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Comparative Research in Law & Political Economy

CLPE RESEARCH PAPER 42/2009

Danielle Allen & Bernadette Maheandiran

‘You Don’t Have to Speak German to Work on the German Law Journal’: Reflections on Being a Student Editor While Being a Law Student

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Also Available at <http://www.germanlawjournal.com>

German Law Journal

‘You Don’t Have to Speak German to Work on the German Law Journal’: Reflections on Being
a Student Editor While Being a Law Student
Danielle Allen & Bernadette Maheandiran

10 German Law Journal 615 (2009), available at:
<http://www.germanlawjournal.com/article.php?id=1144>

This article was originally published in Volume 10, Number 7 of the German Law Journal as part of the journal’s 10th anniversary symposium on “Transnationalizing Legal Education” edited by Nadia Chiesa, Adam de Luca, and Bernadette Maheandiran.

Danielle Allen & Bernadette Maheandiran

**‘YOU DON’T HAVE TO SPEAK GERMAN TO WORK ON THE GERMAN LAW
JOURNAL’: REFLECTIONS ON BEING A STUDENT EDITOR WHILE BEING A LAW
STUDENT**

Abstract: By taking a backstage look at our experiences as student editors on the German Law Journal, we reflect on what being a student editor can add to a legal education. In order to rebut criticisms of student participation on law journals, we first argue that being a student editor provides students with invaluable skills and experiences that cannot be replicated in the classroom. Working on a journal not only allows students to refine their editing and research skills, but compels students to connect the technical knowledge learned in class with an understanding of the complexities and legacy of law as a project and a discipline. Secondly, we canvass the different forms of journal organization and student participation on law journals in different countries and argue that critics of student participation have ignored this wide spectrum. We conclude that just as the German Law Journal benefits from the involvement of English speaking student editors, new to European and international law, legal publications are far richer and more insightful the more they involve of fresh minds.

Keywords: Legal Education

JEL classification: K10, K40

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‘You Don’t Have to Speak German to Work on the *German Law Journal*’: Reflections on the Value of Being a Student Editor While Being a Law Student

*By Danielle Allen & Bernadette Maheandiran**

Explaining the work of the *German Law Journal*¹ has become almost second nature to student editors; at one point in our legal careers we all have to justify to a colleague, a future employer, a parent, or potential student editor recruits the existence of a journal that, based on name alone, appears to centre on a civil law country in Europe at a North American law school that teaches the common law. Most of us have some version of this statement ready:

The *German Law Journal* is a monthly, English-language, peer-reviewed, online law journal that focuses on the recent developments in German, European and International Law. The name reflects the Journal’s original purpose: to create a monthly English legal periodical that would make German constitutional jurisprudence more accessible to the non-German speaking world. While the mandate of the Journal has grown over time, the name, however, has stuck.

This is often followed by an obligatory chuckle after we are asked the inevitable follow-up question: ‘so you don’t have to speak German to work on the *German Law Journal*?’

It comes as a surprise to many people unfamiliar with the Journal that the majority of our student editors does not speak German, have little connection with Germany and, in fact, work from locations an ocean away from Europe. It is hard to explain without an obvious sense of irony that the Journal relies on a solid contingent of native English speakers to edit the work of countless international contributors who may be writing in their second, third, or even fourth language. But this is just one example of the difficulty in trying to communicate what it means to be a student editor on the *German Law Journal*.

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¹ Or alternatively, the ‘Journal’ or ‘GLJ’ from this point forward.

What is even more difficult, and even more important to explain to colleagues, future employers, parents - but in particular - potential student editors, current law professors and aspiring academics, is the skills and exposure to material the Journal has given us, and how work on the Journal has changed the way we understand and approach law. While it is generally enough for a colleague and future employer to appreciate the obvious skills a student gains during editorial work – editing skills, language skills, footnoting skills, teamwork skills etc. - in many ways, it is the intangible and hard to categorize experiences that really set journal work apart from what it is possible to learn in the classroom, and why student participation on journals is so important.

There has been many a criticism levelled at student participation on law journals, targeting everything from the way students are admitted to the staff of a law journal,² to the bias they show towards submissions,³ to the conservative and homogenous journal layout and format they perpetuate,⁴ to the inexperience students have with law, which has been likened to letting inmates run an asylum.⁵ As part of the *German Law Journal's* special 10th anniversary issue on the *Transnationalization of Legal Education*, we want to rebut these criticisms with a closer look at what being a student editor while being a law student means from a student's perspective. The first section of this essay will be a candid and self-reflective exploration of how student editors engage with the *German Law Journal*, paying special attention to the intangible and often little discussed ways work on the Journal has complemented and pushed our legal analysis and thereby our legal education. We then situate the *German Law Journal* with the variety of forms and formats student participation on a legal publications take, noting the huge spectrum of levels of participation and degrees of student responsibility. Ultimately, despite criticisms of student involvement on journals, we argue that regardless of the kind of journal a student participates in, doing journal work during one's legal education provides a unique exposure and skill development that greatly complements classroom instruction and that, most importantly, cannot easily be replicated elsewhere.

A. Backstage at the *German Law Journal*

The *German Law Journal* began as a bi-monthly online publication, the brainchild of the current Co-Editors-in-Chief Peer Zumbansen and Russell Miller, who met as clerks at the

² Criticisms of law reviews are well canvassed in Bernard J. Hibbitts, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 NEW YORK UNIVERSITY LAW REVIEW (N.Y.U.L. REV.) 615, 635 (1996).

³ *Id.* at 641.

⁴ *Id.* at 633.

⁵ *Law Reviews: Do the Inmates Run the Asylum?*, STANFORD UNIVERSITY, Accessible at: <http://news.stanford.edu/pr/95/950228Arc5352.html> >, last viewed 8 May 2009.

