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# Reproducing Gender and Race Inequality in the Blawgosphere

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REPRODUCING GENDER AND RACE INEQUALITY IN THE BLAWGOSPHERE

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**Introduction**

The use of the Internet and other digital media to disseminate scholarship has great potential for expanding the range of voices in legal scholarship. Legal blogging, in particular, with its shorter, more informal form, seems ideal for encouraging commentary from a diverse group of scholars. This Chapter tests this idea by exploring the role of blogging in legal scholarship and the level of participation of women and scholars of color on the most visible academic legal blogs. After noting the predominance of white male scholars as regular contributors on these blogs, we analyze the relative lack of diversity in this emerging form of scholarship. Finally, we offer suggestions for reversing these trends and creating a more inclusive blogosphere and enriching its potential for lively, informed scholarship.

**I. The Emergence of Blogging as Legal Scholarship**

Over the last 15 years, blogs have become a major site for law-related discourse.<sup>1</sup> The influence of legal blogs—known as “blawgs”<sup>2</sup>—is measured by blog traffic, citations in court

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<sup>1</sup> The rapid proliferation of legal blogs makes it difficult to report current data but a 2006 study estimated the number of such blogs at 600. Paul Caron, *Are Scholars Better Bloggers? Bloggership: How Blogs are Transforming Legal Scholarship*, 84 WASH. U L. REV. 1025, 1032 (2006). In 2016, the ABA Journal reported that “[t]he tally of law blogs in [its] directory has topped 4,000.” Sarah Mui & Lee Rawles, *10<sup>th</sup> Annual Blawg 100*, ABA JOURNAL (Dec. 1, 2016, 12:00 AM), [http://www.abajournal.com/magazine/article/10th\\_annual\\_blawg\\_100](http://www.abajournal.com/magazine/article/10th_annual_blawg_100).

<sup>2</sup> Merriam-Webster’s Dictionary defines a “blawg” as “a blog about legal issues.” Merriam- Webster, <https://www.merriam-webster.com/legal/blawg>

decisions and law review articles and in a variety of other ratings systems.<sup>3</sup> Contributors include practitioners and law faculty.<sup>4</sup> Law firms use them to announce developments in the law and law practice or successful litigation, often with the goal of attracting clients.<sup>5</sup> Blogs are also a place for the latest news about legal education—admissions, faculty hiring, law school rankings and just plain gossip.<sup>6</sup> Some discuss current events and politics.<sup>7</sup> And, many provide legal analysis and scholarly commentary—a place for scholars to try out new ideas in reaction to a court opinion, new statute or policy trend<sup>8</sup> or review or promote new legal scholarship.<sup>9</sup> It is this type of law-related “academic” blogging that we focus on in this chapter.

Unlike law review articles, which usually run about 25,000 words with hundreds of footnotes,<sup>10</sup> blog posts are shorter, less formal and rarely include citations to authority. Most posts

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<sup>3</sup> See e.g., Mui & Rawles, *supra* note 1.

<sup>4</sup> A recent study placed the total number of law faculty who blog at 302. J. Robert Brown, Jr, Essay: Law Faculty Blogs and Disruptive Innovation (August 13, 2012). 2 JOURNAL OF LAW (1 J. LEGAL METRICS) 525; U Denver Legal Studies Research Paper No. 12-27. Appendix C Available at SSRN: <https://ssrn.com/abstract=2128890> or <http://dx.doi.org/10.2139/ssrn.2128890>

<sup>5</sup> See MINNESOTA LITIGATOR, <http://www.leventhalpllc.com/news-commentary/> (last visited Mar. 15, 2017).

<sup>6</sup> See e.g., ABOVE THE LAW, <http://abovethelaw.com> (last visited Mar. 16, 2017); LAW PROFESSORS BLOGS NETWORK: BRIAN LEITER’S LAW SCHOOL REPORTS, <http://leiterlawschool.typepad.com> (last visited Mar. 16, 2017); Deborah Merritt & Kyle McEntee, LAW SCHOOL CAFE, <http://www.lawschoolcafe.org/> (last visited Mar. 16, 2017); The Faculty Lounge, <http://www.thefacultylounge.org/> (last visited March 21, 2017)

<sup>7</sup> INSTAPUNDIT.COM, <https://pjmedia.com/instapundit/> (last visited Mar. 16, 2017).

<sup>8</sup> See e.g., SCOTUSBLOG, <http://www.scotusblog.com> (last visited Mar. 15, 2017) (a blog that responds to new opinions by the United States Supreme Court).

<sup>9</sup> Jotwell’s, The Journal of Things We Like (Lots), describes its mission as “filling a telling gap in legal scholarship by creating a space where legal academics can go to identify, celebrate, and discuss the best new scholarship relevant to the law.” *Mission Statement*, JOTWELL, THE JOURNAL OF THINGS WE LIKE (LOTS), <http://jotwell.com/mission-statement/> (last visited Mar. 15, 2017).

<sup>10</sup> A preference for articles 25,000 words or less is a relatively recent trend in law reviews. *Submissions*, HARVARD LAW REVIEW, <http://harvardlawreview.org/submissions/> (last visited Mar. 16, 2017).

Many law reviews have responded to the potential displacement of blog posts for legal analysis and commentary by publishing on online versions. The Michigan Law Review explicitly noted that their online version was a response to the popularity of blogs: “First Impressions, an online companion to the Review, features op-ed length articles by academics and practitioners in order to fill the gap between the blogosphere and the traditional law review article.

are 500-1000 words.<sup>11</sup> Some blogs may permit longer posts, 2500-3000 words, particularly when organized around a theme, like a book or a recent Supreme Court decision. *Concurring Opinions*, for example, regularly holds book symposia where a regular contributor invites 3-5 guest contributors to read and comment on a book by a legal scholar.<sup>12</sup>

Academic blogs may have single contributors or, more commonly, a group of regular contributors and occasional guest contributors. These blogs may be “independent”—neither directly attached to nor supported by a law school and others are sponsored by law schools.<sup>13</sup> Others are sponsored by advertising and are organized as limited liability corporations owned or co-owned by a one or a few law professors.<sup>14</sup> Increasingly academic blogs have joined in networks or what Professor Robert Brown calls “Empires.”<sup>15</sup> A primary example of this kind of blog is the Law Professor Network Blogs, organized by legal subjects like Tax, Constitutional Law and Family Law. It now includes approximately 60 blogs edited by more than 100 law professors, law

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This extension of our printed pages aims to provide a forum for quicker dissemination of the legal community’s first impressions of recent changes in the law.” <http://michiganlawreview.org/mlr-online/>  
But online law review submissions tend to be longer than blog posts and, while some online law reviews invite essays and blog length pieces, most pieces are longer than blog posts and replicate the format of law review articles, including footnotes. *See e.g., Online Essay Submissions*, STANFORD LAW REVIEW, <https://www.stanfordlawreview.org/%20submissions/online-article/> (last visited Mar. 16, 2017) (3,000 words inclusive of footnotes); *Submissions Instructions*, COLUMBIA LAW REVIEW, <http://columbialawreview.org/submissions-instructions/> (last visited Mar. 16, 2017) (3,000-6,000 words including footnotes); *MLR Online*, MICHIGAN LAW REVIEW, <http://michiganlawreview.org/mlr-online/> (last visited Mar. 16, 2017) (4,000-6,000 words including footnotes).

<sup>11</sup> *See* Joe Bunting, *How Long Should Your Blog Post Be? A Writer’s Guide*, THE WRITE PRACTICE <http://thewritepractice.com/blog-post-length/> (last visited Mar. 16, 2017).

<sup>12</sup> *See e.g.,* Solangel Maldonado, *Upcoming Online Symposium on Merle Weiner’s “A Parent-Partner Status for American Family Law,”* CONCURRING OPINIONS (Oct. 11, 2015), <https://concurringopinions.com/archives/2015/10/upcoming-online-symposium-on-merle-weiners-a-parent-partner-status-for-american-family-law.html>.

