



# The Yale Law Journal

Volume 90  
Number 5  
April 1981

## Symposium

### *Legal Scholarship: Its Nature and Purposes*

Foreword: Legal Scholarship and Moral Education  
*Anthony T. Kronman*

Two Modes of Legal Thought  
*George P. Fletcher*

Comments by *Barbara D. Underwood* and *Owen M. Fiss*

Historicism in Legal Scholarship  
*Robert W. Gordon*

Comment by *Morton J. Horwitz*

The Fundamental Rights Controversy: The Essential Contradictions  
of Normative Constitutional Scholarship  
*Paul Brest*

Comment by *Geoffrey C. Hazard, Jr.*

The Present Situation in Legal Scholarship  
*Richard A. Posner*

Comment by *Bruce A. Ackerman*

From a Language Perspective  
*Christopher D. Stone*

Comments by *Ellen A. Peters* and *Martin Shapiro*

Legal Scholarship: Its Causes and Cure  
*Mark Tushnet*

Comments by *Frank I. Michelman* and *Alan D. Freeman*

The Interdisciplinary Study of Legal Evolution  
*Robert C. Clark*

Comments by *Duncan Kennedy* and *George L. Priest*

Afterword  
*Arthur A. Leff*

# The Yale Law Journal

Volume 90, Number 5, April 1981

## Contents

Papers from the Yale Law Journal Symposium on  
Legal Scholarship: Its Nature and Purposes

*Held at the Yale Law School on February 13-15, 1981*

Foreword: Legal Scholarship and Moral Education		
	<i>Anthony T. Kronman</i>	955
Two Modes of Legal Thought	<i>George P. Fletcher</i>	970
<i>Comments: Against Dichotomy</i>	<i>Barbara D. Underwood</i>	1004
The Varieties of Positivism	<i>Owen M. Fiss</i>	1007
Historicism in Legal Scholarship	<i>Robert W. Gordon</i>	1017
<i>Comment: The Historical Contingency of the</i>		
Role of History	<i>Morton J. Horwitz</i>	1057
<i>Summary of Discussion</i>		1060
The Fundamental Rights Controversy: The Essential Contradictions of Normative Constitutional Scholarship	<i>Paul Brest</i>	1063
<i>Comment: Commentary on the "Fundamental</i>		
Values" Controversy	<i>Geoffrey C. Hazard, Jr.</i>	1110
The Present Situation in Legal Scholarship	<i>Richard A. Posner</i>	1113
<i>Comment: The Marketplace of Ideas</i>	<i>Bruce A. Ackerman</i>	1131
From a Language Perspective	<i>Christopher D. Stone</i>	1149

<i>Comments: Reality and the Language of the Law</i>		
	<i>Ellen A. Peters</i>	1193
On the Regrettable Decline of Law		
French: Or Shapiro Jettet Le Brickbat		
	<i>Martin Shapiro</i>	1198
Legal Scholarship: Its Causes and Cure	<i>Mark Tushnet</i>	1205
<i>Comments: Politics as Medicine: On Misdiagnosing</i>		
Legal Scholarship	<i>Frank I. Michelman</i>	1224
Truth and Mystification in Legal Scholarship		
	<i>Alan D. Freeman</i>	1229
The Interdisciplinary Study of Legal Evolution		
	<i>Robert C. Clark</i>	1238
<i>Comments: Cost-Reduction Theory as Legitimation</i>		
	<i>Duncan Kennedy</i>	1275
The New Scientism in Legal Scholarship:		
A Comment on Clark and Posner		
	<i>George L. Priest</i>	1284
Afterword		
	<i>Arthur A. Leff</i>	1296

The Yale Law Journal

ISSN 0044-0094

Published monthly, November to January and March to July, inclusive, at New Haven, Connecticut, by the Yale Law Journal Company, Inc. Editorial and General Offices, 127 Wall Street, New Haven, Connecticut. Mailing address, The Yale Law Journal, 401A Yale Station, New Haven, Connecticut 06520. Domestic subscription price, \$25.00 per year; Canadian and Mexican, \$27.00 per year; Foreign, \$28.00 per year. Subscriptions are accepted only on a volume basis, starting with the first issue. Each issue of the current volume can be purchased for \$5.50 from the Yale Law Journal Company (check with order). For all back issues not from the current volume, inquire of Fred B. Rothman & Company, 10368 West Centennial Road, Littleton, Colo. 80123 (\$7.50 for issues, check with order). Address all other business communications to the Officers of the Yale Law Journal Company. If a subscriber wishes to discontinue the Journal at the expiration of his subscription, notice to that effect should be sent to the Treasurer; otherwise, it is assumed that continuation of the subscription is desired. Second-class postage PAID at New Haven, Connecticut.

Copyright © 1981 by the Yale Law Journal Company, Inc. Except as otherwise provided, the author of each article in this issue has granted permission for copies of that article to be made for classroom use, provided that (1) copies are distributed at or below cost, (2) author and journal are identified, (3) proper notice of copyright is affixed to each copy, and (4) the user notifies the Yale Law Journal that he has made such copies.