

European Normativity – Global Historical Perspectives

Veranstalter: Max-Planck-Institute for European Legal History, Frankfurt am Main

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On September 2, 2013, the inauguration of the new building of the Max-Planck-Institute for European Legal History (Frankfurt am Main) was celebrated. The occasion was marked by the international colloquium „European Normativity – Global Historical Perspectives“. As the Institute's director THOMAS DUVE (Frankfurt am Main) explained in his introductory working paper, the colloquium aimed at opening European legal history „for intra- and interdisciplinary discourse, introducing productive analytical tools into our research and starting a joint reflection on some basic categories of transnational jurisprudence.“¹ Distinguished experts from different academic disciplines and traditions (law, history, anthropology, sociology, art history, and history of science) entered into an intense debate about European legal history in a global perspective. As the event united different generations of scholars, the discussions benefited not only from diverse concepts of normativity, but also from the varied methodological approaches of different schools of thought (for example legal positivism, critical legal theory, cultural studies, intellectual history). The speakers covered many periods from antiquity to the 20th century and dealt, among others, with geographic regions as widely spread as Saxony, Spain, Argentina, and Japan.

Provincializing Europe

One of the colloquium's central topics was the conscious and critical handling of Eurocentrism and Eurocentric historiographies. Many speakers examined critically their own disciplines concerning these questions and suggested new ways of understanding. By discussing the issues of human rights and cultural relativism, MARIE-CLAIRE FOBLETS

(Halle) explained how legal anthropology is still influenced by a Eurocentric way of understanding, which forges a „troublesome relationship“ between legal anthropology and European normativity. GERHARD WOLF (Florence) stressed that history of art has been unreflectingly developed as a European discipline and reassessed the role of aesthetic norms in transcultural encounters of *Europe* and *the Other*.

Continuing the critical approach to Eurocentrism, the colloquium focussed also on the Western expansion and imperialism as well as the processes of universalization and rationalization. YOICHI NISHIKAWA (Tokyo) described the impact of this hierarchical and bipolar world construction of centre (Europe) and periphery (the non-European regions) on the Japanese legal and political elites and demonstrated how local political elites made great efforts to *westernize* their country from the second half of the 19th century onwards.

Agreeing on the need to overcome such a biased perception, the participants discussed alternative approaches on how to deal with the problem of Eurocentrism. In his evening lecture, PAOLO GROSSI (Rome) spread out a wide panorama of European legal history. Taking up these traditional approaches, the colloquium's participants discussed critically some underlying concepts as, for example, the monolithic notion of a „European normativity“. Dealing with the globalization of knowledge in history and its normative challenges JÜRGEN RENN (Berlin) demonstrated the entanglement between normativity and knowledge by deconstructing „universal“ and „value-free“ concepts, and grand narratives in the history of science which had been developed in Europe. Studying the history of emotions, UTE FREVERT (Berlin) demonstrated how the concepts of „crimes of honour“ and „crimes of passion“ were used in a normative discourse on *civilization and barbarism* up to the middle of the 20th century, pointing out that „honour killings“ are

¹Thomas Duve, European Legal History – Global Perspectives. Working Paper for the Colloquium ‚European Normativity – Global Historical Perspectives‘. Max Planck Institute for European Legal History Research Paper Series No. 2013-06. Available at SSRN: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2292666&download=yes> (15.1.2014).

not alien to European history. Also RAJA SAKRANI (Bonn) claimed a reflective re-reading of European legal history, criticizing the absence of Islamic law in European legal historiography despite the presence of an important Muslim population in medieval Europe.

Translation

Another central topic which many speakers referred to, were normative „translations“ or processes that sometimes were qualified as „transfers“, „transplants“, „receptions“ or „diffusion“ of normative ideas and practices. It became clear that the employed concepts and the underlying assumptions should be clarified in order to improve the understanding of these processes in different historical and regional contexts. Cultural and legal translations – transcending the linguistic level – were not analyzed as merely linear and unilateral phenomena. Instead, local adaptations, appropriations, and choices were stressed as decisive factors, as KLAUS GÜNTHER (Frankfurt am Main) and KJELL Å. MODÉER (Lund) summarized in their final statements. Tensions and collisions as well as misunderstandings usually accompanied phenomena of translation and should not be neglected, as their examination promises productive insights. (Cultural) Translation was considered a strong analytical concept offering a convincing alternative to former metaphorical terms of description.

HARTMUT LEPPIN (Frankfurt am Main) examined the encounter of different religious normative orders, analyzing the concept of „freedom of religion“ and the challenge of Christian monotheism in ancient Rome. Studying the „spread“ of the Saxon-Magdeburg Law to Eastern Europe in the Middle Ages, HEINER LÜCK (Halle) presented different manners of „reception“ and discussed the creation of legal spaces („Rechtsräume“) and their changes in time. Such methodological challenges of „legal mapping“ constitute a common problem for investigations of other regions as well, be they in Europe or beyond.

