



The Yale Law Journal

To: All J.D. and M.S.L. Candidates at Yale Law School
From: The *Yale Law Journal* Volume 127 Notes and Comments Committee (Anthony Sampson, Patrick Baker, Samir Doshi, James Durling, Meredith Foster, Joaquin Gonzalez, Annika Mizel, Max Harris Siegel, and Arjun Ramamurti)
Re: Notes Submission Guidelines
Date: August 4, 2017

I. INTRODUCTION

We invite and encourage all current J.D. and M.S.L. students to submit a Note for publication in Volume 127 of the *Yale Law Journal*. A Note makes an original, well-supported argument that advances the frontier of legal scholarship in a particular field. Publication in the *Journal* allows student authors to communicate their ideas to the legal community, to develop their scholarly voice, and to join a time-honored tradition of excellence and innovation in student scholarship. We are strongly committed to publishing an array of Notes that reflect the diversity of intellectual interests at the law school.

The Fall 2017 submission deadlines, or “drop dates,” for Volume 127 will be **Friday, September 1 at 5 PM; and Friday, October 20 at 5 PM.**

Please refer to the rest of this memorandum for guidance on developing and submitting your Note. The Notes and Comments Committee takes its commitment to blind review seriously. To preserve anonymity, all questions regarding the Notes submissions process and requests for Notes Development Editors should be directed to Managing Editors Erin van Wesenbeeck (erin.vanwesenbeeck@yale.edu) or Kyle Victor (kyle.victor@yale.edu). Please do not contact any member of the Notes and Comments Committee regarding your submission.

II. DEVELOPING YOUR NOTE

What Is a Note?

A Note is a student-written piece of legal scholarship. Notes are not limited by topic, methodology, or approach. Successful Notes typically share the following three characteristics:

- **Original:** the Note should advance a particular area of legal scholarship beyond its current state. The Note should situate itself within a legal discourse and articulate how it progresses

the field.

- **Well-supported:** the Note's argument should be analytically sound. Each step in the argument should be well supported by legal authorities. The Note should provide persuasive evidence for each of its conclusions and acknowledge the limits of its argument. Citations should be complete and unambiguous. The *Journal* follows *The Bluebook: A Uniform System of Citation* (20th ed. 2015) for citation form and the *Chicago Manual of Style* (16th ed. 2010) for stylistic matters not addressed by *The Bluebook*.
- **Well-written and structured effectively:** the Note should employ clear and concise prose and it should present the argument logically. The Note should clearly convey its thesis and the relevance of each section to the overall argument.

We welcome Notes adapted from clinical briefs, memos, or seminar papers. Although Notes can originate from Substantials or SAWs, effective Notes differ from most Substantials and SAWs in several ways. Notes need not contain a lengthy literature review and they should proceed quickly to the author's original argument and analysis. Notes should be directed at a broad legal audience, not at one professor.

Notes published in previous volumes of the *Journal* provide examples of excellent student scholarship. Recent examples include:

- Marissa C.M. Doran, Note, *Lawsuits as Information: Prisons, Courts, and a Troika Model of Petition Harms*, 122 YALE L.J. 1024 (2013), http://www.yalelawjournal.org/pdf/1131_vrvvg56f8.pdf.
- Alex Hemmer, Note, *Civil Servant Suits*, 124 YALE L.J. 758 (2014), http://www.yalelawjournal.org/pdf/HemmerPDF_p4iyzgmt.pdf.
- Tyler W. Hill, Note, *Financing the Class: Strengthening the Class Action Through Third-Party Investment*, 125 YALE L.J. 326 (2015), http://www.yalelawjournal.org/pdf/e.484.Hill.532_pwnguifv.pdf.

Resources for Developing Your Note

The Notes and Comments Committee offers several resources to students who are interested in learning more about the Notes submissions process or receiving feedback on their ideas or writing.

Notes Development Editors

First, students may request a Notes Development Editor (NDE). NDEs are Notes and Comments Editors who work with student authors and provide substantive, stylistic, and organizational advice at any stage of the Notes development process, from formulating an idea to polishing a finished piece. Please note that NDEs are not available for the February drop date but will be available shortly thereafter.

- NDEs are available to answer any questions you may have about the Notes submission process and to offer feedback on potential topics and ideas. There is no deadline to request an NDE for these purposes.
- Prior to submission, NDEs will also provide comments on *one* full draft of a Note per drop

date and answer follow-up questions. There will be a deadline for requesting an NDE prior to each drop date. The deadline will be publicized via Wall email.

