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A Cure for Scholarship Schizophrenia: A Manifesto for Sane Productivity and Productive Sanity

Ronald Benton Brown*

I. Introduction

Scholarship is an activity and the product of that activity. It involves both the acquisition of a body of knowledge, through study and research, and the publication of that knowledge, but the debate on scholarship has considered only what a law professor should publish. Before determining what qualifies as legitimate scholarly publication, and the relative values of its different forms, it is first necessary to

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   scholarship . . . 2: the character, qualities, or attainments of a scholar: as a: scholastic achievement: LEARNING . . . b: methods, attitudes, and traditions characterizing a scholar (if by [scholarship] we mean all of the activities and attitudes encompassed in the sincere search for truth — Hugh & Mabel Smythe) 3: the body of learning and esp. of research available in a particular field . . . syn[onym] see KNOWLEDGE.

   scholar 1a: one who attends a school or studies under a teacher: PUPIL, STUDENT . . . b: one under the training of a particular master . . . 2a: one who by long systematic study (as in a university) has gained a high degree of mastery in one or more of the academic disciplines; esp: one who has engaged in advanced study and acquired the minutiae of knowledge in some special field along with accuracy and skill in investigation and powers of critical analysis in interpretation of such knowledge . . . b: a learned person; esp: one who has the attitudes (as curiosity, perseverance, initiative, originality, integrity) considered essential for learning . . .

2. Byse, Legal Scholarship, Legal Realism and the Law Teacher's Intellectual Schizophrenia, [hereinafter cited as “Byse"] 13 Nova L. Rev. 9 (1988) and the other articles responding to Byse, are no more guilty of this omission than are any of the other articles on this subject. See, e.g., the symposium entitled American Legal Scholarship: Directions and Dilemmas, 33 J. LEGAL EDUC. 403 (1983), as well as the other articles cited in the notes herein.

3. See, e.g., Abrams, Sing Muse: Legal Scholarship for New Law Teachers, 37 J. LEGAL EDUC. 1 (1987), where the author classifies into three categories - busy work,
determine why a law professor should engage in scholarly publication. What is it intended to accomplish? Who is it supposed to benefit? And how does it relate to the law professor's other duties of teaching and service?

To answer these questions, it is necessary to reach a consensus on the primary reasons law schools exist. Law schools do not all necessarily exist for the same reasons. The law schools and their parent institutions have, to some extent, the right to choose a particular reason for starting and continuing the school's existence. There are different models, but only two would generally be considered legitimate among legal educators today. The first is the law school whose primary purpose is to educate its students. This may be labeled the student-oriented model. Under this model, all activity should be measured according to its effect on the educational process.

The second model is the law school whose primary purpose is to produce scholarly research and publications. Under this model, the education of law students is only the means of financing the publication endeavour. Educating students is merely a necessary evil to be endured by the faculty who must focus their efforts on their real work, publication.
tion. Activity is to be measured only in terms of publications. So it is not acceptable to totally ignore teaching classes because that would undermine the tuition income necessary to finance the publication process, but it would be wasteful to spend more time and effort on teaching than is necessary to keep the tuition dollars coming in. Acceptable or good scholarship under this model would be quite different than under the student-oriented model.

The purpose of this paper is not to argue the correctness or desirability of either model, although this author has a clear preference for the student-oriented model and this paper will focus on it. The purpose of this paper is to point out that scholarship has an integral and logical role in the student-oriented law school. When the law professor is expected to publish in a way which is consistent with her responsibilities in a student-oriented law school, the professor should feel healthy, whole and sane, leading her to be naturally productive. In turn, productivity by itself, and from its recognition, should lead to further feelings of health and sanity, leading to further productivity, a healthy and productive spiral. This is in stark contrast to the feelings of schizophrenia experienced by professors who view their scholarly obligations to be in conflict with the education of their students.

II. Scholarship in the Student-Oriented Law School

Under the student-oriented model, emphasis is on providing the institution's law students with the best possible education. The reason that the institution employs law professors is to provide that education.

