

Rethinking Legal Citation: A Bibliographic Essay

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Abstract

The easy accessibility of sources via web links and the fluidity of online formats offer an opportunity to revisit the purpose of legal citation and to consider competing citation models from a fresh perspective. This bibliographic article identifies the leading citation guides in use in the United States along a historical continuum and documents selected works that extol, critique, or excoriate—but for the most part continue to recommend adherence to—these guides. Secondary sources are included for the purpose of outlining the scope of the debate concerning which of the many citation guides now in use is preferable, and to help predict the path that legal citation is likely to take in coming years, particularly given the realities of a hyperlinked world and easily accessible source documents. Using these materials as a framework, the article invites the reader to think creatively about the purpose and future of legal citation.

I. INTRODUCTION

Legal citation guides claim to have many purposes, chief among them the need to direct readers to the authorities upon which legal arguments are grounded in the most expeditious manner possible. While they may differ in other particulars, this concern for accessibility is a unifying theme. Other often-cited purposes include the need to help the reader identify the particular part of the source being referenced (accessibility on a more granular level), and to furnish additional information about the source in order to help place the work in context and potentially lead the reader to related information (again, a variation on accessibility).¹ The use of a standardized citation “language” aids in this finding process,² but preferences for one standard language over another have led to the publication of a variety of often conflicting guides to legal citation and some disarray among US jurisdictions as to which of the many options should hold sway.

Overlaying this conflict is a more fundamental concern, driven by the advent of the World Wide Web, that calls into question the core rationale—reader access—underlying all legal citation formulas: if a cited document is only a clickable hyperlink away, why puzzle over the application of italics versus small caps font or flip through a lengthy style guide to find the correct abbreviation, especially if the ephemeral web page can be permanently archived? Web publishing has also blurred the lines between previously identifiable content *formats* around which most citation guidelines are organized. Is it a book, web page, journal article, blog, opinion piece? When the medium is the computer screen the physical qualities of the underlying content are not as readily discernible

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¹ For a discussion of the purposes of legal citation, see, for example, *The Bluebook* (20th ed., 2015), 1; Martin, *Basic Legal Citation*, § 1–200; Barger, *ALWD Guide to Legal Citation* (5th ed., 2014), 2.

² In his *Introduction to Basic Legal Citation*, Peter W. Martin characterizes a legal citation as “a standard language that allows one writer to refer to legal authorities with sufficient precision and generality that others can follow the reference.” Martin, *Basic Legal Citation*, § 1–200.

and distinguishable—or even relevant—as they were in the days of hard-copy publications. Content has now replaced form. Yet, leading citation guides continue to presuppose an identifiable form for the purpose of prescribing complex guidelines that dictate the presentation of citation information on the written page.

The easy accessibility of sources via web links and the fluidity of online formats offer an opportunity to revisit the purpose of legal citation and to consider competing citation models from a fresh perspective. With these questions in mind, this article identifies the leading citation guides currently in use in the United States along a historical continuum and documents selected works that extol, critique, or excoriate—but for the most part continue to recommend adherence to—these guides.³ Secondary sources are included for the purpose of outlining the scope of the debate concerning which of the many citation guides now in use is preferable, and to help predict the path that legal citation is likely to take in coming years, particularly given the realities of a hyperlinked world and easily accessible source documents. Using these materials as a framework, the article invites the reader to think creatively about the purpose and future of legal citation.

II. RETROSPECTIVE: *THE BLUEBOOK* AND ITS PREDECESSORS

The dominance of *The Bluebook: A Uniform System of Citation*, now in its 20th edition, might lead one to believe that legal citation guides first appeared in the US with publication in 1926 of the first edition of this work—then a mere twenty-six pages and not yet designated “The Bluebook.” Scratch the surface, however, and it quickly becomes clear that current systems of citation are the descendants of a small number of citation guides issued by courts—for example, the list of nineteen rules published by the Reporter of the Nebraska Supreme Court in the 1890s, mentioned in Byron Cooper’s 1982 *Law Library Journal* article, “Anglo-American Legal Citation: Historical Development and Library Implications”—and the early legal encyclopedias in use among nineteenth-century American jurists, which were aimed not so much at prescribing a particular style of citation as at identifying and providing a common system of abbreviations for the legal works then in circulation. Cooper, who states that “[c]urrent citation practices ... are explained less by logic and social analysis than by historical evolution,” claims that standardized citation formats might even be traced back to the legal classification systems employed by the ancient Romans, but notes that such manuals were rare before the twentieth century.⁴