Federal Constitutional Court of Germany. Over the next ten years, as the Journal's mandate grew, so did the number of members of the editorial board, recruited from among doctoral students in several countries with unique expertise in a range of domestic and comparative law fields and the willingness to collaborate in the fast production schedule of the Journal (mostly through email). Eventually complementing the editors were the student editors at the law schools in North America where the Co-Editors-in-Chief began to teach. These law schools had a large pool of English-speaking law students who could lend their language and editorial skills to improve and increase the scope of the Journal's production. At the same time, involvement on the Journal as student editors greatly complemented each law school's curriculum, and offered an additional extra-curricular activity where students could gain exposure to German, European and international law and develop the practical skills involved in putting a legal publication together. Currently, there are two teams of North American law students, one at Osgoode Hall Law School in Toronto, Ontario, Canada and one at Washington and Lee University School of Law in Lexington, Virginia, U.S.A. Each team alternates in assuming responsibility for editing and publishing the (now) monthly issue of the Journal.⁶

Placing the *German Law Journal* organization structure into the traditional flow chart is challenging. At the top, things are pretty straightforward and intuitive. Following the top level of Co-Editors-in-Chief are the Journal's editors, who are comprised of lecturers and professors from across Europe and North America. Together, the Editors and Editors-in-Chief collectively steer the direction of the Journal, solicit, receive and review articles submitted for publication, and decide which ones should be published. Below this, there are the two teams of student editors, one in Canada and one in the U.S., each one headed up by one of the Co-Editors-in-Chief. It is at the level of the student editors that a hierarchical and static view of the Journal as an organization becomes inadequate at describing how the journal works, and what the role of a student editor plays. At Osgoode, there has traditionally been less hierarchy and more flexibility in the way the student editorial team is run. This largely reflects the fact that the student editorial board is conceptualised as a unique learning experience, designed to be both responsive to student input and to the strengths and weaknesses of who is on the team at that exact moment, while also safeguarding an efficient workflow for a journal that deals with significantly more submissions than it publishes. In addition to the regular editorial positions, the Osgoode team comprises of a number of ad-hoc committee groups chaired by various students that are formed to research, plan, and coordinate symposia, special issues, and student-initiated projects based on student interest. The only tried and true division between student editors is the split between junior editors, who are students in their first year working on the Journal, and senior editors, who are in their second or third year with the Journal.

⁶ It should be noted that between the 2002/03 – 2007/08 academic years, the U.S. student editorial team was based at the University of Idaho College of Law, located in Moscow, Idaho, U.S.A.

Having now introduced the Journal, this section will give a behind-the-scenes glimpse into a student editor's role and experience on the Journal, focusing on our experience at Osgoode Hall Law School. First we explain the student editors' responsibilities. Then we discuss the soft skills and experiences that being on the Journal provides a student editor, and how it enhances and adds a transnational and critical element to our legal education in ways that are not easily observable by someone outside the journal experience. From the outset, it is important to acknowledge that this is just one perspective, and that ours may not represent what other students have experienced on the Journal. Our perspective will certainly be limited to the unique nature of how the *German Law Journal* is structured as a hybrid between student and faculty-run, and the unique corporate personality it assumes each year depending on the particular group of students.

I. The Fine Details: Please Have Your Style Guides Ready

The weekly student editorial team meetings often resemble something between academic seminar and business meeting, with each week's agenda dependent on where we are in the year, what events are coming up, and what articles we have just published. Like the Journal itself, the production of the Journal takes place online without a physical office space, so our meetings are held in a seminar room at the law school. Our first meetings of the year are typically preoccupied with training new editors⁷ by helping them to get a grasp of the editorial process and gaining some familiarity with German and European law and politics. The senior editors run a series of workshops on how to properly format and edit an article for publication. While all the Journal articles are peer-reviewed by the editorial board, the student editors are responsible for converting the document into the specified format so that it can be properly published in both PDF and HTML, as well as correcting grammar, making minor changes to organization and English language edits. A vital part of the editing process also involves student editors bringing the footnotes into the Journal style, which is similar but not identical to the *Harvard Bluebook of Legal Citations*. Interestingly, it is only the first month of Journal meetings that is devoted to the editorial and footnoting skills, the very skills usually assumed to make up the bulk of what a student on a law review usually learns as a student editor.

⁷ The process of joining the Journal as a student editor at Osgoode has changed dramatically in the last year. In the 2006/07 and 2007/08 academic years, any student who was interested in joining simply had to attend the first meeting, sign up, and keep on coming. This meant that first meeting of the year was generally packed full of students interested in hearing more about the Journal, and that slowly over the next month numbers would shrink and students who enjoyed the meetings stayed on. With increased interest in the Journal, this year was the first year that required an application. Students were asked to submit a resume and cover letter explaining why they were interested in working on the Journal and what skills and experience they could bring with them. These applications are evaluated by the Osgoode Co-Editor-in-Chief, and Student Managing Editor, who look not at grades but rather at experience, interest, and attention to detail in the application. It would be accurate to observe that while the Journal remains more flexible and fluctuating than many similar publications, as its numbers grow participation in the Journal is becoming more formalized.

Generally, after the initial workshops by the senior editors, the majority of the editing skills of a junior editor will be gained through hands-on experience. The first assignment they will receive is to take an article in the form the contributor submitted it, edit it, and prepare it for publication. The junior editor is assigned a senior editor to review their work and give them feedback on how they have progressed before the junior editor sends the edits back to the author for approval. Regardless of how well an article is written, organized, and presented (though we often have observed that one learns the most when trying to improve a weaker article rather than a strong one), editing someone else's work gives a student editor a unique view into how different authors organize their thoughts and approach writing, and how some of these approaches can be understood as being more effective than others. This in turn hopefully improves the student editor's own writing style, and helps bolster the student's confidence in his or her own writing - useful when at the end of a first year as a junior editor, students are asked to write a book review or article for publication in order to qualify as senior editors and (if they wish) to take the journal for academic credit.

While articles are being assigned to editors to edit individually on their own time, student editorial meetings continue. The next few meetings provide an introduction to German law and politics, the European Union, and civil law more generally while the majority of the remaining Journal meetings focus on a number of different topics. Usually there is a seminar on comparative law, international law, and discussions about specific topics and articles we have just published. We also may, as a team, along with the Editor-in-Chief, substantively edit a contribution instead of it being submitted for the typical peer review process. One of the best meetings in our collective memory was where we went through an article and identified gaps and potential improvements. Although at times there was hesitation to make additions to the scholar's work, it gave us the ability to look constructively at a piece as it stands alone and step beyond understanding it as the work of an anonymous author.

