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## POPULARIZATION AND DEMOCRATIZATION OF KNOWLEDGE THROUGH BLAWGS

### 1. Introduction

Given the importance placed on the definition of environmental law in contemporary society, this paper aims to investigate how the representation of this area of law takes place in a specific genre, namely the legal blog (blawg) and, more specifically, the environmental blawg (EB). Legal blogs can offer new perspectives for the interpretation of environmental discourse at large and play an important role in the rapid diffusion of updated information regarding environmental law. In particular, EBs, whether considered from a linguistic, communicative, social or legal perspective, are critically important genres for the understanding of specific laws and rights.

The analysis of blawgs as social action opens up a series of questions, which arise from the consideration that a blawg constitutes a space in which the law is not only represented but also communicated and negotiated (Kastberg 2010; Ditlevsen 2011), with the latent potential to inform subsequent discussion. Thus, considering the delicate role that new technology assumes in legal contexts, the main research question addressed here may be reduced to the following: how does Internet technology interact with the constraints of established legal conventions?

In turn, there arise two sub-questions more specifically related to the socio-discursive practices which characterize the genre under investigation, namely:

- To what extent are the formalities of legal language preserved in this genre, and what popularization tools are employed to depict specific legal concepts?
- How do the demands of blawgs, such as the need to attract and maintain readership, influence the process of knowledge dissemination?

After discussing legal blogs as a sub-genre, this paper presents the material under investigation (namely, the collection of EBs) and the methodology employed. More specifically, the coding procedure focuses on issues of interactivity, co-construction of information and metaphors. This approach allows us to investigate the role of blawgs as democratizing tools and to explore the dissemination and popularization strategies implemented.

The rationale for this work lies in the need to deepen our understanding of the processes through which environmental law and rights are discussed. Indeed, the traditional philosophical-axiological paradigm on which the anthropocentric vs non-anthropocentric dichotomy<sup>1</sup> is based needs to be constantly redefined and problematized. In other words, the investigation of these dynamics would benefit from a more encompassing approach to axiology, going beyond the mere acknowledgment of values as thematic concepts (cf. Biedenbach and Jacobsson 2016). These reflections should also consider discursive and communicative perspectives which focus on real examples of how environmental law is represented in different public media not solely aimed at a traditional academic readership.

The overall objective of this work is to examine the textualization of environmental law in influential blawgs and observe what rhetorical strategies are predominant. The analysis also aims to point out differences and similarities in the formulation of analogue concepts in purely legal texts. In particular, given the accessibility of blawgs external to the legal community, specific attention is devoted to popularization strategies (Calsamiglia and van Djik 2004). This allows us to understand to what extent blogs play a popularization role in the understanding and consequent fulfillment of environmental rights by the public at large.

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<sup>1</sup> See Jakobsen (2016) for a discussion of both perspectives in environmental ethics.



Indeed, a blawg addresses matters of jurisprudential importance and at the same time may serve a popularization function intended as the recontextualization of information. More specifically, in this case rather than a recontextualization from a specialist to a generalist community, we should discuss a process which involves two hybrid communities: one consisting predominantly of specialists and another including a vast array of participants, mainly non-specialists (extending to semi-experts, experts and professionals in other fields).<sup>2</sup>

## 2. Blawgs as a sub-genre

### 2.1 Environmental blawgs

Following the widespread diffusion of law blogs, EBs have also grown in popularity. Environmental law may be defined as a vast branch of law dealing with legislation enacted and enforced by local, national or international entities to regulate activity affecting the natural environment. Thus, EBs may be broadly described as driven by multiple forces. Thematically, they mostly focus on environmental law or related fields, such as land use law, energy and climate issues, endangered species litigation and agricultural law. They may also embrace broader and less specialized topics and include posts which appear less related to the main theme. This choice is often necessary given the fragmented nature of the tool and may be functionally exploited to attract the readers' interest.

Environmental law is a particularly heterogeneous and complex field which requires deep reflection in that it deals with crucial themes which have implications from a social, economic and political perspective as well as in ethical, philosophical and ontological terms. Thus, whether a blawg is a legitimate space to discuss such themes or not is a controversial issue, and the notion of legitimacy is directly linked to the consensus that the messages transmitted through the blawg receive. The idea of environmental justice itself is highly dependent on the individual conceptualization of justice and the very nature of what is definable as the environment. In particular, in the absence of extensive agreement over these broad notions, it becomes imperative to offer at least a clear explanation of basic concepts related to environmental law at both national and international levels.

Although EBs may have a local perspective focusing on regionally confined environmental issues and cases, the approach is very often atterritorial, involving people who do not necessarily share the same geographical space. Moreover, the potential global reach of a blog allows individuals to engage in profound discussions which extend far beyond a local level and involve transnational communities of users. In particular, these blawgs may serve not only to discuss environmental rights, but also to raise ontological questions regarding the relation between human beings and nature.

Holder and Lee (2007) stress the need to read environmental law and policy within a specific context of value judgments which are often unexpressed. Therefore, the content of blawgs should be investigated within wider law debates being conducted in the legal agora. In a similar vein, it is also imperative to analyze the information provided in EBs keeping in mind the popularization processes that they undergo. Indeed, to some extent, blawgs constitute a form of expert-lay interaction in that they are generally read by heterogeneous audiences who are not necessarily experts in the field. This form of interaction encapsulates the multifarious and ever-changing practices which are instantiated by the flexibility and dynamicity of the tools involved. Indeed, blawgs can be updated and modified instantaneously and can include a vast array of elements, from extended articles to notes, from podcasts to user comments, which can be dynamically combined.

