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Introduction to Symposium: Conference on the Ethics of Legal Scholarship

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INTRODUCTION

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For almost entirely forgivable reasons, most legal academic symposia remind one of the adage—surely well known among the editors, if not the readers, of a Wisconsin-based law review—about the weather: Everyone talks about it, but no one does anything about it.

Symposia have been accused of various standard flaws. High on the list are the related criticisms that they are overstocked with “Famous People,”¹ and that they neglect or ignore “promising newcomers, mavericks, women[,] and minorities.”² These are important criticisms, which we at least *tried* to address in our own symposium planning. (Whether we succeeded or not is surely up to others to judge.)³

Beyond these standard criticisms, there is a broader concern with the symposium format: that it consists of a group of people who meet on common ground in order to wander far afield in every possible direction. George Bernard Shaw called England and America “two countries divided by a

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1. Solon, *The Symposium*, 48 J. LEGAL EDUC. 136, 136 (1998).

2. Jean Stefancic, *The Law Review Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy?*, 63 U. COLO. L. REV. 651, 670–72 (1992).

3. We certainly did not fail to avoid inviting at least a couple of “Famous People.” Of course, we did so because we thought they had valuable things to say despite the misfortune of being well known. We were also old enough hands at symposium planning to be aware that the presence of a confirmed Famous Person or two will make other acceptances easier. There is another, less selfish reason to do so: if one conscientiously attempts to invite interesting and talented people from a variety of schools and backgrounds, emphatically including young and rising scholars, it is gratifying to give them the opportunity to meet and learn from—and teach—those established figures.

common language.”⁴ Had Shaw been forced to attend a law review symposium, he might have called it a collection of scholars divided by a common topic.

One can learn much, of course, from a variety of views on and approaches to a particular subject or question. But variety can enervate as well as inspire. A symposium that “range[s] widely over a bewildering variety of issues,”⁵ however tenuously tied they may be to an ostensible unifying topic, can leave one, well, *bewildered*, even as to what the topic was in the first place. And although the minds collected there are all supposed to direct their efforts at exploring the same problem, it is relatively rare that they combine forces to arrive at a common resolution, or even statement, of that problem. Often enough, each has his or her own goal to pursue—one that resembles suspiciously the goals pursued in past or forthcoming articles—and mutual learning and consensus are incidental, if they happen at all. That is perhaps somewhat surprising, given the normative bent of so much legal scholarship. But the frequent result is not terribly surprising: “a rather low signal-to-noise ratio” in the contents of the symposium.⁶

In this case, the symposium planners had a different goal in mind: to actually arrive at some common, generally agreed upon answers and principles. With the wonderfully collegial collaboration—but not, to be sure, complete agreement on every issue—of the symposium participants, and the kind assistance of the editors of the *Marquette Law Review* and their willingness to do the unusual, we have done just that here.

It helps that the subject of this symposium—the ethics of legal scholarship—is one as to which there is widespread agreement that all is not well. Not all of this consensus necessarily reaches the “outside” world. The legal academy, like any other branch of the academy, can be defensive. When academics generally are, or are perceived to be, under assault from outside (and sometimes internal) forces,⁷ it is unsurprising that the pages of the *Chronicle of*

4. See CHRISTOPHER E. DAVIES, *DIVIDED BY A COMMON LANGUAGE: A GUIDE TO BRITISH AND AMERICAN ENGLISH*, at viii (2005).

5. William Twining, *The Boston Symposium: A Comment*, 66 B.U. L. REV. 391, 391 (1986).

6. Solon, *supra* note 1, at 136.

7. For a mere sampling of sources, see FRANK DONOGHUE, *THE LAST PROFESSORS: THE CORPORATE UNIVERSITY AND THE FATE OF THE HUMANITIES* (2008); BENJAMIN GINSBERG, *THE FALL OF THE FACULTY: THE RISE OF THE ALL-ADMINISTRATIVE UNIVERSITY AND WHY IT MATTERS* (2013); HENRY A. GIROUX, *NEOLIBERALISM’S WAR ON HIGHER EDUCATION* (2014); CHRISTOPHER NEWFIELD, *UNMAKING THE PUBLIC UNIVERSITY: THE FORTY-YEAR ASSAULT ON THE MIDDLE CLASS* (2011); ELLEN SCHRECKER, *THE LOST SOUL OF HIGHER EDUCATION: CORPORATIZATION, THE ASSAULT ON ACADEMIC FREEDOM, AND THE END OF THE AMERICAN UNIVERSITY* (2010). There are at least as many books arguing that the university’s wounds are largely self-inflicted as there are those arguing that it is under assault from neoliberal or other forces. See, e.g., RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* (2011); WILLIAM

