (rehearsing the history of the *Pennsylvania Law Review*).

22. McClintock, *supra* note 19, at 663.

23. In fact, by 1931 Benjamin Cardozo qualitatively emphasized the stature of the law review:

Judges and advocates may not relish the admission, but the sobering truth is that leadership in the march of legal thought has been passing in our day from the benches of the courts to the chairs of universities. . . . [T]he outstanding fact is here that academic scholarship is charting the line of development and progress in the untrodden regions of the law.

The saturation of the legal community with an abundance of new publications brought with it increased pressure for those publications to specialize. More often than not, the particular audiences sought were the bench and the bar.²⁴ For example, the editors of the Northwestern School of Law's first student-edited publication stated: "Undoubtedly the field for law reviews of a general character is already overcrowded. . . . It is believed, however, that there is genuine and widespread need of a live periodical primarily devoted to the discussion and exposition of Illinois law. . . ." ²⁵ Targeting this audience, authors constructed their articles largely by sifting through settled precedent and established doctrine in ways that would provide insight probative to the resolution of particular exigent issues.²⁶ Essentially, scholars were conducting doctrinal analysis that would be immediately helpful to the bench and bar.

The classic article on privacy rights, *The Right to Privacy*,²⁷ written by Samuel Warren and Louis Brandeis, provides an excellent example of the type of scholarship and the relationships that emerged between the bench and the nascent student-edited reviews.²⁸ Warren and Brandeis wrote their article in response to a case that the New York Superior Court had decided in which the essential elements of a privacy tort claim were present.²⁹ Hoping to help resolve the issue, Warren and Brandeis stated: "It is our purpose to consider whether the existing law affords a principle which can properly be invoked to

Benjamin N. Cardozo, *Introduction*, in *SELECTED READINGS IN THE LAW OF CONTRACTS*, at vii, ix (George J. Thompson et al. eds., 1931).

24. For discussion on how law review articles are helpful to the bench and bar, see Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. REV. 615, 623 n.33 (1996).

25. Frederic C. Woodward, *Editorial Notes*, 1 ILL. L. REV. 39, 39 (1906).

26. Jack M. Balkin & Sanford Levinson, *Law and the Humanities: An Uneasy Relationship*, 18 YALE J.L. & HUMAN. 155, 174 (2006) ("[T]he familiar work [of the legal academy is] offering expert advice and advocacy on contemporary legal questions for the benefit of the bench and bar. Until the 1970s, offering such advice was the standard practice of law professors, and their legal scholarship viewed judges . . . as their ideal readers.").

27. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

28. See McClintock, *supra* note 19, at 666 ("Overcoming their initial prejudice, courts sought out law reviews to assist in their judicial decision making, and from the beginning, courts cited articles that had been tailored to address the legal problems before them. . . . One of the first examples of such an article was a doctrinal piece written by Samuel Warren and Louis Brandeis titled *The Right to Privacy*." (citing Warren & Brandeis, *supra* note 27)).

29. Warren & Brandeis, *supra* note 27, at 195-96.

protect the privacy of the individual”³⁰ Concluding that the existing tort law did in fact recognize a right to privacy, they desired that their article would influence judicial decisions. Despite the fact that the New York Court of Appeals explicitly rejected the conclusions of their article in 1902,³¹ the article eventually did have a profound impact on both statutory and common law throughout the country.³²

Warren and Brandeis’s exchange with the New York courts typifies two characteristics of early law review articles. First, their article had a specific audience.³³ Due to urbanization, the advent of the high-speed rotary printing presses, and other social transitions derivative of the industrial movement, scandalous news—whether true or not—had an ability to do far more damage to reputation than a quarter of a century before.³⁴ These social changes were pressing the courts to decide cases at the borders of traditional categories, forcing judges to stretch traditional doctrines in new ways.³⁵ Warren and Brandeis sought to aid the bench in resolving the privacy issue; their audience was specific. Second, Warren and Brandeis worked under the assumption that the bench might *actually* use their work in resolving the issue. They found precedent, resolved that precedent, and drew substantive conclusions intending to advance the court’s ability to interpret existing doctrine in light of the changed

30. *Id.* at 197.

31. *Roberson v. Rochester Folding Box Co.*, 64 N.E. 442, 443 (N.Y. 1902) (“Mention of such a [privacy] right is not to be found in Blackstone, Kent, or any other of the great commentators upon the law; nor, so far as the learning of counsel or the courts in this case have been able to discover, does its existence seem to have been asserted prior to about the year 1890, when it was presented with attractiveness, and no inconsiderable ability, in the *Harvard Law Review* . . . in an article entitled ‘Rights of a Citizen to His Reputation.’”).

32. *See, e.g., Pavesich v. New England Life Ins. Co.*, 50 S.E. 68, 74, 78–79 (Ga. 1905) (adopting the views of Warren and Brandeis); *see also* William L. Prosser, *Privacy*, 48 CAL. L. REV. 383, 385–89 (1960) (discussing the development of the tort of invasion of privacy following *Roberson*).

33. Warren and Brandeis framed the issue specifically as a question of common law. By doing so, they targeted an audience consisting of judges who shaped that common law. *See* Warren & Brandeis, *supra* note 27, at 193 (“Political, social, and economic changes entail the recognition of new rights, and the *common law*, in its eternal youth, grows to meet the demands of society.” (emphasis added)).

34. *Id.* at 195–96.

35. *See id.* at 204 (“Although the courts have asserted that they rested their decisions on the narrow grounds of protection to property, yet there are recognitions of a more liberal doctrine.”).

circumstances of the late nineteenth and early twentieth centuries.³⁶ Based on these two observations, Warren and Brandeis probably valued the success of their scholarship as a function of its impact on the way the bench decided cases dealing with privacy.³⁷ Because Warren and Brandeis wrote to influence the bench, hoping that it would explicitly recognize individual privacy interests, the actions of the bench determined their success or failure.

Furthermore, *The Right to Privacy* shows that even the most prestigious law reviews, even in their nascent years, sought to publish scholarship that stood in direct relation to the bench.³⁸ The law reviews published articles engaged in doctrinal analysis, the value of which depended in large part on the bench's reception. This dynamic, or interface, molded the classic purpose of the law review: "to instruct attorneys in their consideration of legal problems [and] to guide judges and other decisionmakers in their resolution of legal disputes."³⁹ Addressing the purpose and value of the law review, Judge Stanley Fuld phrased it nicely in 1953:

We admire the law review for its scholarship, its accuracy, and, above all, for its excruciating fairness. We are well aware that the review takes very seriously its role as judge of judges—and to that, we say, more power to you. By your criticisms, your views, your appraising cases, your tracing the trends, you render the making of 'new' law a little easier.⁴⁰

In other words, by a "careful reading and comparison of appellate opinions with a view to identifying ambiguities, exposing

36. See, e.g., *id.* at 205 ("[In *Prince Albert v. Strange*,] Lord Cottenham stated that a man 'is entitled to be protected in the exclusive use and enjoyment of that which is exclusively his,' and cited with approval the opinion of Lord Eldon, as reported in a manuscript note of the case of *Wyatt v. Wilson*, in 1820, respecting an engraving of George the Third during his illness, to the effect that 'if one of the late king's physicians had kept a diary of what he heard and saw, the court would not, in the king's lifetime, have permitted him to print and publish it.'").

37. This is a natural conclusion. It simply particularizes the more general intuition that the efficacy of something seeking to be normative is most properly determined by evaluating its capacity to change the way its targeted audience actually acts. See Michel Foucault, *Afterword to MICHEL FOUCAULT: BEYOND STRUCTURALISM AND HERMENEUTICS* 208, 216–18 (Hubert L. Dreyfus & Paul Rabinow eds., 2d ed. 1983).