As junior editors progress and become more comfortable editing pieces and communicating with authors, they are also expected to get more involved with the soft work already taking place on the Journal, such as working on one of the various ad-hoc committees (for example book review, style guide, fundraising) or helping research, plan and curate a special issue or symposium. This year the Journal, in celebration of its 10th anniversary, is planning a number of special issues that have been researched and planned by students (including this very issue on the *Transnationalization of Legal Education*). This is a decidedly creative process that allows student editors to gain knowledge on an evolving, comprehensive topic of interest and to make inroads into this newly discovered territory by formulating paper topics, structuring a table of contents and developing the narrative of the special issue. The preparation of a special issue allows the student editors to research and to identify authors on the cutting edge of a particular field and to solicit submissions. This involves the student editor engaging in negotiations, persuasions and gentle coercions with an author in order to align the editors' vision of how a particular

article would contribute to the special issue with the author's particular interest and capacity to contribute such a desired piece at that time.

II. Beyond the Footnotes, Beyond the Classroom

All that is solid melts into air, you learned, but your four course books weigh fifteen pounds.⁸

The ability to edit, to footnote or write an article, to organize a symposium or to research a special issue are the more obvious skills gained by working on the Journal. But let's face it, no student ever burst through the doors of a law journal and declared that all they wish to do is footnote editing (if they have, please pass along their contact information to us!). Further, if conference organization or research skills are the only things to be gained by working on the Journal, there are numerous other activities at law school that would provide students with a similar skill set. There is something about the Journal and law journals in general that has added more than just those hard skills to the education of its student editors.⁹ In order to decipher what that something is we shall try to describe the psyche of a law student.

The transition from undergraduate study into law school is simultaneously the most powerful and the most devastating adjustment for many law students, ourselves included. There is the pride that is associated with admission into a demanding institution where you will be trained to be dexterous, at ease, and precise within a highly technical set of rules and method of reasoning. At the same time, there is the anguish and confusion of having all of what you thought you knew (be it about the world, or about how to approach knowledge and concepts) be swept out from underneath you, and being reduced to a state much like a kindergarten student who must first begin with the ABC's of legal reasoning and legal principles before attempting to comment on or to grapple with even the simplest of everyday legal problems. Particularly in first year, what one student learned in their undergraduate post-colonial literature class seems to be about as relevant to legal studies as what another learned in introduction to computer programming. There are more options in the upper year program, but that – in first year – seems light years away. The most disorienting part of this process is that the emphasis on learning the technical and

⁸ DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM*, 2nd Edition, (1995) at 3. For an interesting comment on the importance of Duncan Kennedy's scholarship on legal education in the German context, and how trends have changed since the publication of Kennedy's little red book, see Victor Winkler, *Review Essay - Langdell's Prodigal Grandsons: On Duncan Kennedy's Critique of American Legal Education* 7 *GERMAN LAW JOURNAL* (GLJ) 717 (2006), Accessible at: <<http://www.germanlawjournal.com/article.php?id=753>>, last viewed 27 May 2009.

⁹ It should be noted that the prestige of working on a law journal differs greatly between Canada and the U.S. In Canada, generally, participating on a journal is open to more students, and is not as determinative of employment opportunities in practice as it is in the U.S.

cognitive skills through rigorous case law and statute review in class often leaves no space to work towards a big picture understanding of what function law is trying to provide in a society and why legal models and legal principles have taken various forms and directions. This is not to say that policy or historical backgrounds are not addressed to varying degrees in the classroom, but there is no doubt that comprehending black-letter law takes priority and in many ways overshadows inquiry into why these rules are important. Carrying around fifteen pounds of textbooks everyday and competing with a classroom full of bright, well-educated and well-spoken peers to fully comprehend and apply detailed yet abstract principles, it's hard not to crave a genuine discussion of the political, cultural and historic context - or the 'why' - behind a legal framework.

GLJ editorial meetings often provided a refuge from the disorienting, disheartening, and generally overwhelming experience of the strict case and statute based teaching method in the classroom (not to mention an escape from the ever-present awareness of eventual evaluation against your peers). At GLJ meetings we were permitted, encouraged, and sometimes even ordered (!) to read legal commentary and academic analyses of the larger processes and issues at play behind and beyond cases, codes, and statutes, and to discuss and share what we thought about them. Moreover (and this is a unique feature to the Journal), as a journal dedicated to developments in German, European and International law, the types of articles and case comments we read pushed us to not only contemplate the material we covered in class in light of larger political and historical contexts, but also to understand the material as geographically and culturally specific.

For instance, at one memorable meeting in late 2006 we were all asked to have read three articles from our then hot-off-the-press special issue celebrating the republication of Martti Koskenniemi's seminal book *From Apology to Utopia: The Structure of International Legal Argument*.¹⁰ David Kennedy's "The Last Treatise: Project and Person (Reflections on Martti Koskenniemi's *From Apology to Utopia*),"¹¹ Balakrishnan Rajagopal's "Martti Koskenniemi's *From Apology to Utopia*: a Reflection,"¹² and Martti Koskenniemi's response to the articles in the issue.¹³ Professor Zumbansen (who heads the Osgoode student team) arrived to the meeting with a stack of all available copies of the book from the law library and chided us, for he took this as an 'obvious' indication that no one had borrowed the

¹⁰ 2nd Edition, (2006), originally published in 1989.

¹¹ David Kennedy, *The Last Treatise: Project and Person (Reflections on Martti Koskenniemi's From Apology to Utopia)*, 7 GERMAN LAW JOURNAL (GLJ) 982 (2006). Accessible at: <<http://www.germanlawjournal.com/article.php?id=772>>, last viewed 15 May 2009.

¹² Balakrishnan Rajagopal, *Martti Koskenniemi's From Apology to Utopia: a Reflection*, 7 GERMAN LAW JOURNAL (GLJ) 1089 (2006). Accessible at: <<http://www.germanlawjournal.com/article.php?id=779>>, last viewed 15 May 2009.

