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The Plural of Anecdote is "Blog"

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THE PLURAL OF ANECDOTE IS "BLOG"†

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[1][1] Like most of the participants in this conference on, excuse the term, "Bloggership," I get to play because I'm a law professor who has a blog that includes some discussion of legal issues. For reasons that almost entirely escape me, a writing project that I think of as my hobby—Discourse.net—is routinely counted among the most popular law-related blogs.[2] When I say the reasons escape me, I am not for once engaging in false modesty: much of what I write is idiosyncratic and personal commentaries on technology and politics; I am uncertain as to whether Discourse.net really qualifies as a "law blog"[3]; and to a great extent it amazes, puzzles, and, of course, pleases me that anyone reads this stuff.

[2] I've been using the Internet in one form or another since long before it went graphical. For someone who has coded web pages by hand, it's hard to see blogs as anything more than a shortcut to making nice web pages. Discourse.net, started in 2003, is only one part of my online

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† Posting of Alex Harrowell to A Fistful of Euros, The Plural of "Anecdote" Is Not "Data", It's "Blog", http://fistfulofeuros.net/archives/002493.php (Apr. 20, 2006, 4:52 p.m.).

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1. This comment uses web-friendly paragraph numbering.

2. *See* Paul Caron, *Are Scholars Better Bloggers? Bloggership: How Blogs are Transforming Legal Scholarship*, 84 WASH. U. L. REV. 1025 (2006). Personally, I have serious doubts about the metrics commonly used to rank blog popularity, as each seems flawed in fundamental ways. Measures of links by other blogs, such as the Truth Laid Bear ecosystem, measure "popularity" with all the sophistication of a high school clique. *See* The Truth Laid Bear, http://truthlaidbear.com/ecosystem.php (last visited Nov. 16, 2006). I would be surprised if there were absolutely no correlation between being frequently blogrolled and being frequently read, but even so I'd expect enormous variance between these metrics. Many blogs may be more blogrolled than read; some others undoubtedly will be very widely read by people who are not bloggers themselves and thus don't have blogrolls. Indeed, from what little I know of my audience—and it is not much—I suspect Discourse.net tends to attract readers who are not themselves bloggers, nor even law professors. Indeed, a substantial part of the audience appears to be techies with an interest in law.

My experience with SiteMeter and its competitors also leads me to believe that they tend to exaggerate hitcounts, are subject to manipulation, and often work poorly when readers use privacy-protection software such as proxies, cookie-blockers, or referrer-blockers. *See* Site Meter: Counter and Statistics Tracker, http://www.sitemeter.com (last visited Nov. 16, 2006). Depending on how the counter software is designed, proxies and blockers can prevent hits from being counted at all. More commonly these privacy-enhancing tools can prevent the counter from recognizing a repeat visitor, leading to an inflated count of the number of "unique" visitors.

3. Why, for example, is Discourse.net so often called a law blog, but "Is That Legal?" by UNC Prof. Eric Muller, http://www.isthatlegal.org/, which contains extensive discussion of legal and constitutional history, so often counted out? *See, e.g.*, posting of Roger Alford to Opinio Juris, Most Popular Law Blogs (Jan. 9, 2006) (stating "I am excluding blogs by law professors that are not true law blogs . . . as well as those blogs that straddle the fence (e.g., Is that Legal?)"). If there's a method to this madness, it escapes me.

activities, which include an activist blog and several teaching blogs; and I suspect in the end my personal blogging may be the least important of my online activities.

[3] Since 1999, I've been an editor at ICANNWatch.org, a watchdog site run by a group of academics concerned about the activities of the Internet Corporation on Assigned Names and Numbers.[4] When we started the site, we saw it as a way to publicize the errors and excesses of ICANN, and hoped that this effort would rally the members of the specialist community concerned with domain name regulation to action. In the event, we were less successful as political operatives than we might have hoped. But ICANNWatch turned out to have an unexpected value as a historical corrective to the official record—a value increasingly recognized by academic writers. By documenting the various errors and omissions of ICANN, and in particular by making clear what information was (and especially was not) available in advance of key decisions, ICANNWatch's archives have undermined ICANN's claims that its decisions are the result of either a "bottom-up" process or that they are the product of "consensus."