38. See generally McClintock, *supra* note 19, at 667 ("Once their initial prejudice had subsided, courts began to seek out law review articles dealing with the legal issues of the day to assist in their judicial decisions. These articles often shaped the law.").

39. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 42–43 (1992).

40. Stanley H. Fuld, *A Judge Looks at the Law Review*, 28 N.Y.U. L. REV. 915, 918 (1953).

inconsistencies among cases and lines of cases, developing distinctions, reconciling holdings, and otherwise exercising the characteristic skills of legal analysis,”⁴¹ law reviews provided a particular utility to the bench. In a sense, then, the authors were bound to the bench and the bar by a common purpose: resolving conflict for particular litigants.⁴² There was a common enterprise between the academy and the practicing legal community, and the academy communicated to the practitioners through the law review.⁴³

II. THE POWER OF CITATION TO ENDEAR ACADEMIC TO JUDICIAL WRITING

The authors of early law review articles sought, consciously or unconsciously, to manage their impressions to best achieve their primary goals—often to influence the way a particular judge ultimately decided a particular case or issue.⁴⁴ To do so, as in all extended dialogues, the parties involved utilized personas⁴⁵ that reflected their positions relative to one another and their interests in

41. Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1113 (1981); see also Cardozo, *supra* note 23, at ix (stating that law reviews were able to “canalize the stream [of legal precedent] and redeem the inundated fields”). In fact, law reviews garnered their first Supreme Court citation in a dissent from 1897, *United States v. Trans-Missouri Freight Assoc.*, 166 U.S. 290, 350 n.1 (1897) (White, J., dissenting) (citing Amasa M. Eaton, *On Contracts and Restraint of Trade*, 4 HARV. L. REV. 128 (1890)), and in the majority in 1899, *Chicago, Milwaukee & St. Paul Ry. Co. v. Clark*, 178 U.S. 353, 365 (1899) (citing James Ames, *Two Theories of Consideration*, 12 HARV. L. REV. 515 (1899)).

42. See *supra* note 26 and accompanying text.

43. Judge Hoffman’s statement in 1956 captures the relationship and common purpose of the reviews and the bench: “Speaking for the bench, it is possible to say that [law reviews] are not only accepted but also are very welcome additions to the literature of the law.” Hoffman, *supra* note 19, at 17.

44. There were, of course, scholars who expressly did not write for the bench, but the scholarship propelling the “Golden Age” of the student-edited review was primarily directed toward the bench. See Richard A. Posner, *The Future of the Student-Edited Law Review*, 47 STAN. L. REV. 1131, 1133 (1995) (describing the rise of forms of scholarship other than doctrinal analysis after the “Golden Age”).

45. *Persona* simply means an *organizing consciousness* of the text. In other words, the reader should not evaluate the text as if it were a personal confession of the author, but rather as if it were a narrative presented and organized by a purposefully created construction of the author. Essentially, it is the alter ego of the author. Although many post-structuralists will question the notion of an organizing consciousness, see, e.g., Roland Barthes, *The Death of the Author*, reprinted in IMAGE—MUSIC—TEXT 142, 143–48 (Stephen Heath ed. & trans., 1977), the concept remains invaluable as a heuristic tool for organizing the narrative of a particular text.

the relationship.⁴⁶ It is important to make clear, then, exactly what the interest of the authors was in the relationship: to gain acceptance into an official governmental proceeding. They sought to influence the judge, however subtly, in ordering the affairs of the litigants. There were, however, significant hurdles that these authors had to overcome to fulfill their purpose.

First, in official judicial proceedings, each a chapter in the ongoing legal narrative, academic authors are outsiders.⁴⁷ Judges, at least in their official capacity within that narrative, play the role of norm providers to the litigants.⁴⁸ This role generally burdens judges in at least two ways. First, it pressures judges not to depart entirely from existing law.⁴⁹ Second, it pressures judges to “explain to the parties

46. See generally ERVING GOFFMAN, *FRAME ANALYSIS* (1974) (providing background reading about the framework within which authors generally communicate with readers). For an analogous example of how the audience of a law review continues to influence authorial anxieties in profound ways, see William N. Eskridge, Jr., *Outsiders-Insiders: The Academy of the Closet*, 71 CHI.-KENT L. REV. 977, 978 (1996). Explaining why legal scholars hesitate to identify their sexual orientation in print despite other minorities readily doing so, he states:

An explanation must start with the paradox that America is both anxious about and obsessed with sexuality; both push the gay author of an insider article away from disclosure. If the imagined reader and the author are both anxious and indeed embarrassed about sexuality, then reasons of privacy will suggest to the author that she purge her article of sexual orientation.

Id. In much the same way, the anxieties of the judges to whom academic scholars often wrote necessarily shaped the way in which they constructed their texts.

47. In the early years, authors often met with judicial resistance. A large part of this resistance was, and continues to be, due to sociological reasons. For example, Justice Oliver Wendell Holmes discouraged the use of law review articles in briefs because they were the “work of boys.” Judith S. Kaye, *One Judge’s View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 316 (1989). Surely, the object of Holmes’s remark was the youth of journals’ editors. Yet the problem of authority and legitimacy sustained this sociological critique.

48. Cf. Edward R. Becker, *In Praise of Footnotes*, 74 WASH. U. L.Q. 1, 3 (1996) (“By demonstrating to litigants and lawyers that they have been heard, written opinions reinforce the bar’s confidence in the bench and enhance the legitimacy of the judicial process in the eyes of the people.”); Michael Sinclair, 14 GEO. MASON L. REV. 363, 373 (2007) (“Do you know how they make [common law]? Just as a man makes laws for his dog. When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way judges make law for you and me.” (quoting JEREMY BENTHAM, *Of Promulgation of the Laws and Promulgations of the Reasons Thereof*, in 5 THE WORKS OF JEREMY BENTHAM 235 (John Bowring ed., 1859))).

49. This is not a recent epiphany. As Alexander Hamilton wrote long ago, “[t]o avoid an arbitrary discretion in the courts, it is indispensable that they should be bound by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.” THE FEDERALIST NO. 78, at 168 (Alexander Hamilton) (Frederick Quinn ed., 1997). Though there are times when law is overturned, see, e.g., *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (overturning the “separate but equal” doctrine), this does not change the fact that

why the law compels (or at least justifies) a certain result in a particular case.⁵⁰ These twin pressures, in large part, explain the propensity of common law judges to resort to precedent.⁵¹ By skillfully constructing precedential narratives, judges not only make their particular holdings seem inevitable but do so in a way that suggests that reasonable citizens could have predicted properly how the law would respond to their acts.⁵² This is important because “justice demands, wherever that concept is found, that like men be treated alike in like conditions.”⁵³ These narratives, however, are not all-inclusive. Simply by selecting precedent upon which to ground their holdings, judges underscore the type of reasoning that is to be used and, by implication, that which is not. Because of this exclusionary tendency, judicially created precedential narratives often marginalize the reasoning of academics.⁵⁴

Second, upon gaining acceptance into the legal narrative, authors actually further complicate their status. As Professor John Henry Merryman noted long ago, “[when] the courts cite [secondary authorities] then [those authorities] are in some sense law as a result of the citation.”⁵⁵ Once accepted, the author’s work not only gains

generally “it is desirable that a person should be able to predict with some degree of certainty what might be the legal consequence of a particular action.” Merryman, *supra* note 5, at 622.

