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The Banality of Law Journal Rejections

Noah C. Chauvin

Essay

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As many others have observed, American law journals are odd.[1] Unlike journals in every other academic field, the articles law journals publish are (for the most part) not selected, reviewed, or edited by experts in the field. Rather, law journals are run by students. But although students run the journals, it is legal academics, as the overwhelming majority of the journals' authors and readers, who benefit most from them.[2] This mismatch between the benefits derived from law journals and the effort that goes into producing them has contributed to law journal publication practices that impose severe burdens on student editors.

For instance, due to efforts by student editors to reduce the length of the papers they publish, the standard law journal article is approximately 25,000 words long[3]—still far longer than is typical in closely related fields.[4] Because they do not edit or peer review law

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1. *See, e.g.*, Richard A. Posner, *Law Reviews*, 46 WASHBURN L.J. 155, 156 (2006) (describing law journals as "strikingly different" from other scholarly publications).

2. Of course, while legal academics benefit most from the final product, students derive some benefit from the *process* of producing law journals. *See* Barry Friedman, *Fixing Law Reviews*, 67 DUKE L.J. 1297, 1334–35 (2018). However, there is no reason to believe that these benefits—such as editing skills and exposure to more areas of the law—could not be achieved in other ways, such as by serving as a professor's research assistant or writing an independent study or seminar paper.

3. Noah C. Chauvin, *Enough Is as Good as a Feast*, 44 SEATTLE U. L. REV. 1, 7 (2020).

4. *See, e.g.*, *Article Submission*, AM. HIST. REV., https://www.historians.org/publications-and-directories/american-historical-review/article-submission [https://perma.cc/TV36-RAXU] (detailing *The American Historical Review*'s 13,500-word limit for articles); *Instructions for Authors*, AM. POL. SCI. REV., https://www.cambridge.org/core/journals/american-political-science-review/information/instructions-contributors [https://perma.cc/3DPK-EMRW] (detailing the *American Political Science Review*'s 12,000-word limit); *Submission Guidelines*, PHIL. REV., https://read.dukeupress.edu/the-philosophical

journal articles, though, professors have fewer incentives to keep them brief than they otherwise would. Indeed, since publication decisions are being made primarily by second-year law students who have relatively little legal experience, authors are incentivized to increase the length of their articles by including lengthy background sections that do not advance the article's thesis but do provide uninitiated readers with an overview of relevant law and scholarship.[5]

Another result of this mismatch between benefit and effort is a system for selecting articles for publication that wastes time and effort for author and editor alike.[6] Because there is no peer review at most law journals, the journals do not prohibit multiple submissions, and authors submit their papers to many journals simultaneously.[7] And new technologies have made it simpler for professors to submit to multiple journals. Online submission services allow authors to submit to dozens or even hundreds of journals at the same time, without having to put in the time and effort that was required for such a large volume of submissions when submissions were done by mail or email.[8] Even after they receive an offer of publication, authors are not done with the submission process: they then seek expedited review from other journals, hoping to leverage their original offer to get a publication offer from a higher-ranked journal.[9]

-review/pages/Submission_Guidelines [https://perma.cc/WC6T-9QPN] (detailing the *Philosophical Review*'s 15,000-word limit).

5. Michael C. Dorf, *Thanks to a Joint Statement by Top Law Journals, Law Review Articles Will Get Shorter, but Will They Get Better?*, FINDLAW (Feb. 28, 2005), https://supreme.findlaw.com/legal-commentary/thanks-to-a-joint-statement-by-top-law-journals-law-review-articles-will-get-shorter-but-will-they-get-better.html [https://perma.cc/KM5P-DR99]. For a discussion of why background sections in law review articles are not particularly useful to the reader, see Chauvin, *supra* note 3, at 13–14.

6. *See* Michael D. Cicchini, *Law Review Publishing: Thoughts on Mass Submissions, Expedited Review, and Potential Reform*, 16 U.N.H. L. REV. 147, 150–55 (2017) (describing the costly and time-intensive article submission process); Friedman, *supra* note 2, at 1303, 1305–07 ("These problems detract from the quality of our work and its readership, impose huge burdens of time and other costs, and make us all a little crazy.").

