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A Case Study in Bloggership

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A CASE STUDY IN BLOGGERSHIP

D. GORDON SMITH*

On August 9, 2005, Chancellor William Chandler of the Delaware Court of Chancery published his long-awaited opinion in *In re The Walt Disney Co. Derivative Litigation*.¹ Within hours, leading corporate law scholars offered their analyses of the opinion on Conglomerate,² a blog where I write regularly on issues relating to “business, law, economics, and society” with my co-bloggers: Christine Hurt, Victor Fleischer, Lisa Fairfax, and Fred Tung.³ Participants in this event, which we branded “Conglomerate Forum: Disney,” discussed the opinion and its implications from various angles.⁴ In this essay, I offer the *Disney* blogging on Conglomerate and other business law blogs as a case study of bloggership.

The Conglomerate Forum was not an isolated event, but part of a stream of blog commentary on the *Disney* case that began for me in late 2003 and has continued through the present.⁵ My first blog post on the *Disney* case was inspired by the flurry of long-form legal scholarship that followed on the heels of Chancellor Chandler’s first major opinion on the “fiduciary duty of good faith.”⁶ Dissatisfied by what I was reading in the working papers, I wrote, “This is a tough issue, but I think I have it figured out. So listen closely; I’m only going to say this once.”⁷

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1. 907 A.2d 693 (Del. Ch. 2005).

2. See D. Gordon Smith et al., Conglomerate Forum: Disney, http://www.theconglomerate.org/conglomerate_forum_disney/index.html (last visited Nov. 8, 2006).

3. Conglomerate, <http://www.theconglomerate.org/> (last visited Nov. 8, 2006).

4. See Conglomerate Forum: Disney, *supra* note 3. Participants in the Conglomerate Forum included Steve Bainbridge of the UCLA School of Law, Victor Fleischer of the University of Colorado School of Law, Sean Griffith of Fordham University School of Law, Larry Hamermesh of the Widener University School of Law, Christine Hurt and Larry Ribstein of the University of Illinois College of Law, Elizabeth Nowicki of the University of Richmond School of Law, and David Skeel of the University of Pennsylvania Law School.

5. On November 6, 2006, the Delaware Supreme Court issued an opinion that influenced dramatically the issues addressed in *Disney*. See *Stone v. Ritter*, 911 A.2d 362 (Del. 2006). I offered blog commentary on the *Stone* decision the following day. See Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2006/11/remember_the_tr.html (Nov. 7, 2006) (“Remember the ‘Triads of Fiduciary Duty’? Just Kidding!”).

6. *In re The Walt Disney Co. Litig.*, 825 A.2d 275 (Del. Ch. 2003).

7. Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2003/11/the_fiduciary_d.html (Nov. 25, 2003) (“The Fiduciary Duty of Good Faith”). For better or worse, the writing on blogs is more casual in style than the writing in a typical law review article. In her contribution to this symposium, Ann Althouse refers to writing in a “bloggish style.” Ann Althouse, *Why a Narrowly Defined Legal Scholarship Blog is Not What I Want: An Argument in Pseudo-Blog Form*, 84 WASH. U. L. REV. 1221 (2006) (“[Y]ou write to be free, write for the joy of it, and don’t

Ugh!

Revisiting that post wouldn't be nearly as painful as it is had I nailed the analysis,⁸ but my thinking on the fiduciary duty of good faith has evolved substantially over time. That evolution has been driven in part by new pronouncements from the Delaware courts and by substantial secondary reading in the law reviews. Perhaps most importantly, however, my views have been shaped by my own efforts to write about the duty of good faith on Conglomerate and by the ensuing exchanges with commenters and other bloggers. This process is the central feature of my account of bloggership.

