

PILAGG PROGRAM 2015: “PROBING LEGAL KNOWLEDGE IN GLOBAL PERSPECTIVE: A DANGEROUS METHOD?”

Here is the update for the PILAGG program 2015: past events and the ones foreseen from September 2015 on.

I. GLOBAL PARADIGM AND LEGAL METHOD(S): MARCH 2015

The emergence of a global legal paradigm upsets assumptions/fictions developed within the modern, Westphalian model, which takes the law to be a self-contained, stable and coherent system and designs its method(s) accordingly. To what extent, then do comparative and internationalist perspectives provide plausible alternative legal methodology(ies) within an emerging “global legal paradigm”? Paying critical attention to law in global context is likely to constitute a “dangerous method” with respect to its subversive and emancipatory potential.

- **The Mind and the Method(s):** Jan Smits (Maastricht)
- **Global Legal Paradigm:** Ralf Michaels (Duke)

II. LAW AND AUTHORITY WITHOUT (STATE) PEDIGREE: MAY 2015

Competing, diffuse, post-Westphalian forms of authority and correlative displacements of power to non-state actors are difficult to capture in legal terms. Is it possible to take seriously – whether to legitimize, challenge, or govern – new, diffuse and disorderly expressions of authority and normativity which do not necessarily fit traditional forms of legal knowledge, nor respond to familiar methods of legal

reasoning? Is legal pluralism adequate to assess legitimacy of such claims or to solve conflicts between them? What are the alternative accounts of informal law (s) beyond the state?

- **Transnational Authority:** Max del Mar and Roger Cotterell (Queen Mary, London)

RENTREE 2015:*What are the specific insights of the discipline of the conflict of laws in respect of some of the most significant issues which challenge contemporary legal theory, in its attempts to integrate the radical changes wrought by globalisation in the normative landscape beyond (framed outside, or reaching over) the nation-state. Indeed, remarkably, these changes have brought complex interactions of conflicting norms and social systems to the center-stage of jurisprudence. This means that the conflict of laws has a plausible vocation to contribute significantly to a “global legal paradigm” (Michaels 2014), that is, a conceptual structure adapted to unfamiliar practices, forms and “modes of legal consciousness” (Kennedy 2006). Conversely, however, private international legal thinking has all to gain from attention to the other legal disciplines that have preceded it in the effort to “go global”. Thus, it needs to undergo a general conceptual overhauling in order to capture law’s novel foundations and features. In this respect, it calls for an adjustment of its epistemological and methodological tools to its transformed environment. It must revisit the terms of the debate about legitimacy of political authority and reconsider the values that constitute its normative horizon. From this perspective, the ambition of this paper is to further the efforts already undertaken by various strands of legal pluralism, as an alternative form of “lateral coordination” in global law (Walker 2015), towards the crafting of a “jurisprudence across borders” (Berman 2012). Societal constitutionalism (Teubner 2011), which has explicitly made the connection between transnational regime-collision and the*

conflict of laws, provides a particularly promising avenue for unbounding the latter, which might then emerge as a form of de-centered, reflexive coordination of global legal interactions.

III. CONFLICTS OF LAWS UNBOUNDED: THE CASE FOR A LEGAL-PLURALIST REVIVAL. : 25th SEPTEMBER 2015

- **Horatia Muir Watt** (Sciences-po Ecole de droit) FRIDAY 25 Septembre 2015. Salle de réunion (4e étage), 14h-17h, Ecole de droit, Sciences po, 13 rue de l'Université, 75007 Paris.
- **Discussant : Loic AZOULAI** (Sciences po, Ecole de droit)