6. It seems to this author that a school which places original research and the publication of that research as the first priority (hereinafter such schools will be referred to as "research-oriented") has an obligation to disclose that orientation to current and prospective students. Perusal of law school catalogs did not reveal any schools which made such disclosures. To the contrary, every school seems to claim that it is focused upon efforts to provide its students with the best possible education. But the universality of student-orientation is not the impression one would get when talking to law professors at conferences.

7. The distinction between the student-oriented and the research-oriented law school may be illustrated by focusing on the relationship of the students to the professors' employment contracts. In the research-oriented institution, the students are merely incidental beneficiaries of the professors' employment contracts because the professors' prime responsibilities are research and publishing. However in a student-oriented law school, the law students are the intended third party beneficiaries of the law professors' employment contracts.
"learned profession,"⁸ the law professor must have a high degree of knowledge.⁹ Even maintaining the existing levels of knowledge takes effort, but simply maintaining the amount of knowledge with which the professor started, and even updating that knowledge, would not be enough. In a school committed to providing the best possible education, the professors must be committed to continually learning. Every professor has the responsibility to become more knowledgeable, more learned, and thereby a better educator. This is the learning aspect of scholarship.

Any activity, or combination of activities, which expands a professor's knowledge helps to satisfy the need for learning. A professor learns by performing original research,¹⁰ whether it is in the library or in the field. A professor learns by reading reports of the original research performed by others. A professor learns by reading summaries, restatements, updates, texts and treatises of the law. A professor learns about a subject by experimenting with new ways to present material to his students. A professor learns by actively participating in the practice of law.¹¹ But a law professor also learns by reading about, studying, and even researching in related disciplines such as economics, sociology, anthropology, psychology, literature, history, business and government. As Brainerd Currie stated, "[e]very available resource of knowledge and judgment must be brought to the task of legal education."¹²

But the value of these learning experiences will have to be evaluated in light of the extent to which they interfere with the professor's primary obligation which is to her students. For example, a professor could undoubtedly learn a lot about the law from participating in litigation, but the amount that the professor has learned must be weighed against the costs. When a professor is so busy with the litigation that she is not available to transmit what she has learned from it to her students, then that learning is of little use to the students. In the inevitable cost-benefit analysis, the professor's learning experience is too ex-

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⁹ Knowledge is used here to include both information and skill.
¹⁰ That is, researching to discover something which was previously unknown. Distinguishing what is truly unknown and therefore the proper subject of scholarly research, from what is simply unknown to a particular group would inevitably lead to a protracted discussion well beyond the scope of this paper.
¹¹ E.g., as attorney for one of the parties, as consultant to one of the attorneys, as an arbitrator, mediator, master or judge in the case.
pensive. The professor should limit the extent of her participation to the point where she is able to utilize what she has learned to satisfy her primary professorial responsibilities.

The most important of these responsibilities in a student-oriented law school is teaching his students because that is the primary reason for which he is employed by the institution. But a professor also has the personal obligation to share what he has learned with a wider audience. No professor learned everything he knows, or even everything that he is teaching, from original research. He learned from reading or hearing about the knowledge accumulated through the hard work of others. He has an obligation to share with these sources of knowledge what he learns. And he has an obligation to share what he learns with others on whose work he will rely in his continuing efforts to expand his knowledge. Because this opportunity to learn from others is crucial to the success of every academic venture, it is implicit in academic society that every participant will be obligated to share his knowledge. This is the publication obligation of scholarship.13

The scholarship obligation of an academician, even a legal academician, cannot be satisfied without publication even if she did not and does not personally rely upon the work of others. While learning is the immediate goal of scholarship, the learning of that professor and her students is not alone enough in the student-oriented institution. To be successful in that process of educating its students, the faculty will have to be truly knowledgeable. And the faculty as a group must rely in large part on the publications of other professors even if one professor has no such need. This faculty and every faculty would be seriously hampered in providing learning to its students if the others did not share what they had learned. Consequently, every faculty, as well as every individual professor, justifiably expects that all professors will contribute to the common body of knowledge on which they all are dependent. Thus, publication is not only an individual obligation, but is

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13. This is the point of this author’s disagreement with Professor Byse. Professor Byse sees the teaching and scholarship obligations as entirely separate. He concludes that the “two activities need not be conflicting but can be mutually reinforcing.” Byse, supra note 2, at 29.

