What the Internet Age Means for Female Scholars

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As a female law professor, I can’t help asking: is the Internet-driven transformation of legal scholarship good for the girls, or bad for the girls?

Will it remove some of the handicaps that have dogged women’s efforts to join the ranks of scholarly “superstars”? Or will it only increase the professional obstacles still faced by women in legal academia? In this short Essay, I try to predict some of the promises and perils that the Internet holds for women in the legal academy.

Begin with the fact that the top-tier American law schools remain, on the whole, male preserves. The latest issue of this Journal is emblematic: of sixteen authors, only one is female.¹ Men occupy more than eighty percent of law school deanships and three-fourths of tenured professorships.² Although nearly half of American law students are women, elite schools still hire twice as many men as women into tenure and tenure-track positions,³ and there is some evidence that female law faculty are paid and tenured at lower rates than their male counterparts.⁴

Is rampant and overt sex discrimination responsible for the dearth of women at the top of the scholarly pyramid? On the whole, no. Don’t get me wrong—from time to time, old-fashioned sex discrimination still rears its ugly head. But today, the relatively lower status of women in legal academia is less a

product of overt discrimination than of societal and institutional structure. Most women operate under different constraints than most men, and the legal academy is structured in ways that make it harder for the average woman to succeed than the average man.

Start with a relatively uncontroversial premise. In American society, women—including women employed full-time outside the home—still do far more “care-taking” than men. They do more housework, cook more meals, and spend more time caring for children. Some men, of course, do more of these tasks than many women—but the average man does not. Many professional men with children have wives who don’t work outside the home, at least if there are young children in the picture; meanwhile, very few working women, mothers or otherwise, have husbands who don’t work outside the home.

Here’s a second uncontroversial premise: the legal academy is structured to reward scholarship above all else. Teaching, service, and collegiality receive higher or lower degrees of lip service, depending on the institution, but at virtually all top-tier schools, the productive scholar who can’t teach is prized far more than the fine teacher whose scholarship is scanty or weak.

This may be precisely as it should be, but it has gendered consequences. In the academy, where one’s work is never done at 5:00 pm, those with fewer family and household responsibilities have more time for scholarship. Because men tend to have fewer competing responsibilities, they tend to be more productive scholars than women, and write and publish more than women in their cohort, as Steven Stack and Kellie Maske have shown. Quantity isn’t quality, of course, but it seems reasonable to think that more time for scholarship will generally translate not only into “more scholarship” but also into “better scholarship.”

And just what do we mean by “better scholarship”? Many commentators have remarked on the growing specialization in legal scholarship—and the consequent fragmentation. As the world of legal scholarship professionalizes and expands, it becomes harder and harder to generate consensus around any one—or two, or three, or four—conceptions of “good” legal scholarship.

This lack of consensus about what constitutes “good” scholarship creates an environment in which many law professors rely (consciously or not) on proxies for “good scholarship.” Such proxies vary, but can include regular performance at conferences and workshops; visiting semesters at other schools (especially those higher up the U.S. News & World Report food chain); and

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other such things that might signal intellectual seriousness or the esteem of colleagues.

To put it more bluntly, most young law professors know that the route to success requires a certain amount of visibility. And those who are singlemindedly bent on visibility must accept invitations to conferences, workshops, and visiting professorships, regardless of any resulting disruption to family life.

This too has gendered consequences. With their relatively greater family responsibilities, women are often less able to travel than are men, and therefore accept fewer invitations to conferences. Similarly, women often find it harder than men to accept visiting offers; even if they have no children, women in relationships rarely have partners willing and able to leave their own jobs for months or years. If there are children, the difficulties multiply.

Take any random sample of women in the top fifty law schools and compare them to their male counterparts; odds are that the women will have fewer visiting professorships under their belts. I know many men who have done visiting stints at half a dozen law schools over the course of a decade or so—visiting stints that have helped their careers. Almost all of them possessed that most valuable asset, the trailing spouse.

You might say, of course, that some women simply choose to value family over career, and that there is no basis for objecting if this leads to a lower representation of women at the top of the profession. Certainly, there is no shame in valuing the wellbeing of one’s family over one’s own career ambitions—indeed, the contrary is true. But for most women, this is by no means a wholly free choice.

And women often lack the luxury of choice in another way, as well. Because women are less likely than men to accept invitations to visit, faculty appointment committees are, in turn, less willing to invite them. Most professors have seen this dynamic many times: when names of possible lateral candidates are tossed around, someone will mention a woman’s name, only to have someone else say, often with only the best intentions, “Oh, no point in inviting her to visit—she’ll never come. She has young children, and her husband works at a local firm.” So the invitation is never extended in the first place, for why go to the effort to vote through an offer for someone unlikely to accept? And we never find out whether the woman in question would in fact have accepted an offer.

Even if she would indeed have declined, the reluctance of many appointments committees to push through visiting offers in such circumstances, while understandable, has hidden ripple effects. Visiting offers not only help law professors move to “better” schools; visiting offers can also raise the stock of a professor at her home institution, even when those offers are declined. They can give professors leverage in negotiations about
everything from salary to leave time, teaching loads, research funds, and committee assignments.

A man with heavy family responsibilities will find himself in a position similar to that of many women. But such men are relatively rare; it is women who most frequently find themselves struggling to remain visible professionally while facing overwhelming demands at home.

