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Crispulo Marmolejo

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Globalization and Legal Culture. The Influence of Law & Economics' blogs in Developing Countries¹

Crispulo Marmolejo*

Abstract: This paper considers the relationship between blogs and Law and Economics from two perspectives: some aspects of the law and economics approach to blogging, and the influence of blogs in the diffusion of Law and Economics. The article explores how blogs are a modern way of low cost domestic journalism, in a context in which the increasing size of the blogosphere is a current challenge in terms of free speech and quality of the information. At the same time, blogs such as "The Volokh Conspiracy" are playing an interesting role in the American legal academia as a real instrument to analyze the papers posted in specific scholar networks such as SSRN (Social Science Research Network) or REPEC (Research Papers in Economics), as well as Selected Works and Encyclopedia of Law and Economics. Regarding to this point, some scholars have studied the relationship between the presence of legal scholars in blogs and the number of downloads in academic networks.

Keywords: Law and Economics – Blogs – Social Science Research network – books - domestic journalism

I. INTRODUCTION

It is an old desire of men and women to write their experiences on documents with different degrees of privacy. Since the private and personal diaries - which play the role of silent partner - to the increasing levels of emotions daily noticed in the so-called social networks (such as Twitter or Facebook) by which individuals express and reveal their reactions and opinions. The degrees of elaboration, extension or depth of opinions appearing on the Internet, and the treatment of certain texts, have determined the profile of these tools of dissemination and how they are used. According to Mercado -Kirkegaard (2006) millions of people worldwide maintain blogs or "internet journals", covering a

¹ A previous draft of this article was sent to ALACDE Conference 2010, El Salvador. The author exposes an updated versión.

* Universidad de Valparaíso, Law School, Chile; e-mail: crispulo.marmolejo@uv.cl

huge range of topics, being very popular in technology, marketing, media and discussion of legal issues.

This paper presents a perspective on the growing use of blogs in legal academia, specifically in programs that teach topics, conceptual framework and methods based on the Economic Analysis of Law, and how this approach of legal institutions has benefited from the use of blogs. As in all of the areas in academic activity, Internet is a requirement for conducting studies and research, and facilitating the exchange of texts and reviews. A good summary of the benefits generated by the blogging for academics has been written by Hugh McGuire in 2008 in a column for The Huffington Post²; in this text, McGuire poses that blogs are a way of spreading ideas and works that support academic activity.

In relation to the study of Law and Economics, this field has vastly proliferated in several schools of Law. Almost all universities in the United States and many European centers have developed programs of teaching and research on these matters, repeating this expansive trend towards developing countries. (Cooter&Acciarri, 2012)

Because of this context of clear relation between the Academy and the Internet, it is possible to distinguish two levels: a) A first level or primary support for the dissemination of publications; b) A second level, or secondary support for the dissemination of papers and articles. At the first level we can identify three tools: i) specialized search engines ii) repositories and; iii) networks of academic publications. At the second level or secondary support, we include blogs and social networks like twitter (a microblog system) or Facebook.

On the first level, the specialized search engines include Elsevier, Ebsco, or JSTOR, all with global coverage. On repositories, it should be noted the Encyclopedia of Law and Economics³ developed by academics from the University of Ghent; and Scholarship⁴, by University of California. As networks of academic publications, it should be noted Social Science Research Network⁵ (SSRN), Selected Works⁶ and National Bureau of Economic Research⁷ (NBER).

SSRN has been recognized because facilitates the exchange of academic work, usually before its publication in a specialized magazine or Journal. Founded in 1994, this network maintained leadership in the dissemination of papers about Economics, Finance, and Law, and although it started in United States of America, has been gradually expanding to other countries, by collecting works of scholars in Asia, Middle East and Latin America. A relevant fact in its functioning

²http://www.huffingtonpost.com/hugh-mcguire/why-academics-should-blog_b_138549.html

³<http://encyclo.findlaw.com/>

⁴<http://escholarship.org/>

⁵www.ssrn.com

⁶<http://works.bepress.com/> y <http://works.bepress.com/alacde>

⁷<http://www.nber.org>

is the development of the authors ranking (Top authors), which is determined by the number of downloads for each one and it is important to spreading these articles using blogs or social networks. Equally important is another network of academic publications that has been helpful in disseminating work on Law and Economics: Research Papers in Economics (REPEC)⁸, which operates as a platform for publication of core papers and additional sites such as IDEAS, EconPapers e INOMICS.

