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THE TRANSFORMATIVE NATURE OF BLOGS AND THEIR EFFECTS ON LEGAL SCHOLARSHIP

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Max Frisch once observed that "[t]echnology is a way of organizing the universe so that man doesn't have to experience it."[1] As new technologies are formed, earlier technologies and means of communication may be supplanted or partially displaced. At times, some commentators argue, the use of legal blogs supplants traditional legal scholarship such that traditional legal scholarship need no longer be "experienced" by readers. Such a broad-based dismissal, however, of the inherent value of traditional legal scholarship—even in light of increased reliance on blogs—is misplaced.[2] This paper argues that law reviews (the cornerstone of traditional legal scholarship) can co-exist peacefully with legal blogs, as each often operate in separate, distinct spheres.

The interaction between traditional legal scholarship (which takes the form of journal articles and books) and the increased presence of legal ideas on the Internet can have profound consequences for the legal academy. While many scholars remain resistant to this shift in communication, the increased popularity of blogs generates significant advantages with respect to the dissemination of information. The Internet

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1 The Quotations Page: Technology, http://www.quotationspage.com/subjects/technology/ (last visited May 16, 2008).

2 Historically, new technologies providing more efficient dissemination of ideas have not entirely supplanted older, less efficient communication technologies. *See generally* NEIL POSTMAN, AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN THE AGE OF SHOW BUSINESS (1986) (discussing the interrelationship between television as a source for news and newspapers as the traditional foundation of information).

in general and legal blogs in particular provide the largely unprecedented opportunity for the creation of a broad-based legal dialogue among lawyers and non-lawyers. This paper argues that such a dialogue should not be discouraged, as the legal academy can benefit immensely from a more pervasive dissemination of novel legal ideas by means of the Internet.

The Internet's unique ability to generate discussion among legal scholars and laypersons has been cited as an adverse consequence of the open forums provided by legal blogs, or blawgs. Such blanket dismissals of this phenomenon, however, fail to acknowledge the benefits accruing from such discussions. Discussion of recent court decisions aids in normative discussions with respect to the way in which law should function in society. There is little reason to place the responsibility of deciding cases on the basis of broad public policy grounds on judges lacking access to the general public's viewpoints on particular issues. The Internet provides an ideal forum for the type of interaction between judges, clerks, lawyers, and the general public to actively participate in ongoing discussions about specific policy goals.[3] Although many scholars argue that judicial interaction with the general public can have adverse consequences for the legal academy (presumably because non-legally trained persons are attempting to help dictate legal policy by means of influencing judges and lawyers), sometimes the best ideas are generated by the least likely of sources.[4]

This phenomenon was examined on an episode of *The Simpsons*.[5] In *The Simpsons* episode entitled *They Saved Lisa's Brain,*[6] physicist Stephen Hawking visits Homer Simpson's town of Springfield and notes that he is intrigued

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3 As noted earlier, many judges and clerks peruse legal blawgs in order to learn more about recent happenings in the law, post their own reactions, and, presumably, read comments posted by members of the general public.

4 *See* STEVEN KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS: WHAT OUR FAVORITE TV FAMILY SAYS ABOUT LIFE, LOVE, AND THE PURSUIT OF THE PERFECT DONUT ch. 1 (2006) (discussing specific examples in which important ideas have been produced from highly unlikely sources). Steven Keslowitz argues that such examples further the tradition of Socrates, who believed that great ideas can come not from leaders, but rather from those deemed least fitted to lead in society. Socrates observed that "in my investigation in the service of the god I found that those who had the highest reputation were nearly the most deficient, while those who were thought to be inferior were more knowledgeable." *Id.* at 17; *accord* Socrates, *Apology*, *in* PLATO, FIVE DIALOGUES 26 (John M. Cooper ed., G. M. A. Grube trans., 2d ed. 2002).

5 For a complete list of episodes of *The Simpsons*, see The Simpson Archive: Episode QuickList, http://snpp.com/guides/ql.html (last visited May 16, 2008).

6 *The Simpsons: They Saved Lisa's Brain* (FOX television broadcast May 9, 1999).

by Homer's theory of a donut-shaped universe.[7] Despite the fact that the source of the information (i.e., Homer Simpson) is widely viewed as unreliable and incompetent,[8] Hawking, often deemed "the world's smartest man,"[9] was willing to listen to Homer's ideas. Similarly, members of the general public without formal legal training may have important ideas to contribute. The Internet provides such persons a forum through which their voices can be heard by members of the Bar who do have the power to make specific decisions and advocate policy initiatives. Viewed from this perspective, this paper argues that despite some occasional praise from law professors, legal blogs (or blawgs) have received an unfair amount of criticism from many scholars.

I. BLOGS: A NEW MEANS OF COMMUNICATING LEGAL IDEAS

> "Blogging . . . [a]t its best [is] a way of bringing power to the people."[10]
>
> *Professor Paul Butler*

The recent upsurge in both the number and use of blogs by academics, lawyers, and the general public has greatly increased communication among people of diverse ages, backgrounds, and livelihoods. The reliance on blogs for news, information, and commentary[11] is coupled with both an increase in access to ideas[12] and a decrease in reliability and

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7 The idea of a donut-shaped universe has been proposed by prominent scientists. *See Doughnut-Shaped Universes* (2007), http://www.dansdata.com/gz074.htm.

8 *See generally* KESLOWITZ, *supra* note 4.

9 *See id.* at 18.

10 Paul Butler, *Blogging at Blackprof*, 84 WASH U. L.R. 1101, 1103 (2006).

11 Despite the increasing popularity of blogs, some polls have shown that the majority of Americans do not read political blogs. According to a January 2008 poll, only 22 percent of Americans said that they read blogs on a regular basis. 56 percent of respondents stated that they never read political blogs, while 23 percent said that they read such blogs several times a year. *See* Ellen Wulfhorst, *Poll: Most Americans Don't Read Political Blogs*, REUTERS, Mar. 10, 2008, *available at* http://www.reuters.com/article/politicsNews/idUSN1048067620080310.

12 If scholarship is primarily concerned with the formation of new ideas, an exploration of the means of both generating and disseminating such ideas is a task worth undertaking. Despite some reluctance to the proposition that true legal scholarship can be produced on blogs, such hesitation is, in my view, misplaced. If we define scholarship as "learning" or, alternatively, as "knowledge acquired by study," there is little reason to question the use of blogs – merely a medium through which learning can occur and knowledge can be acquired – as a useful tool in the generation of legal scholarship. For the previously cited definitions of 'scholarship,' see Dictionary.com: Scholarship, http://dictionary.reference.com/browse/scholarship

accuracy as compared with the use of other sources (such as books, newspapers, and television) for sources of information. The anonymity of many bloggers contributes to the likely increases in both misinformation and disinformation,[13] a trend that mirrors the reliance on the Internet in general as a primary source of information.[14] The legal profession[15] is similarly impacted by the increase in the use of law blogs as sources of information and as a means of dissemination of ideas. The shift in the medium for discourse from primary reliance on Law Reviews[16] for sophisticated legal commentary to increased reliance on blogs for information has profound consequences for the creation and communication[17] of legal

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(last visited Jul. 11, 2009). For an elaboration on the contrary position (i.e., that blogs have no place in a discussion of the production of scholarship), see Lawrence B. Solum, *Blogging and the Transformation of Legal Scholarship*, 84 WASH. U. L.R. 1071, 1088 (2006) ("Scholarship is about 'papers,' not 'posts.'").