¹³ Martti Koskenniemi, *A Response*, 7 GERMAN LAW JOURNAL (GLJ) 1103 (2006). Accessible at: <<http://www.germanlawjournal.com/article.php?id=781>>, last viewed 15 May 2009.

actual book to read before the meeting. It was clear among us junior editors (then only four months into law school) that this was our first time reading Koskenniemi, Kennedy, or Rajagopal, let alone a treatise on international legal reasoning. In the classic Socratic style of GLJ meetings – filled with awkward silences at first and then progressing to more free flowing discussion - we started by slowly discussing each piece individually. In particular, we were asked to think about the author's background and the different perspectives that came across, be it geographic (European, South Asian, or North American), professional (practitioner, academic, diplomat, law professor), temporal (what were the formative legal events for each author?), or stylistic (self-reflective, theoretical, anecdotal). Step-by-step we began discussing how each piece related to the other, and what consideration of all three pieces in conversation said about the field of international law and the changes since the first publication of Koskenniemi's book. It forced us to reflect upon and articulate the tension created when one person approaches a set of foreign or international legal structures from a distinct and culturally specific legal education and background. The strength of this position flows from the ability make observations about a situation without being overly influenced or clouded by unspoken assumptions rooted in the situation. Often a certain degree of unfamiliarity can make room for novel or illuminating commentary. The weakness, of course, is that try as one might, it is impossible to overcome or to shed our own limits of perspective and conceptual understandings, and often observations will import their own assumptions and methodologies. In short, the exercise asked us to engage with law in a comparative and deconstructivist manner, yet without undermining the entire project of law or regulation but rather adding a new appreciation for its legacy of complexity and struggle.

And this is just one example among countless others to demonstrate how participation in the Journal added a comparative, international, and sub-textual element to our legal education, and acted as a small but important provocation to the weighty authority implicitly pronounced by the domestic sources of law we learned in the classroom. Reading, editing, and discussing articles about how a similar crime is punished and prosecuted in one State compared to another, or how private law and public law are divided in civil law and common law systems, and then reflecting on how this compares to the domestic institutions and procedure we learned in a class made it more obvious that a certain legal solution is but one choice among many in distributing obligations and entitlements between different parties and actors. Additionally, these discussions highlighted the fact that the rules and law we were being taught, while presented as rather rigid and unquestionable principles in the classroom, were neither static nor universal.¹⁴ To gladly accept this unsettling rupture so early in an already overwhelming time in a law

¹⁴ These discussions were often followed up by an email with references to literature on the topic for those who wanted to read more. In this case, see Günter Frankenberg, *Critical Comparisons: Re-thinking Comparative Law*, 26 HARVARD INTERNATIONAL LAW JOURNAL (HARV. INT'L L.J.) 411-455 (1985), and Peer Zumbansen, *Comparative Law's Coming of Age? Twenty Years after 'Critical Comparisons'*, 6 GERMAN LAW JOURNAL (GLJ) 1073-1084 (2005), Accessible at: <<http://www.germanlawjournal.com/article.php?id=614>>, last viewed 21 May 2009.

student's life may seem like a tall order, but the work on the Journal in many ways satisfied a desire to have a space to talk about law in ways that would seem downright indulgent in a first year contracts, torts, or civil procedure class. Yet, paradoxically, the provision of this space to reflect and discuss reinforced the importance of learning and mastering the detailed and technical rules we were presented with in class, and accepting that these building blocks were essential to our education - the best articles we read demonstrated that to really make an accurate and compelling argument about the big picture required a thorough understanding of the legal technicalities to begin with.

Work on the Journal not only exposed us to authors and subject matters that we had never encountered before, but it allowed us to develop hard and fast editing, citation, communication and team-work skills that went hand-in-hand with the practical requirements of journal publication and distribution. In this way, the Journal provided a rather unusual setting where it was necessary to jump back and forth between ideas, and the practical realities and skills required to present and contrast these ideas in a written publication. At the tips of everyone's tongues at a meeting were not only comments about the content of the Journal, but also the style, manner of presentation, juxtaposition of contrary interpretations, and, of course, the correct way to footnote a case or what size font the article title should be in. Student-initiated digressions into how *The New Yorker* was run during the early Harold Ross years, bets on the number of cases considered by the Supreme Court of Canada in a year versus the Federal Constitutional Court of Germany,¹⁵ or how a novel we read last summer (for who has time to read novels during the semester!) or a film we saw last weekend is relevant to the discussion were equally as welcome as practical tips that made editing more straight forward, or smart observations about an author's thesis. Further, since there is a mix of first, second and third year students who were generally active in other specialized programs in the school (such as working at one of the two legal clinics, going on exchange, or participating in an aboriginal or criminal intensive program), the wealth of experiences brought into both the practical and theoretical problem-solving tasks, and connections made between seemingly disparate skill-sets made our meetings even more collaborative and instructional. As such, working on the Journal carried our knowledge of and appreciation for law and legal argument beyond proper citation and footnotes, and beyond the well-worn expectations of a law student in the classroom.

¹⁵ Answer: on average the Supreme Court of Canada delivers 80 decisions per year and considers approximately 600 applications for leave to appeal, the Federal Constitutional Court of Germany considers 5 000 complaints annually. See The Supreme Court of Canada, *Answers for Teachers*, Accessible at: <<http://www.scc-csc.gc.ca/education/kit-trousse/questions/ans-rep-eng.asp>>, last viewed 15 May 2009; The Federal Constitutional Court, *Organization*, Accessible at: <<http://www.bundesverfassungsgericht.de/en/organization/organization.html>>, last viewed 15 May 2009.

B. Centre Stage in a Discussion over the Value of Student Participation in Law Journals

After a backstage look into how the *German Law Journal* runs and a discussion of the skills and exposure it can give a law student that go well beyond what they are taught in the classroom, the question that now moves to centre stage is of what value to a legal education is student participation in law journals? With this in mind, we now step back and connect what a student editor's experience on the Journal in particular can tell us about the value of student participation in law journals more generally.