<sup>13</sup> These may include blogs with regular faculty contributors from a number of law schools. *See e.g.* JOTWELL is sponsored by the University of Miami. JOTWELL, THE JOURNAL OF THINGS WE LIKE (LOTS), <http://jotwell.com> (last visited Mar. 16, 2017). Sometimes blogs that are limited to posts by the sponsoring law school’s faculty or students. *See* THE UNIVERSITY OF CHICAGO LAW SCHOOL FACULTY BLOG, [uchicagolaw.typepad.com](http://uchicagolaw.typepad.com) (last visited Mar. 16, 2017).

<sup>14</sup> *See* Paul Caron, THE LAW PROFESSOR BLOGS NETWORK, <http://www.lawprofessorblogs.com> (last visited Mar. 16, 2017).

<sup>15</sup> Brown, *supra* note 4, at 528.

librarians and practitioners.<sup>16</sup> In what may be a trend, one influential academic blog, the Volokh Conspiracy, “migrated” in 2014 behind the pay wall of the online edition of the Washington Post.<sup>17</sup> According to the blog’s founder, University of California-Los Angeles law professor Eugene Volokh, the move was made to gain wider readership. While the blog will maintain editorial independence, Volokh recognizes that the tone and content of the blog may change with the broader audience the Washington Post affiliation may bring.<sup>18</sup>

The place of blogging in legal scholarship has been the subject of much debate.<sup>19</sup> The number of legal blogs and the wide range of contributors has made it hard to make meaningful judgments about their quality.<sup>20</sup> But many agree that “a class of widely recognized and often cited

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<sup>16</sup> LAW PROFESSOR BLOGS NETWORK, <http://www.lawprofessorblogs.com> (last visited Mar. 12, 2017).

<sup>17</sup> Justin Berrier, *The Volokh Conspiracy and Washington Post’s to the Right*, MEDIA MATTERS FOR AMERICA (Jan. 22, 2014, 4:30 PM), <https://mediamatters.org/blog/2014/01/22/the-volokh-conspiracy-and-washington-posts-move/197694>. For a discussion of the growing popularity of paywalls for a wide range of written material, including blogs, see <https://medium.com/@getdrizzle/paywalls-are-on-the-rise-with-many-success-stories-3a7101f55bea#.mabo23e47>

<sup>18</sup> Eugene Volokh, *In Brazil, you can always find the Amazon – in America, the Amazon finds you*, THE WASHINGTON POST: VOLOKH CONSPIRACY (Jan. 21, 2014), [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/01/21/in-brazil-you-can-always-find-the-amazon-in-america-the-amazon-finds-you-2/?utm\\_term=.94e1e36314ec](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/01/21/in-brazil-you-can-always-find-the-amazon-in-america-the-amazon-finds-you-2/?utm_term=.94e1e36314ec) (“we recognize that a few things will change, not because of [the Washington Post’s] demands but because our attitudes to blogging will change in some measure. When someone else’s brand is at stake in what you write, you think about that before writing.”). Other indications of the increasing visibility of legal academic blogs can be seen in the recent appearance of the editor of the SCOTUS blog on the Daily Show. See Staci Zaretsky, *Quote of the Day: Strip Searches Are Funny on Cable TV*, ABOVE THE LAW (Apr. 4, 2012, 1:07 PM), <http://abovethelaw.com/2012/04/quote-of-the-day-strip-searches-are-funny-on-cable-tv/>.

<sup>19</sup> See: Bloggership: How Blogs Are Transforming Legal Scholarship; [http://taxprof.typepad.com/taxprof\\_blog/files/harvard\\_symposium\\_schedule\\_march\\_10a\\_2006.pdf](http://taxprof.typepad.com/taxprof_blog/files/harvard_symposium_schedule_march_10a_2006.pdf) (last visited March 21, 2017)

*Bloggership Symposium*, BERKMAN KLEIN CENTER FOR INTERNET & SOCIETY AT HARVARD UNIVERSITY, <https://cyber.harvard.edu/node/97654#> (last visited Mar. 16, 2017); *The Fate of Scholarship in American Law Schools – Baltimore, MD*, Legal Scholarship Blog (Feb. 23, 2016), <http://www.legalscholarshipblog.com/2016/02/23/the-fate-of-scholarship-in-american-law-schools-baltimore-md/>. See generally

Brown, *supra* note 4. But at least one commentator finds the debate “a bit silly”. “A general debate concerning whether law blogs are or can be legal scholarship makes little more sense than a general debate concerning whether law articles or law books are or can be legal scholarship. [Put simply, b]logs — like articles and books — are just a medium of communication. [And, l]ike other media of communication, blogs surely can be used to advance a scholarly mission or a range of other missions. Douglas Berman, *Scholarship in Action: The Power, Possibilities, and Pitfalls for Law Professor Blogs*, 84 WASH. U. L. REV. 1043, 1061 (2006).

<sup>20</sup> Of course, the increase in the number of law reviews over the last two decades and the role of student editors in those journals have made traditional legal scholarship subject to the same critique. See Richard A. Posner, *Against Law Reviews*, Legal Affairs (Nov/Dec 2004) [http://www.legalaffairs.org/issues/November-December-2004/review\\_posner\\_novdec04.msp](http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp). But see, Alfred L. Brophy, *Mrs. Lincoln’s Lawyer’s Cat: The Future of Legal*

law faculty blogs has emerged.”<sup>21</sup> Examples of blogs topping the lists of most cited blogs in court opinions and law reviews, are Balkinization, the Volokh Conspiracy, Concurring Opinions and PrawfsBlawg.<sup>22</sup> A growing consensus has emerged that posts in blogs like these make significant contributions to the development and dissemination of legal scholarship. As one commentator noted, in commenting about Volokh Conspiracy:

But even if it is unusually well-known, Volokh has the characteristics of most successful academic blogs: Its contributors are scholars and experts in a given field, and they use that expertise to provide on-the-spot analysis and running commentary on issues that matter. They interact with readers who comment on posts and build on (or push against) each other’s insights. Not unlike peer review ... except on a potentially wider scale, and in public.<sup>23</sup>

Similarly, while there are a few dissenting voices, most agree that contributing to these influential blogs is beneficial to law faculty.<sup>24</sup> First, blog posts encourage larger audiences for scholars’ traditional legal scholarship-- a law review article, a book or book chapter. A post on a widely read blog discussing such scholarship can increase attention to longer form scholarship.<sup>25</sup> Some commentators have attempted to measure the “bounce” scholars get from attention on

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*Scholarship*, 39 CONNTEMPLATIONS 11, 26 (2007) (extolling the virtues of law reviews and noting that he “share[s] others’ great skepticism of blogs as scholarship and most assuredly do not believe that those of us who spend our free time blogging deserve credit for it...”). *Id.*

<sup>21</sup> Brown, *supra* note 4, at 531.

<sup>22</sup> For a full list of highly ranked blogs on the basis of numbers of citation, see Brown, *supra* note 4, at Appendixes A and B. A number of other rankings exist for both academic and non-academic legal blogs, including the American Bar Association’s Annual 100 Best Blawgs. See Mui & Rawles, *supra* note 1.

See also, Paul L. Caron, *Law Prof Blog Traffic Rankings*, LAW PROFESSOR BLOGS NETWORK: TAX PROF BLOG, [http://taxprof.typepad.com/taxprof\\_blog/2011/10/law-prof-blog.html](http://taxprof.typepad.com/taxprof_blog/2011/10/law-prof-blog.html) (Oct. 25, 2011) (top blog had over 18 million page views in one 12-month period). For a ranking of blogs based upon page views and visits based upon data in 2014, see Paul Caron, *Law Prof Traffic Rankings*, LAW PROFESSOR BLOGS NETWORK: TAX PROF BLOG, (July 10, 2014), [http://taxprof.typepad.com/taxprof\\_blog/2014/07/law-prof-blog-.html](http://taxprof.typepad.com/taxprof_blog/2014/07/law-prof-blog-.html).