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<sup>2</sup> Although the concepts of dissemination and popularization are sometimes used interchangeably, popularization is generally intended as a form of dissemination which aims to reframe specialized knowledge for the public at large (mainly, although not exclusively, for the *populus*), thus creating a bridge between specialized knowledge and common knowledge. Instead, dissemination is intended either as an umbrella term to refer to knowledge diffusion beyond its original circles of production or, more specifically, as a process in which knowledge is reframed for other professionals, creating a connection between specialized and other forms of professional knowledge.

In the case under investigation, both processes are taken into account, given the heterogeneity of subjects and audiences involved and their differing levels of specialization.



## 2.2 Generic features

Legal blogs represent a subgenre of blogs (see Puschmann 2013 for a general overview of blogs), whose specificities lie especially in content (Cornett 2009, 230). However, blawgs also display distinct features in the organization and management of information as well as in terms of structure. More specifically, Cornett (2009) identifies some aspects which characterize a blawg, such as lower level of engagement with the readers and more extensive disclaimers.

In this study, blawgs are conceived as constituting a hybrid and fluid genre (see Garzone 2014, 2015), which has specific communicative purposes. From this perspective, the notion of the blawg as a genre functions cognitively as an interpretative tool which guides the readers through different processing dynamics. Following Bakhtin's oft-quoted statement, we can affirm that "when the speaker's speech plan with all its individuality and subjectivity is applied and adapted to a chosen genre, it is shaped and developed within a certain generic form" (1996, 38). In this vein, intuitive considerations and overall expectations about a genre are also hermeneutics which inevitably influence the way we approach a text.<sup>3</sup>

We can argue that a blawg lies at the crossroads between blogs in general and websites run by specialized lawyers. Indeed, they display technicality and formality and tend to follow the guiding principles on which professional law websites are based, but they also show a certain degree of flexibility, which can vary across the many sections of the blog (showing considerable variations, for instance, between disclaimers and personal commentaries or narrations of anecdotes).

Blawgs represent a genre with specific communicative constraints, which at the same time provide an opportunity to creatively go beyond such limitations. Indeed, genre conventions are there to be either observed or broken, and, in practice, bloggers generally try to find a balance between conservatism and novelty. On the one hand, those who eschew the conventional practices of the genre somehow do so against the reader's expectations and this choice may harm the writer's credibility. On the other hand, somehow freed from the constraints of traditional legal writing, professionals may be prone to test the boundaries of the genre in their writing. Moreover, as will be illustrated, breaking conventions can functionally serve as an attention-grabber.

Blawgs can reach vast audiences which go far beyond the legal community. The combination of textual resources with other semiotic resources (e.g. static and moving image, sound, music, etc.) can also favor involvement and consequently play a significant role in molding public opinions and subsequent actions and reactions.

## 3. Data and Method

Blawgs are remarkable in the variety of their depictions of environmental law, which range from vivid reproductions of personal stories to technical enquiries into specific points of judicial procedure. A comprehensive assessment of these multifarious narratives and discussions and the ways in which they contribute to broader understandings of, as well as responses to, this area of law is a task which goes beyond the scope of this paper. Rather, this discussion will place a more limited focus on some of the features which render (or otherwise) blawgs popularizing and democratizing tools, observing how they may contribute to the popular conceptualization of environment law. Indeed, one of the aims of this work is to reflect upon how the online tools under investigation can contain and disseminate legal information which can present and, in turn, make a contribution to contemporary legal, political and social debates on these highly topical issues.

In this study, the privileged object of analysis is a collection of twenty environmental blawgs<sup>4</sup> investigated up to their first level of hyperlinks, including posts and threads. The total number of types is approximately 310,000, while tokens amount to approximately 545,000. The blogs are all written in English, given the crucial role that the English language plays both in international legal scholarship as well as in environmental communication and ecolinguistics (Schlosberg 2013). They were also chosen according to their popularity (number of views in July 2017) and recency (last updated not prior to 01/04/2017). This choice derives from the acknowledgment that reflections gravitating around the appropriateness of considering blawgs as

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<sup>3</sup> To some extent this view is also in line with Schema Theory and the related idea that all knowledge is organized into units or categories (Rumelhart 1981).

<sup>4</sup> The blogs are listed in Appendix 1.



societally central should be based on the analysis of material which is deemed influential. Consequently, blawgs which were not manifestly popular or regularly updated were excluded.

The topics covered by the blogs are diverse, given the inherent interdisciplinary nature of environmental law. Those selected are predominantly managed by individuals, companies, or organizations based in North America (US and Canada) and deal mainly with theoretical issues in environmental law, law-related climate change and litigations. Both national and supra-national issues are considered within the various posts examined, although blogs focusing exclusively on state and local government were not selected.

The twenty blogs collected were coded manually through *QDA Miner Lite*<sup>5</sup> within a qualitative approach. The main codes selected are related to the issues of interactivity, co-construction of information and metaphors. This choice allows us to investigate to what extent interactivity is maintained on a professional blog of this type, what degree of cooperation emerges in the construction of information and what informational dynamics take place, and how figures of speech are implemented in order to contribute to the processes of dissemination and popularization of legal knowledge. Given the vast array of rhetorical figures available, the focus is restricted to legal metaphor (see section 5), in light of the traditional importance that it assumes in legal discourse and legal theory (Condello 2016).

Thus, the study has two main focal points: a theoretical one, which discusses and problematizes the role of blawgs as sources of information and as potentially democratizing tools, and a more empirical one, which observes how dissemination and popularization strategies are implemented, with specific focus on the role of legal metaphors.