[4] Starting in 2004, I've set up a blog for each class I've taught, a practice which I'm gradually spreading to my colleagues. Previously, I used email lists to communicate with my students. At first, I found lists to be a great way to send out both administrative and substantive information, and to answer student questions. But over time I found that the students' spam filters started to eat important notices and that student participation in email conversations declined as my emails got lost in the clutter. Blogs were an attractive substitute not only because some students found them to be a shiny new toy, but also because of their persistence—no longer did I have to hear about emails gone astray or accidentally deleted. Unlike some,[5] I have never worried for an instant that students might be accessing the blog in class—I should be so lucky. My concern has been whether they get notices and relevant news items I like to send them and have a user-friendly place to ask questions.

[5] When I started Discourse.net, I thought that it would be a good way to engage in online scholarly discussions. I quickly discovered, however, that the kind of academic writing I like best is detailed and (I'm afraid) studded with footnotes which substantiate my claims to precision. This

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4. For a more scholarly discussion of my concerns about ICANN, see A. Michael Froomkin, *Wrong Turn in Cyberspace: Using ICANN to Route Around the APA and the Constitution*, 50 DUKE L.J. 17 (2000), *available at* http://www.law.miami.edu/~froomkin/articles/icann.pdf.

5. Paul Butler, *Blogging at Blackprof*, 84 WASH. U. L. REV. 1101 (2006).

style translates badly to the web. In addition, writing like that feels like work; and I found that if I worked on the blog, I worked less on my articles. The articles seemed more important, and thus I have posted relatively little about the topics closest to my scholarly writing. The blog did provide a good outlet for lawyerly writing about topics I didn't intend to write full articles about, notably the Bush administration's attempts to justify the torturing of detainees.[6] But most of my writing turned out to be either attempts at humor or political commentary driven by my increasing dismay at the current administration's policies.

[6] This experience tends to make me a little skeptical about the premises underlying this event. We should be careful to avoid being carried away by our new toys. Blogging software packages existing tools. A blog is, at most, an evolution in ease of use rather than a revolution in communication. Like other forms of communications—magazines, sitcoms—blogs have many socially constructed conventions, but only a few of them are fixed by the technology. It is not evident that blogging is either a distinct medium nor one that tends to any particular message; if, for example, blogs are best understood as akin to personal magazines, events such as this symposium may evolve into something closer to trade association meetings than scholarly conferences. Plus, there are an awful lot of things that blogs are not so good for. This conference, for example, was not carried out via blogs. Blogs are not about to replace the traditional casebook or treatise (although wikis may give some of the latter a run for their money). At least as we mostly use them today, blogs seem best suited for the quick and the new, and least well-suited for long, complex material. It's unfashionable to say so, but footnotes do have value. Indeed, our fetishism of footnotes, our insistence that claims of fact and law be justified by precise and accessible reference to original sources, may be the strongest argument supporting academic lawyers' claim to belonging in universities rather than glorified trade schools.

[7] That said, tools do sometimes shape content—consider the saying, "Power corrupts—and PowerPoint corrupts absolutely."[7] Thus it may be useful to consider how this set of tools might shape what we do with it.

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6. *See, e.g.*, Discourse.net, Apologia Pro Tormento: Analyzing the First 56 Pages of the Walker Working Group Report (aka the Torture Memo), http://www.discourse.net/archives/2004/06/apologia_pro_tormento_analyzing_the_first_56_pages_of_the_walker_working_group_report_aka_the_torture_memo.html (June 9, 2004); Discourse.net, OLC's Aug. 1, 2002 Torture Memo ("the Bybee Memo"), http://www.discourse.net/archives/2004/06/olcs_aug_1_2002_torture_memo_the_bybee_memo.html (June 14, 2004).

7. *See* Edward R. Tufte, PowerPoint Is Evil, Wired.com (Sept. 2003), http://www.wired.com/wired/archive/11.09/ppt2.html.

Like the layers on which they rely, blogs have strengths and vulnerabilities—and "technoquirks." Comments and trackbacks, for example, are vulnerable to spam, and the struggle between spam blockers and spammers has an almost ecological feel. As Orin Kerr noted in his presentation, the tendency of bloggers to choose to present information with the newest entry first has more than stylistic implications.[8] The ease with which one can link encourages a culture of reference to sources, one particularly congenial to lawyers already trained in this discipline. Ease of comments encourages dialogue—although a significant number of bloggers do not activate this feature.

