

# *Towards a Series of Academic Norms for #LawProf Twitter*

Carissa Byrne Hessick

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# TOWARDS A SERIES OF ACADEMIC NORMS FOR #LAWPROF TWITTER

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When we talk of legal scholarship, we ordinarily mean law review articles, university press books, and similar publications. But those are far from the only outlets for a scholar’s research and opinions. Many legal scholars write briefs, comments on agency action, popular press books, opinion pieces, and other works that are aimed at a wider audience.<sup>1</sup> Legal scholars also maintain blogs, post on Twitter, testify before legislatures and other policy bodies, and give statements to the press. From time to time, law professors have questioned what professional norms ought to apply when scholars engage in these non-scholarly activities.

In this short symposium contribution, I offer some tentative thoughts on what professional norms ought to apply to law professors who engage in a now-popular form of public discourse: Twitter. Specifically, I suggest that law professors should assume that, each time they tweet about a legal issue, they are making an implicit claim to expertise about that issue. I also suggest that when law professors participate on Twitter, they should do so in a fashion that models the sort of reasoned debate that we teach law students.

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\* Anne Shea Ransdell and William Garland “Buck” Ransdell, Jr. Distinguished Professor of Law, University of North Carolina School of Law. I am indebted to Brian Frye, Erica Goldberg, Rachel Gurvich, David Herzig, Andy Hessick, John Inazu, Micahel Kagan, Anthony Kreis, Alex Kreit, Orin Kerr, Michael Morley, and Alexandra Roberts for their helpful comments on this Essay.

1. Some have argued that these other, non-traditional outlets for legal research and opinion should also “count” towards their professional obligation to produce scholarship—a debate that I do not take up here. Of course, in calling these works “non-scholarship,” I am tipping my hand that I personally do not think that they “count” as the scholarship that we have a professional obligation to produce.

One might legitimately question the value of discussing Twitter in a symposium devoted to legal scholarship.<sup>2</sup> With its rigid character limits and focus on “hot takes,”<sup>3</sup> Twitter is arguably the antithesis of scholarship.<sup>4</sup> And yet there is little doubt that Twitter has an increasingly important role in public discourse and legal discourse in particular. There have been a number of exchanges criticizing how some law professors use the Twitter platform.<sup>5</sup> Nevertheless, I think that there is value in law professors participating on Twitter, and thus it is worth discussing whether, as a profession, legal academics ought to endorse or criticize certain behavior on Twitter.<sup>6</sup>

2. Indeed, one might legitimately question the value of law professor participation on Twitter. Many law professors do not participate on Twitter. And those of us that do, often question the value of the medium and the wisdom of our decision to participate in it. See sources cited *infra* note 69.

3. A “take” is an opinion or a point of view. A “hot take” is a quickly expressed view, ordinarily based on simplistic reasoning. See *Hot take*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=hot+take> [<https://perma.cc/VD6Y-JSEM>] (last visited Dec. 20, 2017) (defining “hot take” as an “opinion based on simplistic moralizing rather than actual thought”).

4. “Twitter . . . is heavily frequented by legal academics, but often does not foster or even allow for circumspect, reasoned, dispassionate analysis.” Erica Goldberg, *What Makes a (Legal) Academic?*, IN A CROWDED THEATER (Dec. 17, 2017), <https://inacrowdedtheater.com/2017/12/17/what-makes-a-legal-academic/#more-2922> [<https://perma.cc/3GYA-B42K>].

5. See, e.g., Joseph Bernstein, *Why Is A Top Harvard Law Professor Sharing Anti-Trump Conspiracy Theories?*, BUZZFEED (May 11, 2017, 3:18 PM), [https://www.buzzfeed.com/josephbernstein/larry-tribe-why?utm\\_term=.grXZZbmD3x#.evg44DXKR7](https://www.buzzfeed.com/josephbernstein/larry-tribe-why?utm_term=.grXZZbmD3x#.evg44DXKR7) [<https://perma.cc/L6A7-KPL6>] (criticizing Professor Laurence Tribe for his Twitter activity).

6. Professor Erica Goldberg also recently called for a development of professional norms for law professors on Twitter:

Twitter, a medium which I also use, is heavily frequented by legal academics, but often does not foster or even allow for circumspect, reasoned, dispassionate analysis. Overly partisan tweets outside of an academic’s area or bickering, with other professors or the general public, are unbecoming facets of Twitter. Tweets designed to simply cleverly express a view . . . already held by one’s followers, for the purpose of ossifying positions, seem at direct odds with the academic pursuit. Professors are people too, but when our Twitter accounts are connected to our status as professor, lines are blurred, and academic credibility is lost. (I’m honestly not sure what the solution to that problem is, and of course we shouldn’t be restricting professors’ use of Twitter, but perhaps promoting better norms. I am guilty of “like-seeking” behavior.)

Goldberg, *supra* note 4.

### A. Scholarly Norms for Non-Scholarship

The idea that non-scholarship ought to be subject to scholarly norms is not new. There are several law review articles on the topic.<sup>7</sup> In 1999, Neal Devins and Cass Sunstein had a debate about the law professor letter that was submitted to Congress opposing the impeachment of President Bill Clinton.<sup>8</sup> Ward Farnsworth wrote an article a few years later that dealt more generally with the practice of law professors “sign[ing] their names to amicus briefs, letters, and petitions addressed to courts and other decision-makers considering questions of public interest . . . .”<sup>9</sup> More recently, Richard Fallon and Amanda Frost took different views on the appropriateness of law professors signing amicus briefs that include language and arguments for which they cannot personally vouch.<sup>10</sup>

This scholarship can be roughly divided into two camps: Those who think that ordinary norms of scholarship apply (at least in some form) to non-scholarship, and those who think that different norms ought to apply.<sup>11</sup> The “same norms” view emphasizes the reputational and institutional harm to the legal academy that non-scholarship can cause. Implicit in this view is the idea that law professors ought to remain silent if their statements would fall significantly short of the scholarly ideal.<sup>12</sup> The “different norms” view rests on the ideas that law professors have a role to play in the non-academic resolution

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7. There is also plenty of non-scholarly writing on the topic. *See, e.g.*, Michael I. Krauss, *The Law Professors’ Scandalous Statement Against Jeff Sessions*, FORBES: #THEVERDICT (Jan. 5, 2017, 11:46 AM), <https://www.forbes.com/sites/michaelkrauss/2017/01/05/the-law-professors-scandalous-statement-against-jeff-sessions/#7f3d9c495a72> [<https://perma.cc/MGL4-3KYF>]; Eric Segall, *Writing About Law in an Avalanche: What is a Scholar to Do?*, DORF ON LAW (Nov. 1, 2017), <http://www.dorfonlaw.org/2017/11/writing-about-law-in-avalanche-what-is.html?m=1> [<https://perma.cc/FL45-G8MK>]; Ilya Somin, *The Ethics of Law Professor Amicus Briefs*, VOLOKH CONSPIRACY (Oct. 29, 2011, 9:06 PM), <http://volokh.com/2011/10/29/the-ethics-of-law-professor-amicus-briefs> [<https://perma.cc/AS4B-4F5C>].