Four days after my initial post on *Disney*, Steve Bainbridge⁹ linked to that post and offered his own analysis of the fiduciary duty of good faith. While my initial post was largely doctrinal—arguing that “the fiduciary duty of good faith is nothing new at all, but simply a reinvigoration of substantive due care”¹⁰—Steve situated the duty of good faith within his theory of the business judgement rule as an abstention doctrine.¹¹ In doing so, he performed two tasks that are central to the work of a legal scholar: he reconciled his theory with my claim that the Delaware courts were poised to reinvigorate the doctrine of substantive due care, and he reconciled the *Disney* opinion with his own understanding of existing doctrine.¹²

Over the ensuing months, I found myself repeatedly drawn to *Disney* as a blogging topic, and when the trial at the Court of Chancery started in the fall of 2004, I created a separate category on Conglomerate for *Disney*-

think too hard about how you might make the blog work to count as scholarship or to advance you professionally.”).

8. This is an essay about scholarly method, not about Delaware corporate law. Unless required for purposes of illustration, therefore, I will refrain from discussing the various doctrinal and theoretical implications of the *Disney* case.

9. Writing on my old “Venturpreneur” blog, I welcomed Steve Bainbridge to the blogosphere with a short post on September 11, 2003. At the time, his blog was called “Corporation Law & Economics,” but his posts quickly outstripped that title. D. Gordon Smith, Steve Bainbridge Joins the Blogosphere!, *Venturpreneur*, http://venturpreneur.blogspot.com/2003_09_07_venturpreneur_archive.html#106330622162578946 (Sept. 11, 2003, 13:50 CST).

10. Posting of D. Gordon Smith, *supra* note 7.

11. ProfessorBainbridge.com, http://www.professorbainbridge.com/2003/11/substantive_due.html (Nov. 29, 2003). Steve felt that the task of explaining his position on the possible revival of substantive due care was “beyond the scope of any mere blog posting,” so he provided a link to his working paper on the subject. *Id.* That working paper eventually was published as Stephen M. Bainbridge, *The Business Judgment Rule as Abstention Doctrine*, 57 *VAND. L. REV.* 83 (2004).

12. His 2000-word post quotes not only from my earlier post, but also from his own long-form legal scholarship (a working paper and a treatise), the first Delaware Supreme Court opinion in the *Disney* litigation, and a corporations casebook. *See* ProfessorBainbridge.com, *supra* note 11.

related posts. Since then I have written about *Disney*-related scholarship,¹³ developments in the *Disney* litigation,¹⁴ and changes in Disney's management team.¹⁵ Some of my posts have been about legal doctrines,¹⁶ while others are about legal theories.¹⁷ Sometimes I have acted as teacher¹⁸ and sometimes as student.¹⁹ Occasionally, I play the role of "public intellectual."²⁰ And throughout the process, my views of the case have evolved.²¹

Other bloggers also were drawn to *Disney*, too. My co-bloggers Christine Hurt,²² Vic Fleischer,²³ and Lisa Fairfax²⁴ posted repeatedly on

13. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2004/02/disney_litigati.html (Feb. 10, 2004) (commenting on Bernie Black et al., *Outside Director Liability (Before Enron and WorldCom)* (Stanford Law & Econ. Olin Working Paper No. 250, 2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=382422).

14. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2004/03/disney_no_expert.html (Mar. 24, 2004) ("Disney: No Expert Opinion on Fiduciary Duties").

15. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2004/03/the_fall_of_eis.html (Mar. 8, 2004) ("The Fall of Eisner"); Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2005/03/iger_named_disn.html (Mar. 14, 2005) ("Iger Named Disney CEO").

16. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2005/08/repeat_after_me.html (Aug. 10, 2005) ("[T]he notion that fiduciary duties are constant seems wildly out of place in this case . . .").

17. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2005/08/innovation_fidu.html (Aug. 11, 2005) (exploring the risk-taking rationale for the business judgment rule in the context of *Disney*).

18. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2006/01/the_core_issue_.html (Jan. 28, 2006) (explaining the "enigmatic procedural system established by *Emerald Partners v. Berlin*, 787 A.2d 85 (Del. 2001)," which governs the *Disney* case).

