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The Public Face of Scholarship

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# The Public Face of Scholarship

Larry E. Ribstein

## **Abstract**

The web enables scholars to engage in several types of what I have called “amateur journalism.” Of particular interest is scholars’ ability to effectively leverage their expertise in commenting on matters of public interest. This form of expert engagement has the potential to reshape the relationship between academic experts and professional journalists and change the tone and content of public discussion

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Larry E. Ribstein

Draft of April 17, 2006\*

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The web enables scholars to engage in several types of what I have called "amateur journalism." Of particular interest is scholars' ability to effectively leverage their expertise in commenting on matters of public interest. This form of expert engagement has the potential to reshape the relationship between academic experts and professional journalists and change the tone and content of public discussion.

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\* Corman Professor, University of Illinois College of Law. Prepared for the conference on *Bloggership: How Blogs Are Transforming Legal Scholarship* sponsored by The Berkman Center for Internet & Society at Harvard Law School, April 27, 2006. My blog is [www.ideoblog.org](http://www.ideoblog.org).

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This conference so far mostly has concerned scholar-bloggers' impact on and relation to scholarship. This essay focuses on the relationship between academic weblogs and journalism. I see academic blogs as a form of what I called in a separate paper "amateur journalism."<sup>1</sup> Here I focus on the type of writing that is both most distinctive to scholars and connects most closely with professional journalism – that is, scholars' use of blogs to engage with the public. Part I reviews the distinction between amateur and professional journalism and describes types of academic blogs. Part II focuses on what I call "publicly engaged academic blogs," or PEAPs, discussing the changes these blogs may bring to professional journalism.

### I. SCHOLARS AS AMATEUR JOURNALISTS

In general, an "amateur journalist" writes separately from her main job, which might include professional journalism. The distinction between amateurs and professionals focuses on incentives. Amateurs write mostly to express themselves and

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<sup>1</sup> Larry E. Ribstein, *From Bricks to Pajamas: The Law and Economics of Amateur Journalism*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=700961](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=700961), forthcoming William & Mary L. Rev. (2006).

only secondarily for commercial reasons such as promoting their careers or attracting advertising. The web enables amateur journalism by permitting public dissemination of writing without the need for a significant capital investment.<sup>2</sup> Google and other search engines allow viewers to identify which of the millions of websites are most useful and relevant to their specific interests. These technologies have fostered proliferation of a large number of diverse viewpoints.

The distinction between professional and amateur journalism assumes clear boundaries between vocation and avocation. This breaks down for scholars, whose jobs are only vaguely defined and who are usually insulated from an employer's most important disciplinary mechanism – termination. Job security helps foster the creativity necessary for good teaching and scholarship. Universities control agency costs by granting tenure only to those who demonstrate during a long probation period that they will use it responsibly. Tenured academics have significant leeway to engage in behavior that does not serve the university's interests. In other words, the costs of controlling agents' discretion leaves a lot of slack.

Scholars also have more expertise than other bloggers on matters of general interest. Non-academics' expert knowledge is confined by their jobs. While a purchasing agent may know everything there is to know about the components of a line of products, the demand for this information may be fairly narrow, and the employee is barred from disclosing proprietary information. Non-academics' jobs usually leave them little time to become experts on non-work-related topics. By contrast, academics have significant time to devote to topics that may be of general interest and are not constrained from communicating the information by property rights or confidentiality concerns.

In order to identify the distinct role of scholar-bloggers it is necessary to distinguish four types of web-based writing academics may engage in, sometimes combining these types on the same blog.<sup>3</sup>

#### **A. RECREATIONAL EXPRESSION**

Some academic blog posts are indistinguishable from non-academics' blogs in the sense that they do not draw on any particular expertise. Academics who comment on politics, popular culture or other subjects outside their specialties differ from other bloggers mainly in having more leisure time. Also, academic bloggers have the flexibility to merge job and hobby. For example, most of my posts on films relate to my scholarly project on how business is portrayed in film, now embodied in two more formal papers.<sup>4</sup> Even wholly unscholarly blog posts can have a job connection by building readership for more technical posts.

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<sup>2</sup> Note that this might change if telecom companies were permitted to offer different levels of service at different prices. See James Surowiecki, *Net Losses*, *The New Yorker*, March 20, 2006.

<sup>3</sup> Because of this potential for combination, I discuss "blog posts" rather than types of blogs.

<sup>4</sup> See Larry E. Ribstein, *Wall Street & Vine*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=563181](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=563181); Larry E. Ribstein, *Imagining Wall Street*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=771724](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=771724), forthcoming *Virginia Law & Business Review*.

## B. THE BLOGICLE

A second type of academic blog post is essentially a short scholarly article I call a "blogicle." These posts may present early versions of ideas or commentary that are too preliminary or informal to qualify as scholarly work. Blogicles differ from articles or essays not only in their length, but also in their informality, topicality and interactivity. They include occasional links rather than extensive footnotes, are usually triggered by some current event or article in the professional media or another blog, and provide an opportunity for contemporaneous response through comments, trackbacks and posts on other blogs. For example, my initial article on blogs<sup>5</sup> began as a series of posts on the law and economics of blogging.<sup>6</sup> More often, my posts develop ideas that I have first discussed elsewhere, triggered by topical news events or stories.<sup>7</sup>

Although blogicles look different from articles, they are part of academics' traditional scholarly enterprise. Indeed, they may be more clearly scholarship in the modern theoretical and interdisciplinary mode than the sort of purely descriptive articles practicing lawyers write, or traditional doctrinal legal scholarship. Courts have cited blog posts as if they were scholarly writing.<sup>8</sup> In any event, I leave blogicles to the other papers at this conference, noting them here mainly by way of contrast to the focus of this paper described in section 4.

