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The Law of Political Economy
Transformations in the Functions of Law

Titles, Abstracts and Biographies
(Alphabetic order)

Law, Capital & The Corporation

Grietje Baars (The City Law School, University of London)

This is a paper about the relationship between law and capital, or, put differently, about the role of law in capitalism. It is a Marxist legal scholar's task to the take role of law in facilitating, structuring, 'congealing' global capitalism seriously. It is an appeal to understand the nature of the corporation, that ubiquitous 'phenomenon' that touches every area of our lives, and that forms global capitalism's main engine, as a masterpiece of legal technology. I write in response to the authors, scholars and activists, who are committed to addressing the fact that the corporation has the power to do unprecedented harm within our societies and environments. This paper shows that precisely *because of law's relationship to capital*, law can never successfully be employed to prevent or remedy the many negative effects produced around the world by corporate capitalism. Litigation can sometimes provide temporary relief, a legal rule can curb some corporate behaviour some of the time, treaty or contract negotiation involving corporations can be key in people's everyday life or death struggles, but it can never bring about the structural change that is needed to *overcome* global corporate capitalism's devastating realities. This is,

because law and capital, besides producing that local, specific, temporary relief, also *produce* global corporate capitalism's devastating realities. In the past ten years, lawyers' and academics' concern about the devastating realities around us, has led, amongst other things, to a call for corporations to be held to account for 'corporate complicity' in human rights violations through international criminal law prosecution. I illustrate the relationship between law and capital by means of a counternarrative to this call. I describe the historical conditions and processes that produced this call, why it is popular, why it has not yielded the desired results, and why it is doomed to fail in the long run. Letting go of the 'corporate accountability' fantasy will generate the space we need to formulate a different answer to 'the question of the corporation', and different answers to global corporate capitalism more broadly, outside of the law. The first step to producing these answers is the recognition of the intimate, symbiotic relationship between law & capital and the nature of the corporation.

Biography

Grietje Baars is a Senior Lecturer at the City Law School (City, University of London) with experience as a both corporate lawyer and a human rights/law of armed conflict advisor in the Middle East. They work on Marxist theory of law, the commodity form theory of law, and law and/as ideology. Together with Professor Andre Spicer of Cass Business School they ran the ESRC funded 'Critical Corporation' Project from 2013-2017, and edited 'The Corporation: A Critical, Multidisciplinary Handbook (CUP 2017). Their monograph 'Law, Capital & The Corporation' is contracted to be published as part of Brill's Historical Materialism Series (expected 2018). Grietje's current project 'Queering Corporate Power' seeks to investigate the role of law and legal institutions such as the corporation in the heteronormative, and the uses queer theory might have in understanding, articulating, and ultimately subverting corporate power. Grietje has published on Marxist theory of international law and the global corporate economy as well as the Nuremberg trials of the industrialists and has held visiting scholarships at the Humboldt University of Berlin, Tel Aviv University and Birzeit University in the West Bank. They are a regular faculty member at the Harvard Institute for Global Law & Policy's global and regional workshops. In 2006 Grietje co-founded the Al-Quds Human Rights and IHL Clinic at the Palestinian university of Jerusalem and they continue to work on pushing the boundaries of (legal) education inspired by critical pedagogical thought and the boundless energy of their students.

Market Imaginaries in Private Law

Marija Bartl (Faculty of Law, University of Amsterdam)

The history of private law is tightly linked to the changing imaginaries of the market. Each imaginary has come with different subject(ivities), institutions, instruments and discourses of private law. I will trace this history through three distinctive imaginaries: the market as a natural entity out there, that is eventually self-regulating; the market as a political project that we may shape in the way that we deem desirable or just, and the market as a tool for rationalising 'life'. Finally I would ask what the 're-politicisation' of private law/market would mean and require today. If the market has become a tool of rationalization of, and through, private law, any such enterprise will need less to engage with the de-naturalisation of market and more with the (de)naturalization of a certain types of rationality.