On the second level or secondary support for publications, should be included blogs and social networks like Twitter (a microblog system) and Facebook. An interesting case discussed in the text relates to The Volokh Conspiracy, one of the most popular blogs in the legal environment in the United States. This blog was created by Professor of Law at University of California, Los Angeles, (UCLA), and Eugene Volokh. This blog recently completed a joint venture with The Washington Post, to operate on the official website of that newspaper.

This one of the relevant examples of how the increasing number of blogs about Economics, Law, or Law and Economics has meant a greater degree of reflection not only from the perspective of social impact, or how this tool is used to spread knowledge, but also ultimately the way that has influenced teaching mechanisms. As a consequence of this, some authors have begun to talk about the new "blogger professor of Law" and their image like public intellectuals. (Kerr, 2006)

Additionally, it is possible to affirm a growing scholar interest revealed in the number of articles that examine these issues. These researches have emerged from various fields such as Sociology, Science Education, Economics and Law. One of the most illustrative work on this subject was written by professor Larry Ribstein - who died in December 2011 - entitled "From Bricks to Pajamas: The law and economics of amateur journalism." This article was published on October 2006, and Professor Ribstein explores the role of blogging as a form of personal journalism, as will be explained later. Moreover, the increasing number of legal and economics blogs presents new questions and problems that deserve to be analyzed as an important factor for projections of legal education and as an interesting challenge for developing countries.

II. WHAT IS A BLOG?

II.1. CONCEPTS

⁸<http://repec.org/>

Blogs have grown as a great tool of expression and influence oriented to diverse public. Without a doubt, blogs are strong competitors – and sometimes, providers – for mainstream media, in a wide variety of interests. Besides, blogs are instrumental to many initiatives like marketing, social and political activism. The word "blog" is the short version of "weblog" and usually denominates "websites or personals journals frequently updated with almost daily new entries in a reversed chronological order consisting of the most recent post and offer many links to related information" (Mercado-Kierkegaard, 2006)⁹

In his book "Public Intellectuals," Judge Richard Posner describes that blogs are "websites maintained by frequent individuals who make postings to their site, usually consisting of hyperlinks added with their own commentary". The composition shows a style of one-person online newspaper (for those who post daily) or magazine. (Posner, 2003)

Others scholars have said that blogs are, mostly, series of comments posted on a website in a specific direction, written by an author or authors often integrated with several comments in that blog or another (Ribstein, 2006).

The elements of this structure of texts, images, messages and data, arranged chronologically, that can be seen in a protocol or HTML browser, have the following characteristics: i) Each blog post has a title, date and a specific direction; ii) the home page always opens displaying the latest post; iii) files include the oldest post usually organized by category, with the option of allowing readers to comment; iv) the blogroll blog establishes a community with other blogs, for purposes of publication and dissemination (Winner, 2003).

The American Bar Association Journal (ABA Journal) conducts an annual ranking of the most prominent legal blogs in the United States of America¹⁰. This ranking lists them as: i) Academic Law blogs category; ii) General Law blogs category; iii) political law blogs category and; iv) Court-focused law blogs category.¹¹

II.2. AMATEUR JOURNALISM

Blogs are a direct proof of the exercise of freedom of expression. In the same manner, blogs are an expression of citizen journalism (Radsch, 2013) that meant in some recent events an important factor in the articulation of social movements demanding political opening. A blogger holds two dimensions of freedom of expression: i) "free speech" and ii) "cheap speech". In terms of free speech, blogs materialize the scope of freedoms of the First Amendment of the Constitution of

⁹According to <http://www.ebizmba.com/articles/blogson> February 2014 some of the 15 most popular blogs are The Huffington Post, TMZ, Business Insider, Gawker and others.