[8] The number of third-party tools[9] that both measure and compare traffic or other types of popularity may encourage pandering in some—and certainly encourage a "mine is bigger than yours" attitude in others. Undoubtedly, some authors keenly feel their status at the end of the so-called "long tail."[10] It's important to note, however, that this sort of measurement and comparison is nothing new.[11] Hierarchies are always with us. And it's not even clear that the new hierarchy is that different from the old one. It may be a little younger, but it is still pretty white and pretty male—as one glance at the speakers at this event demonstrates.

[9] The most intriguing question for me, though, is whether there is a blog "voice." I don't think so—rather I think blogging lets authors adopt different voices, but those spring from within rather than being determined by the technology. There's no question that my blogging styles differ radically on ICANNWatch (often polemic) and Discourse.net (more measured and wry, with touches of outrage), and that my more formal writing has yet a different sound. Blogging makes informality easy, though it doesn't require it. It happens most typically without editors, though again that remains an option.

[10] So what are blogs good for? From the writer's point of view, they are a great publicity mechanism. Everyone from activists and media critics to very specialist academics now has a great pulpit. Blogs, like other web tools, can organize everything from very disparate communities to highly

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8. Orin S. Kerr, *Blogs and the Legal Academy*, 84 WASH. U. L. REV. 1127 (2006).

9. *See, e.g.*, Google Rankings, http://www.googlerankings.com (last visited Nov. 16, 2006); The Truth Laid Bear, http://truthlaidbear.com/ecosystem.php (last visited Nov. 16, 2006); Technorati, http://www.technorati.com (last visited Nov. 16, 2006).

10. *See, e.g.*, Seth Finkelstein, Infothought, A-List Example, http://sethf.com/infothought/blog/archives/000586.html (Apr. 17, 2004) ("The A-List Cites The A-List").

11. *Compare* Caron, *supra* note 2, *with* Fred R. Shapiro, *The Most-Cited Legal Books Published Since 1978*, 29 J. LEGAL STUD. 397 (2000).

localized ones.[12] And they have already proved congenial for those of us who want a soapbox, whether to bear witness, establish a role as a public intellectual, or try out some ideas that don't fit neatly in to one's scholarly sub-discipline.

[11] But the reader's viewpoint may be more important. Thanks in particular to the "push"[13] aspects of RSS,[14] blogs still have untapped potential as content and news awareness services.[15] The technical blogs have led the way, but the legal blogs are not so far behind. Blogs are increasingly the easiest means to keep up with developments outside one's field[16]—and to read nearly instant commentary in one's main area of interest. And blogs seem to excel at error detection and correction. Exposures of mistakes that would never merit a full academic article nicely fill out a blog post or three.[17]

[12] Although there's an ever-growing number of law-related blogs, it seems to me that given the strengths set out above, their full potential remains to be mined, both for activism and for scholarship. I trust that activism will take care of itself, so I will concentrate here on blogs and legal scholarship.

[13] Political blogs do a great job of filtering political news. It would be nice if legal blogs would provide comparable pointers to legal academic reading, ideally in a focused subject-oriented fashion. Yet legal blogs intersect surprisingly rarely with law reviews, perhaps because of the existence of extensive but unfiltered online content services such as SSRN and BePress. Great subject-oriented academic filtering exists: Doug

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12. The Howard Dean campaign was surely only the first of many to employ blogs as organizing tools.

13. Push technologies are Internet-based content delivery systems in which users sign up to have information delivered to them. "Push" technologies are distinguished from standard "pull" technologies, such as ordinary web pages, in which the user must specifically request the content, e.g., by pointing a browser at its URL. *See* Push Technology, http://en.wikipedia.org/w/index.php?title=Push_technology&id=81725338 (last visited Nov. 17, 2006).

14. RSS stands for "Really Simple Syndication." An RSS "feed" is a formatted data stream put out by blogs and other software. RSS "readers" (also known as "aggregators") can be programmed to check a list of "feeds" and display only material added since the previous visit. *See* RSS (file format), http://en.wikipedia.org/wiki/RSS_(file_format) (last visited Nov. 17, 2006).