#### 4. Blawgs as democratizing tools?

##### 4.1 Interactivity

Blogs are frequently based on the synthesis of different authorial voices (Garzone 2014). However, in the case of blawgs, comments and interaction with users are generally possible but limited (see section 4.2). Indeed, readers rarely comment on the posts published and many posts do not receive any comments. When present, comments are considerably shorter and less articulated than the original posts (or than the counter-comments by the blogger). By means of an example, one blog (*ACOEL*) presents a post of 734 words entitled “Common Sense Species Mitigation Policy Shouldn’t Be Reversed By Trump DOI,”<sup>6</sup> which argues that “depending on one’s political persuasion, the Endangered Species Act is either a glaring example of federal overreach or a critical safety net for scores of plants and animals that are at risk of extinction.” This post extensively traces the historical development of that act and its politicization, as well as the impact it has had over the years. Instead, the comment it receives is considerably brief and not particularly detailed: “This is what proves that I’m the last centrist. Can’t I take the position that the ESA is BOTH a glaring example of federal overreach AND a critical safety net for scores of species?”

Although fifteen out of the twenty blawgs under investigation present user comments, the level of interactivity remains low. Threads of comments tend to be extremely short, with the majority of articles and posts not displaying any user reaction.

The identity of the author(s) is usually explicitly stated. EBs are generally written and managed by law professionals and may be run by a single author or more. For instance, *GreenLaw* is run by a network of law professors and scholars from Pace University School of Law. In comparison, other blogs officially have one single editor (for instance, *Environmental Crimes Blog* is managed by Walter James, an attorney specialized in environmental counseling and environmental litigation). In any case, although other professional categories may also be involved, the texts are generally written by legal experts, usually lawyers, and can be the expression of their own considerations, or the manifestation of a law firm’s way of thinking, or again the space where multiple authors’ voices can coexist. Generally, the expert status of the editors seems to automatically convey credibility and legitimacy to the blog itself.

In other types of blogs, the level of accountability which lies in the transmission of a message through individual or collective voices is often unclear. Consequently, the legitimacy of the information may be lost, because of the disaggregated and complex nature of such messages whose origins are often diverse.

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<sup>5</sup> See <https://provalisresearch.com/products/qualitative-data-analysis-software/freeware/>

<sup>6</sup> See: <http://www.acoel.org/post/2018/03/29/Common-Sense-Species-Mitigation-Policy-Shouldn%E2%80%99t-Be-Reversed-By-Trump-DOI.aspx>



Conversely, blawgs tend to display a high level of coherence, albeit the inevitable partial dispersion of the information presented. Moreover, personal and professional accountability tends to mitigate disruptive and dishonest practices. Especially in the case of legal specialists, their posts seem to rely heavily on the concept of credibility and transparency, and to aim to find a balance between passionate enthusiasm and objective informative descriptions. Hence, we can argue that the professional persona and that conveyed on the Internet coexist and necessarily live in their reciprocal lights.

Law blogs are generally exempt from the risks connected with anonymity in that the bloggers' identity is usually manifest. Indeed, while other types of blogs may guarantee some form of digital secrecy, in the case of legal blogs the blogger's identity is well-known, and anonymity, if present, is circumscribed to user comments. In fact, a blawg potentially allows for a multitude of views to be expressed, but the blogger's voice is generally predominant and clearly defines the main ideology traceable throughout the blog. Other voices function as a corollary of ideas, which can be critical, in agreement or irrelevant, but assume minor communicative power, whereas the blogger, ultimately, has control over the messages conveyed.

Blawgs can offer expert views on specific topics and, although they may lack general consensus, they are often legitimized by the expertise of the blogger. Moreover, even if a position may ultimately not prevail, the blawg is the vehicle through which that position can be heard. Indeed, the diversity of individual visions, which is theoretically provided by user comments, is noticeably limited in the case of blawgs. Users and bloggers are often like-minded people; this is not to deny the communicative importance of critical voices, but simply to stress that these kinds of blogs do not often attract critics or haters. For instance, a detailed post entitled "Texas Supreme Court Holds Manager Personally Liable for Environmental Penalties" received only one comment, which reads: "Good Posting."

There are of course exceptions and some posts can express disagreement. For instance, a post on the need to reduce carbon dioxide at a global level received the following comment: "There is no conclusive scientific proof that reducing carbon dioxide emissions actually mitigates climate change or has any effect at all on global climate. We demand hard incontrovertible proof (not lies)."

Comments of this type are, however, infrequent in comparison with other media (Reagle 2015) and generally do not generate extensive adversarial confrontation. Comments, instead, tend to express approval and confirmation. Clearly, this tendency may be favored by the possibility of the blogger to filter public comments. Room for spontaneity seems limited although, as will be seen, blogs continue to represent important information sources. A blawg is not thus to be considered a pluralistic medium but rather as the expression of individual views with the sporadic presence of comments from other sources.

*Prima facie* blawgs assume the role of tools which enable citizens to access information with minimal effort, linking them in communities often, although not always, sharing the same world view. Therefore, a personal perspective regarding a topic can become the perspective of a community, a way to articulate a collective position. In the case of a blog, we can argue that a new community is formed, which is linked mainly by interest in a specific issue rather than by other traits. Whether that is identifiable as a community of practice (CoP) (see Lave and Wenger's 1991 model) or not is however a complex matter. Such community is potentially highly heterogeneous in that a vast array of people with diverse backgrounds may show an interest in environmental law and the individuals involved may have considerably different roles and levels of engagement. Moreover, the three interrelated terms which typify a CoP, namely "mutual engagement," "joint enterprise" and "shared repertoire" (Wenger 1998, 72-73) seem to pertain exclusively to the professionals interacting in a specific blog, and are not applicable *tout court* to a whole group of users. For instance, in a blawg, active engagement in terms of material production and commenting behavior seems to be a prerogative of law professionals, while other users tend to assume a more passive role.