8. Neal Devins, *Bearing False Witness: The Clinton Impeachment and the Future of Academic Freedom*, 148 U. PA. L. REV. 165, 171–73 (1999); Cass R. Sunstein, *Professors and Politics*, 148 U. PA. L. REV. 191, 192–98 (1999).

9. 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, 13–14 (2001).

10. Richard H. Fallon, Jr., *Scholars’ Briefs and the Vocation of a Law Professor*, 4 J. LEGAL ANALYSIS 223, 227 (2012); Amanda Frost, *In Defense of Scholars’ Briefs: A Response to Richard Fallon*, 16 GREEN BAG 2D 135, 139 (2013).

11. *Compare* Devins, *supra* note 8, at 189–90 (arguing that law professors should only participate in partisan politics when they have a substantial amount of knowledge akin to professional norms), *with* Sunstein, *supra* note 8, at 195–96 (suggesting a less stringent standard).

12. *See* Devins, *supra* note 8, at 189–90.

of important issues<sup>13</sup> and that law, as a field, is not distinct from politics.<sup>14</sup> These differences suggest that the authors of these articles may disagree not only about whether scholarship norms ought to apply to non-scholarship, but also about the precise nature of scholarship norms themselves.

I find value in both camps. On the one hand, each time that we identify ourselves as law professors when making a public statement about legal issues, we ought to be mindful that such statements obviously include a claim to authority. That is to say, if a person identifies herself as a law professor, she is making a claim to be an expert—someone who deserves to be taken seriously, if not to receive deference—that is independent from the content of any particular statement that she makes.<sup>15</sup> We should also be aware that our public statements about legal issues often reflect on the legal academy as a whole.<sup>16</sup> On the other hand, I think that there is real value in law professors engaging with the courts, the political branches, and the broader public.<sup>17</sup> Although law and politics are distinct fields,<sup>18</sup> legal knowledge and expertise can be quite useful to the resolution of some political questions. And when we make statements to non-legal or non-academic audiences, I think it is acceptable (if not preferable) to omit at least some of the nuance and complexity that would

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13. See Sunstein, *supra* note 8, at 200 (“[I]t is perfectly responsible, maybe even a civic duty, for law professors to participate in public affairs, at least some of the time, by showing how what they know bears on public issues.”).

14. See Frost, *supra* note 10, at 144–47 (arguing that “the ‘best’ or ‘correct’ legal result sometimes cannot be separated entirely, or even significantly, from political or ideological preferences” and arguing that “ideology *should* play a significant role in resolving close legal questions”).

15. Cf. Frederick Schauer, *Authority and Authorities*, 94 VA. L. REV. 1931, 1936 (2008) (“Like parents and judges of higher courts, those who are *in* authority typically rely, or at least can rely, on their role or position to provide reasons for their subjects to follow their rules, commands, orders, or instructions.”).

16. As Ward Farnsworth has explained, “[W]hen a legal academic takes a position in public and identifies himself as a ‘law professor,’ he is trading on the equivalent of a trademark in that title,” and if some academics use the title in situations where they do not actually possess expertise, then “consumers of academic opinions” will not be able to tell whether a given law professor is an expert or not, leading to “consumer confusion or dilution of the ‘law professor’ mark.” Farnsworth, *supra* note 9, at 17–19.

17. See Sunstein, *supra* note 8, at 200–01.

18. “Law is not politics. When law and politics are seen as indistinguishable, then the legal arguments of law professors can be dismissed as nothing more than fig leaves for preferred political outcomes. I’ve seen far too much of that recently, and I think law professors should do all that they can to resist that view.” Carissa Byrne Hessick, *Ideological Diversity and Party Affiliation*, PRAWFSBLAWG (June 17, 2017, 4:11 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2017/06/ideological-diversity-and-party-affiliation.html> [<https://perma.cc/2T23-WLVL>].

appear in a work of legal scholarship. In short, I think that the legal academy ought to adhere to professional norms when engaging in non-scholarship, but those norms are less demanding than the norms governing scholarship.

Before proceeding further, it is important to be clear about what I mean by “norms.” I do not mean that law professors should somehow be forbidden from saying certain things on Twitter. A norm is different than a prohibition. A norm is a standard of behavior that is desired or expected. A single person cannot set a norm for a group; the group would have to agree, at least implicitly, on the appropriate standard. So what I am proposing here is that law professors, as a group, come to a consensus about how we, as a group, ought to behave on Twitter.

### B. Twitter and the Dissemination of Ideas

There are a number of reasons that a law professor might want to post on Twitter.<sup>19</sup> As compared to the other platforms available to law professors, Twitter has distinct advantages as a method of communication with other law professors and with the public more generally. Twitter allows law professors to broaden the reach of their ideas, increase their professional profiles, and communicate more easily and more quickly than other media.

A law professor who wants to communicate an idea to other law professors has several options. She can publish that idea in a law review article or an academic press book. This process takes a long time, not only because writing those manuscripts involves a lot of time and effort, but also because it takes a significant amount of time, after a manuscript is complete, for it to appear in print. Consequently, a law professor who has an idea about a timely topic may find that her idea is obsolete (or no longer of public interest) by the time it is published. It is also uncertain how many people will read a professor’s law review article or academic book. Because law review articles are quite long, readership may be limited to those who are researching the same topic.<sup>20</sup> To be sure, a law review article published in an elite law journal is likely to be more widely read. But a professor has little control over where her manuscript is published.

The professor can attempt to communicate her idea to other law professors by speaking at academic conferences or faculty workshops. But many

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19. See generally Chris Walker, *Is There Any Reason Not to Be on Twitter (Jr. Law Prawfs FAQ)*, PRAWFSBLAWG, (April 20, 2016, 9:03 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2016/04/is-there-any-reason-not-to-be-on-twitter.html> [<https://perma.cc/9SUK-DLWD>].