## C. SELF-PROMOTION

Academics use blogs to promote their expertise. Before blogs, scholars had little ability to publicize their work. Scholarly journals may reach most of the scholar's fellow specialists, but not many policymakers and others to whom the work may be relevant. Blogs can help scholars increase the impact and value of their work, and thereby gain benefits that encourage scholarly work.

Scholars have more incentive than ever to publicize their expertise. Rankings of educational institutions have increased the attention given to objective methods of evaluating institutional performance, and therefore to the reputation component of the rankings. This motivates schools to attract and retain scholars whose work is not only admired by other specialists but also widely known. In particular, an emerging objective measure of reputation is downloads on the Social Science Research Network.<sup>9</sup> Scholars

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<sup>5</sup> See Ribstein, *supra* note 1.

<sup>6</sup> See Larry E. Ribstein, Ideoblog, *The Law and Economics of Blogging: Introduction* (March 22, 2005), available at [http://busmovie.typepad.com/ideoblog/2005/03/the\\_law\\_and\\_eco.html](http://busmovie.typepad.com/ideoblog/2005/03/the_law_and_eco.html).

<sup>7</sup> See, e.g., Larry E. Ribstein, Ideoblog, *A Disney Preview*, July 10, 2005, available at [http://busmovie.typepad.com/ideoblog/2005/07/a\\_disney\\_previe.html](http://busmovie.typepad.com/ideoblog/2005/07/a_disney_previe.html) (previewing forthcoming Delaware Chancery Court opinion in the Disney litigation).

<sup>8</sup> See 3L Epiphany, *Cases Citing Legal Blogs*, April 15, 2006, available [http://3lepiphany.typepad.com/3l\\_epiphany/2006/04/cases\\_citing\\_le.html](http://3lepiphany.typepad.com/3l_epiphany/2006/04/cases_citing_le.html) (collecting judicial citations to blog posts).

<sup>9</sup> See Bernard Black & Paul Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 IND. L.J. (2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=784764](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=784764); Lawrence A. Cunningham, *Scholarly Profit Margins and the Legal Scholarship Network: Reflections on*

can increase downloads by linking their articles on a widely read blog. This gives schools an incentive to subsidize or even run blogs.<sup>10</sup>

Blogs fill a significant gap in existing mechanisms for promoting scholarship. Merely listing a paper's title on a resume or on SSRN often does not really communicate what the article is about. Even the abstract can only convey a general idea and not how the paper relates to specific issues. More importantly, there is the problem of bringing the title or abstract to the attention of potential readers. Even if the article appears in the right databases it may become a needle in the burgeoning haystack of academic literature. SSRN abstracting journals are an effective means of promotion, but they reach readers only at one point in the paper's life. Blogs can push the article repeatedly to visitors who have demonstrated some interest in the scholar's work. More importantly, a blog can illustrate the article's relevance to issues that currently interest these readers. For example, my blog posts on my paper on outsider trading<sup>11</sup> discuss the various subjects the paper covers.<sup>12</sup> Some of these would not be obvious from the title, abstract or cursory review.

#### D. SCHOLARLY PUBLIC ENGAGEMENT

This paper highlights a particular type of academic blogging that uses the blogger's scholarly work as a mechanism for public engagement. I call these publicly engaged academic posts, or PEAPs.<sup>13</sup> The authors are not engaging simply in original scholarly analysis or self-expression, but rather are trying to use their expertise to influence the outcome of a public debate. They may be aiming for some particular public policy result, or to rebut the political or policy arguments made by politicians, interest groups, journalists or other bloggers. Recent examples on my blog include discussions of

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*the Web*, Boston College Legal Studies Research Paper No. 67 (March 30, 2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=695283](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=695283).

<sup>10</sup> A recent paper argues that investments in hiring active scholars have only modest payoffs for law schools' reputation scores, and therefore for their rankings. See William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L. J. \_\_ (2006), available at <http://ssrn.com/abstract=720122>. However, relatively investments in promoting scholarship, as by supporting blogs, could be cost-effective. See Larry E. Ribstein, *Should Law Schools Invest in Scholarship*, April 5, 2006, available at [http://busmovie.typepad.com/ideoblog/2006/04/should\\_law\\_scho.html](http://busmovie.typepad.com/ideoblog/2006/04/should_law_scho.html).

<sup>11</sup> Bruce H. Kobayashi & Larry E. Ribstein, *Outsider Trading as an Incentive Device*, forthcoming Cal-Davis Law Review, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=888188](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=888188).

<sup>12</sup> See, e.g., Ideoblog, *The Attack on the Shorts, and Hedge Funds, continues* (March 27, 2006), available at [http://busmovie.typepad.com/ideoblog/2006/03/the\\_attack\\_on\\_t\\_1.html](http://busmovie.typepad.com/ideoblog/2006/03/the_attack_on_t_1.html); *Prediction Markets and Outsider Trading* (March 22, 2006), available at [http://busmovie.typepad.com/ideoblog/2006/03/prediction\\_mark.html](http://busmovie.typepad.com/ideoblog/2006/03/prediction_mark.html); *Incentives and market efficiency* (March 4, 2006), available at [http://busmovie.typepad.com/ideoblog/2006/03/prediction\\_mark.html](http://busmovie.typepad.com/ideoblog/2006/03/prediction_mark.html); *Outsider Trading as an Incentive Device* (March 3, 2006), available at [http://busmovie.typepad.com/ideoblog/2006/03/outsider\\_tradin.html](http://busmovie.typepad.com/ideoblog/2006/03/outsider_tradin.html).

