

Now available online: RabelsZ, Issue 2/2020

The second 2020 issue of RabelsZ is now available online. It features two essays as well as the contributions to a Symposium on career paths into legal academia held at the Max Institute in June 2019:

Lord Hodge, The Scope of Judicial Law-Making in the Common Law Tradition, pp. 211 et seq

Judge-made law is an independent source of law in common law systems. To jurists brought up in legal systems which have codified law, this is one of the striking features of the common law tradition. Instead of interpreting a code to develop the law, common law judges develop the law which their predecessors have made. While statute law now impinges on many areas of private law, large tracts of our private law remain predominantly the product of judicial decisions. [In this contribution] I wish to discuss some of the areas of private law which have been and remain predominantly judge-made and the limits in the common law tradition on judicial law-making.

Markus G. Puder, Law and Language in Action. Transformative Experiences Associated with Translating the Louisiana Civil Code into German, pp. 228 et seq

In the course of translating the Louisiana Civil Code into German I had to overcome the unique challenges posed by the source text and the receptor text. Beyond the translation issues stemming from its own bilingual origins, the Louisiana Civil Code codifies mixed law in unprecedented ways. Different but no less challenging conditions surrounded the destination text, as distinct species of legal German exist. In addition to the legal German of Germany, these include the legal German of Austria and Switzerland. Resolving these challenges required tailored translation approaches within the spectrum of source text and receptor text orientation. My article discusses the challenges I encountered and the decisions taken in response. It concludes with final thoughts on my experiences as legal translator and legal comparativist.

SYMPOSIUM: Career Paths into Legal Academia

Reinhard Zimmermann, *Akademische Karrierewege für Juristen im Vergleich. Einführung in das Symposium (Career Paths into Legal Academia Compared. Introduction to the Symposium)*, pp. 264 et seq.

By highlighting characteristic aspects of an academic career in the United States, the present contribution attempts to provide an interesting contrast to the career paths into legal academia available in the countries on which the symposium, held in the Hamburg Max Planck Institute in June 2019, focuses. The countries considered in the symposium are Germany and Austria, France, Italy, England and Scotland, and Japan. Here, too, we find considerable differences which both shape different legal cultures and are shaped by them.

Walter Doralt, *Akademische Karrierewege für Juristen in Deutschland und Österreich (Career Paths into Legal Academia in Germany and Austria)*, pp. 268 et seq.

Seen from a distance, it is often presumed that career paths in law and legal education in Austria and Germany are very similar. This assumption is also widely held in Germany (with regards to Austria). Some similarities do indeed exist. However, many aspects during the university education are surprisingly different in both countries. Equally, this is true for subsequent career stages in academia. This article analyses the common points and differences.

Dorothee Perrouin-Verbe & Samuel Fulli-Lemaire, *Career Paths into Legal Academia in France*, pp. 299 et seq.

It is likely that a description of the way university careers unfold in France, at least as far as law is concerned, will surprise even seasoned observers of the academic world. Not everything, naturally, will appear outlandish: that the single most important precondition is having a PhD thesis is perhaps to be expected for a civilian jurisdiction; that the overall system is centralized will not astonish those that have come into even superficial contact with the country. But the extent of that centralization, the sheer number of unwritten rules, the

relative lack of importance attributed to publications and the specificities of the agrégation, the competitive exam which serves as the main point of entry into the body of law professors, as well as the acceleration it is designed to provide to young academics' careers, may surprise some readers.

Francesco Paolo Patti, Career Paths into Legal Academia in Italy, pp. 324-350 (27)

The present contribution aims to explain the relevant steps in the Italian academic career path and its most relevant traits. It is divided in three parts. The first contains a brief outline of the Italian legal framework on university recruitment and its evolution over the last forty years. The various structures are presented in a synthesised and simplified way, with the purpose of indicating the rationales underlying the different reforms. After having sketched out the playing field, the article describes a typical Italian academic career and points out the unique aspects of each step on the long path of academia, from university graduation to the call as full professor. Finally, the paper outlines fundamental features of the Italian academic social environment, which are essential to understand how the rules on university recruitment actually work in practice. Needless to say, the last part is the most important one. In addressing the subject matter, it is not possible to limit the treatment to a description of the rules and their rationales as there are several non-written rules belonging to the Italian academic tradition that need to be presented in order to understand university recruitment in actual practice. Aspects discussed in the present contribution concern especially the field of private law.

Andrew Sweeney. Career Paths into Legal Academia in Scotland, pp. 351 et seq.

This contribution deals with the smallest country represented at the symposium. Its size, however, is not the sole feature that distinguishes Scotland from the others. As a legal system, Scotland sits exactly neither with the Continental systems (represented here by Germany, France and Italy), nor with England. It is, instead, often described as a mixed legal system, sharing features with both Civilian and Common-law systems. [...] This [contribution] focuses primarily on the position in Scotland. But much of what is discussed will be equally applicable to an English academic, and it is easy to overstate the differences between the two jurisdictions. Where interesting differences exist between the two jurisdictions, an attempt has been made to point them out. [...]

Space constraints restrict the assessment to a select few of the myriad of subjects which the topic of academic career paths could include, and some of those selected are permitted only a cursory glance. Particular focus is given to a career in private law, and it must be borne in mind that differences – sometimes significant ones – exist in other areas such as criminology, legal theory and legal history.

Harald Baum, Akademische Karrierewege für Juristen in Japan (Career Paths into Legal Academia in Japan), pp. 374 et seq.

The landscape for an academic legal career in Japan shows some striking differences from its German counterpart. While in Germany a large number of qualified young academics struggle to secure a university posting, Japanese law faculties presently face difficulties in filling free positions. A second major difference is the way in which an academic career is achieved. In Japan, in-house, tenure-track careers are the norm whereas, at least up until now, they are a rare exception in Germany, where it is highly unusual to be appointed by the university where one has obtained his other academic qualification. Accordingly, a change of universities in the course of an academic career is rare in Japan while in Germany the opposite is true. Japanese law faculties are entirely free to determine the qualifications necessary for an academic promotion. A second monograph, like the German »Habilitation«, is unknown in Japan. A PhD thesis, however, is increasingly common. The typical academic career starts after four years of undergraduate studies, followed by a two-year period of study at graduate level or, alternatively, two years of training at a law school. Thereafter, a three-year doctoral programme has nowadays become the norm. This is followed by employment as an assistant, and in the event that the candidate's qualifications are seen as sufficient, by a promotion to the position of associate professor. The latter is a member of the faculty and employment is no longer limited in terms of duration. The final step is promotion to full professorship at the average age of 36 to 40.