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## The Peer Review Experiment

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The Honorable Richard A. Posner \*

The *South Carolina Law Review* deserves commendation for experimenting with peer review, a practice virtually unknown—so far as I am aware—among student-edited law reviews, although student editors do sometimes seek informal advice from faculty members at their school concerning submitted manuscripts. Peer review is nearly universal not only in scholarly journals in fields other than law but also in law journals edited by faculty rather than students. Although there are now a number of such journals, scholarly publication in law, including faculty publication, continues to be dominated by student-edited journals.

There is nothing to prevent a student-edited law journal from submitting article submissions to faculty or practitioners for review in a systematic fashion, comparable to that used in journals edited by faculty, as the *Review* contemplates. The process is likely to increase not only the quality of the articles published by the journal but also the quality of the articles it rejects on the basis of the reviews, for negative reviews can help an author to revise, whether or not the journal that turned down the article would be willing to consider a revised version. Authors should therefore welcome peer review, even though it will result in occasional disappointments.

The principal negative is not the disappointment of rejection, for plenty of articles are rejected by students without benefit of faculty advice—that can be even more irritating, and there is no offsetting benefit consisting of receipt of expert criticisms that may enable improvements in the next draft. The principal negative is delay, and it is compounded by the near-universal practice of forbidding authors to submit an article to more than one journal at a time. If the average length of the peer-review process is three months (this is just a guess—and I know that for many journals in other fields it is longer), then an author whose submission is turned down by the first two journals to which he submits it, but accepted by the third, has lost nine months. The delay would be shorter, obviously, if multiple simultaneous submissions were permitted, but the result would be an enormous increase in the burden of reviewing, for there would be a great many more reviews than there would be articles submitted, rather than just twice as many (assuming two reviews per submission). For the article in my example that is accepted only after two rejections, instead of two reviews there would be six.

In fields in which all or virtually all journals are peer-reviewed, authors have no choice no matter how exasperated they are by delay in action on their submissions. They must grin and bear it. The situation in law is of course different, and that is a great challenge for the *South Carolina Law Review*, because some authors, trading off the benefits of peer review against the costs, will find the latter preponderant. So it was natural and prudent for the *Review* to

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permit its authors to submit simultaneously elsewhere, and this would not burden reviewers because the other journals to which the authors submit their articles will not be employing peer review. As explained in the editors' introduction, they encountered drawbacks and have decided to substitute a different method, involving the creation of a consortium of reviews committed to peer review, and exclusive submission of articles to the entire consortium, with each member journal making its own decision on whether to accept the article, based on a single set of reviews distributed to all the journals. This is an ingenious procedure, and it will be interesting to see whether it is successful.

The *South Carolina Law Review* has fixed a deadline for reviewers of two months, which is good, but it remains to be seen whether it can be enforced. What would help to enforce it would be paying reviewers, conditional on their meeting the deadline. Even nominal payments, such as \$75 or \$100, would increase compliance significantly.

Law journals that adopt peer reviewing can be expected to experience a boost in quality, prestige, and possibly even circulation. True, they will lose some good articles to the impatience of the authors. But I think they will gain more good articles because of the career advantages to authors of publishing in a peer-reviewed journal. Modern law schools, in making faculty hiring decisions, place unprecedented weight on scholarly publication, and are bound to weight an article more if it has undergone peer review—and this in addition to the greater weight that it will earn as a result of criticisms and suggestions by the peer reviewers. For an article published in a student journal that uses peer review has been evaluated by academics as well as by students, and that evaluation (presumed positive) will carry greater weight with other academics.