13 *See, e.g.*, KESLOWITZ, *supra* note 4, at 142 (discussing the concept of disinformation).

14 *But see id.* at 129–148 (discussing Neil Postman's observation that, despite the advent of new medium of communications, newspapers remain the cornerstone of information in contemporary society).

15 Legal professionals who blog may run into a number of ethical dilemmas, particularly with respect to client relationships. *See, e.g.*, Adrienne E. Carter, *Blogger Beware: Ethical Considerations for Legal Blogs*, 14 RICH. J.L. & TECH. 5 (2007) (observing that practitioner blogs can create ethical considerations, ranging from the creation of undesired attorney-client relationships by means of blogging, engaging in the unauthorized practice of law, as well as advertising and confidentiality issues).

16 Professor Hibbitts' examination of the historical context in which law reviews were created concludes that the law review served 4 fundamental institutional purposes prior to the explosion of the number of law journals. These purposes, as summarized by Professor David A. Rier, include the desires of law faculty to:

> 1) [G]ive their students the legal training needed to secure them good jobs; 2) strengthen their standing, and that of their school, among the practicing bar; 3) improve ties to alumni, both to strengthen their schools' financial bases and improve job placement of graduates; and 4) improve their academic status within the university.

David A. Rier, *The Future of Legal Scholarship and Scholarly Communication: Publication in the Age of Cyberspace*, 30 AKRON L. REV. 183, 184 (1996).

While Hibbitts applauds the interplay between modern technology and legal scholarship, Rier provides a counter-argument, but does acknowledge the soundness of at least some of Hibbitts' specific critique of law reviews. Rier summarizes these attacks on law reviews as follows:

> [F]or their length; their inept, over-aggressive editing—and poor selection of articles—by inexperienced student editors; their failure to provide educational benefits to any students save a small elite; their failure to provide even these elite students with educational benefits worth the enormous investments of time involved; their lack of peer review or faculty supervision; their publication of too much mediocre, poorly-written scholarship; their publication backlogs; their overuse of footnotes; their lack of utility to practicing lawyers and judges; and their over-emphasis on a limited range of topics.

Id. at 184.

17 Some scholars argue that despite the perceived increase access to ideas on blogs, the particular layout of blogs is ill-suited to *preserve* ideas for lengthy periods

ideas and theories. The informality of blogs, coupled with the opportunities for mistakes and inaccuracies, serves a striking contrast to Law Reviews, well-known for their meticulous attention to detail and factual accuracy. This paper examines the impact of the increased reliance on blogs and its probable effects on the legal profession and general understanding of the law. The paper argues that blogs' main positive attribute[18]—the increased access to legal ideas - trumps the traditional benefits of law reviews, such as accuracy and meticulous attention to detail.

One of the main dilemmas faced by users of blogs is identifying whether a particular blog is reliable. While some blogs are explicitly designed to be silly, others claim to offer the Internet community a reliable fountain of information.[19] Furthermore, the difficulty of defining a blog and the medium's multiple, diverse functions[20] contributes to its general murkiness in terms of its function as a medium through which information is disseminated.[21] While a user is

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of time. *See* Eugene Volokh, *Scholarship, Blogging, and Tradeoffs: On Discovering, Disseminating, and Doing*, 84 WASH. U. L.R. 1089, 1098 (2006) (arguing that the communication generated on blogs is fleeting and largely ephemeral: people will read about new legal ideas, post their thoughts and engage in a back and forth discussion, but will then will forget about these ideas in a few months and subsequently find that re-entry to a particular blog discussion on a particular topic can often be cumbersome).

18 Law reviews serve other purposes as well, some of which blogs are not well-equipped to serve. Law reviews have arguably become increasingly important in determining the overall ranking of a law school. *See generally* Alfred L. Brophy, *Focus: Law School: The Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35 (2007); Dr. Ronen Perry, *Commentary: Law School Rankings: The Relative Value of American Law Reviews: Refinement and Implementation*, 39 CONN. L. REV. 1 (2006). Blogs are not particularly well-suited to displacing law reviews as a criterion for ranking law schools in general.

19 *See, e.g.*, Hon. Jefferson Lankford, *To Blog or Not to Blog*, ARIZ. ATT'Y, Feb. 2004, at 10, 10 ("Depending on the viewpoint and the blog, blogs are cool or silly, informational or unreliable."). Some law blogs even contain short essays which "are serious and analytical enough to be published in a typical law review." James Lindgren, *Is Blogging Scholarship? Why do you want to know?*, 84 WASH. U. L.R. 1105, 1105 (2006).

20 *See, e.g.*, Hon. Jefferson Lankford, *supra* note 19, at 10 ("Most blogs are personal Web pages of a particular kind. These informal online diaries focus on a topic or person. Usually their entries are entered in reverse chronological order and updated frequently—many on a daily basis, with a time stamp. Often they contain useful links, such as to break news. Sometimes the blog operates as a bulletin board, allowing visitors to add their comments to the host's postings."). *See also* Andrew Updegrove, *The Profession: Essentials of Creating a Successful Legal Blog*, B.B.J., May/June 2007, at 16, 16 (listing diverse objectives of blogs, particularly in the legal arena: blogging for credibility, blogging for legal education, and blogging in order to generate business).

21 *See, e.g.*, Hon. Jefferson Lankford, *supra* note 19 ("Defining [a] 'blog' is tricky."); Andrew Updegrove, *supra* note 20 ("What exactly is 'blogging?' Originally,

aided in his determination of the popularity of a particular blog by Google rankings, such rankings do not necessarily relate directly to the degree of accuracy of specific information posted on the blog. Critics of blogs argue that blogs are not self-regulating, and thus can lead to the dissemination of massive amounts of disinformation.

A. *Pervasiveness of Blogs*

Despite the many flaws of blogs (discussed *infra*), users' increased reliance on blogs as a source of information is considered a threat to traditional forms of journalism and academic journals.[22] Like many other members of the academic community, a number of legal practitioners[23] and scholars have engaged in blogging and devote extensive time to developing and articulating concrete legal ideas on law blogs, commonly referred to as "blawgs."[24] The enormous potential impact of blawgs on the legal profession has not been lost on legal scholars, many of whom joined in a conference devoted to legal blogging held at Washington State University Law School.[25] A major focus of the symposia was whether blawgs constitute legal scholarship, a question that largely remained unresolved by the conclusion of the event.[26]

'web logs' (soon shortened to 'blogs') were simple on-line diaries, and some still are. But today a blog is as likely to include reviews, opinions, or just about anything else the owner wants to share on a semi-regular basis with the world at large."). David Hudson writes:

> The trouble is that not all agree on the definition of a blog. Robert A. Cox, President of the Media Bloggers Association, describes the word "blogging" as "terrible." He explains that "it is worse than useless because it is an empty vessel into which people can—and do—pour whatever meaning suits them at the time. This breeds confusion and stands in the way of what I believe is the most important development in the media over the past several years—the growth of what is often referred to as 'citizens media' or 'grassroots journalism.' . . . Blogging is writing. Period.