I. Dual Citizenship: Locating the German Law Journal

Being a student editor on the *German Law Journal* is a rather unique experience. On the one hand, as described above, the Journal is headed and guided by faculty, and decisions on what articles to publish and what directions the Journal will take rests squarely with them. On the other hand, student editors are heavily encouraged to take on responsibility for planning special issues and soliciting articles for these issues. In this way, the Journal is a hybrid of faculty and student initiatives, making it hard to definitively categorize as 100 per cent faculty or 100 per cent student-run. In addition, the Journal meetings are run as quasi-academic seminars, where we discuss articles and ideas while also addressing the regular business of the Journal. While the *German Law Journal* resembles the experiences of other law journals, it is certainly in a category of its own. It is therefore important to situate our journal experience within the context of other student editor experiences both at Osgoode and internationally in order to better pinpoint the value of student participation in law journals. It should be noted from the outset that our research is unfortunately limited by the fact that there are very few 'backstage' details of how other journals conduct their business. Besides the occasional 'history of' article written by past and current staff members,¹⁶ most of the information about how journals are run is only marginally addressed on publication websites. Further, some journal publications do not have information readily accessible on the Internet.

The GLJ is one of three law journals that publish out of Osgoode Hall Law School. The oldest running journal at Osgoode is the *Osgoode Hall Law Journal* (OHLJ).¹⁷ Founded in 1958, the OHLJ is the most traditional law review at Osgoode. Released quarterly, it publishes academic articles, case commentary, book reviews and special issues in a hard copy format. It is headed by a faculty Editor-in-Chief and staffed by student editors who apply to join the journal in first year. Student editors at the OHLJ are responsible for

¹⁶ See, for example, Emilio S. Binavince, *Introduction: The Founding of the Ottawa Law Review*, 6 OTTAWA LAW REVIEW (OTTAWA L. REV.) 12 (2006); Barry M. Singer et. al., *Reflecting on the Past 70 Years*, 69 SASKATCHEWAN LAW REVIEW (SASK. L. REV.) 277 (2006); or Malcolm MacLaren, *A History of the University of Toronto Faculty of Law Review*, 55 UNIVERSITY OF TORONTO FACULTY OF LAW REVIEW (U.T.FAC. L. REV.) 375 (1997).

¹⁷ *Osgoode Hall Law Journal*, Accessible at: <<http://www.ohlj.ca/on>>, last viewed 3 May 2009.

checking all of the footnotes in articles, and also hold meetings to discuss which submissions to the journal should be published. The *Osgoode Hall Review of Law and Policy* (OHRLP) is the newest addition to legal periodicals at Osgoode.¹⁸ It was started in 2007 by a group of Osgoode students who wanted a journal to showcase articles by student authors. Managed by students, and assisted by a faculty advisor, the OHRLP publishes online bi-annually.

In addition to the three law journals, there are two online blogs that are run out of Osgoode. First is *The Court.ca*, where a team of student and faculty editors post short comments on decisions of the Supreme Court of Canada (or invite relevant scholars to post commentary of their own) and provide timely analysis on recent decisions and discuss the legacy of past decisions.¹⁹ Headed by one faculty member, *The Court.ca* is staffed for the most part by student editors who, after being selected as part of the editorial team through an application process at the beginning of the academic year, agree to write one post per month. Readers are able to post short responses and replies to posts in a moderated discussion forum. The second online blog is *IPLogue*, which addresses intellectual property law issues.²⁰

Taken together, these publications demonstrate the continuum that exists from the more informal, flexible and quick-paced production of online legal publications such as *The Court.ca* and *IPLogue*, to the more formal, slower-paced and traditional publications such as the OHLJ. Each of the formats has different strengths and weaknesses. For instance, the OHLJ does not have the capacity to be as responsive as *The Court.ca* given that each submission takes considerably longer to publish and is not produced in a format that allows readers to interact with pieces. However the OHLJ is firmly established in the Canadian and transnational legal community by publishing well-written and thoroughly researched academic articles. The *German Law Journal* is situated somewhere in the middle of this continuum: it publishes monthly and only online, which allows the Journal to solicit pieces on events as they happen (as *The Court.ca* does) while still retaining high quality writing and research standards, similar to a traditional law journal. Presently, the Journal is ranked as the world's leading online legal periodicals,²¹ it is anonymously peer-reviewed in double-blind manner and rejects about 60-65 per cent of all submissions.

¹⁸ *Osgoode Hall Review of Law and Policy*, Accessible at: <<http://ohrlp.ca/index.php>> last viewed 21 May 2009.

¹⁹ *TheCourt.ca*, Accessible at: <<http://www.thecourt.ca/>>, last viewed 3 May 2009.

²⁰ *IPLogue*, accessible at: <<http://www.iposgoode.ca/ipilogue/>>, last viewed 3 May 2009.

²¹ See the 2008 survey of *Law Journals: Submissions and Ranking*, Washington & Lee University School of Law, under the categories "peer-edited" and "online only", accessible at: <<http://lawlib.wlu.edu/LJ/index.aspx>>.

Canvassing the different types of legal publications at Osgoode Hall Law School also provides some insight into the different roles and levels of participation students can have in legal publications. Rather than picturing a spectrum, the different degrees of student participation are better mapped on a checkerboard since each publication relies on student editors for different tasks. At *The Court.ca*, for example, student editors are responsible for everything from research, to writing, to editing, and finally posting their work on a specified schedule. At OHRLP, students are responsible for everything from soliciting and accepting articles, deciding which articles to publish, and editing the work. At OHLJ there is a more formalized structure, as students have various positions in the journal and degrees of responsibility. During our time at the *German Law Journal*, beyond editing articles and communicating with authors, student responsibility has been much less formalized and very flexible; the level and type of student responsibilities in many ways depends on student initiated ideas and projects - 'the sky's the limit,' as the saying goes.