<sup>23</sup> Andy Guess, “*Blogs and Wikis and 3D, Oh My!*”, INSIDE HIGHER ED, (May 9, 2008), <https://www.insidehighered.com/news/2008/05/09/blogs>; see also Brown, *supra* note 4, at 536. (“[R]ankings reveal a cluster of law faculty blogs that are generally seen as trusted sources of legal analysis”).

<sup>24</sup> Brown, *supra* note 4, at 525–527, 548–551. *But see* Brian Leiter, *Why Blogs Are Bad for Legal Scholarship*, 116 YALE L.J. POCKET PART 53, 57 (2006). Having faculty who blog can also bring institutional benefits to bloggers’ home schools. Paul Caron, *Are Scholars Better Bloggers? Bloggership: How Blogs are Transforming Legal Scholarship*, 84 WASH. U L. REV. 1025, 1037 (2006).

<sup>25</sup> Brown, *supra* note 4, at 549-550

popular blogs has been measured. Paul Caron, an early and leading blogger, has analyzed data to show a positive correlation between a scholar's popularity as a blogger and numbers of citations and downloads of the blogger's scholarship.<sup>26</sup> Another commentator has tried to quantify the impact of blogging on a specific article by tracking the number of SSRN downloads immediately after a post on a leading blog. The number of SSRN downloads substantially increased 48 hours after the post.<sup>27</sup>

Blogging also permits scholars to reach audiences they may not reach through law review articles or scholarly books. Despite the academic orientation of the blogs discussed in this chapter, comments on these blogs reveal they are read by law students, practicing lawyers, experts in other fields, and non-lawyers.<sup>28</sup> The shorter length, more informal, and footnote free posts are more accessible and interesting to these audiences.<sup>29</sup> This provides the opportunity to test new ideas and get feedback from a broader audience, informing scholars about which ideas are worth pursuing in a longer form. It also increases the possibility that these audiences, who wouldn't ordinarily read law review articles, might read the author's longer scholarship, including judges who might cite to this scholarship (or even the blog post) in their decisions.<sup>30</sup> Blogging for broader audiences may also lead to interdisciplinary or practitioner collaborations as well as media appearances. All

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<sup>26</sup> Caron, *supra* note 23, at 1032. Paul Caron is the founder of the Law Professor Network Blogs discussed *supra* note 16 and in accompanying text.

<sup>27</sup> Brown, *supra* note 4, at 549; *see also* Rosa Brooks, *What the Internet Age Means for Female Scholars*, 116 YALE L.J. POCKET PART 46, 51 (2006) ("A mention of an article on one of the "major" legal blogs can lead to a huge spike in SSRN downloads...").

<sup>28</sup> Jennifer J. Rose, *The Blog Spot*, INTERNET L. RESEARCHER, (2006), available at Westlaw, 11 No. 10 GLILR 9 (reporting that "57% of lawyers read at least one blog a day").

<sup>29</sup> Complaints about the inaccessibility of law reviews have been made for decades. For one of the earliest critiques see, Professor Fred Rodell, Yale Law School, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936) *See also*, Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Richard A. Posner, *Against the Law Reviews*, LEGAL AFFAIRS, (Nov.–Dec. 2004) [https://www.legalaffairs.org/issues/November-December-2004/review\\_posner\\_novdec04.msp](https://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp); Michael J. Madison, *The Idea of the Law Review: Scholarship, Prestige and Open Access*, 10 LEWIS & CLARK L. REV. 901 (2006) ("[L]aw professors know that few people outside of law schools actually read the law reviews.").

<sup>30</sup> Brown, *supra* note 4, at 533–535.



of this leads to greater name recognition.

Blog posts also allow the expression of scholarly ideas without “the worst excesses and most confining aspects of traditional forms of legal scholarship.”<sup>31</sup> Blog posts are short, rarely footnoted, and are subject to little or no editing. This allows scholars to disseminate their ideas much more quickly and with less effort than can be done through traditional scholarship.

Writing a full-length law review article can take scholars months. Once submitted and accepted—often a long process in itself--the typical law review takes another six months to a year to a year to publish an article.<sup>32</sup> A blog post critiquing a legal development –an important Supreme Court decision for example--- can be out in the blogosphere minutes after an opinion is issued.

All of these characteristics of blogs—providing scholars with larger and more diverse audiences, the ability to test ideas quickly and without large investments of time – enhance faculty reputation.<sup>33</sup>

### **III. Gender and Legal Blogging: Why Don’t More Women Promote Their Scholarship Through Blogging?**

Given all these benefits, you would expect to see a broad and diverse range of law faculty bloggers, including a high percentage of women blogging on these oft cited, highly visible legal blogs. The opposite is true. While women are more active participants than men in social media

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<sup>31</sup> Berman, *supra* note 19, at 1048.

<sup>32</sup> Matthew Salzwedel, *Don’t Waste Your Time Writing Law-Review Articles*, LAWYERIST.COM (Oct. 3, 2012) [https://lawyerist.com/48777/dont-waste-your-time-writing-law-review-articles/\(estimating that it is at least one year from the start of writing a law review article to publication\)](https://lawyerist.com/48777/dont-waste-your-time-writing-law-review-articles/(estimating%20that%20it%20is%20at%20least%20one%20year%20from%20the%20start%20of%20writing%20a%20law%20review%20article%20to%20publication))

<sup>33</sup> A junior scholar who has not yet had the opportunity to present her work at many conferences and “be noticed” can advertise her expertise and forthcoming scholarship by blogging. *See* Christine Hurt & Tung Yin, *Blogging While Untenured and Other Extreme Sports*, 84 WASH. U. L. REV. 1235 (2006) (“Professors who traditionally would be overlooked for conference panels and presentations because of their geographical location, junior status, or institution can now disseminate their ideas to senior colleagues they may have never met.”)



generally<sup>34</sup> and on some legal blogs<sup>35</sup>, they are underrepresented in these highly rated law-related academic blogs. A quick look at the gender breakdown of four of the leading<sup>36</sup> academic oriented legal blogs demonstrates this point.

<i>Name of Blog</i>	<i># of Regular Contributors</i>	<i>Men</i>	<i>Women</i>
Balkinization	35	28	7
Concurring Opinions	14	9	5
Prawfsblawg	13	10	3
Volokh Conspiracy	22	20	2

\*Information obtained from home page of each blog as of March 10, 2017

The relative lack of female voices in the upper echelons of the legal blogosphere may be traced to gender patterns in traditional legal scholarship. A variety of studies have documented

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<sup>34</sup> Megan Garber, *The Digital (Gender) Divide: Women Are More Likely than Men to Have a Blog (and a Facebook Profile)*, THE ATLANTIC (Apr. 27, 2012), <https://www.theatlantic.com/technology/archive/2012/04/the-digital-gender-divide-women-are-more-likely-than-men-to-have-a-blog-and-a-facebook-profile/256466/>.

<sup>35</sup> See LAW PROFESSOR BLOGS NETWORK: FAMILY LAW PROF BLOG, [http://lawprofessors.typepad.com/family\\_law/](http://lawprofessors.typepad.com/family_law/) (last visited Mar. 16, 2017); FEMINIST LAW PROFESSORS, <https://www.feministlawprofessors.com> (last visited Mar. 16, 2017). The underrepresentation of women is not as pronounced in non-academic oriented legal blogs. See e.g., Alison I. Stein, *Women Lawyers Blog for Workplace Equality: Blogging as a Feminist Legal Method*, 20 YALE J.L. & FEMINISM 357 (2009) (identifying and explaining the widespread use of blogs by women lawyers to “address the challenges and grievances [women] face in the workplace, as well as to increase the number of women in leadership positions in the profession.”).