50. Bruce M. Selya, *In Search of Less*, 74 TEX. L. REV. 1277, 1278 (1996).

51. See, e.g., Sinclair, *supra* note 48, at 370 (“Following precedent tends to show that the court is not following the whims of political winds or the judge’s own predilections; that she is not, in the fashionable phrase, legislating from the bench.”); Walsh, *supra* note 5, at 351–52 (providing empirical research to show that judges often use citations as a way of legitimizing their holdings).

52. Cf. PRISCILLA WALD, *CONSTITUTING AMERICANS* 47–48 (1995) (“As a lawyer, Abraham Lincoln had learned to construct legal narratives that continually invoked and obscured origins in order to establish the ‘categorical authority’ of the law. These legal narratives, in other words, authorized their claims by retroactively but obscurely choosing a point of departure and making a sequence of events lead naturally and inevitably to a particular interpretation of the present. Such narratives derived . . . their authority from the rhetoric of inevitability . . .” (citing Jacques Derrida, *Devant La Loi*, in *KAFKA AND THE CONTEMPORARY CRITICAL PERFORMANCE: CENTENARY READINGS* 128–49 (Alan Udoff ed., Avital Ronell trans., 1987))).

53. KARL N. LLEWELLYN, *THE BRAMBLE BUSH* 36 (1930).

54. See, e.g., *supra* note 47 (explaining Justice Holmes’s initial discouragement of the use of law review articles in official legal writing).

55. Merryman, *supra* note 5, at 621. In fact, the publishers of *The Bluebook* validated this claim in their response to Professor A. Darby Dickerson’s critique of the sixteenth edition. Professor Dickerson reminded the legal community that “[c]hanging what the [citation] signals mean effectively changes the substance of our common law.” A. Darby Dickerson, *An Uniform System of Citation: Surviving with the New Bluebook*, 26 STETSON L. REV. 53, 69 (1996). The publishers quickly responded by publishing the seventeenth edition, which reverted

insider status, but, incredibly, gains official status. Thus, a mere citation, or even clear judicial reasoning traceable to the logic of a law review article, changes the ontological status of that article from secondary literature into law. This, in turn, creates complications for judges given the pressures deriving from their official relationship with the litigants. How can judges maintain legitimacy within the legal narrative as norm providers when they seem to concede that authority to the author of the article?⁵⁶ Such a maneuver surely bucked the perceived role of a judge during the nascent years of early law reviews.

Conceptually, both hurdles derive from issues of authority. The first—the use of precedent—involves judges masterfully protecting their legitimacy in an effort to ensure their authority, at the expense of those marginalized. Similarly, the second—the conferral of official status—only arises because judges are in positions of authority, which stimulates pressure to protect the legitimacy of that authority. Thus, a central problem slowing success for early academic authors in law reviews was one of authority. There was an onus on such authors to create authority. To avoid tainting the legitimacy of judges' actions, authors had to portray an authority through their texts which, if given official status via judicial recognition, would not become officious.

to the signal rules that preceded the sixteenth edition, preserving the meaning of the common law. *See* Bacchus, *supra* note 9, at 252–53 (“In 1996, the Sixteenth Edition appeared, including within it momentous changes. . . . The seventeenth edition of The Bluebook reinstates the signals of the fifteenth edition with minor changes.”). *Compare, e.g.,* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.2(a), at 22 (Columbia Law Review Ass’n et al. eds., 16th ed. 1996) (changing the use of “[no signal]” to indicate only that the “[c]ited authority (i) identifies the source of a quotation, or (ii) identifies an authority referred to in the text” and changing the use of the “see” signal to indicate “cited authority [that] directly states . . . the proposition”), *with* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.2(a), at 22–23 (Columbia Law Review Ass’n et al. eds., 15th ed. 1991) (using “[no signal]” to indicate that the “[c]ited authority (i) clearly states the proposition, (ii) identifies the source of a quotation, or (iii) identifies an authority referred to in the text” and using the “see” signal “when the proposition is not directly stated by the cited authority but obviously follows from it”), *and* THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.2(a), at 22–23 (Columbia Law Review Ass’n et al. eds., 17th ed. 2000) (reinstating the three meanings of “[no signal]” and the meaning of the “see” signal that were used in the fifteenth edition).

56. These are issues with which Judge Roger Traynor deals in his dedication celebrating the tenth birthday of the *UCLA Law Review*. Roger J. Traynor, *To the Right Honorable Law Reviews*, 10 *UCLA L. REV.* 3, 6 (1962). After discussing the emergence of citations to law reviews in judicial opinions, he states that “[t]he clumsy explanation [for such emergence] is that if it persuasively sets forth what should be authoritative, it may be transmuted surreptitiously into what is by those in a position to declare the law.” *Id.*

To portray such authority, law review authors quickly learned to construct authoritative personas. A heavy emphasis on footnoting became a particularly prominent device in constructing the appropriate persona.⁵⁷ By placing a large emphasis on footnoting, academic legal authors betray a struggle to create their own authority.⁵⁸ Although “the basic function of a footnote is to allow ‘the interested reader to test the conclusions of the writer and to verify the source of a challengeable statement,’”⁵⁹ footnotes have much greater semiotic significance. As early as 1937, Professor Fred Rodell noticed, albeit in passing criticism, that footnotes signified a relationship between the authors and their readers.⁶⁰ Through footnoting, authors cultivate their relationship with their readers by making two semiotic gestures. First, authors signify to their readers that the source to which they are citing contains an objective meaning that is knowable distinctly apart from the process of its being read.⁶¹ Second, authors signify that they are accurately channeling that objective meaning to their readers.⁶² When readers readily accept both of these gestures,

57. In fact, Judge Richard Posner argues that a genre developed in which authors “footnot[e] copiously, treat[] every topic exhaustively,” and in which “soundness is valued above originality, [and] thoroughness above brevity.” Posner, *supra* note 41, at 1122.

58. For a clear explanation of the technical process, see Sanford Levinson, *Law as Literature*, 60 TEX. L. REV. 373, 382 n.33 (1982). Professor Levinson highlights certain epistemological assumptions that sustain the practice of footnoting. Describing his citation to Stanley Fish, Levinson writes:

It occurs to me, as I dutifully footnote Fish’s statement, that the act of footnoting is itself a bow toward the notion of objective knowledge, for I am purporting, even as I describe Fish’s reader-response theories, to be giving you (the reader) an “accurate” rendition of those theories. Indeed, the point of footnotes, especially if “cite-checked” by law review editors, is to suggest that the proof of my accuracy is that you would arrive at the same conclusions by reading the same material.

Id.

59. Austin, *Footnote Skulduggery*, *supra* note 6, at 1012 (quoting Carolyn O. Frost, *The Use of Citations in Literary Research: A Preliminary Classification of Citation Functions*, 49 LIBR. Q. 399, 399 (1979)).

60. Professor Rodell curtly notes that “[e]very legal writer is presumed to be a liar until he proves himself otherwise with a flock of footnotes.” Fred Rodell, *Goodbye to Law Reviews—Revisited*, 48 VA. L. REV. 279, 282 (1962). Rodell’s comment assumes that the emphasis on footnoting signifies a certain relation between legal authors and their readers. Essentially, academic legal authors are impotent and must “prove” every assertion to their readers. The implicit irony is that the legal author really has no authority. *Cf. Aside, Challenging Law Review Dominance*, 149 U. PA. L. REV. 1601, 1602 n.7 (2001) (satirizing the necessity to footnote in order to gain authority).