Charles Soule’s *The Lawyer’s Reference Manual of Law Books and Citations*, first published in 1882 in Boston, provides another example of an early American citation guide. The *Reference Manual* is divided into five parts, including (1) a list of American federal and state materials with descriptive notes that describe the listed materials, and identify the number of volumes, dates covered, and “way in which they should be cited”;⁵ (2) lists of English, Irish, Scotch, and British colonial law reports with notes; (3) an alphabetical “Index of Legal Authors, Elementary Works, and Law Journals,” (4) a subject index that lists by topic those works identified in the author/title index; and (5) 152 pages of abbreviations. Soule, a law book seller by profession, explains that part 5 was “intended to embody not merely the ordinary citations, but all forms of abbreviations, correct or incorrect, which have been used in reports or textbooks, so arranged as to enable a lawyer to make out, without unnecessary delay, the meaning of any abbreviation he finds in a book or brief.”⁶ In addition to opening a window on the world of the late-nineteenth century with references to civil war publications, “the Arizona territory,” and numerous state equity or chancery reports that have long since vanished, Soule’s work also illustrates through its typography that the use of large and small caps font, the bane of many a *Bluebook*-user’s existence, was already entrenched in American legal usage at that time.

These and other early works notwithstanding, 1926 remains a useful starting point for examining later citation guides—including later and ever-expanding editions of *The Bluebook* itself—because publication of the first edition of *The Bluebook* marked a turning point in legal citation standards in the US, inasmuch as it quickly became a touchstone for both law review editors and legal practitioners. The first edition, called simply *A Uniform System of Citation* and referred to as a “pamphlet” by its presumed author, Erwin Griswold, then a

³ The author has purposely excluded a discussion of foreign law citations, which raise unique issues and will be the subject of a later article.

⁴ Cooper, “Anglo-American Legal Citation,” 20–21, citing “Rules for Citations,” *American Law Review* 30 (1896): 107.

⁵ The term “cited” means “abbreviated” in context.

⁶ Soule, *The Lawyers Reference Manual*, 345.

student at Harvard Law School and later its dean,⁷ stated in its opening lines that the work was only intended to “deal with the more common abbreviations and forms to which one has occasion to refer.”⁸ It pointed the reader to *Bouvier’s Law Dictionary* for a more comprehensive list of abbreviations and in doing so was likely referring to volume one of the 1914 edition of that work, edited by Francis Rawle, constituting a third revision and eighth edition of the classic first published in 1839 with the stated goal of distinguishing the American legal system from its English predecessor. The 1914 edition of *Bouvier’s* provided a sixty-eight-page list of “all abbreviations in common use,” cataloging legal publications in circulation at the time in the US and England.

The first edition of *The Bluebook* was followed by nineteen more, each one more complex and inscrutable than its predecessor. By the 1934 edition, *The Bluebook* referenced not only *Bouvier’s* but also *Black’s Law Dictionary* as a comprehensive source of abbreviations;⁹ the reference to *Bouvier’s* as a guide for abbreviations was dropped in the ninth edition (1955) but *Black’s* remained. The first references to the *US Government Printing Office Style Manual*, initially published in 1894, appeared in the Foreword to the tenth edition (1959) of *The Bluebook* as the go-to guide for punctuation and capitalization matters.