19. See, e.g., Comment Posting of D. Gordon Smith (Aug. 11, 2005) to Posting of Sean Griffith to Conglomerate, http://www.theconglomerate.org/2005/08/friendship_the_.html#c8540752 (Aug. 10, 2005).

20. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2005/08/disney_as_a_cal.html (Aug. 13, 2005) (arguing that "one lesson of *Disney* and similar corporate governance failures is that shareholders should be more focused on board composition than they are now"). On bloggers as public intellectuals, see Larry E. Ribstein, *The Public Face of Scholarship*, 84 WASH. U. L. REV. 1201 (2006).

21. For example, at the time of the trial, I predicted that *Disney*'s directors would be held liable for breaching their duties. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2005/01/disney_still_wa.html (Jan. 30, 2005) ("The Delaware courts have been signaling their disgust with the *Disney* board in every opinion written in the case, and I think they will continue to beat up on the board."). By the time Chancellor Chandler issued his opinion, I was persuaded that he would exonerate the directors. See Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2005/08/welcome_to_the_.html (Aug. 10, 2005) ("In my view, this was a close case, and like Steve Bainbridge, I would not have been shocked to see this come out the other way, even though I found Larry Ribstein's prediction [of no liability] very persuasive.").

22. See, e.g., Posting of Christine Hurt to Conglomerate, http://www.theconglomerate.org/2006/06/disney_argument.html (June 8, 2006) ("Disney (Arguments) on Ice: The Business Judgment Rule and Officers"); Posting of Christine Hurt to Conglomerate, http://www.theconglomerate.org/2006/01/disney_bjr_and_.html (Jan. 25, 2006) ("Disney, BJR and Good Faith").

23. See, e.g., Posting of Victor Fleischer to Conglomerate, <http://www.theconglomerate.org/>

the case, as did Steve Bainbridge,²⁵ Larry Ribstein,²⁶ Elizabeth Nowicki,²⁷ Dale Oesterle,²⁸ and others.²⁹ We conversed and criticized.³⁰ We debated and analyzed.³¹ This sort of exploration is part of the scholarly process, and my blogging about the *Disney* case feels very much like the work that I do in the preliminary stages of writing a law review article. In his contribution to this symposium, Orin Kerr observes that “the advancement of scholarly ideas requires frequent and recurring mulling . . . over a long

2005/08/ovitz_and_innov.html (Aug. 13, 2005) (“Ovitz and Innovation”); Posting of Victor Fleischer to Conglomerate, http://www.theconglomerate.org/2005/08/the_tax_angle.html (Aug. 10, 2005) (“The Tax and Financial Engineering Angle”).

24. See, e.g., Posting of Lisa Fairfax to Conglomerate, http://www.theconglomerate.org/2006/06/disney_on_due_c.html (June 11, 2006) (“Disney on Due Care vs. Best Practices”); Posting of Lisa Fairfax to Conglomerate, http://www.theconglomerate.org/2006/06/disney_and_the_.html (June 9, 2006) (“Disney and the Fate of Director-by-Director Analysis”).

25. In addition to his posts as a participant in the Conglomerate Forum, see Stephen Brainbridge’s commentary at ProfessorBainbridge.com, http://www.professorbainbridge.com/2006/06/disney_jacobs_o_1.html (June 8, 2006) (“*Disney: Jacobs* on the BJR”); http://www.professorbainbridge.com/2006/01/discussing_disn_1.html (Jan. 25, 2006) (“Discussing Disney”); http://www.professorbainbridge.com/2004/09/disney_ovitzs_c.html (Sept. 28, 2004) (“Disney, Ovitz’s Compensation, and the Business Judgment Rule”).