<sup>13</sup> As noted above, because this writing may appear on the same blogs with the other types of writing discussed above, I am characterizing specific "posts" rather than entire "blogs." Blogs do differ, however, as to the extent to which each type of post dominates.

the SEC's proposed rule on executive compensation disclosure.<sup>14</sup>

PEAPs' significance as a distinct category of amateur journalism is that they connect both with journalism and scholarship. While PEAPs involve the same sort of activity as professional journalism, scholar-journalists gain an advantage over professionals by leveraging their expertise. This has three implications. First, the posts are more informed than other blogs that engage in self-expression. Scholars can draw from their expertise to make immediate and timely posts without the significant new research that generalist journalists would have to do. Second, the post is likely to be more disciplined and objective than other self-expressive blogs because it derives from a body of prior ideas developed without specific public policy objectives. Third, the blogger stakes her scholarly reputation on the post, and therefore has more incentive than other amateurs to carefully support her position.<sup>15</sup> These differences between PEAPs and other amateur journalism relate to the impact PEAPs may have on the nature and quality of professional journalism, as discussed in the next Part.

## II. PEAPs' EFFECT ON PROFESSIONAL JOURNALISTS

This Part discusses how PEAPs are likely to affect professional journalism. Subpart A discusses the equilibrium that existed prior to the rise of blogs – that is, the power of professional journalists to control access to the public debate. Subpart B examines the incentives and biases of professional journalists. Subpart C considers the potential effects of academic blogging on professional journalism, including the implications for the relationship between academics and journalists.

### A. THE POWER OF PROFESSIONAL JOURNALISTS

Speakers' access to an audience depends on their resources. Professional journalists and editors traditionally have had significant power to control participation in public debate through their ability to direct their employers' resources. A journalist who works for the New York Times may have a louder voice in the public debate than a non-journalist, a journalist for a smaller newspaper or even some politicians. While these journalists may let others speak through their articles or broadcasts, they select the speakers and edit this speech.<sup>16</sup>

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<sup>14</sup> See, Ideoblog, *Executive Compensation* archive, [http://busmovie.typepad.com/ideoblog/executive\\_compensation/index.html](http://busmovie.typepad.com/ideoblog/executive_compensation/index.html).

<sup>15</sup> These characteristics of PEAPs differentiate them from Posner's "public intellectuals." See Richard Posner, *PUBLIC INTELLECTUALS: A STUDY OF DECLINE* (Harvard, Rev. edition, 2003). Posner criticized a relatively small group of famous intellectuals for a variety of flaws, including conflicts of interest and sloppy thinking. I envision a large number of PEAPs authors, each with only a small audience (though perhaps collectively influential), who stick fairly closely to their fields of expertise and academic roots. As noted in the text, this is likely to have a payoff in accuracy and responsibility. Although a detailed application of Posner's theory is beyond the scope of this short paper, it is worth noting that PEAPs might correct the deficiencies of public intellectuals as well as those of professional journalists.

<sup>16</sup> Corporations and interest groups similarly can command the resources necessary to disseminate their views to a large audience and therefore play a significant role in the public debate. For an analysis of the political implications of corporations' power to engage in political debate, see Larry E. Ribstein, *Corporate Political Speech*, 49 WASH. & LEE L. REV. 109 (1992).

The web potentially changes all this by giving amateurs direct access to the public. Access, of course, still is not “free,” since the web does not alter fundamental limitations on consumers’ attention. But blogs enable amateurs to reach a significant audience without the sort of capital investments that professionals make. Amateurs can enter the market with no capital investment and increase their prominence by investing time.<sup>17</sup> While only a relatively few amateurs ultimately might succeed in capturing significant attention, their success is determined through a decentralized process rather than through a professional-type institutional framework. As discussed below, this may have important implications for the types of views that achieve prominence in the public debate.

## **B. PROFESSIONAL JOURNALISTS’ INCENTIVES**

In order to determine how PEAPs may affect journalism, it is important first to analyze professional journalists’ incentives in a world without PEAPs. These have been modeled and tested empirically in several articles in the finance literature. There are basically two theories, which can be referred to as “demand-side,” originating from journalists’ effort to give the audience what it wants, and “supply-side,” originating from journalists’ biases.

### **1. Demand-based theories**

Michael Jensen propounded the first market or demand-side theory of journalist incentives.<sup>18</sup> Jensen characterizes consumers of news as maximizing their self-interest, and journalists as serving this market. More specifically, people look to news for entertainment. People have little incentive to invest in information that would guide their voting decisions because they do not expect to affect voting outcomes.<sup>19</sup> Quoting extensively from H.L. Mencken, Jensen says the audience for news (whom Mencken refers to as “boobs”) wants sensationalist stories that present choices between good and evil, and simple solutions rather than complex explanations such as poorly designed incentives.<sup>20</sup> They prefer stories about “evil men with evil motives [who] pervert the system for their own ends,”<sup>21</sup> or that say that people are bad because the system causes them to act selfishly. Journalists meet this demand by first scaring people with a problem and then offering a reassuring solution.<sup>22</sup> Journalists accordingly ally with politicians, scientists and others who have interests in creating crises for which they can offer

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<sup>17</sup> Blogs such as Huffington make significant investments in publicity in order to reach a substantial audience. But these are much more like professional outlets. Although the writers themselves are amateurs in the sense that their activity is a sidelight to their main careers, professionals handle promotion and coordination. These blogs are, in effect, professional journals consisting exclusively of op-ed pages.

<sup>18</sup> Michael C. Jensen, *Toward a Theory of the Press*, in *Economics and Social Institutions*, Karl Brunner, ed., 1979; available at <http://ssrn.com/abstract=94038>.

<sup>19</sup> Anthony Downs, *An Economic Theory of Democracy* (1957).