In contrast, the author sees scholarship as a product of the professor’s teaching responsibilities. Consequently, there cannot be a conflict between them. Teaching is the purpose for which the scholarship exists in a student-oriented school. Therefore, no problem exists in determining the “relative emphasis” to be placed on each. Teaching should come first and it should be supported by an appropriate amount of scholarship. In contrast, the order would be reversed in a research-oriented law school.
also an institutional obligation. A professor who is learned but fails to share her knowledge is not a scholar because she has failed to fulfill a scholar's obligations individually and as a member of a faculty.

An institution whose members do not participate in the sharing of information by publication is disdained by professors elsewhere as much for the failure to meet this scholarly obligation as for the apparent lack of learning. So a professor who does not publish is a burden on his colleagues who must compensate for his lack of productivity or endure the negative effects, realizing that the harm to the school's reputation will be felt primarily by the students who rely on the school to provide them with an education and to establish the public acceptance of the value of that education. In large part, this is accomplished by publication.

Having reached this conclusion, it is time to deal with the question which is at the heart of the scholarship discussion, i.e., what kind of published piece satisfies this publication obligation? Certainly that would be answered by determining if the author and the readers learn something of value from the piece which contributed, at least potentially, to legal education. A law professor must make some rational choices about how to pursue research, keeping in mind that the published result will be used to measure the success of the learning and sharing efforts. But in the best possible academic world, the professor should not be constrained by a predetermined hierarchy of best or better type of publication. Nor should the professor be constrained by a predetermined choice of what is the best, or only, form of publication or what is the best, or only, place where a scholarly piece may be published.

Similarly, the research approach and the politics of the author are irrelevant in determining the value of a publication unless the author allows them to interfere with learning and sharing knowledge. No professor could successfully master every discipline and research methodology which might produce new knowledge about the law, but every professor would benefit from the opportunity to read about the results


15. An excellent example of effective scholarship in a non-law review article format is H. Hart & A. Sacks, The Legal Process: Basic Problems in the Making and Application of Law (1958). These are course materials which were never commercially published, but they have had a significant effect on many students and law professors and on the development of legal education.
of research. It does not diminish the value of that research to the professor simply because it may be the result of a method or approach beyond the professor's own expertise. In fact, the professor would benefit from the widest possible range of learning and that probably could be acquired by reading about research performed by the widest possible range of methods and approaches. So legal education would best be served by encouraging a pluralism in research and publication. The choice of method and approach should be based solely upon what best serves the professor's need to learn and his subsequent efforts to share what he has learned.

By engaging in publication, a professor gains notoriety and credibility and by this, she adds to the reputation of the law school at which she teaches. The better known the faculty members, the "better" a school will be considered. People assume, rightly or wrongly, that the school with the "better" reputation provides a better education. The student at the "better" school will probably have an easier time getting a job, transferring from one school to another, or getting into a graduate school. The value of the "better" school's degree has been enhanced by its professors' publication record. It is certainly important to the students that this faculty's publication record may give them greater opportunity to utilize their education, and that is important in a student-oriented institution.

The school's reputation for providing its students access to these opportunities will make it easier for the institution to attract students. Publication may also enhance the school's reputation with school counsellors, pre-law advisors, teachers and lawyers who may advise prospective law students on the choice of law school. As the reputation of the school grows, obtaining a place in the class becomes more difficult and the institution can choose the "better" students. It is not suggested that exclusivity by itself is desirable, or that it is even a legitimate end, although many would assert that it is. But it is undeniable that as it becomes more difficult to obtain a commodity, the commodity's value will increase. As it becomes more difficult to get into a school, the education at that school is perceived as being better and that benefits the school's students when they look for jobs, seek further education or other opportunities.