The notion of community of practice has been subject to constant redefinition. Wenger, McDermott and Snyder (2002, 4) see it as a group of "people who share a concern, a set of problems, or a passion about a topic, and who deepen their knowledge and expertise in this area by interacting on an ongoing basis." From this perspective, a significant number of non-regular users seem to be excluded, in that they are not involved in the ongoing interaction required to deepen knowledge and expertise.

Law profession membership itself is not a factor which determines access to a blog, which, by definition, is made public and consulted by individuals displaying very heterogeneous traits. However, most of the users may be seen as belonging to a Community of Interest (CoI) (cf. Henri and Pudelko 2003), rather than a CoP.



Thus, we could describe the blawg community as the meeting point of a specific CoP and a CoI, with the latter intended as a macro-community including the former.

## 4.2 Towards the co-construction of information?

### 4.2.1 Technicality and popularization

Crucial issues which affect the public at large, such as those concerning the environment, should be expressed through clear and transparent means, but noticeable conflicting tensions emerge. Firstly, the complexity of the law often appears in contrast with the need for clarity (see *inter alia* Keil and Poscher 2016) and this divergence is also manifest in blawgs. Secondly, personal interests may deviate from common ones and, consequently, blogs officially aimed at disseminating information of public interest also constitute a way of promoting the blogger's opinions.

By and large, it may be argued that the level of technicality may hamper comprehension, and this is particularly evident in sections such as disclaimers which require high accuracy and precision. In this respect, the corpus analyzed confirms the extensiveness of disclaimers. Plausibly, given the legal bloggers' professional background and their *forma mentis*, legal aspects are never overlooked and it is deemed necessary to clearly emphasize the educational function of the blawg in order to pre-empt any criticism for a legal perspective. Two examples of disclaimers are presented below:

#### Disclaimer

This Blog/Web Site is made available by the lawyer or law firm publisher for educational purposes only as well as to give you general information and a general understanding of the law, not to provide specific legal advice. By using this blog site you understand that there is no attorney client relationship between you and the Blog/Web Site publisher. The Blog/Web Site should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.<sup>7</sup>

#### Disclaimer

These Terms and Conditions of Use apply to you when you view, access or otherwise use the blog located at [www.realestatelanduseandenvironmentallaw.com](http://www.realestatelanduseandenvironmentallaw.com) (the "blog"). The blog is owned by Sheppard Mullin Richter & Hampton LLP ("Sheppard Mullin"). We grant you a nonexclusive, nontransferable, limited right to access, use and display the blog and the materials provided hereon, provided that you comply fully with these Terms and Conditions of Use. [...] <sup>8</sup>

These two texts seem to corroborate the heterogeneity which characterizes environmental blawgs, not only in terms of content or structure, but also as regards discursive and linguistic features. The first case displays, to some extent, a limitation of the use of traditional legal jargon, which gives way to simpler vocabulary and syntactical patterns, as well as to a more direct style while addressing the reader ("to give you general information and a general understanding of the law"). Conversely, the second excerpt is more in line with the typical features of legal discourse: the disclaimer is much longer, reaching 1845 words, and displays more convoluted language. More specific terminology is employed ("nonexclusive, nontransferable, limited right") as well as typically legal adverbs such as "hereon."

In both cases, however, a certain level of formality as well as syntactical and lexical precision are visibly present. The level of editing and the degree of correctness may vary, but it is generally high in order to establish the writer's credibility and convey the idea of serious scholarship. Disclaimers are an essential part of blawgs, in that establishing the clear boundaries of the attorney-client relationship online is crucial, and legal experts are well aware of all corollary issues such as confidentiality and provision of legal advice online (Carter 2007).

### 4.2.2 Empowering processes

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<sup>7</sup> ACOEL blog.

<sup>8</sup> *Real Estate, Land Use & Environmental Law Blog*.



The world of EBs displays a certain level of heterogeneity. Some appear rather self-promotional and self-referential, whereas others express utopian aspirations that the medium may assume the role of a global democratizing tool, which can re-energize environmental debate. For instance, the *Real Estate, Land Use & Environmental Law Blog* aims to provide up-to-date information on these topics, but at the same time the self-promotional function of the tool is manifest:

Our lawyers function as an integrated team. Not only do we have bench strength with more than 60 real estate, land use and environmental attorneys; we also have significant depth and breadth. Our lawyers bring concrete and cost-effective advice in connection with any issue facing our clients. We pride ourselves on practicality and problem-solving.

This passage shows that blogs can clearly serve as a vehicle for publicizing law firms or other practice. The purposeful description ostensibly emphasizes multiple areas of expertise and the construction of a self-image which is advantageous to promoting or publicizing the lawyers' activities.

On its home page the *Environmental Law Institute* blog provides an enthusiastic description of their activity and their objectives, and one of its paragraphs recites:

The Environmental Law Institute (ELI) makes law work for people, places, and the planet. ELI's Vision is "a healthy environment, prosperous economies, and vibrant communities founded on the rule of law."  
ELI's Mission is to foster innovative, just, and practical law and policy solutions to enable leaders across borders and sectors to make environmental, economic, and social progress.