61. Levinson, *supra* note 58, at 382–83 n.33.

62. *Id.*; *cf.* Richard A. Posner, *Goodbye to the Bluebook*, 53 U. CHI. L. REV. 1343, 1346 (1986) (highlighting the absurdity in condensing meaning of a text into a parenthetical, thereby disclosing the authorial proposition that meaning is conveyed to the reader).

consciously or not, they concede certain authority to authors: readers trust that their individual readings of the source would not provide them an understanding different from that which the authors purport, *and* readers recognize, albeit implicitly, that information exists apart from the knower. Thus, both of these gestures place authors' personas, the alter egos of authors that come through the text, in positions of authority over readers. Fundamentally, then, a profuse use of footnotes evidences an anxiety of authority or, from a different perspective, authors' attempts to gain deference from their audiences.

The presence of such an acute version of the anxiety of authority is significant because it evidences pressures similar to those under which judges write. For judges, the skillful use of precedent enables them to make use of a "rhetoric of inevitability," thereby protecting their legitimacy.⁶³ Similarly, for academics, the skillful use of attribution—because it signifies a relationship between authors and their readers in which the latter group concedes authority to the former—fosters precisely the same type of legitimacy. Both the construction of a precedential narrative and profuse attribution allow authors to assert authority. This commonality between the rhetoric of both judicial and academic writing, stemming from the semiotic significance of citation, allows academic writing to fit easily within the legal narrative without becoming officious. As a result, judges can safely bring a law review article within the official narrative while ostensibly maintaining their legitimacy. Thus, by negotiating this anxiety through the construction of authoritative personas, academics can create an affinity with common law judges that significantly enhances their probability of success in contributing to the resolution of an issue.

III. THE STANDARDIZATION OF CITATION WITHIN THE ACADEMIC LEGAL TRADITION

Because the proper use of citation enabled authors to avoid an officious intrusion into the legal narrative, authors such as Warren and Brandeis succeeded in playing a part in the resolution of legal issues. Moreover, because of their success, these authors left a

63. See *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (Rehnquist, C.J.) ("Stare decisis is the preferred course because it . . . contributes to the actual and perceived integrity of the judicial process."); cf. WALD, *supra* note 52, at 47–48 (describing how, as an attorney, Abraham Lincoln used authority in legal narratives which "derived—as they continue to derive—their authority from the rhetoric of inevitability").

permanent mark on the genre of law review articles with regard to their language, style, and technique. Their chosen conventions became the conventions of the genre and, over time, became embedded within the language assumed by academic authors publishing in the law reviews.⁶⁴ In particular, the tendency to footnote as a means of textually establishing authority has become a relic that only the most assured of authors can avoid.

As it remains the dominant guide to law review citation,⁶⁵ *The Bluebook* provides a unique window into how this anxiety of authority has become embedded within the language of the law review genre. Because first-year law students begin their indoctrination into the “complex and intricate directives laid down in [*The Bluebook*]” from day one in their legal writing classes,⁶⁶ and second- and third-year students on law reviews continue their slavish devotion to mastering *The Bluebook*,⁶⁷ its power as a structuring force within the legal community, particularly in normalizing certain assumptions, cannot be underestimated.⁶⁸ As a structuring force, then, *The Bluebook* normalizes assumptions regarding the position of authors in relation to their readers, thereby providing a valuable source for examining the accepted notions for how to construct a persona through citation.⁶⁹ It is a valuable source for peering into how the language used within academic legal writing, and particularly the tendency to footnote, is laden with the relics of previous contexts, and

64. See generally Peter A. Appel, *Intervention in Roman Law: A Case Study in the Hazards of Legal Scholarship*, 31 GA. J. INT'L & COMP. L. 33 (2002) (providing an example of how the format and conventions of law review articles play important roles both in shaping the substance of articles and also in the careers of authors).

65. Christine Hurt, *The Bluebook at Eighteen: Reflecting and Ratifying Current Trends in Legal Scholarship*, 82 IND. L.J. 49, 52 (2007) (“*The Bluebook* has continued to dominate the citation market for the last half century.”).

66. Posner, *supra* note 62, at 1343.

67. Jonathan Mermin, *Remaking Law Review*, 56 RUTGERS L. REV. 603, 613 (2004) (“I suspect that many students take solace in their seemingly impressive mastery of the *Bluebook*’s intricacies as a counterpoint to their unease at being expected, after just one or two years of law school, to pass judgment on the substantive merits of advanced legal scholarship.”).

68. See Bacchus, *supra* note 9, at 246 (“The familiarity bred by that prolonged and intense exposure makes *The Bluebook* . . . a foundational text upon which legal culture is built.”); Hurt, *supra* note 65, at 50–51 (“Like high school students rushing to grab a copy of their school’s yearbook to glimpse the personalities and events that captured the eye of school photographers, legal scholars can trace important movements in the law and legal scholarship from edition to edition [of *The Bluebook*].”).

69. See Bacchus, *supra* note 9, at 248 (“*The Bluebook* [is] not so much an artifact as a code, in the semiotic sense—a system of signs that does not reflect ‘objective reality,’ but, rather, constructs a political and social grammar.”).

how those relics may very well be supported by anachronistic assumptions.

First, the existence and the widespread use of *The Bluebook* emphatically underscore the legal community's fixation with citation and, by logical extension, its fixation with establishing authority. By ultimately encouraging the growth of the "twenty-six page pamphlet . . . to its status as a 389-page manual used at the vast majority of law schools," the legal community demonstrates uncommon devotion to ensuring proper citation.⁷⁰ The community of law reviews deems so important the way in which authors appropriate and infuse prior thinking into their text, there has developed a market able to sustain the incredible commercialization of a once modest citation guide.⁷¹ This reveals an assumption that is so pervasive within the law review community that it is seldom discussed: authors simply must cite.⁷²

Second, the rules of the *The Bluebook* make clear that the publication has normalized the anxiety of authority that authors like Warren and Brandeis promulgated. The rules of *The Bluebook* make standard authors concerned about how their work will be received by their audience and the fear that it might be dismissed for lacking authority.⁷³ For example, Rule 1.2 constructs a system for introducing sources of information.⁷⁴ This system includes signals not only for indicating direct authority, but also for identifying tangentially related and even contradictory authority.⁷⁵ By implication, Rule 1.2 teaches that authors have not completed their job by merely providing direct support for their propositions. They must also find tangentially related authority and possibly even contradictory authority. This is counterintuitive: why should an author find sources that will only marginally further the author's point and at times may actually

70. *Id.* at 250 (referencing the seventeenth edition of *The Bluebook*).

71. Dickerson, *supra* note 55, at 57–66. Professor Christine Hurt has also argued recently that part of the success of *The Bluebook*, as a publication manual more dominating than any other in related disciplines, is sustained by the fact that legal authors must "daily produc[e] . . . written materials that are either formally delivered to clients or filed with a government tribunal or agency." Hurt, *supra* note 65, at 67.

72. Bacchus, *supra* note 9, at 254.

73. *Id.* at 249. For more on anxiety, see *supra* notes 9, 14.

74. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.2, at 22–24 (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

75. *Id.*; see also Bacchus, *supra* note 9, at 258 ("In an ideal citation, fully utilizing the technology of rule 1.2, contradictory authority, indirect authority, and, arguably, authority that has an even more distant relationship to a proposition in the text would be found and cited.").

disparage it? The best explanation is that by including contradictory authority, the author “can give the appearance of strengthening the support for the proposition, because the proffer of contrary authority hints that the author’s confidence in her argument can withstand such weakening citation.”⁷⁶ By following Rule 1.2, then, authors construct a particular persona: one that is an exhaustive researcher, confident in the argument, and expert on the particular topic.