David L. Hudson, Jr., *Blogs and the First Amendment*, 11 NEXUS 129, 129 (2006) (original citation omitted).

22 *See, e.g.*, Hon. Jefferson Lankford, *supra* note 19 ("Blogs are often so muckrakish and current that they have been called both a threat to traditional journalism and 'the Web's equivalent to a sophisticated early warning system.'").

23 At the end of 2005, the American Bar Association estimated that nineteen percent of all lawyers were engaged in the process of writing blogs, a number that is certain to increase as the Internet's scope and influence continuously expand.

24 The term "blawg," which refers specifically to law blogs, was coined by Denise Howell, the author of the intellectual property blog "Bag and Baggage."

25 See the papers from that conference cited throughout this article.

26 The views of Howard Bashman, the only participant who was not a law professor, were particularly refreshing with respect to this point. Bashman noted that "for me and many others outside of the legal academy who enjoy reading law-

The increased use of blogs by lawyers has profound consequences not only for the legal profession, but also for the general public. With the advent of blawgs, non-lawyers have an unprecedented opportunity to share their views with respect to various aspects of the law, ranging from thoughts about recent court decisions, purposes and functions of law, and the development of new laws.[27] As Professor Adrienne E. Carter observes, blogs increase the visibility of the law by encouraging non-lawyers to join with lawyers to discuss serious legal issues.[28] Such discussion of legal ideas among non-lawyers demonstrates blogs' sharp departure from traditional forms of legal scholarship, such as law reviews, which are generally read (if at all) by legal scholars and judges.[29] This increased visibility of the law resulting from blogs demonstrates its greatest impact as a medium.[30] Legal scholarship, as Professor Solum argues, is no longer confined to the ivory towers, but rather is widely accessible to the public at large.[31] By making the law more open to discussion[32] among non-lawyers, new ideas and perspectives on diverse issues inevitably develop[33] with respect to specific

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related blogs, the battle over whether law professor blogs should count as scholarship or public service borders on the irrelevant." Howard J. Bashman, *The Battle Over the Sould Law Professor Blogs*, 84 WASH. U. L.R. 1257, 1260 (2006). What matters is that "the law professor segment of the law blog world generates a great deal of interesting content on a daily basis." *Id.*

27 Blogging, "at its best [is] a way of bringing power to the people." Butler, *supra* note 10, at 1103.

28 Discussing the public's increased accessibility to the law, Professor Carter writes that "blogs actually make the legal community more accessible by inviting the public to join lawyers in a discussion of the law." Carter, *supra* note 15.

29 *See infra* Part II.

30 Many blawgs tout the advantages of providing a forum for the expression of legal ideas to a large number of people. The goal of TaxProfBlog, for example, "is to create a virtual tax community among tax professors, students, and practitioners who come to the site each day to both access the vast array of tax resources available on the Internet and to learn of new tax developments." Paul L. Caron, *Are Scholars Better Bloggers?*, 84 WASH. U. L.R. 1025, 1026 (2006); *see* TaxProf Blog, http://taxprof.typepad.com/taxprof_blog/ (last visited Mar. 29, 2008).

31 Professor Solum argues that the "emergence of academic legal blogging is an important indicator of other trends—real causes that are driving significant transformative processes. These trends include the emergence of the short form, the obsolescence of exclusive rights, and the trend toward the disintermediation of legal scholarship."). Lawrence B. Solum, *supra* note 12, at 1071.

32 The transparency provided by the Internet, in general, is particularly applicable to the ideas presented on scholarly legal blogs. Professor Solum concludes that "Blogs serve as an alternative channel of information about legal scholarship—an alternative form of 'peer review' that is more competitive, open, and transparent than the traditional peer review processes." *Id.* at 1088.

33 *See e.g.*, KESLOWITZ, *supra* note 4, at 15–27 (discussing the emergence of ideas from unlikely sources, and observing that Socrates championed the notion that novel ideas can come from those deemed least likely to provide such ideas).

legal issues. The popularity of legal blogs is attributable to a number of causes, including ease of use, ability to evade editors' comments,[34] and communication[35] advantages, particularly the ability of persons both within legal[36] and non-legal professions to engage in discussions with one another by means of the Internet.[37]

Blawgs have the potential to seriously impact the face of legal scholarship. Legal scholars have had mixed reactions[38] to the alleged academic utilization of blogs on the Internet,[39] but the very fact that the discussion is taking place in law review articles and at symposia speaks to the shift toward non-traditional mediums to communicate serious ideas. If the ultimate objective of legal scholarship is the dissemination of

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34 Many professors would like to avoid the back and forth editing process associated with law reviews. Blogs provide an escape route. Professor Volokh, discussing this advantage of blogs, explains: "You don't need to please, or even deal with, an editor. You don't even have to proofread and polish as much. Polished work is more effective, but people forgive typos and other little lapses more than they would in print: readers realize that many academic bloggers will be willing and able to blog—or at least blog timely and often—only if they can do so with a minimum investment of effort." Volokh, *supra* note 17, at 1091.

35 Some scholars have lauded blawgs' ability to provide easy communication among law professors. Professor Volokh, writing about his own experiences on blawgs, observes that "Now that I've enabled comments, I get fewer e-mails, but I still get some, sometimes arguing with me, sometimes complimenting me, often pointing me to other interesting stories to cover; and the comments themselves end up being a conversation triggered by our posts, and often responding in thoughtful ways to our posts." *Id.* at 1091.

36 In a nod to the transformative nature of blawgs in terms of the ways in which legal scholarship is produced, some law reviews have established websites and blawgs that encourage professors and other scholars to post feedback on specific legal ideas and newly produced scholarship. Professors also are encouraged to post responses to soon-to-be-published law review articles. These sites provide increased access to fresh legal ideas and a window into the inner workings of the legal academy. *See, e.g.*, Virginia Law Review-In Brief, http://virginialawreview.org/index.php (last visited Mar. 29, 2008). The Cardozo Law Review has revamped its website to include similar features.

37 *See* Carter, *supra* note 15, at 6 ("Lawyers are finding that the ability to directly communicate with the general population, without the filter of media outlets, allows for a more human discourse between lawyer and potential client.").

38 For an optimistic view toward the use of blogs with respect to the advancement of legal scholarship, see Caron, *supra* note 30, at 1034 ("Because blogs are simply a medium of communication, they can be used to advance legal scholarship in the same way as articles and books can."). For the contrary viewpoint, see *supra* note 21. For an analysis of blogging as a medium, see Solum, *supra* note 12, at 1071 ("[B]logging is essentially epiphenomenal—an effect and not a cause. Blogging is merely a particular medium—a currently popular form of Web-based publishing.").