<sup>20</sup> *Id.* at 8-9.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.* at 17.

solutions.<sup>23</sup>

Recent studies provide evidence of Jensen's market theory of journalists' incentives. Core, Guay and Larcker track press reports relating to executive compensation.<sup>24</sup> While they show that the press provides some information, some of their data supports an entertainment theory. The authors show that negative press reports tend to concern option exercises and equity and option holdings rather than annual pay, and are more negative for large firms and for firms that perform poorly. Both of these findings indicate that the press opts for sensationalism over reporting that would reveal the extent of the excess compensation problem. Equity holdings and option exercises tend to exaggerate the compensation executives are actually receiving. Large and poorly performing firms tend to be more newsworthy but not necessarily most indicative of an excessive compensation problem.

Along similar lines, Miller describes the factors that determine which accounting frauds journalists will cover.<sup>25</sup> The press is more likely to write about accounting frauds where managers have also made misleading statements or misappropriated money, both of which make the story more sensational. Also, the press is likely to focus on firms that are larger and have more analysts following them. These choices reflect the story's entertainment value based on factors identified in a leading journalism text. Conversely, whether the story will be written does not depend on the severity of the fraud in terms of its length or the number of violations.

Other scholars have proposed theories of professional journalists' incentives based on the market's demand for biased information rather than for entertainment. Gentzkow & Shapiro argue that the news media seek to build a reputation for high-quality and accurate information, but understand that the audience faces limitations in evaluating whether they are receiving such information.<sup>26</sup> Consumers will act like Bayesians and evaluate the accuracy of each new piece of information in the context of what they already know. If a news account differs too much from their existing information, readers will conclude that it is inaccurate and lower their evaluation of the media delivering it. The media's incentive to deliver accurate information accordingly depends on what the audience learns from other sources, which determines the expectations that the media need to meet. If the information is immediately verifiable, as with sports or weather, expectations and therefore reporting are likely to be accurate. However, such feedback may not be much of a corrective for business regulation the effect of which may be unclear. Significant market competition may give the media an incentive to provide alternative views, which also may determine audience expectations. This has implications for the role of PEAPs and other blogs.

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<sup>23</sup> *Id.* at 19.

<sup>24</sup> John E. Core, Wayne R. Guay & David F. Larcker, *The Power of the Pen and Executive Compensation* (October 28, 2005), available at <http://ssrn.com/abstract=838347>

<sup>25</sup> Gregory S. Miller, *The Press As A Watchdog For Accounting Fraud* (August, 2005), available at <http://www.nd.edu/~lmarsh1/Miller.pdf>.

<sup>26</sup> Matthew Gentzkow & Jesse M. Shapiro, *Media Bias and Reputation* (September 14, 2005), available at <http://home.uchicago.edu/~jmshapir/bias091305.pdf>.

Mullainathan & Shleifer<sup>27</sup> also argue that journalists serve a market demand for biased information. However, in this theory bias is attributable to audience attitudes rather than Bayesian updating. Since the authors assume that more information alone does not change individuals' beliefs, neither real world feedback nor media competition can readily cause the audience to demand accurate information. Competition merely provides more outlets serving existing audience biases. However, Mullainathan & Shleifer assume that some readers demand accurate information, and satisfy this demand by aggregating diverse biased sources. It follows that, the more heterogeneity there is in audience beliefs, the more different news outlets will serve these preferences, and the more aggregate accuracy there will be.

## 2. The supply side: journalist bias

David Baron explains media bias based on journalist attitudes.<sup>28</sup> Baron argues that those who choose to become journalists have a leftward, pro-regulatory bias that they wish to express in their stories. Because of their preference for self-expression, they are willing to trade the higher wages they could earn in jobs like advertising for more opportunity for self expression. On the other hand, consumers of news demand accuracy because they use the information to make decisions. Biased reporting therefore may reduce prices and profits. News organizations have an incentive to give journalists license to express themselves if the resulting decrease in wages journalists demand exceeds the decline in the price consumers are willing to pay for biased reporting. Competition may not reduce overall bias and may even increase it by giving news organizations an incentive to reduce prices, and therefore to reduce wages by giving journalists more freedom. Moreover, as prices drop, more people consume news and therefore more are exposed to biased reporting.

Although Baron cites evidence of leftward bias among professional journalists,<sup>29</sup> he does not fully explain why this bias would exist. Such an explanation is obviously important to analyzing how PEAPs might change the equilibrium. There are four potential reasons for journalist bias. First, only certain types of people may choose journalism as a profession. As Baron explains, these people are willing to trade the higher earnings they would make in professions like advertising that give their employees less freedom. It follows that these people are likely to have strong views and the desire to express them and thereby influence public debate. However, journalists' willingness to trade money for freedom does not imply *particular* views, such as a preference for more regulation and bigger government. Perhaps people who are willing to work for less money than those with similar training are more critical of the institutions such as markets that provide these higher rewards. In other words, they may view themselves as outsiders. Also, as Schumpeter has argued about the “intelligentsia” generally, journalists

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<sup>27</sup> Sendhil Mullainathan & Andrei Shleifer, *The Market for News*, forthcoming American Economic Review, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=485724](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=485724).

<sup>28</sup> David Baron, *Persistent Media Bias*, Stanford Graduate Sch. of Bus., Research Paper No. 1845 (2004), available at <http://ssrn.com/abstract=516006>.