Characterizing the *German Law Journal* as a hybrid, or 'dual citizen' - as half student-run/half faculty-run, and half traditional law journal/half quick-paced online publication - translates well when we expand our comparison to legal publications across Canada and internationally. In Canada, the landscape of legal publications is rather distinct, and, until very recently, not often written about or analysed.²² Legal scholarship in Quebec, Canada's bijural province where private law is governed by the civil legal tradition, is published mainly in *revues juridiques*. These are strictly faculty-run publications that do not involve student editors in the process. One Canadian legal scholar has suggested the lack of student participation in law journals in Quebec stems from "civilian scholars' deeply rooted conviction that... legal scholarship is the exclusive business of academics."²³ This is based on the deference judges show academics in the interpretation of legal codes and the development of the law itself in the civil legal tradition. In English-speaking Canada there is a combination of faculty-run and student-run law reviews, with the majority, however, displaying some form of student participation. Interestingly, for a significant part of the 20th Century, legal publications were dominated by national and provincial bar associations in Canada.²⁴ The tradition of university-based law reviews is relatively new, with the first beginning after World War II,²⁵ and the number of journals starting to flourish in the late 1960s.²⁶ What is common between both the common and civil law journals in Canada is

²² Bruce Ryder, *The Past and Future of the Canadian Generalist Law Journal*, 39 ALBERTA LAW REVIEW (Alta L. Rev.) 625, 625 (2001). This has since changed, with a symposium on Canadian Law Review Experience held by the Alberta Law Review in 2001 (of which the above article was a product of), and by the first national conference of Canada's student-edited law reviews at Queen's university in 2005.

²³ Jean Leclair, *A Review of Law Reviews: Comments of a Contented Victim*, 31 QUEEN'S LAW JOURNAL (Queen's L.J.) 385, 391 (2005).

²⁴ *Supra*, Binavince (note 16) at 12.

²⁵ Donna Greschner, *Law Review as Cultural Narrative*, 79 ALBERTA LAW REVIEW (ALTA. L. REV.) 616, 618 (2001).

²⁶ *Supra* Binavince, (note 16) at 12.

that almost all are peer-reviewed.²⁷ This is also the case in Australia, where a disproportionate number of university law reviews are peer-reviewed, often by a double blind procedure (as is the case for the *German Law Journal* itself). The referees, who are generally academics, are responsible for the selection and content of the journal articles.²⁸ By contrast, in the United States there is a long-standing tradition of university-based student-run law reviews that do not engage in peer-review, where students are ultimately responsible for the selection, content and stylistic editing of the journal articles.²⁹ This form of law review as an institution has been the subject of a vast amount of scholarship. Furthermore, in the last thirty years there has also been a proliferation of faculty-run specialty journals. Some of the law reviews that emphasize the student-centered nature of their publication, such as the *Administrative Law Review* at the Washington College of Law,³⁰ or the *George Washington Law Review*,³¹ do have some sort of faculty participation. Nevertheless, this participation does not eliminate the gate-keeping function of the student editors.

With few exceptions,³² student participation in law journals outside of North America and Australia is generally limited to journals that are created with a mandate to only publish student-written articles. In the United Kingdom, the model of “by students, for students” is advocated for its student-run journals. *King's Student Law Review*,³³ *Oxford University Commonwealth Law Journal*,³⁴ the *University College London Jurisprudence Review*,³⁵ to

²⁷ *Supra* Greschner (note 25) at 389.

²⁸ The Honourable Justice Michael Kirby, *Welcome To Law Reviews* 26 MELBOURNE UNIVERSITY LAW REVIEW 1 (2002). Accessible at: <<http://www.austlii.edu.au/au/journals/MULR/2002/1.html>> last viewed 26 March 2009.

²⁹ For example, see *Harvard Law Review*, Accessible at: <<http://www.harvardlawreview.org/about.shtml>>, last viewed 20 May 2009; *Supra*, *Administrative Law Review* (note 30); *Supra*, *George Washington Law Review* (note 31) *NYU Law Review*, Accessible at: <<http://www.law.nyu.edu/journals/lawreview/masthead/index.htm>>, last viewed 20 May 2009.

³⁰ *Administrative Law Review*, Accessible at: <<http://www.wcl.american.edu/journal/alr/board.cfm>>, last viewed 22 May 2009.

³¹ *George Washington Law Review*, Accessible at: <<http://docs.law.gwu.edu/stdg/gwlr/contacts.htm>>, last viewed 20 May 2009.

³² For example, the *Ateneo Law Journal* (based in the Philippines), Accessible at: <<http://www.ateneolawjournal.com/>>, last viewed 21 May 2009.

³³ *King's Student Law Review*, Accessible at <<http://www.kslr.org.uk/editorial.html>>, last viewed 8 May 2009.

³⁴ *Oxford University Commonwealth Law Journal*, Accessible at: <<http://www.law.ox.ac.uk/ouclj>>, last viewed 8 May 2009.

³⁵ *University College London Jurisprudence Review*, Accessible at: <<http://www.ucl.ac.uk/laws/jurisprudence/jurisprudence-review/index.shtml>>, last viewed 8 May 2009.

name a few,³⁶ are student edited and accept only submissions by students or recent graduates. Germany appears to be one of the only continental European countries that has attempted to adopt student participation in law reviews. *The Bucerius Law Journal*,³⁷ the *Heidelberg Student Law Review*³⁸ and the *Göttingen Journal of International Law*³⁹ are examples of law reviews that envision student editorial teams with faculty participation. However, only the *Göttingen Journal of International Law* seeks submissions from established scholars whereas the others centre on student-written articles.⁴⁰ Beyond journals dedicated to student-written articles, there has been opposition to student-run law journals accepting articles by faculty members in Europe and the U.K., most likely owing to the fact that legal education is undertaken by students as a first entry degree, as opposed to the US and Canada, where an undergraduate degree is typically required. However, in Australia, where professional legal education consists of a four-year degree for students without a prior undergraduate degree (and a three-year degree for those that do), student-run law journals that accept faculty-written articles are the norm.⁴¹ This is likely due to the system of peer-review Australia has adopted, as discussed above.