7. Erik M. Jensen, *The Law Review Manuscript Glut: The Need for Guidelines*, 39 J. LEGAL EDUC. 383, 384–85 (2006).

8. *See* Cicchini, *supra* note 6, at 153–54 (discussing how professors use online systems to submit a single article to over 100 law journals); Friedman, *supra* note 2, at 1325 ("Back in the day, multiple submissions of an article were at least a bit of a hassle."); *see also* Jensen, *supra* note 7, at 384 (arguing, in 2006, that it was problematic for authors to "mail copies [of their articles] to twenty or more publications").

9. Friedman, *supra* note 2, at 1313–14; Jensen, *supra* note 7, at 384–85; *see also* C. Steven Bradford, *As I Lay Writing: How to Write Law Review Articles for Fun and Profit*, 44 J. LEGAL EDUC. 13, 30 (1994) ("When you receive the initial offer . . . . [B]egin

The net result of this process is that law journals often receive thousands of submissions during any given submission cycle,[10] and, because they only publish at most a few dozen articles in a given volume, they send thousands of rejection notices in any given year. One would expect that rejections from each journal would convey essentially the same message. During a recent submission cycle, though, I noticed how similar these messages really are. For instance, from the *BYU Law Review*:

> Thank you for submitting your article . . . to the BYU Law Review. Unfortunately, after editorial review, we have decided not to extend an offer of publication.
>
> The Law Review receives a large number of submissions each year and we are constrained by the limited number of pages we are able to publish. Frequently, we must make the difficult decision to turn down an excellent piece of scholarship.
>
> We wish you the best of luck and hope that you will keep our journal in mind for future submissions.[11]

From *The George Washington Law Review*:

> Thank you for allowing us to consider your manuscript for publication in *The George Washington Law Review*.
>
> Our editors have had an opportunity to review your manuscript and agreed that it is a strong contribution. Unfortunately, we receive a large number of submissions worthy of publication but lack the space to publish them all. I regret that we will be unable to publish your article in our current volume.
>
> We appreciate your submission and wish you the best of luck in finding a suitable home for your article. I encourage you to continue to submit manuscripts for review in the future.[12]

calling the articles editors at every other review on your list. The key here is to bluff: make them think that the offer you have in hand is from a top-ten law review which is desperate to have you.").

10. Leah M. Christensen & Julie A. Oseid, *Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power—Student Editors*, 59 S.C. L. REV. 175, 203–04 (2007).

11. Email from BYU Law Review to Noah C. Chauvin (Mar. 18, 2021, 11:26 AM) (on file with author).

12. Email from The George Washington Law Review to Noah C. Chauvin (Mar. 19, 2021, 5:23 PM) (on file with author).

From the *Nevada Law Journal*:

> Thank you very much for submitting your article to the Nevada Law Journal. Unfortunately, we are unable to extend an offer of publication. The NLJ receives a large number of submissions and we are constrained by the limited number of pages we are able to publish. Frequently we must make the difficult decision to turn down an excellent piece of scholarship.
>
> We wish you the best of luck and look forward to your next submission.[13]

And from the *Wisconsin Law Review*:

> Thank you very much for submitting your article to the *Wisconsin Law Review*. Unfortunately, we are unable to extend an offer of publication. The *Wisconsin Law Review* receives a large number of submissions every year, and we are constrained by the limited number of pages we are able to publish. Frequently we must make the difficult decision to turn down an excellent piece of scholarship.
>
> We wish you the best of luck and look forward to your next submission.[14]

Most striking, of course, is the identity between the *Nevada Law Journal* and *Wisconsin Law Review* messages, but note that all the messages share similar features—they are identical in their meaning, even if not in their precise phrasing. Each of them makes reference to the large number of submissions that they receive each year and uses this to explain why the journal has elected to not publish the article. Each one makes clear that the editors must frequently reject articles that are worthy of publication. Each one stops short of asserting that *your* article is worthy of publication—even *George Washington*, which refers to the article submitted as "a strong contribution" does not go so far as to say that it is a "submission[] worthy of publication."[15] And each of them expresses the journal's hope that you will find another journal willing to publish the piece and their fervent desire that you will submit future articles to them.