¹⁰<http://www.abajournal.com/blawg100>

¹¹<http://volokh.com/posts/1196285479.shtml>

the United States, or any constitution that protects freedom of speech, religion and press. However, this area of freedom, in which it is exercised blogging, has sparked criticism among some players in the mainstream media. For instance, Professor Ribstein cites a statement by Jonathan Klein, President of CNN from 2004 to 2010, saying that: "Bloggers have no checks and balances; you can not compare the limitations that face the whole media industry with a guy in pajamas sitting in her living room writing" (Ribstein, 2006). Posner (2005), however, in an article published in *The New York Times* assures that this argument, supported mostly by mainstream journalists against bloggers, is obtuse, as the blogosphere would have more checks and balances than the conventional media, only are different.

These arguments about free speech and how it is exercised by bloggers can also be analyzed from the perspective of Professor Cass Sunstein about polarization on the Internet. This author explains that the polarization occurs when "members of a deliberative group end up in a more extreme position in line with the trends established before the discussion takes place" (Sunstein & Vermeule, 2008).

Although an environment of free speech can inspire more blogs, it can not be excluded that the exercise of blogging also can lead to higher rates of polarization or social extremism, considering that in several mainstream media the incentive for posting and the comments is precisely for the most extreme statement or position. This approach is also validated by MacKenzie and Osler (2011).

For this reason, in many mainstream media the more extreme views of columnists receive more blog posts in open review. Alternatively, according to Posner (2005), "the argument that competition increases polarization assumes that individuals close to liberal positions want to read liberal newspapers; and individuals close to conservative positions want to read conservative publications. However, what is truly logical and rational, is that to be better informed, conservatives must read liberal publications and liberals should read conservative newspapers, in the same way as scientists test their hypotheses by contrasting data that can refute."

In relation to the aspect of cheap speech, Ribstein says that "in terms of capital investment, blogging requires no more than a computer, internet access, and perhaps a program such as Typepad blog. This means easy access to virtually zero-cost brokerage. However, some bloggers operate with the expectation of tangible returns and enhancing its reputation, charging for access to qualified opinions.

II.3. ECONOMIC STRUCTURE OF BLOGGING IN A GLANCE

Professor Ribstein proposes an outline of the economic structure of blogging:

- (a) Private costs of amateur journalism;
- (b) Incentives such as: i) self-expression and communication; ii) promotion; iii) returns advertising;
- (c) Social benefits, such as: i) exploit individual skills; ii) the use of Google as a pricing mechanism; iii) Bloggers as benevolent parasites; iv) Interactivity; v) lack of professional pressures or prejudices.

The argument about the benevolent parasitism is interesting because of the level of competition that bloggers generate for the media. As Posner indicates, coinciding with Ribstein, bloggers act as parasites of the mainstream media, because they copy the news and opinion generated in the mainstream media, as often as necessary. Thus, bloggers provide readers with links to articles published in newspapers, allowing the audience to read the articles without buying the newspaper. So, the real problem for the mainstream media does not mean that bloggers affect the thoroughness in reporting news, but they are free riders and this may impair the ability of conventional media to finance journalism which bloggers depend (Posner, 2005).

Some of the social costs that Ribstein points out are "noise", emotional harm, reputation and image damage, and breach of privacy. The term "noise" refers to the absence of mechanisms of "checks and balances" which increases the dissemination of information of low quality or "noisy" and how this misinformation can cause waste of resources. However, Posner dispute that the risk of misinformation is greater for bloggers for journalism or media professionals. Even if some individual bloggers can not be as careful as the professional standard of the media, they can be easily corrected by other blogs or comment on the row of posts. On this point, Ribstein makes the difference between professional media and blogs, in order to explain that the information check is horizontal between bloggers, but in the media is vertical, depending on the hierarchy in its structure.

III. HOW LAW & ECONOMICS CAN BENEFIT FROM BLOGS

III.1. APPROACH

There are several explanations for the increasing number of scholars and professors involved in blogging. On the one hand, from the perspective of the Higher Education in a general context, there is an extensive research about the reasons, incentives and goals of blogging in learning skills, included in an article

written by Mewburn & Thomson (2013). On the other hand, assuming a more specific focus, an adequate source of study of the economic blogs is the article written by McKenzie & Ozler (2011) which includes a wide research about the proliferation of economics blogs, characterized by an increasing number of economists attracting large numbers of readers. On their paper, the authors state that the links from blogs cause a striking increase in the number of abstract views and downloads of economic papers; also, blogging raises the profile and reputation of the blogger and finally, a blog is able to transform attitudes about some of the topics it covers; for this reason, blogs play an interesting role in the amplification of research papers and articles.

