

Part Two: Connecting Laypeople with the Law Through Blogs

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This post continues a [five-part series](#) examining legal scholarship in the electronic world. Parts III-V will appear during the next two weeks. Dave Kopel is Director of Research at the [Independence Institute](#), and a permanent blogger on [The Volokh Conspiracy](#).

By [Dave Kopel](#)

Blogging is creating a Golden Age of legal scholarship. For the first time in the memory of any living person, legal scholarship is now connecting with an audience beyond the world of law professors and legal professionals.

Legal blogs today are the primary medium by which non-lawyers can learn about interesting new law review articles. As a result, the right article may be read by an audience of thousands, or occasionally, tens of thousands. And once in a while, over a hundred thousand—as was [Jim Lindgren's Yale Law Journal article](#) exposing the pervasive fraud in Michael Bellesiles' award-winning book *Armed America*, which had made up many sources and lied about many others in order to support a fraudulent claim that guns were rare in early America.^[1]

Undoubtedly the mass audience reached by Lindgren's article played a role in the very belated decision of the book's publisher to withdraw the title, as well as the revocation of the Bancroft Prize which had been awarded to Bellesiles.

Blogs also help the public directly access the law. On the day *District of Columbia v. Heller* was announced, [Scotusblog](#) had over [370,000 hits](#).^[2] Readers found out immediately, rather than having to wait for a media report, what the Court had decided. Thanks to Scotusblog's links, [93,000 readers studied the Court's decision themselves](#), rather than being dependent on media descriptions.^[3] Our judicial system, and our system of government, are stronger when more people read Supreme Court decisions themselves.

Of course, the large majority of the public will continue to rely on journalistic reports of cases from the Supreme Court and other courts. The best blogs fill a crucial gap in legal journalism. Our nation's senior Supreme Court reporter is [Lyle Denniston](#) of the *Baltimore Sun*. At a Heritage Foundation symposium last July, he remarked that [mainstream media reporting on the Supreme Court is terrible](#).^[4] He is surely correct.

Many MSM articles concentrate almost exclusively on reporting the winners and losers in the case, while ignoring or barely mentioning the legal issues. Such reporting causes the public to have an over-politicized view of the courts. Even when the reporter has the

knowledge to explain the legal issues accurately, as did *New York Times* Supreme Court reporter Linda Greenhouse, the reporting may be highly tendentious, and sometimes misleading.

The legal blog writers usually have a point of view, which they make no effort to conceal, but at their best, the writers still provide readers with well-informed and accurate analysis.

For example, my fellow Volokh Conspiracy author, [Dale Carpenter](#) of the University of Minnesota, is a strong advocate of gay rights. While in his posts on [state supreme court decisions rejecting arguments for a constitutional right to gay marriage](#) did not hide his disappointment, he also provided insightful analysis of what the majority and the dissenters in the various states had written, and the strengths and weaknesses of the various arguments.^[5]

I suspect that a reader who was personally opposed to gay marriage might have found Dale's posts to be fairer and more accurate than the parallel coverage of those cases in the MSM.

A few print periodicals, such as *The New Republic*, have a long tradition of legal commentary written for intelligent laymen. However, the advent of legal blogging has expanded the quality of high-quality legal commentary a hundred-fold, or more.

One group that particularly benefits from the new age of legal blogging is the commenters. Law students, particularly those who live on campus, enjoy a thriving intellectual atmosphere where they can debate law and policy topics all night with their friends, as many choose to do so. In my time at the University of Michigan Law School, I learned at least as much from these non-classroom dialogues with my classmates as I did from any single professor. However, once one leaves the law school campus, the opportunity for these kinds of discussions is greatly diminished.

In the Volokh Conspiracy comments section, commenters can have serious intellectual debates with each other. It's not as much fun as doing it with a beer and pizza at the [Brown Jug](#) in Ann Arbor, but doing it over the Internet is better than not doing it at all. As in the face-to-face debates, some of the arguments are simplistic, some are quite good, and a few are excellent.

Once in a while, a comment even gets cited in a law review—sometimes because the law review writer cites it for a fact or an insight; sometimes as an example of something the writer wants to criticize. On October 5, 2009, I studied the citations to Volokh.com in Westlaw's lawrev-pro database. There were 291 cites, and of these, at least five were to Volokh Conspiracy commenters.^[6]

Commenting on a legal blog is still not as much fun as talking face to face while enjoying pizza and beer. But it's more fun, and more intellectually productive, than what goes on in the comments zone of most non-law blogs.

Starting around 1250, courts in England began operating in French. After hundreds of years, the legal language had turned into something called "[law French](#)," which was a confusing amalgam of English and of a French that no French person would ever speak. [\[7\]](#)The new American colonists jettisoned law French. In America, the law was stated positively in statutes written in straightforward English comprehensible to ordinary people.[\[8\]](#)

The writing of statutes in plain English was one of the methods by which the Americans ensured that the law was under the control of the people, rather than imposed from above. One of the causes for the cynicism which many modern Americans feel about government in general, and law in particular, is the degree to which the laws Americans must obey have become as incomprehensible to a normal, literate American as law French was to a normal, literate Englishman.

Scholarly legal blogging is a wholesome, constructive development, in the tradition of the plain English statutory writing of our American ancestors four hundred years ago. By making law, and legal scholarship, more accessible to the lay public, law bloggers are reconnecting American law with the American people.

[\[1\]](#) See Glenn Reynolds, [Lindgren/ Bellsiles Update](#), Instapundit, Oct. 8, 2002 (over 100,000 downloads of the article from Instapundit; this figure does not include downloads from SSRN or the Yale Law Journal website).

[\[2\]](#) Jason Harrow, [Gauging Interest In The Guns Case](#), Scotusblog.com, June 27th, 2008.

[\[3\]](#) *Id.*

[\[4\]](#) [Scholars & Scribes Review the Rulings: The Supreme Court's 2008-2009 Term](#), Heritage Foundation, July 17, 2009.

[\[5\]](#) *E.g.*, Dale Carpenter, [The New York Marriage Decision and Equal Protection](#), The Volokh Conspiracy, July 7, 2006.

[\[6\]](#) See Luigi Russi, Federico Longobardi, *A Tiny Heart Beating: Student-Edited Legal Periodicals in Good Ol' Europe*, 10 German L.J. 1127, n. 39 (2009)(the Westlaw version of the article is unpaginated, so the exact page on which note 39 appears is unclear); Ann Bartow, *Internet Defamation as Profit Center: The Monetization of Online*

Harassment, 32 Harv. J.L. & Gender 383, 398-99 (2009); Todd Brower, *It's Not Just Shopping, Urban Lofts, and the Lesbian Gay-By Boom: How Sexual Orientation Demographics Can Inform Family Courts*, 17 Am. U. J. Gender, Social Pol'y & L. 1, 20 n. 125 (2009); Carissa Byrne Hessick, *Why Are Only Bad Acts Good Sentencing Factors?* 88 B.U.L. Rev. 1109, 1147 n. 187 (2008); Elizabeth M. Glazer, *Name-Calling*, 37 Hofstra L. Rev. 1, 2 n.3 (2008); Larry E. Ribstein, *Bloggership: How Blogs Are Transforming Legal Scholarship IV. The Many Faces of Law Professor Blogs*, 84 Wash. U. L. Rev. 1201, 1219 n. 48 (2006).

[7] See David Franklin, *Pardon My Law French* 2 Green Bag 2d 421 (1999).

[8] Bradley Chapin, *Criminal Justice in Colonial America, 1606-1660*, at 22-24 (1983).