Such affectations amount to precisely the same gestures that early authors were able to make through thorough use of attribution. The persona of an exhaustive researcher is valued because of the underlying assumption that texts contain meanings that can be accurately transferred from one reader to another, apart from the latter’s individual discursive interactions with the source. This is precisely the same assumption which sustained the practice of footnoting abundantly during the emergence of law reviews. The underlying process is similar: by passing on to the reader all of this previously gathered information, authors assert themselves as the experts and thereby gain authority. Moreover, such authority allows their pieces to maintain the legitimacy of a judicial opinion if given official recognition by judges. Thus, *The Bluebook* has codified an anxiety of authority by having as its philosophical predicate the very same assumption that characterizes the authorial persona that emerged, at least in part, as a result of legal academics seeking acceptance within the official legal narrative.

IV. THE USE OF FOOTNOTES COMES WITH SUBSTANTIAL COSTS

Yet even while the emphasis on footnotes contributed to the ability of the law review to sustain a relationship between the law review article author and the judicial opinion, it also brought with it a burden that the legal community still bears. There are at least three different aspects to this burden. First, the emphasis on citation negatively affects the style of the genre. Second, all too often the emphasis on footnotes masks shallow substance. Finally, the political space created by the emphasis on footnoting is in tension with the general understanding of citation among student editors. To the extent that the actual usage of footnotes diverges from the student understanding of their usage, the legal community condones an educational failure for which the consequences may be difficult to

76. Bacchus, *supra* note 9, at 261.

quantify but which are no less severe. In short, although extensive footnoting may have helped to cohere scholars' work to the bench, the legal community can only maintain that cohesion with a price.⁷⁷

A. *Style and Expense*

The style of law review articles suffers because of the emphasis on footnoting.⁷⁸ First, articles heavily dependent on footnotes are largely standardized.⁷⁹ This limits the amount of individuality that authors can express through their writing. *The Bluebook* has “cultivate[d] a most dismal sameness of style, a lowest-common-denominator style.”⁸⁰ Because that style emphasizes the importance of uniformity,⁸¹ “[f]lair, humor, and individualism [are] not tolerated in the text.”⁸² Although student editors of the reviews perform much of this standardization,⁸³ the authors bear the ultimate responsibility for their work.

77. Judge Edward Becker, nonetheless, has eloquently defended the use of footnotes in judicial opinions:

The primary reason for survival [of footnotes] also reflects their central beauty: They enable the writer to address multiple audiences simultaneously. Footnotes allow the judge-writer to engage in a legal conversation: with the lawyer or litigant in the case; with the reader who wants to drink deep, at least on a particular issue, and draw all possible instruction from the opinion; and with the neophyte who wants to understand an area of law.

Becker, *supra* note 48, at 12. Though this eloquent apology is directed at many of the criticisms discussed in Part IV of this Note, it is somewhat inapposite in the law review context. Authors of law review pieces are increasingly writing to one another. See *infra* notes 109–20 and accompanying text. Thus, while the readership of law reviews has grown, the interests of that audience have become narrower. This eliminates the need to dispense footnotes throughout to satisfy the desires of a particular faction of the readership.

78. Posner, *supra* note 62, at 1349 (“The particular casualty of preoccupation with citation forms is the style of legal writing.”).

79. *Id.*

80. *Id.*

81. See *id.* (“*The Bluebook* displays an excessive, an unhealthy—one is almost tempted to say, since this is still the land of freedom, an un-American—obsession with uniformity.”).

82. Austin, *Footnote Skulduggery*, *supra* note 6, at 1016.

83. See Carol Sanger, *Editing*, 82 GEO. L.J. 513, 517 (1993) (“[A]rticles are too frequently transformed [by student editors] from something written by an author with a distinct voice, point of view, and line of argument to something closer to a composition by student committee. In its worst form, the method combines unnecessary arrogance with a stubborn adherence to rules, sometimes ‘official’ rules and sometimes independently idiosyncratic ones. Whatever their provenance, the force and good sense of these rules are wildly overestimated by law review editors who find it hard to understand that authors sometimes need to state complicated and subtle points in complicated and subtle prose.”).

The stylistic deficiencies created by an emphasis on footnoting are significant because of the effects they have on the reader. First, the inattentive reader is likely deceived into overestimating the quality of the writing.⁸⁴ All footnotes are not created equal,⁸⁵ and many citations are simply “to vacuous and repetitive student notes, worthless commentary, and material of doubtful relevance.”⁸⁶ Thus, when a reader approaches a law review article with the “conventional assumption . . . that authors carefully select and read the material that they cite[,] . . . the addiction to [footnoting] renders this reckoning at best dubious, and in reality, ridiculous.”⁸⁷

Second, and more important, excessive footnoting turns away many potential law review readers.⁸⁸ On a stylistic level, lengthy and exhaustive footnotes are usually unnecessary and can be intimidating and/or confuse readers.⁸⁹ In a surprising celebration of *Levesque v. Anchor Motor Freight*,⁹⁰ Judge Bruce Marshall Selya praises the case because “it is the only full-dress, published appellate opinion . . . that contains *no* citations . . . not a case, not a treatise, not a statute, not a law review article.”⁹¹ As such, the opinion is efficient, and its reasoning accessible. Professor Arthur Austin wryly criticizes the 4,824 footnotes in a piece published by the *New York Law School Law Review*.⁹² In contrast to *Levesque*, the article is anything but efficient. Any reader who has the patience to navigate 4,824 footnotes

84. Abner J. Mikva, *Goodbye to Footnotes*, 56 U. COLO. L. REV. 647, 653 (1985) (“In my early days on Law Review I was told that the footnotes are the real measure of worth in legal writing.”).

85. Balkin and Levinson put a humorous spin on this fact with a purposeful example of a thoroughly vacuous cite. See Balkin & Levinson, *supra* note 6, at 858 n.58 (“For an example of an article that uses the word ‘shy,’ see J.M. Balkin, *supra* note 2. . . . For examples of articles that use the word ‘don’t,’ see . . .”).

86. Austin, *Footnote Skulduggery*, *supra* note 6, at 1017.

87. *Id.*

88. Perhaps as more law reviews develop legal blogs that “attempt to educate and inform as wide an audience as possible by providing fast, and relatively succinct, commentary on current legal controversies,” concern that heavy citation will intimidate potential readers will mitigate this specific critique. Anthony Ciolli, *Much Ado About Nothing: Why Student Scholarship Has Nothing To Fear from Blogs*, 116 YALE L.J. POCKET PART 210, 211 (2006), <http://thepocketpart.org/2006/12/18/ciolli.html>. At the same time, however, the growth in legal blogs merely furthers the point made in Part V that an author should not be afraid to adopt a persona reflecting the response of her audience.

89. Austin, *Footnote Skulduggery*, *supra* note 6, at 1010.

90. *Levesque v. Anchor Motor Freight, Inc.*, 832 F.2d 702 (1st Cir. 1987).