In 1998 William S. Hein & Co. published *The Bluebook: A Sixty-Five Year Retrospective*, which collected in two volumes all editions of *The Bluebook* then in existence—the first through the fifteenth editions—and included as appendices the 1921 and 1924 versions of the Yale Law Journal’s *Abbreviations and Forms of Citation*, each fifteen pages in length. Like the author of the 1926 *Bluebook*, the unnamed author of Yale’s pamphlets stated at the outset that they were not intended to be comprehensive, referring the reader not to *Bouvier’s* for a longer list of abbreviations, but to volume 1 of *Brief Making*—undoubtedly a reference to *Brief Making and the Use of Law Books*, first published by West Publishing Co. in 1906 with several later editions, which included a 122-page appendix titled “Abbreviations of Law Publications” that was based on a table of abbreviations compiled by the Ohio Supreme Court Library. *Brief Making* was designed, according to its introduction, to provide the law student and young legal practitioner with “a working knowledge of the depositories of the law with practical suggestions as to the method of looking up authorities and properly presenting his case to the court.”¹⁰ It included parts discussing “The Brief on Appeal,” “How to Use Decisions and Statutes,” “American Law Publications” (helpfully distinguishing primary from secondary authorities, listing and discussing the leading materials of the day in both categories, and outlining the history of published cases in the US), and “How to Find the Law.” Its list of abbreviations reveals a much greater specificity in compilations than the reporter systems of today—the titles include, for example, “American Electrical Cases,” “Report of Methodist Church Cases,” and “Moore’s Indian Appeals”—abbreviated Am. El. Ca. or Am. Elec. Ca., Meth. Ch. Ca., and Mo. I. A., respectively. Missing from the list of abbreviations were references to secondary sources, and the apparent lack of standardization of secondary-source abbreviations in usage at the time of publication is suggested by the largely unabridged citations to such sources included in the footnotes to the main body of *Brief Making* itself.

Early editions included in the *Retrospective* hint at the influences underlying development of *The Bluebook*. By viewing *The Bluebook’s* evolution through the pages of the *Retrospective*, one is also able to see the degree to which it veered from its early purpose of “deal[ing] with the more common abbreviations and forms to which one has occasion to refer”¹¹ and instead developed an apparently insatiable life of its own, growing from a mere twenty-six to 560 pages by 2015. The complexity of modern editions has spawned a cottage industry of works designed to “break the code” of *The Bluebook*—for example, Alan Dworsky’s *User’s Guide to A Uniform System of Citation: The Cure for the Bluebook Blues*—and any number of teaching aids such as C. Edward Good’s *Citing & Typing the Law: A Guide to Legal Citation and Style*, many of which were based on the fourteenth edition of *The Bluebook*, an edition that introduced significant revisions including twenty-five that are listed in introductory material preceding the Table of Contents. (Such a list of changes from the prior edition seems to have first appeared in the thirteenth

⁷ In a recent *Minnesota Law Review* article titled “The Secret History of the Bluebook,” authors Fred Shapiro and Julie Graves Krishnaswami of Yale Law School challenge the notion that Harvard Law School, and Griswold in particular, created *The Bluebook*. They assert instead that Karl N. Llewellyn, then editor-in-chief of the Yale Law Review and later an influential law professor, prepared an eight-page booklet, *The Writing of a Case Note*, in the 1920s that formed “the embryo that has grown into the 528-page [actually 560-page] behemoth that is the Bluebook 20th edition in 2015” (Shapiro & Graves Krishnaswami, at 1573–1574.)

⁸ *A Uniform System of Citation* (1926), 1.

⁹ *A Uniform System of Citation* (1934), Foreword.

¹⁰ *Briefmaking* (1906), 8.

¹¹ *A Uniform System of Citation* (1926), 1.

edition of *The Bluebook*.) Dworsky's work attempted to simplify *The Bluebook* by distilling its core principles into a mere forty-two pages from what was then 255 pages; Good, on the other hand, retained most of *The Bluebook*'s length but replaced its copious examples with explanatory and background materials.

III. ALTERNATIVES TO *THE BLUEBOOK*

Alternative citation guides have emerged over the years, with varying degrees of success. Miles O. Price, Law Librarian and Professor of Law at Columbia University, produced *A Practical Manual of Standard Legal Citation* in 1950, with a second edition appearing in 1958 that focused on forms of legal citation prescribed by the courts. The work was based on Price's examination of a style manual then used by the Supreme Court justices and their law clerks, his correspondence with judges and court personnel of lower federal and state courts, and similar information sharing on the part of federal agencies, according to the author's preface to the 1958 edition. In that sense, Price was not directly competing with the eighth or ninth editions of *The Bluebook* in existence at the time the first and second editions of his manual were published; *The Bluebook* had not yet expressly prescribed a citation style for legal documents different from law review style (that distinction would first appear in the twelfth edition, published in 1976, with the introduction of varied fonts for briefs versus law reviews).