- Finally, NDEs are available to work with authors who receive Revise & Resubmit letters on revising the piece for resubmission. We encourage students to take advantage of this resource.

We strongly encourage you to work with an NDE as you develop your Note.

Please note that NDEs will be recused from discussing and voting on Notes to which they are assigned. It is important that you do not contact a Notes and Comments Editor directly to request his or her assistance in developing your Note. Instead, email Managing Editors Erin van Wesenbeeck and Kyle Victor to request an NDE. In your email, please include (1) the nature of your request, such as “general submissions advice”; (2) a brief description of your Note’s topic or proposed topic; (3) any preferences you have about working with a particular Notes Editor; (4) the names of any Notes Editors who might be able to identify you as the author of the submission, and would thus be recused from considering your submission; and (5) the draft of your Note if you would like to receive feedback on a full draft. A Managing Editor will assign you a Notes Editor with these considerations in mind. NDEs will be assigned to authors on a first-come, first-served basis.

Other Resources

We encourage students to review our **Common Suggestions for Notes and Comments** and our **Guide to Writing a Note or Comment Based on Summer, Clinical, or RA Work**, both of which are available on our website [here](#).

III. POLICIES ON REVIEWING AND ACCEPTING NOTES

Blind Review

The Committee is strongly committed to impartial, blind review. Notes are reviewed without knowledge of the author’s name or other identifying information, and authors’ identities are only revealed to the Committee after a Note has been accepted. Any Committee member who can identify a Note’s author with confidence will be recused from the Committee’s deliberations on the Note.

To preserve the anonymity critical to the Committee’s review of submissions, you should not discuss any aspect of your Note or the submissions process with members of the Committee apart from your NDE, if applicable. To that end, please do not discuss your Note with Anthony Sampson, Patrick Baker, Samir Doshi, James Durling, Meredith Foster, Joaquin Gonzalez, Annika Mizel, Max Harris Siegel, or Arjun Ramamurti.

The Notes and Comments Committee will not consider submissions that contain identifying information about the author. Prior to uploading any documents, please double check to make sure that you have removed all self-identifying references from your documents. For all documents, please select “File” and then “Properties” on Microsoft Word and remove your name from the

“Author” field.

The Notes and Comments Committee takes its commitment to blind review of each Note seriously. Please take every reasonable precaution to avoid identifying yourself.

Notes Revision

All students who have submitted a Note will be notified promptly of the Committee’s decision, which will entail one of the following: (1) acceptance of the Note; (2) a request to revise and resubmit the Note; or (3) a rejection. Students who receive a request to resubmit the Note will also receive a Revise & Resubmit letter (R&R), which evaluates the strengths and weaknesses of the Note and provides constructive feedback on how the author should revise the Note to increase the likelihood of acceptance. If you receive an R&R and have not previously worked with an NDE, you can request an NDE to review the suggestions contained in the R&R.

Please note that acceptance of a Note on the first submission is extremely rare. The vast majority of Notes published in the *Journal* are accepted on the second or even third submission. We strongly encourage all students who receive an R&R to incorporate the Committee’s suggestions for revision and to resubmit the Note. Far from being cause for concern, an R&R indicates that the Committee is interested in your Note and hopes you will resubmit. We also recommend that students who receive an R&R work with an NDE to revise their Notes for resubmission. Finally, we encourage you to submit your Note at the earliest drop date possible. The earlier you submit, the more time you will have to implement the Committee’s suggestions and resubmit at a later date.

Journal Membership

The Notes and Comments Committee welcomes submissions from non-*Journal* students. Members of the Class of 2019 who are the sole authors of accepted Notes will be invited to join the *Journal* as First Year Editors. Authors of accepted Notes from the Class of 2018 will be eligible for membership if the Note is accepted at or before the September drop date. Authors of accepted Notes from the Class of 2017 will not be eligible for *Journal* membership. The *Journal* does not extend offers of membership to the authors of co-written Notes. Membership offered on the basis of the acceptance of a Note will be revoked if the Note is not published in Volume 127.

We hope that you will accept your offer of membership and join the *Journal* as a First Year Editor, fulfilling the same responsibilities as your peers in that role. If you have additional questions about becoming a *Journal* member, you will have an opportunity to ask them before accepting the membership offer. You will not need to decide until after we have committed to publishing your Note.

