

IS BLOGGING SCHOLARSHIP? WHY DO YOU WANT TO KNOW?

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Is blogging scholarship? Kate Litvak writes that scholarship is anything that satisfies your salary committee.¹ Doug Berman argues that blogs are just another medium of communication,² and Larry Solum explains how blogs are signs of larger forces at work.³

I would answer the question of whether blogging is scholarship by asking another question: *Why do you want to know?* In other words, to what purpose will you use a classification of blogging as scholarship or not scholarship? Categories are used to order the messy reality of academic life because they serve some purpose. Without knowing what purpose we expect scholarship to fill, it is hard to determine whether blogging is a form of scholarship.

BLOGGING AS TRADITIONAL SCHOLARSHIP

Most law blogs do not publish much, if any, scholarship in the traditional sense: serious, printed, edited medium- or long-form works on topics that are central to a typical field of legal scholarship. Indeed, only a few blogs regularly publish the sorts of pieces that would be published in a traditional law review. But there are exceptions: Larry Solum, for example, often publishes short essays on his Legal Theory Blog that are serious and analytical enough to be published in a typical law review.

BLOGGING AS AN EFFECTIVE SUBSTITUTE FOR TRADITIONAL SCHOLARSHIP

Although few bloggers post essays that would be appropriate without any changes for a traditional law review, we often blog on recent developments in the field or in our own scholarship, using arguments and evidence that could be adapted fairly easily to a law review article or

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1. Kate Litvak, *Blog as a Bugged Water Cooler*, 84 WASH. U. L. REV. 1061 (2006).

2. Douglas A. Berman, *Scholarship in Action: The Power, Possibilities, and Pitfalls for Law Professor Blogs*, 84 WASH. U. L. REV. 1043 (2006).

3. Lawrence B. Solum, *Blogging and the Transformation of Legal Scholarship*, 84 WASH. U. L. REV. 1071 (2006).

comment. Indeed, the nearly instant blog commentary on recent court cases is replacing the law review case note, which has often appeared over a year after the case has been decided. Thus, blogs can be used to formulate and disseminate the same sorts of arguments that we might publish in a law review; blog posts may not look or feel like traditional scholarship, but they often serve the same function.

BLOGGING THAT INCLUDES SUBSTANTIAL QUOTATIONS FROM SCHOLARLY MANUSCRIPTS

Another common contribution to legal scholarship is the posting of parts of our scholarship and evidence on our blogs. For example, in March 2006, I posted a section of a manuscript on African American conservatives.⁴ It contained charts reporting the results of over two dozen nationally representative studies of the American public. Not only is what I posted *similar* to what I might publish in a law review, it is *identical* to part of what I plan to publish, except that I omitted the footnotes. Interestingly, this post led to an invitation from the University of Chicago's Black Law Students Association to talk about this topic as part of the school's Diversity Week—a further opportunity to disseminate my scholarship.

BLOGGING AS SCHOLARLY DIALOGUE

Blogging often starts a dialogue with readers and other bloggers that leads to correcting mistakes in our scholarship, finding more evidence for or against our positions, or challenging us to deal more fairly with real (rather than imagined) counterarguments. Some law bloggers even enrich their scholarship by “blegging”—posting a request for information, evidence, or examples to use in our research.

BLOGGING TO DISSEMINATE SCHOLARSHIP

Probably the most important contribution of blogging to legal scholarship is informing readers both inside and outside the legal academy of recent work published in a law review or posted to a website service, such as the Social Science Research Network (SSRN). Bloggers spread

4. Posting of Jim Lindgren to The Volokh Conspiracy, http://volokh.com/archives/archive_2006_03_19-2006_03_25.shtml#1142911861 (Mar. 20, 2006, 9:31 p.m.) (“While in the last decade black conservatives are very common, roughly as common as black liberals, black Republicans are relatively few in number.”).

information about many things, scholarship included. Some commenters at this bloggership conference seemed to accord SSRN even more importance than it has yet achieved. Although it is fairly comprehensive in some fields, such as law and economics and legal theory, most legal scholarship in fields other than these two is not on SSRN.