In 1989, the University of Chicago Law School published its first edition of *The University of Chicago Manual of Legal Citation*, now called *The Maroonbook*, as an alternative and simpler system of citation than *The Bluebook*. That edition, which initially appeared as an appendix to a *University of Chicago Law Review* article by Judge William Posner in 1986 (the same year that the 255-page fourteenth edition of *The Bluebook* appeared) and later as a freestanding edition, was sixteen pages in length and focused on four primary rules: (1) typefaces, (2) citation sentences, (3) initial references to authorities, and (4) subsequent references to authorities. It also included appendices of less than a page each, addressing style rules, abbreviations, and geographic terms. Regarding abbreviations, which have always consumed a disproportionate share of *The Bluebook*'s real estate, the first *Maroonbook* counseled that, "[g]enerally, abbreviations should only be used if they are easily recognized without reference to this book."¹² While it has grown in length since that first edition, the 2016 edition of *The Maroonbook* continues to offer a simplified approach to citation, starting with Rule 1's axiom, "Everything in roman, except as noted,"¹³ and it in fact uses italics as the one and only font variation. It further simplifies the process by dispensing with punctuation in abbreviations.

In 2000, the Association of Legal Writing Directors (ALWD) sought to create a legal citation textbook that would both simplify the task of teaching citation rules and focus more specifically on legal practice concerns than on legal scholarship. The *ALWD Guide to Legal Citation* is now in its fifth edition (2014), and at 608 pages is even longer than *The Bluebook* but arguably more useful. In keeping with its pedagogical purpose, the *ALWD Guide* contains much more explanatory material than *The Bluebook*. It also includes "snapshot" pages depicting source documents—for example, the cover of a law review—with notes in the margin that identify the citation-relevant components of the document, a unique feature that is likely appreciated by visual learners. The current edition reflects a major revision requested by ALWD members that acknowledges "certain scholarly traditions in legal citation" and provides academic formatting examples that are visually set off with a special icon. Part 4 of the *ALWD Guide* addresses electronic sources and enhances the discussion with a useful sidebar on assessing the reliability of web-based content. However, it continues to encourage citation to print versus electronic versions of documents on the theory that print is more reliable and trustworthy, and thereby fails to address the degree to which many jurisdictions are opting out of print publications altogether. It also fails to take a position on web archiving tools such as the Internet Archive's Wayback Machine or Perma.cc.¹⁴ (In contrast, Rule 18.2.1 of the twentieth edition of *The Bluebook* now overtly encourages the archiving of Internet sources when a reliable tool is available.)

Peter Martin's *Introduction to Basic Legal Citation*, first published in 1993 and now available online (2015 ed.), opens with a discussion of the purpose of legal citation, examining the basic question of why we bother, rather

¹² *The Maroonbook* (1st ed., 1986), in Posner, "Goodbye to the Bluebook," App.

¹³ *The Maroonbook* (2016 ed.), 1.

¹⁴ Perma.cc, a project of the Harvard Law Library Innovation Lab, allows members to archive legal documents and generates permalinks to such documents for use in legal writing. Perma.cc, <https://perma.cc/>. The Law Library of Congress began using Perma.cc for its foreign and comparative law research products in the fall of 2015.

than focusing exclusively on citation form and examples. With the examples that are provided organized around types of legal materials, Martin's work seeks to reflect a citation format used in professional practice, according to its author. In section 1–500, titled “Citation in Transition,” Martin discusses the current debate created by the ongoing shift from print to electronic publishing, and the resulting movement toward medium- and vendor-neutral citation formats, meaning citation formats that are not tied to particular publishers or types of publications.¹⁵ He does not advocate one system over another, however, but rather describes the landscape and reflects back current practices.

Several works, including Martin's *Introduction to Basic Legal Citation*, are indexed to or provide comparisons of *The Bluebook* and the *ALWD Guide*, allowing the reader to quickly see where the two guides overlap and differ. In his *Introduction to Basic Legal Citation*, Martin calls the difference between the two guides “microscopic” and notes that both focus on academic publications, while his own guide, he says, is aimed at citation forms used in professional practice and therefore does not get caught up in questions of typography that apply to journal publication.¹⁶ Indeed, he appears to employ italics as the one and only font variation in the examples provided. Larry Teply's *Legal Writing Citation in a Nutshell* (2008) also provides a comparison via citation illustrations that are keyed to both *The Bluebook* and the *ALWD Guide*, using “BB” and/or “ALWD” notations before citation examples. Teply covers as much ground as either guide in his 507-page work but does so in a narrative format that frequently draws in historical references and explanations, making the reading experience far more agreeable than the typical citation guide.