Furthermore, blogs fulfill a supervision function of information or its lack, in terms of “blogs play an important role in republishing and spreading information as quickly as it banned from official websites.” (Mercado-Kirkegaard, 2006).

The proliferation of legal blogs has impacted the way of practicing Law, in terms of the current developments in academia and professional skills, particularly in the United States. These ways of influence are focused in three areas: general diffusion of Law; teaching of law and citations of blogs in judicial opinions. The forementioned areas share a characteristic regarding to the American Legal system: the study and analysis of specific cases or Case Law. Among the blogs of general diffusion of law, should be noted The Wall Street Journal and its associated legal blog¹²; also, a blog devoted to the United States Supreme Court called ScotusBlog¹³; the Law Insiderblog¹⁴; China Law Blog¹⁵. In the same way, there are other groups of blogs devoted to scholar issues, or “purely scholars”, such as the Empirical Legal Studies¹⁶. Some legal scholars have involved in the public policy debate, through their opinions in legal blogs, such as Professor Stephen Bainbridge¹⁷ and Truth on the market,¹⁸ a reputed blog once related to Professor Larry Ribstein. In Latin America, the Instituto de Direito e economia do Rio Grande do Sul manages a blog called devoted to Law and Economics¹⁹.

Regarding to Law and Economics is interesting to remember a statement in order to explain the expansion of this field: “Economics provide a scientific theory to predict the effects of legal sanctions on behavior. To economists,

¹²<http://blogs.wsj.com/law>

¹³<http://www.scotusblog.com>

¹⁴<http://www.thelawinsider.com>

¹⁵<http://www.chinalawblog.com>

¹⁶<http://www.elsblog.org>

¹⁷<http://www.professorbainbridge.com>

¹⁸<http://truthonthemarket.com>

¹⁹<http://www.bloglawandconomics.org/>

sanctions look like prices, and presumably, people respond to these sanctions much as they respond to prices” (Cooter, 2000). One evidence of this wide expansion can be read on the list of most cited articles of Law Review by Shapiro & Pearce (2012)²⁰ which has three versions that reveal that most of them are articles devoted to Law and Economics.

Berman (2006) presents a review of the virtues through the use of blogs for legal education. It starts with the flexibility of current information technologies and the absence of internal bureaucracies, for spreading ideas and creating debates. This author highlights, among several advantages, the fact that blogs are important means of interdisciplinary academic collaboration between lawyers engaged in professional practice and those who develop research and teaching, as well as a better way for students to interact with academic particularly through brief comments on cases. By the way, proposing these obvious benefits, exercise of legal blogging can generate costs, like the excessive devotion of time and even addiction, through a mistaken notion about the popularity of the academic (you’re a good professor if you maintain an updated blog).

The analysis of the influence of blogs in legal contexts is recent. Caron (2006) recalls that the first academic conference about the impact of blogs in the American legal academic was conducted at Harvard Law School on April 28, 2006. In that conference there were four major topics discussed: (1) legal Blogs and academic activity in law schools; (2) the role of the Law professor blogger; (3) legal blogs and the First Amendment of the Constitution of the United States; (4) the many faces of the blogs of law professors. One of the objectives of this conference was to analyze why the blogs, being a simple means of communication, can be used to advance the legal education in the same way as articles or books can do so?

Surprisingly, some of them raised the idea that the blog was part of the essential profile of a professor of law (Caron, 2006). At the same conference, Professor Orin Kerr (2006) stated that at that time there were modest role for blogs maintained by professors of Law, because the format of the blog platform is not friendly, due to the tyranny of RCO (reverse chronological order). Even so, Kerr proved that during 2006 the most popular magazine in the United States of America (Harvard Law Review) amounted to 8000 copies per issue, and the most popular blog, the Volokh Conspiracy received approximately 25,000 visits per day, although that comparison is highly imperfect, recognized by the authors of the same assessment.

