

WS 14/15 **ring
vorlesung**

des Exzellenzclusters
»Die Herausbildung normativer Ordnungen«

Translating Normativity: New Perspectives on Law and Legal Transfers

Campus Westend

Hörsaalzentrum & Casino

Dec. 04 / Dec. 16 / Jan. 20 / Feb. 05 / 18 h c.t

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NORMATIVE ORDERS

Exzellenzcluster an der Goethe-Universität Frankfurt am Main



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Preface

Translating normativity: New perspectives on law and legal transfers

Throughout history, law and legal knowledge were circulating between cultures, countries, and continents. Sometimes willingly adopted, sometimes forcefully imposed by powers from outside, the process of dealing with foreign law often changed not only the sources of law, but a whole structure of normative thinking. One might think of the reception of Roman law in Europe during the Middle Ages, the formation of *derecho indiano* in early modern Hispano-America or the adoption of European law in East Asia during the 19th century. In recent years, such processes could be observed in states in transition, for example in Eastern Europe.

As most normative orders, law is not only produced by politics, but it is rooted in language and traditions. Is it actually possible to translate norms?

What happens when they are taken up by a different culture, having to operate in another language? How does their meaning shift during these processes, how do their function and even their normativity change?

The lecture series, which will try to find answers to these questions, is inspired by the concept of “cultural translation”. This term aims to supersede the notion of a linear give-and-take; instead, it emphasizes interactions and intermediate areas, internal dynamics, resistance and the “agency” of the actors. In a critical reflection of the traditional Eurocentric perspective, the concept of “translation” reminds us how complex, intertwined, and contested the adoption and re-production of foreign norms might be.

We do not only focus on legal normativity. While one lecture will explicitly discuss the translatability of law and legal norms, the other lectures shall deal with different forms of normativity as to be found in political concepts, religion and technology. Broadening the view in this way should enable us to compare normative orders and to examine how cultural translation actually “worked” in different fields. This might, eventually, produce a profounder understanding not only of law but also of normativity in general.

Prof. Thomas Duve
Dr. Lena Foljanty



Prof. Thomas Duve
Cluster of Excellence Normative Orders
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Dr. Lena Foljanty
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Legal History

Programm

Campus Westend
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Where? When? What?

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18 h c.t | One European private law, more than one language: in vindication of Goethe
Dr. Simone Glanert, Kent Law School (UK) |
| HZ 10 | Tue, Dec. 16, 2014
18 h c.t | Das ethische Produkt, oder wie man Moral in Material übersetzt. Regeln für Herrscher von Qiu Jun (1421-1495)
Prof. Dagmar Schäfer, Max-Planck-Institut für Wissenschaftsgeschichte (Berlin) |
| HZ 11 | Tue, Jan. 20, 2015
18 h c.t | Translating political vocabularies in the Iberian Atlantic. Historical semantics and conceptual transfers
Prof. Javier Fernández Sebastián, Universidad del País Vasco (Bilbao, Spain) |
| Cas. 1801 | Thu, Feb. 5, 2015
18 h c.t | Translating norms: strengths and weaknesses of a concept
Prof. Peter Burke, University of Cambridge (UK) |



Dr. Simone Glanert
Kent Law School (UK)

Abstract

Over the last decades, diverse task forces have sought to promote legal integration within the European Union. The most familiar endeavours are no doubt those of Ole Lando's "Commission" and Christian von Bar's "Study Group". And it is well-known that the European Parliament has spoken in favour of a European Civil Code on various occasions and that the European Commission has provided financial sponsorship for some at least of the major projects. Although the idea of a European private law has generated considerable debate, the specific implications following upon the brand of legal uniformization being defended remain poorly appreciated. In order to yield a more insightful perspective on the proposed legal framework, I consider Johann Wolfgang Goethe's idea of "Weltliteratur" – or world-literature – that he elaborated in 1827 in a context where leading German intellectuals felt it imperative to move the cultural agenda beyond the narrow confines of parochial interests. The striking contrast between the two models of intercultural communication sheds light on the legal initiatives mentioned above. In particular, my comparative and interdisciplinary analysis points to the many translational problems arising from the development of uniform law in a plurilingual setting which are either ignored or downplayed by proponents of a European private law.

Thursday, Dec. 4, 2014, 18 h c.t
Campus Westend, Casino, Cas. 1801

One European private law, more than one language: in vindication of Goethe

CV

Simone Glanert, a graduate of the Sorbonne and a former Rudolf B. Schlesinger Fellow at Cornell Law School, is a Senior Lecturer at Kent Law School (UK) where she teaches comparative law, French public law, and legal interpretation. She has acted as visiting professor in Grenoble, Montreal, and at the Sorbonne. Her research focuses on theoretical issues arising from the practice of comparison in the context of the globalization and Europeanization of laws. In this regard, Dr. Glanert's monograph *De la traductibilité du droit* (Paris: Dalloz, 2011) critically assesses the possibilities and limits of legal translation from an interdisciplinary perspective. In addition, she recently edited *Comparative Law – Engaging Translation* (London: Routledge, 2014). Further, she acted as Guest Editor for a special issue on law and translation just released by *The Translator*, a leading translation-studies journal. Other representative publications include "Foreign Law in Translation: If Truth Be Told.", in Michael Freeman and Fiona Smith (eds), *Current Legal Issues: Law and Language* (Oxford: Oxford University Press, 2013; co-authored with Pierre Legrand) and "Method?", in Pier G. Monateri (ed.), *Methods of Comparative Law* (Cheltenham, UK: Elgar, 2012).

