

# Why We Write: Reflections on Legal Scholarship

EMILY SHERWIN\*

## INTRODUCTION

Scholars have been writing about law for many centuries. Recently, however, some changes have occurred as law schools have sought to establish law as an academic discipline within universities. The volume of scholarship has increased dramatically, new genres of legal scholarship have emerged, and efforts have been made to integrate the methods and insights of other disciplines into legal research. A quick glance at the writing that currently appears in law journals will show that increasing numbers of legal scholars see themselves as something other than practitioners of a craft attempting to clarify and rationalize the internal rules of the craft.

The surge in legal scholarship, and the changes in its content, raise questions about why legal scholars write and what they hope to accomplish by doing so. Most legal writers, like most writers generally, probably are motivated by a combination of personal and impersonal ends. We hope to succeed in our profession, establish our reputations, fulfill institutional duty, and remain employed. Beyond this, are we continuing the traditional enterprise of imposing order on law, with the help of new ideas imported from other disciplines? Are we seeking to improve the law by bringing moral, economic, and psychological wisdom to bear in a way that will

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\* Professor of Law, Cornell Law School. The essays in this collection are based on a panel discussion held by the American Association of Law Schools Section on Scholarship on January 4, 2004.

enlighten judges and practitioners? Do we hope to change the rules and conditions of society, through the medium of law? Are we fulfilling professional duty in the best way we know how, with no particular plan in mind? Are we just having fun?

In the essays that follow, a group of extraordinarily successful legal scholars set out their thoughts on the enterprise of legal scholarship. Their conceptions of that enterprise vary widely. The range of their views and, of course, the very idea of a set of articles on why we write articles, suggests the uncertainty that affects the field. At the same time, most of the authors are reasonably optimistic about the value of scholarship about law.

Theodore Eisenberg is Henry Allen Mark Professor of Law at Cornell University. He is the author of numerous books and articles on a variety of subjects, and is editor-in-chief of the recently established *Journal of Empirical Legal Studies*. Professor Eisenberg explains why his own scholarship has focused increasingly on empirical assessment of the legal system and provides examples of surprising information revealed by recent empirical work.

Yale Kamisar is Clarence Darrow Distinguished University Professor of Law at the University of Michigan and Professor of Law at the University of San Diego and a well-known expert in criminal justice. He is the author of two casebooks now in their ninth and tenth editions, as well as many other books and journal articles. Professor Kamisar sees legal scholarship as a means of improving the quality of justice in our legal system. He also points out that the luxuries of time, resources, and freedom of inquiry available to law professors provide them with a special opportunity to perform this task.

Jonathan Macey, an extremely prolific scholar in the field of corporate law, recently joined the law faculty at Yale University. At last count, he had published thirteen books and nearly 150 articles, book chapters, and book reviews. Professor Macey examines the relationship between law schools and their affiliated universities, finding a correlation between successful interdisciplinary legal scholarship and close ties to a successful university.

Professor Steven Smith is Professor of Law at the University of San Diego. Professor Smith is a leading authority on law and religion and has published five books and many journal articles. He views scholarship as a calling and suggests that in his own case the calling is to present legal analysis as an alternative to purely “scientific” approaches to human activity.

Professor Kimberly Yuracko has been teaching law at Northwestern University since 2002. She specializes in employment law and feminist theory, and has already published a book and several journal articles. Professor Yuracko traces the “high and low” motivations that compel her to write.