In addition, this blog clearly tries to involve readers and encourages them to support their activities through donations, memberships, publications, etc.

EBs tend to deal with two main issues: providing information in terms of environmental law, which is based both on purely legal as well as more scientific data, and enhancing active participation by citizens, in that public access to information can potentially nurture interest and engagement by the users.

The enhancement of involvement may simply regard subscription to blog updates or a newsletter, as demonstrated in the following excerpt, and this approach can encourage readership: "When you subscribe to Legal Planet, you will receive all new posts by email. Enter your email address to start your subscription."

Blawgs can also aim to promote a higher level of active involvement by suggesting reflections which encourage readers to consider important societal issues. For instance, *Climate Change Attorney Blog* presents a post entitled "What Do You Plan on Telling Your Grandchildren You Did About Climate Change?," which is to some extent syncretic in that it combines elements from within and beyond legal considerations and has a clear social significance in that it directly addresses the public at large.

In this perspective, virtuous circles may develop based on involvement and trust, in a sort of "discursive legitimation" which allows the achievement of persuasive objectives via discursive strategies. Indeed, these blogs aim to provide publicly available information through a means which differs from traditional legal sources by adopting language which is not often employed in traditional legal endeavors, and by using tools which may be adequate for undifferentiated audiences<sup>9</sup> (see also Section 4.1).

In this vein, as d'Aspremont aptly points out, "lawyers should not strive to make legal blogging resemble legal scholarship" (d'Aspremont 2015, 252). Indeed, the creation of discussion *fora* is facilitated, and processes of deformalization may take place. However, these dynamics should not be conceived as a threat to conventional legal scholarship, but rather as part of an inexorable cultural evolution within the epistemic community.

Information diffused through blawgs also becomes fluid to some degree in that it is not only circular, but also revisable. This may seem in conflict with the intrinsic stability of the law, but it should simply be intended as

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<sup>9</sup> By means of an example, the article "Challenge to Ordinance Prohibiting Mobile Medical Marijuana Dispensaries Goes Up in Smoke" (on *Real Estate, Land Use & Environmental Law Blog*) describes a specific case (Union of Medical Marijuana Patients, Inc. v. City of Upland: 3/25/16, D069293) in a very accessible manner, while preserving legal accuracy.



in line with the contingent value of legal knowledge and the complexity of legal theory, which necessarily displays fluid and reflexive traits.

Moreover, given the sheer amount of information available online, it appears necessary that filtering processes are applicable and blawgs also provide this function, which renders selected information manageable. This selection is, however, necessarily partial and tends to avoid divergent perspectives which are not in accordance with that of the blogger. This may be seen as deviating from the concept of participatory democracy and informed awareness. Specific blawgs seem to attract people in complete accord in a process which, instead of guaranteeing multiperspectival views, may actually generate vicious circles which overlook differing points of view. Users look for replication and confirmation of their own thoughts rather than an opportunity to be challenged, therefore widening their horizons. In other words, users seek echo voices and mirror images. Although these dynamics may be amplified in the case of web content, such processes lie in the nature of theme blogs and also characterize other forms of communication.<sup>10</sup>

Environmental law information appears to be decentralized and diffused by a complex web of sources and, consequently, citizens have access to information from a variety of actors. This disaggregated model may to some extent hinder the affirmation of concepts which are congruent with the legal doctrine, in that processes of popularization and simplification may alter the legal value of some of the information provided (Anesa 2012). More specifically, information regarding environmental law requires sifting through complex data and complicated legal notions in order to allow citizens to grasp the relevance of conflicting meanings. Following from this, the filter of the blogger, while impeding real debate and a genuine pluralistic discussion, avoids degenerating into a cacophony of individual voices.

It is worth stressing that access to information is a fundamental aspect of democracy and blogs potentially represent a tool to realize such a right. In the case of environmental law, given the consequences for all individuals, the need for accessible and detailed information is clearly evident in that comprehensibility is the first step towards the realization of justice. Not only does an understanding of the law represent a way to guarantee that citizens are informed about their rights and duties (and consequently can act accordingly), but educated behavior can in turn generate new political outcomes.

However, mere access to information is itself a highly controversial matter, given the various degrees of inclusivity. Communication can be interactive and reflexive, but it often maintains a clear hierarchical status in the provision of information, which lies predominantly in the hands of the bloggers, who can also filter user comments. More generally, access to information both in terms of technical access and comprehension is also subject to non-democratic dynamics. Of course, the danger of an elite of bloggers who possess the professional expertise as well as the rhetorical ability to convey persuasive messages is palpable, and this may appear in contrast with the idea of democratic communication.

Ideally users are empowered with a chance of becoming reflectively cognizant of the opportunity to become part of a democratic system. However, the correlation between an active exchange of information and citizen engagement is not automatic. It can also be argued that manipulative elites can filter the content and to some extent control the interaction happening online and, as a consequence, hinder the democratic nature of the exchange. Nevertheless, a blog is the manifestation of an author's viewpoint, and its democratic value lies more in the ease of access to content rather than in the mutual construction of the information provided. In relation to other forms of online communication, the possibility to create a collective narrative is more limited in the case of a blog, but it is clear that it still represents an opportunity to offer reasoned and informed arguments on topics which may otherwise remain alien to many. Thus, we may argue that the e-democracy may still be intended as an "e-litist" form of democracy, but some online tools are nonetheless invaluable to increase awareness about specific topics.