39 Some scholars have decried the increasing reliance on legal blawgs with respect to the production of legal scholarship, warning of potential dangers. Randy Barnett, for example, argues that blogging may contribute to a "flight from scholarship" as law professors use blogging as an excuse to flee from the difficult and time-consuming task of writing law review articles. *See* Caron, *supra* note 30, at 1038.

new ideas,[40] blawgs are arguably well-suited to the task at hand.[41] As Professor Jim Lindgren observes, reaching the conclusion that blawgs serve academic purposes often requires that we look beneath the surface of blawgs, perhaps ignoring their form,[42] and instead focusing on the content presented in more scholarly postings.[43] Searching beneath the surface and sifting out new ideas and serious commentary from the fluff is an endeavor which often requires academic rigor and intense concentration.

Some legal scholars argue that blawgs are in the process of revolutionizing[44] legal scholarship.[45] Professor Carter

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40 "[B]log posts often serve the same purposes as traditional legal scholarship: to generate and disseminate knowledge about the law and legal institutions." Lindgren, *supra* note 19, at 1108.

41 Still, blawg postings do not invariably discuss new legal ideas in a way that will influence scholars (and judges) to perceive a case in one way as opposed to another. Because of the relative brevity of many blawg posts, the influence of blawgs in general may take a backseat to traditional forms of legal scholarship. *See* Volokh, *supra* note 17, at 1095 ("At best, we may have an article that is relevant to a case, but the relevance might take some explaining. More likely, we may have ideas about a pending case that we haven't yet fully expressed in an article.").

42 While blawgs serve as a unique means of communicating information in terms of their structure, the content presented on such blawgs should not obfuscate the fact that some scholarly blawgs present complicated legal ideas which merit serious discussion among the academic community. In order to reap the academic benefits of blawgs, browsers must conclude that "[b]logging is merely a particular medium—a currently popular form of Web-based publishing," and is capable of presenting important ideas to both the legal academy and the general public. Solum, *supra* note 12, at 1071.

43 Although "[v]ery few blogs or blog posts have the same form, style, and content as traditionally published legal scholarship . . . 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." Caron, *supra* note 30, at 1036–37 (quoting James Lindgren, *Is Blogging Scholarship? Why do you want to know?*, 84 WASH. U. L.R. 1105 (2006)).

44 Professor Hibbitts argues that the Internet in general has had profound consequences on the thought processes associated with the production of legal scholarship. Discussing the newly-created freedoms enjoyed by scholars, Hibbitts writes that:

> Law professors working at terminals with an Internet connection to the Web need not worry any more about whether the subject of a piece is too esoteric, too doctrinal, too complicated or even too impolitic for law review editors; we are free to write and publish on the topics of our choice. This freedom might give us a useful antidote to the substantive . . . sameness of the reviews as they now exist. On the Web, we need not endure months of frustrating or embarrassing delay while our papers are judged, peer-reviewed, edited or printed in formal journals; we can disseminate our work instantly, as soon as we are satisfied with it. . . . On the Web, we are under no compulsion to tolerate the indignities and inaccuracies of line-editing: we can present our own work in our own terms, in our own "voice," in our own words, in our own ways.

Bernard J. Hibbitts, *Last Writes? Re-assessing Law Review in the Age of Cyberspace*, ¶4.5 (Mar. 10, 1997), http://faculty.law.pitt.edu/hibbitts/lastrev.htm.

Hibbitts concludes that "In the age of cyberspace, law professors can finally

argues, for example, that blawg postings can largely serve the same purposes as traditional forms of scholarship.[46] Professor Gordon Smith concurs, noting that blawgs are well-positioned to serve as an outlet for the dissemination of critical legal ideas.[47] Professor Smith also points out that even if blawg postings do not generally develop and expand ideas to the same extent as a lengthy law review article, such postings can serve an important "pre-scholarship function"[48] by proposing new ideas, and receiving feedback from other bloggers. This open discussion of ideas makes blawgs akin to rough drafts of legal scholarship.[49] For these reasons, some legal scholars believe the Internet can serve important academic purposes,[50] and have the potential to be transformative in terms of the ways in which legal ideas are presented.[51] Even if legal ideas are presented using the same words, the significance of the shift in context from printed law reviews to online forums

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escape the straitjacket of the law reviews by publishing their own scholarship directly on the World Wide Web." *Id.* at ¶4.2–4.3.

45 *See, e.g.*, Solum, *supra* note 12, at 1087 (arguing that blawgs merit recognition as true scholarship: "First, blogs themselves can serve as the medium by which short-form scholarship is written and disseminated. That is, blog posts can be legal scholarship. If anyone ever thought otherwise, they simply were not paying attention. Blogs can be legal scholarship because anything that can be written can be written as a blog post. . . . Second, blogs can serve to introduce and disseminate legal scholarship.").

46 "Because blogs are simply a medium of communication, they can be used to advance legal scholarship in the same way as articles and books can." Caron, *supra* note 30, at 1034.

47 Professor Gordon Smith observes that "[i]f scholarship is about making a 'contribution to knowledge,' and the receptacle for that contribution is a scholarly community, then blogs seem well positioned to serve as delivery mechanisms." *Id.* at 1038 (quoting D. Gordon Smith, *A Case Study in Bloggership*, 84 WASH. U. L.R. 1135 (2006)).

48 *See Id.* at 1037.

49 Professor Orin Kerr argues that blog posts can be viewed as the "first rough draft of legal scholarship." They provide "promising outlets for legal scholars interested in becoming public intellectuals." *Id.* at 1035 (quoting Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U. L.R. 1127 (2006)).

50 Eugene Volokh writes:

> [A] blogger can, at least in theory, use the blog to get feedback on the arguments that he's putting in his articles. Blog readers might provide useful counterarguments, or at least identify places where the blogger's argument is less persuasive than he'd like it to be.
>
> Most blog readers won't be interested in taking the time to read one's arguments (either the whole article or even a short excerpt), and most won't be knowledgeable enough to provide very useful reactions. . . . Offering the article for commentary by blog readers . . . might provide at least some extra feedback, though, in my experience, not a vast amount.

Volokh, *supra* note 17, at 1095.

51 As discussed elsewhere in this paper, the use of a blog's comment feature can have transformative results with respect to the way legal scholarship is produced. As Professor Carter observes, "[a] blog's comment feature . . . transforms a blog from a one-sided legal article into a discussion on the law." Carter, *supra* note 15.

should not be ignored.[52]

Critics of blawgs, however, maintain that the Internet's general inability to filter out inaccuracies[53] should lead to great skepticism on the part of scholars seeking to rely on blawgs for accurate information. Because blogs can alternatively be designed as inane or serious, it can be hard to distinguish the valuable legal blogs from the imposters, just as it is hard to decipher fact from fiction in other contexts.[54] This may lead to inaccurate dissemination of information,[55] as well as disinformation, both of which are harmful to scholars.