<sup>29</sup> Baron relies on Groseclose & Milyo. See Tim Groseclose & Jeffrey Milyo, *A Measure of Media Bias*, [http://economics.missouri.edu/Working\\_Paper\\_Series/2005/wp0501\\_milyo.pdf](http://economics.missouri.edu/Working_Paper_Series/2005/wp0501_milyo.pdf), QJE (based on citation analysis, finding liberal bias of all major news outlets examined except Fox News and Washington Times).

may share resentment directed at a society that refuses to value what they do.<sup>30</sup>

A second possible explanation for professional journalists' leftward bias is the institutional structure associated with the journalism profession. All professions seek market advantage through privileges enforced by government.<sup>31</sup> Professional journalists may have, or seek, special protections under the press clause of the First Amendment,<sup>32</sup> are shielded under state law from revealing sources,<sup>33</sup> and are protected from defamation liability by state retraction laws.<sup>34</sup> Special journalist codes of ethics, like other professions' codes, provide a public rationale for these special protections by fostering an image the press as an essential institution of democratic government – the "Fourth Estate." Although ethics and institutions do not inherently carry a particular political slant, they tend to reinforce journalists' posture as critics of the status quo or of people in power. In the U.S., power is defined by markets. It follows that journalists would tend to see their role, at least in part, as ensuring that government controls markets.

A third explanation for journalists' bias relates to the second – the institutions of professional journalism screen the people who are admitted to the profession. They may do so either by discouraging those with views that differ from the prevailing orthodoxy from seeking to be journalists, or by actively preventing entry and advancement by those with right-of-center views.

Fourth, some of the left bias may stem not from journalists, but rather from the owners of professional media organizations. Some leading firms, such as the New York Times, Washington Post and Dow Jones, are controlled by the founding families through dual class stock or similar devices. These devices are intended to preserve a particular managerial philosophy distinct from pure profit maximization. Although this does not dictate a particular set of views, it may reinforce the slant of other institutions of professional journalism discussed above.

Journalists' bias can help shape public policy. Where interest groups are closely divided, the outcome of political battles may depend how much voter support each side can enlist. This, in turn, may depend on how journalists have portrayed the issue to the public. For example, the press has been seen as an important influence on corporate governance throughout the world.<sup>35</sup> One factor in the rapid passage of the Sarbanes-

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<sup>30</sup> See Joseph A. Schumpeter, *Capitalism, Socialism and Democracy*, 145-55 (1950). Note that it might also be the case that journalists resent capitalists because the latter control the papers they work for. For an analogous theory of the anti-capitalist content of U.S. films, see Larry E. Ribstein, *Wall Street & Vine* (September 14, 2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=563181](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=563181).

<sup>31</sup> See Adam Smith, *Wealth of Nations* at \_\_\_ ("people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices").

<sup>32</sup> See Ribstein, *supra* note 1 at \_\_\_.

<sup>33</sup> *Id.* at \_\_\_.

<sup>34</sup> *Id.* at \_\_\_.

<sup>35</sup> See I. J. Alexander Dyck and Luigi Zingales, *The Corporate Governance Role of the Media*, (August 2002), CRSP Working Paper No. 543, available at <http://ssrn.com/abstract=335602>.

Oxley Act, the strongest federal financial regulation in 70 years, may have been the overwhelmingly negative coverage of business in the first half of 2002: 77% of the 613 major network evening news stories on business concerned corporate scandals.<sup>36</sup>

This effect of journalists is indirectly supported by evidence that corruption declined when growth of the press made it more independent from politicians.<sup>37</sup> When professional journalists could make more money selling newspapers than selling out to corrupt politicians, they became an independent voice against political corruption. Indeed, press campaigns against corruption have been associated with the defeat of corrupt politicians. A possible corollary of this theory and evidence is that increased press power meant not only less power for politicians but more power for journalists. Baron's theory suggests that journalists may use this power not only to root out corrupt politicians, but to encourage adoption of their own preferred policy outcomes.

The press can influence individuals' behavior in ways other than voting that affect the level or impact of government regulation. Press reports about drug or tobacco companies and other tort defendants can influence jury verdicts. Also, firms might alter their conduct as a result of press reports to avoid liability or regulation. For example, there is evidence that firms change their methods of compensation to make it less efficient in response to press distortions of compensation practices.<sup>38</sup>

One problem with the journalist bias theory is that it may be hard to determine whether news coverage that is slanted to a particular version of reality reflects journalists' personal attitudes or their efforts to meet market demand for information consistent with the theories discussed in the preceding subsection. Tyler Cowen argues that what looks like journalist bias is often just the media's effort to find the most entertaining story.<sup>39</sup> For example, U.S. military prowess and heroism was a story that would sell during the early stages of the Iraq war, while the engaging story in the aftermath was more likely to be suicide bombers than military efforts to rebuild. The press packaged the OJ Simpson trial as a continuing story that engaged viewers. The Enron trial and other corporate criminal prosecutions serve the same goal. However, there may be many potentially engaging stories with various political slants. For example, there is no obvious reason why viewers would not be engaged by "feel good" stories of rebuilding in Iraq and turned off by repetitive and gloomy stories of violence.

### 3. An illustration

A recent column by New York Times columnist Gretchen Morgenson illustrates

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<sup>36</sup> See Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521, 1559 (2005) (discussing data compiled by the Media Research Center).

<sup>37</sup> Matthew Gentzkow, Edward L. Glaeser and Claudia Goldin, *The Rise of the Fourth Estate: How Newspapers Became Informative and Why it Mattered*, available at [http://kuznets.fas.harvard.edu/~goldin/papers/GGG\\_CR.pdf](http://kuznets.fas.harvard.edu/~goldin/papers/GGG_CR.pdf).

<sup>38</sup> See Core, et al, *supra* note 24.