<sup>36</sup> The Volokh Conspiracy and Prawfsblawg were both named to the ABA Blawg 100 Hall of Fame which includes blogs that have “consistently been outstanding throughout multiple Blawg 100 lists.” Sarah Mui et al., *Blawg 100 Hall of Fame*, ABA JOURNAL (Dec. 1, 2016, 5:00 AM) [http://www.abajournal.com/magazine/article/2013\\_blawg\\_100\\_hall\\_of\\_fame](http://www.abajournal.com/magazine/article/2013_blawg_100_hall_of_fame)

the gender disparity in law review publication.<sup>37</sup> Although there are some variations by rank, seniority and home school of female scholars, highly ranked journals publish the scholarship of male faculty more often than female scholars. In one leading study, Minna Kotkin analyzed the authorship by gender and “home school privilege” in 15 law reviews (the “top ten”) over a three year period.<sup>38</sup> She found that just over 20% of articles in those law reviews were written by women even though women make up 31% of the tenured/tenure-track faculty nationally.<sup>39</sup>

Commentators have suggested a number of possible explanations for women’s under-representation in scholarship. They include the fact that women, overall, have been teaching in law schools for fewer years than men, they appear in fewer numbers in highly ranked schools, and they tend to be under represented in subjects like Constitutional Law that appear more frequently in prestigious law journals.<sup>40</sup> And just as in traditional scholarship, it appears that the subjects most often discussed in the blogs viewed as most scholarly---Constitutional Law<sup>41</sup>, Civil Procedure, Criminal Law<sup>42</sup>—are subjects taught more often by men. While there are blogs focusing on Family Law, Trusts and Estates, and Feminist Jurisprudence and other areas where female scholars blog in greater numbers,<sup>43</sup> these blogs do not have the visibility of the highly rated blogs.

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<sup>37</sup> Minna J. Kotkin, *Of Authorship and Audacity: An Empirical Study of Gender Disparity and Privilege in the “Top Ten” Law Reviews*, 31 Women’s Rts. L. Rep. 385 (2010); see also Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 B.Y.U L. REV. 99, 124 (2009); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 237–38 (1997).

<sup>38</sup> *Id.* at 385–386. The term “home school privilege” refers to the advantage of those seeking publication on journals published by law schools where the author is a member of the faculty. Prof. Kotkin found that in “Top Ten” law schools the home advantage was the strongest and tended to disadvantage women. *Id.* At 404-405.

<sup>39</sup> *Id.* at 398, 418.

<sup>40</sup> *Id.* at 429. See also McGinley, *supra* note 32, at 136 (citing multiple studies demonstrating that course assignments are also gendered in many law schools as men are likely to teach high status courses like Constitutional Law and women are more likely to teach low status courses like Trusts and Estates).

<sup>41</sup> SCOTUSBLOG, <http://www.scotusblog.com> (last visited Mar. 15, 2017).

<sup>42</sup> See e.g., SENTENCING LAW AND POLICY, <http://sentencing.typepad.com/> (last visited Mar. 15, 2017).

<sup>43</sup> See FEMINIST LAW PROFESSORS, <https://www.feministlawprofessors.com> (last visited Mar. 16, 2017); LAW PROFESSOR BLOGS NETWORK: FAMILY LAW PROF BLOG, [http://lawprofessors.typepad.com/family\\_law/](http://lawprofessors.typepad.com/family_law/) (last visited

Women faculty also tend to have less time for scholarship given that they devote more time to serving law schools in committee work and student contact.<sup>44</sup> And women, including law school faculty, still take on greater share of family responsibilities than their male counterparts.<sup>45</sup> And the problem is not just the time to write but the time to do the things that improve scholarly opportunities—attend and speak at conferences, accept visits at higher ranked schools and other efforts to improve visibility and demonstrate scholarly talent and interest.

While the ease of blogging may offer new opportunities for female scholars, at least one commentator has concluded that “[T]he online world of legal scholarship may ultimately replicate many of the hierarchical and gendered structures found in the offline world of legal scholarship.”<sup>46</sup> The reasons for this prediction echo those that have contributed to women’s inability to keep pace with men in the world of traditional scholarship. It begins with having the time to blog. Even with the shorter, more informal style of blogging, being a regular contributor to a blog takes time. One editor of a leading legal blog noted this when he described blogging as “a time suck and addiction” because he felt “the need to feed the beast” whenever there was a

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Mar. 16, 2017); LAW PROFESSOR BLOGS NETWORK: WILLS, TRUSTS & ESTATES PROF BLOG, [http://lawprofessors.typepad.com/trusts\\_estates\\_prof/](http://lawprofessors.typepad.com/trusts_estates_prof/) (last visited Mar. 16, 2017).

<sup>44</sup> Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745, 1762 (2012) (“[W]omen do the disproportionate share of the “housework” in the workplace itself, including within the faculty governance structure of the university”); McGinley, *supra* note 32, at 102–103, 150–151; Brian Leiter, *Law School Faculty Quality: Who is Up and Who is Down Since 2003*, LAW PROFESSOR BLOGS NETWORK: BRIAN LEITER’S LAW SCHOOL REPORTS, [http://leiterlawschool.typepad.com/leiter/2006/08/law\\_school\\_facu.html](http://leiterlawschool.typepad.com/leiter/2006/08/law_school_facu.html).

<sup>45</sup> The fact that men do not share the 50% of child and elderly care and housekeeping management despite other late 20<sup>th</sup> century advances in women’s equality was documented over a decade ago in ARLIE RUSSELL HOCHSCHILD, *THE SECOND SHIFT* (2d ed. 2003). There has not been much change in the last ten years. *See e.g.*, *American Time Use Survey—2011 Results*, BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR: NEWS RELEASE (June 22, 2012), [https://www.bls.gov/news.release/archives/atus\\_06222012.pdf](https://www.bls.gov/news.release/archives/atus_06222012.pdf) (describing survey results showing that women do a disproportionate share housework and child care). For a very recent take on this continuing phenomenon, *see* TIFFANY DUFU, *DROP THE BALL: ACHIEVING MORE BY DOING LESS* (2017) (documenting the continuing inequities in the division of unpaid domestic duties and calling for women to drop “unrealistic expectations” and, thereby, achieve real change by both in power structures by refocusing women’s time and energy on social change and ending indoctrination about gender roles for our children).

<sup>46</sup> Brooks, *supra* note 27, at 49.

new legal development in his field.<sup>47</sup> Because bloggers *can* react immediately to a legal development, those who own or contribute to them feel they *must* react immediately. <sup>48</sup>And a faculty member can only do this if her time is not largely consumed by teaching, student contact hours, service to the law school, and home and caretaking tasks.

A more speculative and less quantifiable reason for women's lagging behind in both traditional scholarship and blogging is what has become known as the "confidence gap" between men and women.<sup>49</sup> This term refers to the research findings that conclude a "vast confidence gap that separates the sexes. Compared with men, women don't consider themselves as ready for promotions, they predict they'll do worse on tests, and they generally underestimate their abilities."<sup>50</sup> Although commentators have sharply debated the reasons for this gap, most agree that women are generally less self-assured than men.<sup>51</sup> Another commentator described one of the cultural contributors to the confidence gap that seems particularly apt in the context of legal scholarship: "Improving individual female confidence will not address the fact that when boys

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<sup>47</sup> Berman, *supra* note 19, at 1408. Douglas Berman is the co-owner of the Sentencing Law and Policy blog, an affiliate of the Law Professors Blog Network. SENTENCING LAW AND POLICY, <http://sentencing.typepad.com/> (last visited Mar. 14, 2017).

<sup>48</sup> See *About Us*, TECHNORATI MEDIA, <http://www.technorati.com/about/> (last visited Sept. 17, 2008). According to their data, "[b]loggers update their blogs to the tune of over 1.6 million posts per day, or over 18 updates a second." *Id.*

<sup>49</sup> Katty Kay & Claire Shipman, *The Confidence Gap*, THE ATLANTIC (May 2014), <https://www.theatlantic.com/magazine/archive/2014/05/the-confidence-gap/359815/> (discussing their book, THE CONFIDENCE CODE (2015) which documents and explains this gap through analysis of both cultural trends and neuroscience and psychology studies.)