Biography

Marija Bartl is an Assistant Professor at the Faculty of Law, Amsterdam, and a senior researcher in the project 'The Architecture of Post-National Rulemaking'. She wrote her PhD thesis at the European University Institute in Florence. Marija Bartl's current research focuses on the relationship between democracy, expertise and market integration. Recently, she was awarded a personal research grant VENI for a project 'Bringing Democracy to Markets: TIIP and the Politics of Knowledge in Postnational Governance'. In this project she explores the interrelation between democracy, knowledge production and market-making on the background of the transatlantic trade negotiations.

Governance, Constitutionalisation and the Flattening of the Public/Private Distinction

Emilios Christodoulidis (School of Law, University of Glasgow)

We are invited to reflect on how 'economic discipline [has] increasingly detached itself from neighbouring disciplines'; in the process of cutting itself adrift, the market economy has reconfigured its relationship to the law. The runaway economic system now presents an impossible challenge to the 'reflexivity' of law. Where in the past the distinction between public law and private law organised the field and demarcated the spheres of public interest and individual freedom respectively, today we confront the pervasive move of market thinking that

no longer pits them against each other but underwrites them both. This move involves a substitution. Under the sign of *governance* the market principle that was understood as the principle subtending the transactional nature of private law as distinct from public law, gradually becomes the arbiter of the separation itself and guarantor of the circulation ('balancing' in the preferred idiom) of public goods. As framing the debate, the market principle receives the immunity that all framing conditions enjoy: they cannot be simultaneously deployed and queried.

Biography

Emilios Christodoulidis holds the Chair of Jurisprudence at the School of Law of the University of Glasgow. He is also Docent of the University of Helsinki. He is author of many articles on constitutional theory, democratic theory, critical legal theory, and transitional justice. He is editor of the 'Critical Studies in Jurisprudence' series (Routledge), and is on the editorial board of Social & Legal Studies and Law & Critique. He is a member of the Executive Committee of the IVR. His work has appeared in English, Greek, French, Japanese and Spanish.

Diagnosing the Inward Turn in Democratic Capitalist States: A Critical Legal Approach

Dan Danielsen (School of Law, Northeastern University)

In this essay, I will suggest a critical legal approach to exploring the political economy of the turn across the democratic capitalist West away from democratic pluralism, multilateralism, trade liberalization and multi-ethnic and racial societies toward populism, nationalism, trade protectionism and anti-immigrant rage. This latter trend, I call the "inward turn," is often explained by reference to historic issues of cultural identity and the adverse impacts of what is usually loosely described as "globalization" on middle and working class members ethnic/racial/religious national majorities. I will argue that while powerful, these "causes" are better understood as "symptoms" of a significant erosion in the perceived ability of nation states to secure their geographical borders from the global diffusion of foreign legal rules and the distributive impacts of those legal rules in the domestic sphere. Using some legal determinants of global value chains and of the race and class dynamics in Ferguson, Missouri as examples, I will suggest ways we might examine critically the role of law in producing particular allocations of power, value, wealth and welfare in both local and global contexts. In so doing, I will suggest

that an enhanced understanding of the plural legal forces giving rise to these distributive effects may help us to identify new levers for redistribution through law and policy.

Biography

Dan Danielsen is a legal scholar who spent many years as an international business lawyer. He teaches Corporations, Law and Development, International Business Regulation, International Law and Conflict of Laws. Professor Danielsen's research explores the complex role of the business firm in global governance.