26. In addition to his posts as a participant in the Conglomerate Forum, see Larry Ribstein’s commentary at Ideoblog, http://busmovie.typepad.com/ideoblog/2005/07/a_disney_previe.html (July 10, 2005, 14:52 CST) (“A Disney Preview”); http://busmovie.typepad.com/ideoblog/2004/12/disney_the_case.html (Dec. 15, 2004, 7:57 CST) (“*Disney: The Case of the Decade?*”); http://busmovie.typepad.com/ideoblog/2004/10/disney_and_ovit.html (Oct. 26, 2004, 8:09 CST) (“Disney and Ovitz”).

27. In addition to her posts as a participant in the Conglomerate Forum, see Posting of Elizabeth Nowicki to Concurring Opinions, http://www.concurringopinions.com/archives/2006/06/the_disney_opin_1.html (June 19, 2006, 14:15 EST) (“The Disney Opinion and Executive Compensation”); Posting of Elizabeth Nowicki to Concurring Opinions, http://www.concurringopinions.com/archives/2006/06/the_disney_opin.html (June 9, 2006, 17:59 EST) (The Disney Opinion and “Not in Good Faith”); Posting of Elizabeth Nowicki to Concurring Opinions, http://www.concurringopinions.com/archives/2006/06/disney_bob_iger.html (June 8, 2006, 10:40 EST) (“Disney, Bob Iger, and Michael Eisner”); Posting of Elizabeth Nowicki to Trust on the Market, <http://www.truthonthemarket.com/2006/05/19/the-merck-directors-and-the-vioxx-debacle-a-good-chance-to-revisit-the-phrase-%e2%80%9cin-good-faith%e2%80%9d/> (May 19, 2006, 14:49 CST) (“The Merck Directors and the Vioxx Debacle: A Good Chance to Revisit the Phrase ‘In Good Faith?’”).

28. See, e.g., Posting of Dale Oesterle to Business Law Prof. Bldg., http://lawprofessors.typepad.com/business_law/2006/03/thoughts_on_the.html (Mar. 19, 2006) (“Thoughts on the Disney Case”); Posting of Dale Oesterle to Business Law Prof. Bldg., http://lawprofessors.typepad.com/business_law/2005/08/the_disney_case.html (Aug. 10, 2005) (“The Disney Case”).

29. See, e.g., Posting of Jeff Lipshaw to Legal Profession Blog, http://lawprofessors.typepad.com/legal_profession/2006/10/pine_tar_and_th.html (Oct. 27, 2006) (“Pine Tar, Zealous Advocacy and the Disney Case—More on the Ethics of Exercising One’s Rights”); Posting of Matt Bodie to PrawfsBlawg, http://prawfsblawg.blogs.com/prawfsblawg/2006/04/disney_and_exec.html (Apr. 10, 2006, 9:18 EST) (“Disney and Executive Compensation”).

30. See, e.g., Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2006/06/disney_around_t.html (June 9, 2006) (discussing posts by Larry Ribstein, Steve Bainbridge, and Elizabeth Nowicki).

31. See, e.g., Posting of Elizabeth Nowicki to Conglomerate, http://www.theconglomerate.org/2006/01/not_in_good_fai.html (Jan. 26, 2006) (various commentators debating the meaning of “good faith”).

germination period.”³² Though Professor Kerr finds blogging ill suited to this scholarly process, my experience with *Disney* has been that the process is on display when I publish multiple blog posts on the same topic over a long period of time. I “take the idea and pick it up, spin it around, look at it from all sorts of angles, and then put it down again.”³³ Then I turn to my keyboard and compose a blog post about what I have learned.

Miranda Perry calls this process “pre-scholarship,” and other bloggers express similar sentiments about the connection between blogging and scholarship.³⁴ For example, Larry Ribstein has noted, “I . . . use my blog to germinate and develop ideas that eventually appear in polished scholarship.”³⁵ Similarly, Randy Barnett has referred to blogging as a “virtual faculty lounge,” where bloggers try out new ideas and get feedback from commenters or other bloggers.³⁶ Indeed, judging from the bloggers who have written about the relationship of blogging and scholarship, facilitating pre-scholarship is an important side benefit of blogging.³⁷

Though similar to other pre-scholarship, blogging is different in a fundamental way: blogging is public.³⁸ The inherently public nature of blogging provides an opportunity for scholarly activity that is similar in many ways to presenting at an academic conference or publishing an editorial article. The term “bloggership” in the title of this essay and

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

33. *Id.* at 1129–30.

