

Völkerrechtsblog

Der Blog des Arbeitskreises junger Völkerrechtswissenschaftler*innen

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DISCUSSION RESPONSE

Legal blogs follow tradition, too

HANNAH BIRKENKÖTTER — 20 November, 2014



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A reply to **Katharina Isabel Schmidt**

In her insightful and very pertinent [blog post](#) on legal formats, Katharina Isabel Schmidt takes a comparative look at law journals and legal formats in the US and Germany, the two systems that she is familiar with. Most of her observations correspond to my experience (although I have only spent a few weeks in the US, so most of my observations are grounded in conversation with colleagues and friends as well as reading American-authored scholarship rather than first-hand experience “on the ground”) and I wholeheartedly agree that comparative looks at legal formats allow us to “re-imagine the future of legal

knowledge production”. I am skeptical, however, whether non-traditional means of knowledge production, in particular blogs, truly have the “potential to facilitate conversations about law that are *free* from the intricate constraints of national legal science” (emphasis my own). I’ve rather found legal blogs, or blawgs, especially of the academic type, to be quite different depending on the legal culture they are rooted in. I certainly agree that blogs have the potential, and are actually used as a means to disturb existing hierarchies and conventions of scientific communication, and that on both sides of the Atlantic. But at the same time, they are not free of their respective legal traditions.

Blawgs from near and far: two comparative points on legal blogging

In an article forthcoming in *Juristische Ausbildung* (in German), Maximilian Steinbeis and I give an overview on the legal blogosphere in Germany and sketch out some comparative lines to blawgs in other countries. There are some noticeable differences between the academic blawgosphere between the US and Germany. Firstly, there are the numbers: Germany currently features three major blogs on public law. Next to this blog, Verfassungsblog has been around since 2009 and cooperates with the Berlin Institute for Advanced Study since 2011, and Juwiss-Blog, run by a group of young scholars in public law, went online in early 2013. In the US, the American Bar Association’s “blawg directory” in turn lists over 100 blogs authored by law professors. Sure, not all of these blogs concern public law (however, that same directory lists around 75 legal blogs on constitutional law alone, and another 30+ blogs on administrative law). And of course, there are more than 200

law faculties in the US, whereas only 43 faculties exist in Germany (see here at p. 25). But even if you factor in these caveats, you still have a considerably lower ratio of blogs per professor in Germany than in the US.

Secondly, there is the blog format: many professors in the US run individual blogs (e.g. Ann Althouse, Eric Posner, Eugene Volokh – though with guests, Jack Balkin – who also features many guest posts, Diane M. Amann, Rebecca Tushnet, to name but a few). Of course, you find individual blawgs in Germany as well. Udo Vetter's LawBlog is probably the best-known example. Johannes Zöttl, a partner at Jones Day, equally runs a successful blog of his own, and so do many other practitioners. But law professors who run individual blogs are virtually absent from the German blawgosphere – at least in public law (if you know of individual blog projects run by professors of other fields, I'd appreciate a hint in the comment section). The only individual professor-authored blog I am aware of is Christian Tietje's blog featuring news on his latest work and the work of his institute. But this is significantly different from blogs such as Balkinization or Volokh Conspiracy, who clearly position themselves in a political spectrum and significantly contribute to shaping public discourse through opinionated posts. We observe similar differences on group blogs: Group blogs originating in the US, such as Just Security or Opinio Juris, are centered around a core team of contributors, who provide the bulk of posts and thus shape the tone and general direction of the blog. Guest authors are the exception, not the rule. In Germany, the abovementioned Juwiss-Blog as well as this blog work the other way around: while the editors of both blogs will occasionally feature posts of their own, the majority of posts are not from the editors, but from guest authors. The editors mostly – edit. I am not

suggesting that one way is superior to the other. I am merely pointing out that the blawgosphere, just as law journals, is equally diverse and that this diversity seems to have to do with the legal culture in which they are rooted. So do we find differences along similar lines Katharina showed so convincingly for legal journals?

“On the courage to be wrong”

A few years ago, one of Germany’s leading daily newspapers mused on why so few German law professors chose to blog. And while institutional factors, such as time management, priorities with regard to teaching and other faculty-related obligations surely play a role, the journalist put forward that the main reason was a difference in how legal debates were structured on either side of the Atlantic. This corresponds to some of the aspects that Katharina has – in a more nuanced way – laid out in her post. It also resonates with the assessment of another colleague familiar with both systems: “If American legal scholars try first to be interesting, Germans want first to be right.” Of course, this is a pointed statement on a much more complex phenomenon (that is developed in full in the post linked above). But the basic line of argument – that different functions of legal scholarship and their different position in society on either side of the Atlantic make for differences in the type of scholarly outcome produced – may provide us with a hint at why American blogs are so much more opinionated than German blogs, and why most individual bloggers in Germany are not found within legal academia. If German scholarship is mostly concerned with doctrinal accuracy, academics might feel more at home on a blog featuring a wide range of authors and topics without a particular political agenda. And in turn, American scholars will see the blog as yet another way to

publish their thoughts in a mostly unfiltered way, thus preserving their originality.

Blawgs between old habits and new perspectives

So does this mean that the blawgosphere will necessarily replicate existing predispositions of legal academia, and that attempts at breaking with one's tradition through the means of a blog are thus entirely futile? Not necessarily. Because blogs are a relatively new phenomenon, they have also served as a means to disturb existing communication structures. Jack Balkin created his blog in part because he was dissatisfied with the possibility of participating in the public discourse on constitutional matters through op-eds or scholarly articles. Likewise, Völkerrechtsblog explicitly aims at featuring debates with arguments and counter-arguments – in order to incite controversial debates that are not necessarily the most prominent feat of Germany's academic culture as of now. Juwiss-Blog understands itself as a platform exclusively for young scholars and thus contributes to shaping an identity for a group that traditionally remains on the sidelines of academic debate. A similar form of identity-building seems to be behind IntLawGrrls, a platform aiming to give a voice to women in international law. Blogs, it appears, have served as a means to alter the ways and the participants of legal debate – on both sides of the Atlantic. But, as I tried to show in this brief outline, they are never entirely free of the legal culture in which they are rooted.

I would submit that this isn't so bad, either. Rather than aiming at achieving “conversations free from the intricate constraints of national legal science” – I am uncertain as to whether that is possible – I would advocate for

conversations that make these constraints explicit. And here, I fully agree with Katharina: blogs are a great way to do so. While not free from constraints, they provide alternative platforms and thus room for alternative topics, actors and approaches. This very conversation is, in my view, proof of it. So let's continue the talk.

Hannah Birkenkötter LL.M. is a research assistant at Humboldt University Berlin, Chair for Public Law and Legal Philosophy (Prof. Dr. Christoph Möllers, LL.M.) and works with the Verfassungsblog.

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2 Comments



HANNAH

20 November, 2014 at 10:40 (Edit) – Reply

Just a quick addition on individual blogs in Germany: there is also “RSozBlog” by Professor Röhl, which is an individual blog project: <http://www.rsozblog.de>. But again, I would argue that RSozBlog is not really about positioning oneself in public debate.



ANDREA KIEßLING

5 December, 2014 at 10:35 (Edit) – Reply

Dear Hannah,

nice article! One more blog I know is <http://notizen.duslaw.de/> by Prof. Noack from Düsseldorf (no public law though).

Andrea

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