Recent Developments

Building an African Academic Law Journal: Some Reflections

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Abstract

The Strathmore Law Review (SLR) enters its third volume this year. In this short non-academic essay, the author charts the path that the SLR has taken, discussing the underlying principles behind some of the important decisions made, as well as the lessons drawn from the first two years of publishing. The essay also broaches some of the critical issues in legal-academic writing today. Eventually, its insights aim at playing a role, however small, in helping decision-makers create and facilitate better quality legal-academic publications touching on African issues.

Keywords: Strathmore Law Review, legal academic and internal peer review

I. Background

It might surprise some that the decision to write about the beginnings of the SLR was far from easy to make. The more I considered it, the more doubts crept into my mind. Some were institutional, others more personal. The former included questions such as whether the SLR has, since its beginnings, become 'big enough' or 'influential enough' to be worth reflecting on; as well as whether such an account will serve to limit or to spur the SLR. The latter was definitely more difficult to get past, and included questions on whether such an account would misrepresent some facts and show biases; and whether such an account would really be of use to anyone or would instead be a vanity-muddied journey.

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The decision to go ahead and do it was mostly influenced by my conclusion that such an account may actually be useful to someone. I recalled that when I (and my 'founding' colleagues, who will appear in more detail later on) first sought to set up the SLR, we found ourselves confronted by significant information asymmetry. While there were several items one could read about other matters pertaining to legal-academic journals, there was a distinct dearth of information on the basics of how well-regarded academic law journals *were set up*, and how they *are run*. Apart from Griswold's insightful piece on the Harvard Law Review,[1] and a rare 'Constitution of the Southampton Student Law Review',[2] most information came from talking to those who had the experience of running academic journals.[3] As a way, then, of playing my small part for someone who may later on be in the position in which I found myself — or one of similar variance — I decided to write this piece. And just as influential as this idealistic reason was my belief that knowledge for its own sake can sometimes be a good thing. Finnis' writings, quite instructive in this regard, convinced me that some persons would simply want to find out the 'how' or the 'why' as an end in itself.[4]

II. Beginnings

The groundwork for the publication of a law journal managed entirely by students at Strathmore Law School (SLS) was laid before the second graduating class (in which I was) started law school. In the first days of my time in first year, a handful of students from the pioneer class paid a visit to my class. They explained that they wanted to produce a 'Strathmore Students' Law Review and wanted all those who felt as they could write something to do so and submit for publication. My excitement about the possibility of publishing something (and perhaps even joining the team then) was, however, tempered by the fact that the visitors said they were keen to consider any sort of writings, even poetry. Surely,

1 Griswold E, 'The Harvard Law Review: Glimpses of its history as seen by an Aficionado' 18 January 1987 <https://harvardlawreview.org/1987/01/glimpses-of-its-history-as-seen-by-an-aficionado/> on 22 July 2017.

2 See generally Constitution of the Southampton Student Law Review (2010).

3 We benefited enormously from conversations with, among others, Dr John Osogo Ambani, now the Editor in Chief of both the Strathmore Law Journal and Strathmore University Press (Legal); Mr Humphrey Sipalla, now the Managing Editor of the Strathmore University Press (Legal); and lately Mr Scott Cohen, as at writing the Editor in Chief of the Cornell Law Review. There were many other informal conversations whose lack of mention here does not imply insignificance. All notes with author.

4 Finnis J, *Natural law and natural rights*, Oxford University Press, 2ed, New York, 2011, 59-75.

that cannot then be a legal-academic journal, I thought then (this of course does not mean that poetry cannot be academic, I just thought its place was not in a legal-academic journal). Nonetheless, I did write and submit.