What this short review of student participation in legal publications worldwide suggests is that participation is by no means universal or the accepted standard. Still more, within the countries where student participation is the norm, there are diverging forms and types of participation. Some journals limit student participation to strictly editing and formatting articles under the supervision of faculty, while others are 100 per cent student-run - where students are responsible for also selecting articles to publish and coordinating the logistics of every issue. Even within the same publication, student participation and expectations will change over time depending on how the journal runs, who the members are, and the institutional traditions of the journal itself. In a history of the *University of Toronto Faculty of Law Review* (UTFLR), one past Editor-in-Chief, Malcolm MacLaren (himself a long time member of the *German Law Journal* editorial board), charts the way the UTFLR adjusted

³⁶ See also, *Cambridge Student Law Review*, Accessible at: <<http://www.cslr.org.uk/>>, last viewed 8 May 2009.; *the UCL Human Rights Review*, Accessible at: <<http://www.uclshrp.com/review/>>, last viewed 8 May 2009; *Trinity College Law Review*, Accessible at: <<http://www.trinitycollegelawreview.com/>>, last viewed 8 May 2009.; *Irish Student Law Review.*, Accessible at: <<http://www.islr.ie/>>, last viewed 8 May 2009.

³⁷ *Bucerius Law Journal*, Accessible at: <http://www.law-journal.de/About_us.171.0.html>, last viewed 8 May 2009.

³⁸ *Heidelberg Student Law Review*, Accessible at: <<http://www.studrz.de/pagev2/index.php5?p>>, last viewed 8 May 2009.

³⁹ *Göttingen Journal of International Law*, Accessible at: <http://gojil.uni-goettingen.de/joomla/index.php?option=com_wrapper&view=wrapper&Itemid=97>, last viewed 8 May 2009.

⁴⁰ *Id.*

⁴¹ *Degrees in Law, Council of Australian Law Deans*, Accessible at: <http://www.cald.asn.au/slia/Legal.htm#Degrees> on 26 May 2009.

with the expectations of legal education and with the changing types of articles that were being submitted.⁴² For instance, from the 1960s onward, attitudes about the role law played in society and a significant increase in “law and ...” writing saw many changes not only to the UTFLR, but also to law school curriculum as well. As seminars and workshops became more common in law school, the UTFLR introduced a law review seminar where faculty and students could engage in dialogue about particular topics and publish pieces that followed the discussions.

Despite such a diverging range of experiences for students on law journals across time and space, there is still enough that makes a legal publication similar to accept that there is a significant degree of crossover of skills to be gained on journals. Though every journal may not have a seminar portion, or an exposure to comparative or international material, there are still a number of intangible skills that exposure to academic material can offer a student that they will not find in the classroom. Critical thinking about the project of law as a whole and how technical rules and cases learned in the classroom relate to the big picture, essential to the legal education of any student, are often by-products of being exposed to numerous legal commentary, draft versions of manuscripts, and to the curatorial element behind each issue of a journal. With this observation we turn to a discussion of how our experience on the *German Law Journal* can be extended to an evaluation of the value of student participation in law journals more generally.

II. Allowing “the Inmates [to] Run the Asylum?”⁴³ Addressing Criticisms of Student Participation in Law Journals

Perhaps the most cited law review article on law reviews is Fred Rodell’s *Goodbye to Law Reviews*.⁴⁴ Published in 1936, Rodell’s infamous critique, “[t]here are two things wrong with almost all legal writing. One is its style. The other is its content,”⁴⁵ still holds true for many critics of the enterprise of law journals. Much of the blame for the follies of law reviews is laid squarely at the feet of student editors of student-run law journals. The most prominent of these criticisms is that student-run law reviews bypass the peer-review system and allow students, the least experienced members of the field of law, to be the gatekeepers for what gets published.⁴⁶ After all, students are by definition in the process of

⁴² *Supra* MacLaren (note 16) at 387.

⁴³ *Supra*, *Law Reviews: Do the Inmates Run the Asylum?* (note 5).

⁴⁴ Fred Rodell, *Goodbye to Law Reviews*, 23 VIRGINIA LAW REVIEW 38 (1936). In 1962, Rodell reworked his theme in Fred Rodell, *Goodbye to Law Reviews — Revisited*, 48 VIRGINIA LAW REVIEW 279 (1962).

⁴⁵ *Id.*

⁴⁶ Michael Vitiello has divided the critique of student-run law reviews into two camps. The first critique the elitism and undemocraticness in the way in which law reviews hire new student editors; the second suggests that student editors lack the expertise to address the interdisciplinary turn in legal scholarship (the ‘law and ...’

learning the law; they are likely just beginning to understand the basics of law, and would not have enough knowledge to understand the intricacies of a specific field of law in order to decide whether or not a specific article has enough merit to be published. This situation is unique to the field of law whereas in other fields, the most prestigious journals are edited by specialists in that field.⁴⁷ In the publish or perish world of academia, this obviously affects emerging scholars who want and need to have their articles published. Therefore, it appears that students are given far too much control over the fates of faculty. The second main criticism posited by critics is that the system of editing by student editors promotes over-annotated articles that are homogeneous and do not challenge the prevailing wisdom.⁴⁸ This is owed to the fact that student editors are obsessive about citations "in order to create the impression that everything in the article is proven fact."⁴⁹

These criticisms weigh heavy indeed and challenge the value of law reviews as providing academic analysis to the judiciary and the bar. Nevertheless, they must come with some caveats. From our survey, it is apparent that purely student-run law reviews without peer-review are a rarity outside of the United States, and that there are a host of other types of student participation in journals that involve higher levels of participation by faculty.⁵⁰ Further, critics tend to make the assumption that all journals are structured in the same fashion. Here, too, our survey shows otherwise. The double-blind, peer review system used on most Canadian and Australian law journals or the European "by students, for students" model shows that there are many different ways to organize a law review.

It is undoubtedly true that students are not specialists. To argue that students would be capable of editing a piece in the manner of a faculty member who has been exposed to the relevant texts so as to be able to challenge a scholar to go further with her work would be

articles) and further perpetuate conventional writing. See Michael Vitiello, In Defense of Student Run Law Reviews, 17 CUMBERLAND LAW REVIEW (Cumb. L. R.) 859 (1986).