Between Expertise and Politics: The Disappearance of Environmental Law

Jaye Ellis (Faculty of Law and School of Environment, McGill University)

The role of law in international environmental governance has been receding since its high-water mark in the early 1990s, no doubt due in part to the inevitably disappointing experience with attempts to deploy law as an instrument of social regulation. The body of transnational environmental law is growing slowly, despite instruments such as carbon pricing and concepts such as ecosystem services that should greatly facilitate the translation of scientific knowledge into the language and logic of law. An important impediment to law is a set of assumptions about the nature of law's dependence on politics, and more in particular about the grounding of law's validity in democratic processes. These assumptions give rise to a number of objections regarding the role that law could usefully play in environmental governance. Reference to ecosystem services as a means both of conceptualising environmental impacts and of incentivising environmental protection is rejected as commodification. The heavy dependence of environmental governance on science is decried as technocracy, which is perceived as an ever greater threat in the face of dramatically accelerated rates of ecological change and the resulting need for more rapid and flexible decision-making. Attempts to account for the interests of a wide range of stakeholders affected both by ecological degradation and decisions to address it falter because of the impossibility of transforming this disparate body of stakeholders into a *demos*. Rather than seeking to make a reimagined environmental law meet expectations regarding law's democratic grounding, those expectations should be critically examined. Both knowledge about ecosystemic impacts and the capacity to forestall or diminish them are diffuse – held by a wide

range of different actors, and available at different times. Observations of environmental impacts, and of the effectiveness of attempts to govern the activities causing them, require rapid reactions at multiple points without the possibility of global assessments and responses. Scientific communications about environmental impacts are not widely accessible and therefore not readily taken up in democratic deliberations. In short, law's normativity has come, in the field of environment in particular, to depend too heavily on the democratic legitimation of its content, on one hand, and its capacity to produce particular material outcomes, on the other. The result has been a highly material, cognitive orientation. Transnational law has been particularly vulnerable to this tendency as the result of a perceived need to compensate for the paradoxical nature of its validity.

Biography

Jaye Ellis is Associate Professor in the Faculty of Law and School of Environment, McGill University. She teaches public international law, international environmental law, and environmental epistemology and ethics. Current research projects focus on transnational law, intersections between law and science, rule of law in transnational and international spheres, and risk and uncertainty in public and private law. Recent publications include "Form meets Function: The Culture of Formalism and International Environmental Regimes," Wouter Werner, Marieke de Hoon & Alexis Galán (eds), The Law of International Lawyers: Reading Martti Koskenniemi. (Cambridge University Press, 2017); "Political Economy and Environmental Law: A Cost-Benefit Analysis" in Ugo Mattei and John D. Haskell, eds, *Research Handbook on Political Economy and Law* (2015) 496-516; and "Stateless Law: From Legitimacy to Validity" in Helge Dedek and Shauna Van Praagh, eds, *Stateless Law: Evolving Boundaries of a Discipline* (2015) 133-142.

From Constitutionalized Trans-displinary Synthesis to Authoritarian Rule: Observations on Law and Economics

Michelle Everson (School of Law, Birkbeck University of London) and Christian Joerges (Hertie School of Governance/University of Bremen)

Our narrative departs from an historical context, but its messages are of emplary importance. We proceed in the first step of our argument from the constitutionalization of the economic order as designed in the foundational writings of German ordo-liberalism. “The economic policy that underpins competitive ordering seeks to endow markets with a form of order that meaningfully integrates all parts of the economic process. The result is not subordination, but rather co-ordination in an “order freedom” (Walter Eucken). Was this simply naïve? Much worse, our second intervenor, Karl Polanyi, contends. The idea of a self-regulation market is “a stark utopia”. Aspirations like that of ordo-liberalism to move ever closer to perfectly competitive markets will be dangerously self-defeating. In today’s world of financial crisis we do no longer trust the market. We do instead, as Mario Draghi has put it “whatever it takes” to replace the invisible hand of the market by the powerful hand of economic fiat. The subsequent fourth step of our argument turns back law. What is left of law once we have replaced the market by the rule of economics? We conclude that we have established a state of exception of indefinite duration.

Biographies

Michelle Everson is Professor of Law at Birkbeck College. She has researched and published widely on the European Union, focusing on the interchange between economic law and constitutional law. She also studies the interface between markets and concepts of citizenship.

Christian Joerges is Professor of Law and Society at the Hertie School of Governance in Berlin and Co-Director of the Centre of European Law and Politics at the University of Bremen. Until 2007, he held the chair for European Economic Law at the European University Institute, Florence.