Bryan Garner's *The Redbook: A Manual on Legal Style* also bears mentioning, although it focuses more on legal writing than on citation format per se. *The Redbook*, first published in 2002 and now in its third edition (2013), contains a section devoted to citation format that counsels readers to “choose a citation system and stick to its essential conventions throughout a particular writing.”¹⁷ A subsection titled “Override The Bluebook on a Few Key Points” provides an alternative approach to the use of numbers, section symbols, underlining, and citations in footnotes, but overall cautions that “this section shouldn't be construed as instructing you not to learn *The Bluebook*. As with any complex system of rules ... , you must master the rules before occasionally breaking them. That's the only way to make informed decisions about which rules to ignore.”¹⁸ Overall, *The Redbook* encourages the use of an existing system of citation, specifically mentioning *The Bluebook*, the *ALWD Guide*, *The Maroonbook*, and state style manuals as a starting point, but provides some general principles about choosing precedents, making citations unobtrusive, and using signals correctly, that could be followed in conjunction with the guidance provided by other, more comprehensive guides.

While too particularized to be viewed as a true alternative guide to citation, *The Supreme Court's Style Guide*, published earlier this year, provides a useful example of court-specific citation methods, revealing for the first time the guidance used by the US Supreme Court's Reporter of Decisions in preparing the Court's opinions for publication. While the citation guidance it provides is fairly comprehensive, the *Guide* refers the reader to *The Bluebook* for things not covered in its pages, including foreign law citations. Noting the transience of the web, the work dates itself by “strongly discourag[ing] citation of otherwise-unpublished online material—whether designated as ‘official’ or not.”¹⁹ It appears to use small caps font only for references to current justices and reflects a more liberal use of *supra* (including for case references). The work goes beyond citation matters to include style guidance and information about the opinion release process as well.

IV. AMPLIFICATIONS ON *THE BLUEBOOK*

Supplementing, rather than challenging, *The Bluebook*, Doris Bieber developed what was originally known as the *Dictionary of Current American Legal Citations* in 1981, which organized entries alphabetically in dictionary

¹⁵ The terms “universal citation” or “public domain format” are also sometimes used to refer to medium- and vendor-neutral citation. See, for example, AALL, *Universal Citation Guide* (3rd ed., 2014), generally; *The Bluebook* (20th ed., 2015), Rule 10.3.3.

¹⁶ Martin, *Basic Legal Citation*, § 1-100.

¹⁷ Garner, *The Redbook*, ¶ 123(1).

¹⁸ *Ibid.*, ¶ 8.4(a).

¹⁹ *The Supreme Court's Style Guide*, § 0.2.

format, using *The Bluebook* as a guide. Several subsequent editions were to follow under various titles; the work is now prepared by Bieber's protégé, Mary Miles Prince, who also serves as coordinating editor of *The Bluebook*, and is published under the title *Prince's Dictionary of Legal Citations*. In contrast to *The Bluebook*, Price's *Practical Manual*, and the *ALWD Citation Manual*, which are all organized according to the format of the underlying work—court decisions, statutes, books, journals, etc.—both Bieber's and Prince's works simplify the reader's task of finding the most closely analogous format among content types by organizing specific titles alphabetically. However, this precision is also the downfall of these works, as an alphabetical organization relies entirely on the reader's ability to recall the name of a particular document or work. In addition, both fail to clearly identify the scope of collected entries, leaving the reader to guess as to whether a particular item may be found within their pages.