The heightened reputation provided by well published professors may make it easier for the institution to attract money in the form of donations and grants. Increased funding means more resources and should translate into a better educational environment, directly benefitting the students who are studying there and also adding to the prestige
of the institution, further impressing potential employers: a cycle which could cause an upward spiral of the fortunes of the school and its students.

Legal publications may criticize the law and suggest improvements. This may stimulate change or provide the law makers with the needed tools for change. This is a legitimate goal for a law professor as it is for any citizen and for any member of a learned profession like lawyering. The professor is in a unique position to do this because she has acquired specialized knowledge in fulfilling her teaching and scholarship functions, focusing on particular aspects to a degree not possible for other members of the legal community. Once having acquired that knowledge, it is the professor's responsibility to share it so it may benefit the community at large, particularly as that could significantly benefit the professor's and the law school's students. While helping in the improvement of the law is desirable by itself, it has particular worth as a product of scholarly publication because it enhances the reputation of the professor to the benefit of the law school and to the ultimate benefit of the students. It also enables the professor to provide students with particular insights into the development of the law.

Also, a professor who publishes is more likely to be able to participate in the process of the growth and progress of the law. Because she has made a reputation for interest and expertise in an area, she may be invited to participate in litigation, legislation, rule making, or law reform. It increases the reputation of the professor and, once again, that benefits the institution and ultimately the institution's students.

It cannot be an answer to say that the professor has nothing to contribute. A professor should constantly be learning more and more


17. This is the author's point of disagreement with Turner, Publish or Be Damned, 31 J. LEGAL EDUC. 550 (1982) (which suggests that requiring the same scholarship from all faculty is wasteful and that the law schools would be better off letting each professor emphasize his area of strength, e.g., classroom teaching or writing. Turner advocates each professor be required to produce the same total effort, but be allowed to allocate that effort to the professor's area of strength and interest); and Bard, Legal Scholarship and the Professional Responsibility of Law Professors, 16 CONN. L. REV. 731 (1984) (which advocates encouraging professors to engage in public service to be good role models because most of them will never be good scholars). But by expanding what would be acceptable forms of "scholarship" from these professors, we would encourage them to share the fruits of their strengths, e.g., a better means of teaching, if their strength is not original theoretical research. See also, Murray, Publish and Perish-By Suffocation, 27 J. LEGAL EDUC. 566 (1976).
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about his subjects. Certainly any capable person who is doing that year after year must develop some insights which would be of value to others. A person who has the intellectual ability to teach at the law school level and who continues to teach over years but does not develop any insights is just not thinking. Moreover, that person is ignoring the learning opportunity which is inherent in writing.

Some professors may find it difficult to integrate their highly theoretical research directly into their teaching\(^{18}\) because law school, although nominally a graduate school, is essentially involved with teaching at the introductory level. But direct integration of everything learned is not necessary because the indirect benefits may be substantial. A professor who cannot see any benefit to his students from his research has either not given enough thought to how his research may be transmitted through the law school curriculum or has chosen inappropriate topics for research. There is little justification for a law professor considering only research which does not in some way benefit his students.

By putting what she has learned into written form, the professor learns even more. She is forced to organize and analyze more carefully and completely. She is forced to reconsider prior assumptions and understandings. This expands the way the professor thinks about the subject. By having that written product published, it provides the professor with valuable feedback for her ideas. There may be information known to a reader which was not available to the professor. There may be weaknesses, or even strengths, in the logic which would not be appreciated without publication. Readers may be able to provide helpful insights in reaction to the piece which are not available within the confines of the home law school. So writing and publishing is also an integral part of the learning aspect of scholarship.

