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FOREWORD: THE INTERNET AND SHASTA COUNTY

LISA BERNSTEIN*

Over the past decade, the field of cyberlaw has experienced explosive growth in both academia and the practicing bar. Law schools offer courses in cyberlaw,¹ the Association of American Law Schools now has a “computers and the law” section,² numerous periodicals have cyberlaw columns,³ and many institutes have been set up to deal with cyberlaw-related issues.⁴ The widespread interest in cyberlaw has led to a fast-growing literature on the subject. Some of this literature focuses on the unresolved doctrinal problems that emerge when what has been termed “the law relating to atoms” is applied to a “world consisting of bits.”⁵ Much of the literature, however, has taken a step back from these practical difficulties and has provided eloquent metaphorical descriptions of the ways that cyberspace differs from regular space,⁶ descriptions that are designed

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1. See, e.g., UNIVERSITY OF ARKANSAS, SCHOOL OF LAW 1997-98 CATALOG 36 (1997) (“Law and the Internet”); UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, SCHOOL OF LAW 1997-1998 RECORD 46 (1997) (“Cyberspace Law”); YALE LAW SCHOOL, 1997-1998 BULLETIN OF YALE UNIVERSITY 55 (1997) (“Free Speech, Telecommunications, and Cyberspace”).

2. This section was created in May of 1983. Its bylaws provide, in part, that “[t]he purpose of this section is to promote the communications of ideas, interests and activities among members of the section and to make recommendations on matters concerning computers and their impact on the law and legal education and on the law relating to computers.” *AALS Computers and the Law Section Bylaws, Art. 2* (visited Feb. 19, 1999) <<http://www.aals.org/Bylaws.htm>>.

3. See, e.g., New Directions in Cyberspace Law (column appearing in both the *Los Angeles Daily Journal* and the *San Francisco Daily Journal*).

4. Examples include *Center for Democracy and Technology* (visited Feb. 19, 1999) <<http://www.cdt.org/publications/mission.html>>; *Computer Professionals for Social Responsibility* (visited Feb. 19, 1999) <<http://www.cpsr.org/cpsr/about-cpsr.html>>; *Cyberspace Law Institute* (visited Feb. 19, 1999) <<http://www.cli.org/whatis.html>>; *Electronic Frontier Foundation* (visited Feb. 19, 1999) <http://www.eff.org/EFFdocs/about_eff.html>; and *UCLA On-Line Institute for Cyberspace Law and Policy* (visited Feb. 19, 1999) <<http://www.gse.ucla.edu/iclp/hp.html>>.

5. See generally Lawrence Lessig, *The Zones of Cyberspace*, 48 STAN. L. REV. 1403 (1996) (introducing this distinction but questioning its importance).

6. See A. Michael Froomkin, *The Metaphor is the Key: Cryptography, the Clipper Chip, and the Constitution*, 143 U. PA. L. REV. 709, 717 (1995) (“As more and more settlers arrive in Cyberspace, the nature of this new landscape will depend critically on the legal metaphors the colonists choose to bring with them.”). See generally David R. Johnson & David G. Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367 (1996); Lawrence Lessig,

to help legal policy makers understand why the problems they will face in regulating cyberspace are different not only in degree, but also in kind, from the problems they face in regulating similar activities in real space.

This symposium is not about practical doctrinal problems, though a number of them will, by necessity, be discussed along the way, nor is it about reconceptualizing space or the meaning of either cyber-democracy or cyber-community, though these ideas will also play a role in the discussion. Rather, symposium participants, some of whom are not cyberlaw experts, have been asked to view the Internet, and the human and technological features that define it, as a market with its own particular (and sometimes peculiar) participants, norms, information flows, and institutions. They have been asked to do a mini case-study of some aspect of the Internet and to draw on it to help identify problems from their own fields of expertise that cannot be solved by existing legal doctrines, technological capabilities, social norms, or private order institutions, problems that seem to require a basic reconceptualization of core ideas in legal theory.

Methodologically, participants have been asked to view cyberspace as Robert Ellickson viewed Shasta County,⁷ and to think about what can be learned about law generally from examining its application, expected effects, and actual effects within a well-defined community with its relatively developed yet ever-changing social norms.

In sum, to extend a metaphor introduced to this literature by Judge Easterbrook,⁸ the goal of this symposium is not to see what the “law of the horse” has to teach us about how to construct cyberlaw, but rather what attempting to apply the “law of the horse” to cyberspace has to teach us about the strengths and weaknesses of both the existing law of the horse and equine legal theory.

The Path of Cyberlaw, 104 YALE L.J. 1743 (1995).

7. See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991).

8. See Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. CHI. LEGAL F. 207, 207-08 (suggesting that “the best way to learn the law applicable to specialized endeavors is to study general rules. Lots of cases deal with sales of horses; others deal with people kicked by horses; still more deal with the licensing and racing of horses, or with the care veterinarians give to horses, or with prizes at horse shows. Any effort to collect these strands into a course on the ‘Law of the Horse’ is doomed to be shallow and to miss unifying principles. [It is better] for those who plan to go into the horse trade—to take courses in property, torts, commercial transactions, and the like Only by putting the law of the horse in the context of broader rules about commercial endeavors could one really understand the law about horses.”).