<sup>39</sup> Tyler Cowen, *Media Bias Comes From Viewers Like You* (November 11, 2003), <http://www.tcsdaily.com/article.aspx?id=111103A>.

the above theories.<sup>40</sup> Morgenson's lead concerns a purportedly overpaid executive, in this case Pfizer CEO Henry McKinnell, who received \$65 million in total compensation over a five-year period in which the stock lost 43% of its value, and stands to receive a \$83 million pension benefit when he retires in 2008. Since this amount reflects eight years of increases in Pfizer shares, it exemplifies the practice documented by Core, Guay & Larcker of sensationalizing compensation by emphasizing one-time equity and option distributions rather than annual pay. Morgenson offers no information that would enable the reader to evaluate whether the pay was scaled to performance or industry benchmarks other than comments that the pay was "munificent" and received despite McKinnell's presiding over the "destruction of shareholder value." To build reader interest in the story, Morgenson quotes a shareholder activist (chairman of the Texas Pension Review Board), as saying "[m]anagers and their friends have done well while future retirees, endowments, universities, museums, widows and orphans have broken even, if they are lucky. This is not a coincidence." Although this is alarming, and therefore engaging, it does not tell us why retirement funds would have gone down in the rising stock market that boosted McKinnell's "munificent" pay.

Consistent with Jensen's analysis, the article concludes with a simple solution to the problem: institutional shareholders need to be more vigilant. They have not been vigilant enough, according to Morgenson, because they are paid to manage the funds of companies in which they also hold stock on behalf of clients. The story does not attempt to measure the dimensions of the conflict of interest, such as by comparing trustee fees with earnings from non-trustee business that depend on how the funds are performing. These complications would distract from the flow of the story and make it too long to digest with brunch. All we need to know is that a corporate election is coming up in which institutional investors can force Pfizer's compensation committee chair to resign by withholding votes from that director. The article concludes, "[w]e'll keep you posted on the outcome of this exercise in accountability." This primes the reader for the next installment.

Although Morgenson's slant is largely consistent with the entertainment theory of journalism of Jensen and others, it can also fit alternative explanations: the press's desire to appear accurate by meeting reader expectations, an effort to serve the largely left-leaning audience of the New York Times with a tale of executive greed and corporate laxity, or Morgenson's own biases along these lines. The important point for present purposes is that journalists' tendency to lean in the same direction can influence the public debate on corporate governance and executive compensation. The question discussed in the next subpart is the effect of blogs in general, and PEAPs in particular, on this bias.

### **C. PEAPS' EFFECT ON PROFESSIONAL JOURNALISM**

The effect that scholar-bloggers may have on professional news coverage depends to some extent on whether news media biases flow from market demand or from journalists' own biases. In either case, the addition to the market of an important source of expert opinions is likely to have some impact on the current equilibrium.

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<sup>40</sup> See Gretchen Morgenson, *Fund Manager, It's Time to Pick a Side*, N.Y. Times (March 26, 2006), available at <http://select.nytimes.com/2006/03/26/business/yourmoney/26gret.html>.

## 1. Demand-side incentives

The theories of journalist bias discussed in subpart B include various assumptions about audience demand that allow for different opportunities for PEAPs to affect the market.

Miller, Jensen and Core, et al appear to take demand as fixed: The audience wants to be entertained. Their theories vary only as to the information component in the total demand function, from zero or near zero in Jensen's theory, to mixed in the other two theories. It follows that, in order to compete for audience, blogs will have to offer a product similar to that of the mainstream media, and therefore ultimately may have little effect on content.

Even under this assumption there may be a role for more information from blogs and other sources. First, professional news media may often have choices among alternative types of entertaining stories. The market's preferences for particular types of information or journalist bias could enter into those choices in ways discussed in this and the following subsection.

Second, there may be a greater demand for information than Jensen and other theorists assume. While individuals may have little incentive to acquire voting-related information, they do, as Baron hypothesizes, need the information in news stories to make personal decisions such as which consumer goods and stocks to buy. Journalists have an incentive to pitch their stories to appeal to these more immediate needs. For example, stories about excessive executive compensation are not just about how or whether the government should regulate it, but about whether employees should work where executives are overpaid or investors should entrust greedy managers with their money. If people think the information is biased or inaccurate they will have less demand for it. Also, an influential, even if small, audience of regulators, legislators, academics, journalists and others demand accurate information relating to public policy. And the demand for information relating to public policy may be broader than Jensen supposes. He relies heavily on the observations by H.L. Mencken in the early twentieth century, a time when the American public was much less broadly educated than it is today.

To the extent that the audience demands information, it is not clear how additional competition might affect this demand. Gentzkow & Shapiro argue that market bias depends on how much information the audience receives directly and from competing information sources. For example, they show that adding a television station to a market produces a statistically significant reduction in bias. Gentzkow and Shapiro argue that this supports limiting consolidation of ownership of media sources in news markets.

Mullainathan & Shleifer say that people generally seek information that fits their biases, but that there are "conscientious" readers and viewers who want objective information. While adding more news will not persuade the biased audiences that are already being served, the authors suggest that political entrepreneurs might, in effect, instill new biases that new competitors might serve. More importantly for present purposes, they see the possibility of "entrepreneurs starting newspapers on their own and, so long as they have deep enough pockets, creating enough demand for unorthodox views to broaden the range of opinions (and slants) that are being covered."<sup>41</sup> This can enrich the information available to conscientious readers. But the authors are skeptical these

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<sup>41</sup> Mullainathan & Shleifer, *supra* note 27 at \_\_\_.

entrepreneurs will make much difference because "without a broad political sentiment to support it, newspaper publishing is likely to be a money losing proposition."<sup>42</sup>

The main question for present purposes concerns blogs' potential effect on this competitive equilibrium. In the Gentzkow-Shapiro framework, blogs, including PEAPs, can create different audience expectations and increase the demand for unbiased information. Indeed, web-based information may reduce any effect of media consolidation and therefore the need to regulate it.<sup>43</sup> Under Mullaianathan & Shleifer, blogs can serve micro-markets because they cost so little to produce. Thus, blogs might serve reader biases that are too narrowly held to justify additional high-cost newspapers. This enriches the information available both to these groups and to the conscientious readers who scan the entire market.