Higher Education and of an equally endless number of books are filled with defenses of what we do,⁸ and serve as the launching point for a barrage of arrows pointed anywhere else but at ourselves. When law schools are surrounded (and inhabited by) critics,⁹ it is unsurprising that they too will have their ardent defenders.¹⁰ Similarly, although law professors have worried about the state of legal scholarship for as long as legal scholarship has existed,¹¹ when those criticisms come from the outside¹² our colleagues can be relied upon to rally ‘round the flag.’¹³

The same is true for the *ethics* of legal scholarship. Even if—as we think—there is a fairly broad consensus among legal scholars themselves that we either behave imperfectly as ethical actors when engaging in legal scholarship or lack clear guidance for what it *means* to act ethically, or both, legal academics may be unwilling to say so outside faculty lounges, private chats in offices, and other

DERESCIEWICZ, EXCELLENT SHEEP: THE MISEDUCATION OF THE AMERICAN ELITE AND THE WAY TO A MEANINGFUL LIFE (2014); LAURA KIPNIS, UNWANTED ADVANCES: SEXUAL PARANOIA COMES TO CAMPUS (2017); GREG LUKIANOFF, UNLEARNING LIBERTY: CAMPUS CENSORSHIP AND THE END OF AMERICAN DEBATE (2012).

8. See, e.g., MARTHA S. NUSSBAUM, NOT FOR PROFIT: WHY DEMOCRACY NEEDS THE HUMANITIES (updated ed. 2016); MICHAEL S. ROTH, BEYOND THE UNIVERSITY: WHY LIBERAL EDUCATION MATTERS (2014); FAREED ZAKARIA, IN DEFENSE OF A LIBERAL EDUCATION (2015); RANDALL STROSS, A PRACTICAL EDUCATION: WHY LIBERAL ARTS MAJORS MAKE GREAT EMPLOYEES (2017).

9. See, e.g., BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012).

10. See, e.g., Philip G. Schrag, Failing Law Schools—*Brian Tamanaha’s Misguided Missile*, 26 GEO. J. LEGAL ETHICS 387 (2013); Jay Sterling Silver, *The Case Against Tamanaha’s Motel 6 Model of Legal Education*, 60 UCLA L. REV. DISCOURSE 50 (2012); Michael Simkovic & Frank McIntyre, *Populist Outrage, Reckless Empirics: A Review of Failing Law Schools*, 108 NW. U. L. REV. ONLINE 176 (2014).

11. The *locus classicus* is Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38 (1936). Citations to various articles and symposia addressing and generally lamenting legal scholarship can be found in Deborah Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1327–28 nn.3–8 (2002). A more recent, pungent critique, followed by various responses, is Pierre Schlag, *Spam Jurisprudence, Air Law, and the Rank Anxiety of Nothing Happening (A Report on the State of the Art)*, 97 GEO. L.J. 803 (2009).

12. See Tamara R. Piety, *In Praise of Legal Scholarship*, 25 WM. & MARY BILL RTS. J. 801, 801 nn.1–2 (2017) (citing recent examples, including Chief Justice Roberts’s now-famous quote: “Pick up a copy of any law review that you see and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I’m sure was of great interest to the academic that wrote it, but isn’t of much help to the bar”). For a definitive treatment of Chief Justice Roberts’s then-hypothetical topic, see Orin S. Kerr, *The Influence of Immanuel Kant on Evidentiary Approaches in 18th-Century Bulgaria*, 18 GREEN BAG 2D 251 (2015).

13. See, e.g., Piety, *supra* note 12; Silver, *supra* note 10, at 54 (“[L]egal scholarship enriches teaching as it refines the practice of law and advances justice . . .”); Michael C. Dorf, *Richard A. Posner, Divergent Paths: The Academy and the Judiciary*, 66 J. LEGAL EDUC. 186, 190–93 (2016) (book review).

safe spaces. Some, tenured or not, may refrain from saying so publicly for prudential or self-preservative reasons. Others may do so because they *are* untenured (or “pre-tenured,” as the telling current phrase runs), and unwilling to question the scholarly ethics of those who will vote on their future employment—or of the kinds of articles they write to win promotion and tenure. Others are either too busy or too little inclined to engage in meta-scholarship of this sort, occupied as they are with doing scholarship itself.