15. Leading examples include Howard Bashman's How Appealing and especially Larry Solum's heroic efforts at the Legal Theory Blog. *See* Howard Bashman, How Appealing, http://howappealing.law.com (last visited Nov. 16, 2006); Larry Solum, Legal Theory Blog, http://lsolum.typepad.com/legaltheory (last visited Nov. 16, 2006).

16. For example, my main source of information about the growing Catholicism-and-the-law movement is a blog called The Mirror of Justice, http://www.mirrorofjustice.com/mirrorofjustice/ (last visited Nov. 16, 2006).

17. *See, e.g.*, Muller and Robinson on Malkin, http://www.isthatlegal.org/Muller_and_Robinson_on_Malkin.html (last visited Nov. 16, 2006) (a series reviewing a columnist's new book on politics).

Berman's Sentencing Law and Policy[18] blog is exceptional, and frequently cited by courts, but it is also in a class of its own. Similarly, Larry Solum's Legal Theory Blog[19] is the rare example of a blog that highlights a wide variety of recent legal scholarship—although it does it so broadly that the cumulative effect is almost as overwhelming as SSRN, from which it draws much of its material.

[14] One of the stranger things about writing legal articles is how little feedback one tends to receive from one's colleagues after publishing them. To the extent that articles spur written reactions, there is often a very considerable lag time before they appear. Law journals run reviews of books, but they rarely run anything comparable for articles; instead, they sometimes run "replies" if the respondent thinks the original author got it wrong. True, law journals that run symposia often make room for discussants, but even here the form, or the customs of our profession, encourages conflict. Indeed when symposium commentators are wholly positive, they often feel compelled to apologize. In contrast, as an audience we are grateful for appreciative book reviews that explain why a book is important and places it in the context of other writing. Blogs offer the hope of a better type of conversation, but so far it seems largely limited to blog-on-blog discourse. I have not seen many citations to law professor blogs in legal articles authored by law professors.[20]

[16] There are now a plethora of law reviews; if one is trying to do interdisciplinary work, or to keep an eye in more than one sub-field, it is next to impossible to keep track of everything that is written. One relies on intermediaries—citations, the quality of the review that publishes an article, or word of mouth—to prioritize one's reading. But these are erratic and inefficient methods. The very rapidity and brevity that characterize most blogs hold out the possibility of a better way to keep up with new legal scholarship and to debate its import, but their potential remains to be realized.[21]

[17] While some existing blogs function well as awareness services for recent cases, and for discussions of recent news, cases, and crises, there are surprisingly few blogs dedicated to awareness of and reaction to

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18. Doug Berman, Sentencing Law and Policy, http://www.sentencing.typepad.com/ (last visited Nov. 16, 2006).

19. Solum, *supra* note 15.

20. Student notes and comments are different. Student note authors are not shy about quoting professors with approval or as authority. Professors, seeking to establish the originality of their own ideas, may be more reluctant to cite to other professors' blogs. Or, they may just have more to say.

21. Since I first wrote those words, the number of law reviews with blogs has grown to at least four: Harvard, Michigan, Penn, and Yale. That's a good start.

topical legal scholarship. Currently, blogs are not a good place to go to get answers to the sort of questions we ask each other at conferences: What's good? What are you reading? What should I be reading?

[18] This is a surprising gap, since academic blogs seem well suited for such a role. And it is a gap that I hope to help fill in the future. In the 2006–07 academic year, I intend to start a new online blog-based journal to be called the Journal of Things We Like (Lots), or Jotwell for short. Jotwell will fill a hole in current academic legal discourse by providing a forum in which participants can call attention to the legal scholarship they really like. Jotwell will encourage academics to be positive about new scholarship without apology.

[19] The site at Jotwell.com will use blogging software to aggregate the content of a number of subject-specific sites, each of which will have its own blog page. Each of these pages will be a blog of its own, with its own general and contributing editors. Editors—and others—will contribute occasional short (perhaps two- to four-page) reviews of primarily recent academic work, and explain to their colleagues why it merits their attention. Comments will be encouraged in the hopes of promoting dialogue. Ideally Jotwell will straddle the line between traditional scholarship and blogging, and have some of the immediacy and perhaps informality of law blogs, but more focus and structure.

[20] But whether even blogs can spur the sort of cultural revolution that is required to get law professors to be consistently positive about each others' work—well, we'll have to see about that.