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### The Coffee House Effect: Books, Blogs and Legal Scholarship

This is the first conference in Australia to which I have been invited to speak, and after thoroughly congratulating myself on that achievement, I sat down some months ago to write something you all would find utterly profound and life-changing. Echoing the character, Elizabeth Bennett, \*\* from Jane Austen's Pride and Prejudice, I intended to "say something that will amaze the whole room, and be handed down to posterity with all the eclat of a proverb." Unfortunately, try as I might, I just couldn't think of anything very profound to say.

So, I'm sweating a topic and sitting at my computer one morning reading Law Librarian Blog, \*\* sipping my third fully caffeinated extra-large cup of café sumba. The telephone rings, and my hypersensitive nerves, now tremblingly alive, rocket into action. In a ridiculously exaggerated effort to pick up the receiver, my hand jerks in a motion somewhat reminiscent of a karate chop, and my coffee mug upends over my computer keyboard and onto my shirt. \*\* I was instantly and acutely uncomfortable... *but*... the convergence of coffee, blog, and librarian, led to one of those elusive (for me) Eureka moments. I had discovered my topic – or *it* had discovered *me*!

.... I want to talk to you today about some forms of current social networking media, notably law-related blogs and their derivatives, like Twitter, and the effects they are having on legal discourse and on law librarianship.

Now, I cannot describe *anything* without comparing it to something else, so I began searching for an analogy to illustrate my idea. Where to go? What to use? The long 18<sup>th</sup> century was an era I had studied in a former life. Perhaps I might find something there.

A very brief history lesson: The long 18<sup>th</sup> century lasted roughly between the Glorious Revolution of 1688\*\*\* (represented here by this image of William and Mary) to the battle of Waterloo in 1815\*\*\* – some historians say it even extended to the ascension of Victoria\*\*\* in 1837. Surely something happened in those nearly 150 years that I could relate to my topic. I looked down at my coffee-stained shirt, and what do you know? I *DID* find something from then that I believe may be illustrative of what is happening with legal discourse now.

Let me now direct your imaginations way, way back to the 17<sup>th</sup> and 18<sup>th</sup> centuries, when men were men\*\*\* in their embroidery, lace and high heels, when women took the notion of elaborate to a whole new level,\*\*\* and when coffee was king!\*\*\*

Coffee – and coffee culture – took Europe by storm. London’s first coffee-house opened in 1652. Within a couple of decades, coffee-houses had become the centers of London social life. By the mid-1700s, there were 550 coffee houses in London alone. And they propagated rapidly on the Continent and in various colonial possessions around the world as well.

Although they were pretty much the exclusive domain of men, coffee-house society was notably egalitarian. It is especially important to stress that they were centers of vigorous conversation. In coffee houses of that time, pamphlets circulated, debates roared, and satires were composed. \* The works generated in and for the coffee house clientele included printed satires, plays, and histories. Many were anonymous, fugitive and vulgar. According to Markman Ellis, coffee-houses provided a forum for exchanging views and nurturing public opinion across the social spectrum. Coffee-house literature also celebrated the role of the coffee-house itself in circulating gossip, scandal, rumour and subversion. \*\*

The birth of modern English-language publishing was closely connected with coffee-house culture. Pamphlets, newsletters, and early periodicals, such as The Tatler, \*\* and The Spectator, \*\* were distributed largely to and through coffee houses, and the writers and editors treated the goings-on at coffee houses as part of their subject matter. The modern short story has its roots in the unsigned, semi-disguised non-fiction accounts in these publications. That's right: "The short story," which today is considered a super-specialized literary form, is a direct descendent of the 17th and 18th century equivalent of *Page Six*, *People Magazine*, and *The National Enquirer* in the US, or, *Famous* and *New Idea* Magazines here in Australia. \*\*

The coffee-house was a major springboard for the development of modern British culture. The vigor of British literature, art, politics, industry and finance -- all became possible and took their initial shape and trajectory in the unique

environment found in coffee-houses. A number of venerable institutions such as Lloyd's of London even began their histories as coffee houses. \*\*

As you can see, coffee houses were a **BIG DEAL** back in the 18<sup>th</sup> century. So? What does that have to do with libraries or blogs or anything else? Stay with me. Coffee houses and the culture they fomented have a close connection with libraries. Among other factors, the spur to literary production in 18<sup>th</sup> century coffee houses helped give rise to the notion of the circulating library, as pamphlets and other literature were passed around, “circulated” as it were, within a coffee house’s clientele.

Along with the growth of the middle classes in those times, there were concurrent improvements in paper production and printing methods. Literacy rates also expanded greatly during the long 18<sup>th</sup> century, which helped propel a large spike in demand for printed material, including newer literary forms such as the novel. There was a growth in university attendance, and the establishment of national libraries, as well as new colleges and universities, all of which established their own libraries. It is no coincidence that the 17<sup>th</sup> and 18<sup>th</sup> centuries are known by some historians of libraries as “the golden age of libraries.” For example, the Harvard library, the Bodlean, and National Libraries in Madrid, Lisbon and St. Petersburg either were established or greatly expanded during this era.