IV. POLICIES ON NOTE SUBMISSION

Eligibility

Only J.D. and M.S.L. candidates at Yale Law School are eligible to submit Notes. Students may

submit co-written Notes if all authors are J.D. or M.S.L. candidates. Students who have already acquired a J.D. or its foreign equivalent may *not* submit a Note but are welcome to submit Articles, Essays, and *YLJ Forum* pieces.

Eligible students may publish up to one Comment and one Note in Volume 127.

Word Limit

First-time submissions are subject to a word limit of 15,000 words. To be fair to authors who comply with the word limit, the Committee will not review first-time submissions that exceed 15,000 words. The word limit includes text and footnotes and does not include the Abstract, Table of Contents, or Statement of Originality. This limit will be strictly enforced, and the Committee will verify Note length. There is no word limit for resubmitted Notes. A Note that is submitted for the first time to Volume 127 must adhere to the 15,000-word limit, even if the Note was submitted to a previous Volume.

Please note that there is no minimum Note length. Quality is not correlated with quantity, and your Note need not utilize the full 15,000-word allowance. In the past, the Committee has accepted Notes that were significantly shorter than 15,000 words, including Notes around 10,000 words in length on the first submission. We strongly encourage you to avoid making your submission longer than necessary, especially given that Notes often increase in length upon resubmission and acceptance.

Format

Please use 12-point Times New Roman font and single- or double-space the text of your Note. For the footnotes, use 10-point Times New Roman font and single-spacing. The Note should use 1-inch margins and include page numbers in the bottom-right corner of the page. Please pay careful attention to spelling, Bluebooking, and other technical details.

Source Corroboration

All citations, including datasets, must be capable of being corroborated by the *Journal*. In addition, authors must obtain prior, written permission for the use and publication of any non-public material, including but not limited to quotes or paraphrases from interviews, non-public court documents or records of adjudication, and non-public data. This proviso is particularly important if your Note is the product of clinical work or a research assistantship. The Notes and Comments Committee will determine whether such permission is acceptable.

Statement of Originality

A Statement of Originality should accompany all Note submissions and resubmissions. The Statement of Originality should accomplish several related objectives:

- First, it should identify the Note's **original contribution** to the literature. You should think of the Statement of Originality as an opportunity to highlight the novelty of your argument

to an inexpert audience.

- Second, the Statement should clearly and precisely explain the Note's **relationship to the closest existing works** on the topic. What sources does your Note build on, and how does your Note deviate from existing arguments? Every piece of scholarship relies on what has come before, so the Statement should discuss the Note's major sources and intellectual debts, including cited and uncited scholarship. Do not merely list your sources, but explain them and distinguish your argument from those of other authors.
- Third, the Statement should discuss the literature that forms the **intellectual background** for the Note. Please feel free to provide ideas or material that would contribute to an appreciation of your argument but were not emphasized in the Note itself.

We use the Statement of Originality to learn more about the nature and extent of a Note's original contribution. The Statement of Originality is not an opportunity to make an extended pitch for your Note as a whole—only for the aspects that are original. You should not reproduce the Introduction in your Statement, nor should you include a detailed roadmap. You should only discuss the finer details of your Note insofar as they are necessary to convey the substance and contours of your original contribution.

When it comes to the existing literature, however, you should err on the side of caution and over-inclusion. We expect authors to identify the literature that comes closest to the Note, to describe this literature accurately, and to explain the relationship between the Note and existing literature honestly. Please note that we conduct preemption checks for each submission. Even beyond the acceptance process, every Note author is expected to stand behind his or her Note as original and accurate. If it is discovered after acceptance that the Note does not meet these standards, the piece will not be published.

The appropriate length for your Statement of Originality may vary depending on the topic and scope of the existing literature. **While there is no minimum required length, the word limit for the Statement is 1,500 words, excluding footnotes.** That is, the Committee will only read the first 1,500 words of the Statement. A sample Statement appears at the end of this document. Be sure to check both legal and non-legal books and periodicals, as well as both online and printed sources. If you decide to work with an NDE in developing your submission, he or she will be available to offer advice on the Statement of Originality. Additionally, you can find a tutorial on preemption checking from the Yale Law Library at <http://library.law.yale.edu/research/preemption-checking>.

