Publishing Options as Prolific as our Faculty

by Meredith Heagney
In 2004, Professor Geoffrey Stone was at the Los Angeles Times Festival of Books, where his Perilous Times: Free Speech in Wartime: From the Sedition Act of 1798 to the War on Terrorism earned the Book Prize for best history book of the year. He was speaking on a panel when the woman seated next to him whispered an offer: she was creating a new website where people would blog; did he want to be one of those people?

“I had no idea what she was talking about, but I said ‘sure,’” Stone said. “She gave me her card.”

The name on that card? Arianna Huffington. Back then, she was known for being a political commentator and a candidate in California’s 2003 gubernatorial recall election, not the queen of the blogosphere.

The Huffington Post launched in 2005, and in the past nine years Stone has authored more than 200 posts as an expert on constitutional law, the First Amendment, and civil liberties. It’s a medium the Edward H. Levi Distinguished Service Professor of Law couldn’t have imagined when he started his academic career in the 1970s. Back then, law professors wrote journal articles and the occasional newspaper op-ed. Today, professors’ options for publishing are almost as plentiful as the ideas themselves.

That’s good news for a faculty as prolific as the Law School’s, where constant writing and publishing has long been the norm. As their options increase, each professor devises his or her own “scholarship strategy” based on their field, goals, writing style, time, and career progression. Each must ask the question: what’s the best way to get my ideas out into the world? Even more to the point: who is the audience, and what do I want them to know?

Books can be written for other academics or for the general public, as Stone and other faculty authors, including Eric Posner and Martha Nussbaum, have demonstrated. Often, it’s both; Laura Weinrib is writing her first book largely for other scholars but hopes to attract a general audience as well.

Journal articles are typically read only by academics and students, but the ideas in them can trickle into the courtroom, as evidenced by the empirical civil procedure work of William Hubbard. Faculty who want to influence the law, such as election law scholar Nicholas Stephanopoulos, use a mix of academic and popular writing to reach as many readers as possible. William Baude blogs in addition to writing journal articles so that he can comment immediately on current events.

“Academic writing always comes first,” Baude said, “but it’s nice to have places to publish the important pieces of my ideas for a wider audience. It’s sort of a form of teaching.”

The ability to reach more diverse readers is one reason why Stone moved from journal articles to books, he said. He is the author of eight books, including the aforementioned Perilous Times.

Law reviews used to be written so that they were relevant to working lawyers, he said, but that is less true today.

“They tend to be addressed today more to academics than to people engaging in the legal profession in the real world.” Plus, he added, books have plenty of space to flesh out a big idea. Stone is now working on Sexing the Constitution, which looks at the question of “why it was only in recent decades that judges thought the Constitution had something to say about sexuality.”

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He writes his books with an educated but not necessarily academic audience in mind. Think of the people who are likely to read the New York Times Magazine, he said.

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Stone also coauthors a popular casebook on constitutional law and coedits a peer-reviewed journal produced at the Law School, the Supreme Court Review. He is general editor of the Inalienable Rights series published by Oxford University Press, a series of short books on complex constitutional topics for nonexpert audiences. He submits briefs to the Supreme Court and other courts on issues of constitutional law. And besides the Huffington Post, he also writes regularly for the Daily Beast. His blogging is a fun diversion and a bit of a public service, he said.

“I think what we know in the academy is often extremely useful, and if we can help explain it to people generally, it will help them understand what they’re thinking about better.”

Plus, he added, it’s a good change of pace to be able to have something published so quickly. Journal articles take months and books take years, but popular writing is
immediate. “It’s nice to be walking down the street, have
an idea, and have something to do with it.” Over the
summer, he blogged about religious tests for public office,
the Supreme Court’s decision in the abortion protest case
McCullen v. Coakley, and NSA surveillance of private citizens.
(Stone was one of five people appointed to a presidential
advisory committee on National Security Agency surveillance,
a result of his extensive writing on civil liberties.)
When Professor Eric Posner has something to say on
a timely topic, he turns to his biweekly column at Slate,
which he’s had since 2012. “It wasn’t something I looked
for, but it’s nice,” he said. It did take some adjustment,
however, to go from writing for academic audiences to
writing for everybody, from experts to laypeople.
“When I first started doing it, it was difficult, because it’s a
very different style,” said Posner, Kirkland and Ellis
Distinguished Service Professor of Law. “It’s a lot like teaching.
What you’re doing is trying to convey complicated ideas
to people who aren’t familiar with them. You’re exercising
a different part of your brain, and I find that enjoyable.”
Posner used to write the occasional op-ed for newspapers
such as the New York Times and the Wall Street Journal,
but their space is limited and their acceptance rates are
low, so he doesn’t bother anymore. His pitches land well
at Slate, and there’s not too much pressure; if he doesn’t
have an idea, he can skip a week. If he has two ideas in
one week, he can publish both. Recently, he wrote about
why Speaker of the House John Boehner’s lawsuit against
President Barack Obama is nonsensical and why the
Supreme Court usually decides cases 9–0 or 5–4. He also
blogs at ericposner.com.
Posner enjoys his popular writing, but academic work
will always come first, he said. He has written 15 books
and hundreds of book chapters and articles. He likes to
publish in peer-reviewed journals, which he believes are
higher quality than law reviews because they are edited
by professors rather than students. Student-edited law
reviews, however, have larger readership.
No matter the audience, Posner cringes at the concept of
being a “public intellectual.”
“I think of myself primarily as an academic who writes
for academic audiences. I don’t like the idea of a public
intellectual because I think it conveys a certain amount
of superficiality and self-aggrandizement. I try to write
only about things I know. Basically, I only write about the law. I’ll never write about politics. I’ll never write about whether Obamacare is good or bad. I write about the legal angles, like whether Obamacare is lawful or not.”