Finally, scholarship should be a source of excitement and satisfaction for the professor. It should be a chance for him to satisfy his curiosity and reveal the products of that search to an interested readership. This should renew the professor's interest in his subjects, providing the spice for what might otherwise become the mind-dulling repetition of courses to which nothing really new had been added.\(^{19}\) Even if every


\(^{19}\) Some professors avoid boredom by frequently changing course books or even courses. This does bring some freshness and may even provide the insights from the comparison. But those insights should be developed by the writing process and shared
single moment of learning and writing is not actually pleasurable, the process should be gratifying in the long run as the benefits accrue in the form of expanded knowledge, expanded interest, better teaching and better opportunities for the students. When great effort is expended on "scholarship" but this gratification is not experienced, something has gone wrong in that law school and, perhaps in legal education.

III. Causes of and Cures for Scholarship Schizophrenia

Scholarship has been defined as having two components, learning and sharing that learning by publication. The point of scholarship in a student-oriented law school is to enhance the education of the school's students. But legal education has generally lost sight of that purpose. Law professors feel that they are being subjected to pressures to publish which are inconsistent with the goals of scholarship. When those pressures are extreme, and this perception is particularly common among the untenured junior faculty, professors may feel driven into schizophrenia.\textsuperscript{40}

\begin{itemize}
\item with others who may not have the opportunity to perform the same comparison independently. Moreover, this jumping around approach more probably leads only to superficial teaching because a course or book will be abandoned for another before the professor has developed any real depth.
\item This is the "intellectual schizophrenia" of which Professor Byse speaks in Byse, \textit{supra} note 2, at 18. The definitions of schizophrenia include:
\begin{enumerate}
\item a psychotic disorder of unknown complex etiology that occurs as simple, paranoid, catatonic, or hebephrenic, is characterized by disturbance in thinking involving a distortion of the usual logical relations between ideas, a separation between the intellect and the emotions so that the patient's feelings or their manifestations seem inappropriate to his life situation, and a reduced tolerance for the stress of interpersonal relations so that the patient retreats from social intercourse into his own fantasy life and commonly into delusions and hallucinations, and may when untreated or unsuccessfully treated go on to marked deterioration or regression in the patient's behavior though often unaccompanied by further intellectual loss.
\item SPLIT PERSONALITY. \textit{WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED}, 2030 (1981); and:
\begin{itemize}
\item a mental disorder characterized by indifference, withdrawal, hallucinations, and delusions of persecution and omnipotence, often with unimpaired intelligence. . . .
\end{itemize}
\end{enumerate}
\end{itemize}

Neither Professor Byse nor Professor Bergin were suggesting that law professors
For the newer, untenured professors, the pressure to publish is immediate. At every law school, they are told that publication is necessary to obtain tenure. But these new professors are also in the stage of development when they are learning to be professional teachers of the law. They feel the need to place the greatest emphasis on the learning aspect of scholarship. They also feel the need to learn teaching skills so they can fulfill their primary teaching responsibility. But misdirected publication pressure implies that they should sacrifice their teaching efforts so as to give emphasis to publishing, as if the two were inherently in conflict.

Only when the entire scholarship function is understood to be supportive of the teaching effort can the conflict be eliminated and the apparent competition for the professor’s time and effort reconciled. Scholarship during the early teaching years should focus on learning which is appropriate for the professor’s teaching duties and aspirations. Publication efforts should be aimed at learning how to publish and not on trying to impress the senior law faculty or professors in other departments. The tenure decision should be based upon the question of whether this aspiring professor has learned the teaching skills and scholarship skills appropriate for the unique role of law professor. The pre-tenure years should be acknowledged as essentially a period of learning for most law professors.