Tuesday, Dec. 16, 2014, 18 h c.t
Campus Westend, Hörsaalzentrum HZ 10

Das ethische Produkt, oder wie man Moral in Material übersetzt. Regeln für Herrscher von Qiu Jun (1421-1495)

Abstract

Wie organisiert ein Staat handwerkliche Produktion? Eine klassische Antwort darauf gibt Qiu Jun im China des 15. Jahrhunderts: durch die Festlegung von Riten und die Kontrolle von Sitten und Gebräuchen. Dieser Beitrag diskutiert Qiu Juns Ideen zur Organisation von Staat und Handwerk und erläutert den Einfluss, den das diskursive Zusammenspiel von Ritus und Arbeitswelt auf technische und normative Vorgaben hatte. Nicht Gesetze oder technisches Regelwerk bestimmten das Verhältnis zwischen Staat, Gelehrtestem und Handwerk, sondern elementare Fragen nach Verantwortlichkeiten – wer weiß und wer handelt? Quelle der Untersuchung ist Qiu Juns Hauptwerk, die Erläuterungen zum großen Lernen, ein Regierungskompendium verfasst als Ratgeber für den Kaiser. Während des 15. Jahrhunderts wird Qiu Juns Werk aufgrund seines pragmatischen Ansatzes zum kritischen Referenzpunkt der Wang Yangming Schule des intuitiven Lernens. Ende des 16. Jahrhunderts findet Qiu Juns Werk auch Eingang in Diskurse zur „Erörterung der Dinge und Handhabung der Angelegenheiten“ (*gezhi bowu*), die Jesuiten in enger Verbindung zur europäischen Tradition der *scientia sahén*.

CV

Dagmar Schäfer ist die Direktorin von Abteilung III, „Artefakte, Handeln und Wissen“, am Max-Planck-Institut für Wissenschaftsgeschichte, Berlin, sowie Professorin für Chinastudien und Technikgeschichte an der School for Arts and Languages der Universität Manchester. Sie ist Expertin für die Wissenschafts- und Technikgeschichte Chinas und bekam ihren Dokortitel 1996 von der Universität Würzburg verliehen. Außerdem hat sie an der Zhejiang Universität, VR China, an der Tsing-Hua-Nationaluniversität, Taiwan, und an der Pennsylvania Universität, USA, studiert und gearbeitet. Zu ihren Veröffentlichungen gehören *The Crafting of the 10,000 Things* (University of Chicago Press, 2011) und *Cultures of Knowledge: Technology in China* (Brill, 2012).



Prof. Dagmar Schäfer
Max-Planck-Institut für
Wissenschaftsgeschichte (Berlin)

Tuesday, Jan. 20, 2015, 18 h c.t
Campus Westend, Hörsaalzentrum HZ 11

Translating political vocabularies in the Iberian Atlantic. Historical semantics & conceptual transfers

Abstract

The Iberian Atlantic constitutes an interesting laboratory for studies of historical semantics, and in particular for the observation of the transfers of political and legal concepts in modern times. With one foot in Europe and the other in America, the Ibero-American world is part of so-called “western civilisation”. Understood as an ensemble that includes Iberia and Latin America, many question however the latter’s belonging to the “West”. As well as the imprint of Christianity and classical culture, in addition to the presence of Spanish and Portuguese as main languages, one should bear in mind the considerable cultural diversity and the persistence of indigenous American languages in extensive rural areas. In any case, the fact that certain circumstances were experienced in the region far earlier than in other parts of the world – conquest, independence, republican and constitutional regimes – renders historical analysis of the circulation of political vocabulary exceptionally interesting. The aim of my lecture is to offer some general reflections (which I will attempt to illustrate with specific examples) upon this theme from the perspective of conceptual history.



Prof. Javier Fernández Sebastián
Universidad del País Vasco
(Bilbao, Spain)

CV

Javier Fernández Sebastián is Professor of History of Political Thought at the Universidad del País Vasco (Bilbao, Spain). He has published extensively in the field of intellectual and conceptual history of modern politics. He has been fellow or visiting scholar at various universities and research centres in Europe and the Americas, including the EHESS, the Université de la Sorbonne Nouvelle-Paris III, the Max-Planck-Institut für Geschichte, the University of Cambridge, Harvard University and the Universidade de São Paulo. He is member of the editorial board of several Spanish and international journals, such as *Revista de Estudios Políticos* and *Modern Intellectual History*. Among his recent books are the edited volumes *Concepts and Time. New Approaches to Conceptual History* (2011) and *La Aurora de la Libertad. Los primeros liberalismos en el mundo iberoamericano* (2012), as well as the *Diccionario político y social del mundo iberoamericano. Conceptos políticos fundamentales, 1770-1870* (2009 and 2014, 11 vols.), which is the result of an on-going transnational project on conceptual comparative history in the Iberian Atlantic (Iberconceptos).