One of the most recognized legal blogs in the United States, The Volokh Conspiracy, is organized with a permanent staff of law professors who maintain

²⁰http://www.michiganlawreview.org/assets/pdfs/110/8/Shapiro_and_Pearse.pdf

the life of the blog and sometimes invite other scholars from different areas, to explain their opinions regarding various cases or problems. Like any blog, professors who write in the Volokh Conspiracy use to add links to the original sources such as *Amicus curiae*s, text of non published articles, draft papers or published articles. Moreover, in its original versión - before its recent partnership with The Washington Post on January 2014 -The Volokh Conspiracy had available a blogroll (links to other blogs) abundant and diverse, so that the possibility of seeking links with similar sites was attractive, as in most models legal blogs worldwide.

In the case of Chile, a preliminary investigation by Firmani & Garrido – advisors to the area of legal resources of the Library of National Congress - was presented at an International Meeting of Legal Blogs in Colombia in 2009. In this presentation, the authors explained the case of *Blog Legal* (in English, Legal Blog), an interactive platform developed by the Library of the National Congress of Chile, in order to expand a better understanding of the work of Congress in civil society, collecting contributions of legal experts and facilitate discussion of the legal community. Nevertheless, this investigation revealed the scarcity of legal blogs in Chile. Currently, we can acknowledge a similar situation, but an initial community of Law professors involving on social networks (Twitter and Facebook) discussing current events and posting links of legal interest.

III.2. BLOGGER PROFESSORS

As aforementioned, there are numerous articles on topics related to Law and Economics innetworks such as SSRN, REPEC or IDEAS. These networks operate as an efficient instrument of academic exchange allowing greater contact between scholars, with fluency and favoring peer review. One subject matter of interest in this paper is the analysis of the relationship between legal blogs and these networks of academic publications. So, the aim is to explore if a greater presence in academic blogs leads to a higher number of downloads of articles in academic networks. In a primary approach, we see that there is interesting information about how the data related to the maintenance of a blog and documents downloads in academic networks.

For example, we examined the case of Ohm (2007) who was invited as a guest blogger by Eugene Volokh at The Volokh Conspiracy, and the fact of appearing as a guest on this blog increased the number of downloads of his papers in the SSRN network.

This network applies at least three statistics: view abstracts, document downloads and ranking of downloads. This statistical model contributes to the formation of lists such as "Top Authors", "Top Institutions" and "Top Papers". In his article, Professor Ohm distrusts these rankings, and suggests the idea that in

many times, these measurements favors through bias to economists, corporate Law experts, intellectual property scholars and bloggers. In contrast, Professor Ohm presented a statistical model called "The Volokh effect on SSRN," which reveals increases in view of abstracts and full texts of download in about three hours (2007).

Professor Ohm's conclusion is, in his view, unsurprisingly. The scholars who are themselves bloggers seem to have a significant effect on empirically verifiable abstract views and, most importantly, in the downloads of papers in SSRN. Also, his work provides many of the Top Authors list on SSRN are prolific and permanent bloggers. (Ohm, 2007). He suggests that professors who choose to maintain a legal blog make a strategic decision in which they strongly believe. According to this research, in this paper we agree with the idea that isan strategic decision, to be a blogger professor, which in each case can be analyzed as a game theory classic scheme:

Legal Scholars	Network	No Network
Blog	Blog/Network	Blog/No Network
No Blog	No blog/ Network	No blog/No Network

Where optimum refers to B / N and NB / NN, and where NB / N and B / NN are suboptimal.

A similar conclusion was reached in the article by Ozler&McKenzie (2011) in terms that blogs improve the dissemination of working papers or journal articles; they raise the profile of their creators and they cause changes in attitudes among their readers.

Nevertheless, an usual presence of professors of Law or Economics scholars through blogs leads to achieve high public profile and prominence, as in the case of economists Steven Levitt, Paul Krugman, Greg Mankiw, Richard Posner, Gary Becker, or Professor Bainbridge. This public exhibition transforms them into what the media have called "public intellectuals." For example, the magazine Foreign Policy presents every year its famous ranking of 100 Global Public Intellectuals, in which there are several professors of law and economists. Posner (2005) analyzes the growing phenomenon of many scholars writing beyond universities and their areas of expertise or for general audiences. Although a common instrument by which these public intellectuals interact with people are blogs, an excessive exhibition can bring increasing reputational costs. Posner argues that a decline occurs in the quality of public intellectuals with increasing degree of visibility, which means that "more public, less intellectual."