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* (describing the reasons for the disparity in confidence as "stem[ming] from factors ranging from upbringing to biology.") Others argue that the "confidence gap" is not a personal defect as much as it is a reflection of a culture that gives women no reason to feel self-assured." <https://www.theguardian.com/commentisfree/2014/apr/23/female-confidence-gap-katty-claire-shipman>

and men speak we think what they have to say is more important. Boys and men know this because we teach them, and everyone else, that what they do and say is more important.”<sup>52</sup>

This confidence gap affects many aspects of women’s working lives. For female faculty, it certainly affects their approach to scholarship, making women less likely to believe their ideas are original or worthy of publication. This may play a role in female scholars’ production of traditional legal scholarship; it likely plays an even greater role in women’s motivation to blog on these highly visible blogs.

Law review articles are filled with supporting authority, written and rewritten many times by the author, circulated among peers for feedback before submission to law reviews. Once accepted, articles are further vetted by editors before publication. Blog posts, on the other hand, are meant to be written relatively quickly and posted without substantial vetting.<sup>53</sup> This rapid dissemination of ideas to a broad audience of scholars, including faculty peers at one’s home school and potential evaluators and employers from other law schools, may not appeal to more cautious, less self-assured scholars.<sup>54</sup> Women, thus, cede space to their more confident—some might say overconfident<sup>55</sup>—male counterparts to avoid negative judgments about their scholarly abilities.

When women do assert themselves and express strong points of view, they expose themselves to negative, gender-based comments. This may also account for female scholars’ reluctance to blog. An increasingly well-documented body of research indicates that women face

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<sup>52</sup> [http://www.huffingtonpost.com/soraya-chemaly/10-ways-society-can-close-the-confidence-gap\\_b\\_5200419.html](http://www.huffingtonpost.com/soraya-chemaly/10-ways-society-can-close-the-confidence-gap_b_5200419.html)

<sup>53</sup> Of course, one could ignore the norms of blogging and seek feedback and vetting before posting as some bloggers, particularly women, may do. See discussion *infra* at 21.

<sup>54</sup> Most law school Promotion and Tenure policies require some form of peer and “outside reviews” of the candidate’s scholarship.

<sup>55</sup> Kay & Shipman, *supra* note 49.

a disproportionate amount of gender-based online or “cyber harassment” in social media.<sup>56</sup> This term has been defined as “the intentional infliction of substantial emotional distress accomplished by online speech that is persistent enough to amount to a ‘course of conduct’ rather than an isolated incident.”<sup>57</sup> Researchers have found that 60-72% of “cyber harassment” victims are women.<sup>58</sup> The numbers may go up for lesbian, transgender, or bisexual women and women of color.<sup>59</sup> This gender-based harassment may take the form of threats of violence, false claims of sexual activity or disease, nude photos or gender-oriented slurs. It has an impact on victims’ academic careers, jobs and general reputation.<sup>60</sup> And it causes women to withdraw from online activities, which can have adverse professional and social consequences.

Much of this activity appears to take place on message boards, Facebook and blogs maintained and populated by students, including law students.<sup>61</sup> But as one commentator warns, female scholars may perceive a risk of gender harassment even on the scholarly legal blogs:

And while many legal blogs are professional and straightforward, quite a few— including several popular blogs maintained by law professors— share a certain testosterone-driven quality, with bloggers posting multiple times each day, seeking to attract readers by being tendentious and combative as much as

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<sup>56</sup> See e.g., Rachel N. Simons, *Addressing Gender-Based Harassment in Social Media: A Call to Action*, in ICONFERENCE 2015 PROCEEDINGS (2015); DANIELLE KEATS CITRON, *HATE CRIME IN CYBERSPACE* (Harvard University Press 2014).

<sup>57</sup> CITRON, *supra* note 56, at 3.

<sup>58</sup> Molly M. Ginty, *Cyberstalking Turns Web Technologies into Weapons*, WE NEWS (May 1, 2011), <http://womensenews.org/2011/05/cyberstalking-turns-web-technologies-weapons/> (US National Violence Against Women Survey results indicate that 60% of cyberstalking victims are women); *Comparison Statistics 2001-2013*, WORKING TO HALT ONLINE ABUSE (WHOA), <http://www.haltabuse.org/resources/stats/Cumulative2000-2013.pdf> (last visited Mar. 16, 2017) (finding, based upon those who contact WHOA through their website, that 72.5% of cyberstalking victims are women).

<sup>59</sup> Lisa Stone, *Hating Hate Speech: Safety for Kathy Sierra and all women online*, BLOGHER (Mar. 27, 2007, 12:47 AM), <http://www.blogger.com/hating-hate-speech-safety-kathy-sierra-and-all-women-online>.

<sup>60</sup> CITRON, *supra* note 56, at 10-11.

<sup>61</sup> See Catherine Buni & Soraya Chemaly, *The Unsafely Net: How Social Media Turned Against Women*, THE ATLANTIC (Oct. 9, 2014) <https://www.theatlantic.com/technology/archive/2014/10/the-unsafely-net-how-social-media-turned-against-women/381261/>; *Examples of Gender-Based Hate Speech on Facebook*, WOMEN, ACTION, & THE MEDIA, <http://www.womenactionmedia.org/examples-of-gender-based-hate-speech-on-facebook/> (last visited Mar. 16, 2017).

by being thoughtful and substantive. Posts and comments on some of the generalist legal blogs can be decidedly nasty, often in gendered ways. As more and more scholarly discussion migrates from the (relatively) civilized realm of the conference hall and the faculty lounge to the blogosphere, where no-holds-barred anonymous speech is permitted and often valued, will blogs be safe spaces for women? ...On several occasions, I've seen comment threads on scholarly legal blogs degenerate so much that female participants might have had viable hostile environment sexual harassment claims if the same exchanges had occurred in a discussion forum maintained by their employers.<sup>62</sup>

The risk that female scholars will be subject to cyber harassment or even negative, personal comments by posting on scholarly legal blogs may not be substantial. But, given the pervasiveness of cyber harassment against women, many women on law faculties may have been subject to such attacks in other contexts. They understandably approach any online exposure with great caution. And, given the stakes—harm to scholarly reputation—even a modest risk of such harassment may be enough to deter some women from regularly contributing to these widely read blogs.

#### ***IV. Racial Disparities in Blawgs***

Female scholars are not the only group that is underrepresented in the legal blogosphere. Law faculty of color are nearly invisible in many academic law-related blogs. A quick look at the racial/ethnic background of the bloggers in the legal blogs discussed above illustrates this point.

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<sup>62</sup> Brooks, *supra* note 27.



<b>Gender and Race Breakdown of Editors/Regular Contributors of 4 Leading Legal Academic Blogs*</b>				
<i>Name of Blog</i>	<i># of Regular Contributors</i>	<i>Men</i>	<i>Women</i>	<i>Racial/Ethnic Minorities</i>
Balkinization	35	28	7	4
Concurring Opinions	14	9	5	5
Prawfsblog	13	10	3	1
Volokh Conspiracy	22	20	2	1

\*Information obtained from home page of each blog as of March 10, 2017

As with gender, the lack of racial and ethnic diversity in the legal blogosphere mirrors patterns in traditional legal scholarship. In 1996, James Lindgren and Daniel Seltzer published a list of the most prolific law professors in the most-cited law reviews.<sup>63</sup> Although male professors of color<sup>64</sup> were well-represented in the top twenty-five, there were no women of color on the list and minorities were underrepresented in the next one hundred.<sup>65</sup> Recent studies demonstrate that

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<sup>63</sup> James Lindgren and Daniel Seltzer, *The Most Prolific Law Professors and Faculties*, 71 CHI. KENT L. REV. 781 (1996).

<sup>64</sup> We are defining “persons of color” or “racial/ethnic minorities” to include all of the non-White categories in the U.S. Census—Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander—and persons of Latino/Hispanic or Middle Eastern descent. U.S. Census Bureau, Race: About, <https://www.census.gov/topics/population/race/about.html> (last visited March 22, 2017). Although the U.S. Census does not include a category for persons of Middle Eastern descent, it is considering adding such a category in the 2020 Census. OFFICE OF MGMT. & BUDGET, REVIEW OF STANDARDS FOR MAINTAINING, COLLECTING, AND PRESENTING FEDERAL DATA ON RACE AND ETHNICITY (2017).