Law in the Political Economy of Natural Resource Extraction

Isabel Feichtner (Faculty of Law, University of Würzburg)

Distribution and exploitation of natural resources are central to contemporary political theory debates on global justice as well as policy debates on how to render the globalized economy more sustainable. Both debates lack careful analysis of the role of law in the distribution and exploitation of natural resources. Yet, understanding the impact of law on decisions whether to exploit, which resources, for which purpose, and in what manner is crucial for any project aiming at distributive justice or sustainable resource use.

In this contribution I seek to clarify the ways in which different bodies of norms shape the political economy of resource extraction. I focus on norms of jurisdiction, ownership and use rights and the justifications that accompany these norms of allocation. To better understand the distributive effects of law and its exploitation bias with respect to natural resource extraction I extend my inquiry to two further bodies of norms, namely norms of money and (public) finance as well as trade. With this exercise I not only hope to clarify law's exploitation bias. Ultimately I aim at a more adequate conceptualization of the relationship between state and society, between politics and economics and their respective distribution procedures. Natural resources appear as a suitable starting point for such an endeavour due to their double nature as part of territory on the one hand and potential commodity on the other hand.

Biography

Isabel Feichtner is Professor for Public Law and International Economic Law at the University of Würzburg. Previously she was Associate Professor at Goethe University Frankfurt where she taught and supervised doctoral students in the graduate programme Law and Economics of Money and Finance. She holds an LL.M. from Cardozo Law School and in 2010 completed her doctoral dissertation "The Law and Politics of WTO Waivers – Stability and Flexibility in Public International Law" which was published by Cambridge University Press in 2011. Isabel Feichtner is book review editor of the European Journal of International Law and associated member of the cluster of excellence Normative Orders at Goethe University Frankfurt. Her research focuses on international economic law, transnational resource law and the law of money and public finance.

Freedom of Enterprise and the Vanishing Autonomy of Labour Law in the EU

Stefano Giubboni (Department of Political Science, University of Perugia)

All classical theories on labour law (e.g. Hugo Sinzheimer and Otto Kahn Freund, then Gino Giugni and Bill Wedderburn) emphasise its autonomy as a core normative value and a pre-requisite for allowing labour laws to perform their essential function of protecting workers. Within the traditional domain of the nation States, the autonomy of labour law has been essentially defined at two fundamental and interconnected levels: on one hand, at an individual level, as the autonomy/immunity from market law and the common law of contracts regulating the employment relationship; on the other hand, at a collective level, as the fundamental and original social power of trade unions to self-regulate the working conditions through the exercise of their collective autonomy. Both dimensions underpin the core function of labour law as the law of protection/emancipation of workers (while at the same time constituting the contractual relationship of subordination). The definitional ambiguity of labour law as a 'reversible technique' (Gérard Lyon-Caen), as such, lays an ambivalent duplicity of functions in striking a balance between the conflicting distributive interests of employers and employees (as a law of workers' subordination and emancipation, of marketization and de-commodification at the same time).

In the EU context a further dimension of the autonomy of labour law has been added. Being an expression of values deeply embedded in the different power constellations of national societies, labour law is to be first and foremost considered as a domain of national regulators and trade union collective autonomy. A European supranational labour law code is neither needed nor desirable or even possible. This means, in such classic account, on the one hand, that (national) labour law has to be preserved from the unduly interference/infiltration of EU market and competition law and, on the other hand, that, if needed, a residual and interstitial European labour regulation should contribute to raise the national standards, by allowing the national systems of labour law to be integrated in the internal market without undermining their protective function.

BIOGRAPHY

Stefano Giubboni is professor of labour law at University of Perugia.

Legal World Making as Distribution: The Distributional Impact of Context Making by Legal Expertise

David Kennedy (Harvard Law School)

Biography

David Kennedy is Manley O. Hudson Professor of Law and Faculty Director of the Institute for Global Law and Policy at Harvard Law School where he teaches international law, international economic policy, legal theory, law and development and European law.