Of course, learning to be a published scholar is difficult and time consuming. Few beginning law professors have a background which has prepared them for this role. But if the professor learns to be a scholar in a cooperative, supportive atmosphere, scholarship will become a natural part of professorial life. This may be interpreted as an argument for longer probationary period before the tenure decision. The rush to judgment in most institutions, an “up or out” situation, seems to preclude the opportunity for gradual development which is being advocated.21 Tenure requirements are not the issue here. What is the issue

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generally suffer from serious mental illness. Byse, supra note 2, at 18; Bergin, The Law Teacher: A Man Divided Against Himself, 54 VA. L. REV. 637 (1968). They have used the term to describe the uncomfortable feeling of persecution experienced by one who thinks that she is being torn apart by conflicting forces beyond her control. This paper uses it in the same sense.

21. This is not to imply that it would be inappropriate to require that new professors, during their probationary pre-tenure years, attempt certain of the different types of publication and demonstrate that they will be able, should the occasion arise, to publish in this form after tenure. However, the emphasis should be on learning to use these forms rather than on the product produced.
is the profession's and the institution's publication expectations. Where the new professor is expected to produce mammoth works solely to impress a tenure committee and a university administration, the product is not worth the cost.

When the professor, the institution or the profession loses the perspective that the appropriate role of publication is to support teaching, then publication becomes onerous. If the amount of publication expected interferes with enthusiastic teaching, reasonable growth in learning and publication skills, and active participation in the life of the law school, the institution is frustrating its professors and causing them to feel schizophrenic. It is also cheating its students by undermining the school’s primary purpose. When a junior professor considers talking to inquisitive students impossible because it is an intrusion into “precious writing time,” it is a symptom of an unhealthy atmosphere at that law school.

It does not lead to a healthy productive atmosphere for senior professors either. Publication indulged in for its own sake, or solely to build the reputation of the author lacks a legitimate purpose and, consequently, is not satisfying. The scholarly publication of American law professors is criticized as being in an awful state. Many professors admit, off the record, that they find writing law review articles to be a useless activity except in meeting the school’s publication requirements. This may explain why there seems to be a distinct decline in

23. Of course, there is a point at which talking with the students becomes less productive than other activities. But the cost-benefit analysis depends on the circumstances.
25. Accordingly, one professor writes:
   The cruel reality is that hardly anyone reads law review articles. Nevertheless, we scan tables of contents and resumes and we make judgments about candidates (and colleagues) which are based largely on decisions made by students with two years of legal education about what is fashionable or worthy. Too often, finding out where an article appears is the end of our evaluation of it. . . . We would not know a “breakthrough” if we tripped over it. Yet law professors seldom confront the issue of what criteria we apply. If we did, we might discover the abyss of uncertainty. We would then be less able to congratulate ourselves on the way we wield power and principle.
   Soifer, MuSings, 37 J. LEGAL EDUC. 20, 23 (1987).
the productivity once professors receive tenure. This adds to the discontent of junior professors who feel that they are subjected to pressures to produce by senior faculty whose behavior reveals, if not their contempt for the endeavor, at least their own lack of commitment to it.

Today the volume of law review articles is overwhelming. A new law review seems to be formed every month and professors could not possibly read every article published in a substantive area. This has created a voracious appetite for more articles and professors are under pressure to produce them. But these professors realize how little of what is written will ever get read. This pressure is in direct conflict with the behavior which the professor has logically or intuitively decided is right. He should be doing whatever would most enhance the education of his students. His time could be better spent on efforts which would have a more direct relationship to the professor's teaching efforts.

However, if the professor, the school and the profession acknowledge the appropriate role of scholarship in a student-oriented school, this conflict would be eliminated. Expecting professors to acquire knowledge relevant to their teaching responsibilities and share that knowledge should replace pressure to publish in a particular form and forum. An appreciation of the different ways in which acquired knowledge can be shared should replace irrational rules about what "counts" as scholarship, and how much. It would also eliminate the misplaced focus on the quantity of publications, replacing it with emphasis on the quality of the education provided at the school.

More important, appropriate recognition should be given to the importance of writing which is directly aimed at students and at lawyers. Writing intended for use by students is directly supportive of the primary teaching function of the student-oriented law school. If well done, it may also play an important learning role for the professor. These efforts should not be denigrated as not being scholarly. They


27. This feeling of conflict is clearly expressed by Professor Rohr, Rohr, A Law School for the Consumer, 13 Nova L. Rev. 101 (1988).