Resubmission Memorandum

Authors who are resubmitting their Note must include the following materials in their submission package: (1) all Revise & Resubmit letters, including letters from previous volumes of the *Journal*; and (2) a Resubmission Memorandum. The Resubmission Memorandum should describe how the Note has changed since the prior submission, and why these changes have improved or strengthened the Note. Of special interest to the Committee is how the author has chosen to implement suggestions offered in past Revise and Resubmit letters. A page or so should suffice. If you have previously resubmitted your Note, please submit your previous Resubmission Memoranda as well (i.e., please submit a Resubmission Memorandum corresponding to each

Revise & Resubmit letter that you have received for the Note).

V. HOW TO SUBMIT YOUR NOTE

The *Journal* accepts student Note submissions only through our website at <http://ylj.yalelawjournal.org/authors/index.html>. If you have any difficulties with the mechanics of the submission process, please email Managing Editors Erin Van Wesenbeeck (erin.vanwesenbeeck@yale.edu) and Kyle Victor (kyle.victor@yale.edu) with questions.

To submit your Note, go to <http://ylj.yalelawjournal.org/authors/index.html> and register for an account. Once your account has been created, log in and select the “Submit Work” hyperlink; check the “Student Note” bubble and select “Continue.” Follow the instructions to submit the required documents. You must include the following submission materials and upload them in the appropriate fields on our website in Microsoft Word format:

1. **Submission field:** upload the submission, without your name on it, in this field. The document must include a Table of Contents and a Cover Page. The Cover Page should include: (1) the title of your piece in the upper left corner; (2) the word count including footnotes; (3) an Abstract no longer than 100 words; and (4) a sentence indicating whether you have previously submitted the Note.
2. **Statement of Originality field:** upload your Statement of Originality, without your name on it, in this field.
3. **Submission Form:** The Submission Form is a Google form that can be accessed from the Notes submissions upload page. Members of the Notes and Comments Committee will never gain access to the contents of this form, and your personal information will not be used to evaluate your Note. Your information will be held in strict confidence by the Managing Editors, and only the Managing Editors will know the identity of authors whose Notes are not accepted. Your information may be used at an aggregate level to help the Committee better understand the composition of the submissions pool, but it will not be linked to you as an identified or unidentified individual. The form is also available [here](#).
4. **R&R 1, R&R 2, R&R 3 fields:** if you have previously submitted your Note (even to prior volumes), upload the original version of any previous Revise & Resubmit Letter(s) associated with your submission.
5. **Resubmit Memo 1, Resubmit Memo 2, Resubmit Memo 3 fields:** if you have previously submitted your Note, upload a Resubmission Memorandum for each Revise and Resubmit Letter.
6. **Note on datasets:** authors submitting pieces with empirical work should also submit any datasets or coding used. We strongly prefer that data be submitted as a .DO file, but we will accept other file types compatible with STATA 9 or Word as well. Please email the file(s) to Managing Editors Erin van Wesenbeeck (erin.vanwesenbeeck@yale.edu) or Kyle Victor (kyle.victor@yale.edu).

The Notes and Comments Committee will not review submissions that depart from any of the guidelines contained in this memorandum.

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We very much look forward to receiving and reading your Note. Please feel free to contact Managing Editors Erin van Wesenbeeck (erin.vanwesenbeeck@yale.edu) or Kyle Victor (kyle.victor@yale.edu) if you have any questions.

Best wishes,

The *Yale Law Journal* Volume 127 Notes and Comments Committee

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Sample Statement of Originality

The Future of Treaty-making: Reservations, Understandings, and Declarations in Courts

This Note's first major original contribution is to provide the first comprehensive account of the enforceability of reservations, understandings, and declarations (RUDs) in courts of law. RUDs have significantly influenced U.S. Senators in their approach to ratifying treaties, and the lessons from this Note might possibly and hopefully inform how the United States approaches treaty-making in the future. For decades, the legal literature on RUDs has focused predominately on debating their legal and moral validity (i.e., a legislative perspective regarding whether U.S. Senators should add RUDs or not when fulfilling their duties of advice and consent on international treaties). For instance, in the literature, some scholars have defended the practice of RUDs as valid exercises of the U.S. Senate,¹ while others have offered criticism.² Scholars have suggested that RUDs lead to a "specious, meretricious, [and] hypocritical" process of U.S. ratification,³ where the United States aims to reap the benefits of participating in treaties while never assuming their obligations or burdens.⁴ More specifically, some have critiqued RUDs on their effectiveness in certain treaties such as the International Covenant for Civil and Political Rights (ICCPR) for signaling the United States' moral commitment to human rights.⁵ But in each instance, scholars have not considered the role of courts; this Note aims to provide a new focus by understanding U.S. and international court jurisprudence in relation to the RUDs practice, and from there, as the Note's second major original contribution, adding a new, informed perspective within the ongoing debate of what to consider when considering the ratification of treaties that are currently under consideration by the U.S. Senate.