III.3. FROM BLOGGER TO WRITER? FROM WRITER TO BLOGGER?

There has been a dramatical evolution in the publishing market. Regarding to the main aim of this article, the question for this part of the article is if a compilation of published posts in blogs can become a book, or if a book can become a blog, as a form to keep an updated debate. This is relevant to highlight clear evidence showing that the publishing market has undergone major changes in recent years, mainly due to the emergence of new technologies. The possibility of safe transmission of digital files and selling them at a reasonable price has changed the traditional decision to visit a bookstore to purchase a book.

The increasing orientation of AMAZON as a traditional books store to being a digital format repository of books for reading on Kindle, Ipad and other tablet readers, is a strong evidence of this phenomenon. What does this mean? A post written by Judge Posner in his joint blog with the Nobel Prize of Economics 1992 Gary S. Becker, begs the question: "Will printed books soon be obsoleted?"²¹ On this point, Posner assumes the obsolescence of media content and the way how this has migrated to digital texts. Becker and Posner assert that many individual articles and collective works are gradually migrating from the printers to the network. Nevertheless, Posner rescues some advantages of the written book in comparison to the digital book. Such as interlining, writing notes in margins, in circumstances that the reading of large pieces in a screen can be stressful for some people. However, Posner adds that is much easier to find a specific word or descriptor in an online book, besides its ease of transfer, as the weight of the e-reader is exactly the same regardless of how many books the reader downloaded, and it is also cheaper to produce. Probably, says Posner, the eBook as a new method of reading, will have much impact as the department store. Therefore, the book competes with other forms of intellectual property such as free information repositories, differing in the quality of its content.

We can categorize these processes in three models: "*blog to book*", "*book to blog*" or "*blog – book – blog*". For instance, the book that Richard Posner and Gary Becker launched on November 2009, "Uncommon Sense: Economic Insights, from Marriage to terrorism" is made on the basis of their own blog.²² (*Blog to book*). In the same way, in the introduction of his book "A Failure of Capitalism" Posner himself acknowledges that much of the text was drawn up on a whole blog posts with Gary Becker, from December 2007 (Posner, 2009).

Additionally, the book was discussed at length in a specific blog created for it, which unfortunately is now disabled. (*blog – book – blog*). There are other examples of books that being successful, keep the discussion on the issues as a

²¹ <http://www.becker-posner-blog.com/2010/02/will-printed-books-soon-be-obsolete-posner.html>

²² <http://www.becker-posner-blog.com/Previous files on :http://www.becker-posnerblog>.

blog. Freakonomics, the recognized book written by Steven Levitt and Stephen Dubner began as a book and had a very success as blog in The New York Times until 2011 (*book to blog*). Currently, the Freakonomics blog is a part of Freakonomics.com.²³ Another interesting case is the book "Nudge: Improving decisions about health, wealth and happiness" written by Cass Sunstein and Richard Thaler, considered one of the most outstanding texts in disseminating Behavioral Economics, Behavioral Law and Economics and Libertarian Paternalism.²⁴

As noted above, in all cases examined, professors of Law, Economics or Law & Economics have used blogs as an effective tool of public debate. This decision allowed a wider audience to know and discuss the main topics raised by the relationship between Economics and Law.

IV. CONCLUSION

1. This article is a brief review of a part in the available literature on blogs and their relationship with some aspects of Law and Economics.

2. The increasing number of high quality blogs can be an opportunity for more authors to apply methods and logic of Law and Economics analysis to current problems, contributing to the legal debate in Latin America.

3. The connection between Economics, Law and Public Policy can be enhanced in developing countries through the discussion of public affairs applying categories of economic analysis of law, for which specialized blogs sustained by academics can be an efficient instrument of improvement of this debate.

4. The model of collective blogs with multiple administrators, as The Volokh Conspiracy, can be interesting and attractive to Latin America and developing countries. This is a strategic decision of each faculty or group of academics that can strengthen the quality of legal research and teaching.

CONFLICT OF INTEREST

The author confirms that this article content has no conflict of interest.

²³<http://freakonomics.com/blog/>

²⁴<http://nudges.org/>

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