28. See, Priest, Social Science Theory and Legal Education: The Law School as University, 33 J. LEGAL EDUC. 437 (1983), where the author points out that treatise authorship is not considered to be a creditable activity by those "on the edge of legal thought." It has been abandoned to practitioners. See also, Simpson, The Rise and Fall of the Legal Treatise: Legal Principles and the Forms of Legal Literature, 48 U. CHI. L. REV. 632 (1981); Conard, The Roles of Lawbooks, 80 MICH. L. REV. 567, 571
should be considered scholarly and worthwhile to the extent that they effectively communicate learning with the student audience.

Nor should a piece be denigrated simply because it is aimed at a lawyer audience rather than at academicians. Students benefit when the law school is appreciated and respected by the practicing bar. But most members of the bar are alienated from law schools because they conclude that law schools have become unrelated to the practice of law, even though graduation from law school is a requisite for admission to the bar. That discontent can significantly interfere with the educational process, particularly when students repeatedly hear about it from lawyers. But law professors are discouraged from using their talents in dealing with this problem because writing for the bar would not be "scholarly enough."

Why discourage writing for lawyers if the professor is learning something from the experience which would help him educate his students? Aiming the publication at lawyers does not make the learning it contains any less a part of the body of knowledge which is available to the academic community and it could produce significant benefits for his students. This institutional message produces conflict for the law professor who is dedicated to making the educational process work. It

(1982), suggesting that treatise writing is only academically worthwhile in "a new or underdeveloped area."

Abandonment of text writing by professors may cause considerable harm if students and lawyers are consequently left with little choice but to study from a text which is in some way defective or biased. See, e.g., Combs, Crime in the Stacks, or A Tale of a Text: A Feminist Response to a Criminal Law Textbook, 38 J. LEGAL EDUC. 117 (1988).

29. This is noted in Wellington, Challenges to Legal Education: The "Two Cultures" Phenomenon, 37 J. LEGAL EDUC. 327, 329 (1987):

Too many very able academic lawyers who, for whatever reasons, do not venture outside the ivy-covered walls, scorn the practicing lawyer and his work ([d]eprecate it) and look for rewards only from within the universities. This is an established phenomenon. It is now visible in a second generation of law teachers . . . . I believe that it is one of the factors that contributes to the extensive — but perhaps not intensive — unhappiness of law students. It is very difficult to do much about this.

30. A frequent concern expressed by professors at conferences is the effect which working for a law firm can have on students. Few law schools, certainly none in urban areas, can report that they do not have a significant number of their students employed in area law offices of one sort or another. The biggest problem is that the students become disenchanted with law school because it is not related to the real world as they perceive it. And students frequently are told by the lawyers to forget about that law school foolishness because it has nothing to do with the practice of law.
produces even greater conflict for the professor whose self-image is that of a lawyer.

Publications aimed at lawyers and students have been denied value for historical reasons. As law schools became parts of universities, rather than independent professional or trade schools, they sought respectability in this new setting. The great need to fit into the university community produced pressures to look like the other academic departments.\(^3\) Having professors engage in publication which looked like the publication of the “academic” departments would help the assimilation process. But the question of acceptance in the university is not a genuine current concern and, even if it were, it would not justify the expense to the law school in lost learning, teaching and morale.

Narrow definitions of acceptable scholarship produce conflict in curious, thoughtful people. The assertion that scholarship should include only original and purely theoretical research which has been written and published in the most esoteric form harks back to Langdell’s thesis that the law was a natural science which could be studied by scientific methods in the library which he considered to be the equivalent of the scientific laboratory. Few would still cling to that antiquated model and it is equally inappropriate to cling to the narrow concept of scholarship as including only doctrinal analysis.\(^3\) But it would be equally inappropriate to define scholarship as including only social science based legal research and publication.

