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Visible and Invisible Civilization

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The study of civilization is one of the core subjects of international legal history. This is no recent development. Jörg Fisch published his seminal work »Die Europäische Expansion und das Völkerrecht« in 1984, the same year in which Gerrit W. Gong presented his renowned »Standard of Civilization«. Today, the more recent works by Martti Koskenniemi and Antony Anghie probably represent the most influential research in this field. What all these path breaking works have in common is that they discuss concepts of civilization in international law especially with regard to its function as providing justification narratives for the European/non-European unequal relations, in particular in the 19th century.

These studies on the function of civilizational discourses rather refrain from developing definitions of the meaning of civilization. The reason might simply be the diversity of historical legal discourses of civilization. In the absence of a shared understanding of civilization, it seems, its main function as a narrative to legitimate European expansion made any further systematization unnecessary. It follows from this that conceptual histories of civilization appeared comparatively rarely, even though with the important exception of Jörg Fisch's entry »Zivilisation und Kultur« in *Geschichtliche Grundbegriffe*.

Marc Pauka's research on civilization and culture in international law is introduced as conceptual history and studies the meaning of civilization in international legal theory from 16th to 20th centuries. The focal point of the study is, however, the development during the 19th century, »the heyday of the concept of a ›civilized state‹«. The book illustrates the transformation of the concept of civilization from a synonym of culture until the mid of the 19th century to its reverse at the beginning of the 20th century. While, then, culture described the sphere of art and intellectual life, civilization was a term to determine the technical and economic stage of a society. Another merit of Pauka's study is that he identifies the claim of reciprocity to be one of the main aspects for the legal conception of the civilized state. Even though a major analytical part on reciprocity and civilization is missing in the book, Pauka presents enough evidence that reciprocity (positive and negative) constitutes a key element in the systematization of civilization in international legal literature.

»Kultur, Fortschritt und Reziprozität« presents a committed critique at legal historian works that trace the origin of civilizational concepts back to the time of the second scholasticism during the 16th century. For methodological reasons it seems appropriate to deny research strategies that apply *historical concepts* in contexts in which they obviously did not exist. However, it is an essential intellectual enterprise to carve out structural similarities and dissimilarities of legal thinking in different ages and cultures etc. In this sense, it is necessary to use *analytical concepts* to show that even though Francisco de Vitoria and his disciples did not write about »civilization« the affinity of their legal theory to 19th century civilizational discourse is actually striking.

The comparison illustrates that civilization and culture in the international legal writing of the 19th century were characterised by a renaissance of religious and natural legal elements which, in fact, was untypical in the context of 19th century positivism but had much in common with works of earlier periods, like, inter alia, the second scholasticism. A historical explanation of this similarity would have to take into account that in both cases European international lawyers struggled with integrating non-European diversity into their legal imagination. It is important, then, to discuss civilization as a European heuristic which arises from European countries' embeddedness into global

* Marc Pauka, Kultur, Fortschritt und Reziprozität. Die Begriffsgeschichte des zivilisierten Staates im Völkerrecht (Rheinische Schriften zur Rechtsgeschichte 16), Baden-Baden: Nomos 2012, 268 S., ISBN 978-3-8329-7413-8

relations. In this sense, the meaning of civilization, as the glue of a specific collective group identity, becomes visible as a shifting social boundary which renews itself in the interaction with a respective other. This observation is best illustrated in 19th century civilizational concepts that develop hierarchies of different levels of civilization which were attributed to different societies and world regions.

Altogether, the book is based on the reading of eminent international legal theorists throughout four centuries. The second scholasticism I have already mentioned. What follows is a selection of many important authors on civilization from the 17th to the 20th century which cannot be appreciated in detail in the context of this review. However, it is the credit of the author to discuss all these works in a manner that does not lose link to the main research question. The book is well structured which makes it easy for the reader to follow the overall argument. In its final section, Pauka refers to the decay of civilizational discourses in the 20th century. However, even though the term of civilization more or less disappeared in international legal sources, it is debateable whether its heuristic for the justification of asymmetric international relations is indeed invisible today.

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Stefan Kroll

Koloniales Kapital

Über Pfadabhängigkeiten rechtlicher und politischer Einflussnahme*

In der gegenwärtigen Forschung zu Recht und Kolonialismus zeigt sich ein interessanter Gegensatz: Während das Recht vor allem als ein Instrument kolonialer Machtausübung verstanden wird, erscheinen Juristen, die nach einer Ausbildung an europäischen oder amerikanischen Universitäten in ihre Herkunftsländer zurückkehrten, als zentrale Akteure lokaler Unabhängigkeitsbewegungen, aus denen heraus neue Nationalstaaten entstanden. Dieser Gegensatz wird beispielhaft illustriert durch aktuelle Arbeiten von Turan Kayaoglu zum *Legal Imperialism* [1] sowie Arnulf Becker-Lorca und seine Figur des *Semi-Peripheral Jurist*. [2] Das Buch *Asian Legal Revivals – Lawyers in the Shadow of Empire* erschien 2010 und geht daher nicht direkt auf diese Arbeiten ein, dennoch ist es ein Beitrag dazu, beide Beobachtungen miteinander zu verbinden. Die Rechtssoziologen Yves Dezalay und Bryant G. Garth, die gemeinsam bereits sechs Bücher verfasst oder herausgegeben haben, untersuchen die Rolle von Juristen in der Herausbildung und Legitimation politischer Herrschaft in sieben asiatischen Ländern im 19. und 20. Jahrhundert.

Asian Legal Revivals vergleicht die Fallstudien dahingehend, wie sich Einfluss und Status von Juristen in den unterschiedlichen historischen Phasen äußerer Abhängigkeit und Unabhängigkeit der betrachteten Länder wandelten. Mit unterschiedlichen Akzenten zeigt sich dabei ein ähnliches Muster in allen beobachteten Fällen: Lokale Eliten werden zunächst an ausländischen Universitäten ausgebildet und dann in ihren Herkunftsländern als koloniale Sachwalter »kooptiert«. Dann aber setzen diese ihr »juristisches Kapital« – das analytische Vokabular der Autoren ist angelehnt an die

* Yves Dezalay, Bryant G. Garth, Asian Legal Revivals. Lawyers in the Shadow of Empire. The University of Chicago Press: Chicago 2010, VI, 289 S., ISBN 978-0-226-14462-7

1 Turan Kayaoglu, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China, Cambridge 2010.

2 Arnulf Becker Lorca, Universal international law: Nineteenth-century histories of imposition and appropriation, in: Harvard International Law Journal 51, 2 (2010) 475–552.