Another more recent amplification includes *The Indigo Book: An Open and Compatible Implementation of A Uniform System of Citation* (formerly *Baby Blue's Manual of Legal Citation*), a free and Creative Commons-licensed version of *The Bluebook* published by California-based Public Resource that has set off an epic copyright battle with the Harvard Law Review Association, publisher of the fee-based “parent.” *The Indigo Book* implements the same system of citation reflected in *The Bluebook* itself but limits its scope to US legal materials, books, periodicals, electronic resources, and certain secondary sources, resulting in a document that is a mere 201 pages in length. It also offers in-depth citation guidance, including “Indigo Inklings” that provide commentary on the more arcane aspects of citation format, and invites users to augment or modify the work as they see fit. It retains *The Bluebook's* distinction between citation formats for court documents versus law review articles—respectively designated “Standard Legal Documents” (SLDs) and “Academic Legal Documents” (ALDs) in *The Indigo Book*—and organizes the manual around the former, noting variations for ALDs where necessary. Having been created by open-source advocates, it is not surprising that *The Indigo Book* also highlights those jurisdictions that have adopted a public-domain (medium-neutral) citation format—it lists sixteen US states that have established public domain formats for case citations, including Arkansas, Colorado, Illinois, Louisiana, Maine, Mississippi, Montana, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Vermont, Wisconsin, and Wyoming.²⁰

V. THE CHORUS OF CRITICS

Modern critics of legal citation guides have focused their discontent on the system employed in the widely-used *Bluebook*, perhaps emboldened by Judge Posner's critical law review articles “Goodbye to the Bluebook” (1986), in which Posner both excoriated *The Bluebook* (then in its fourteenth edition) and introduced *The Maroonbook*, and his “Bluebook Blues” (2011), a review of the nineteenth edition. The 2011 review was even harsher than Posner's earlier piece: “*The Bluebook* . . .,” Posner wrote, “exemplifies hypertrophy in the anthropological sense. It is a monstrous growth, remote from the functional need for legal citation forms, that serves obscure needs of the legal culture and its student subculture.”²¹ While acknowledging the value of a citation format that allows the reader to understand the significance of the cited sources and to find those sources, his scathing critique questions the need for a *uniform* system of citation and counsels that one purpose of having a system of citation is “to spare the writer or editor from having to think about citation form”²²—something *The Bluebook* clearly has not achieved. Posner had much kinder words for *The Maroonbook*, which he lauded for its brevity and for simplifying citation form without sacrificing necessary information. “The Manual is a breath of fresh air; may it swiftly conquer the world of legal publishing,” he said in reference to *The Maroonbook*. “The Bluebook will and should survive—but as a treatise on legal bibliography, not a manual of citation form.”²³ One wonders what Posner might think of the current edition of *The Maroonbook*, which has grown to eighty-five pages in length.

Posner's critical voice is but one of many. The history of *The Bluebook*, the concerns of its detractors, and the vision of its key competitors are outlined by Melissa Weresh in “The ALWD Citation Manual: A Truly Uniform System of Citation,” published in the 2000 edition of the *Journal of the Legal Writing Institute*. Weresh recounts the criticisms of *The Bluebook* leveled by Darby Dickerson, a key author of the *ALWD Guide to Legal Citation*, who focused on four problems: (1) each edition of *The Bluebook* changes the rules slightly; (2) *The Bluebook* has

²⁰ *The Indigo Book*, Table 3.

²¹ Posner, “Bluebook Blues,” 851.

²² Posner, “Goodbye to the Bluebook,” 1344.

²³ *Ibid.*, 1352.

failed to adhere to the uniform standards it espouses, even in the law reviews of its authors; (3) it does not set forth the mandatory court rules that practitioners must follow; and (4) it is too complex, and for that reason has given rise to a variety of alternatives.²⁴ As the title makes clear, the purpose of Weresh's article is to promote the *ALWD Guide*; thus, she highlights the shortcomings of the *ALWD Guide*'s leading rival. In the end, however, her preference for the *ALWD Guide* seems to be grounded on the fact that it is more user-friendly and a better teaching tool than *The Bluebook*—not that the system of citation it outlines is markedly different or superior.

Some have focused on the question of scope when critiquing *The Bluebook*. For example, James Paulsen's review of the fifteenth (1991) edition, titled "An Uninformed System of Citation" and published in the *Harvard Law Review*, suggests that a more reasonable approach for the student-authored *Bluebook* would be to focus on law review articles and entirely do away with practitioner's notes and any attempts at providing a style guide, then spin off the sections addressing foreign and international law materials into a separate publication.²⁵

Others have engaged in philosophical musings on whether *The Bluebook*'s hierarchical ordering of citations and overall taxonomy is reliable, as reflected in Michael Bacchus's comment, "Strung Out: Legal Citation, 'The Bluebook,' and the Anxiety of Authority," which appeared in a 2002 edition of the *University of Pennsylvania Law Review*. Quoting a passage on the problem of reliable classification from philosopher Michel Foucault's *The Order of Things*, Bacchus then discusses *The Bluebook*'s classification systems, particularly around the use of signals to order citations, but in the end avoids direct criticism of *The Bluebook*, instead characterizing that style guide as a byproduct of our legal culture's preoccupation with authority.²⁶

