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Alfons Bora*

Unstructured Diversity

* Universität Bielefeld, alfons.bora@uni-bielefeld.de

reform in both the domestic and the imperial spheres. After reading Cunningham's book, legal historians might wonder how the reputation of philanthropy historically influenced the breadth of public space it was granted and to what extent it became a partner of the state in developing social policies and prompting pieces of legislation. Between the 1790s and the later 19th century, philanthropists committed to solving the problems of vagrancy and crime offered a helping hand to police reformers (Chapters 4 and 5); as agitators both in and outside Parliament, they worked towards the abolition of the slave trade and slavery, and actively participated in political and economic debates about the reform of the Poor Laws (Chapter 7); meanwhile, as prison reformers and critics of capital punishment, they solicited the establishment of government inspectorates and royal commissions (77–79). Even those philanthropists who criticised state intervention for undermining individual effort and self-help – such as the members of the Charity Organisation Society, established in 1869 – ended up contributing their casework on poverty to state departments as public social workers (173).

More generally, between the 18th and 19th centuries, philanthropy in Britain played a crucial role in promoting »patient research and inductive reasoning«, as well as applying the outcomes to the »solution of problems that straddled the boundaries between the social, the political and the economic« (81). This was bequeathed to the social policymaking of the late 19th and 20th centuries as an enduring legacy. From John Howard onwards, various philanthropists and philanthropic associations adopted the methods of inspection and monitoring; collected statistical information and issued surveys and reports; supported and implemented technological improvements; and built webs of intelligence. This philanthropic approach to social inquiry can be detected behind the letter of epoch-making statutory enactments such as the New Poor Law of 1834. Conversely, a legal-historical focus on philanthropy can show how moral preoccupations and religious apprehensions were intertwined with social, political and economic concerns in the making of the law. This represents a potentially productive challenge to legal historians: how to take seriously the philanthropic and humanitarian motives of historical actors (alongside their criticisms of the state, the Church and colonial establishments) without promoting a »recuperative« analysis of state and imperial policies. From this perspective, the law itself emerges, from time to time, as historically prompted by actors who were neither institutional nor strictly legal, and who could be more aptly described as »concerned citizens« who, while marking the autonomy of civil society from the state through their private and voluntary philanthropic activities, turned civil society into a field in which to develop and publicly promote state policies.

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Unstructured Diversity*

The keyword »diversity« refers to a very broad range of topics. These include, for example, issues of civil status (with implications for labor law); questions of political equality; demands for the implementation of civil and equality rights with regard to race, gender, skin color, ethnic origin, age, disability, or religion; and debates about cultural richness. The latter in turn comprise issues of normative diversity in general and legal plurality in particular, such as are being discussed in the field of

* Christina Brauner, Antje Flüchter (eds.), Recht und Diversität. Lokale Konstellationen und globale Perspektiven von der Frühen Neuzeit bis zur Gegenwart, Bochum: Transcript 2020, 374 p., ISBN 978-3-8376-5417-2

sociology of law under the heading of »legal pluralism« and linked to the concept of »multinormativity« by legal historians.

The volume under review is primarily concerned with questions of normative and legal plurality, although individual contributions also address other topics. It contains eight chapters and a detailed introduction by Christina Brauner, who presents the conceptual and systematic framework of the volume. Before devoting some remarks to this concept, the individual contributions, which follow a predominantly historical orientation, will be introduced very briefly.

Anna Dönecke analyzes processes of law and power formation in French and Dutch trading companies of the 18th century. In this context, legal diversity was more than a mere co-existence of different normative systems; rather, these systems and institutions were put into relation to one another by comparative methods. In the course of these processes, in legal practice the various legal systems became increasingly intertwined.

Andreas Becker uses the example of the Saami in central Sweden in the 17th and 18th centuries to show the importance of law for ordering and categorization the population.

Ninja Bumann describes how, in the 19th century, the Habsburg administration in occupied Bosnia-Herzegovina made use of the local Sharia jurisdiction to incorporate existing legal and power structures into their own system of imperial and colonial authority.

Nina Dethloff shows how the plurality of law plays out in the process of globalization. Using the example of marriage and family law, she examines the hybridization of legal systems that comes about when different legal sources interact. Against this background, she then investigates how, in situations of rich cultural diversity, the rules of both conflict of laws and substantive law ensure coherence, transparency, information, and access to legal institutions, remedies etc.

Fabian Fechner describes the local legal practices of the Jesuit order in India and Peru, pointing out the special role of unwritten law in the face of multi-layered particularisms in the order's provinces. These provinces made use of a reasonably strong local legal culture, which was oral and based more on participatory structures, to evade central regulation by Rome.