A primary means of mitigating the chances for inaccuracies on blogs is the fact that blogs can be used by legal professionals to help develop and sustain the blogger's credibility in a relevant field.[56] This is particularly true with respect to those blogs which allow visitors to post comments expressing their thoughts about the blog's content. In this way, such blogs can serve as self-regulating mechanisms[57] with respect to content and, in some cases, prestige. Those blogs which strive for accuracy and objectivity, however, must contend with a general consensus that the Internet is replete with inaccurate, unreliable information. When bloggers post

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52 *See* M. Ethan Katsh, *Law Reviews and the Migration to Cyberspace*, 29 AKRON L. REV. 115, 117 (1996) ("[T]he movement from print to electronic form is important less for a change in the content of individual publications than for a change in context, less for a change in what is written than for a change in how information is being used and who is able to use it.").

53 Take, for example, the Wikipedia format, which enables any Internet user to post and edit the content contained within the site.

54 To take a topical example with respect to the difficulty of separating fact from fiction, consider the fact that at least some of ex-baseball player Jose Canseco's allegations regarding players' steroid use have proven true. Because of Canseco's utter lack of credibility, however, it is exceedingly difficult to decipher fact from fiction. Similarly, some legal blogs may occasionally present ideas in an accurate manner but simultaneously include misinformation.

55 For a discussion of the perceived increase of inaccurate content resulting at least partially from the proliferation of new media outlets, see, generally, RICHARD A. POSNER, PUBLIC INTELLECTUALS: A STUDY OF DECLINE (2002). Posner concludes that media influences contribute to both inaccurate content and the reduced number of true "public intellectuals" in contemporary society as compared with societies in the past.

56 Updegrove, *supra* note 20 ("A blog can showcase [the blogger's] expertise in areas of special competence. Moreover, once a blog starts to attract visitors from existing clients and referral sources, blogging regularly can help bolster and sustain [the blogger's] credibility in the relevant field.").

57 With respect to law blogs ("blawgs") in particular, law professor James Lindgren writes that "[b]logging 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." Lindgren, *supra* note 19.

articles in order to achieve a particular, hidden purpose, for example, the probability that inaccuracies will be present within that post increase manifold. Aside from legal scholars using blawgs in an effort to advance legal scholarship, blogging as a means of generating business serves as a primary example of this concern.[58]

Even if law blawgs generally do not serve as an ideal medium to present the precise level of scholarship as do law review articles,[59] blawg postings can serve purposes largely unfulfilled by traditional forms of legal scholarship. Professor Eugene Volokh, the founder and operator of the wildly popular the Volokh Conspiracy blawg,[60] points out that blawgs serve as the ideal forum for discussion of micro-discoveries,[61] whereas law review articles better address issues worthy of lengthier treatment.

Blawgs also aid legal scholars in ways that directly impact formulations of ideas as presented in traditional scholarship that they produce.[62] Blawg postings serve as a means of testing the waters to gage the impact of new ideas generated at an early stage.[63] The ability to rapidly post on recent developments in the law, while possibly having the deleterious effect of influencing scholars to reflect for an

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58 *See, e.g.*, Updegrove, *supra* note 20 (listing advertising for business purpose as a fundamental objective of many bloggers). While the self-regulating principle may remain true even with respect to blogs designed for advertising purposes, the chances are high that biased (and often inaccurate) information will be posted in conjunction with reliable information, particularly within the advertising context. Sifting out the truth from musings or advertisements in such situations is a tedious task.

59 "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 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." Lindgren, *supra* note 19, at 1105–06.

60 The Volokh Conspiracy, http://www.volokh.com/ (last visited Feb. 17, 2008).

61 A micro-discovery is a topic that isn't enough for a full law review article or note, but still worthy of serious discussion. Professor Volokh argues that blawgs serve as an ideal forum for discussion of such discoveries. *See* Volokh, *supra* note 17, 1097–98.

62 "[B]log 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." Lindgren, *supra* note 19, at 1108. Additionally, legal scholars can (and do) post parts of their scholarship and evidence on blogs. *See id.* at 1106.

63 "[B]logs 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." *Id.* at 1105–06; "Blogging can be a good way to refine ideas and get feedback at an early stage in one's work." *Id.* at 1108.

inadequate amount of time prior to posting ideas,[64] also serves the purpose of keeping scholars attuned to new happenings in their fields of expertise.[65] Equally importantly, blawgs provide scholars with a forum through which they can both present and read about new ideas developing in their fields of expertise.[66]

II. TRADITIONAL LEGAL SCHOLARSHIP: LAW REVIEWS

In sharp contrast to blawgs,[67] law reviews attract a smaller number of readers.[68] This is partly a reflection of the long length of many law review articles.[69] Furthermore, because law reviews take a greater amount of time to fully develop,[70] many of the issues examined and ideas presented are complex and attract only top scholars in the field. Additionally, some critics argue that law schools publish an

64 The SCOTUS blog invites scholars and practicing attorneys to discuss Supreme Court cases on the day that the opinions are handed down. Solum, *supra* note 12, at 1083. Bloggers may well rush to post their initial thoughts on such opinions (which may well change over time). While this practice arguably encourages a lack of reflection on ideas, leading to the development of unrefined legal ideas, the generation of a discussion about the law among many interested persons has the benefit of creating a dialogue of novel ideas. *See* Posting of Sam Bagenstos to SCOTUSblog, http://www.scotusblog.com/movabletype/archives/2005/06/05-week/ (Jun. 6, 2005, 9:20 p.m.). This is the first of a series of posts on Gonzales v. Raich, 541 U.S. 1 (2005).

65 "For the majority of pre-tenured law professors, blogging may be a great way to become a part of the dialogue in a given area. And is that not why we became law professors in the first place?" Caron, *supra* note 30, at 1041 (quoting Christine Hurt & Tung Yin, *Blogging While Untenured and Other Extreme Sports*, 84 WASH. U. L.R. 1235 (2006)).

66 Blawgs serve as a haven for indirect access to ideas. As Lindgren observes, "[p]robably 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)." Lindgren, s*upra* note 19, at 1106.

67 Legal scholars have documented, based on their personal experiences, the wide disparity between readership on blawgs and law reviews. This disparity likely contributes to the ways in which the scholar presents information to his audience. As Professor Volokh writes, "My blog gets about 20,000 unique visitors each weekday; I don't know how many people read my articles, but I'm pretty sure it's far from 20,000." Volokh, *supra* note 17, 1089.

68 *See, e.g.*, Lindgren, *supra* note 19, at 1107 (documenting a specific example from his personal experience of the disparity between readership of book review published in Yale Law Journal and posting on Instapundit, which was then picked up by History News Network).

69 "There is . . . an important relationship between the length of law review articles and the fact that so few people read them." Butler, *supra* note 10, at 1101.

