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From Justice of the Peace to Women's Rights: A Glimpse of Jean-Pierre Nandrin's Contributions to Legal History

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Flexibilisierung der Arbeit engagiert, welche er als illusionäre Lösung zu Lasten der weniger Qualifizierten denunziert. Anstatt die Arbeit weiterhin als gemeinsamen Produktionsprozess anzusehen, beginnen ab den siebziger Jahren Arbeitnehmer und Arbeitgeber, die Arbeit nur als Einkommensquelle und als Funktionsstelle im Betrieb zu betrachten.

Das lange und mühsam erarbeitete Arbeitsrecht sitzt nun auf der Anklagebank, angegriffen insbesondere von den Verteidigern der liberalen Wirtschaftsordnung. Wenn nur noch wenig neue Stellen geschaffen werden und der Arbeitsmarkt so labil ist, dann liegt es nach deren Auffassung nicht an der wirtschaftlichen Lage der französischen Industrie, sondern am zu dicken Arbeitsgesetzbuch, das eine lähmende Schutzfunktion innehabe. Die Frage nach dem Sinn der Arbeit wird aufgeworfen, sowie auch die nach der Rolle des Staates in diesem Prozess. Der Rechtsstaat, wie er aus der Revolution hervorgegangen ist, so Didry, unterstützt das Konzept des sozialen Rechts. Die Regeln, die dadurch entstehen, verändern aber nicht per se die Handlungen der sozialen Akteure. Deren Sinn wird nur ersichtlich nach der Art und Weise, wie sich die Akteure dieser Regeln in ihren Aktionen und Mobilisierungen bedienen. Sollten die Regeln neu definiert werden, dann werden sich alle Akteure an den Staat wenden, um ihn an seine Schutzfunktion zu erinnern. Der Vergleich mit Deutschland ist in diesem Falle aufschlussreich: Über die Tarifautonomie, aber auch über das Mitbestimmungsgesetz sind die jeweiligen Tätigkeitsfelder von Staat, Arbeitgeberschaft und Arbeitnehmerschaft deutlicher definiert worden. Eine Verwechselung zwischen den Rollen und Aufgaben findet kaum statt. Das Arbeitsrecht wird als Korsett konzipiert, das den Aktionen der Arbeitgeber- und Arbeitnehmerschaft einen Rahmen verleiht, der eigentlich die Autonomie der Akteure erleichtern soll statt sie einzuschränken, es sei denn, das Korsett sei zu eng.

Zusammenfassend kann man sagen, dass die Lektüre des Buches sich lohnt, insbesondere die ersten vier Kapitel, die eine interessante These verteidigen, nämlich dass die Arbeit als Ergebnis der Interaktionen vieler Akteure angesehen werden kann, die im Fertigungsprozess aufeinander angewiesen sind. Diese hier dargestellte Auffassung verpflichtet zugleich die Soziologen und die Juristen, die Beziehung zwischen Arbeit und Recht neu zu denken.

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From Justice of the Peace to Women's Rights: A Glimpse of Jean-Pierre Nandrin's Contributions to Legal History*

Hommes et normes is a collection of articles written by Jean-Pierre Nandrin (1947–2012) arranged and published by former friends and colleagues wishing to pay him a tribute. Jean-Pierre Nandrin was a professor of modern history at the Université Saint-Louis (Brussels). Throughout his career, he developed his expertise and interest in social and legal history, including the history of justice and questions relating to gender issues. Dealing mainly, but not exclusively, with the period 1830–1914, *Hommes et normes* is divided into five parts: the history of justice, social history and social law, political history and public law, women's history, and historiography and methodolog-

* Jean-Pierre Nandrin, Hommes et normes. Enjeux et débats du métier d'un historien, Brussels: Presses de l'Université Saint-Louis 2016, 676 p., ISBN 978-2-8028-0222-8

ical reflection. Each section comprises four to six articles and is introduced by a (Belgian) specialist in the respective field.

From the perspective of legal history, the most interesting papers are first and foremost located in three sections. The first (history of justice) deals with the political maneuvers and stakes behind the 1832 appointment of almost 400 judges by the executive power of the newly established Kingdom of Belgium. It shows the difficulties and challenges of managing the transition between the judiciaries of two different but successive regimes. In this regard, Jean-Pierre Nandrin also explains how the appointment of the judges composing the highest judicial authority (Court of Cassation) was politically motivated. The politicization of judicial nomination, therefore, is far from being restricted to recent decades (190). However, Nandrin insists that politicization does not necessarily mean clientelism. Political leaders were also very much driven by the wish to foster the birth and evolution of the Belgian judiciary. In this perspective, appointing a court whose judges shared the same philosophy as that of the government was perceived as a good way to consolidate the new Belgian state.

In this first chapter, the reader also finds articles on justices of the peace, the lowest civil jurisdiction. Jean-Pierre Nandrin highlights an important paradox. On the one hand, politicians and law practitioners have since the 1830s praised and constantly referred to the philosophy and utopia of the law of 1790, which established justices of the peace. On the other hand, this reference to the past has been mobilized to legitimize transformations of the justice of the peace that are sometimes at odds with the philosophy of the revolutionary law of 1790. The goal of the latter was to establish a jurisdiction of proximity whose judges would act as conciliators and rule on equity. Without excessive formalism, the proceedings before justices of the peace are deliberately kept accessible. Ensuring the preservation of peace within his jurisdiction, the judge rules on the facts and ignores legal controversies and questions of interpretation (»juge du fait et non du droit«, 79). Moreover, he is not required to be a trained legal practitioner, but rather »un homme de bien« (»a man of the good«, 80). Although it claims to be inspired by the same philosophy, the Belgian judicial system evolved differently. From the 1830s onwards, the wish to foster a justice of proximity has justified a professionalization of the justices of the peace and widening their competences. While remaining *geographically* a jurisdiction of proximity, the justice of the peace has been normalized, included in the Belgian judicial system and embodied by professional jurists.