Fortunately or unfortunately, the idea never seemed to get off the ground. For reasons which it does no good to restate here, things did not work out and for the first two years of my time in law school, what had been the plan did not materialise. Crucially, however, by the time I was in my second year a number of things that would later prove influential had happened. First, the grounds of publication had become fully legal-academic. No longer would poetry and the like be accepted as publishable submissions. Second was the arrival of Dr Ambani, Humphrey Sipalla and Francis Kariuki at SLS. All three joined the faculty with a wealth of experience in academic publishing as well as an understanding about what is required of a top-notch academic publication. As fate would have it, I found myself around them often, and the experience I gained working with them on the inaugural, faculty-edited Strathmore Law Journal was immeasurable.

Before I began my third year of law school, I asked Imani Jaoko, who later became the Managing Editor of SLR, to join me in drafting a plan for a Strathmore Law Review. The idea was that it would be student-managed and edited, publishing top-level, African legal-academic work done by anyone from undergraduate to master's level. The first plan we drafted was quite bare-bones. It was two pages long, merely elaborating on a team structure and timelines. We discussed it with the Dean, Dr Luis Franceschi, who was very supportive.

We then had a similar discussion on the matter with Dr Ambani and Mr Sipalla. This would be only the first of several such conversations that we would eventually have with an ever-expanding team. There was not always agreement. Far from it. We had complete disagreements on team structure; for example, while the timelines also yielded some splits. The discussions nevertheless brought forth wisdom, a healthy degree of camaraderie and often the modification of some decisions. At the end of the day, however, I was most grateful that they allowed the decisions to be made by the team; first Imani and I, and then the rest as it expanded. Such an independence, I believed then as I do now, is a cornerstone of a truly excelling academic journal.

The first team members were recruited from the same year as Imani and I. The whole thing was, I must admit, expended through considerable fiat, though tempered by consultation. Thankfully, there never was an outcry since legal writing and editing is not 'a thing' and few students (at least those days) were too

keen on such kind of work. Claude Kamau—a kindred spirit with whom I shared *la vita contemplativa*—would become our Peer Review Editor. Brian Kimari, one of the most resourceful persons I have ever met, would join as the Publishing Editor. He played an instrumental role in recruiting Emily Wakesho as our second Peer Review Editor. The recruitment of students then in the second year (and of anyone who joined the team since then) was done competitively, through applications that involved only writing. The wisdom (or lack) of this I will discuss later on in this piece.

III. Of Philosophy

Of the many lessons we picked up from those whom we consulted, the most profound was to do with the philosophy of doing things. It was that: before making any decision, on *any* matter, one ought to ask oneself questions such as 'why am I doing this?' 'Why have I decided to make this decision and not these others?' or 'Why should I make this variation to a practice that is so common?'

While it seems rather simplistic, it is not so in practice, and particularly when one is presented with a completely blank slate. While the goal may be clear, the path to that goal often confronts one with unexpected complexities that were unforeseeable at the onset. With SLR, these questions ranged from being as high minded as 'what role will SLR play in society?' 'What sort of writings will SLR seek to publish?' and 'Should we use the peer review or non-peer review system?' to being as minutely technical as 'what systems should we use to recruit?' 'How do we build the capacity of team members?' 'How will we communicate with authors?' and 'How do we make prospective authors confident enough to submit their work?'

i. Finding the overarching philosophies

In English-speaking Africa, high-level (that is, consistent in both quality controls and publishing timelines) academic law journals that discuss African issues are not many. I had already suspected this based on the conversations I listened to between the people that one could call experts on such matters. Nonetheless, I did not realise how deep the malaise was until I embarked on a search for a journal to submit some of my work to.

In many respects, South Africa is a leader in this business, with several titles. Even then, as I learnt, most are focused on and give precedence to South

African and southern-African works.[5] The rest are either not listed online or quite country-specific.[6] In Kenya, inconsistency has plagued the grand old law journals. They publish, and then do not publish for some time.[7] This is, of course, no way to build a high level academic law journal.