And there is another reputational factor, one not unrelated to the very problems addressed here. Prestige attaches to placement in top law reviews. Success at that “game” involves appealing to the student editors of elite law reviews. And the very practice of student-edited law reviews is one of the factors identified by many law professors as giving rise to concerns about the ethics of legal scholarship in the first place.

For these reasons, the actual corpus of legal scholarship, including legal scholarship *about* legal scholarship, may not fully reflect the depth and breadth of the legal academy’s concerns with the ethics of legal scholarship. But the concern is there just the same. It shows up explicitly from time to time in the legal academic literature.¹⁴ It appears, in slightly obscured form, in discussions and debates about legal scholarly standards.¹⁵ And it shows up *frequently* in the many public forums to which law professors have decamped in great numbers: blogs, social media such as Facebook and Twitter, and so on.¹⁶

Indeed, the existence and popularity of social media, for law professors as for others, is itself not only a place to discuss concerns over the ethics of legal scholarship, but a *cause* of the growing interest in and concern over the subject. Twitter, among other prominent social media, is “awash with law professors proffering legal opinions” on hot-button issues.¹⁷ Legal blogs may have slowed down, both in terms of the content they produce and in terms of the number of new blogs created, as other social media supersede the blog in popularity, but

14. See, e.g., Jennifer E. Laurin, *Messerschmidt and Convergence in Action: A Reply to Comments on Trawling for Herring*, 112 COLUM. L. REV. SIDEBAR 119 (2012).

15. See, e.g., Daniel A. Farber, *The Case Against Brilliance*, 70 MINN. L. REV. 917 (1986); Stephen L. Carter, *Academic Tenure and “White Male” Standards: Some Lessons from the Patent Law*, 100 YALE L.J. 2065 (1991); Mark S. Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

16. At least two of the authors of this Introduction have bored literally dozens of their “followers” with Twitter posts on the subject.

17. Karen Sloan, *For Law Profs, Beware the Perils of Twitter*, LAW.COM (Jan. 16, 2018, 2:40 PM), <https://www.law.com/sites/almstaff/2018/01/11/for-law-profs-beware-the-perils-of-twitter/?sreturn=20180021083304> [<https://perma.cc/D3RT-648U>]; accord Noah Feldman, *Twitter’s Not a Great Place for Legal Advice*, BLOOMBERG VIEW (Jan. 16, 2018, 11:19 AM), <https://www.bloomberg.com/view/articles/2018-01-16/twitter-s-not-a-great-place-for-legal-advice> [<https://perma.cc/TV3R-XR49>].

there remain large numbers of blogs on which legal academics opine on legal and political issues. The election of President Trump has contributed to the creation of at least one more such blog.¹⁸ There are also social media platforms, less visible to the public but often with substantial readerships, in which law professors similarly opine on the concerns of the day. Alongside pictures of one's cat or children, many law professors' Facebook feeds are full of "hot takes" on legal issues. And although the practice of law professors writing op-eds is an old one, it increasingly takes on the nature and reach of social media as those op-eds appear in online publications such as *Slate* or *The Huffington Post*, and as newspapers such as *The New York Times* and *The Wall Street Journal* become more and more a part of the social media environment: not so much print papers with an online presence, as online presences with vestigial print versions, whose business model and very architecture encourages "sharing" and commenting on their contents.

These are the newest but not the only platforms in which law professors have, depending on one's viewpoint, supplemented, extended, or distorted their missions as scholars. "[L]aw professors' letter[s]" have, since at least the impeachment of President Clinton and the 2000 election controversy, been an increasingly popular means of reaching and attempting to influence decision-makers and the public.¹⁹ Similarly, as the overall number of amicus briefs before various courts increases, the so-called "scholars' brief[]" has become an increasingly common and visible vehicle for law professors to attempt through extra-scholarly work to influence courts (and others).²⁰

All these sources for the propagation of law professors' opinions are not truly separate categories, and the simultaneous rise in the quantity and visibility of their use is not coincidental. Almost a decade ago, after the rise of legal blogs, scholars' letters, and other vehicles, but before the full flowering of social media, Dean Erwin Chemerinsky wrote about the difficulty of "draw[ing] a distinction" between different forms of writing by law professors "based just