The the second part, *Hommes et normes* contains essays relating to social law. Convincingly, Nandrin explains how nothing resembling an effective and autonomous Belgian social law appeared until around the First World War. After the violent riots of 1886, the Belgian legislature adopted several social laws. However, this legislation remains firmly anchored in the civil-law tradition of the Napoleonic *Code civil*. The relationship between a worker and his employer is seen as a problem of private rather than public nature. According to the principle of contractual freedom, it is up to them to define the nature and the extent of their association. At the end of the 19th century, the Belgian legislature struggled to conceive of labor relations outside of this contractual perspective. When it becomes obvious that the contractual relations between a worker and his employer are far from balanced, public authorities are not apt to consider labor relations as a special legal realm. Rather, they take protective measures in favor of the workers in order to restore the equality of the two contractual parties, the goal being to foster contractual freedom and not to be interventionist. As a consequence, the Belgian legislature focused mainly on individual labor relations in its early attempts at social measures. It did not really take into account the collective dimension nor the more general issue of commercial society. The articles of Jean-Pierre Nandrin's in this edited volume clearly depict this persistence and the importance of a civil-law approach at the time of the first modern social laws (ca 1886–1914).

Thirdly, *Hommes et normes* brings out an interesting contribution of Jean-Pierre Nandrin to the legal aspect of gender studies. He proposes, for instance, a long-term perspective on the difficult issue of the ban on night-work for women. Several articles also deal with the legal status of independent female workers and the difficulties they faced in the 19th and 20th centuries in freely practicing certain professional activities. Nandrin's clear contributions on the access of women to the bar, magistracy and notary should allow an easy comparison with the situation that prevailed in other European countries. In addition, his paper on the legal status of female merchants again points out

that the Belgian legislature had serious difficulties in emancipating itself from the *Code civil*, which was unfavorable to married women, when trying to reform the *Code de commerce*.

From an editorial point of view, the book is pleasant to read and a clear success, despite a very few misprints (for instance 457, 1st §, 517). There are, however, two regrettable flaws. Firstly, some of the articles are relatively dated (1980s–1990s). They sometimes contain information that needs to be updated. For instance, in 1997 Jean-Pierre Nandrin wrote that, since 1993, the Belgian justices of the peace had had general competence for disputes concerning claims of less than »75.000 FB [Belgian Francs]« (132). In the same article, Nandrin explains that litigation concerning alimony and maintenance allowance represented an important part of the justices' of the peace workload. Since 2014, however, a *tribunal de la famille* has been competent for those disputes (art. 572bis *Code judiciaire*). In another essay from 1996, he explained that a new Belgian law should be adopted relatively soon regarding the night work of women (460). It would have been interesting for the reader to have a short footnote describing the current situation of such issues. What is the current threshold, in euros, delimiting the general competence of the justices of the peace (2500 €, art. 590 *Code judiciaire*)? Has a law been adopted regarding night work since 1996? Secondly, a synthesis at the end of each section (or at the end of the book) would have been helpful of paramount interest. More especially, a foreign perspective on Nandrin's work regarding Belgium would have been valuable. He came to many inspiring conclusions that have been partly summarized here. How have neighboring European countries evolved on those matters? Short essays from non-Belgian scholars would have interestingly enlarged the perspective. It would have been another opportunity to highlight and recall once more the important scientific contribution of Jean-Pierre Nandrin to legal history.

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Pamela Alejandra Cacciavillani

Gemeineigentum als Katalysator*

In *La propiedad en construcción. Luchas por los bienes comunales en la Mancha, 1816–1912* analysiert Vicente Cedrero Almodóvar die Entwicklung des Eigentums, insbesondere den konfliktreichen Prozess des Umbaus von Gemeineigentum zu liberalem Eigentum. Dieser Prozess wird innerhalb eines bestimmten geographischen und zeitlichen Raumes historisch beschrieben und auf einen konkreten Typ von Gemeineigentum fokussiert, indem der Verfasser sich auf die Ereignisse der Jahre 1816–1912 in der spanischen Region Campo de Calatrava konzentriert und Bezug nimmt auf Güter, die dem Gegenstand des *derecho maestral* unterlagen. Das *derecho maestral* war ein feudales Einkommen zugunsten des Landherrn bezüglich der Gemeingüter und spielte eine wichtige Rolle in den Bauerndörfern von Calatrava. Als rechtliche Institution bestand es in einer Gegenleistung für die Nutzung der Weiden (etwa im Sinne einer Weidenpacht – *arriendo de los pastos*) und bedeutete, dass die Dörfer dem Landherrn (*maestre*) jährlich die Hälfte ihres Einkommens abzugeben hatten.

Bemerkenswert ist, dass dieses feudale Rechtsinstitut ein Hindernis auf dem Weg zur Festigung neuzeitlichen Eigentums war, und trotzdem hat es

* Vicente Cedrero Almodóvar, La propriedad en construcción. Luchas por los bienes comunales en La Mancha, 1812–1912, Madrid: Sílex Ediciones S. L. 2016, 264 S., ISBN 978-84-7737-637-8