20. Readership for academic press books may be even lower. Not only are they longer, but they are not included in the Westlaw and LEXIS databases that most law professors use for their research.

conferences and workshops are by invitation only. Whether one receives an invitation to such a conference may depend on the strength of one's personal connections to the organizer or whether one is already considered a "big name" in the field—issues over which most law professors have limited control. Not all conferences require invitations; some have open calls for papers. But the panel attendance at those conferences can be quite low. And even if a professor is lucky enough to have a large audience at a conference, conference attendance is expensive. Thus, there are limits to the number of conferences that a professor is likely to attend in a given year.

Technology has made the communication of ideas within the academy somewhat easier. Law professors are able to post their manuscripts on the Social Science Research Network (SSRN) or other repositories. This allows professors to disseminate their manuscripts almost as soon as they are finished writing, thus eliminating the time lag associated with publication.<sup>21</sup> The title and abstract of those manuscripts are emailed to other professors through digests or e-journals every few weeks. Thus, more people may learn that a professor has written on a particular topic.<sup>22</sup>

Law professors can also communicate their ideas by blogging. A blog post is usually short, and therefore takes less time to write than an article or a book. Law professors also have the ability to make a blog post immediately available. This short time lag between when the law professor has the idea and when she makes it publicly available makes blog posts a good medium for law professors to disseminate their time-sensitive ideas.

Although blogging allows for quick communication, blogging is not necessarily a good medium for ensuring that an idea is widely disseminated. There is no guarantee that other professors will see, let alone read, a blog post. Blog posts are not searchable in the Westlaw and LEXIS databases that most law professors use for their research. Nor can a law professor depend on SSRN or another platform to disseminate her blog posts to a wider audience. She must either join an established law professor blog or start her own blog and try to get other law professors to visit her blog's website. The law professor has only

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21. Those postings may be complicated by copyright concerns. See Howard Wasserman, *SSRN Postings and Copyright*, PRAWFSBLAWG (July 15, 2016, 1:16 PM), <http://prawfsblawg.blogs.com/prawfsblawg/2016/07/ssrn-postings-and-copyright.html> [<https://perma.cc/MND5-JNYR>] (reporting that SSRN was removing law professors' papers from the site over copyright concerns).

22. Whether those additional people take the time to read the full article is a separate question.

limited control over whether her blog post will get a lot of traffic, and it can be quite difficult to increase that traffic.<sup>23</sup>

Unsurprisingly, it is easier for a law professor to disseminate her ideas within the legal academy if she enjoys a strong professional reputation. A professor with a strong professional reputation is likely to get more citations to her scholarship and receive more conference invitations.<sup>24</sup> She is more likely to be invited to join an established blog; and if she chooses to start her own blog, the site is likely to receive a significant amount of traffic. But a professor who is looking to develop a strong professional reputation must do so largely by trying to disseminate her ideas. This creates a Catch-22, especially for junior faculty or faculty outside of the most elite law schools: They want to disseminate their ideas widely in order to develop a good professional reputation, but not already having such a reputation hampers their ability to disseminate their ideas widely.

A law professor who wants to communicate her ideas outside of the academy is even more limited by her existing professional reputation, and she has even fewer options both to communicate her ideas and to increase her reputation. She can try to publish op-eds or popular press books. But it is much more difficult to publish in those venues than it is to publish in law reviews or with academic presses: manuscripts are not blind-reviewed, and thus authors who already have strong reputations are more likely to be published. The professor can speak with reporters and try to get quoted in a news article or to make an appearance on radio or television. But media calls are usually initiated by the journalist, rather than by the expert. Law professors who do not already have national profiles are less likely to receive those calls. And even if a professor wanted to be proactive and reach out to journalists herself, professors often don't know which reporters are writing stories that might be relevant to the idea the professor wants to communicate.

Twitter makes the communication of ideas both inside and outside of the academy much easier.<sup>25</sup> Twitter allows professors to offer their opinions quickly and in an easily digested format. Because tweets have character limits,

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23. See Larry E. Ribstein, *The Public Face of Scholarship*, 84 WASH. U. L. REV. 1201, 1217–18 (2006) (noting the difficulty of academic bloggers in reaching large audiences).

24. Stanley Fish has argued in favor of a system that benefits academics with good reputations; after all, those academics produced the high-quality scholarship that gave rise to those reputations. See Stanley Fish, Guest Column, *No Bias, No Merit: The Case against Blind Submission*, 103 MOD. LANGUAGE ASS'N 739, 739–40, 744–45 (1988). But sometimes those reputations linger long after a professor has ceased to contribute high quality scholarship, and their repeated inclusion at conferences and symposia crowd out newer voices, keeping the next generation of professors from creating their own good reputations.

25. My thinking on the benefits of Twitter was greatly informed by Chris Walker's blog post encouraging law professors to use the platform. See Walker, *supra* note 19.



they allow professors to express an opinion on a topic without expending the time required to write something longer, like an academic article or a blog post. And the character limits of tweets allow readers to read and understand an idea far more quickly than if they had to read a book, a law review article, or even a blog post. This allows readers to expose themselves to a greater number of ideas in a shorter period of time.

Twitter also allows professors to offer their opinions on their own initiative. A professor who wants to comment on a newsworthy topic need not wait for a reporter to call her. Twitter allows law professors to reach a national audience at the click of a mouse. What is more, an idea or an opinion offered on Twitter can come to the attention of a journalist writing on the topic. While journalists are unlikely to read law review articles or even law professor blogs, they often search Twitter. And so a tweet may lead to media opportunities, such as quotes in newspaper articles or appearances on television shows, which will increase an academic's professional profile.

Twitter also makes it easier for law professors to communicate with other law professors. Many law professors are on Twitter,<sup>26</sup> and it is easy to interact with other professors by commenting on their posts or jumping into "conversations" that other professors are already having. Indeed, it appears that this behavior is expected, even between professors who have never met each other before. Twitter thus enables professors to increase their professional network without having to travel to conferences.

The Twitter platform not only allows professors to more easily disseminate their ideas, it also gives professors more information about how many people have seen their idea, as well as who agrees or disagrees with the idea. Ordinarily, law professors have to wait for years in order to assess whether their ideas have had an impact. The methods for assessing that impact are crude and obviously imperfect.<sup>27</sup> And many of us have, at least on occasion, worried

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26. I do not have a head count of the law professors on Twitter. But Bridget Crawford's periodic "Census of Law Professor Twitter Users" indicates that the number is increasing at a steady rate. Compare Bridget Crawford, *Census of Law Professor Twitter Users Version 3.0*, FACULTY LOUNGE (Jan. 23, 2015, 7:44 AM), <http://www.thefacultylounge.org/2015/01/census-of-law-professor-twitter-users-version-30.html> [<https://perma.cc/2KBK-4CKP>] (identifying 553 law professors on Twitter), with Bridget Crawford, *Census of Law Professor Twitter Users Version 2.0*, FACULTY LOUNGE (July 26, 2012, 5:55 PM), <http://www.thefacultylounge.org/2012/07/census-of-law-professor-twitter-users-version-20.html> [<https://perma.cc/J9W3-WGQN>] (identifying 204 law professors on Twitter).