34. In the case of *Disney*, my blogging has not preceded any of my own scholarship. I haven’t published anything about *Disney*, other than my blog posts (though these total over 13,000 words). Judging by emails and occasional blog comments, readers occasionally find useful insights in the blog postings. See, e.g., Comment Posting of Alexandra Lajoux (Sept. 29, 2006) to Posting of D. Gordon Smith to Conglomerate, http://www.theconglomerate.org/2006/01/the_core_issue.html#c23122623 (Jan. 28, 2006) (“Your commentaries are insightful. I wanted to cite one of them in a book I am writing, but ‘blogs’ still don’t carry much academic weight.”).

35. Ideoblog, http://busmovie.typepad.com/ideoblog/2006/02/do_blogs_have_n.html (Feb. 27, 2006, 19:32 CST).

36. See Posting of Paul L. Caron to TaxProf Blog, http://taxprof.typepad.com/taxprof_blog/2006/01/blogging_schola.html (Jan. 8, 2006) (“Blogging: Scholarship or Distractions?”).

37. See Posting of Paul Horwitz to PrawfsBlawg, http://prawfsblawg.blogs.com/prawfsblawg/2006/03/blogging_vs_sch.html (Mar. 29, 2006, 17:34 EST) (“It gives you a chance to develop ideas that will turn into articles.”); Posting of Brian Weatherston to Crooked Timber, <http://crookedtimber.org/2004/01/10/blogging-as-scholarship> (Jan. 10, 2004, 4:02 EST) (“[I]t’s certainly possible that scholarship is advanced by our efforts on blogs, especially when blogs are used to trial genuinely new ideas.”). For examples of long-form scholarship that were incubated on Conglomerate, see Victor Fleischer, *Brand New Deal: The Google IPO and the Branding Effect of Corporate Deal Structures*, 104 MICH. L. REV. 1581 (2006); Jeffrey M. Lipshaw, *Of Fine Lines, Blunt Instruments, and Predictability: The Right to Lie in Business Acquisition Agreements* (Tulane Univ. Sch. of Law, Pub. Law & Theory Research Paper No. 06-0000, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_10=900021.

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

conference is a useful neologism because it distinguishes this sort of scholarship from the traditional, long-form scholarship that appears in law reviews and scholarly journals and because it distinguishes blogging that has scholarly aspirations from other forms of blogging.

At the University of Wisconsin Law School, the goal of scholarly inquiry is to make a “contribution to knowledge.”³⁹ This phrasing of the scholarly objective highlights the collective nature of scholarship. Sitting in her office, a law professor may have insights, but only when those insights are shared with others engaged in her field of expertise does she become a scholar in the way that I am discussing scholarship here.

What sorts of insights qualify as “contributions to knowledge”? Scholars of all sorts purport to be seekers of *truth*.⁴⁰ Orin Kerr offers such a vision of serious legal scholarship:

39. See Univ. of Wis.-Madison, *Statement of Criteria and Evidence for Recommendations Regarding Tenure: Faculty Division of the Social Studies* (Fall 2006), <http://www.secfac.wisc.edu/divcomm/social/TenureGuidelines.pdf> (last visited Nov. 8, 2006).