The vibrant intellectual milieu of which coffee houses were a part help foment a great deal of broad social change. This engine of change is what I call **the coffee house effect**. It has 4 basic features:

1. vigorous and free-ranging conversation \*\*

2. real-time discussions of topics\*\*
3. an open and egalitarian attitude to participants\*\*
4. relatively brief publications/entries/posts\*\*

Moving to the present day, one sees conventional print-based forms of academic authority slowly making way for other forms of scholarly discourse. More law students and faculty members are finding their voices online and staking out intellectual arguments and territories. Junior and senior partners in firms are establishing online reputations for expertise in various areas of the law. Blogs are the focus of much of this discourse. In *general*, law blogs or “blawgs”\*\* are arguably the locus for the most rapid and most interesting developments in legal discourse.

Many blogs provide commentary or news on a particular subject; others function as more personal online diaries. Although they can vary a great deal, a typical blog combines text, images, and links to other blogs, web pages, and other media related to its topic. The ability for readers to leave comments in an interactive format is a fundamental part of many blogs, and is perhaps the most notable feature of the phenomena that affects legal discourse.

Blogs are an example of a cheap, quick, unmediated (or minimally mediated), open access, short form of discourse. If measured by proliferation numbers, they are probably the first successful web-native mode of electronic publishing.

Technorati,\*\* a blog search engine, currently tracks in the neighborhood of 400 million “active” English language blogs. Around the world, thousands of new blogs are created and appear every day. There are tens of thousands of blogs

specifically focused on some aspect of law, including legal education. Here is a fairly well-known blawg produced by Jack Balkin, a faculty member at Yale Law School. \*\*

But these law blog sites' very proliferation has raised issues about the *quality* of blog postings. Opinions expressed about the value of blogs as academic work hint that even on the best academic blogs, perhaps only one in 100 posts meets the commonly accepted criteria of "scholarship" (i.e. researched, thoughtful, employing a specialized vocabulary, and so on). \*\* Basically, blogs are a great, big, rowdy, unruly heap of buzzing conversation. They are quite simply a new, virtual form of the eighteenth century coffee house.

The growing number of law-related blogs gives rise to some important questions about their place in legal discourse:

- Where do blogs fit within the existing array of "acceptable" forms of professional communication?
- How might they be synergistic with other academic work, such as teaching, writing articles for print journals, etc.?
- Do they *merely* build community and provide feedback for early-stage ideas?
- How is their authority established and maintained?
- Is a blog, or "conversation strand" citable? In a judicial opinion? By other legal scholars? Should it be? (note: blogs have been cited in US Supreme Court decisions, beginning...modestly...in 2005 in a footnote in the criminal case, US v. Booker)

- What are the implications of blogs for the current system of promotion and tenure in the legal academy? In law firms?
- What are the work product or proprietary interests in blogs hosted by law firms? What about when posters or participants originate from outside the firm?
- What changes might be in store for institutions that currently derive a huge amount of status and other benefits from the current system of print-based legal information?

At present, there are few – or only partial – answers for most of these questions, but I do believe these issues will become more and more pressing as the phenomenon of social networking in legal contexts continues to grow.

### **What do academic blogs suggest about the future of legal discourse?**

To understand the changes taking place in legal discourse, we need to first look at our present print-based system. Legal scholarship is based almost exclusively on the production of articles for print-based law journals or print treatises. \* The pace of legal scholarship has been necessarily subject to the limits of print editing and publishing schedules. An article is published in a law journal; it is read and studied (largely as a solitary activity), and if it is a particularly hot topic, another scholar or two may publish a response, produced at the “dizzying pace” of a new installment every 9 to 12 months. For less urgent topics, it may take *years* to produce something resembling the give and take of a discussion.

The book, reporter, or law journal represents authority, permanence, limits, and physicality – as compared to the electronic realm’s unreliability, mutability, boundlessness, virtual-ness. Among the legal community, blogs have enabled a kind of conference-without-walls. Blogs are both process and product. New ideas and new texts can be discussed in real time, and the discussion itself – rather than a finished document – becomes the scholarly activity. Process over product. Ideas are exchanged and texts are circulated, evaluated, and critiqued at a much quicker pace than is possible in print media.\* By re-invigorating scholarly and other forms of legal discourse among peers, blogs have helped enable a return to the coffee house model of real time (or nearly real time) textual circulation. It’s just done on a computer, rather than in a rowdy 18<sup>th</sup> century coffee house.

In legal education contexts, blogging heralds the advent of three traits to the future of legal scholarship:

1. the re-emergence of the short form,
2. the eroding of exclusive rights over a product (i.e. copyright), and
3. the trend away from mediated legal scholarship.