Cornelia Aust writes about the legal categorization of the Jewish population in the Polish partition territories under Prussian rule during the late 18th century. She shows the role played by synchronic and diachronic legal comparisons not only in the colonization of non-European territories, but also and very specifically in establishing and stabilizing Prussian central power in the newly acquired territories.

Antje Flüchter examines the significance of comparative practices for the assessment of foreign law by travelers in pre-modern contact zones in Asia. People were aware of the existing cultural diversity, but it was not considered a challenge to rulers or the law; rather, it was compared and interpreted in concrete interactions and then integrated into one's own perspective.

Hanna Sonkajärvi uses insolvency cases and commercial law practices in nineteenth-century Brazil to highlight the relevance of conventions which (in Max Weber's terms) based their legal validity on the rather general – but in practice very palpable – disapproval that ensued if they were broken. The courts in the cases investigated in this chapter followed trade customs, which demonstrated a stronger sense of continuity than laws enacted by the state.

These contributions are consistently very interesting and instructive. They impress by offering a wealth of knowledge, detail, and thoroughness, and provide vivid pictures of the areas of life and the periods studied, thus enabling the kind of experience that makes interdisciplinary contacts so fruitful.

However, in contrast to the strong overall impression given by the individual contributions, the efforts to systematize this rich material – at least from an external disciplinary perspective – fail to convince.

This is mainly due to the very sparse conceptual differentiation at the beginning. The introduction identifies two central questions: first, how society deals with diversity in law, and second, how law responds to diversity in society. Four perspectives of inquiry are linked to these rather obvious questions. The first of these employs a method sometime used in ethnolinguistics: it differentiates between »emic« and »etic«, i. e. between a participatory approach and that of an observer. This is followed by a distinction between two ways of talking about law. The second perspective considers the diversity of law as an expression of differentiated power relations in a society. The third offers a look at the different forms and ways in

which the law constructs social differentiations. The fourth perspective examines social practices of comparison.

Two of these four perspectives recognizably map the two central questions addressed above, but no such connection is visible in the first and fourth perspectives. Their conceptual, systematic significance is difficult to discern, especially since – for example in the case of emic / etic – fairly obvious references to familiar methodological differentiations are missing (such as Identity Theory versus Difference Theory, or participation versus observation). Finally, the perspective of comparison is obviously due to the volume's origin in the Bielefeld Collaborative Research Center »Practices of Comparison / Praktiken des Vergleichens« and as such is quite plausible. However, little is gained by the term. Comparison as a method can lead either to the recognition of similarities or to the identification of differences between objects of reality. Accordingly, it fulfills at least two very different functions, which would have to be separated in the analysis and related to the object at hand in order to facilitate understanding.

In general, the reader is irritated not only by a certain conceptual generosity, but also by the structure of both the introduction and the volume as a whole. The presentation of the individual contributions and their assignment to the four thematic complexes do not correspond in any way to the structure of the volume: it begins with the third perspective, followed by the second and fourth, and concludes with the first perspective. If such discontinuity is already disconcerting to the reader, this sensation is only increased by the way the introduction assigns the individual contributions, which deviates significantly from the structure of the volume. These are by no means cosmetic problems. Rather, these multiple inconsistencies render the promised systematics obsolete, prevent the understanding of the context – beyond the very successful individual contributions – and ultimately thwarts any possible gain in knowledge that could be achieved from this compilation.

Finally, given the obvious interdisciplinary nature of the topic, it must come as a surprise that the contact between various scholarly perspectives appears less intensive than it could have been. In other words, the volume would have benefited from more – and, above all, more thorough – interdisciplinarity and an explicit integration of neighboring sciences. It is interesting to note that even specific legal questions and insights are barely given any room; the exception – Dethloff's contribution – and a few sparse words in the introduction only serve to emphasize this observation. This is even more true in relation to the social sciences. Explicit references to sociology of law, for example, are largely absent, with the exception of the contributions by Dethloff and Sonkajärvi. This is all the more surprising, given that sociology of law has addressed the idea of legal plurality since the days of Eugen Ehrlich (1913); has used the term explicitly since it was introduced in John Griffith's 1986 essay; and has incorporated situations outside Europe into its observations from early on, for example in the work of Boaventura de Sousa Santos or, more recently, in extensive studies such as the one on a »global Bukovina« (Gunther Teubner et al.). All this could have provided fertile ground for discussions about the question pursued in this volume.

The overall impression is thus ambivalent. To summarize the above-mentioned findings: this is a volume that is informative in its historical details, and in this respect it is well worth reading. However, it leaves the reader perplexed and wondering what overarching systematic significance these exciting narratives actually have.

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