⁴⁷ *Supra*, Hibbitts (note 2)

⁴⁸ See *Supra*, Rodell (note 44); *Supra*, Greschner (note 25); *Supra*, Leclair (note 23); *Supra*, Hibbitts (note 2)

⁴⁹ *Against the Law Reviews: Welcome to a World Where Inexperienced Editors Make Articles About the Wrong Topics Worse*, Richard A. Posner, LEGAL AFFAIRS (2004), Accessible at: http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp on 3 May 2009. For an interesting debate about the merits of Australian law reviews, see: *Supra*, Kirby (note 32); John Gava, *Law Reviews: Good For Judges, Bad For Law Schools?*, 26 MELBOURNE UNIVERSITY LAW REVIEW 29, (2002). Accessible at: <http://www.austlii.edu.au/au/journals/MULR/2002/29.html#fn1> on 26 May 2009.

⁵⁰ John G. Kester argues that even 100 per cent student-run journals seek some guidance from faculty members, and in this way have some degree of peer review, see John G. Kester, *Faculty Participation in the Student-Edited Law Review*, 36 JOURNAL OF LEGAL EDUCATION (J. LEGAL EDUC.) 14 (1986). Kester goes on to suggest that the criticisms against the quality of student-run publications are a reflection of the fact that law faculties are now more fragmented and do not agree on what makes good legal scholarship. This makes faculty less of a resource to student-edited journals.

ludicrous. Nevertheless, an interesting parallel can be drawn here between the comparative lessons of *German Law Journal* work and the student perspective in legal writing. As noted above, student editors on the GLJ were exposed to works with ideas they had likely not encountered before and were able to make connections with other commentary, novels or events external to the four corners of law school. The strength of a student editor is, in fact, their unfamiliarity with a topic because this can make room for novel or illuminating approaches and ideas on the journal rather than promoting the homogeneity that critics claim are stifling law reviews.⁵¹ However, this creativity can only be fostered where student editors are given license to engage with an article not only on a stylistic level but in terms of the substantive content as well. Again, here the structure of the journal comes into play. If there is sufficient interplay between the editorial process of students and faculty review such that faculty can ensure that students are on the right track in their criticisms of a particular article, this can be a mutually beneficial experience for both the author and student editor.

Most importantly, these critics, in prescribing an overhaul of the law review to provide minimal student participation or doing away with law reviews altogether, are not granting due consideration to the value of journals to legal education. As elaborated on above, law reviews provide students with the space to understand law as a whole. The silo structure of law school, which presents each field of law as a world unto itself, limits opportunities for students to make the connections that they would not otherwise make. No other mechanism of legal education provides students with the combination of hard editorial skills and soft analytical skills. Although there are seminar classes that promote discussion, these would not bring together such a disparate group of students to discuss topics that vary from one field of law to the next or the 'why' of law, as we have discussed in detail above. Further, the focus on the case method of teaching law, while valuable in and of itself, does not expose students to writing legal commentary and stifles their ability to improve their own writing by reviewing the works of others. Richard Posner (interestingly, former president of the *Harvard Law Review* when he was in law school himself) has stated that "[t]he biggest obstacle to reform is that the present [law review] system provides useful training to law students."⁵² What Posner and others fail to explore in adequate detail is exactly how law reviews benefit students, and the fact that there are many different kinds of journals with different degrees of student-participation. Lumping all student participation in journals into the same category without adequate examination of the benefits it adds to a legal education, and without accounting for the vast array of differences nationally and internationally between law journals is an omission all too common among critics of student participation in legal publications.

⁵¹ The argument that students are more willing to take a risk and publish something that is unconventional is not new, see Phil Nichols, *A Student Defense of Student Edited Journals: in Response to Professor Roger Crampton*, *Duke Law Journal* (Duke L. J.) 1122, 1125 (1987); and Frances Olsen, *The Role of Student-Run Law Journals in Opening North American Law*, 39 *ALBERTA LAW REVIEW* (ALTA. L. REV.) 678, 680-81, (2001).

⁵² *Supra*, Posner (note 49).

C. Conclusion

For the past two years, student editors on the *German Law Journal*, along with student editors from the other four main legal publications at Osgoode Hall Law School (as described above) have been invited to speak to first year students during their orientation week about why they should consider joining the Journal. What is curious about the exercise is that the student editors need to not only convince bright-eyed and optimistic first years that they will benefit from working on a legal publication in general, but they also have to somehow distinguish what makes working on their specific journal the best.

For us, arguing that our experience on the *German Law Journal* is the most rewarding has often felt artificial because the choice of which publication to apply to often comes down to the topics a student wishes to be exposed to and the working climate they would prefer. Beyond aesthetics and personal preferences about the type of work and exposure one aims for, the true benefit of student participation in journals will occur regardless of the distinctions between format, content and organization.

As a theme explored throughout this article, despite the many types of publications and levels of student involvement, at the core of each student's journal experience is not only a development of hard and fast editorial and footnoting skills, but an exposure to the larger trends and ideas that drive the development of law, and connects what we learn in the classroom to the legacy of law as a project and a discipline. In many ways, trying to distinguish the Journal in the eyes of first-year students creates false distinctions about the value of working on a publication as an educational experience. Beyond the obvious editing and organizational skills, what would be more helpful to discuss is the critical analysis skills and breath of fresh air that being a student editor on any legal publication affords a student. Although there are some structures that better allow for this space to be created, journal work as a whole can offer these soft skills that are not easily observable from the outside. Instead of competing for the attention of first-year students, it would be better to instead discuss the value of working on a journal more generally, and address the distinctions between us as simply the different ways we are each organized, and the different types of work and discussions we have while on each particular journal.

This recognition of the benefit of having multiple types, formats, and levels of student participation in journals goes well beyond our first-year orientation week presentation. All too often the critics and proponents of student participation on legal publications have engaged in equally limited discussions of the benefits and drawbacks of current law review models without properly addressing the fact that there are many different kinds of legal publications. The skills a student gains on a law journal far exceed simple editorial and citation skills, but actually shape how we understand and engage with law as a discipline. Student participation on law journals significantly enhances a legal education in a way that cannot easily be replicated in a classroom setting, and form an integral part of law school life.

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Taking a lesson from the *German Law Journal*, just as student editors do not have to speak German to work on the *German Law Journal*, one does not have to be law professor to edit a law journal; often the finished product is far richer and more insightful the more you involve fresh minds.