91. Selya, *supra* note 50, 1278.

92. Austin, *Footnote Skulduggery*, *supra* note 6, at 1011 n.17 (citing Jacobs, *supra* note 3).

in the same article has endurance and diligence beyond the realm of most potential readers, even those scholars whose careers have predisposed them to prolix scholarship.⁹³

This narrowing of the audience is significant because “th[e] law, as an institution or a science or a high-class mumbo-jumbo, has a job to do in the world.”⁹⁴ Professor Rodell states:

With law as the only alternative to force as a means of solving the myriad problems of the world, it seems to me that the articulate among the clan of lawyers might, in their writings, be more pointedly aware of those problems, might recognize that the use of law to help toward their solution is the only excuse for the law’s existence, instead of blithely continuing to make mountain after mountain of tiresome, technical molehills.⁹⁵

Thus, when the style of an article narrows its audience by creating “technical molehills,” a feat substantially aided through the use of prolix footnotes, the legal community fails in one of its central reasons for existence: to provide “a means to a social end and . . . [not], for all the law schools and law firms in the world, [to] be treated as [ends in themselves].”⁹⁶ Thus, to the extent that footnoting narrows the audience of an article, it limits the article’s ability to provide a cornerstone for meaningful discussion, even within the legal community. In light of Professor Rodell’s thoughts regarding the purposes of the law, this is a sacrifice that should not remain unnoticed.

B. Substance and Expense

The impact of excessive footnoting on the actual substance of texts may be even more significant than the stylistic deficiencies it creates.⁹⁷ At their best, substantive footnotes allow an author to explore issues that are only tangentially related to the main point of the text. Used in this regard footnotes can be, and according to some

93. See, e.g., Goldberg, *supra* note 1, at 255 (providing a perfect example of how readers, even the brightest and most acute legal professionals, are turned away by excessive citation).

94. Rodell, *supra* note 60, at 283.

95. *Id.* at 284.

96. *Id.* at 286.

97. See Roger C. Cramton, “The Most Remarkable Institution”: *The American Law Review*, 36 J. LEGAL EDUC. 1, 5 (1986) (“The tendency to provide a citation for every proposition distracts the reader and may contribute more to form than substance.”).

scholars should be, considered a welcome authorial prop.⁹⁸ Too often, however, these props allow authors to remove analysis from the main body and put it below the line.⁹⁹ Essentially, authors acquire the ability to divest from their analysis truly controversial or novel statements. “The footnote becomes . . . a means of concealment. . . . [Statements] that one hesitates to flaunt above the line sneak[] into the footnote.”¹⁰⁰ Furthermore, “[h]edges against forthright statements in the text are squirreled away for a rainy day.”¹⁰¹

Perhaps the most famous example of this type of analytical divestment occurred in footnote four of *United States v. Carolene Products Co.*¹⁰² Footnote four is often taught to first-year law students as a heuristic tool for understanding when the judiciary is justified in becoming more active. It says that when legislation affects “discrete and insular minorities” who cannot vindicate their interests through the traditional political machinery, the judiciary can properly conduct a more robust review of that legislation. Yet the facts of the case had very little to do with “discrete and insular minorities.”¹⁰³ In fact, “Professor Louis Lusk of Columbia Law School, Justice Stone’s clerk during the *Carolene Products* term, has explained . . . that the footnote sought to reconcile conflicting views of Chief Justice Hughes and Justice Stone arising in another context.”¹⁰⁴ Thus, the most famous footnote in American legal history was simply obiter dictum.¹⁰⁵

This is significant because as Judge Abner Mikva speculates, “I would venture a guess that the rule would not have survived as a textual statement.”¹⁰⁶ If Judge Mikva is correct, then one of the most important legal doctrines of American constitutional law initially gained traction on a slippery surface. That is, rather than winning the

98. See, e.g., Mikva, *supra* 84, at 648 (“A judge is reluctant to excise some beautiful prose or sage advice that colleagues or clerks have challenged as superfluous to the decision. What to do? Put it in a footnote.”).

99. DAVID MELLINKOFF, *LEGAL WRITING: SENSE AND NONSENSE* 94 (1982). The phrases “above” and “below the line” refer to the text with appears on top of the footnote line on a page and that which comes below, respectively.

100. *Id.* at 94.

101. *Id.*

102. *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938).

103. Mikva, *supra* note 84, at 649.

104. *Id.* (citing Louis Lusk, *Footnote Redux: A Carolene Products Reminiscence*, 82 COLUM. L. REV. 1093 (1982)).

105. *Id.*

106. *Id.*

support of his colleagues through open and rational reasoning, Justice Stone avoided controversial dialogue by planting the doctrine in a footnote. Whether the doctrine is one that should be lauded or condemned is not the point here. The point is simply that the existence and use of a footnote allowed an undeniably important doctrine to be introduced into American jurisprudence, perhaps without the direct attention of the Court.¹⁰⁷

Moreover, this divestment of analytical rigor or controversial argument from the body of a piece is not limited to judicial opinions. As Professor Joel Seligman notes, the style of citations allow law review authors and editors “to hide behind their footnotes, substituting a forest of annotations and the most ‘neutral’ or ‘reasonable’ synthesis of formal legal doctrines for original examination of what the law actually is or ought to be.”¹⁰⁸ This trend, toward creating a neutral body of an article by lowering controversial and more overtly confrontational discussion to a footnote, may be a positive method of garnering consensus for the proposition in the body, but it represents a value judgment: authors choose to value support for a particular proposition over engaging in completely up-front dialogue.

107. *Id.* Professor Balkin has vividly made this same point in his discussion of footnote two in *Bowers v. Hardwick*, 478 U.S. 186 (1986):

Here the footnote performs the crucial task of holding the logic of the opinion together, by putting off the evil day when these questions will have to be answered. The footnote is the red cape dangled in front of the charging bull, and then removed at the last second, preserving the life of the matador.

J.M. Balkin, *The Footnote*, 83 NW. U. L. REV. 275, 281 (1989).

108. JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* 183 (1978); *see also* James W. Harper, *Why Student-Run Law Reviews?*, 82 MINN. L. REV. 1261, 1268–69 (1998) (“[Law Review] [a]uthors are not innocent in the frenzy for footnotes. They often contribute to it by carrying on a subdialogue in footnotes, by various kinds of footnote ‘padding,’ or even by burying their best and most interesting points in footnotes.” (citation omitted)).

C. *Politics and Expense*

One motivation for footnoting is networking. Formerly latent,¹⁰⁹ the use of footnotes and citation as a method of “[m]aking [f]riends and [n]etworking” has become overt and overwhelming.¹¹⁰ As Professors J.M. Balkin and Sanford Levinson have made humorously clear, footnoting in the contemporary law review is only marginally about referencing work that has been probative to an author’s analysis: “citation has at least as much to do with making certain semiotic gestures to the audience as providing an accurate record of an author’s own intellectual paths.”¹¹¹ In contrast to providing a skeleton of sources that an author has used to construct the substance of the piece, citation becomes a “political act.”¹¹²

Despite its abundance, student editors generally do not notice the political dimension of footnoting, partially because of their naivety but also because of their recent experiences in first-year legal writing courses which generally stress honest authentication in legal

109. For example, despite the fact that it was not public at the time, Professor William Eskridge has identified the central impediment to Rhonda Rivera’s publication in the elite law reviews in the 1970s and 1980s as her politics:

In the 1970s and 1980s, [Rivera] produced a steady stream of articles on gay legal issues. Because such issues were completely marginal in legal education at the time, the fanciest law reviews had no interest in publishing them and aspiring tenure candidates . . . *had no reason to cite* or even read them.

Eskridge, *supra* note 46, at 980–81 (emphasis added).