70 This is a generally accepted empirical observation with respect to the production of law review articles.

excessive number of law journals,[71] many of which are of inferior quality and contribute little[72] to the legal academy.[73] Studies of citations to law reviews demonstrate that a substantial percentage of articles—forty three percent—are never cited by anyone.[74] Seventy nine percent of law review articles receive ten or fewer citations.[75] Those articles which

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71 The number of law journals has increased from 78 in the 1950's to more than 1,000 today. An average of 30 new journals is added each year, mostly in specialized areas of the law. 321 of the student-edited journals are devoted to a specialty topic. There is one student-edited publication for every 279 law students. This number is up from one journal for every 598 students in 1963. Speaking directly to the vast number of publications and the desire to fill the pages with content, Professor Jarvis mockingly opines that "I could publish my grocery list, some law reviews are so desperate." He also argues that as the number of law journals increase, "[y]ou publish more and more student articles to fill the space. . . . And you accept more articles that are away from your core mission. And you take articles that are crap, and have more symposium issues. But it's really all ridiculous." *See* Karen Dybis, *100 Best Law Reviews*, THE NAT'L JURIST, Feb. 2008, at 26. Despite the increase in the number of law journals, the top 100 law reviews (measured by number of citations received)—which measure only 9 percent of all legal journals—garner 49 percent of the total number of citations. *Id.* John Doyle, associate law librarian at Washington & Lee University, notes that "[i]t is one of those 80-20 rules. The vast majority of citations are to the top journals. The top authors and the best articles gravitate to the top journals." *Id. But see* Howard Denemark, *How Valid is the Often-Repeated Accusation that there are too many legal articles and too many law reviews*?, 30 AKRON L. REV. 215, 232 (1996) ("Many of the articles on library shelves will be of no use to anyone, but some articles will change the law. If we cannot predict which ones will make a difference—and we cannot—we should be very circumspect about asserting that there are too many legal articles in too many law reviews."); *Id.* at 217–19 (pointing out that several contemporary arguments leveled against law reviews have been made throughout history, specifically pointing to the fact that scholars argued that there were an excessive number of law reviews as early as 1906).

72 Law professor Robert Jarvis (who ranks law reviews based on prominence of article authors) estimates that 80 percent of law reviews add little to legal academia, leading to the conclusion that approximately 100 student-edited legal publications provide true value. *See* Dybis, *supra* note 71, at 23. Jarvis also argues that virtually all cutting edge research and legal trends are now reported on blawgs. He predicts that the importance of law reviews will wane as law schools continue to hire more tech-savvy professors. *Id.* at 27.

73 *See id.* at 23 (quoting law professor Robert Jarvis: "The writing in law reviews is atrocious.").

74 *See* The Mother of All Law Review Citation Studies Finds Dead Papers Abound, Aug. 16, 2005, http://lawprofessors.typepad.com/law_librarian_blog/2005/08/the_mother_of_a.html (Apr. 16, 2005). This comprehensive analysis of law review citations was conducted by University of San Diego law Professor Thomas Smith. Professor Smith analyzed the citations to 385,000 law review articles, notes, and comments.

75 *Id.* That is not to say, of course, that citation is the only criterion by which we should judge the influence of individual law review articles. Many articles may be read to learn generally about a specific legal idea even if the article is not ultimately cited by an author. The same idea applies to blawgs. Professor Volokh points out that blawg posts have been cited more than thirty times in court opinions, and, as of 2006, there have been more than five hundred citations to blawg postings in law journals. Volokh, *supra* note 17, at 1098. Volokh posits that "[p]resumably even more blog posts have been read by the judges or clerks, and in some measure

receive more than one hundred citations are considered to be the "elite"[76] articles[77] and comprise less than one percent (0.898 percent) of all articles.[78] These elite articles collectively receive ninety six percent of all citations.[79] There is little discernible difference between the number of citations of a particular article[80] to a law review as compared with a judicial opinion.[81]

Still, law reviews communicate ideas in a way that many scholars deem preferable to the methods employed on blawgs.[82] Despite law reviews' sometimes undesirable length

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influenced their thinking, but haven't been cited." *Id.* at 1096.

76 Statements made by former law review editors establish that articles written by professors at the most prestigious legal institutions are often given much deference in terms of selection by student editors, despite often having no discernible difference in substantive content as articles written by professors at other law schools. *See, e.g.*, Penelope Pether, *Discipline and Punish: Despatches from the Citation Manual Wars and Other (Literally) Unspeakable Stories,* 10 Griffith L. Rev. (Special Issue) 101, 121–22 (2001) (recounting the experiences of former law journal editors who concede to having given deference to professors from elite law schools).

77 For a critique of the use of citation studies as a prominent factor in the determination of the value of a particular law review journal or article, see Shane Tintle, *Citing the Elite: The Burden of Authorial Anxiety*, 57 DUKE L.J. 487 (2007). By abandoning a citation-ranking regime, authors would arguably feel freer to explore legal ideas in non-traditional ways. By contrast, authors who feel hampered by a ranking regime heavily dictated by citation concerns will likely feel more constrained to express ideas in a way most likely to receive citations but not necessarily in a way that is most beneficial to the legal academy in general. In this light, it is useful to think of the creation of blogs as a partial abandonment not of the citation regime, but rather of traditional means of expression.

78 Volokh, *supra* note 17, at 1096.

79 *Id.*

80 For an example of increased reliance on law review citation statistics as a means of both determining which individual articles are most important and which journals merit space on a law library's shelf, see Kincaid C. Brown, *How Many Copies are Enough? Using Citation Studies to Limit Journal Holdings*, 94 LAW LIBR. J. 301, 302 (2002) (discussing the University of Michigan Law Library's decision to use citation studies to indicate which law journals should be shelved on library stacks, Brown writes that "[c]itation studies were the primary means used at this stage to categorize specific law journals by their importance to legal research."). "Citation studies show how often legal scholars and judges use a particular law review in comparison to others." *Id.* Reliance on such studies, however, inevitably serves a circular purpose: libraries will keep several copies of a highly-cited journal, which increases access to those articles. Those journals which are not highly cited, however, will continue to be rarely cited as a result of this selectivity by law libraries. Increased reliance on Lexis, Westlaw, and SSRN, however, serves a democratic purpose, however, in that scholars have equal access to all posted articles.

81 *Id.*

82 *See, e.g.*, Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U. L.R. 1127, 1127 (2006) (arguing that, in sharp contrast to law review articles, "blogs do not provide a particularly good platform for advancing serious legal scholarship" because of the "tyranny of reverse chronological order" feature of blogs). Caron, *supra* note 30, at 1035 (quoting Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U. L.R. 1127 (2006)). In his critique of legal blogging, Kerr also points out that "[a]s posts

and focus on esoteric issues, some commentators have set forth the notion that blawgs and law reviews can co-exist peacefully, each occupying a specific, definable role within the vast world of legal academia.[83] Viewed from this perspective, blawgs do not displace law reviews but rather serve desirable functions largely unfulfilled by the traditional law review article.[84] Indeed, some studies suggest that blawgs are beginning to occupy a place where law reviews have largely been unable to exert true influence—the courtroom.[85] That is not to say, of course, that law reviews are not cited by judges in some highly influential opinions,[86] but the authority of the particular citation is often not dispositive with respect to the ultimate outcome of the decision; rather, the citation may supply supporting authority for more significant aspects of the judge's analysis, such as case precedent or statutory authority.[87]

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are continually pushed further and further down the page, blogs reward writers and readers with short attention spans and preclude the 'mulling over' process essential to the production of thoughtful scholarship." *Id.*

83 Professor Paul Butler posits, for example, that the "relationship of blogs to legal scholarship is like the relationship of music videos to real movies. Videos made movies faster, flashier, less meditative, and more attention grabbing. Tastes great, less filling. Still, one did not replace the other." Butler, *supra* note 10, at 1101.