<sup>65</sup> Lindgren & Seltzer, *supra* note 63, at 804. Three of the top twenty-five were men of color, including two of the top five. There was only one woman (a white woman) in the top twenty-five. *Id.* Four years later another study found that “white men averaged significantly more citations than did women or minorities” but the differences were modest and “associated with differences in educational background, prestige of the institution at which a professor

racial minorities are less likely to be cited and, based on downloads on the Social Science Research Network, their work is less likely to be read.<sup>66</sup> For example, only one of the ten most-cited law professors in the U.S. from 2010-2014 is a racial minority.<sup>67</sup> That same professor—Akhil Amar—is the only racial minority on the list of the twenty most-cited constitutional law and public law faculty.<sup>68</sup> Law professors of color are similarly underrepresented in studies of scholarly influence in other subject areas.<sup>69</sup>

As illustrated by the chart above, these racial disparities are also present in the most popular legal blogs. Successful legal blogs, as measured by citations in court opinions and law review articles<sup>70</sup> and selection as a top legal blog by the ABA Journal,<sup>71</sup> are comprised of mostly white, male professors. Only one of the twenty-two bloggers on the Volokh Conspiracy is a racial minority. Similarly, Balkanization has over thirty regular contributors listed on its website but none are African-American or Latino. Of the thirteen regular contributors on Prawfsblawg, one is

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teaches, teaching assignments, and similar factors.” Deborah Jones Merritt, *Scholarly Influence in A Diverse Legal Academy: Race, Sex, and Citation Counts* 29 J. LEGAL STUD. 345 (2000).

<sup>66</sup> For example, only eight of the top 100 law authors on SSRN teaching at U.S. law schools are racial or ethnic minorities. All eight are male. See *SSRN Top 3,000 Law Authors*, [https://hq.ssrn.com/rankings/Ranking\\_Display.cfm?npage=1&RequestTimeout=5000&TMY\\_gID=2&TRN\\_gID=6&ruid=65313](https://hq.ssrn.com/rankings/Ranking_Display.cfm?npage=1&RequestTimeout=5000&TMY_gID=2&TRN_gID=6&ruid=65313) (updated Mar. 1, 2017).

<sup>67</sup> Brian Leiter, *Ten Most-Cited Law Faculty in the United States, 2010-2014*, L. PROFESSOR BLOGS NETWORK (May 18, 2016), <http://leiterlawschool.typepad.com/leiter/2016/05/ten-most-cited-law-faculty-in-the-united-states-2010-2014.html>. The top 10 law authors on the SSRN are all white men, See SSRN supra note 61. Of course, there are faculty of color who are frequently cited such as Mitu Gulati, Devon Carbado, Kimberle Crenshaw, Jerry Kang, E. Penalver, Dorothy Roberts, Bennett Capers, Jennifer Chacon, Sheila Foster. See Brian Leiter, *Top 40 law faculties in scholarly impact, 2015*, L. PROFESSOR BLOGS NETWORK (Sept. 16, 2015), <http://leiterlawschool.typepad.com/leiter/2015/09/top-40-law-faculties-in-scholarly-impact-2015.html>

<sup>68</sup> See Brian Leiter, *Twenty Most-Cited Constitutional & Public Law Faculty in the United States, 2010-2014 (inclusive)(corrected as of May 31)*, L. PROFESSOR BLOGS NETWORK (May 31, 2016), <http://leiterlawschool.typepad.com/leiter/2016/05/twenty-most-cited-constitutional-public-law-faculty-in-the-united-states-2010-2014-inclusive.html>. A study of the most-cited faculty from 2010–2014 similarly included only one male of color and no women. See, Brian Leiter, supra note 62.

<sup>69</sup> See Brian Leiter, *Top Ten Law Faculty (by area) in Scholarly Impact, 2009-2013*, L. PROFESSOR BLOGS NETWORK, (June 11, 2014), [http://www.leiterrankings.com/faculty/2014\\_scholarlyimpact.shtml](http://www.leiterrankings.com/faculty/2014_scholarlyimpact.shtml). There are exceptions. For example, faculty of Latino or Asian descent are influential in the international law area. *Id.*

<sup>70</sup> See supra note 4 and accompanying text.

<sup>71</sup> See Mui & Rawles, supra note 1.

Latino<sup>72</sup> and the rest are white. The exception might be Concurring Opinions where more than one-third of its regular contributors, including one of the authors of this chapter, are racial or ethnic minorities.

The Law Professors Blog Network,<sup>73</sup> which, as noted, is “a network of [almost 60] legal blogs”<sup>74</sup> appears to be diverse as fifteen percent of its bloggers are racial or ethnic minorities. One of the newer blogs in this network, the Race & the Law Prof Blog which was founded in 2015,<sup>75</sup> focuses on race and is comprised entirely of professors of color.<sup>76</sup> However, if we exclude the Race & the Law Prof Blog and the Immigration Prof Blog (which has four bloggers, three of whom are racial or ethnic minorities),<sup>77</sup> we find that only nine percent of bloggers on the Law Professors Blog Network are racial or ethnic minorities and only three percent are African American.

### ***Why Aren't Faculty of Color Blogging?***

Some of the challenges that faculty of color face when writing and disseminating traditional scholarship may also hinder their ability to establish and maintain a presence in legal blogs. Some, although certainly not all, racial minorities are more likely than whites to write about race and to produce Critical Race Theory (“CRT”) scholarship.<sup>78</sup> Race scholarship has, at times, been strongly

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<sup>72</sup> Daniel Rodriguez, the Dean at Northwestern School of Law is Latino.

<sup>73</sup> See *supra* note 16 and accompanying text.

<sup>74</sup> L. PROFESSOR BLOGS NETWORK, <http://www.lawprofessorblogs.com>, (last visited Mar. 13, 2017).

<sup>75</sup> Ruthann Ronson, *Welcome Race and the Law Prof Blog*, L. PROFESSOR BLOGS NETWORK, (Mar. 19, 2015) <http://lawprofessors.typepad.com/conlaw/2015/03/race-and-the-law-prof-blog.html> (post by Ruthann Robson welcoming the Race and the Law blog).

<sup>76</sup> L. PROFESSOR BLOGS NETWORK <http://lawprofessors.typepad.com/racelawprof/#footer>, (last visited Mar. 13, 2017).

<sup>77</sup> L. PROFESSOR BLOGS NETWORK, <http://lawprofessors.typepad.com/immigration/#footer>, (last visited Mar. 13, 2017).

<sup>78</sup> “[C]ritical race theorists assert that both the procedure and the substances of American law, including American antidiscrimination law, are structured to maintain white privilege.” See Francisco Valdes et al., *Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millennium*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 1 (Francisco Valdes et. al eds., 2002). For a summary of the tenets of critical race scholars, see

critiqued and even attacked.<sup>79</sup> For example, Judge Richard Posner has described CRT scholarship as a “lunatic fringe”<sup>80</sup> and others have critiqued its use of narrative, argued that it stereotypes minorities, and is plagued by “significant deficiencies” and “empirical weaknesses.”<sup>81</sup> While some Critical Race Theory articles have been published in leading law reviews, much of this work has been relegated to specialty journals focused on race. These journals are generally less prestigious than the law school’s primary law review and are significantly less likely to be cited.<sup>82</sup> In addition, faculty of color, and in particular, women of color, “frequently encounter skepticism about their abilities as scholars.”<sup>83</sup> Critics may dismiss scholarship addressing issues of race as not intellectually rigorous, especially if the author is a racial minority and thus, is presumed to lack objectivity when writing about these issues.<sup>84</sup>

Race scholarship comes with some risks and pre-tenured faculty are often advised not to write about race until after tenure, as this work may not be counted as “scholarship” by their institution and is likely to alienate at least a few of their colleagues who will be voting to grant or deny tenure.<sup>85</sup> These risks may deter faculty of color from blogging. Even if one feels safe writing about race in traditional law reviews where one has the benefit of time, reflection, feedback received at workshops and conferences, and the opportunity to make nuanced arguments and to support them with infinite citations, it may be dangerous to tackle these topics in a blog post where

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Adrien K. Wing, *Is There a Future for Critical Race Theory*, 66 J. LEGAL EDUC. 44, 52 (2016); Bennett Capers, *Critical Race Theory and Criminal Justice*, 12 OHIO ST. J. CRIM. L. 1 (2014).

