



WHAT IS A SCHOLARLY PAPER?

IT DEPENDS ON WHY YOU'RE ASKING

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WHAT COUNTS AS SCHOLARSHIP depends heavily on the context and the audience.

Journals and SSRN should publish papers that are useful to somebody. That might mean practicing lawyers, judges, law professors, journalists, or the general public. An article on how to submit to law reviews¹ is appropriate for publication as scholarship. So is an article canvassing whether (and how) federal district courts are applying the *Twiqbal* heightened pleading standard to affirmative defenses.² Explaining the basics of impeachment to journalists and/or the public qualifies as well.³ Ideas on how to teach law – whether general or

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¹ See, e.g., Bridget J. Crawford, *Submitting to Specialty Law Reviews and Journals in Gender, Women, & Sexuality*, 22 GREEN BAG 2d 211 (2019); Allan Rostron & Nancy Levit, *Information for Submitting Articles to Law Reviews and Journals*, January 2020, papers.ssrn.com/sol3/papers.cfm?abstract_id=1019029.

² See Brian Soucek & Remington B. Lamons, *Heightened Pleading Standards for Defendants: A Case Study of Court-Counting Precedent*, 70 ALA. L. REV. 875 (2019). (This article goes beyond court-counting to evaluate the practice of court-counting itself, but it would be worthy of publication even had it not done so.)

³ See, e.g., Nikolas Bowie, *Don't Be Confused by Trump's Defense. What He is Accused of Are Crimes*, NEW YORK TIMES, Jan. 27, 2020, www.nytimes.com/2020/01/27/opinion/impeachment-defense-trump.html. That this article appeared as an Op-Ed does not automatically make it non-scholarly. The lengthy law-review publication process simply means that publishing in the *New York Times* is a more effective forum here.

on particular topics – are useful scholarship.⁴ And, of course, tedious debates on the pros and cons of originalism, pie-in-the-sky proposals for “fixing” the Supreme Court, and articles discussing how many angels can legally dance on the head of a pin count as scholarship for these purposes.⁵

Hiring and tenure committees, however, should be more discerning. Their definition of scholarship requires that the paper actually make a contribution to law as an academic discipline, and not just to the practice of law, the teaching of law, or the activity of being a law professor. In other words, only the last set of items in my second paragraph are truly scholarly for purposes of hiring and tenure. Of course, not all scholarly papers on this definition are necessarily good scholarship. So a particular 100-page article in the *Harvard Law Review* might not be worth much but a two-pager in the *Green Bag* might show off the candidate’s creativity, style, and potential for contributing to the academic discipline of law.

So what’s a scholar to do? Before tenure, you have to satisfy hiring and tenure committees. Follow the rules of my third paragraph. (And, unfortunately, placement and length do matter.) After that, write whatever strikes your fancy, as long as it contributes something. Write if, and only if, you have something to say. Don’t write out of obligation or ambition, or to impress. Enlighten somebody, somewhere. And keep it short.



⁴ Articles in the *Journal of Legal Education* have, on occasion, prompted me to try something new in my classes.

⁵ In accordance with the rules of the call for papers, I provide no citations for such articles. But I sheepishly admit I’ve written more than one of them.