27. These methods for assessing impact include citation count surveys and informal feedback from peers. See Fish, *supra* note 24, at 739; see also Adam Liptak, *The Lackluster Reviews That Lawyers Love to Hate*, N.Y. TIMES, Oct. 22, 2013, at A15. The former are both widely consumed and widely reviled. I assume that the latter occurs infrequently given the expressions of shock and gratitude that I've received from other law professors when I tell them that I have read one of their articles.

about whether anyone is actually reading the law review articles that we write.<sup>28</sup> Twitter allows professors to track how often their tweets are shared (“retweeted”) by others, how many users express approval of their tweets (“likes”), and even how many people see their tweets (“impressions”). And because Twitter allows other users to instantaneously comment on tweets, it also gives professors the ability to further defend or refine their ideas in real time.

### C. Twitter’s Virtues as Vices

By now I have established that there are a number of reasons why a law professor would want to express ideas on Twitter. But the very features of Twitter that make it a good vehicle for expressing ideas are also its most problematic features for academics.

Take, for example, the ability of a professor to express an opinion easily on Twitter. One of the defining features of academic scholarship is that it is the product of considerable time and effort.<sup>29</sup> Tweeting, as compared to writing traditional scholarship, takes almost no time or effort. This makes Twitter an attractive venue for expressing ideas. Avoiding the time and effort associated with legal scholarship allows a professor to communicate more ideas, to communicate ideas more quickly, and to communicate those ideas in the context of a particular newsworthy event. But eliminating the time and effort associated with legal scholarship has other, quite negative consequences.

Twitter is not designed to highlight or encourage effort. Unlike longer formats, such as law review articles and blog posts, an idea expressed in a tweet is unlikely to contain much in the way of reasoning. Tweets are conclusory. To be sure, some professors may be offering ideas on Twitter that they have explained more fully elsewhere. Professors often use the platform to alert other professors to their scholarship and blog posts.<sup>30</sup> But the shortened format of Twitter encourages professors to present the most streamlined version of their ideas—to cut to the chase of their conclusion and to leave out the long and

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28. Cf. Liptak, *supra* note 27 (claiming that “43 percent of law review articles have never been cited in another article or in a judicial decision”).

29. The Draft Principles of Scholarly Ethics defines “Legal Scholarship” as published works that, *inter alia*, “are the product of significant effort and professional expertise.” This feature is reflected in the norm of “exhaustiveness” included in the Draft Principles of Scholarly Ethics. *Draft Principles of Scholarly Ethics*, 101 MARQ. L. REV. 897 (2018).

30. See Michael Risch, *Why Tweet? (Plus Some New and Better Data)*, FACULTY LOUNGE (Feb. 2, 2015, 8:00 AM), <http://www.thefacultylounge.org/2015/02/why-tweet-plus-some-new-and-better-data.html> [<https://perma.cc/QL2L-R52S>] (presenting data suggesting that many law professors use Twitter to promote their scholarship, conference appearances, and other professional activities).

messy analysis that supports it. And so what is offered on Twitter may transform legal scholarship into something unrecognizable.<sup>31</sup>

What is worse, the shortened format may also distort ideas. Because of the shortened format, professors must make choices about what information to highlight, what information to omit, and what information to treat superficially. Space constraints may create incentives for professors to treat an idea superficially—particularly ideas with which they disagree. Law professors may present oversimplified versions of others' arguments and then respond to that simple version rather than a more complete, or more nuanced version of the other person's argument. This tendency to oversimplify may transform substantive disagreements between academics into little more than virtual shouting matches.

Twitter's shortened format also encourages professors to share ideas that are not fully formed or vetted. Because it is so easy to communicate ideas on Twitter, professors will often present ideas on Twitter for the first time. Precisely because the barriers to communicating an idea are so low, those who use Twitter will often use the platform to make statements that they would never make in other contexts—statements well outside of their areas of expertise, or statements that they have spent no more time thinking about than the time it took to type them. It is the process of reasoning that forms the core of most legal analysis.<sup>32</sup> And it is reasoning (rather than just our conclusions) that separates academics from non-academics.<sup>33</sup> Thus, if a professor tweets casually—without reflection or depth of knowledge—then she is using the platform in a way that does not help her communicate her ideas *as an academic*.

The ability to tweet casually is especially attractive when it comes to newsworthy topics. Twitter allows those who have expertise on a topic to disseminate their ideas when that topic is timely. For example, it could allow an expert on federal court jurisdiction to express an opinion on the merits of a newly issued Supreme Court case about mootness. But Twitter does not

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31. Professors sometimes tie together multiple tweets into "threads." But such "tweet storms" are still significantly shorter than a typical blog post.

32. Law professors and judges sometimes refer to this concept as whether they are able to "write out" an idea. See, e.g., Stuart Taylor Jr. & Benjamin Wittes, *Of Clerks and Perks*, ATLANTIC (July/Aug. 2006), <https://www.theatlantic.com/magazine/archive/2006/07/of-clerks-and-perks/304959/> [<https://perma.cc/8BHQ-UTPX>] ("John Paul Stevens, the only justice who habitually writes his own first drafts, once told the journalist Tony Mauro: 'Part of the reason [I write my own drafts] is for self-discipline . . . I don't really understand a case until I write it out.'" (alterations in original)). If a law professor or judge is unable to write down the analysis that supports her idea, then the assumption is that the idea may not be correct.