Transformations of the Role of Law in the Economy and the Birth of the Hermeneutic of Suspicion

Duncan Kennedy (Harvard Law School)

This article explores the "hermeneutic of suspicion" that seems to drive contemporary American jurists to interpret their opponents' arguments to be ideologically motivated wrong answers to the legal questions presented. It locates the hermeneutic in the long running process of juridification, judicialization and constitutionalization that characterize law in modern society, a process impelled by the struggle of rival legal intelligentsias to control the high-stakes process of legal change. Law understood as a locus of ideological struggle is partially but only partially disenchanted.

Biography

Duncan Kennedy is the Carter Professor of General Jurisprudence Emeritus at Harvard Law School where he taught from 1971 to 2014. He was a founding member of the conference on critical legal studies. The piece he will present is taken from "The Hermeneutic of Suspicion in Contemporary American Legal Thought," 25 Law and Critique 91 (2014). It extends to public law his previous writing on the role of law in the economy, private law, comparative law, legal history and legal theory.

Two Tales of 'Law and Political Economy'

Poul F. Kjaer (Copenhagen Business School)

The grand theories of society can be divided into to two types: Those who depart from a holistic notion of society and those who have a notion of differentiation at their core. This is also the case for our understanding of the function of law in political economy contexts. Throughout modern times the central standoff has been between the view that the economy is "too detached" (e.g. Polányi) from the rest of society and the view that the economic dimension of society is not adequately differentiated from the rest of society (e.g. Hayek). On this background, the paper reconstructs the transformations in the function of law in relation to economic reproduction since the 19th century on the basis of the thesis that law serves a dual function; the simultaneous separation and re-connection of the economy from the rest of society. In different époques, this twin function has however manifested itself in very different institutional formations producing very different societal effects; interwar corporatism; the neo-corporatism of the immediate post-WWII era and the type of governance which has dominated since the 1990s and which now have come to an end.

Biography

Poul F. Kjaer is Professor at the Copenhagen Business School where he directs the European Research Council project 'Institutional Transformation in European Political Economy – A Socio-Legal Approach (ITEPE-312331- www.itepe.eu)'. He is the author of *Constitutionalism in the Global Realm – A Sociological* Approach (London, 2014 – paperback 2016) and Between Governing and Governance: On the Emergence**,** Function and Form of Europe's Post-national Constellation (Oxford, 2010).

The Future of Law – The „Society of Networks" and Its Emerging New Paradigm of Law"

Karl-Heinz Ladeur (Faculty of Law, University of Hamburg)

The legal system undergoes again a deep process of transformation that may be attributed to the emergence of the "society of networks". The earlier transformations that took place in the "society of organisations" were centred around the organisation as a kind of "big individual" that was and still is able to aggregate and manage long chains of actions as opposed to the individual

subject whose action was rule oriented and followed established patterns of experience. The "society of organisations" was characterised by the rise of all kinds of social norms (standards), organised generation of knowledge, and practices of "balancing" that the multiplication of long chains of action have made necessary. The "society of networks" leads to more complex processes of knowledge generation and tends to create new "quasi-subjects" that follow mobile project-like patterns of cooperation. They are focused on "high knowledge" that is involved in permanent processes of self-transformation. The emergence of "data driven technologies" that do not follow stable trajectories is paradigmatic. It is a challenge for the legal system if what the new loosely aggregated quasi-subjects of the "society of networks" do is "surfing fluid reality" (Bahrami/Evans). This evolution finds its repercussion in new challenges for the regulatory state and also for contracting practices in private law. "Serial law" might be a new paradigm of law that "reads" processes of change in real time and experiments with forms of coordination that refer to learning processes.

Biography

Karl-Heinz Ladeur is professor emeritus at the Faculty of Law, University of Hamburg.