The miscellany of the audience is an argument which supports the utility of blawgs as popularizing elements, whereas other sources of information have a more circumscribed public. Indeed, blawgs provide specific information which can reach a global audience and even suggest measures of political leverage incredibly quickly. However, the dynamics through which stakeholders are informed and/or influenced via blawgs is subject to passionate debate. On the one hand, blawgs may be depicted as democratic tools which favor the exchange of information and enrich environmental law discussion. On the other hand, reservations are often expressed about the likelihood that messages regarding environmental law may be altered because of

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<sup>10</sup> See the concept of selective exposure and its application to online environments (Stroud 2008).



oversimplification (which often stands in stark contrast to the complexities of the law itself) or because partiality and personalized views are facilitated by specific communicative means. In this respect, the nexus between the communicative act and its legitimacy also represents a multifaceted matter in that the degree of expertise and the sophistication of reflections become more unstable and fluid than in law literature, and are strongly related to public acceptance rather than expert in-group's legitimation.

## 5. Law and metaphors

### 5.1 Forms of legal metaphors

As Hibbitts, *inter alia*, aptly remarks, metaphors pervade legal language (Hibbitts 1994, 240). Indeed, as early as 1930, Fuller stated, “metaphor is the traditional device of persuasion. Eliminate metaphor from the law and you have reduced its power to convince and convert” (Fuller 1930, 380).

The conceptualization of legal metaphor has gradually shifted following the development of new theories on the role and function of metaphorical devices. The traditional paradigm saw metaphors as decorative elements with a predominantly expressive and aesthetic function. As an illustration, Loughlan (2006) cites Lord Atkin's metaphor used in *United Australia Ltd v Barclays Bank Ltd* to exemplify how a modern legal issue may not be dealt with by adopting an ancient precedent: “When these ghosts of the past stand in the path of justice clanking their mediaeval chains, the proper course is for the judge to pass through them undeterred.”<sup>11</sup> The image employed renders the concept clear and memorable because of its narrative and aesthetic value and is used to offer its vivid depiction through an elliptical simile.

In line with the development of cognitive metaphor theories, over the last few decades the theorization of legal metaphor has undergone considerable processes of sophistication from a cognitive perspective. Legal metaphors are seen as a conceptual phenomenon which plays a central role in accessing and understanding complex and abstract legal notions, following the idea that our conceptual system is “metaphorical in nature” (Lakoff and Johnson 1980, 3). However, some criticism has also been expressed towards the use of legal metaphors. For instance, Gummow J (High Court of Australia) has stated that they may obscure rather than clarify the underlying concepts,<sup>12</sup> despite he himself using metaphorical language to explain his view.

A legal metaphor is not just a way of expressing a legal concept, but a means to structure and create the concept itself. Consequently, metaphors can shape our understanding of legal notions (cf. Lakoff and Johnson 1980, 4-5) and, by their very nature, forge our conception of an item and preclude other conceptualizations. For instance, the basic definition of a trial as a battle, especially in an adversarial system, leads us to anticipate a fierce confrontation. Such an expectation, in turn, inevitably influences our attitude and our behavior in relation to a trial.

Following Makela's categorization (2011), different types of metaphors related to the law may be identified. More specifically, in his study he distinguishes between legal metaphors, metaphors in the law, metaphors of the law and metaphors about the law. According to his interpretation, *legal metaphors* are those used in non-legal texts, in which the law itself functions as a metaphor. A superb example is Shakespeare's *Sonnet 46*, constructed with the use of a vivid metaphor in which the heart sues the eye and they are fighting over who gets to control the image of the beloved. Another instance is represented by *Sonnet 87*, in which the relationship between the speaker and the young man is metaphorically depicted as a contract which is now void. Regnier calls this rhetorical device an “extended metaphor using specific legal terms” (2003, 57). To describe this kind of trope, in this study I decided to use neither Regnier's definition, which may appear inapplicable without the presence of specific legal terms (whose level of specificity remains undefined), nor the expression *legal metaphor* (which, instead, is intended here as a general term to identify all metaphors dealing with the field of law). I describe these cases as *law as comparatum* metaphors, in which the law is one of the elements compared for the creation of the trope. In other words, the law itself is a metaphorical image. This metaphorical device, however, is not common in the blogs analyzed.

Another category is represented by *metaphors in the law*, a rhetorical tool in legal reasoning. One example is the metaphor which is now reported in a variety of contexts, and also in blawgs, to illustrate the notion of responsibility in the case of defamatory blog comments. In 2012 in the case *Tamiz v Google Inc Google UK*

<sup>11</sup> *United Australia Ltd v Barclays Bank Ltd* (1941) AC 1 at 29 (Lord Atkin).

<sup>12</sup> “Metaphors in the law are apt to obscure rather than illuminate.” *Truth About Motorways v Macquarie Infrastructure Investment Management Ltd* (2000) 200 CLR 591, section 88 (Gummow J).



*Ltd.*, Justice Eddy of the UK High Court concluded that Google served as “wall covered in graffiti” (i.e. a provider of space which is not responsible for what is written). The court also considered that Google should remove or whitewash (continuing with the analogical reasoning) the defamatory elements.