Overall, it struck me as a bit of a shame that some of the most high-level legal-academic journals that focus on African issues are published by institutions outside the continent: think of the *Journal of African Law*, the *African Journal of Legal Studies* or the *African Journal of International and Comparative Law*. The saving grace may be that their Editorial Boards are almost exclusively made up of Africans.[8]

Given this climate, it became obvious that SLR had an obligation to provide another high-level platform for budding African scholars to publish their work. Indeed, this is one of the Strathmore University Press-Legal's (SUP-L) most defining philosophies, a path that we were keen to follow. By this time, however, the Strathmore Law Journal (SLJ) was already in existence, having published its first volume.[9] The SLJ is perhaps the most consistent and high-level legal academic journal in Kenya at the moment. I served as a student editorial assistant for this faculty-edited journal where I gained a lot of insight. It is not issue-specific, and neither does it focus solely on country-specific matters. Naturally then, it has since its inception attracted a high number of more established African scholars seeking to publish their pieces. Thus, the space for young budding scholars who were still in school (master's or undergraduate) to publish in SLJ is considerably

5 The country-specific ones include the *South African Law Journal*, *De Jure Law Journal*, *Acta Juridica* and *Stellenbosch Law Review*. The *African Journal of International and Comparative Law*, the *African Human Rights Law Journal*, the *South African Journal of Human Rights*, the *Journal of Comparative Constitutional Law* and the *Pretoria Student Law Review* consider works on regional and continental issues.

6 Botswana, for example, has the *Botswana Law Journal* published by the University of Botswana, while Malawi has the *Malawi Law Journal* published under the auspices of the Malawi Law Society, University of Malawi faculty of Law and Malawi Law Academics in diaspora. On the other side of Africa, Nigeria has the *Nigerian Juridical Review* as well as the *Nigerian Lawyers Association Journal*, while Ghana has the *University of Ghana Law Journal*. This list is at random, to demonstrate the general outlook.

7 The University of Nairobi faculty of Law's *East African Law Journal* was a pioneer in publishing legal-academic work in Kenya, but has had too many years during which it went unpublished. The *Moi University Law Journal*, the *African Nazarene University Law Journal* and *Kenya Law Review,* have had similar challanges. The quality of others such as the Law Society of Kenya Journal is not assured.

8 The *Journal of African Law*, published for over 60 years now, is considered by many African scholars as one of the holy grails of journals. It is published by the Cambridge University Press. The *African Journal of Legal Studies* is published by MartinusNijhoff/ Brill, a Dutch group. Finally, the *African Journal of International and Comparative Law* is published by the Edinburgh University Press.

9 Volume 1 of the *Strathmore Law Journal* was published in June 2015. See it here<http://press.strathmore.edu/slj1/>on 14 August 2017.

limited. In our minds, it became the task of the SLR to provide a platform for such persons.

Two more complex unforgiving questions emanated from such a determination: first, can student works be good enough to be considered at the highest academic level? Second, on what grounds should fellow students be in charge of determining which works are worth publishing, and editing them to perfection? The latter is a question not particularly unique to our setting. In America there has been an intriguing debate over the system that proved useful in our own decision making, with critics denouncing students running law reviews as an example of 'inmates running the asylum'.[10]

In response to the first question, there is no doubt of the immense truth in an assertion that years of experience in academic work give innumerable skills to scholars. One cannot compare a post-doctoral scholar to an undergraduate student who hopes to be a scholar one day. The maturity in scholarship and research skills are worlds apart. Indeed, it is not without reason that a lot of great scholars' *magna opera* came after their postdoctoral years. Yet there is a case to be made that, first, there are also a good number of scholars with the requisite qualifications, all the way to post-doctoral *et cetera*, whose works are bland, uninspiring, not touching on anything new, or—at worst—without any academic rigour. I have seen many of these in my time as an editorial assistant at the SUP-L. Second, there are a number of young, budding scholars who—towards the end of their undergraduate years, or as they do their postgraduate degrees—can write interesting, inspiring work that views matters in a new way and with lots of academic rigour. Likewise, I have seen many such persons in my time at SUP-L.