18. That is the *Take Care Blog*, whose general mission of providing "insightful, accessible, and timely legal analysis of the President's adherence" to the duty to "take Care that the Laws be faithfully executed" was "undertake[n] . . . in direct response to recent assaults on the rule of law in America by President Donald J. Trump and his Administration." *About Us*, TAKE CARE BLOG, <https://takecareblog.com/about-us> [<https://perma.cc/9H9W-7S6Y>] (last visited Jan. 26, 2018).

19. See, e.g., Ward Farnsworth, *Talking Out of School: Notes on the Transmission of Intellectual Capital From the Legal Academy to Public Tribunals*, 81 B.U. L. REV. 13, 16 (2001); accord Neal Devins, *Bearing False Witness: The Clinton Impeachment and the Future of Academic Freedom*, 148 U. PA. L. REV. 165 (1999); Michael J. Gerhardt, *Impeachment Defanged and Other Institutional Implications of the Clinton Scandals*, 60 MD. L. REV. 59, 93-95 (2001).

20. For a dialogue on the issue, see Richard H. Fallon, Jr., *Scholars' Briefs and the Vocation of a Law Professor*, 4 J. LEGAL ANALYSIS 223 (2012); Amanda Frost, *In Defense of Scholars' Briefs: A Response to Richard Fallon*, 16 GREEN BAG 2D 135 (2013).

on form.”²¹ Although he doubted that all such writings met the criteria for legal scholarship, he added, “I find it hard to explain why an amicus brief containing lengthy and original analysis of a legal issue does not count as scholarship, but that same brief repackaged and published as a law review article is deemed scholarship.”²²

The word “repackaged,” with its suggestion that what we see is merely the same content appearing on different “platforms,” is key to understanding how and why these varied expressions of law professors’ views have given rise to renewed concern and discussion of the ethics of legal scholarship. It is certainly a plausible enough argument that the platform for a piece of legal scholarship is not its essential feature. But each of these platforms may involve or encourage different forms of writing, different motivations for writing, and different constraints—or lack of constraint—on the content of the writing. The long timeline and (somewhat) careful vetting of scholars’ writing in some platforms encourages one type of writing. The seeming privacy of other platforms, such as Facebook, may encourage other forms of writing, perhaps more naked in their motivations and expressions. The immediacy of platforms like Twitter, which both contain and incentivize hot takes, hot responses from readers, and hot replies from the author, may result in still another form of writing. Taken together, they raise important questions about the nature of legal scholarship and the duties and constraints of legal scholars writing as such.

Finally, the multi-platform nature of legal scholars’ writing on legal issues—the “repackaging,” as Chemerinsky puts it, of roughly the same subjects and arguments in potentially very different forms and for different audiences—raises questions about the ethics of legal scholarship because it can be, and often is, an *integrated* enterprise. For some, that may be merely a matter of seeking the widest possible distribution of the ideas contained within a law review article or a body of scholarship. For an overlapping set of law professors, the integrated nature of this writing may contribute to a branding effort aimed at professional advancement of various sorts.²³

21. Erwin Chemerinsky, *Why Write?*, 107 MICH. L. REV. 881, 892 (2009).

22. *Id.*

23. Brian Leiter, *SSRN Download Rankings Now Measure Mentions in Newspaper*, LAW PROFESSORS BLOG NETWORK (Jan. 8, 2018), <http://leiterlawschool.typepad.com/leiter/2018/01/ssrn-download-rankings-now-measure-mentions-in-newspapers.html> [<https://perma.cc/7DZU-J8TG>]. As Brian Leiter recently noted (with dismay), the “download rankings” of the Social Science Research Network (SSRN), which has become the primary source of access to legal scholarship for many law professors and whose rankings are a subject of often obsessive concern by law professors themselves, are heavily influenced by newspaper mentions of particular articles appearing on SSRN, which can, via hyperlinks to the online version of a news story, lead to tens of thousands of additional downloads.