Susie Salmon reframes the *Bluebook* critique in her 2015 article, "Shedding the Uniform: Beyond a 'Uniform System of Citation' to a More Efficient Fit," by challenging the value of uniformity and predicting the obsolescence of traditional citation manuals as technology evolves. Among other things, Salmon argues, uniformity of citations costs too much to implement both in terms of the amount of time devoted to teaching uniform citation during law school at the expense of more important subjects and in terms of the actual monetary costs to attorneys and their clients for the professional time spent (or donated) to the uniformity exercise.²⁷ Salmon also distinguishes herself among *Bluebook* critics by questioning the utility of uniform citations in a world where sources can increasingly be hyperlinked or rendered into proper format by a variety of citation apps and online tools.²⁸

VI. CURRENT USAGE AND UNANSWERED QUESTIONS

In his introduction to *The Bluebook: A Sixty-Five Year Retrospective* (discussed above), Professor Robert Berring describes the psychological impetus behind continued devotion to *The Bluebook*, something rarely acknowledged but implicitly understood by anyone who has attended a US law school, stating,

[t]he Uniform System of Citation has inflicted more pain on more law students than any other publication in legal history. The pain has not always been without its benefits, as the *Bluebook* served as a generally accepted standard that made legal citation form uniform. Besides, those generations of law review editors who had mastered the *Bluebook* were able to experience the joy of making others suffer through mastering it. Though neither uniform nor limited to citation, The Uniform System of Citation stands in very rare company. It created a verb. We teach nascent lawyers to "bluebook."²⁹

Despite this shared pain, a review of the literature illustrates that huge fissures are developing in the facade of *Bluebook* devotion. Even the 20th edition of *The Bluebook* implicitly acknowledges that it no longer dominates the citation field by cataloging in Table BT2 (at the end of the Bluepages) jurisdiction-specific citation rules and style guides for US federal and state courts as well as US territories. That list reveals that many jurisdictions authorize practitioners to use a variety of citation guides, including but not limited to *The Bluebook* and the *ALWD Guide*. Meanwhile, medium-neutral citation is now in use in sixteen US jurisdictions for cases, according to Table 3 of *The Indigo Book*.

²⁴ Weresh, "The ALWD Citation Manual," 260–261.

²⁵ Paulsen also provides a rather sarcastic critique of the 1991 edition's attempts at "political correctness" and bemoans its lack of understanding of state practice. Paulsen, "An Uninformed System of Citation," 1785–1786, 1791–1793.

²⁶ Bacchus, "Strung Out," 255–257, 275–277.

²⁷ Salmon, "Shedding the Uniform," pt. IV(A).

²⁸ *Ibid.*, pt. V.

²⁹ Berring, *Retrospective*, vol. 1, Intro., v (citations omitted).

What few of the critics have been willing to address, even as *The Bluebook's* grip lessens, are the questions of (1) why a uniform citation format is needed at all when technology now allows writers to hyperlink to a reliable copy of nearly every source cited and, as a backstop to the problem of “link rot” or nonworking links, even hyperlink to archived versions of those sources that make them accessible for time immemorial; and (2) why systems of citation organized around clearly delineated content formats continue to persist in an era when secondary sources are increasingly impossible to categorize by form. The *AALL Universal Citation Guide* directly acknowledges the latter issue in its first edition:

The seemingly insignificant legal citation is the linchpin of the law. Citations enable lawmakers to legitimize their actions by linking legislative enactments to established legal authority. They enable jurists to document their decisions through supporting precedents. Citations also lead citizens to the laws they are expected to obey. . . . Their quiet success is attributable to congruence between generally accepted citation standards and the structure of our legal literature. *However, current citation rules were crafted for the gilded age of the law book and this symmetry is disintegrating as computer technology reshapes the legal record.*³⁰