The task of the SLR, as we saw it, was to give an opportunity—a platform—to the latter group to publish their work. Many existing journals require that one attaches one's curriculum vitae when submitting an article for publication.[11] This implies that the quality of your scholarship might actually be a secondary consideration to your standing as a scholar, effectively locking out the latter group from publishing. In fact, to get around the issue, many take to 'co-authoring' with more reputable scholars in order to have their work accepted. These were the limitations that a platform like the SLR, in our thinking, would do away with.

[10] Yang P and Rosman L, 'Law Review Conference' 47 *Stanford Law Journal*, 1995, vii.

[11] Every academic journal published by the Oxford University Press and Cambridge University Press, as well as almost every American Law Review has this requirement, for instance. Here in Kenya, the *African Nazarene University Law Journal* had such a requirement.

The second question is a truly difficult one. I partly agree with those who take the stand that one who undertakes to judge, choose and edit other persons' works should be a step above, and true academic quality requires judgment by those considered experts in their field. Nevertheless, there is just as much truth in a claim that only an audience (not necessarily comprised of those 'a step above') can judge aspects such as maturity of writing, *understandability* and reach of the thesis of a written piece. My belief of this was significantly informed by Prof Migai Akech, who made quite a convincing case to us about this, all the more powerful because of his many outstanding years publishing legal-academic research.[12]

It is that double-hinged consideration that led us to adopt a system comprising what we would call 'Internal Review' and 'Expert Review.'

ii. Internal Review I

Internal Review became the first stage which all submissions received would go through. Having decided that a 'Call for Submissions,' rather than be open perpetually, would be open for only about three months (for the sole reason that having more than one volume would require of team members superhuman time and effort over and above what they were already putting in), we designed an internal review process that would work in the manner that follows. Every member of the Editorial Board, each with an Editorial Assistant, would have about six weeks to read through every submission and score them. If the submissions were too many, we would split into as many groups as the numbers demanded. The scores given would be based on a comprehensive criterion developed by our *Peer Review Editors*. And it must be said at this stage that the job that Claude and Emily did was, in living up to their job titles, peerless. The criterion they developed and then explained to the team considered almost every possible aspect, and was as scientific as any such criterion could be. Scores allocated for issues such as style were lower than those allocated for issues such as maturity of writing, *understandability* of the thesis, depth of research and addition to the body of knowledge.

Once each Board Member had allocated their scores for all submissions, there would be a plenary meeting to average the total scores for each submission

[12] See a list of some Prof Akech's publications prior to 2012 here <https://profiles.uonbi.ac.ke/amigai/publications>on 14 August 2017. Since then, he has done several others, the most significant being the first Kenya-specific administrative law text book, Akech M, *Administrative Law*, Strathmore University Press-Legal, Nairobi, 2016.

and then discuss our decisions about which submissions would be offered a publishing contract. The whole process was blind. Only the Managing Editor—Imani—knew the authors' specific names and institutions of origin. Along with averaging, this was part of the effort to form a bulwark against any sort of bias leading to an otherwise deserving article missing out on publication.

Once we had made our decisions—typically about ten articles being offered publication contracts—we would then send out communication to all submitting authors. To rejected authors, we decided to send not just letters of regret but pages and pages of comments. This was once again, in my view, a momentous decision. Most journals do not send to authors reasons for rejection.[13] An author is left merely knowing that their work is not good enough, but with no idea about where it fell short, and how to better it. We insisted especially that the comments for rejected articles be as specific as possible. All this was part of an effort to place submitting authors at the centre of our work, for one who has written and submitted knows that when an author submits their work to you, they are submitting their hearts to you.

iii. Expert Review & Internal Review II

Submissions that were offered contracts of publication would then be passed each to an expert reviewer but at the same time would undergo a second round of internal review. The experts that SLR sought were academics as close to the top of their field of expertise as possible. This, we considered, was one way to ensure that the journal was as high level as possible. We insisted to these expert reviewers that they ought to be as strict as possible in their assessments, and should utilise the highest possible standards that they were aware of. Naturally, we gave most of them guiding points. By and large, it was a successful endeavour, with the usual expected haggles such as time constraints. At the end, I remained convinced that this is an indispensable part of the process if one is to have a truly top quality academic journal.