To some degree, it is little wonder that the rejection messages journals send look so similar. For one thing, both ExpressO and

13. Email from Nevada Law Journal to Noah C. Chauvin (Mar. 21, 2021, 3:46 PM) (on file with author).

14. Email from Wisconsin Law Review to Noah C. Chauvin (Mar. 21, 2021, 3:38 PM) (on file with author).

15. Email from The George Washington Law Review, *supra* note 12.

Scholastica, two popular websites that help journals manage article submissions, offer template rejection letters to editors.[16] So, at a practical level, it is predictable that some journals will use the template rejection notes and send essentially identical messages.

Even without the assistance of these templates, though, it is unsurprising that the rejection messages law journals send would coalesce around certain themes.[17] Most authors of journal articles are repeat players,[18] so journals naturally take a risk-averse approach when dealing with them. Conscientious journal editors are deeply aware that they are only temporary custodians of an institution that will (hopefully!) endure long after they are gone. It costs the journal nothing to be polite in rejecting an article and even to try and massage the bruised ego of the scholar whose work the journal has rejected. The last thing journals want are professors bad-mouthing the journal to their colleagues, and so journals take an "it's not you, it's us" approach to rejecting articles. Thus, the emphasis on the large number of submissions the journals receive (your paper is one of many), the quality of the papers the journal rejects (your paper is great), and the hope that the author will return in the future (next time, we'll almost maybe publish you).

Speaking as the recipient of many rejection messages, it does sting whenever a journal rejects a paper into which an author has poured hundreds of hours of painstaking thought, planning, researching, writing, and editing.[19] So caution on the part of editors rejecting articles is probably merited, especially because the professors who write such articles are keenly aware of the fact that the editors rejecting their work are second-year students who generally do not have the subject-matter expertise necessary to meaningfully review the content of many articles.[20]

16. *Managing Submissions via ExpressO: A Guide for Law Review Editors*, EXPRESSO 15, https://law.bepress.com/assets/images/expresso/ExpressO_Guide_for_Law_Review_Editors.pdf [https://perma.cc/PJ58-RMDJ]; Elli Olson, *Must-Have Law Review Email Templates, Part 2: Publication Decisions*, SCHOLASTICA (July 27, 2016), https://blog.scholasticahq.com/post/law-review-email-templates-pt-2/ [https://perma.cc/CU84-AH2E].

17. These themes are well known to legal scholars. *See* Mark A. Lemley, *Please Reject Me: An Open Letter to the Harvard Law Review*, 22 GREEN BAG 2D 235, 235 (2019).

18. *See* Jensen, *supra* note 7, at 384 (arguing that the increase in the number of law review submissions in the early 2000s was due in part to an increase in the number of law professors).

19. This is perhaps why some scholars devote so little time to these aspects of writing journal articles.

20. *See* Dorf, *supra* note 5. Of course, this awareness has generally not led to law

In all respects, it is unsurprising that law journals have coalesced around essentially identical rejection messages. There is a risk that their rejections may offend authors, they feel a responsibility to avoid doing so, and they have been provided with tools that make giving offense less likely. In theory, everyone wins. In reality, everyone loses—at least in part.

There is a cost to all involved when journals send inauthentic rejection messages. And make no mistake, the messages are inauthentic. If journal editors really do enjoy an article, if they really believe it to be excellent, then they make an offer of publication.[21] The first cost of the inauthenticity of these rejection notes is that they are soul-crushing, to both sender and recipient. The student editors who send the rejections are forced to suppress their true feelings in favor of canned politeness. They are denied the opportunity to speak in their own voice and are thus stripped of their agency—hardly what we want of students in professional school who will soon become our colleagues.

Such messages are damaging to the souls of the recipients, too. Article authors know that the rejection messages are not genuine. The knowledge that they are being lied to—and lied to by second-year law students who dare to judge the author's work and find it lacking—breeds a sense of vague contempt in authors for both the student editors and the article selection process.[22] This feeling is compounded when authors receive essentially the same rejection message, over and over again. This is unhealthy for authors because the article selection process is of great importance to them. Moreover, to a greater or lesser degree, authors will realize that their frustrations with the article selection process are a function of a system that they are collectively responsible for. They have the power to enact meaningful reforms, such as instituting peer-reviewed article selection, yet they choose not to exercise it. In this sense, they are the architects of their own vexation—never a comfortable position to be in.

However, it is not just souls with which I am concerned. I also

professors instituting meaningful reforms to the law journal publication process, such as implementing peer review, *see* Posner, *supra* note 1, at 155–57, so it is difficult to say that this is a problem law professors care about too strongly.