But this coffee house model still largely revolves around the contemporary equivalent of newspaper and pamphlet publishing, rather than the longer, more deliberative form of the book. What this means is that we should remember the way books have for many hundreds of years served as objects for discussion.\*\*

And that is the model or paradigm upon which blogging is built.

## **What effect will academic blogs have on the future of law libraries or law librarianship?**

Librarians understand blogs. We get it. Many of us are even bloggers or tweeters ourselves. I also think our profession understands that literary and discursive phenomena like the coffee house effect caused by blogs will have implications for law libraries. But, up to this point, the law library profession has been mostly distracted by fighting a valiant rear-guard action related to the rapidly rising\*\* prices of print materials, copyright and collection development implications associated with proprietary databases, and the effects of mergers of legal publishing conglomerates.\*\* Most law librarians simply have not had the time to deeply ponder the evolution and trajectories of legal discourse.

I feel that library administrators in particular should do more than react to legal publication pricing issues; we should continuously update our understanding of the legal communities of scholars and practitioners we work alongside and serve. As law librarians work with legal scholars, jurists and practitioners, it becomes imperative that we know how our patrons work. That information should be used to help shape library collections and services in ways that support the process of legal scholarship and practice. We do this in part by producing or facilitating, when appropriate,

- faculty profiles,
- journal profiles,
- RSS feeds,
- blog hosting, twitter accounts, or wikis,

- collaborating closely with university libraries or judicial or firm branches to provide more and better interdisciplinary electronic materials,
- streamlining public and technical services functions to optimize work flow,
- consider changing library space to better facilitate collaborative work,
- and, joining in ongoing blog or twitter discussions.

This will also have the effect of integrating the library staff more closely into the community of the law school, court, or law firm in which they serve.

As we look at how law libraries are organized to support change, our understanding of what these changes are is vitally important. While our old print library system was not perfect, we law librarians knew who we were and what our job was. Our patrons came to us to find and to use the books and journals they needed. \*\* Our responsibility was to acquire, catalog, and preserve those materials for all time and to make them accessible. The physical arrangements in our libraries reflected these purposes. In short, libraries were the hubs around which legal intellectual life revolved. Now, we find that law students, legal scholars and other legal professionals are creating complex online communities where they share research, conversation and ideas, and where they publish. How will this affect the law library?

**I believe that the law library will become much more than a mere repository or archive, but a full component of a communications circuit, one that actively facilitates discourse \*\* rather than enforces silence. \*\*** The pace of change is dictated in large part by the pace of discourse. Blogs and their like are having the effect of turbo-charging legal discourse at every stage - this will inevitably lead to

an increase in the pace of change in the legal professions, as it will in law librarianship.

We librarians know which way the wind blows. We have picked up on the trend toward the coffee house effect that creates community and circulates ideas, and we are bringing it into the library. This takes various forms. Rutgers law library in New Jersey, for example, takes a very literal interpretation of the coffee house concept. \*\*

Other libraries are trying to create more interaction among their patrons; for example, the Yale Law library hosts a Faculty Scholarship lecture series and has a monthly “movie night.” These events are designed to help Yale’s patrons interact not just with the library’s material, but with one another. My own library at Emory Law School has converted underused space into more group study rooms. From unused closets or alcoves that formerly housed copy machines, these spaces have become some of the most requested and used real estate in the library.

One theory behind making such changes is that today’s computer-centric patrons will be more likely to use the library in traditional ways as well — for instance, to feel comfortable approaching a research librarian for help with a project. And there are myriad other forms of this kind of stepped-up interaction taking place in law libraries everywhere. **I am not suggesting that the only reason for these efforts is to get people to use the library in *traditional* ways. Instead, I think what may be even more important is getting patrons to interact with and help *each other*. This sort of coffee house effect on libraries – over time – may help**

**transform librarians into something more akin to a mentor for a community than a mere “helper” to an isolated patron.**

## CONCLUSION

Preparing this talk – particularly reflecting on the phenomenon of coffee houses – took me back to my days as a graduate student in English Literature at the University of Illinois. My dissertation focused on 18<sup>th</sup> century British fiction. I wrote about fictional accounts of several male stereotypes, incidentally often found in London coffee houses. \*\* Those fictional accounts helped re-align the contours of acceptable male behavior with the values of the burgeoning middle class. The literature that circulated in 18<sup>th</sup> century coffee houses – and the varied and colorful characters that could be found in coffee houses – helped propel enormous change in 18<sup>th</sup> century culture. Similarly, today’s rapidly evolving blogging culture is helping to propel changes in legal discourse and in the very culture or cultures of the law. I believe this is - and will continue to – propel changes in law librarianship as well.

In this talk, I have focused on changes in legal discourse being created by law blogs. I compare the blogosphere – or realm and culture where blogging happens – to the environment of the 18<sup>th</sup> century English coffee house. So far, my research of this topic has raised more questions than it has provided answers, but the evolving nature of legal discourse is without a doubt a crucial area to consider for both the legal community and law librarians alike.