110. Austin, *Footnotes as Product*, *supra* note 6, at 1145.

111. Balkin & Levinson, *supra* note 6, at 860.

112. See Richard Delgado, *The Colonial Scholar: Do Outsider Authors Replicate the Citation Practices of the Insiders, but in Reverse?*, 71 CHI.-KENT L. REV. 969, 969 (1996) (“I showed that the major figures who were writing during the heyday of the Civil Rights Movement marginalized and ignored the writings of scholars of color to a surprising degree. . . . In a follow up article . . . I showed that, although . . . newer scholars were avoiding the errors of their predecessors, much of the same preference for in-group recognition . . . held true in 1992.” (citing Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984) and Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349 (1992))); Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground*, 11 HARV. WOMEN’S L.J. 1, 5 (1988) (“Citing outsider scholarship is a political act. Tenure and promotion review committees typically ask whether a candidate’s work is cited. Readers look to citations to determine whether an article speaks to them. When Martha Minow, a Harvard Law School professor, cites Audre Lorde, for example, she is saying to women, to people of color, and to lesbians ‘I am talking to you. I am learning from you.’ This act brings outsiders into the world of ‘Harvardian’ discourse and encourages them to continue writing. It challenges other readers to expand their sources and prevents the ghettoization of outsider writing.”).

writing.¹¹³ During preliminary screening of articles, editors sometimes make initial judgments based upon the number of footnotes.¹¹⁴ This is largely a reflection of the generally shared assumption among editors that footnotes represent authorial research.¹¹⁵ Moreover, during the selection of articles, the form and precision of footnotes matter.¹¹⁶ Editors may use the form and the precision of the footnotes as a proxy for the author's diligence and attention to the piece. Notoriously absent from most editors' review of footnotes is an inquiry into what type of politics the footnotes, as a whole, convey to the audience.¹¹⁷ That is, editors do not ask the questions: Does the author cite theoretical work and thereby push a legal-theory approach? Does the author cite only "outside scholars" in an attempt to normalize the marginalized? Does the author cite only cases and treatises in an attempt to push a conservative analysis?

Remediating this divergence between the reasons authors cite and the reasons editors believe that authors cite could materially benefit the entire legal community.¹¹⁸ Editors spend an inordinate amount of time in both their own writing and the writing they edit looking to the

113. See Austin, *Footnote Skulduggery*, *supra* note 6, at 1011 ("Authors have recognized that discerning, intelligent—or unethical—manipulation of footnotes can be a significant factor in achieving promotion, tenure, and status. Paradoxically, many student editors are unaware of both the new trend and their role in its development.") (citations omitted).

114. See Posner, *supra* note 44, at 1134 (discussing how student editors judge quality of an article partly on "the number and length of footnotes in it"); cf. Harper, *supra* note 108, at 1268 (describing student editors' zeal for footnotes and their desire to see a footnote in support of "every factual assertion and reference to doctrine").

115. For an example of this assumption at work, albeit by an academic, see Deborah R. Gerhardt, *Plagiarism in Cyberspace: Learning the Rules of Recycling Content with a View Towards Nurturing Academic Trust in an Electronic World*, 12 RICH. J. L. & TECH., Spring 2006, at 19.

116. See Eric A. Chiappinelli, Essay, *Definite Articles: Using the Law Review Article Type Indicator® to Make Law Review Publishing Decisions*, 42 WM. & MARY L. REV. 559, 562 (2000) (during article selection, editors "want articles in which most sentences are already footnoted in conformance with *The Bluebook*").

117. See Natalie C. Cotton, Comment, *The Competence of Students As Editors of Law Reviews: A Response to Judge Posner*, 154 U. PA. L. REV. 951, 964–66 (describing the process editors use in evaluating the strength of an article's research without mention of inquiry into the political posture of that research).

118. The prominent legal scholar, Lawrence Friedman, acknowledged that the norms of law reviews can, and do, shape legal scholarship when he stated "[a]fter all, an institution (law review) so entrenched is bound to affect the very nature of legal scholarship—both in formal senses (for example, the *length* of articles); and in the substantive sense (*what* people write about)." Lawrence M. Friedman, *Law Reviews and Legal Scholarship: Some Comments*, 75 DENV. U. L. REV. 661, 661 (1998).

past for support.¹¹⁹ Were the political dynamic of footnoting more apparent, students could actively choose whether to employ or bypass such a strategy in their own writing without feeling the pressure to air out the text with large amounts of footnotes. Perhaps even more beneficial to scholars, editors could spend less time haggling with authors about whether an above-the-line proposition needs support and whether a particular source is the most effective attribution and defer to authors, knowing that they have personal reasons for their preferences. Finally, scholars would have less reason to footnote automatically and student editors might become more cautious in using the number of footnotes as any type of proxy, thereby liberating prospective authors from playing the numbers game. In sum, the education editors receive from their law review experience would be materially advanced because they would have more opportunity to engage in forward-looking, critical analysis in editing and authoring pieces for their law reviews.¹²⁰

V. FOOTNOTING ANXIETIES IN CONTEMPORARY CONTEXT

On the one hand, authorial anxieties and tensions inhere in footnoting, providing legal scholarship with a profound capacity to maintain a presence in the official legal narrative. On the other hand, however, the legal community, consciously or not, bears the burden of excessive citation. Intuitively, this value judgment seems well worth it: in exchange for a number of stylistic, substantive, and constructive deficiencies caused by excessive footnoting, scholars acquire relatively easy access to the bench because they can construct authorial personas that affect anxieties intrinsic to the common law system. By placing those anxieties within the contemporary legal setting, however, the decision to maintain this value judgment without deliberate reflection is problematic.

119. In fact, this is a problem that professors often complain of regarding the student editing process. Professor Daniel Solove hints as much by saying: "A . . . problem is that sometimes editors want to footnote every sentence that can be footnoted." Daniel J. Solove, *Law Review Editing: Some Suggestions for Reform*, Concurring Opinions, Mar. 13, 2007 http://www.concurringopinions.com/archives/2007/03/some_pet_peeves.html.

120. Judges, as well, would benefit from correcting the divergence. The abundance of footnotes conditions editors to think that the force created by the citation is a valuable proxy for the efficacy of a piece of legal writing. Given that most editors become practitioners, this conditioning carries over outside the academy. The brief with 301 footnotes drafted by Cravath, Swaine & Moore during the Texaco-Pennzoil litigation provides a quintessential example of how this conditioning affects judges. Austin, *Footnotes as Product*, *supra* note 6, at 1134–35 n.16.

Scholars no longer write primarily for the bench.¹²¹ Over the last fifty years, law school faculties have become much more diverse: “[n]o one who is familiar with the contemporary legal academy can fail to realize that we are divided by far more than conflicting views.”¹²² As a result of this faculty diversification, “legal scholarship today is different, much more complex, and in many ways totally anarchic.”¹²³ “Fewer and fewer articles offer a way of resolving an important legal problem through a purportedly ‘best understanding’ of traditional legal materials.”¹²⁴ Such articles have been largely replaced by what Judge Harry Edwards terms “impractical scholarship.”¹²⁵ By impractical, Judge Edwards primarily means scholarship that does not help practitioners or judges resolve a legal dispute by failing to recognize that “each . . . is constrained by a complicated mass of authoritative texts.”¹²⁶ In other words, many authors are no longer writing to influence directly the way in which

121. See Louis J. Sirico, Jr., *The Citing of Law Reviews by the Supreme Court: 1971–1999*, 75 IND. L.J. 1009, 1013 (2000) (“[I]t is easy to conclude that the most elite journals are publishing primarily for the scholar, rather than the bench or the bar.”); cf. Sanford Levinson, *The Audience for Constitutional Meta-Theory (Or, Why, and to Whom, Do I Write the Things I Do?)*, 63 U. COLO. L. REV. 389, 392 (1992) (referring to two articles he had previously written, Professor Levinson stated: “[l]ike most of what I write, neither of these articles takes a recognizable position on any of the most contentious constitutional issues of the day, at least if they are defined in terms of those that are likely to come before a judge”).