More specifically, this Note takes on the concerns, stemming from real U.S. Senators, who remain unsure to what extent RUDs are really going to be enforceable in courts. Such concerns

¹ See, e.g., Jack Goldsmith, *The Unexceptional U.S. Human Rights RUDs*, 3 UNIV. ST. THOMAS L.J. 311 (2005); Jack L. Goldsmith, *Treaties, Human Rights, and Conditional Consent*, 149 U. PA. L. REV. 399 (2000).

² See, e.g., Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AMER. J. INT'L LAW 341 (1995) (recommending limiting the use of RUDs).

³ *Id.* at 341.

⁴ See *id.* at 344 ("By adhering to human rights conventions subject to . . . reservations, the United States, it is charged, is pretending to assume international obligations but in fact is undertaking nothing. It is seen as seeking the benefits of participation in the convention . . . without assuming any obligations or burdens."); Lori Fisler Damrosch, *The Role of the United States Senate Concerning 'Self-Executing' and 'Non-Self-Executing' Treaties*, 67 CHI.-KENT L. REV. 515, 518 (1991) ("[T]he trend toward non-self-executing treaty declarations is unfortunate and should be resisted. Domestic judicial application of international treaties should be encouraged in the interests of effective enforcement of international law as well as the development of a body of jurisprudence under the treaties.").

⁵ See, e.g., Kristina Ash, *U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 NW. J. INT'L H.R. 1 (2005) (discussing which RUDs the United States should withdraw from the ICCPR); M. Cherif Bassiouni, *Reflections on the Ratification of the International Covenant on Civil and Political Rights by the United States Senate*, 42 DEPAUL L. REV. 1169 (1993) (arguing that the United States' RUDs violates its good faith obligations to the treaty commitments).

were evident especially after the questions raised in *Bond v. United States*,⁶ a case that involved the possible domestic application of what was thought to only be international regulations from a treaty. In this vein, the Note provides a crucial vantage point for Senators' concerns about *Bond* during the Convention on the Rights of Persons with Disabilities—essentially, how enforceable RUDs to protect against unintended applications. Indeed, they are very enforceable, and to the extent other scholars have acknowledged as much, they have only done so by assumption.⁷ And these lessons will be critical as the United States considers ratification of treaties including the Convention on the Rights of Persons with Disabilities and the United Nations Convention on the Law of the Sea.

Finally, this Note also builds upon a more general literature that provides the more descriptive account of the practice of RUDs in U.S. and international courts, as well as the general understanding of the United States' treaty practice. Edward Swaine has published the most recent and comprehensive description of the law concerning reservations, namely the Vienna Convention and the use of and interests of reservations as a part of treaty-making,⁸ while others have provided descriptive account of their proliferation and use over time.⁹ In the *Yale Law Journal*, Oona Hathaway has written one of the most comprehensive discussions of the future of treaty-making from the vantage point of the Treaty Clause and congressional-executive agreement as two distinct routes.¹⁰ This Note contributes to these scholarly pursuits another view of the sustainability of treaties through the focal point of one of the main practices that allow their continuation. In short, the Note provides a strong affirmation that RUDs are litigated and enforced in practice. This insight should help U.S. Senators redirect their focus and interest in not whether RUDs will be enforced but whether their use is justified when risks exist, including the prohibition of RUDs in future treaties.

⁶ 134 S. Ct. 2077 (2014).

⁷ See, e.g., Damrosch, *supra* note 4 (taking for granted that the distinction between self-executing and non-self-executing treaties under U.S. law is accepted).

⁸ Edward T. Swaine, *Reserving*, 31 YALE J. INT'L LAW 307 (2006).

⁹ See, e.g., Kevin C. Kennedy, *Conditional Approval of Treaties by the U.S. Senate*, 19 LOY. L.A. INT'L & COMP. L.J. 89 (1996) (reviewing the history of RUDs usage by the U.S. Senate); John King Gamble, Jr., *Reservations to Multilateral Treaties: A Macroscopic View of State Practice*, 74 AMER. J. INT'L LAW 372 (1980) (surveying state practice in the area of reservations from 1919 to 1971).

¹⁰ Oona Hathaway, *Treaties' End: The Past, Present, and Future of International Lawmaking in the United States*, 117 YALE L.J. 1236 (2008).