One who becomes a professor because she is a good lawyer and is then pressured to research and publish articles based upon a social science methodology\(^3\) will certainly experience feelings of schizophrenia. Why pressure a person to perform a task for which she was never

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31. This is explained and explored by Professor Chase in Chase, *The Legal Scholar as Producer* 13 Nova L. Rev. 57 (1988).


33. For an example of the kind of logic which would give the new professors the idea that they are under that pressure, see Byse, *supra* note 2, at 18; Auerbach, *Legal Education and Some of Its Discontents*, 34 J. LEGAL EDUC. 43 (1984); Schlegel, *Searching for Archimedes — Legal Education, Legal Scholarship, and Liberal Ideology*, 34 J. LEGAL EDUC. 103 (1984).
trained and encourage her to deprecate the very profession of which she is a member and for which she is training her students? Why make the new law professor feel incompetent for being skilled only in law when that is the field of study of the law school? It is totally irrational. A law school which acknowledges only social science based research and publication should hire only social scientists. However, a law school staffed entirely by social scientists may be unable to perform its educational tasks. It will need some lawyers on the faculty, and limiting a lawyer to engaging only in social science research would prevent her from doing the type of scholarship for which she has the appropriate background. It also ignores the value of learning which is based upon any other research model, assuming that only social science learning has real value. Law professors, however, need the opportunity to acquire knowledge which is not restricted to social science prospective. That need for the widest possible learning experience should be the crucial point in defining acceptable scholarly publication.

A thoughtfully written piece which increases the knowledge of the author and the readers and also benefits students, directly or indirectly, should be accepted as scholarship whether it is a traditional law review article, a scholarly book, an essay, a book review, a textbook or treatise, a case book, or other teaching materials. The value accorded the piece should be measured by the extent that it benefits the author, her students, and her institution and adds to the common fund of knowledge. When the law school, the university, and the profession accept this standard, the environment of legal education will become far healthier, and with that health will come greater and more valuable scholarly productivity.

34. Zimring, *Where Do the New Scholars Learn New Scholarship?* 33 J. LEGAL EDUC. 453 (1983), suggesting that the professor will either have to be self-taught, have a double doctorate, or arrange for a collaboration with a scholar from the appropriate discipline who has been trained in the appropriate methodology.

35. Crampton, *Demystifying Legal Scholarship*, 75 GEO. L.J. 1, 14 (1986), arguing that traditional doctrinal analysis was and is highly valuable to lawyers and judges, is compatible with the professor's teaching duties, and provides useful law reform.

36. "Written" would include not only something which appears in print but also things in other media, such as computer programs and video tapes.

37. The profession includes not only law professors as a group, but also the bodies that accredit institutions, i.e., the American Bar Association and the Association of American Law Schools.
IV. Conclusion

Scholarship has intrinsic value to all members of a student-oriented or a research-oriented law school, particularly if both learning and publishing aspects of scholarship are considered. But a law school which has not clearly chosen whether it is research-oriented or student-oriented, or has failed to follow the model chosen rationally, will not achieve its scholarly potential. Regardless of whether the fault is internal or imposed externally by the university or the profession, the result will be more schizophrenia than scholarship. Pressure on law professors to publish, which ignores logical goals, may coerce the professors into producing a large quantity of publication, but at the sacrifice of fundamental student-oriented goals.

In a student-oriented law school, the purpose of scholarship is to increase the knowledge of the participants and to benefit the students, directly and indirectly. Although most law schools seem to provide sufficient opportunity, legal scholarship has not flourished in American legal education because few professors and fewer institutions understand and appreciate its purpose. To make scholarship thrive naturally, the first step is for student-oriented law schools to recognize, encourage and appreciate scholarship as learning and the sharing of learning which is relevant to the educational process. Scholarship will truly flourish when scholarship schizophrenia is eliminated. That will be accomplished by the acceptance of this understanding by the entire legal education establishment.