



ROBE AND GOWN: WHY FACULTY- AND JUDGE-EDITED?

*Eugene Volokh**

I. WHAT DO WE DO?

Welcome to the *Journal of Free Speech Law*, a new peer-reviewed journal. We aim to publish excellent, novel, readable, and useful scholarship on the freedoms of speech, press, assembly, petition, expression, expressive association, and thought. (We leave pure religious freedom and church-state matters to others, such as the *Journal of Law & Religion*, but we would gladly publish works on religious speech.)

We don't limit ourselves to constitutional law (federal or state), but expect to also cover statutory, regulatory, and common-law speech protections, as well as private institutions' approaches to speech regulation. We also of course don't limit ourselves either to "pro-free-speech" or "pro-restriction" articles. And we are open to articles on foreign, international, and comparative law as well as U.S. law.

II. WHY PEER-REVIEWED?

Law, of course, is famous as "the only discipline in which professors grade the exams and students edit the journals." This journal departs from the "students edit the journals" norm, for several related reasons:

1. We think evaluating the soundness, utility, and especially novelty of scholarly work generally requires serious experience in the field.
2. We think peer reviewers can better avoid pressure to exclude controversial viewpoints or controversial authors. Of course, we are all subject to the biases and limitations of human nature, and peer-reviewed journals in many fields are often accused of being dominated by established orthodoxies. Indeed, student-edited journals may sometimes have the virtue of being more open to fresh approaches. But having an ecosystem with both highly regarded peer-reviewed journals and

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highly regarded student-edited journals seems likely to help produce more valuable scholarship than having a monoculture with only one or the other variety.

We have also tried hard to create an editorial board that comes from a mix of institutions; has a mix of ideological views; and has a mix of approaches to scholarship (doctrinal, theoretical, philosophical, historical, empirical, or otherwise). Our hope is that this mix will in turn help us publish a rich mix of articles.

3. Because faculty editors tend to have more self-confidence than students, it's easier for us to jettison traditions that we think are counterproductive. For instance:

- We won't be as insistent on comprehensive footnoting, parentheticals in footnotes, and the like—material that clutters the article, and distracts the reader from the substance. (It's sad how many results come up in a search for the citation "U.S. Const. amend. I," including when the text already mentions the First Amendment.) We will still of course require footnotes when support for assertions is genuinely needed.
- While we will generally follow the Bluebook, just because it has become the familiar custom in legal writing, we won't feel bound by rules that the authors or the editors think add unnecessary work, clutter, or confusion.
- We won't trouble authors about most stylistic choices, such as contractions or split infinitives. Your article, your call.

III. PUBLISHING QUICKLY

We also plan on publishing quickly, when necessary within a month or two. This will stem from several related practices.

1. We respond quickly to submissions. We do require exclusive submission, but promise authors an answer within two weeks. We have consistently kept that promise, and our average has been under one week.

2. We aren't constrained by the academic year, so we don't shut down review for the Summer (and late Spring) or Winter (and late Fall), as many student-edited journals do.

3. When the article is finished, there's no need to wait for the next open issue. Indeed, the concept of an "issue" comes from a world where print publication was key, and we are no longer in that world.

Rather, the article will be published, to our site and to electronic services, as soon as it's done. We still have print issues—we recognize that tradition has weight,

and even now print publications tend to have more gravitas than purely electronic ones. (Many thanks to the Stanton Foundation for their generous funding, which will pay for, among other things, the printing costs.) And the print issues will come out, we expect, roughly once every three months, so there might be a wait until that happens. But these days, an article is practically “published” when it’s online, and that will happen quickly.

4. We will also avoid one article’s lateness delaying others. Not long after we accept an article, we will assign it a starting page number (e.g., 2 J. Free Speech L. 301), and that will be its permanent citation, which people can start using. Then, even if the author of the article at 2 J. Free Speech L. 201 provides the final draft late, the other articles can still be published online as soon as they are done.

Of course, that means there will be some gaps in the page numbering; we might have pages 301–46, followed by 351–82, followed by 401–65, followed by 501–33. That might seem odd to someone who reads a whole issue on paper. But who would that unicorn be, in a world where nearly everyone finds and reads articles online? (That’s an overstatement, especially for symposium issues, but not by much.) And in any event, such a noncontinuously numbered print issue will remain perfectly useful, since the page numbers within each article will still be consecutive.

5. We will offer authors some editing advice, generally based on the reactions of the peer reviewers, but we won’t set aside time for editing more broadly. (In our experience, student-edited law reviews mostly don’t offer much valuable substantive editing in any event; and we expect to accept articles that are ready for prime-time.) We will have the articles proofread, both ourselves and by some students who will help us, but this should be a quick process.

6. We will also generally expect our authors to arrange for their own cite-checkers, which can allow them to get the article checked quickly, without delays at the journal. (Other faculty-edited journals, such as the *Supreme Court Review*, also take this approach.) In our experience, academics generally have research assistants available to them, and practicing lawyers will often have paralegals, or can hire cite-checkers for a modest sum. We will, however, ask for copies of the cite-checkers’ work, to verify that the cite-checking has been done. And if an author doesn’t have access to reasonable cite-checker help, we will assign a student to do the cite-check.

IV. WHY PROFESSORS + JUDGES?

Our Board of Editors (see p. i for the members) is a “robe-and-gown” board, consisting of judges and professors. The professors have all written extensively on

free speech law. The judges have all written opinions on free speech law; they are also mostly former full-time law professors (though generally in fields other than free speech law), and are thus especially experienced at evaluating law review articles. The few judicial board members who aren't former full-time law professors have either written articles or treatises about free speech law.

Here too we think that having such a mix will give the Journal a broader perspective. Not all law review articles need to be useful to judges and practitioners: Consider legal history, broadly acknowledged as a legitimate endeavor even when—for instance, because of the century, country, or topic being discussed—it provides nothing that can be used directly in litigation.¹ But neither must all law review articles be conceptually exciting to academics.

The best articles, we think, are often ones that have something to offer to everyone: judges, lawyers, academics, and students. But articles can be innovative and useful even if they help only some of those groups. We hope our Board can better identify a wide range of such articles.²

V. AN EXPERIMENT

Our Journal's motto is, "It is an experiment, as all life is an experiment." Justice Holmes said this about the Constitution, but of course by definition it applies to everything—including our journal.

Will it work? Only time will tell. Perhaps, some features will work and some won't, and we hope to adapt our practices accordingly. The one constant, we hope, will be that you will find our articles interesting, novel, sound, and useful.

¹ While we will not publish an article on the influence of Immanuel Kant on evidentiary approaches in Eighteenth Century Bulgaria (see Chief Justice John G. Roberts, Jr., Interview at Fourth Circuit Court of Appeals Annual Conference, available at <http://www.c-span.org/video/?300203-1/conversation-chief-justice-roberts> at approx. 30:40 (June 25, 2011); Orin S. Kerr, *The Influence of Immanuel Kant on Evidentiary Approaches in Eighteenth Century Bulgaria*, 18 GREEN BAG 2D 251 (2015)), we will happily publish interesting articles on Immanuel Kant and free speech or on free speech in the Eighteenth Century Ottoman Bulgarian provinces.

² For those who need precedent, consider *Judicature*, published by the Bolch Judicial Institute at Duke and containing a board of Duke-linked judges, Duke professors, and Duke alumni lawyers.