*Metaphors in the law* slightly differ from *metaphors of the law*, which are inherent in the nature of the law itself. For instance, the justice arena is a well-known image employed in legal endeavors to conceptualize the performative nature of the law. Complex concepts such as common law may also be theorized through the use of metaphors, which are often developed by legal professionals and then adopted by commentators in other contexts. For example, in *Hilen v. Hays*, 673 S.W.2d. 713 Judge Leibson (Kentucky Supreme Court) used the following image: “The common law is not a stagnant pool, but a moving stream” to illustrate the fluid and dynamic character of the common law. Moreover, as Fairgrieve and Muir-Watt (2006, 26) rightly point out, the metaphor of a river (or, in this case, a stream) serves as a source of legitimization of the Common Law, which has its origins in the past and is constantly evolving (in this respect see also Picard 2003). Similarly, Equity and Common law have been vibrantly conceptualized as “[t]he two streams of jurisdiction, though they run in the same channel, run side by side and do not mingle their waters” (Ashburner 1933, 18) to emphasize their independence and diversity. However, others have resorted to a similar metaphor to offer a conceptualization based on the fusion of the two areas (“the streams of law and Equity have flown together and combined so as to be indistinguishable the one from another”).<sup>13</sup> Other common legal metaphors related to the environment are those depicting the law as a tree, with roots and branches, not only to illustrate its origins and structure, but also to stress its living character (Richard 2014).

*Metaphors about the law* represent a way of making claims about the law as a phenomenon *per se*. They are tools which allow us to comment on the law and are particularly common on blawgs (see section 5.2).

Among the various devices that bloggers may deploy to popularize legal and environmental discourse, legal metaphors play an important role for the conceptualization of legal notions and have a central poetical force.<sup>14</sup> “Law is a major area where metaphor is made real,” argues Lakoff (1993, 243), and in a similar vein we can affirm that metaphors contribute a specific order of images or *systema simulationis* which allows us to understand legal concepts within a certain symbolic visual apparatus. Thus, images conveyed by visual metaphors become a sensory cipher for the dissemination of legal knowledge.

## 5.2 Metaphors as topical figures in blawgs

Metaphors about the law emerge in blawgs in that posts often aim to comment on the law. For instance, in the following passage the blogger Seth Jaffe (from the blog *Law and the Environment*) reports a vivid description of the notions of formal rulemaking and the principle of *Auer* deference<sup>15</sup> through a metalinguistic reflection on the role of analogies:

[...] the most notable part of the case is a statement from Justice Thomas that, to me, already wins the metaphor of the year prize. Justice Thomas’s argument against *Auer* deference, while couched in constitutional terms, is really a screed (parts of which I sympathize with) against the growth of rulemaking and the modern administrative state. He laments the use of interpretive rules and the decline of formal notice-and-comment rulemaking, and the protections that are required:

“Today, however, formal rulemaking is the Yeti of administrative law. There are isolated sightings of it in the ratemaking context, but elsewhere it proves elusive.”

To describe the elusiveness of formal rulemaking the Yeti metaphor is adopted, as the use of concrete and emblematic images contributes to the immediateness of the message.

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<sup>13</sup> *Federal Commerce and Navigation Ltd v. Molena Alpha Inc* (1978) QB 927, 974-975.

<sup>14</sup> *Poiesis* is here intended as “the general word for the process of coming into being” (Tuckwell 2017, 129).

<sup>15</sup> In the context of administrative law, *Auer* deference refers to a principle of judicial review of federal agency actions, deriving from the *Auer v. Robbins* (1997) Supreme Court case. Under this principle, a federal court must defer to an agency’s interpretation of an ambiguous regulation that the agency has promulgated. *Auer* deference is only applicable to an agency’s interpretation of its own ambiguous regulation.



Other cases also associate the presence of metatextual references with the role of metaphors, whose meaning is manifestly explicated:

In my view, it is *short-sighted* to try to protect the industry by proclaiming its absolute safety and refusing to take precautionary measures against possible catastrophic system failures. In fact, no system can be absolutely safe, and pretending otherwise merely sets the stage for a total loss of credibility when the “*black swan*” does come to visit.

For those who don't know the metaphor, it used to be regarded (*sic*) as axiomatic that all swans are white, until black ones were discovered in Australia — similarly, black swan events are ones that are considered impossible until they actually happen, like the financial meltdown of a few years ago. It is hubris to think that we have anticipated all possibilities and that black swans are impossible.

In a popularization effort, even a metaphor which should be immediately understandable is explained for the sake of clarity. The same passage also presents the use of other general metaphorical expressions not specifically related to the law, such as *it is short-sighted to*.

Commonly known metaphors may also be explicitly referred to in order to explain a concept beyond the legal sphere. Indeed, given the multidisciplinary nature of environmental law, other notions, e.g. scientific ones, may have to be illustrated. In the following case, the *Environmental Law Institute blog* presents a post entitled “Of Frogs and Men” in which a popular metaphor is cited:

In *An Inconvenient Truth*, Al Gore famously used the example of a slowly boiled frog as a metaphor for climate change. That turns out not to be accurate, as biologists say the frog is smart enough to jump out of the pot long before it becomes frog soup. But the problem Gore described is real enough.

Often-quoted analogies allow us to explain a complex problem through a concrete image even when that image is described as not scientifically accurate, but it still constitutes a cognitive cipher to frame that concept and manage its complexity. Moreover, legal and other metaphors regularly coexist in environmental blawgs.

These reflections demonstrate the relevance of interdiscursivity in the investigation of blawgs and in online professional discourse. Complementary discursive practices, indeed, are implemented in order to offer popularized information from a professional perspective, and environmental and legal discourse intermingle and nurture one another in order to offer a comprehensive picture of specific issues.

The post entitled “Fight Club Rules: Using Restraining Orders to Prevent Workplace Violence” appears on *Workplace Safety and Environmental Law Alert Blog* and includes the following synopsis:

Workplace violence is a major concern that can take the form of intimidation, threats, and even homicide. But fret not: California employers can *arm themselves with* restraining orders, to prevent a modern version of the “*Fight Club*” at work.