33. Cf. Devins, *supra* note 8, at 186 (stating that "it is the reasoning of academics—not the conclusions they reach—which justifies academic freedom").

distinguish between those law professors with expertise on a topic and those without. A Twitter user is given the same opportunity to express an opinion on a topic about which she has written a multi-volume treatise as is given to a user who has never thought about a topic before that very moment. How widely those opinions end up being disseminated will depend on how many “followers” a professor has and on how many other users choose to “retweet” that opinion. And, unfortunately, one rarely gains large numbers of followers or garners large numbers of retweets by offering sober, nuanced analysis. Pithy generalizations and partisan fodder are more likely to generate interest and followers.<sup>34</sup>

Leaving aside the problem of expertise, the ability to comment quickly on newsworthy topics creates problems for the formation of a law professor’s ideas. In scholarship, professors ordinarily offer their ideas as general principles that have been adopted after considerable reflection.<sup>35</sup> This helps to ensure both that the ideas remain relevant and that the professor is committed to the principle as a principle. Because the process of writing and publishing scholarship takes so long, a professor will publish an idea only after considerable reflection.<sup>36</sup> In contrast, a law professor’s tweets on noteworthy events do not require generally applicable principles. Professors can offer an opinion on a particular event—such as an opinion on whether a particular government action is constitutional—without having to articulate or defend a generally applicable principle. Because a professor is expressing an opinion only about this particular instance, the opinion may have been influenced by her intuitions or preferences about the outcome of that particular case. That is to say, it might reflect a political or personal preference rather than a considered legal opinion.<sup>37</sup>

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34. For a trenchant analysis of the social dynamics at play on Twitter and how they influence journalists on the platform, see Damon Linker, *Twitter is Destroying America*, WEEK (June 2, 2017), <https://theweek.com/articles/702389/twitter-destroying-america> [<https://perma.cc/79H4-42PU>].

35. Cf. Eugene Volokh, *Intermediate Questions of Religious Exemptions—A Research Agenda with Test Suites*, 21 CARDOZO L. REV. 595, 598 (1999) (“[I]f arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them, whether they are executive officials or judges. And one task of legal scholarship is to help courts translate vague, general statutory or constitutional language into rules that set forth somewhat more ‘explicit standards.’”) (alteration in original) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

36. See *Draft Principles of Scholarly Ethics*, *supra* note 29 (referring to the norm of “exhaustiveness”).

37. To be clear, I think that legal academics often overvalue a commitment to principles; the entire premise of a common law system is that contextual decision making has significant value. But, at the same time, there is a difference between saying that the appropriate resolution of an issue can (and should) depend on the context, and saying that there is no difference between one’s legal opinions and one’s political opinions.

Perhaps most importantly, if a professor is using Twitter in order to express an idea on a noteworthy topic, then she is using the platform in order to avoid the time lag that would ordinarily provide an opportunity for reflection. Like most law professors, I have often changed my mind about legal opinions after reflection. Not only does Twitter not reward such reflection, it may actually discourage it. The news cycle on Twitter is incredibly short, and those who tweet about an issue first often receive the most attention. Thus, Twitter encourages and rewards those professors who offer opinions quickly, rather than those who leave themselves time for reflection.

The increased control that Twitter gives over one's opportunities to increase professional reputation can also be problematic. Although the traditional scholarship model does not give professors much control over their professional reputations,<sup>38</sup> the little control a law professor does have is over the quality of her scholarship.<sup>39</sup> For most people, high-quality scholarship requires significant reflection and great depth of knowledge. Twitter rewards the opposite. Professors build a large Twitter following by tweeting often and by tweeting on noteworthy topics.<sup>40</sup> But tweeting often and quickly on noteworthy topics is likely to lead a person to tweet without reflection or without depth of knowledge. In other words, Twitter allows professors more control over their professional reputation, but it does so by inverting the incentives of traditional scholarship. A professor who published law review articles on current events and without reflection would be mocked; but a professor who tweets in such a manner will likely be rewarded by a large Twitter following.

Professors who decide to tweet without reflection and to tweet on newsworthy events also appear sometimes to forget that the platform is public.<sup>41</sup>

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38. Efforts should be made to change that.

39. I distinguish between the actual quality of a law professor's scholarship and the external markers of quality—such as law review placement and citation counts. Professors have significant control over the former and limited control over the latter.

40. See Michael Risch, *How Law Professors Use Twitter*, FACULTY LOUNGE (Jan. 27, 2015, 6:30 AM), <http://www.thefacultylounge.org/2015/01/how-law-professors-use-twitter.html> [<https://perma.cc/R42J-F5CK>] (showing that those law professors who have more followers tweet more; “The cause and effect is likely symbiotic, but it does reflect something I’ve read about for other social media, like blogging: knowing you have readers creates pressure to produce more content.”). To be sure, some professors’ large Twitter followings may be attributable to reputations that they have established outside of the platform, such as by running a popular blog or appearing on television.

41. As Eric Posner notes:

In the non-virtual world, successful people take care to keep up impressions, for example, they avoid making controversial statements to friends, colleagues, and strangers except when unavoidable, and even then do so in a carefully respectful way. [But on] Twitter, the same people act as if their audience consisted of a few like-minded friends and forget that it actually consists of a diverse group of

For example, many professors are quite careful to conduct their classes in an even-handed and non-partisan manner. But those same professors may express opinions on Twitter about purely political issues with no apparent connection to law, opinions can be (and often are) seen by their students.<sup>42</sup> These tweets can send a clear signal to students about the political affiliations and views of their professors, undermining the professors' classroom efforts to present an even-handed and non-partisan image in the classroom.

That Twitter makes it easy for professors to track the impact of their tweets makes its skewed incentives all the more salient. A pithy comment on a timely topic is more likely to be widely "retweeted" and "liked" than a sensible and nuanced tweet on a purely legal topic.<sup>43</sup> When professors see this dynamic—when they are rewarded for the pithy and the timely—it encourages professors to tweet more of the same.<sup>44</sup> Indeed, Eric Posner has pointed out that Twitter appears to have changed its algorithms so that they make pithy and timely—i.e., non-academic—tweets more likely to be read.<sup>45</sup>

Even Twitter's ability to facilitate communications between law professors has its downsides. Twitter's quick communication sometimes allows professors to refine their ideas more efficiently. But the ability to communicate quickly sometimes leads professors to communicate rudely. Time for reflection doesn't just help professors refine their ideas, it also gives them time to cool off and couch their disagreement with peers in polite (or at least professional) terms. I am sorry to say that I have witnessed more than one professor whom I otherwise admire behave very rudely on Twitter. And because Twitter is a constantly available platform, it allows people to tweet when they are tired, angry, or otherwise not their best selves. This probably makes unprofessional behavior far more likely.

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people who may not agree with them in every particular . . . . Without realizing it, people who use Twitter damage the image of themselves that they cultivate in the non-virtual world.

Eric Posner, *Twenty Theses About Twitter*, ERIC POSNER (July 3, 2017), <http://ericposner.com/twenty-theses-about-twitter/> [<https://perma.cc/X4SR-U998>].

42. Forgetting that students can see their tweets raises problems not only about tweets that express political preferences, but also about tweets that address other aspects of teaching. There are tweets that complain about grading or about student behavior—and one wonders whether professors who tweet such sentiments do so with the idea that their students can see these tweets in mind.