PEAPs may have a particularly important effect on the market. Because PEAPs present scholars' expertise, and because of the objectivity inherent in the fact that this scholarship is produced for other purposes, PEAPs may carry more weight than other blogs. This is especially significant under the Gentzkow & Shapiro assumption that readers are Bayesians continually updating their assumptions. Even under Mullainathan & Shleifer's assumption that readers generally cling to their biases, readers may vary in their resistance to facts. If that is true, a wider range of readers might be persuaded by the more objective and credible information in PEAPs than by more biased blog posts.

## 2. Supply-side incentives

Under Baron's theory, even if the market demands useful information, journalists do not supply it because they are biased. It follows that more objective information from alternative sources may significantly affect the audience's views. However, for this to happen, scholar-bloggers' incentives and biases must differ from those of professional journalists. Also, professional journalists must not have special competitive advantages that would enable them to compete successfully with blogs for readers *even if* the audience demanded more objective reporting.

Academic bloggers resemble professional journalists to the extent that they have decided to forego more remunerative activity like writing books and articles and consulting for the freedom to express themselves and influence public debate. This suggests that their views might be similar to those of professional journalists. However, there are several important differences between the two groups.

First, PEAP authors do not make the same sort of career decision that professional journalists do. Academic blogging can be remunerative to the extent that it builds reputations and carries advertising. Academics may combine public engagement with these other activities. Indeed, public engagement can itself be a kind of promotion. Moreover, even if academics are engaged in pure public service, their opportunity costs may be low because they are doing it as, or instead of, a hobby rather than instead of a remunerative activity. Thus, the decision to blog does not imply any particular views. Indeed, a scholar may write PEAPs not to oppose the status quo, but to support it against professional journalists.

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<sup>42</sup> *Id.* at \_\_\_\_.

<sup>43</sup> *See* Ribstein, *supra* note 1 at \_\_\_\_.

Second, unlike the professional media, PEAPs do not emerge from an institutional structure that encourages any particular point of view. PEAP writers are essentially free-lancers. The only attitude that binds them is their decision to work on their own rather than through some larger institutional structure. Academia's institutions bind neither bloggers in general, nor publicly engaged bloggers in particular. Indeed, PEAPs may have an extra incentive to engage in their activity precisely in order to express opposition to the prevailing academic establishment.

Third, PEAPs are not subject to any ownership structure that imparts or reinforces particular institutions. Rather, they are owned by authors who seek only to express their views, and not to use financial resources to leverage their influence.

Apart from whether PEAPs are subject to bias, it is also significant that, as hobbyists with minimal capital investments, PEAP authors are not subject to the same market pressures as professional journalists. Gentzkow & Shapiro argue that the professional media must cater to the expectations of the general audience or risk losing credibility. Scholars, on the other hand, are free to reach conclusions that diverge from the generally accepted wisdom. Their reputations depend on the evaluations of their fellow scholars, which are based on facts different from those that shape the opinions of the general public.

Assuming PEAP authors' incentives and biases differ from those of professional journalists, this may affect what professional journalists say if blogs can provide meaningful competition to the professional media. Before PEAPs and other academic blogs, scholars could speak to the public only through professional journalists. As Jensen has pointed out, journalists prevented by trade ethics from inserting their own opinions in straight reporting seek quotes from experts, including academics.<sup>44</sup> These quotes lend credibility to reports by non-expert journalists. Baron also notes that journalists' bias can determine their choice of particular quotes.<sup>45</sup> Professional journalists induce scholars to cooperate in this game by offering them significant exposure than can produce professional rewards.<sup>46</sup> Scholars accordingly have had an incentive to tailor their views and how they express them to match what journalists want to say. For example, academics may be willing to boil complex topics down to sound-bites, and to portray them as the kind of serious problems with clear solutions that the professional journalists think their readers want to read.

PEAPs potentially enable scholars to express their views directly to the public rather than going through the professional journalists who solicit their quotes. Scholars can focus on categories of specialty knowledge that would be too narrow for professional journalists who cater to large markets. They can also add depth and complexity that professional journalists, seeking to entertain, may want to avoid. For example, I included the above analysis of the Morgenson article<sup>47</sup> on my blog.<sup>48</sup> And PEAPs can directly

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<sup>44</sup> See Jensen, *supra* note 18 at 6.

<sup>45</sup> See Baron, *supra* note 28 at 8.

<sup>46</sup> See Jensen, *supra* note 18 at 15.

<sup>47</sup> See *supra* text accompanying note 40.

<sup>48</sup> See Ideoblog, *More entertainment from Gretchen Morgenson*, March 27, 2006, available at

confront professional journalists who distort or misinterpret their quotes.<sup>49</sup>

The problem with this scenario is that an academic blog cannot hope for more than a small fraction of the audience of the large professional outlets.<sup>50</sup> Building a huge web audience requires promotion and staff resources that are beyond the reach of any amateur journalist. Even if some amateur journalists might be able to develop substantial audiences, the audience for academic experts who write within their specialties is limited.

On the other hand, the professional media might be concerned about competition from blogs as a whole. Through news aggregators readers can, in effect, assemble their own newspapers by automatically pulling in the feeds from many blogs. Also, criticism of particular media outlets can spread rapidly through the web and have a significant cumulative impact, as happened with CBS and RATHERGATE. If PEAPs and other blogs can effectively compete with the professional media, these outlets have an incentive to respond by changing their content. Under Baron's theory, this could mean that they will reduce their reporters' and editors' discretion. The professional media might hire journalists from outside the "guild," including amateur journalists. Indeed, they may be forced to do so if they are unable to offer professional journalists a high enough wage to induce them to forego freedom of expression.