21. There are, of course, exceptions. Journals may reject pieces of scholarship they think are excellent because they have filled their volume already, and the four or five top journals probably do reject pieces they think are genuinely good.

22. This may also be the case if an author suspects that his or her article was rejected for some reason other than its perceived quality, such as the author's pedigree. *See* Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601, 602, 607–10 (1999).

worry about the practical impact that disingenuous and formulaic rejection messages have on both editors and authors. To begin, there are negative consequences for authors. For good or for ill, the article selection process is in the hands of students. Thus, if authors want their work published, they need to grab the attention and interest of student readers. Formulaic rejection letters, which do not indicate what students disliked about an article or why it was rejected deny authors the opportunity to make informed revisions that will increase the article's odds of selection at a later date.[23]

The second effect on authors is admittedly more speculative. Many authors have horror stories of student editors butchering their articles during the editorial process.[24] I wonder if the overzealous editing of some student editors is them reasserting agency of which they were robbed during the selection process. Admittedly, the causal connection between form rejection letters and fervid editing is not obvious. But it would not be surprising if a process that robbed students of power at a point when they had relatively little control led them to becoming petty tyrants when they later had some authority to flex.

Most concerning of all, though, is what form rejection letters will do to authors' perceptions of student editors. Because the messages strip the editors of their humanity, they allow authors to see the editors as nothing more than avatars for their journals, rather than as actual people. This allows authors to ignore the consequences of the publication system—a system that authors manipulate to benefit themselves at the expense of the students who ostensibly run it. It is difficult for moral actors to justify making a hundred or more simultaneous submissions to journals, especially knowing full well that, if you get an offer of publication from all but a few journals, you will use it to

23. Suggestions could include "The introduction was too technical," "I enjoyed it, but other members of the article selection committee did not think the thesis was convincing," or "This is the fourth article we have seen this cycle making the same argument about [whatever blockbuster case the Supreme Court is considering this term]." Of course, authors may worry that edits that appeal to students will reduce the article's overall quality. *See, e.g.*, Posner, *supra* note 1, at 158 (arguing that student editors favor stilted style and lengthy articles); Dorf, *supra* note 5 (noting that articles with extensive background material may be less insightful and original). But since the goal of submitting articles is to get them published, feedback from the very people who decide whether that will happen is valuable.

24. *See, e.g.*, Posner, *supra* note 1, at 159–60 (discussing several law professors' negative experiences with journal editors); *see also* Bradford, *supra* note 9, at 31–32 ("You want to be as laidback and relaxed as possible when you examine what the editors have done to your valuable work.").

try and leverage a better offer.[25] But it is easier to do so when you can deny the humanity of the students you are burdening, and easier still when their personness is hidden behind the pat language of a form letter—especially when you will get the exact same form letter from a dozen other journals.

When compared to other objections to the law journal publication process—that it reduces the quality of scholarly articles, stifles creativity, and wastes the time of editors and the treasure of authors[26]—my observation that it robs editor and author of a meaningful and candid interaction at the point of rejection seems inconsequential. And to be sure, receiving even a canned rejection notice is preferable to the more common problem of receiving no response at all.[27] But there is something exceptional about the amateurishness of legal scholarship and academic publishing. It allows for creativity, for play; it can be *fun*. We should mourn any time that spark is snuffed out by those who confuse dullness with seriousness. To the fullest extent possible, we should prevent the banality of procedure and platitude from killing what makes legal scholarship special. As long as student editors are our partners in publishing legal scholarship, we should treat them as full partners. This means accepting them as people, not expecting them to be faux-professional avatars, and pushing back against the bureaucratization of any aspect of the publication process, including even the sending of rejection notices. And so, I beg the editors who reject this and future articles: please, tell me you didn't like the paper. We will both be better off for it.

25. To a purely moral actor, it should not matter that everyone else is doing the same thing. *See* Cicchini, *supra* note 6, at 153.

26. Chauvin, *supra* note 3, at 15–16; Cicchini, *supra* note 6, at 154–55; Dorf, *supra* note 5; Posner, *supra* note 1, at 157–60.

27. *See* Lemley, *supra* note 17, at 235–36 ("So please, *Harvard Law Review*, reject me. Save the ghosting for parties.").