For others, these platforms—including one’s law review articles, books, or other traditional forums for scholarship—are all the same because the *goal* in each case is fundamentally the same. That goal, in a word, is “engagement.” “Engaged scholarship” entails the view that beyond “our romance with ‘serious’ scholarship,” we must seek forms of scholarship that have “a real world impact and a broader audience than the typical law professor, law student, or legal scholar.”²⁴ We must be “actively involved in the world of [our] subject matter,”²⁵ seeking actively “to influence or shape the law itself, rather than [merely] comment on its status.”²⁶ As Rebecca Eisenberg has observed, “The tension between the role of advocate and the role of scholar may be less apparent to legal scholars, who are trained as advocates and who often take something like an advocate’s stance in their scholarly writing.”²⁷ Modern advocates of “engaged scholarship” may acknowledge this tension, but insist that engaged scholarship is valuable and should be embraced by law professors.

Given that view, and especially the position that we should seek an impact on a wider audience than ourselves, there is a close link between this approach and the view that “we need to broaden our [use and sense of the] value of other types of publications [besides traditional law reviews and university press books] . . . , and embrace other forms of nontraditional scholarship” that have a wider readership and impact.²⁸ On this view, the use of Twitter, Facebook, and other forms of social media, scholars’ letters and briefs, op-eds, and other nontraditional forms of scholarship is not simply an attempt to communicate casually with one’s friends, publicize an idea, or engage in brand-building and self-promotion. The use of these varied media and of different kinds of writing is an integral part of the enterprise of “engaged” *scholarship* itself. These practices are given a push not only by the popularity of these media, but by the highly political—some would say *urgently* political—times in which we live, an era of fierce political debate and activism that takes place largely *on* these media. Although, since the rise of modernity if not before, it has been a common belief in *every* moment, in every era, that *this* moment is special, that

Id. Law professors, we venture to suggest, do not always pay sufficient attention to the means of production and distribution of their scholarship and its possible effects on their scholarship.

24. Sonia K. Katyal, *Encouraging Engaged Scholarship: Perspectives From an Associate Dean for Research*, 31 *TOURO L. REV.* 53, 54–56 (2014).

25. Catherine A. MacKinnon, *Engaged Scholarship as Method and Vocation*, 22 *YALE J.L. & FEMINISM* 193, 203 (2010).

26. David Hricik & Victoria S. Salzmann, *Why There Should Be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves*, 38 *SUFFOLK U. L. REV.* 761, 765 (2005).

27. Rebecca S. Eisenberg, *The Scholar as Advocate*, 43 *J. LEGAL EDUC.* 391, 394 (1993).

28. Katyal, *supra* note 24, at 54.

this era calls for more engagement, there is no doubt that legal scholars in the current moment again believe that there are new and special reasons for them to be more “engaged.”

Our aim here is not to criticize this view, or the use of varied platforms and communicative approaches and styles to reach wider audiences. Some—including some among the symposium participants—*have* criticized it, or expressed concerns about it. Others among the participants in this symposium have argued—thoughtfully and well—that “[i]f we want to use the law to further the ends of justice, we . . . need big, ambitious scholarship that is unabashedly normative.”²⁹ The participants in this symposium included conventional legal scholars, interdisciplinary legal scholars, and even one non-lawyer (Stanley Fish) who writes frequently about law, legal scholarship, and the academy in general. Their methods differ, and so do their views on the function and goals of legal scholarship, on speech by academics outside the usual precincts of scholarly journals and books, on specific behavior by legal academics, and much else besides. While respecting those differences, the document put together through discussion at the symposium event and published in this issue constitutes an effort to reach as much common ground and consensus as we can on a set of what we call basic “principles of scholarly ethics” for law professors.³⁰

Like most such ethical guides, whether for academics, professionals, or others, these basic principles are necessarily general in form. They comprise a short list of basic norms—exhaustiveness, sincerity and good faith, candor, open-mindedness, and disclosure—that can guide legal scholars with a variety of viewpoints, including varied viewpoints about the point of scholarship itself; a variety of methods or approaches to legal scholarly work; and work performed through a variety of forums or “platforms.” They are not *wholly* general. As with many professional ethical codes, and as with legal Restatements—although the draft principles published here are neither, nor are they intended to be—the basic principles are filled out somewhat by explanation, discussion, and some fairly basic applications. But neither do they “partake of the prolixity of a legal code.”³¹

What, then, is their value? We think that designing this symposium around the effort to come up with a *concrete* and *written* set of proposed principles of legal scholarly ethics, general though they may be, makes at least three important contributions. First, *if* we succeeded in inviting and creating a

29. Robin West, *The Contested Value of Normative Legal Scholarship*, 66 J. LEGAL EDUC. 6, 17 (2016). See generally ROBIN WEST, *NORMATIVE JURISPRUDENCE: AN INTRODUCTION* (2011).