And it’s all connected, Posner added. “I’d say 90 percent of what I’ve written (for the popular press) is related to my academic work, so when I write I feel like I know what I’m talking about, and I’m not just spouting an opinion.”

Professor Martha Nussbaum, like Posner, is a well-known name who receives a fair amount of press. But the philosopher doesn’t like the label “public intellectual” either. It is sometimes interpreted to mean that the academic has left the academy behind, she said, which is definitely not her.

“I’m not unhappy in academia at all. But I want to connect with the broader public. I think it’s extremely important,” she said. “Political philosophy is about matters of urgent human importance that bear on public policy.”

Nussbaum, who has written more than 20 books and 400 articles, doesn’t have an online column like Stone or Posner, but she does have strategies for writing for different audiences. If she thinks the audience will be largely academic, she is free to reference many works of other scholars, lots of empirical data, and complex examples. If she expects a popular audience, she figures out ways to make the academic more accessible. For example, in her 1986 book, *The Fragility of Goodness*, Nussbaum put all the footnotes at the end of the book, “so you can skip them.”

Sometimes, her aim is to develop theories that will change and shape the field of philosophy. Other times, she wants to effect change on the ground. For example, in her 2013’s *Creating Capabilities: The Human Development Approach* with two audiences in mind: undergraduate students just starting to learn about social justice and, even more practically, development workers around the world trying to make it happen.

The capabilities approach described in that book was developed by Nussbaum with Harvard economist Amartya Sen and has been used all over the world by governments and agencies working on human rights and welfare. Several of these bodies have consulted Nussbaum on implementing the approach. And the chief economist of the World Bank, Kaushik Basu, is the former president of the Human Development and Capability Association, of which Nussbaum is a founding president.

So while Nussbaum is very aware of the importance of writing for broader audiences, she’s quick to point out that she never “dumbs down” her popular writing. Conversely, even in her most complicated academic writing, she works to engage the reader intellectually and emotionally. To put it simply, “Whatever I’m writing, I try to write clearly and compellingly for humans who care about the issues.”

Of course, in Nussbaum, Posner, and Stone’s cases, their accomplished careers and reputations create automatic demand for whatever they write. Faculty who are earlier in their careers publish as a route to academic growth, tenure, and greater exposure.

Professor Laura Weinrib, a legal historian, is writing her first book, *The Taming of Free Speech*, which is about the history of the civil liberties movement in the United States.

Different fields have different norms, Weinrib said; for example, quantitative fields such as economics or the hard sciences tend to be more article driven. Many fields have a premium on getting work out quickly or focusing on changing developments in the courts, but history is not one of those fields.

Books are the norm for historians for a few reasons, Weinrib said. One, history requires a lot of documentation of research and evidence for your argument. In addition, you have to “engage with the historiography,” which means revisiting all the important relevant work and arguments and then adding your own contribution. All those footnotes “require a lot of pages.”

Another reason historians write books? Nonacademics read them sometimes, but they almost never read journal articles. History, and especially American history, is very marketable to a general audience. Weinrib chose Harvard University Press as her publisher, she said, in part because they have a track record of success in a general market.

“History has a narrative component,” Weinrib said. “Historical writing is not exclusively analytical, it’s not exclusively normative. There’s a story to tell, and that’s an important part of what makes good history.”
Sometimes, that “good history” is even intensely personal. Weinrib edited the 2009 book *Nitzotz: The Spark of Resistance in Kovno Ghetto and Dachau-Kaufering Concentration Camp*. The book is an English translation of several issues of an underground Jewish journal edited by her grandfather under Nazi occupation, first in the ghetto and then in a concentration camp. Weinrib, who wrote an intensive introduction for the book, first started working on the topic as her senior thesis in literature at Harvard College.

Professor William Hubbard, on the other hand, tries to tell his story through empirical data. He does economic analysis of litigation, courts, and civil procedure. Most of his early publications were invited pieces for conferences and symposia, which the event organizers would later publish. Being a new professor at the Law School helped him get those invitations, he said.

“Chicago helps me a lot,” he said. “People may not know who I am, but they know Chicago.”