43. See Posner, *supra* note 41 ("[T]he most effective tweet is a clever formulation of a view that everyone already believes. If one lacks cleverness, forcefulness provides a second best.").

44. See Posner, *supra* note 41 ("People send tweets with a single overriding purpose: to get the tweet "liked" or retweeted. . . . When your tweet is liked or retweeted, you enjoy a dopamine surge.").

45. Eric Posner, *The Worthy Tweet*, ERIC POSNER (March 3, 2018), <http://ericposner.com/the-worthy-tweet/> [<https://perma.cc/3LQS-ZGNF>].

I should note that I am personally guilty of many of the Twitter vices that I have identified. I have tweeted outside of my area of expertise; I have allowed newsworthiness to eclipse rigorous analysis and reflection; and I have sometimes tweeted in an intemperate tone. The fact that the Twitter platform facilitates, and at times incentivizes such behavior is not an excuse for what I've done. But I do tend to think that, to the extent more law professors exhibit this behavior on Twitter, the behavior is likely to increase. Indeed, the legal literature on norms suggests that our behavior is, in many respects, influenced by the behavior we see in our environments more than by legal prohibitions.<sup>46</sup> Thus, if more law professors were to eschew the vices of Twitter—if, as a profession, we were to develop informal social norms to counteract the incentives of the platform—then we could see a real positive change in how law professors behave on Twitter.

#### D. Suggested Norms for Law Professors on Twitter

Twitter provides law professors with an easily accessible public platform. Participating on Twitter allows a law professor to share her ideas and increase her professional profile more easily than publishing traditional scholarship and attending conferences. But a law professor's participation on Twitter isn't necessarily limited to shaping a law professor's individual public image; the law professor's participation can also shape public perception of law professors as a group.

To be clear, not everything that a professor does necessarily reflects on the academy as a whole. If a law professor tweets about a sporting event,<sup>47</sup> complains about the state of public transit in her city, or tweets about some other relatively mundane issue that has nothing to do with the law,<sup>48</sup> then her tweets are unlikely to have an effect on the reputation of the legal academy as a whole.<sup>49</sup> But when professors tweet about legal issues, or when they tweet false and incendiary information from Twitter accounts that identify them as law professors, then their behavior on the platform may reflect not only on them as individuals, but also on the legal academy as a whole.<sup>50</sup>

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46. See generally RICHARD H. MCADAMS, *THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS* (2015); ERIC A. POSNER, *LAW AND SOCIAL NORMS* (2000).

47. I had no idea how many law professors were Philadelphia Eagles fans.

48. Larry Ribstein called this sort of public writing by academics "recreational expression." Ribstein, *supra* note 23, at 1202.

49. But, as discussed below, the *manner* in which those tweets are framed may raise other problems.

50. See Goldberg, *supra* note 4 ("Professors are people too, but when our Twitter accounts are connected to our status as professor, lines are blurred, and academic credibility is lost."); see also *supra* notes 15–16 and accompanying text.

Because law professors' tweets may affect public perception of law professors as a group, we, as a group, should work to develop norms associated with law professor participation on Twitter. Indeed, we should work to develop norms associated with all types of non-scholarship public discourse, including op-eds,<sup>51</sup> legislative testimony,<sup>52</sup> and amicus briefs.<sup>53</sup> But this short essay is focused on Twitter.

I have two suggested norms for law professors who tweet: First, law professors should assume that, each time they tweet about a legal issue, they are making an implicit claim to expertise about that issue. Second, professors who participate on Twitter should keep in mind that they are part of a profession that is committed to promoting reasoned debate. These norms will not correct all of the Twitter vices identified in this Essay—they are far too modest to do that. But my hope is that, in proposing relatively modest norms, they are more likely to be accepted by other professors.

Importantly, these suggested norms are directed only at those who publicly identify themselves as law professors on Twitter. A law professor whose Twitter profile and tweets do not identify her as a law professor is “tweeting in her personal capacity” and should feel free to tweet only with her own reputation and interests in mind. And a law professor's posts on other non-publicly available social media, such as Facebook, are also more appropriately considered personal.

Perhaps more importantly, I am offering these norms as a starting point for discussion. There are hundreds of law professors on Twitter, and each of them has their own approach and priorities.<sup>54</sup> I know that at least some law professors disagree with the norms that I am suggesting. Some law professors see Twitter primarily as a social platform, and thus they question why they should have to maintain a professional persona on it.<sup>55</sup> Others insist that lawyers are

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51. See Paul Horwitz, *The Small and Vast Difference Between Two Op-Eds*, PRAWFSBLAWG (Aug. 25, 2017), <http://prawfsblawg.blogs.com/prawfsblawg/2017/08/the-small-and-vast-difference-between-two-op-eds.html> [<https://perma.cc/JV7U-62UK>] (raising questions about how law professors' novel arguments ought to be presented in op-eds).

52. Lee Fang, *The Scholars Who Shill for Wall Street*, NATION (Oct. 23, 2013), <https://www.thenation.com/article/scholars-who-shill-wall-street/> [<https://perma.cc/W2VP-F4VT>] (raising concerns about a law professor who had testified about financial legislation without disclosing his outside funding).

53. See Fallon, *supra* note 10, at 253; Frost, *supra* note 10, at 148 (discussing the conditions under which law professors ought to sign amicus briefs).

54. See, e.g., Will Baude, *Simple Principles for Tweeting Well*, VOLOKH CONSPIRACY (Mar. 2, 2018, 3:35 PM), <http://reason.com/volokh/2018/03/02/simple-principles-for-tweeting-well> [<https://perma.cc/73FA-D483>]; Josh Blackman, *My Rules for Twitter*, JOSH BLACKMAN'S BLOG (Jan. 15, 2018), <http://joshblackman.com/blog/?s=rules+for+twitter>.

55. See, e.g., Stephen Bainbridge (@ProfBainbridge), TWITTER (Dec. 31, 2017, 10:44 PM), <https://twitter.com/ProfBainbridge/status/947690062740721664> [<https://perma.cc/F744-8VBJ>] (“I



generalists, and thus law professors on Twitter should not feel constrained to their areas of expertise.<sup>56</sup> But while I may be unable to convince *all* law professors that these norms are desirable, so long as a significant number of us agree on these norms, then they can go a long way towards ensuring that the virtues of Twitter for a legal academic are not overwhelmed by its vices.

*1. Assume you are claiming expertise when you tweet about issues related to law*

Law professors who identify themselves as law professors on their Twitter profiles are making a representation to the public. They are identifying themselves as an expert on legal issues. Thus, a person who identifies herself as a law professor on Twitter should assume that others will interpret that identification as a claim to expertise. That claim to expertise lurks in the background of all tweets on legal topics.