84 *See generally supra* Part I (discussing blawgs' diverse roles, and arguing that blawgs serve as a gap filler with respect to traditional legal scholarship).

85 In 2007, the Benjamin N. Cardozo School of Law held a conference in which judges from the Second Circuit critiqued law reviews generally for failing to address legal issues in a manner conducive to helping judges decide ongoing cases. *See Trends in Federal Judicial Citations and Law Review Articles*, Mar. 8, 2007, *available at* http://graphics8.nytimes.com/packages/pdf/national/20070319_federal_citations.pdf. The increased number of blog citations in judicial opinions (discussed *supra*) evidences one of the ways in which blogs are arguably transforming not only legal scholarship but also judicial decision-making.

86 Two articles published in the Cardozo Law Review were recently cited in the California Supreme Court's gay marriage decision. *See In re* Marriage Cases, 183 P.3d 384, 426 n.42, 460 (Cal. 2008).

87 *See id.* The context of the citations in the gay marriage opinion is reproduced below with emphasis on the particular citations:

> Because our cases make clear that the right to marry is an integral component of an individual's interest in *personal autonomy* protected by the privacy provision of article I, section 1, and of the *liberty* interest protected by the due process clause of article I, section 7, it is apparent under the California Constitution that the right to marry—like the right to establish a home and raise children—has independent *substantive* content, and cannot properly be understood as simply the right to enter into such a relationship *if (but only if)* the Legislature chooses to establish and retain it. (Accord, *Poe v. Ullman* (1961) 367 U.S. 497, 553 (dis. opn. of Harlan, J.) ["the intimacy of husband and wife is necessarily an essential and accepted feature of the institution of marriage, *an institution which the State not only must allow*, but which always and in every age it has fostered and protected" (italics added)].)

Id. at 426.

> *One legal commentator has suggested that the federal constitutional right to*

Perhaps the most substantive and vicious criticism leveled at blawgs is their perceived inability to regulate content. The observation that blawgs, in sharp contrast to law reviews, lack a viable mechanism for filtering content by means of a sustained, methodical selection and editing process[88] highlights one of the most important differences between traditional legal scholarship and blawg postings.[89] Student-run[90] law reviews employ a number of techniques to

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> *marry simply "comprises a right of access to the expressive and material benefits that the state affords to the institution of marriage . . . [and that] states may abolish marriage without offending the Constitution." (Sunstein, The Right to Marry (2005) 26 Cardozo L.Rev. 2081, 2083-2084, italics omitted.) The article in question concedes, however, that its suggested view of the right to marry is inconsistent with the governing federal cases that identify the right to marry as an integral feature of the liberty interest protected by the due process clause (id. at pp. 2096-2097), and further acknowledges that even "[i]f official marriage was abolished, the Due Process Clause might give people a right to some of the benefits and arrangements to which married people are ordinarily entitled under existing law." (Id. at p. 2093.) As explained above, in light of the governing cases identifying the source and explaining the significance of the state constitutional right to marry, we conclude that under the California Constitution this constitutional right properly must be viewed as having substantive content.*

Id. at 426 n.42 (emphasis added).

> *Several other states have reacted negatively by, for example, amending their constitutions to prohibit same-sex marriage. (See Stein, Symposium on Abolishing Civil Marriage: An Introduction (2006) 27 Cardozo L.Rev. 1155, 1157, fn. 12 [noting, as of January 2006, '39 states [had] either passed laws or amended their constitutions (or done both) to prohibit same-sex marriages, to deny recognition of same-sex marriages from other jurisdictions,* and/or to deny recognition to other types of same-sex relationships'].)

Id. at 460 (emphasis added).

Neither of the law review articles cited by the court were entirely dispositive in the court's decision, but the fact that the court looked to law reviews for authority on this matter provides support for those who argue that law review articles can exert significant influence on judicial reasoning.

88 *See, e.g.*, Carter, *supra* note 15, at 7 ("Legal blogs lack the peer review of scholarly and legal journals, making them vulnerable to both error and credibility problems."). Law reviews, by contrast, employ a sustained (and often intense) editing process.

89 *See* Volokh, *supra* note 17, at 1091 ("You don't need to please, or even deal with, an editor. You don't even have to proofread and polish as much. Polished work is more effective, but people forgive typos and other little lapses more than they would in print: readers realize that many academic bloggers will be willing and able to blog—or at least blog timely and often—only if they can do so with a minimum investment of effort.").

90 Because law reviews are student-run publications, it is worth considering whether students benefit from the menial tasks assigned to them, the writing component required by most law reviews, or whether law reviews simply provide a means for the school to inform employers that members of a particular law review or journal ranked in a particular area in their class. For an argument that law reviews are created with the primary purpose of creating such hierarchies within law schools, see JOHN F. DOBBYN, SO YOU WANT TO GO TO LAW SCHOOL? 138-39, 141

ensure the accuracy of published content. Second-year law students[91] who participate on journals are assigned the menial tasks of blue-booking and checking the author's sources for accuracy in terms of citation.[92] Indeed, the prestige of a law review is partially determined by the degree of accuracy of content and blue-booking. There is no question that, in terms of both accuracy and punctuation, law reviews are unsurpassed by any other medium seeking to communicate complex ideas within the legal academy. Whether this feature of law reviews is particularly desirable, however, is another question.

Prestigious law reviews are universally commended[93] for their meticulous attention to detail. While some scholars argue that valuable scholarship must be disseminated through traditional means,[94] this paper argues that the value of scholarship should not be judged according to the form which it takes.[95] This paper posits that the hallmark of valuable

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(1976), observing that:

> Law schools have . . . created their own corps of elite students that are the pride of the school, the happy hunting ground for employers, the goal of every first year student, and the envy of most second and third year students. It is called law review. . . . Interviewing partners and judges who guard the entrances to the most prestigious and desirable law firms and judicial clerkships are well aware of the double dose of training that comes from law review experience on top of the normal law school vulcanizing. They are also aware of the rigid selection process for membership, and many are willing to let that screening serve them in filtering out applicants for interviews. There is a certain rational, if unfortunate discrimination in the rash of notices that are posted on the job placement bulletin board every year announcing interviews with law firms "for law review members only."