The Politics of European (Regulatory) Private Law

Hans-W. Micklitz (Department of Law, European University Institute)

The purpose of the paper is to link two strands of discussion together, the rise, development and fall (?) of European Private Law, from traditional private law to what is called European regulatory private law and the different stages of the role of law in the European integration process – integration through law, integration through governance and integration beyond law. In roughly 60 years the European legal order went through the three stages of globalization, classical legal thought, the Social and new formalism. Today, this is the argument the European private law should and could still be understood as a laboratory in which the 'new' private law is elaborated and designed.

First clarification: European private law bears two connotations the classical understanding of private law in the meaning of the grand codifications and the common law of contract and tort and the regulatory private law which refers back to the understanding of private law as economic

law where social regulation and traditional private law are coming together in the attempt to establish a new political and legal order. The EU instrumentalises private law for market building processes and thereby transforms the role and function of private law.

Second clarification: The '*integration through law*' formula reached its peak in the 1986 project on the completion of the Internal Market, which was to be achieved through 'regulation'. Correctly speaking, the Internal Market project should be equated with 'integration through regulation'. The next move occurred around the millennium and can be captured by the formula '*integration without law*' or less provocative '*integration through governance*', enshrined and condensed in the 2002 White Paper on Governance. This is not yet the end of the '*integration through or without law'* saga. Less visible at the turn of the millennium, but stronger since 2000, two new paradigms gained ground in European integration – economic efficiency and fundamental/human rights. They are tentatively caught in the '*integration beyond law*' formula.

The argument in a nutshell: the integration through law project promotes classical legal thought, at least on the surface, integration through governance is best reflected in the Political Draft Common Frame of Reference which comes close to the new approach on technical standards and regulation and integration beyond law in the pressure economic efficiency (consumer welfare) puts on social regulation and in constitutionalisation as the new formalism. European private law is claimed be in a crisis, to be techno law made by experts and bureaucrats and to deprive private law of its social component. Is there still something positive to say about it? I think yes.

Biography

Hans-W. Micklitz is Professor for Economic Law at the European University Institute

The Socio-economic Ordering Effects of EU Competition Law: Consumerism *Versus* Producerism

Jotte Mulder (School of Law, Utrecht University)

The function of EU competition law is seemingly apparent: to prohibit cartels amongst firms and combat the abuse of positions of economic dominance in order to ensure effective competition between firms and, eventually, to maximise consumer welfare. What is less apparent are the more covert socio-economic ordering effects of this externally imposed legal system on institutions within EU Member States that may historically/culturally have organised economic sectors on the basis of social logics that do not necessarily accord with the centrality of

competition and its accompanying logics as a principle of social organisation. This may apply in particular to economic sectors that have historically been organised to serve *producerist* objectives or interests. With producerist I refer broadly to an orientation of the state on the supply side of a market. Producers are accorded a central function in society that goes further than merely an economic function but is enabling in providing a certain social-economic identity. The protection of guilds (lawyers, waiters in France, pharmacists), certain ways of making products (pasta, wine, reinheitsgebot) or the size of stores and their opening times may fulfil a social function that resonates with a certain culture, history and identity. A (economic) consumerist orientation is, by contrast, focussed on purposive rights and interests on the demand side of the market-in particular, primarily as an interest in competitive prices and choice for consumers. This paper discusses this potential clash of organisational logics by reviewing how the structure and application of EU competition law has been used to covertly tilt EU Member States from producerist towards consumerist socio-economic orientations. It shall do so on the basis of a critical reflection of attempts by the European Commission to 'liberate' the liberal professions and more recent examples in The Netherlands that demonstrate how EU competition law may install a logic of consumer welfare as a primary principle of social organisation whenever firms cooperate to achieve public interest objectives.

Biography

Jotte Mulder is assistant professor at the Europe Institute of the Utrecht Law School. Jotte defended his doctoral thesis entitled 'Social legitimacy in the internal market – a dialogue of mutual responsiveness' at the European University Institute (Florence, Italy) in 2016. His thesis provides a model to discuss the legitimate social impact of internal market law and addresses the challenge to reconcile the economic and social purpose of European market integration and is forthcoming in the modern studies on European law series of Hart. Jotte obtained his bachelor and master degrees in International and European Law at the University of Amsterdam and completed further postgraduate studies in competition economics at Kings College, London. Before turning to academia Jotte practiced EU competition law in Amsterdam and Brussels for many years. He is an editor of the annually updated Jones/Van der Woude Competition Law Handbook and publishes regularly on matters of European economic law.