40. As a new faculty member at the University of Wisconsin in 2002, I was introduced to the story of Professor Richard T. Ely, director of the School of Economics, Political Science and History at the University of Wisconsin in the early 1890s. See generally THEODORE HERFURTH, *SIFTING AND WINNOWING* (Univ. of Wis.-Madison 1949), Wisconsin Electronic Reader, http://www.library.wisc.edu/etext/wireader/wer1035_chpt1.html (last visited Nov. 8, 2006). Following labor strikes in Madison, Oliver E. Wells, one of the University’s Board of Regents, publicly accused Ely of “believ[ing] in strikes and boycotts, justifying and encouraging the one while practicing the other.” *Id.* At the heart of Wells’ accusation was Ely’s book, *Socialism: An Examination of Its Strength and Its Weakness, with Suggestions for Social Reform*. Following a colorful “trial” by the Board of Regents, Ely was cleared of the charges. *Id.* On September 18, 1894, the Board of Regents adopted a report containing the following paragraph on academic freedom:

As Regents of a university with over a hundred instructors supported by nearly two millions of people who hold a vast diversity of views regarding the great questions which at present agitate the human mind, we could not for a moment think of recommending the dismissal or even the criticism of a teacher even if some of his opinions should, in some quarters, be regarded as visionary. Such a course would be equivalent to saying that no professor should teach anything which is not accepted by everybody as true. This would cut our curriculum down to very small proportions. We cannot for a moment believe that knowledge has reached its final goal, or that the present condition of society is perfect. We must therefore welcome from our teachers such discussions as shall suggest the means and prepare the way by which knowledge may be extended, present evils be removed and others prevented. We feel that we would be unworthy of the position we hold if we did not believe in progress in all departments of knowledge. In all lines of academic investigation it is of the utmost importance that the investigator should be absolutely free to follow the indications of truth wherever they may lead. *Whatever may be the limitations which trammel inquiry elsewhere we believe the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found.*

Id.

The italicized portion of the foregoing appears on a bronze plaque mounted on Bascom Hall, the University of Wisconsin’s main administration building.

I assume that legal scholarship—or what I will somewhat arbitrarily call *serious* legal scholarship—normally is designed to be lasting. That is, serious legal scholarship usually will aim to reveal something about the legal system that is true for more than just a few hours or days. The time horizon is a matter of months, years, or decades. The idea is to reach some lasting insight, to find some kernel of truth about how the legal system works.⁴¹

While I agree with Professor Kerr's description of serious legal scholarship—which distances scholarship from journalism⁴²—it is important to emphasize the unique character of “truth” in the context of legal scholarship. Legal truth, asserts David Barnhizer, “is determined in a context of consistency, language, precedent, and underlying systemic grant of authority rather than in reference to some ultimate *Lex* or system of natural law permeating the very fabric of our existence.”⁴³ Contributions to *legal* knowledge, therefore, are different from contributions to the study of biology or chemistry. Insights about the duty of good faith in the wake of *Disney*, for example, could be invalidated by subsequent human intervention—say, a decision of the Delaware Supreme Court⁴⁴ or an action by the Delaware legislature—in a way that discoveries in biology and chemistry could not.⁴⁵

Contributions to knowledge fuel scholarly communities, and blogs have design features that encourage the formation of such communities: reverse chronological ordering, hyperlinking, and commenting.⁴⁶ The reverse chronological ordering of blogs signals to readers that the material will be updated and suggests the need for repeat visits to the site.⁴⁷ This effect is strengthened by a network of blogs with overlapping readerships. For example, many readers frequent several or all of the major business

41. Kerr, *supra* note 32, at 1128.

42. On scholar-bloggers as “amateur journalists,” see Larry E. Ribstein, *The Public Face of Scholarship*, 84 WASH. U. L. REV. 1201 (2006).

43. David Barnhizer, *Truth or Consequences in Legal Scholarship?*, 33 HOFSTRA L. REV. 1203, 1209 (2005).

44. See *Stone v. Ritter*, 911 A.2d 362 (Del. 2006).

45. Of course, I do not mean to claim that the state of knowledge in biology or chemistry is stagnant. Instead, my claim is that changes in the state of knowledge in those fields typically would involve more *discovery* than *invention*.

46. See generally Rafael Gely & Leonard Bierman, *Social Isolation and American Workers: Employee Blogging and Legal Reform* (Univ. of Cincinnati Pub. Law Research Paper No. 05-26, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=796285.