Professional journalists may, however, be able to compete successfully against blogs *even if* they remain biased *and* the audience demands objectivity. The professional media can bundle biased reporting with features readers demand and cannot get from amateurs. Consumers may continue to prefer that their news be delivered in paper or other physical form even as web access becomes ubiquitous. Physical delivery requires capital investments that are beyond amateurs' reach. Even if the web replaces physical delivery, consumers may prefer to forego search costs and, in effect, buy from the professional media the service of choosing, aggregating and vouching for all of the types of information consumers want, including entertainment reviews, classified pages and other advertising information, sports scores, recipes, bridge advice and comics. The professional media can shape the demand for this bundled product through advertising, promotion and other mechanisms for creating goodwill. They can use their most popular features to promote other parts of the bundle. Professional media's resources enable it to invest in popular writers and branded syndicated features. Consumers therefore may be willing to continue to buy biased reporting because they get offsetting benefits from the overall product. Even if consumers supplement their reading with blogs, they may continue to be influenced by professional reporting.

Journalism might evolve to a hybrid in which neither professional nor amateur journalism clearly dominates. Professional media may add to their bundles blog-like features for the readers who would otherwise defect to blogs. Indeed, many newspapers already have blogs on their websites that combine professional writing and reporting with

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[http://busmovie.typepad.com/ideoblog/2006/03/more\\_entertainm.html](http://busmovie.typepad.com/ideoblog/2006/03/more_entertainm.html).

<sup>49</sup> See Bruce MacEwen, *Adam Smith, Esq., The Blogosphere & The Mainstream Media, or What to Do If You're Misinterpreted* (February 15, 2006), available at [http://www.bmacewen.com/blog/archives/2006/02/the\\_blogosphere.html](http://www.bmacewen.com/blog/archives/2006/02/the_blogosphere.html).

<sup>50</sup> A Technorati graph from January, 2006, <http://www.sifry.com/alerts/Slide0005-8.gif>, shows the significant spread in terms of links between the most popular blogs, such as the Daily Kos, and the mainstream media.

interactivity.<sup>51</sup> This might carry over to the rest of the newspaper, with each story providing a point of connection with reader commentary and blogs. Or current forms of professional media might be replaced by professionally managed Huffington-type group blogs.

Some dividing line between professional and amateur media is likely to remain. For example, professionals by definition will have more resources than academics to report on facts.<sup>52</sup> Conversely, bloggers, particularly including PEAPs, will continue to offer more specialized expertise than the mass media can offer.

Whatever the specific competitive outcome, as long as the market demands accurate information and objective reporting, as this subsection assumes, blogs in general and PEAPs in particular likely will have a long-term effect on professional reporting. Traditional professional journalists may find that, in order to compete with blogs, they have to become less biased, more informal and interactive and more open to diverse views. Consumers might discover tastes for less bias and entertainment and more facts after being exposed to blogs. Academic commentary, including academics' critiques of specific stories by professional journalists, might raise readers' expectations about the depth of reporting.

Even if PEAPs and other blogs ultimately are unable to effectively compete with professional journalists, they may alter professional journalist biases simply by publicly challenging these journalists' views. Glenn Reynolds has observed that mainstream journalists surf the web and "like to read about themselves and their colleagues. This means that blog criticism may have a more immediate impact than might otherwise be the case."<sup>53</sup> Since journalists have always gotten letters and now emails from readers, including scholars and other experts, it is not obvious why blog criticism should be more effective just because it is on the web unless journalists perceive it as competition for the reasons discussed above. Perhaps professional journalists recognize that they are particularly vulnerable to criticism by experts and need the credibility these experts provide. Journalists might therefore be susceptible to criticism by scholars that is circulated in the academic community even if these blogs never significantly erode professional journalists' overall audience.

Finally, PEAPs' effect on professional journalism depends to some extent on the audience's view of the authoritativeness and objectivity of PEAPs' analysis. If readers perceive that PEAPs do not offer significant advantages in this regard over the professional media, they might stick with these traditional sources. Thus, PEAPs' effect on professional journalism ultimately may depend on how they affect scholarship. If PEAPs lure academics away from traditional scholarship and into full-time public engagement, this might undermine PEAPs' distinctiveness – that is, may blur the line between PEAPs and the undisciplined self-expression of non-scholar amateur

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<sup>51</sup> See, e.g., The Wall Street Journal's *Law Blog*, <http://blogs.wsj.com/law/>.

<sup>52</sup> For example, Marty Lederman in a comment on Volokh.com discussing the issue of whether reporters should, and do, credit blogs says, "[t]he real issue that should obsess journalists is not "breaking" a story, but filling it out with important details and making it come alive in a way that would be impossible on a blog." <http://volokh.com/posts/1143503636.shtml#76774>.

<sup>53</sup> Glenn Reynolds, AN ARMY OF DAVIDS, 92 (2006).

journalists.<sup>54</sup> On the other hand, PEAPs might increase the incentives to do scholarship. Public engagement not only increases scholars' influence on public policy, but more tangibly may attract offers for lucrative private or government consulting or expert work. Thus, the opportunity to engage publicly may offer scholars a way to capitalize on, and thereby increase the value of, traditional scholarship, just as entrepreneurs' ability to cash into public securities markets supports business formation.

### III. CONCLUSION

Scholars increasingly are becoming amateur journalists. To some extent they are like all other bloggers, only with more time and flexibility. Other scholar-blogs may be just another version of scholarship. But scholars also make a unique contribution to amateur journalism by using blogs as a form of public engagement. The result is a potentially high-value form of journalism that may help both reshape professional journalism and motivate traditional scholarship. In other words, blogs may enable academics to climb down from the ivory tower, while bringing some of their purer air with them.

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<sup>54</sup> In other words, blogs may tempt scholars into some of the flaws Posner, *supra* note 15, attributes to "public intellectuals."