The difficulty, of course, in implementing AALL's preferred solution of a medium-neutral citation system is that doing so requires legal content creators—courts, legislatures, regulatory agencies, law journal publishers, etc.—to collectively produce content in a manner that allows for direct citation and then to publish that content on a publicly-accessible platform.³¹ This process will necessarily be incremental, even if it is generally viewed favorably, a point discussed at length by Ian Gallacher in a 2007 faculty paper titled “Cite Unseen: How Neutral Citation and America's Law Schools Can Cure Our Strange Devotion to Bibliographic Orthodoxy and the Constriction of Open and Equal Access to the Law.” Gallacher attributes the slow pace of adopting medium-neutral citation to the fact that commercial publishers are unwilling to develop databases of materials linked to neutral citations without some assurance that they will be used by the legal community, and the legal community in turn needs to know that they can find materials through such citations before accepting such a system. “This vicious cycle,” Gallacher says, “virtually ensures West and LexisNexis' continued domination of the legal information market.”³² His recommended solution is a law school-based initiative to “find, edit, and publish American common law for the benefit of all.”^{33,34}

In an article appearing in a 2010 edition of the *European Journal of Law and Technology* titled “How Structural Features of the US Judicial System Have Affected the Take-up of Digital Technology by Courts,” Peter Martin identifies another possible reason for the slow pace of reform toward adopting medium-neutral citation (among other technological innovations)—namely, the decentralized nature of the US judicial system. While individual courts have embraced technology, he says, “reforms that depend on coordinated action or substantial investment are progressing more slowly than they might in a more unified system. Because of the uneven pace and dispersed initiative some outcomes seem not merely distant but unlikely.”³⁵ At the same time, the “good news,” as Martin sees it, is that the “experimental space created by America's fifty-state federal structure, vision, leadership, and institutional capacity have aligned in a number of jurisdictions to furnish at least a foretaste of what judicial processes reconfigured for a digital age can look like” and to provide models for other court systems.³⁶ Some of these

³⁰ *AALL Universal Citation Guide* (1st ed., 1999), ¶ 1 (emphasis added.)

³¹ In his 1995 *California Law Review* article, Robert Berring also cautions that moving to a “format-neutral” citation system could interfere with the marketplace in legal information, which he cites as the number-one reason for the high quality of the US legal information system, and would also introduce an element of anonymity that could make it difficult to evaluate the reliability of legal information. Berring, “On Not Throwing Out the Baby: Planning the Future of Legal Information,” 631–632.

³² Gallacher, “Cite Unseen,” 36.

³³ *Ibid.*, 38.

³⁴ While Gallacher's proposed solution may have seemed far-fetched at the time he wrote his article in 2007, it is now starting to become a reality as more legal sources are digitized. As one of several examples, the Harvard Law Library Innovation Lab's “Free the Law” project has the ambitious goal of digitizing and making freely available online all of the official print versions of US case law in Harvard's collection—some forty million pages. For more on the project, see <http://librarylab.law.harvard.edu/projects/free-the-law>.

³⁵ Martin, “How Structural Features of the US Judicial System Have Affected the Take-up of Digital Technology by Courts,” Conclusion.

³⁶ *Ibid.*

developments within court systems “deserve ‘best practices’ designation” while others “provide vivid examples of what not to do,”³⁷ Martin says.

VII. THE WAY FORWARD

The preceding discussion reveals the way in which legal citation systems in the United States have proliferated over time and how those systems have been received. The systems currently in use are far more complex than their early ancestors but are motivated by a similar goal: to help readers find the sources upon which legal arguments are grounded. In the print world into which most leading citation systems were born, the finding process was often defined by form, whereas the digital word has shifted the focus to content. Yet leading citation systems continue to incorporate identifiers of form into their unique language—for example, by the use of multiple font variations—even while “born digital” legal content proliferates. The legal citation debate in the twenty-first century will undoubtedly be preoccupied with finding a solution to this inherent tension, and hints of such a solution are already apparent, most notably in the movement toward medium-neutral citation. Until a creative alternative is fully realized, however, law practitioners and scholars will continue to struggle to apply citation systems that cling to form over content, even while most sources underlying the “standard language” of citation have long since transmigrated to a digital universe.

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³⁷ In an earlier article published in the *Law Library Journal*, “Neutral Citation, Court Web Sites, and Access to Authoritative Case Law,” Martin documents Wisconsin’s experience with medium-neutral citation following its 1994 recommendations on the topic and provides an overview of state developments since that time.

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