47. Orin Kerr contends that this feature of blogs is counterproductive to scholarship: “The blog format focuses reader attention on recent thoughts rather than deep ones. The tyranny of reverse chronological order limits the scholarly usefulness of blogs by leading the reader to the latest instead of the best.” Kerr, *supra* note 32, at 1127.

law blogs—Conglomerate, ProfessorBainbridge.com,⁴⁸ Ideoblog,⁴⁹ Truth on the Market,⁵⁰ Business Law Prof Blog,⁵¹ Race to the Bottom,⁵² and the Harvard Law School Corporate Governance Blog.⁵³ Hyperlinking among these blogs further increases the sense of shared enterprise, and commenting allows readers and bloggers to build shared understandings. If 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.

But are blogs capable of containing “contributions to knowledge” as described above? Blog posts typically are much shorter than traditional works of legal scholarship. As a result, blogging does not lend itself to any form of scholarly expression that requires extended analysis unless that analysis can be compartmentalized. And perhaps the analysis can be spread over multiple blogs. Tyler Cowen, an economics professor at George Mason University who also maintains a popular economics blog called Marginal Revolution, contends:

The blogosphere as a whole is the relevant unit of analysis. Don't think that a single post amounts to much of importance. But the blogosphere as a spontaneous order (sometimes) spits out the truth.⁵⁴

When evaluating the scholarly potential of blogging as a medium, therefore, a network of blogs—such as the business law blogs listed above—may be the right unit of analysis.

In attempting to position certain types of blogging as scholarship, I am raising issues of importance for the promotion and tenure of “pretenured professors,”⁵⁵ as well as issues relating to the value of tenured professors.

48. Stephen Bainbridge, ProfessorBainbridge.com, <http://www.professorbainbridge.com/> (last visited Nov. 8, 2006).

49. Larry E. Ribstein, Ideoblog, <http://busmovie.typepad.com/ideoblog/> (last visited Nov. 8, 2006).

50. Bill Sjostrom et al., Truth on the Market, <http://www.truthonthemarket.com/> (last visited Nov. 8, 2006).

51. Dale Oesterle, Business Law Prof Blog, http://lawprofessors.typepad.com/business_law/ (last visited Nov. 8, 2006).

52. J. Robert Brown Jr. et al., Race to the Bottom, <http://www.theracetothetbottom.org> (last visited Sept. 11, 2007).

53. Lucian Bebchuk et al., Harvard Law School Corporate Governance Blog, <http://blogs.law.harvard.edu/corpgov/> (last visited Sept. 11, 2007).

54. Posting of Tyler Cowen to Marginal Revolution, http://www.marginalrevolution.com/marginalrevolution/2004/11/the_scholarly_c.html (Nov. 30, 2004, 6:33 EST).

55. Christine Hurt & Tung Yin, *Blogging While Untenured and Other Extreme Sports*, 84 WASH. U. L. REV. 1235 (2006).

Law professors typically are evaluated in three areas of activity: research, teaching, and service. Having already compared bloggership to presenting at an academic conference or publishing an editorial article, I am comfortable with treating bloggership as a form of service for administrative purposes.⁵⁶ On the other hand, in close cases of tenure and promotion, a record of high-quality bloggership could weigh in a candidate's favor on scholarship, too.

By affirming the value of bloggership, I hope to accomplish something more than self-congratulation. I hope to advance the process of legitimizing blogging as a useful scholarly endeavor—not as a substitute for long-form legal scholarship, but as a meaningful appendage.

56. See Posting of Brian Leiter to Leiter Reports, <http://webapp.utexas.edu/blogs/archives/bleiter/000663.html#000663> (Jan. 9, 2004, 9:50 CST); Posting of Brian Leiter to Leiter Reports, <http://webapp.utexas.edu/blogs/archives/bleiter/000671.html#000671> (Jan. 9, 2004, 13:54 CST).