Prof. Peter Burke
University of Cambridge (UK)

Abstract

'Cultural translation' is one of a cluster of concepts such as 'transfer', 'exchange' and 'hybridization', that has come into use to describe cultural change (in domains such as language, architecture, music, religion and so on). Like its competitors, it has advantages and disadvantages.

The model of translation between languages has at least two advantages. Compared with 'transfer', it emphasizes the point that what travels changes. In the second place, the model has the advantage of emphasizing agency, the conscious adaptation of a text to a new context. Of course the model itself needs adaptation when it is used to discuss other kinds of cultural change, for example the work of missionaries in a culture very different from their own. There are obvious differences between translating forms, as in the case of architecture, and translating knowledge or ideas, when the problem of contradiction may arise. The problems of translation from one region to another, from one medium to another and from one domain to another are rather different.

Translators like other people follow norms in their work, while norms like forms or ideas can be translated. In the case of law, one thinks of the problems of translating laws from one language to another, of the translation of oral custom into written law,

Thursday, Feb. 5, 2015, 18 h c.t
Campus Westend, Casino, Cas. 1801

Translating norms: strengths and weak- nesses of a concept

and of imposing laws formulated in one context or culture in a different context or culture.

Despite its advantages, the model of cultural translation is not universally applicable. Like other paradigms, perhaps all paradigms, it casts shadows as well as light. What it does not illuminate (essentially changes that are not the result of conscious action) requires other concepts such as 'hybridization' or 'habitus'.

CV

Peter Burke studied at Oxford and taught at the new University of Sussex (1962-78) before moving to Cambridge, where he became Professor of Cultural History. He retired from the Chair in 2004 but remains a Life Fellow of Emmanuel College. He is also a Fellow of the British Academy, an Honorary Fellow of St John's College Oxford, and has been awarded honorary degrees by the Universities of Lund, Copenhagen, Bucharest and Zürich. He has published 26 books and his work has so far been translated into 31 languages. For most of his career he has worked on the cultural and social history of early modern Europe, with some incursions into the 19th and 20th centuries.

The Cluster

The Frankfurt Cluster of Excellence “The Formation of Normative Orders” explores the development of normative orders with a focus on contemporary conflicts concerning the establishment of a “new world order”. The network is funded by the national “Excellence Initiative” and combines a series of research initiatives in Frankfurt and the surrounding area. The Cluster is based at Goethe University in Frankfurt/Main.

The Research Programme

Normative orders play a decisive role in conflicts over a just and fair economic order and the realisation of peace, human rights and democracy. These orders serve to justify a system of political rule and a specific distribution of goods and life chances. The Cluster investigates how such orders are handed down, modified, institutionalised and practised over long periods of time. In the second funding phase, researchers from the fields of philosophy, history, political science, legal studies, anthropology, economics, theology and sociology will focus greater attention on the question of how justifications assert themselves in the reality of social power relationships. The Cluster is divided into three research areas:

I. THE NORMATIVITY OF NORMATIVE ORDERS:

Origins, Vanishing Points, Performativity

With the onset of modernity, the formation of normative orders itself becomes normative – that is, it becomes reflexive and produces critical standards and procedures for examining normative orders. As a result, normative orders become exposed to

persistent revision which compels them to change from within. At the same time, normative orders, viewed from a dialectical perspective, produce one-sided justifications or justifications that immunise themselves against criticism and likewise generate discursive power. This is the core idea of the first research area which examines the ‘Normativity of Normative Orders’ with regard to its reflexivity, the genesis of normativity and how it is constituted through narratives, art and the media.

II. THE DYNAMICS OF NORMATIVE ORDERS:

Rupture, Change, Continuity

The projects of the second research area deal with the transformation of normative orders, whether it be long-term change or change brought about by conflicts between competing orders. On the one hand, the goal here is to develop possible models of transformation; on the other hand, the focus is on the consolidation of normative orders following periods of crisis and radical change. On the programme are case studies on postrevolutionary situations in antiquity up to the transformations currently taking place in North Africa. A further focus is on historical and contemporary constellations in which revitalised religious and nonreligious discourses engage in negotiation over normative orders. A special point of interest is the broad spectrum of Islamic movements.

III. THE PLURALITY OF NORMATIVE ORDERS:

Competition, Overlapping, Connection

A variety of competing patterns of order exists at the supranational level. A possible global security order is also an inherently plural construct whose realisation is being pursued by a variety of means. Companies and international organisations are involved in this endeavour in addition to states. The aim of the third research area is to engage in empirical research and normative reflection on new types of legitimation of transnational orders. This also involves the recognition that different types of legitimation and legitimacy of supranational orders compete with each other. Thus a political order is often legitimised by recourse to democratic participation, though also with reference to public interests or social development.

People

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