Invited pieces came with some peace of mind, because he knew when and where his work would be published, he said. The downsides were that the work had to fit a particular theme and deadlines were tied to an event and therefore strict. Given that empirical work is particularly time-consuming—“it always seems to take twice as long as expected,” he said—writing for a deadline is especially nerve-wracking.

Now with more experience behind him, Hubbard is setting his own pace. This gives him more freedom to develop his own themes but requires that he pitch his work to journals. “I write a paper, send it out, and hope somebody likes it,” he said. He aims for peer-reviewed journals, which are better equipped to edit technical data analysis and mathematical modeling. Hubbard himself is a coeditor of the peer-reviewed *Journal of Legal Studies*, which is produced at the Law School.

Hubbard said he knows that most judges and lawyers don’t read journals. Some judges have criticized academic work as too esoteric, too focused on “sexy” cases, and not in tune with how the law really works or its political significance.
realities, he said. He tries to make sure his work has practical benefit by focusing on issues that have interested him since he was a lawyer practicing high-stakes civil litigation cases. In February, Hubbard presented results of an empirical study on litigation costs to the Advisory Committee on the Civil Rules, the group of judges responsible for the federal rule-making process.

Hubbard also has spoken in depth with federal judges who visit the Law School as part of its Visiting Jurist program, which brings leading judges and members of the faculty together to discuss academic research. In 2013, Hubbard discussed pleading standards with Judge Gary Feinerman of the Northern District of Illinois.

“Judges don’t generally read these papers,” Hubbard said. “But I want to inform an academic debate on how people understand the process by which lawsuits are resolved. As academics, lawyers, and even their clients become aware of new ideas, I think those ideas do trickle up to judges and policy makers.”

Professor Nicholas Stephanopoulos also wants to create work with impact, in his case, on election law.

He does that through both his academic writing, usually published in law reviews, and his popular writing for publications such as Slate, the New Republic, the Los Angeles Times, and the Chicago Tribune.

For example, Stephanopoulos recently completed Partisan Gerrymandering and the Efficiency Gap, a paper in which he proposes a quantitative metric to measure the degree of partisan gerrymandering in district plans. The metric is based on partisan symmetry, which the Supreme Court has shown some openness to despite rejecting other standards. The article will be published in the University of Chicago Law Review next year, but it’s already available online, and people in Wisconsin unhappy about the state’s pro-Republican gerrymander plan to use its proposed metric in a lawsuit. (If the lawsuit succeeds, it would be the first-ever victory on this cause of action.) Stephanopoulos also presented the basic ideas in a July 2 piece for the New Republic, “Here’s How We Can End Gerrymandering Once and for All.”

These “pop” versions of his articles bring his academic ideas to the masses, he said. Both types require some hustle for a young professor; Stephanopoulos pitches each law review article to a few dozen law reviews and then contacts media outlets to find space for a column.

“I’m really interested in not just having a role in the academic debate but also being relevant in the public debate,” he said. “To the extent I can do a bit to further my policy views, I’d like to do that.”

Even better, he said, “doing more popular writing improves my academic writing. Academic writing can tend to be too complex, too dense. When I have to write a piece with no footnotes, I find I work to make it clearer and more accessible.”

Professor William Baude shares Stephanopoulos’s feelings about the importance of making academic work accessible. He started a law blog when he was still an undergraduate at the University of Chicago a decade ago. Back then, law blogs weren’t at all common, but Baude read a few he liked and was inspired to start his own.

“I would see people say things on the Internet I thought were wrong or not quite right, and I wanted a place to respond,” he said. Baude also wrote for the Maroon student newspaper and sometimes for no outlet at all; if he was moved to write an essay about something and had nowhere to publish it, he’d simply circulate it among friends.

While studying at Yale Law School, Baude’s blog evolved into a “place for me to figure out what I thought about things. And that’s still true. I often write about things that puzzle me.” Today, the blog is defunct, but Baude writes for two others: SCOTUSblog, where his beat is jurisdiction and procedure cases, and the Volokh Conspiracy, populated by mostly law professors and now hosted by the Washington Post. Baude’s work has found its way to the Supreme Court and beyond. Justice Antonin Scalia cited two of Baude’s scholarly articles in two separate opinions; first, it was “Beyond DOMA” in his dissent for United States v. Windsor and then “Rethinking the Federal Eminent Domain Power” in his concurring opinion in Bond v. United States. Both articles have been used in recent law school case books. And it’s not just scholarly articles getting attention; one of Baude’s Volokh Conspiracy blog posts was cited in the successful petitions for summary reversal in Williams v. Johnson, decided by the Court July 1.

But even the heavy workload of articles and blogging isn’t enough writing for Baude. He does more, just for fun. His Twitter (@crescat) followers can count on a post or two virtually every day, and he is the author of more than 1,000 business reviews on Yelp, where he has been named to the “Yelp Elite Squad” six years in a row.

“I just love writing,” Baude said. Luckily for him and our other prolific professors, the opportunities are endless.