Legal discourse is rife with war metaphors and such militaristic rhetoric is typical of the confrontational nature which characterizes the adversarial system. Moreover, popular analogical images are employed, such as that of a *Fight Club*, drawing on David Fincher's quintessentially metaphorical film (1999).

In conclusion, following Prendergast (1986, 21), we can argue that metaphors have a crucial epistemic value and simply allow us to understand the world. He also emphasizes the entelechic force of metaphors, which materializes items. In a similar vein, we can argue that metaphors, whichever their form, permit the full realization and actualization of a concept (be it legal or otherwise) or, following Leibniz's notion of entelechy (see Rescher 1991), they achieve and crystallize the principle of perfection of such a concept.

## 6. Conclusive remarks

Blawgs represent one means through which new public spaces are created for the dissemination and discussion of legal information online, and new technology carries with it a concomitant expansion of expectations. To this end, this paper has attempted to offer critical reflections on the role that such spaces



may have regarding the democratization of legal information, with specific focus on blawgs concerning environmental issues. Subsequently, it has made some preliminary considerations on one specific rhetorical device which may assume dissemination and popularization functions, namely the legal metaphor.

Knowledge-representation processes about environmental law depend on the dissemination dynamics which allow for the diffusion, discussion and final (in)validation of specific concepts within the expert community, and, in parallel, the popularization of such concepts for the general public. A variety of tools can be deployed to achieve these aims, and blawgs constitute just one. Their proliferation has eased access to information pertaining to environmental law and demonstrates that legal scholars have extended their quest for validation to media that go beyond the law journal. Criticisms which neglect the role played by blawgs fail to consider that they are part of a wider pluralization of communication tools, and, most importantly, aim to supplement but not replace traditional dissemination processes. Therefore, we can argue that blawgs are a social reality. Dismissing them as trivial or lacking in formal legitimization means overlooking the important role they have played over recent years in diffusing information on many subjects. It also disregards their transformative opportunities for public involvement and engagement. In this respect, blawgs resist dismissal as mere marketing hype; rather, they potentially represent an additional way to engage with and remediate legal issues.

As demonstrated, the hypertextual and hybrid nature of blawgs may render them inconclusive and chaotic, and one may wonder whether ordinary citizens are able to critically filter highly complex information, or if they are more inclined to apathetically accept the contents presented. Similarly, it may also be argued that users often tend to read blogs which broadly appear in line with one's way of thinking rather than actively search for different viewpoints. Moreover, the idea that a blog may serve to empower citizens with the tools to change their behavior may also seem utopian and destined to remain *in abstracto*. However, awareness of the principles of environmental law and its developments is a prerequisite for making informed decisions. Consequently, given the widespread unfamiliarity of laypeople with legal texts, a blog may serve as a tool where information may be co-constructed, not only within the legal community but also for the public at large. Nevertheless, the low level of user interaction manifested in this type of blog makes their potential still inchoate to some extent.

Given the enormous societal importance of environmental law and the growing debate that some political choices are generating (see Donald Trump's recent decision to withdraw the U.S. from the Paris Agreement on climate change), specialized blogs represent a latent force which may drive public engagement and critical reflection. In particular, the paucity of the debate around this area of law calls for reflection on the need to disseminate information related to this theme outside exclusive circles. Indeed, citizens should be emboldened to access more resources dealing with sensitive and socially critical topics such as the law and the environment. In particular, blawgs should not remain marginalized or excluded from investigation. The question of how they operate in and contribute to this environmental discourse needs to be addressed systematically, as these media texts offer constructions of law which can circulate and become influential sources of information.

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## Appendix 1

### List of blogs

- American College of Environmental Lawyers*: <http://www.acoel.org>
- Climate Change Attorney Blog*: <http://www.climatechangeattorney.com>
- Climate Change Law Practice Group Blog*: <http://www.davis.ca/en/blog/Climate-Change-Law-Practice-Group>
- Climate Lawyers*: <http://climatelawyers.com>
- Corporate Environmental Lawyer Blog*: <http://environblog.jenner.com>
- Energy Legal Blog*: <http://www.energylegalblog.com>
- Environmental Crimes blog*: <http://www.environmentalblog.typepad.com>
- Environmental Law & Climate Change Law Blog*: <https://taberlaw.wordpress.com>
- Environmental Law & Litigation*: <http://envirolaw.com>
- Environmental Legal Blogs*: <http://environmentallegal.blogs.com/sholzer>
- Green Law*: <http://greenlaw.blogs.law.pace.edu>
- Green Patent Blog*: <http://greenpatentblog.com>
- Law and Environment*: <http://www.lawandenvironment.com>
- Law and the Environment*: [http://lawandenvironment.typepad.com/law\\_and\\_the\\_environment](http://lawandenvironment.typepad.com/law_and_the_environment)
- Legal Planet - The Environmental Law and Policy Blog*: <http://legalplanet.wordpress.com>
- Legal Planet*: <http://legal-planet.org>
- Real Estate, Land Use, and Environmental Law*: [www.realestatelanduseandenvironmentallaw.com](http://www.realestatelanduseandenvironmentallaw.com)
- Renewable Energy Law Blog*: <http://renewableenergylaw.blogspot.com>
- Vibrant Environment Blog*: <https://www.eli.org/vibrant-environment-blog>
- Workplace Safety and Environmental Law Alert Blog*: <https://www.environmentalsafetyupdate.com>