122. Levinson, *supra* note 121, at 390.

123. Friedman, *supra* note 118, at 666.

124. Levinson, *supra* 121, at 391.

125. Edwards, *supra* 39, at 46. This assertion is complicated, however. In 1996, Professor Michael Saks, Howard Larsen, and Carol Hodne conducted a unique comparison of law school publications from both 1960 and 1985 in an effort to survey any increase in theoretical scholarship. Michael J. Saks, Howard Larsen & Carol J. Hodne, *Is There a Growing Gap Among Law, Law Practice, and Legal Scholarship?: A Systematic Comparison of Law Review Articles One Generation Apart*, 30 SUFFOLK U. L. REV. 353 (1996). They concluded: “The top-quintile journals seem to have increasingly become the province of legal scholars and the most experimental kind of scholarship, and less a forum for exchanges among legal scholars, practitioners, and judges.” *Id.* at 374. They also asserted, however, that on the whole there had not been a decrease in practical scholarship because the emergence of specialized journals had provided increased capacity for legal publication. *Id.* at 370–71. Despite this latter finding, however, the importance of the increased theoretical focus of the elite journals is critical because the courts, especially the Supreme Court, generally cite to such journals. See Sirico, *supra* note 121, at 1010 (“Most of the Court’s citations continue to refer to journals that are generally regarded as elite.”).

126. Edwards, *supra* note 39, at 55.

judges decide cases.¹²⁷ In fact, “it’s quite likely that [although] an earlier generation of academics would have gladly traded ten citations in the *Harvard Law Review* for one citation in a Supreme Court opinion. . . . many contemporary academics would find this a bad trade.”¹²⁸

Though this diversity in purpose may be criticized, an incidental benefit of it should be that authors can construct personas with specific audiences in mind. For example, consider two different types of authors. First, take the student seeking to publish a traditional case note. “For reasons both structural and logistical, students have long played the role of reporters in the legal academy,”¹²⁹ writing notes that “summariz[e] current legal developments.”¹³⁰ The narrow doctrinal approach of traditional case notes is appropriate because it plays to the skill of organizing and sorting precedent recently acquired in the first year of law school, and it eliminates the need for an expansive theoretical background required for sophisticated normative critiques. Additionally, such notes often provide the judges with whom such students may clerk a unique opportunity to see their writing skill, analytical capacity, and perhaps snippets of a judicial philosophy.¹³¹ By both scholastic purpose and personal ambition, the audience for student notes is often quite precise: the judiciary. For the student, then, it is not only appropriate but a sign of maturity to be able to assume the anxieties of the judge and to write under such pressure. Thus, to cite often and thoroughly fits a student.¹³²

127. Shortly before Judge Edwards had made this point, Professor Rubin stated:

The entire point of standard legal scholarship is to explore and contrast the pragmatic implications of conflicting normative positions The most promising discourse for standard legal scholarship . . . is not the vaguely articulated neo-formalism of the courts, but prescriptive arguments based on consciously acknowledged normative positions.

Rubin, *supra* note 18, at 1893.

128. Balkin & Levinson, *supra* note 6, at 865 n.81.

129. Stephen I. Vladeck, *That’s So Six Months Ago: Challenges to Student Scholarship in the Age of Blogging*, 116 YALE L.J. POCKET PART 31, 36 (2006), <http://www.thepocketpart.org/2006/09/06/vladeck.html>.

130. *Id.*

131. Moreover, the audience for student scholarship is not limited to judges but also includes other future employers. See Nathan H. Saunders, Note, *Student-Edited Law Reviews: Reflections and Responses of an Inmate*, 49 DUKE L.J. 1663, 1671 (2000) (discussing how the work product and internalization of the editing process provides value to future employers).

132. This explains the tendency to cite in this Note. Though this is most certainly not a doctrinal piece, as a student, there are particularly strong institutional pressures, deriving largely from the editing process, to cite thoroughly. Without such citation, as a student, publication

In contrast, as a self-proclaimed “constitutional theorist,” Professor Levinson writes foremost to other theoretical scholars.¹³³ As a result, he does not have to wage a credibility campaign through purportedly exhaustive research. Because he dialogues with an audience not bound by the same pressures as judges, he does not have to burden his authorial persona with the anxieties intrinsic to the common law system. Theorists do not necessarily have to exploit the “rhetoric of inevitability.” Rather, theorists can prove their credibility through the weight of their arguments, the novelty of their language, and the nuance of their thoughts. In short, legal scholars willing to borrow ideas and paradigms from other disciplines should be able to garner control of their texts and audiences in ways that mimic the scholars of those disciplines without having to confront guilt for not having footnoted copiously.

This is not to say, however, that clever wit or novel thinking should necessarily replace thorough research. The suggestion is rather that an authorial persona, as constructed through the use of citation, should reflect the audience to which the particular author writes. In determining the proper method of citation for a particular piece, authors should consider several factors. First, it is important that authors know their audiences. Second, authors should cite in a way that befits the tone and substance of the article. Third, authors should consider the role the piece will play in their careers, asking, for example, if it is a tenure-track piece. Fourth, authors should consider whether they want to gain cross-discipline attention. Thus, there are numerous factors that should play a role, but the importance of each factor ultimately derives from the purposes of the article, making the decision uniquely one for the author to make prior to drafting the piece.

Again, it is important to note that although the immediate audience for legal scholarship is in some ways narrower than ever before, it is, in some ways, also more expansive. That is, the majority of legal scholarship is written for other legal scholars. Contemporary legal scholars, however, because they are willing to borrow paradigms from other fields, are becoming ever more adept at gauging and evaluating different types of scholarship and categorizing that scholarship as good, bad, or mediocre based upon its relative impact.

would likely not be possible. In contrast, scholars writing theoretical scholarship are under very different pressures. *See supra* notes 121–28 and accompanying text.

133. Levinson, *supra* note 121, at 390.

Thus, some scholars have no need to adopt the authorial persona that has been institutionalized within the law review genre. Their target audience is perfectly competent to assess the merits of their work apart from the persona of the exhaustive researcher. In light of this and the fact that footnoting does exact a burden, it is incumbent upon authors to select their personas and not allow the anxieties normalized through traditional footnoting practices and *The Bluebook* to direct that decision subconsciously.

CONCLUSION

Behind the emphasis on citation and footnoting in academic legal writing are anxieties of authority and credibility. The historic relationship between law review article authors and the bench provides a unique explanation for the existence of those anxieties and how authors have used them to fulfill their purposes of helping judges decide issues. Yet for many authors who do not write for the bench, those anxieties constrain authorial personas and should be reevaluated in the contemporary setting. Essentially, scholars who write articles primarily directed to other scholars should be aware of the costs that an overemphasis on footnoting externalizes onto the broader legal community. With such awareness, scholars may not desire to utilize the classic law review persona. This standard persona has and still can contribute positively to the capacity of a scholar to establish and maintain legitimacy within the official legal narrative. Nevertheless, as the legal academy continues to diversify and establish its own identity apart from the bench, the default authorial persona of law review articles should more appropriately reflect the particular purposes of the article. Moreover, such a change is likely to enhance the productivity of student-edited law reviews and student writings, eliminate persistent tension between faculty authors and student editors, and generally improve communication between authors and audiences by abolishing the single standard for judging citation.