A broader consideration of local factors – favourable or adverse – led to a reinterpretation of processes of (legal) translation and to

new research perspectives. The same holds true for the analysis of the so-called global „circulation“ of normative knowledge which profits from a local and regional point of view, stressed by Renn and Nishikawa. A variety of approaches was presented to explain these phenomena: socio-cultural perspectives by Foblets and WERNER GEPHART (Bonn), epistemological points of view by Renn, ideological orientations by Nishikawa and EUGENIO RAÚL ZAFFARONI (Buenos Aires), and political explanations by JEAN-LOUIS HALPÉRIN (Paris). Other speakers, for example MARTTI KOSKENNIEMI (Helsinki), argued against „contextualism“ and suggested to pursue a critical legal history of international law in order to avoid the creation of new holistic concepts.

Instead of dealing with abstract developments, many contributions were focusing on persons and groups involved in translating the law. Such a perspective leads to a better understanding of the actors – who were not only members of elite groups – and of their scopes of action („Handlungshorizonte“). In this respect, further prosopographical and comparative studies would be helpful, as ANDREAS THIER (Zurich) remarked. TAMAR HERZOG (Cambridge, MA), examining the role of law for defining the „identity“ of indigenous and European inhabitants in early modern Spanish America, and Zaffaroni, who dealt with the „influence“ of European penal law in Argentina in the 19th and 20th centuries, showed the importance of (transatlantic) migration and moving populations. Halpérin compared the transplants of European normativity in British India and in Japan (18th-20th centuries) focusing on similarities and obstacles in these two processes.

Multinormativity and Legal Pluralism

The discussions during the two days resulted in a prolific outcome. The diverse contributions did all – more or less explicitly – converge on the necessity of a more accurate and broader epistemological approach towards normativity. Such a new theoretical framework could be supplied by concepts of legal pluralism or multinormativity, which allow a more nuanced comprehension of legal mechanisms. It would prevent thinking and

writing about legal history from sticking to container-concepts.

The participants, who examined the complexity of legal spheres in various societies, drew on legal pluralism. While some presentations investigated manifold laws, commonly understood as rules within the domain of the state (Halpérin) – that is weak legal pluralism –, other panellists conducted their analyses under a framework of strong legal pluralism. Renn, for instance, underlined that along with state law, the focus should also lie on the role of other legal actors, such as individuals and institutions, their interconnections as well as their interactions with the environment. The wider array of levels and actors is particularly relevant, since the analysis of the local sphere was presented by many participants as the *conditio sine qua non* to better grasp the global legal phenomenon.

Moreover, it was recommended that criteria and analytical methods should be developed that allow to overcome the traditional normative hierarchy and to differentiate law from non-legal normativity, for example religious, moral or aesthetic ones (Leppin, Thier, Wolf). This distinction is often revealed by the local praxis of law, not necessarily by legal definitions. Reflecting on normative plurality also implies a broader selection of legal historical sources. They should be emancipated from the classical legal issues to which they are traditionally linked as Koskenniemi pointed out. Furthermore, the colloquium encouraged to examine the interdependency between law and other normative spheres, and to take into account the multi- and transdimensional levels of law, as MARIO ASCHERI (Rome) observed in his final statement. Günther, for his part, argued that law is losing its status of an exclusive and stand-alone research topic in this field.

Not least because of this, the speakers acknowledged that law as one kind of normativity can only be understood properly with reference to other normative *modi*. They highlighted the need for alternative perspectives and interdisciplinary research on legal history.

Conference Overview:

Evening lecture

Paolo Grossi (Rome): Die Botschaft des europäischen Rechts und ihre Vitalität: Gestern, heute, morgen

Thomas Duve (Frankfurt am Main): Introduction

Section I: Theory and Method

Jürgen Renn (Berlin): The Globalization of Knowledge in History and its Normative Challenges

Marie-Claire Foblets (Halle): European Normativity and Legal Anthropology. The History of a Troublesome Relationship

Werner Gephart (Bonn): European Legal Analysis as Cultural Research: A Global Cultural-Sociological Perspective

Section II: Integration and Encounter in the Ancient World and the Middle Ages

Hartmut Leppin (Frankfurt am Main): Religious Liberty and the Challenge of Monotheism

Heiner Lück (Halle): Aspects of the Reception of Saxon-Magdeburg Law in Middle and Eastern Europe

Section III: Law during the Age of the European Expansion

Martti Koskenniemi (Helsinki): In Praise of Anachronism: Thoughts on Critical History of International Law

Tamar Herzog (Cambridge/MA): Legal de-Naturalization: Forming and Reforming Insiders and Outsiders in Spanish Colonial Imagination

Section IV: European and other Normativities in the Age of the Transformation of the World

Eugenio Raúl Zaffaroni (Buenos Aires): Der Einfluss des deutschen Strafrechts im argentinischen und lateinamerikanischen Recht

Yoichi Nishikawa (Tokyo): Menschenbild und Ordnungsvorstellung im japanischen Liberalismus zwischen Westen und Osten

Jean-Louis Halpérin (Paris): Transplants of European Normativity in India and in Japan: an Historical Comparison

Raja Sakrani (Bonn): The Law of the Other in

Europe. On the Historical Presence of Islamic Law

Ute Frevert (Berlin): Honour and / or / as Passion

Section V: The Globalization of Aesthetic Norms

Gerhard Wolf (Florence): Normative Aesthetics and Transcultural Dialogue. Global Dynamics in the Premodern Period

Final Discussion

Initial Statements:

Mario Ascheri (Rome)

Klaus Günther (Frankfurt am Main)

Kjell Å. Modéer (Lund)

Andreas Thier (Zurich)

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