30. See *Draft Principles of Scholarly Ethics*, 101 MARQ. L. REV. 897 (2018).

31. *McCulloch v. Maryland*, 17 U.S. 316, 407 (1819).

discussion among a diverse set of scholars who, though united by an interest in these questions, take different views on them, then the fact of reasonable consensus on these principles has value in itself. It suggests that despite the apparent dissatisfaction with or concern about the contemporary state of legal scholarly ethics, there *are* common principles around which a diverse group of scholars can unite.

A second and related value has to do precisely with the fact that the individual members of the group that came up with these draft principles *do* differ in their views, methodologies, perspectives on the purpose of legal scholarship, and more. That they reached some consensus around these basic principles suggests that at least some core values are shared by legal scholars whose work itself may differ considerably. These principles are thus not simply an effort to draw a narrow line around some strict definition of legal scholarship or scholarly ethics and disclaim those who fall outside those narrow boundaries. This is not a normative point: whether legal scholarship should be so defined, and whether some work by law professors should not count as “legal scholarship” as such, is itself something legal scholars, including those participating in this symposium, may wish to debate. Instead, we suggest that a wide variety of law professors may find these core principles useful in judging the work of others—and, perhaps more important, in writing and reflecting on their *own* scholarship.

It is thus unsurprising that these draft principles focus, in one form or another, on openness and transparency. That is transparently true, so to speak, of some, such as the principles of candor and disclosure. But it is, in the end, true of all of them. The principle of exhaustiveness, for example, does not speak in direct terms to the question of transparency. But a duty to “acknowledge” and “engage” with “pertinent past work” on the topic on which one is writing enables readers to evaluate that piece of writing against the backdrop of other work,³² from a variety of perspectives and methods, addressing the same subject. (Not incidentally, it also forces the writer him- or herself to confront that work.) In each case, these principles, applied carefully and in good faith, do not tell scholars *not* to be politically engaged or *only* to be politically engaged; they do not tell them to adopt liberal or conservative (or other) political principles in their work or urge them to strive for “objectivity” or “neutrality”; they do not, in short, tell the reader what kind of legal scholar to be. Instead, they tell that scholar to be whatever sort of legal scholar he or she is in an open, and open-minded, fashion, one that acknowledges and is up-front about one’s animating premises, influences, agreements and

32. See *Draft Principles of Scholarly Ethics*, *supra* note 30, at 897–898.

disagreements, goals, sources, and internal or external constraints. They give readers—whether other law professors, scholars in other fields, or a more general readership—the ability to judge that work more knowledgeably for themselves. In a politically heated age in which, in so many areas and endeavors of life, the end is so often treated as justifying the means, that agreement is something valuable and noteworthy in itself.

Last but not least, these draft principles have value as a *starting point for further discussion*. Indeed, we think that is their foremost value. There will necessarily be disagreements about *how* these basic principles ought to be applied. Given the multiple platforms and activities engaged in by law professors—Twitter feeds, amicus briefs, congressional testimony, activism of various stripes, and much more—there will be inevitable disagreements about *where* and *when* they should apply. Even the basic principles themselves will not command unanimous consent from legal scholars.

But forward movement requires movement from *somewhere*. It requires a starting point, both to serve as a spur for discussion and to provide a common vocabulary for that discussion. If it is not to be merely the proverbial discussion about the weather, it requires *some* common ground in both defining the scope of the subject and attempting to fix some tentative principles that ought to guide our action going forward. That starting point may be imperfect, but having a place to *start from* is essential.

In the individual contributions that follow, each of the symposium participants take different—sometimes provocatively different—views about which of these values are most important and which are most problematic, what sorts of activities by law professors they should apply to, and of course how they should apply. Our attempt, unusual for academic symposia such as this, to put something specific on the table, agree on it, and share it with our colleagues was never meant to be a final and definitive answer to the questions that confront us concerning the ethics of legal scholarship. It was not meant to end the discussion. But we have attempted to provide a useful place from which to *begin* and continue such a discussion.

So, let us begin.