(NB Martijn Hesselink will give his talk later on in the term

IV. GLOBAL LEGAL PLURALISM AND THE CONFLICT OF NORMS: OCTOBER 9th

"It has now been approximately 20 years since scholars first began pushing the insights of legal pluralism into the transnational and international arena. During those two decades, a rich body of work has established pluralism as a useful descriptive and normative framework for understanding a world of relative overlapping authorities, both state and non-state. Indeed, there has been a veritable explosion of scholarly work on legal pluralism, soft law, global constitutionalism, the relationships among relative authorities, and the fragmentation and reinforcement of territorial boundaries »[Berman 2012]. Competing plural and transnational assertions of authority are singled out as the emblematic feature of our complex world, while the defining problem in contemporary legal thought lies in the interactions of legal traditions, social spheres, cultural values, rights and identities, epistemologies or world-visions. Various responses come in the form of a search for consensus (around constitutional values), the promotion of new utopias (the

quest for global justice), the celebration of diversity as competition (law and economics), the devising of methodologies designed to mediate or coordinate (systems theory), or renewed definitions of authority and legitimacy (socio-legal studies). At first sight, the conflict of laws would appear to fit quite well among these pluralist strands of thought.

- **Paul Schiff Berman: A jurisprudence across borders**
- Discussant: Jean-Philippe ROBE

V. GLOBAL LAW AND INTERDISCIPLINARY INQUIRY: OCTOBER 16th

Law's status as (empirical) social science, repeatedly mooted then rejected in the name of its "internal" or dogmatic perspective, is arguably the most significant methodological debate in its modern history. But what is it about globalization which makes the need for interdisciplinarity resurface today in view of rethinking legal method? Is global law a relevant object of inquiry for the social sciences? Can the methods of private international law help frame a common problematic?

Alexander Panayatov attempts an exercise in an inter-disciplinary conceptual clarification. Discussing the impediments to, and conditions for, inter-disciplinary collaboration based on exploring law and political science research cultures, he evaluates "The Legalization and World Politics" (LWP) project that offers a framework for deploying political science methodology to law. He also offers a supplementary framework for studying jurisdictional politics. This framework will specify four distinct mechanisms accounting for the creation of transnational jurisdictional regimes

- **Alexander Panayatov (NYU): Transnational jurisdictional regimes and interdisciplinarity FRIDAY OCTOBER 16th 2015. Salle de réunion (4e étage), 14h-17h, Ecole de droit, Sciences po, 13 rue de l'Université, 75007 Paris.**

- Discussants : Véronique Champeil-Desplat (Paris X), auteure de *Méthodologies du droit et des sciences du droit*, Dalloz 2014
- Jérôme Sgard (Sciences po Paris)

VI. INTIMATIONS OF GLOBAL LAW: NOVEMBER 13th

Indisputably, globalisation, or its contemporary (fourth?[1]) avatar, is inflicting an identity crisis upon the conflict of laws[2]. One of the reasons for this is that it shows up the link between legal methods elaborated in view of dealing with conflicting norms and the framing of law's origins, functions and objects within a particular legal paradigm. In other words, modes of legal reasoning in the face of conflicting norms and claims to authority reflect various conceptions and expectations as to what law is and does, where it comes from and the types of issues it deals with. Change affecting these assumptions and representations about the world affects established forms of legal knowledge; probing them is, as we know, a distinctly "dangerous method". So what is left of state-bound legal-theoretical conceptions of the law in its "global intimations"?

- Neil WALKER: The intimations of global law
- Mikhail XIFARAS: Further global intimations

UPCOMING EVENTS :

THE CONSTRUCTION OF GLOBAL LAW : Date to be determined

Various attempts are being from a markedly public law perspective (global administrative law/global constitutionalism) to build a global law. These are all certainly relevant to contemporary "private" international law, to the extent that the discipline has always had a strong process-orientation (remember "conflicts justice"?) and is currently in the process of renewal from the perspective of

fundamental individual and collective rights. Meanwhile (as we have already seen), the new Brussels school has turned to pragmatism in legal philosophy (Benoît Frydmann), while Gunter Teubner's "societal constitutionalism" is a significant contender from an interdisciplinary perspective. Interestingly, both of these use specifically private international tools, methods or approaches (jurisdiction and RSE; conflicts solutions to legal pluralism). The last session discussed the potential contribution of socio-legal theory to this debate, with a view to understanding new forms of transnational authority. But what happens to private law in this process?

THE RIGHT TO JUSTIFICATION IN GLOBAL PRIVATE LAW: Martijn Hesselink, (Amsterdam)