An implicit claim to expertise does not necessarily mean that a law professor should only tweet in areas where she is an expert. Because Twitter is populated by many people who know very little about the law, a law professor will often be able to clarify or dispute a legal issue that is being mischaracterized by others, even if that issue is outside of her core area of expertise. Law professors of all fields are experts in teaching others how to “think like a lawyer.” And so law professors may have expertise in pointing out logical flaws in the reasoning of others, even when that reasoning isn’t necessarily about a legal issue. But law professors should be careful when offering to clarify a legal misunderstanding outside of their field, or when disputing the logic in the non-legal claims of others. Non-expert law professors need not remain silent; but they should make clear that they are not claiming expertise when they tweet about those matters. Put differently, when tweeting on legal issues outside of their area of expertise, law professors should take care to dispel the implicit claim to expertise created by their self-identification as a law professor.

Law professors can tweet in ways that dispel the implicit claim of expertise. They can, most obviously, disclaim expertise in a tweet itself. Imagine, for

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guess I disagree with the premise. For me, at least, Twitter is mainly recreational. And political. And venting. It’s not a venue where I go for reasoned discourse about the law. And it’s not a place to look for anyone speaking with authority. It’s a saloon not a French salon.”).

56. See, e.g., David Herzig (@professortax), TWITTER (Jan. 1, 2018, 11:28 AM), <https://twitter.com/professortax/status/947882310539628545> [<https://perma.cc/F75E-GJ8G>] (“[N]ot sure why norm would be I can only comment on tax law. I can file a lawsuit as a lawyer for any area of law as long as I’m willing to do leg work. I can go to AALS and pontificate on anything. Why is norm different here?”).

example, if a non-lawyer tweeted that, because a winning candidate for political office had accepted inappropriate campaign contributions, a new election should be held. I would feel comfortable tweeting “I’m not an election law expert, but that’s not how the law deals with campaign finance violations.”

Another way to dispel the implicit claim of expertise is to tweet in ways that do not appear to be premised on a claim of personal expertise. Examples of tweets that are not premised on personal expertise include tweeting links to cases or to the scholarship or non-scholarly writings of those who are experts. For example, I am not an expert on Fourth Amendment searches.<sup>57</sup> But if an event in the news implicated the constitutionality of a search, I would feel quite comfortable tweeting a link to a blog post by a law professor who is a Fourth Amendment expert and noting that the professor’s analysis seems sound.

Law professors can also dispel the background presumption of expertise by framing their “takes” on newsworthy issues as questions, rather than as affirmative opinions. If, for example, a public figure appears to have said something that seems to be an incorrect statement of First Amendment law, I should not tweet a statement that takes a definitive stance on the First Amendment because I am not an expert in the field. But it would be entirely appropriate for me to tweet a quote of the statement and to ask how that statement can be squared with a particular Supreme Court case or a particular constitutional principle. Such a tweet raises a legal issue, and it expresses skepticism; but it also signals that I do not have a definitive answer to the question that I have raised.<sup>58</sup>

In response to an earlier version of this Essay, some law professors have argued that their implicit claim to expertise is limited to areas that they specifically identify in their Twitter bios.<sup>59</sup> For example, my Twitter bio identifies me as a “[c]riminal law professor at the University of North Carolina.” Thus, according to this argument, if I tweeted about the First Amendment or election law, there would be no background claim to expertise implicit in those tweets.

I disagree. For one thing, some law professors do not list areas of expertise in their bios; they just identify as law professors. For another, people without

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57. I have taught Fourth Amendment issues many times, but I do not write on the topic.

58. Framing non-expert thoughts as questions also has added benefits: It avoids embarrassment if a law professor is wrong about something, and it can make disagreement seem more polite.

59. *E.g.*, Michael Morley (@michaelmorley11), TWITTER (Mar. 20, 2018, 12:11 PM), <https://twitter.com/michaelmorley11/status/976144214496088065> [<https://perma.cc/UA6D-YBCJ>] (noting “disagreement with [the] premise that, by tweeting as a law professor, I am presumptively implicitly claiming expertise in the subject matter of my tweets. I have a general background in law, but claim some degree of expertise only in areas listed in my bio.”).

legal training may not be able to understand whether a particular area listed in a professor's bio makes that person an "expert" on a particular topic. For example, some law professors list "public law" as an area of expertise in their bios.<sup>60</sup> Most non-lawyers do not know what "public law" means. Other law professors list "constitutional law" or "constitutional theory" in their bios. Many non-lawyers that I know think that the Constitution (rather than statutes, regulations, or the common law) is the primary source of law in the United States. And so they are likely to read such a bio as claiming expertise in absolutely everything having to do with law.

To be clear, the implicit claim to expertise does not extend to everything that a law professor posts on Twitter. A law professor has no implicit claim to expertise about sporting events, celebrity culture, or other obviously non-legal subjects just by virtue of the fact that they self-identify as a law professor on Twitter.<sup>61</sup> The implicit claim to expertise arises only in tweets related to legal issues.

One might question whether law professors' tweets about political issues also carry an implicit claim to expertise.<sup>62</sup> After all, it is often difficult to disentangle law from politics (and vice versa). Take, for example, a law professor who tweeted that a particular presidential action should or should not lead to impeachment. Whether impeachment is warranted is both a legal and a political question, and so it may be unclear whether the professor is making a legal statement—in which case the implicit claim is present—or a political statement—in which case it likely is not. Reasonable minds could differ on this issue, but I believe that, to the extent that a law professor's tweet on a political issue could be viewed as a tweet on a legal issue, then she should err on the side of caution and assume that there's an implicit claim of expertise.

To be sure, assuming an implicit claim to expertise can be burdensome, and it may lead law professors to tweet less outside of their areas of expertise. After all, a tweet that is framed as a question or that includes a disclaimer of expertise is hardly going to be thought pithy and retweeted widely. And so some

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60. For example, Einer Elhauge identifies himself in his Twitter bio as "Harvard Law Professor, antitrust economist, and scholar focused on antitrust, contracts, health law policy, and public law." Einer Elhauge (@elhauge), TWITTER, <https://twitter.com/elhauge> [<https://perma.cc/7ARY-KRV2>] (last visited Mar. 28, 2018). He is not the only law professor to use the "public law" moniker. See TWITTER, <https://twitter.com/search?f=users&vertical=default&q=public%20law&src=typd> [<https://perma.cc/5HWE-ZFB7>] (last visited Mar. 28, 2018).