<sup>79</sup> See Capers, *supra* note 78, at 1, 3 & n.13–16 and accompanying text.

<sup>80</sup> Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40.

<sup>81</sup> Capers, *supra* note 78, at 4–5 (internal citations and quotations omitted).

<sup>82</sup> See Washington & Lee University School of Law, *Law Journals: Submissions and Rankings 2008-2015*, at <http://lawlib.wlu.edu/LJ/index.aspx> (last visited mar. 22, 2017)

<sup>83</sup> See Carmen Gonzalez, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAWYER 48 (2014).

<sup>84</sup> Gonzalez, *supra* note 83 at 52.

<sup>85</sup> See, e.g., Cynthia Lee, *(E)racing Trayvon Martin*, 12 OHIO ST. J. CRIM. L. 91, 91 & n.3 (2014) (“Many junior law professors of color were warned by more senior professors of color not to write about race before acquiring tenure as doing so might negatively affect their chances of getting tenure.”).

these safeguards are lacking.<sup>86</sup> In addition, individuals who blog about race are subject to vicious comments similar to those experienced by women who blog about gender.<sup>87</sup>

Faculty of color, and women of color in particular, find it challenging to be as prolific as white male faculty because they have greater institutional commitments. With the exception of law schools that are part of historically black colleges and universities (“HBCUs”), the majority of law schools employ few faculty of color and even fewer in tenure-track positions.<sup>88</sup> As a result, faculty of color often have significantly heavier teaching and administrative burdens than white men.<sup>89</sup> They are likely to serve on more law school and university committees because the institution needs a person of color on every important committee such as Admissions, Appointments, Budget, Curriculum, Rank & Tenure, or Dean’s Search. They are expected to serve as faculty advisors to the diverse student organizations and to mentor students of color. They are also expected to attend all law school and alumni functions and to represent the law school at bar association events and task forces.<sup>90</sup> Faculty of color may also find themselves

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<sup>86</sup> Paul Butler, *Blogging at BlackProf*, 84 WASH. U. L. REV. 1101, 1103 (2006) (noting that African-American bloggers “were more careful than the white academics who were dominating the legal blogosphere. It felt like more of a risk for us.”)

<sup>87</sup> See Jessie Daniels, “Your Comments Here”: Racism in Online Comments, RACISM REVIEW (Oct. 25, 2009), <http://www.racismreview.com/blog/2009/10/25/your-comment-here-racism-in-online-comments/>, (last visited Mar. 19, 2017). Cf. CITRON, *supra* note 56, at 14 (noting that women of color experienced the highest rates of cyber harassment and white men had the lowest rates).

<sup>88</sup> Meera E. Deo, *Trajectory of A Law Professor*, 20 MICH. J. RACE & L. 441 (2015).

<sup>89</sup> Gonzalez, *supra* note 83, at 51.

<sup>90</sup> Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943, 993 (2015) (“the research in this area has consistently shown both that faculty of color and female faculty take on enormous service responsibilities, especially those related to students, and that these undertakings are rarely rewarded or even acknowledged when the larger faculty and administration evaluate faculty for tenure or promotion.”); Kellye Y. Testy, *Best Practices for Hiring and Retaining A Diverse Law Faculty*, 96 IOWA L. REV. 1707, 1715 (2011) (noting that often “a minority faculty member bears a disproportionate responsibility for student advising and mentoring and is often stretched thin due to the school’s otherwise worthy goal of having diverse faculty well represented on committees and other important institutional assignments.”); Devon W. Carbado & Mitu Gulati, *Tenure*, 53 J. LEGAL EDUC. 157, 170 (2003) (“untenured minority faculty likely end up doing more service work than their white male competitors for tenure, and that, in turn, means that they have relatively less time for scholarship and teaching preparation.”); see also LawProfBlawg, *Racism in Academia* (Not a Breaking Story), Feb. 21, 2017, <http://abovethelaw.com/2017/02/racism-in-academia-not-a-breaking-story/> (telling a story which is an “amalgam of true experiences people have had being a person of color in academia.”)

with heavier teaching loads because the school wants students to be exposed to a diverse group of faculty in their required courses. They are also expected to teach the race courses that no one else wants to teach, or is deemed, qualified to teach. All of this teaching and service to the law school and broader legal and academic community leave little time for scholarship, including blogging.<sup>91</sup>

There is some evidence that high achieving minorities experience what is known as “impostor syndrome” which is similar in some ways to the gender confidence gap discussed above.<sup>92</sup> While both impostor syndrome and the confidence gap are primarily the result of structural forces and stereotypes that signal that women and minorities are not as competent as white men, recent studies show how these forces apply to female professors of color. In a nutshell, women of color are presumed incompetent.<sup>93</sup> Many colleagues and students presume that a professor of color was hired because of her race and is not actually qualified. Consequently they subject her teaching, scholarship and service to extra scrutiny.<sup>94</sup> “To withstand this additional scrutiny, female professors of color often *overprepare* for classes”<sup>95</sup> which decreases the time they have available for scholarship, including blogging. Since their scholarship will be subjected to extra scrutiny, it is risky, or downright reckless for female faculty of color to publish anything that has not been pondered endlessly and edited a dozen

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<sup>91</sup> Gonzalez, *supra* note 83, at 51; Angela Mae Kupenda, *Academic War Strategies for Nonviolent Armies of One*, 4 CRITICAL STUD. J. 111, 116 (2011)

<sup>92</sup> See T. Elon Dancy II and Gaetane Jean-Marie, *Faculty of Color in Higher Education: Exploring the Intersections of Identity, Impostorship, and Internalized Racism*, 22 MENTORING & TUTORING: PARTNERSHIP IN LEARNING 354, 355 (2014).

<sup>93</sup> Gonzalez, *supra* note 83, at 50.

<sup>94</sup> Sylvia Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of “Doing” Gender and Race in the Classroom*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 164, 177 (Angela P. Harris, et. al eds., 2012) (“both minorities and women are presumed to be incompetent as soon as they walk in the door.”).

<sup>95</sup> Gonzalez, *supra* note 83, at 51; Deo, *supra* note 88, at 1006.

times—the opposite of a quick blog post. According to a recent survey conducted by the ABA, 63% of bloggers reported that the typical blawg post “takes up to two hours to produce.”<sup>96</sup> Professor Volokh has also noted that blogging does not require much proofreading or polishing because readers will “forgive typos and other little lapses.” He adds that “readers realize that many academic bloggers will be willing and able to blog ... only if they can do so with a minimum investment of effort.”<sup>97</sup> This is undoubtedly true of many bloggers but, in our experience, women and faculty of color spend anywhere from four hours to a full day or longer drafting, editing, and seeking feedback on a typical blog post. For them, blogging requires a significant investment of time and effort, albeit significantly less than a law review article.

Many faculty of color, like many white faculty, have no interest in blogging. However, some would consider it if asked. Invitations to guest blog for a brief stint may lead to an invitation to join the blog as a regular contributor but even if they do not, it allows the blogger to reap some of the benefits of blogging including, as noted above, exposure of her ideas to a broader audience than is likely in traditional law review articles. However, as with many invitations in academia, when bloggers are deciding whom to invite to guest blog, they tend to reach out to faculty in their own networks—those that they know well or have met at conferences. Given the lack of diversity in legal academia, white faculty may have limited interactions with faculty of color outside their institution. There are often few faculty of color on

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<sup>96</sup> Stephen Rynkiewicz, *What Bloggers Told Us About the State of the Legal Blogosphere*, ABA JOURNAL, (Dec. 1, 2016), [http://www.abajournal.com/magazine/article/what\\_bloggers\\_told\\_us\\_about\\_the\\_state\\_of\\_the\\_legal\\_blogosphere](http://www.abajournal.com/magazine/article/what_bloggers_told_us_about_the_state_of_the_legal_blogosphere)

<sup>97</sup> Eugene Volokh, *Scholarship, Blogging, and Tradeoffs: On Discovering, Disseminating, and Doing*, 84 WASH. U. L. REV. 1091 (2006).



panels or in attendance at many subject matter conferences<sup>98</sup> which decreases the likelihood that they will meet bloggers who will invite them to blog.