The second round of internal review would require editors to undergo a paradigm shift, from viewing their work as judging the submissions that are good

[13] Of course, there are good reasons for this, for some journals such as the *Yale Law Journal* receive as many as 2,000 submissions for only one volume, see Hackett L, 'Understanding law review success: An analysis of factors that impact citation counts' Thesis submitted in partial fulfilment of the requirements of the King Scholar Program, Michigan State University College of Law, 10-11 <http://www.law.msu.edu/king/2012-2013/Hackett.pdf> on 14 August 2017. It would be almost impossible to send to each of these authors' detailed reasons for the rejection of their articles.

enough to be offered contracts of publication, to viewing their work fully as assisting a contracted author to produce the best possible version of their article for publication in the SLR. We tried to communicate this message as clearly and as effectively as possible to the entire team. I am not sure that we succeeded completely in this for I saw traces of the old thinking many times: when, for instance, in writing comments to a contracted author, an editor is more general than specific, and adopts a judgmental tone.

This second round would see each member of the Editorial Board (again along with an Editorial Assistant) assigned one article to work on fully out of all those contracted for publication. The philosophies behind this exercise were simple: excellence and academic rigour. Every word of every line, as we insisted, was to be read, re-read and read again according to a second criterion developed by Claude and Emily. The criterion, once more outstandingly, contained everything from language, to in-house style, to claim-confirmation. Each of an author's citations was to be confirmed, and if the resource used could not be located online or in our libraries, we would ask an author to scan and share the particular page cited. Plagiarism testing was to be done manually, paragraph by paragraph. While we could have used some of the well-known plagiarism checkers such as *TurnItIn*, their imperfections[14] meant resorting to a manual check as the best way to go. If perfection was to be the horse in wishes that are horses, then as beggars we were determined to ride.

After the two processes were complete, comments from both reviews were compiled and sent to the contracted author for implementation.

iv. Recruitment and capacity building

Finding the best system possible to recruit team members is one of those things that took time, and is perhaps still a work in progress. We studied copious amounts of material on how established law reviews recruit team members (thankfully, this is part of the little information available on websites). We considered how other institutions recruit, and we had endless discussions before settling on a methodology.

[14] The flaws of systems such as *TurnItIn* are well-documented. Since such systems search for strings of words that are similar, they can be circumvented by a keen person, who would simply have to change the third word of every string written. See <https://www.insidehighered.com/news/2015/07/14/turnitin-faces-new-questions-about-efficacy-plagiarism-detection-software>and<http://en.writecheck.com/plagiarism-checker-tools-misunderstandings/>on 14 August 2017.

To begin with, we had two different recruitments. The first was for Editorial Assistants, whom we drew from the first-year class. Recruiting Editorial Assistants from the first-year class, we felt, was important to generate a new crop of editors who would perhaps later join the Editorial Board. In my own time, such an opportunity was not available to first-year students, and the learning curve was obviously steeper as a consequence. We felt that the future of SLR would no doubt be brighter if those managing it amassed three years of editorial experience behind them as compared to the one or two that we had. When it came to details, the decision on how many to pick turned out to be an interesting one. At first, we had decided to pick only six applicants before altering that to as many as the existing Board Members. Not only would assigning each Editorial Assistant to a Board Member allow a closer and more enriched learning experience, it would also give such an opportunity to more first-year students. Indeed, any lingering doubts as to the shift in number were extinguished by what we came to find out: the students who were *not* at the top of the ranking of applications by and large became some of the best team members. Some remain indispensable members of the Editorial Board as I write this. In contrast, some of those whose applications ranked top struggled with the sometimes dreary and demanding tasks. Many quit by the end of the first year. I will leave it to others to consider why this would be the case, although my own suspicion is that a person with a gift of intelligence does not necessarily come strutting in through the double doors twirling their Malacca cane of hard work or tipping their purple fedora of perseverance.