61. Importantly, law professors are often experts in things other than law. Many have advanced degrees in other fields, non-legal work experience, and similar backgrounds and experiences. But identifying as a law professor does not implicate other potential areas of expertise.

62. There is a related, but separate question, about whether law professors ought to refrain from making purely political statements while identifying as law professors. That question is much bigger than this particular essay, and I do not take it up here.

professors may find it is simply not worth tweeting on newsworthy topics outside their area of expertise. I'm not sure that is a bad thing.

## 2. *Help promote (or at least do not undermine) reasoned debate*

Whenever law professors express ideas, at least some people will disagree with them. Disagreement is nothing new to law professors. We often disagree with judges or other professors in our scholarship. And when we publish our own scholarship or speak at conferences and workshops, people often disagree with us. Engaging with those who disagree with us is part of our job as law professors.

Using Twitter to engage with opposing views is not easy. The character limits lead many Twitter users to be abrupt. Those same limits also pose a challenge for offering explanations, rather than simply conclusions. Some people appear to use Twitter primarily as a platform to inflame the passions of others,<sup>63</sup> while others proudly proclaim that their tweets are meant to be “snarky.”<sup>64</sup> Dealing with abrasive and downright rude people does not lead a person to be calm, cool, or collected.

Even though the Twitter platform makes civil disagreement more difficult, law professors should strive to uphold the same norms of reasoned debate that we have in our disagreements about scholarship. When disagreeing about ideas in scholarship, law professors are often able to do so in a professional manner.<sup>65</sup> They identify the precise grounds of debate, concede when appropriate, and keep the discussion focused on the substance of the arguments. Twitter disagreements should follow the same form. A law professor should ask herself, before tweeting, whether the tone and the content of her disagreement are appropriate given that she publicly identified herself as a law professor.

One might wonder why a law professor ought to have a special obligation to promote reasoned debate. What is it about law professors—as opposed to dentists, accountants, or elementary school teachers—that should require them to maintain a civil tone on Twitter? The difference is that one of the major

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63. This phenomenon is so common that the internet has developed a slang term to refer to such people: troll. A troll is a person who purposefully posts offensive comments in order to antagonize others. See *Internet Troll*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=Internet%20Troll> [<https://perma.cc/K3VY-GX9G>] (last visited Dec. 20, 2017).

64. The term “snarky” appears to mean something roughly approximating sarcastic cynicism or rudely critical—and yet people (even law professors) seem to claim the characteristic as a badge of honor. See *Snarky*, URBAN DICTIONARY, <https://www.urbandictionary.com/define.php?term=snarky> [<https://perma.cc/PP6S-KZ7S>] (last visited Jan. 27, 2018).

65. I say “often” because not all law professors are equally gracious during substantive disputes. Occasionally, a professor’s disagreement at a conference, workshop, or in published work can be unprofessional or rude.

skills we aim to teach our students in law school is to be able to argue dispassionately about controversial topics. Our ability to disagree civilly with one another about our scholarship is not simple professionalism; it is part of what helps set legal thinkers apart from those without legal training.

Indeed, in a recent article for Time Magazine, Yale Law School Dean Heather Gerken credited the training that law students receive as the reason we have not seen the same sort of efforts to limit free speech at law schools as we have seen elsewhere on University campuses:

In law schools we don't just teach our students to know the weaknesses in their own arguments. We demand that they imaginatively and sympathetically reconstruct the best argument on the other side. From the first day in class, students must defend an argument they don't believe or pretend to be a judge whose values they dislike. Every professor I know assigns cases that vindicate the side she favors—then brutally dismantles their reasoning. Lawyers learn to see the world as their opponents do, and nothing is more humbling than that. We teach students that even the grandest principles have limits. The day you really become a lawyer is the day you realize that the law doesn't—and shouldn't—match everything you believe. The litigation system is premised on the hope that truth will emerge if we ensure that everyone has a chance to have her say.<sup>66</sup>

Given that law schools pride themselves on teaching their students “how to go to war without turning the other side into an enemy,”<sup>67</sup> we should expect law professors to model that skill in their public discourse. The ability to engage in reasoned debate is part of our shared identity as *legal* academics.

That isn't to say that professors shouldn't be able to express opinions or strong feelings on Twitter. But rather, that when they are on Twitter they shouldn't advocate in favor of or against ideas in a fashion that is incompatible with reasoned debate. They should speak in good faith, address others' arguments on the merits, criticize arguments and actions rather than resorting to personal attacks, and generally try to avoid the over-the-top invective that often passes for public discourse in 2018.<sup>68</sup>

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66. Heather Gerken, *Dean of Yale Law School: Campus Free Speech Is Not Up For Debate*, TIME (July 13, 2017), <http://time.com/4856225/law-school-free-speech/> [<https://perma.cc/7GHS-HRHG>].

67. *Id.*

68. Anthony M. Kries (@AnthonyMKreis), TWITTER (Mar. 20, 2018, 11:01 AM), <https://twitter.com/AnthonyMKreis/status/976126686667378689> [<https://perma.cc/BNK3-95D3>].

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Twitter can be a useful platform for law professors. But it also poses a number of challenges. Many law professors whom I admire avoid the platform all together; several others tweet, but express great ambivalence about doing so.<sup>69</sup> The avoidance and ambivalence is attributable, at least in part, to the problems with the platform I've addressed here.

But if the more circumspect and intellectually scrupulous law professors stay off Twitter, that is not necessarily good for the legal academy as a whole. Twitter may be a passing fad. But right now it is a major platform by which the general public is exposed to law professors. The law professors who are the most active on Twitter are, in a very real sense, the public face of the legal academy for a large segment of the country. That is why the rest of the legal academy should take an interest in setting norms for the platform.

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(suggesting that law professors ought to “publish content that’s civil/tasteful/good-natured befitting of the profession and is a good model for others, esp[ecially] students.”).

69. See, e.g., Goldberg, *supra* note 4 (noting that Twitter often does not “allow for circumspect, reasoned, dispassionate analysis” and expressing concern that Twitter results in lost academic credibility); Horwitz, *supra* note 51 (“For my sins, I have become more active on Twitter lately.”); Derek T. Muller, *The Rise and Fall of my Use of Twitter*, EXCESS OF DEMOCRACY (Jan. 15, 2018), <http://excessofdemocracy.com/blog/2018/1/the-rise-and-fall-of-my-use-of-twitter> [<https://perma.cc/ZP36-DYSH>] (“[O]ver time, I found that these benefits has lost much of their appeal, and the cost-benefit analysis has moved me away from using Twitter.”); Posner, *supra* note 41 (characterizing Twitter as “a black hole of value-destroying technology for all concerned”).