91 Most employers highly value law review experience on a resume, even if its actual benefits to students is questionable. *See* Dan Slater, *Law Reviews Get a Bad Review*, WALL ST. J. L. BLOG, Feb. 11, 2008, http://blogs.wsj.com/law/2008/02/11/law-reviews-get-a-bad-review/ ("And yet we can't deny the symbolic importance of law-review membership. Just look at the on-campus interview guide of any non-tier-one law school. Many employers are clear: No law review? No thanks."). Also see the comments posted on this page for an informal discussion/critique of law reviews.

92 For a critique of student-edited law reviews, see Dybis, *supra* note 71, at 23 (quoting law professor Robert Jarvis: "Most editors really are not qualified to be on a journal. . . . And on these specialized journals, the editor-in-chief is really into the topic, but most of the other students are not familiar with the subject matter. They are weaker [academically] than they should be and they don't have the interest in the subject matter.").

93 Well, almost universally. For an argument that law reviews, *in toto*, should cease to exist, see *id.* (quoting law professor Robert Jarvis: "The question is: Why does this institution continue even if it's a product no one wants and no one needs?").

94 "Scholarship is about 'papers,' not 'posts.'" Solum, *supra* note 12, at 1088.

95 One caveat: Because virtually anyone can post on a blog, blogs are essentially the equivalent of self-publication. If we view student editors as exercising at least some level of competency and discretion with respect to article selection, publication in a law review is, perhaps for good reason, presumed to contain at least some

scholarship is not the crossing of "t's" or the dotting of "i's," but rather the communication of new ideas to interested readers.[96] From a normative perspective, legal scholarship should be concerned with *ideas*, not the form by which those ideas are expressed or the medium through which they are communicated. Furthermore, the degree of attention accorded to formatting citations in traditional law journals wastes valuable time and resources that could be used for further research and learning more about substantive legal ideas. Such an extensive process is arguably coercive—both to authors[97] and student editors. Student law review staffers and editors do obtain some benefits from the arduous (if sometimes menial) tasks assigned to them. Indeed, some commentators have suggested that a demonstration of the ability to withstand the perceived drudgeries experienced by the law review staffer signals an ability to withstand similar types of work at large law firms.[98] It is noteworthy, in this

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furtherance of an idea or analysis of a pre-existing one. There is simply less sifting through for readers of law reviews to do than readers of blogs because student editors do much of the sifting prior to publication. Discussing the contrasts between legal scholarship and changing technologies, Professor Denemark writes that "As radical as [posting articles on electronic databases is], [such changes] do not include self-publication, but rather follow the traditional pattern of submitting manuscripts to an editorial board that decides whether or not to disseminate the submitted article under its imprimatur." Denemark, *supra* note 71, at 216.

96 Harvard Law Professor Alan Dershowitz, the author of 28 books and several law review articles, explains that his approach to scholarship is focused less on cite checking, but rather on generating strong arguments and maintaining a factual basis for such arguments. He decries the meticulous attention to formatting detail associated with the publication of law review articles. By publishing popular legal books (many of which are best-sellers, such as the # 1 *New York Times* Bestseller, *Chutzpah*), Dershowitz has been able to reach more than 1 million readers throughout the world. Had Dershowitz spent significant amounts of time checking and re-checking whether all of the "t's" were crossed in his work, he would not have been able to produce as much valuable scholarship. *See* Alan M. Dershowitz, www.alandershowitz.com (last visited May 16, 2008).

97 Authors are constrained in a number of ways. Authors seeking to be published in a law review feel bound to abide by traditional methods of producing scholarship—such as citing to many legal authorities over the course of a paper. Such authors are often constrained in terms of the way in which they produce such scholarship, and are often required to cite to authority in places where their own logic would presumably suffice. *See* Pether, supra note 76, at 117 ("Citation to legal authority . . . is a coercive practice, operating to suppress critical perceptions of law's claims to autonomy and logic."). Such coercion can adversely affect the substantive content of law review articles, as authors may feel constrained to abide by certain traditional standards. The use of citations, however, is important for both "acknowledging sources and providing a means for the interested reader to pursue research into the sources used by an author." *Id.* at 118.

98 The reader comments for Dan Slater's *Law Reviews Get a Bad Review*, *supra* note 91, are instructive: "Employers, and judges, are interested in Law Review members because they have been through what I would describe as 'lawyer boot camp.'" Posting of Anonymous to WALL ST. J. L. BLOG,

context, to point out that law reviews in some nations outside of the United States are less concerned about proper citation;[99] if such law reviews spend more time on substantive editing, such an approach is preferable since the legal academy benefits more from substantive work than proper formatting.

III. CONCLUSION: FUTURE PROSPECTS

Regardless of whether the legal academy officially endorses blawgs as a means of generating legal scholarship, the Internet's influence on the production of new ideas will not suddenly halt. That is not to say, however, that the way in which legal blawgs impact legal scholarship will not change over time.[100] Indeed, because blawgs are more open and free[101] than traditional legal scholarship, they have the inherent ability to adapt to new environments and ways of presenting information.[102] As discussed throughout this paper,[103] blawgs have been instrumental in the transformation of the communication of legal ideas—i.e., from primary reliance on traditional legal research tools to more novel ways of finding information.[104] In order to most

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http://blogs.wsj.com/law/2008/02/11/law-reviews-get-a-bad-review/tab/comments/ (Feb. 13, 2008, 3:20pm). "Anyone smart enough to make the law review who excels at tasks as mindnumbing as bluebooking is going to be a great junior associate." Posting of Anonymous to WALL ST. J. L. BLOG, http://blogs.wsj.com/law/2008/02/11/law-reviews-get-a-bad-review/tab/comments/ (Feb. 12, 2008, 1:54pm).

99 *See* Pether, *supra* note 76, at 101–02 ("Whereas American law reviews tend to follow strict rules about citation style, their English equivalents are less interested in the subject. Not only do the English lack a uniform system of citation . . . but it is also possible to find within as well as among the journals significant variations in citation form."). Pether concludes that "[t]his relaxed approach to citation convention is not necessarily a bad thing." *Id.* at 102.

100 *See, e.g.*, Solum, *supra* note 12, at 1072 ("To the extent that blogs have anything to do with legal scholarship, the relationship has just begun to emerge. Undoubtedly it will change.").

101 *See, e.g.*, *id.* at 1078–79 (critiquing the strict constraints of the law review article selection process).

102 *See id.* at 1082 ("The future, arriving as you read these words, will emphasize the short form over the long, open access over proprietary rights, and disintermediation over traditional intermediaries. The future will be short and free with very little between the author and the reader. . . . Legal scholarship today is moving toward the short form.").

103 *See generally supra* Part I.

104 *See* Solum, *supra* note 12, at 1075. Professor Solum discusses the historical transformation from scholars' primary reliance on (1) very lengthy treatises to (2) law reviews (long, but a much shorter than treatises) to (3) blogs (much shorter). As discussed previously, the modern trend is the short form of legal scholarship. This is particularly evidenced by recent scholarly movements toward the dissemination of

effectively produce and disseminate legal scholarship, authors should make use of all of the tools at their disposal.

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micro-discoveries (discussed by Professor Volokh) by means of the Internet.