The standard that we decided to adopt for the recruitment of Board Members was far more strict and exacting. This had to be the case because, first, members of the Editorial Board in SLR have many more consequential decision-making responsibilities than Editorial Assistants. Second, with one year of law school experience under their belt, students applying to be Board Members are genuinely (and correctly so) expected to have a higher trough of knowledge on matters regarding legal research and writing.

We thus came up with an application criterion that would require students—in strictly one week during their school break—to write a 3,000 word article that was set on a similar topic for all applicants, as well as do a short test that checks how well one understands and has interacted with SUP-L's in-house style. Many students complained about the short timeline which put them off applying. The complaints seemed ironic to me since the timeline was made short for that exact reason—to put off those who are not fully committed (from applying).

The decision to set one topic every recruitment cycle was a response to an old problem we endured: applicants depending on what we termed 'past glories' to get in, and then performing dismally. Our initial system required applicants to send their best work of 3,000 words, and some took advantage of this to rely on an admittedly brilliant piece they did years ago. It was clear to us that we had to find another way of testing *commitment* on top of the skills, and thus the shift. Finally, we also decided to *never* do oral interviews. Experience had taught us that one could 'talk up a big game', so to say, and then end up performing quite dismally in comparison. In any event, the core skills demanded by the trade were the rigorous academic skills of researching and writing, coupled with a search for excellence. Any knowledge of the applicant as a person would easily be transmitted via their personal statement.

Building the capabilities of team members was one of the most significant concerns we had from the outset. By capabilities, I generally refer to editorial skills. As anyone would expect, team members had varying levels of knowledge and experience when they joined. Some had done academic writing before and taken part in projects that bequeathed upon them editorial skills, while others were completely new to all of it. For Editorial Assistants, who were jarringly new to everything, we designed a nearly month-long crash course that would allow them to be taught the basics first. This was important so that when they were assigned a Board Member to work with, the level of learning would be higher and more practical.

For Editorial Board Members and Editorial Assistants who got past the crash course, we found that the most prudent way to build capacity was to organise periodic trainings. These trainings were to be instructed by persons with many years of experience in academic publishing, or those whose work is highly acclaimed. We did these almost every week, with our *Publishing Editor* Brian Kimari playing an instrumental role in securing the time of most of our instructors, and each without any commission! At the end of the day, however, I firmly believe that such trainings can only do so much, and instead, it is the personal responsibility of every team member to strive to raise their capacity as much as possible. A frequent example I use is the fact that I knew students who never joined the SLR team but were better at the trade than some inside the team. In my own opinion, the onus is undoubtedly a personal one. One must write, allow themselves to be criticised, read, read and keep reading in order to better their own skill set.

IV. Conclusion

There remain some issues that have gone untouched here but are complex, and I am unsure about to this day. For example, how exact should the Call for Submissions be? SLR traditionally worked with about four variously wide themes and while this had its upsides, I began feeling, towards the end of my tenure, that it especially confused first-time authors who did not inquire before writing. The other incredibly complex matter involves how to hold members of the Editorial Board to account when it comes to their work. That is, who should perform the appraisal of each Editorial Board Member, and on what basis? This was by all means the most complex matter I think we had to deal with in our time, and until today I am not secure on what the correct way forward is. At the moment, my opinion decisively lurches towards such a task being the sole responsibility of the Editor in Chief and Managing Editor, not because this is the perfect method but rather because it is the best of the ones that have been mooted.

By and large, however, I conceived this essay to give insight into the workings of SLR, at least for its first two volumes, as well as the philosophical underpinnings of some of the most crucial decisions made then. I hope it has achieved that, and that this will give confidence to any prospective author so that despite having a low impact factor, SLR holds itself to the highest standards possible. I also hope that reading the essay will guide anyone who finds himself in a position where he has to choose between some of the decisions we made to decide in a wiser manner. Finally, I hope this account will make a contribution, however small, to achieving quality African academic work.