Blogging can help point people to new scholarship (wherever it is posted online) to a degree that SSRN has not yet achieved. If I may be permitted to offer an example from my own experience, consider the case of Michael Bellesiles's *Arming America: The Origins of a National Gun Culture*.⁵ Initially, the book was well received (it even won the Bancroft prize for American History).⁶ But as I and others began to look into the basis for many of its claims, the evidence fell apart.⁷ My co-author Justin Heather and I found that Bellesiles claimed to have counted guns in about a hundred Providence wills that never existed, claimed to have counted guns in San Francisco County inventories that were apparently destroyed in the 1906 earthquake and fire, reported national means for his data that were mathematically impossible, changed the condition of most guns in some counties in a way that fit his thesis, and had over a sixty percent error rate in finding guns in Vermont estates.⁸ As the reputation of the book collapsed, Bellesiles resigned his tenured position at Emory University and Columbia University took the unprecedented step of withdrawing the Bancroft Prize.⁹

When I published a review of the book in the *Yale Law Journal*,¹⁰ it hardly created a ripple. But when I sent Glenn Reynolds a copy of the review, he posted it at Instapundit and blogged about it, leading to over

5. MICHAEL A. BELLESILES, *ARMING AMERICA: THE ORIGINS OF A NATIONAL GUN CULTURE* (2000).

6. James Lindgren, *Fall from Grace: Arming America and the Bellesiles Scandal*, 111 *YALE L.J.* 2195, 2201 (2002) (book review).

7. *See id.* at 2199–232; Robert H. Churchill, *Guns and the Politics of History*, 29 *REVS. AM. HIST.* 329 (2001); Robert A. Gross, *Historians and Guns*, 59 *WM. & MARY Q.* 203 (2002); Ira D. Gruber, *Of Arms and Men: Arming America and Military History*, 59 *WM. & MARY Q.* 217 (2002); Gloria L. Main, *Many Things Forgotten: The Use of Probate Records in Arming America*, 59 *WM. & MARY Q.* 211 (2002); Joyce Lee Malcolm, *Arming America*, 79 *TEX. L. REV.* 1657 (2001) (book review); Randolph Roth, *Guns, Gun Culture, and Homicide: The Relationship Between Firearms, the Uses of Firearms, and Interpersonal Violence*, 59 *WM. & MARY Q.* 223 (2002).

8. James Lindgren & Justin L. Heather, *Counting Guns in Early America*, 43 *WM. & MARY L. REV.* 1777 (2002); Lindgren, *supra* note 6, at 2232.

9. *Columbia's Board of Trustees Votes to Rescind the 2001 Bancroft Prize*, *COLUM. NEWS*, Dec. 16, 2002, http://www.columbia.edu/cu/news/02/12/bancroft_prize.html (“The Trustees voted to rescind the Prize during their regularly scheduled meeting on December 7, 2002 and have notified Professor Bellesiles of their decision.”).

10. Lindgren, *supra* note 6.

130,000 downloads from Instapundit alone.¹¹ This caused the History News Network (HNN) to republish it on its site, leading to perhaps another half million downloads from HNN (though HNN did not have a counter of the manuscript itself, so that number is little more than a guess).¹² In SSRN's history, the most downloaded article ever is Eugene Fama's *Market Efficiency, Long-Term Returns, and Behavioral Finance* with over 60,000 downloads since it was posted at SSRN nine years ago.¹³ With attention from Reynolds at Instapundit, Eugene Volokh at The Volokh Conspiracy, and other bloggers, my law review essay was downloaded many more times in just its first week on the Web at Instapundit than any article has ever been downloaded at SSRN. The potential of bloggers to generate discussion and interest in particular manuscripts dwarfs what SSRN can achieve on its own.

CONCLUSION

Very few blogs or blog posts have the same form, style, or content as traditionally published legal scholarship. Yet, if one looks closer at law blogs, one can see that blog posts often serve the same purposes as traditional legal scholarship: to generate and disseminate knowledge about the law and legal institutions. Blogging can be a good way to refine ideas and get feedback at an early stage in one's work. As a method of disseminating traditional scholarship, blogs (along with such services as SSRN) are increasingly important. In rare cases when scholarly manuscripts interest a wide sector of the educated public, the power of blogs to focus attention and advance public intellectual debate about legal issues is rivaled only by the top segment of traditional mass media, such as network television and major daily newspapers.

11. Personal communication with Glenn Reynolds (Mar. 1, 2005) (on file with author).

12. A version of "Fall From Grace," *supra* note 6, was published at the History News Network: <http://hnn.us/articles/930.html>.

13. SSRN Top Downloads, <http://papers.ssrn.com> (follow "Top Papers" hyperlink). The article is available in print and electronically on SSRN. Eugene F. Fama, *Market Efficiency, Long-Term-Returns, and Behavioral Finance*, 49 J. FIN. ECON. 283 (1998), available at <http://ssrn.com/abstract=15108>.