The Transnationalization of Law as a Dialectical Process: On the Relationship of State and Non-State Law

Lars Viellechner (Faculty of Law, University of Bremen)

Under conditions of what is called globalization or differentiation of world society in the social sciences, the law is undergoing a deep structural transformation. While national legislation cannot effectively regulate cross-border affairs, international law-making often fails due to a lack of consensus or pace. Hence a new form of transnational law, which disconnects from institutionalized politics, is emerging beyond both nation-states and international organizations.

The arrangement for domain distribution on the Internet well illustrates this development. It escapes from the conventional categories of legal thinking fixated on the nation-state. In particular, it transcends the dichotomies of national and international law as well as public and private law. It also breaks the distinction between statute and contract. With regard to a particular issue-area of global communication and information, a complex network of contracts brings about an emergent pattern of order, which disposes of its proper dispute settlement mechanism and thus gains a relative autonomy, even though lawsuits may still be filed with national courts.

From the emergence of transnational law arises a problem of legitimacy that may arguably be solved by a new approach to the horizontal effect of constitutional rights. According to this understanding, constitutional rights are to be regarded as both foundation and limitation of transnational law. On the one hand, they enable and promote societal self-regulation beyond the state. On the other hand, however, they protect opposing liberties against infringement and allow for equal participation when transnational governance arrangements hold a monopoly position in regulating activities which are indispensable for the realization of freedom.

As the arbitration practice in domain disputes proves, such constitutional rights may emanate from the emerging body of transnational law itself. Yet as long as such auto-constitutionalization does not succeed, transnational law will have to be complemented by the national legal orders. In such processes of external constitutionalization the national legal orders will however have to take into account the transboundary elements of the case at hand

and therefore possibly have to adapt their own rules by incorporating foreign norms. This results in a hybridization – or transnationalization – of law.

It now becomes more apparent what the earlier interaction between national and international law has already foreshadowed: The coherence and legitimacy of the law in world society may only be guaranteed through a horizontal coordination among the various legal orders, opening themselves for each other by internally reflecting their mutual impact. Indeed, a new kind of conflicts law required to this end is gradually evolving. Courts and tribunals dialectically develop rules of complementarity and subsidiarity without relinquishing their own identity. A responsive legal pluralism in this sense offers a promising fourth way to overcome both the outdated dualist doctrine of sovereigntism and the unattainable monist vision of universalism while at the same time avoiding radical legal pluralism. It may even amount to an adequate reconfiguration of constitutionalism, upholding the tension between self-determination and fundamental rights protection, in the current context.

Biography

Lars Viellechner is an Associate Professor of Constitutional Law, Constitutional Theory, Legal Philosophy, and Transnational Law at the University of Bremen (since 2014). He studied law at Humboldt University of Berlin (Dr. iur. 2012), Yale Law School (LL.M. 2004), and Panthéon-Assas University of Paris II (lic. dr. 1999). He also served as a law clerk at the Higher Regional Court of Hamburg and the Federal Constitutional Court of Germany (2008). His research focuses on constitutional law, comparative law, and legal theory, especially questions of law and globalization. Currently he is working on a book project on comparative constitutionalism. Major publications include: “Responsive Legal Pluralism: The Emergence of Transnational Conflicts Law”, (2015) 6 Transnational Legal Theory 312–332; Transnationalisierung des Rechts (Weilerswist: Velbrueck 2013), 432 pp.; “The Constitution of Transnational Governance Arrangements: Karl Polanyi’s Double Movement in the Transformation of Law”, in: Christian Joerges and Josef Falke (eds.), Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets (Oxford: Hart Publishing 2011), 435–464.