Arguably, law professors of color who want to blog need not wait for invitations to join an existing blog. They can simply create their own blogs, either alone or with other professors. However, there is no guarantee that a new blog will be successful. Although the Race & the Law Prof Blog made the ABA Annual Blawg 100 in its first year,<sup>99</sup> only time will determine its success. As of yet, it has not been cited in any judicial opinions or law review articles<sup>100</sup> and a blog focused on race is unlikely to attain the broad readership of a general interest well-established blog. It may also face challenges that other blogs might not. The Race & the Law Prof Blog is not the first collaborative blog focused on race. In 2005, nine law professors of color created BlackProf, the first blog of minority law professors.<sup>101</sup> Although Blackprof “provided a sharp analysis on race, law and culture,”<sup>102</sup> and was quite popular for a few of years,<sup>103</sup> it slowly became less active as its contributors struggled to find the time to frequently add new content. It was hacked shortly thereafter, making its content completely inaccessible.<sup>104</sup> In addition, while blawgs that focus primarily on race (or gender) are necessary, these topics should also be discussed in general blawgs. Otherwise, general interest blawgs will contribute to

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<sup>98</sup> Faculty of color sometimes use their allotted travel funds to participate in conferences that provide support to faculty of color instead of the much more costly AALS conferences. For example, each geographic region hosts an annual People of Color of Color Conference; Latino/a Critical Race Theory hosts a biannual conference; CAPALF hosts an annual conference, Lutie Lytle Black Women Law Faculty Writing Workshop also hosts an annual conference. While a few white faculty members attend these conferences, most do not.

<sup>99</sup> See Mui & Rawles, *supra* note 1.

<sup>100</sup> A Westlaw search conducted on March 15, 2017 found no citations.

<sup>101</sup> Paul Butler, *Bloggling at BlackProf*, 84 WASH. U. L. REV. 1101 (2006).

<sup>102</sup> Jessie Daniels, *RIP Blackprof.com*, RACISM REVIEW (June 24, 2009), <http://www.racismreview.com/blog/2009/06/24/rip-blackprof-com/>.

<sup>103</sup> See Daniel Solove, *BlackProf Blog*, CONCURRING OPINIONS (Oct. 19, 2005), <https://concurringopinions.com/archives/2005/10/blackprof.html>.

<sup>104</sup> Lee Rawles, *We Honor the Fallen: Past Blawg 100 Entries Which Have Departed*, ABA JOURNAL (Dec. 1, 2011), [http://www.abajournal.com/magazine/article/we\\_honor\\_the\\_fallen\\_past\\_blawg\\_100\\_entries\\_which\\_have\\_departed/](http://www.abajournal.com/magazine/article/we_honor_the_fallen_past_blawg_100_entries_which_have_departed/) (noting that Blackprof was the only law professor blog on the ABA 100 Blawg to have disappeared entirely).

the devaluation of race and gender in the same way that traditional scholarship focused on race or gender has historically been devalued in the academy.

### **Why Do Gender and Racial Disparities Matter?**

We have noted the many benefits of blogging to the individual faculty and their respective institutions that are lost if women and racial minorities do not blog. There are also benefits to blog readers who are exposed to a broad range of ideas and expert analysis on a variety on legal and social issues. Blogging also facilitates the responsibility that many law professors, including faculty of color and women, feel to reach a broader segment of society than just lawyers. Women and racial minorities may have a perspective that differs from that of white men.<sup>105</sup> As such the breadth and reach of discourse is limited if the voices of women and racial and ethnic minorities are underrepresented in legal blogs.<sup>106</sup> In the same way that the U.S. Supreme Court has recognized that “classroom discussion is livelier, more spirited, and simply more enlightening and interesting”<sup>107</sup> when law schools admit a diverse student body, the blawgosphere is richer when all voices are represented.

### **Creating an Inclusive Blogosphere**

Law faculty who blog may be unaware of the gender and race disparities in the blogosphere. Some who are aware may assume that these disparities are the result of individual choice. That may be true but it is also quite possible that at least some female faculty and faculty

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<sup>105</sup> Cf. Sonia Sotomayor, Lecture: *A Latina Judge's Voice*, N.Y. Times (May 14, 2009) (stating that she “would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.”).

<sup>106</sup> Butler, *supra* note 101, at 1104 (stating that blogging “helped nine African American legal scholars talk to, and learn from, the communities we serve.”)

<sup>107</sup> Grutter v. Bollinger, 539 U.S. 306, 330 (U.S. 2003).

of color would welcome the opportunity to blog even if only for a test drive. Given the many benefits of blogging, individual bloggers, readers, and law schools should facilitate the creation of a more inclusive blogosphere. First, we should all be alert to the racial and gender disparities and explore ways to address them. For example, bloggers on general interest blawgs can blog about these disparities and explain why we should all be concerned when the perspectives of women and minorities are absent. Blog readers can nudge blogs to include the voices of women and minorities by explicitly requesting it in their comments and by supporting blogs with a diverse group of contributors.

Second, bloggers should look beyond their informal networks when inviting faculty to blog and when selecting books to review for online symposia. Bloggers can subscribe to the Legal Scholarship Network (LSN) Subject Matter eJournals emails that provide abstracts of recent scholarship posted on SSRN and extend invitations to guest blog to women and minority scholars writing on a variety of topics even if they are not in their networks.<sup>108</sup> More established and confident bloggers can make a point of bringing positive recognition to the posts of women and people of color. This can be done by posting a positive comment or bringing the blog post to the attention of others through reposting on faculty listservs and Twitter.

Third, law schools should recognize the contributions that bloggers make and support faculty who wish to blog by counting it as scholarship or service.<sup>109</sup> In addition to benefitting individual faculty, strong faculty presence on influential legal blogs can improve a law school's institutional reputation.<sup>110</sup> Whether it is treated as scholarship or service, blogging should count

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<sup>108</sup> See SSRN Subject Matter eJournals Index, <https://www.ssrn.com/en/index.cfm/lisn/lisn-ejournals/> (last visited Mar. 23, 2017)

<sup>109</sup> See Ellen Podgor, *Blogs and the Promotion and Tenure Letter*, 84 WASH. U. L. REV. 1109 (2006) (arguing that blogs should at minimum count as service for purposes of tenure).

<sup>110</sup> Paul Caron, *Are Scholars Better Bloggers? Bloggership: How Blogs are Transforming Legal Scholarship*, 84 WASH. U. L. REV. 1025, 1037 (2006).

for purposes of promotion and merit compensation and institutions should set clear criteria for assessing blogs. For example, institutions should decide in advance how many blog posts will equal one traditional law review article, book review, or service as the faculty advisor to the Black Law Students' Association. Institutions can also support "active bloggers" (as defined by the institution) by reducing their course load or number of committees on which they serve—the institutional commitments that often fall most heavily on women and faculty of color.

## **Conclusion**

As we were finishing this Chapter, popular law-related academic blogs focused on Judge Neil Gorsuch's confirmation hearings to the U.S. Supreme Court and analyzed his likely position on a variety of legal issues. While these posts were enlightening, we could not help but notice that almost all of the bloggers discussing one of the most important issues of our time—who will sit on our highest court—were White males. Imagine how much richer the discourse could have been if women and racial minorities had been participants in this real-time conversation. The blawgosphere has the potential to disrupt the gender and racial disparities that have long plagued traditional legal scholarship but only if we commit to including the voices of women and racially diverse faculty in the discourse. The suggestions proposed in this Chapter are merely a start but our hope is that they generate ideas for inclusion of all voices in the blawgosphere and beyond.