Will the Internet equalize this disparity? Or will it throw more obstacles in the path of female scholars? So far, aside from the occasional plaintive query about the dearth of female legal bloggers, very few commentators have focused on the gender impact of the Internet on female academics. (Perhaps in part this is because most of those who write about the effect of Internet technologies on law are men. Last spring, for instance, Harvard Law School’s Berkman Center on the Internet and Society brought together prominent legal bloggers—mostly law professors—to look at “how blogs are transforming legal scholarship.”) Nearly three-quarters of the panelists were men.)

The changes ushered in by the Internet offer both promise and peril for women scholars. Let’s start with the positive. Many of the raw materials of legal scholarship are now online. Courts publish opinions on the Internet. Newspapers and law reviews offer their content online. Legal scholars increasingly distribute their work over the Internet. And almost every law school’s library offers faculty electronic access to extraordinary databases of material. All this enhances both speed and flexibility: scholars can now do research, circulate their work, start conversations and get their ideas “out there” to many more people, much more quickly. And, like the apocryphal pajama-clad blogger, they can now do all this from the breakfast table.

The very existence of the Pocket Part testifies to the nature of the changes the Internet has brought. Once, we all waited patiently for The Yale Law Journal to arrive at the library; now, we read half the articles in advance on SSRN and the rest when they show up on the Journal’s website. And as legal blogs have proliferated, we can all produce and read real-time analysis of court decisions, legislation, and political events. Who would wait to open a law journal next year to see what Jack Balkin thinks about Hamdan v. Rumsfeld, when we can find out right now by reading his blog?

Blogs in particular are reshaping how we think about legal scholarship. There are now many blogs in most major legal areas; although their quality varies, many are consistently useful sources of information and analysis. Others are sources of news and more or less scurrilous gossip, which is occasionally useful and often entertaining.

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At the Harvard Law School conference on blogs and legal scholarship, mentioned above, conference participants disagreed about some particulars, but few of them questioned the premise that the Internet is, indeed, transforming legal scholarship. The participants agreed that we will see more and more “short form” legal scholarship, ranging from the thirty-page essays that law journals print but also make available online, to the few-thousand word pieces in the *Pocket Part*, to blog entries of a few paragraphs. For practitioners, students, and even many other scholars, these developments will make legal scholarship far more useful, accessible, and user friendly. (I’ll leave for another day—or another commentator—the question of whether scholarship will be less deep in a world of more frequent but smaller units of scholarship).

Needless to say, these new forms of scholarship are already creating new hierarchies and new anxieties for law professors. Once, law professors anxiously counted citations to their articles. Now, they count SSRN downloads and install site-meters on their blogs. And those with a mania for rankings now have multiple new ways to rank schools and individuals: by SSRN postings, SSRN downloads, blog posts, and blog traffic.

These Internet-driven changes have the potential to eliminate some of the barriers faced by women legal scholars. Partly, that’s because shorter articles are, quite simply, easier to write in small scraps of time than lengthy articles. Shorter pieces don’t require the kind of sustained focus and concentration needed for longer articles, and can more easily be sandwiched in somewhere between taking a sick child to the pediatrician and making dinner. And partly, it’s because you don’t need to travel anymore to get noticed in the Internet age. You can blog, instead, or post lots of articles on SSRN, or comment on other people’s articles or blogs. I can think of several younger scholars—including some women—whose careers have clearly been helped by blogging and commenting on blogs, activities that have gotten them noticed by people who then go on to read and be impressed by their more “serious” work. It’s too soon to say, but I suspect that the Internet age may gradually help eliminate the practice of making visits a predicate of lateral faculty offers. To the extent that blogging can help people get to know a scholar’s style of thinking, why put everyone to the trouble and expense of term- and year-long visits?

But the Internet age may also bring new dangers for women in the legal academy. Indeed, the online world of legal scholarship may ultimately replicate many of the hierarchical and gendered structures found in the offline world of legal scholarship.

Take blogging. With its 24-7 quality, blogging attracts the obsessive, the energetic, and the insomniac. If blogging is the new equivalent of going to conferences—because it’s a way to be visible to others within the profession—
bloggers have an incentive to do whatever it takes to get noticed, and frequent posts are one way.

There are a handful of prolific female legal bloggers, but, even more than in the pages of law journals, women legal bloggers are still thin on the ground. Will round-the-clock blogging replace more traditional forms of visibility and scholarly productivity as routes to career advancement? If so, women are likely to be left behind, for the same reasons women are left behind in the world of traditional scholarship. Who has time?

A mention of an article on one of the “major” legal blogs can lead to a huge spike in SSRN downloads, and as download rankings become ever more important the incentives for gaming the system grow. Here too, if women are less present in the blogosphere—or less comfortable with blogospheric self-promotion—these new scholarly forums may leave women as far behind as the old ones.

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 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. As unofficial blogs maintained by law professors become more and more integrated into the official scholarly community, that integration will raise interesting questions about professional ethics—and perhaps even about legal liability. For now, it’s probably enough to note that the culture of many blogs is off-putting for many women, which may keep female participation down.

None of this is inevitable. The Internet is transforming legal scholarship and scholarly incentives, but the transformation has only just begun. There’s still plenty of time to shape our own future.

Let’s make the Internet age one that’s good for the girls, not bad for the girls.
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