



Max-Planck-Institut für ethnologische Forschung

Max Planck Institute for Social Anthropology

Conference

(Re)designing Justice for Plural Societies: Accommodative Practices Put to the Test

14 – 16 June 2017

Organiser: Department 'Law & Anthropology'

Convenors: Marie-Claire Foblets, Katayoun Alidadi and Dominik Müller

– Concept –

Summary

The 2017 annual conference of the Law & Anthropology Department will be devoted to a number of cases of accommodation of minority practices (cultural, religious, ethnic, linguistic or otherwise) under state law. The focus is on the analysis of the pitfalls and successes of such accommodative practices. The conference will give a number of scholars, from both within and outside the MPI, the opportunity to showcase their research and discuss the relevance of their interdisciplinary approach to the topic at hand.

Introduction

In today's world, where various types of normativity intersect and become entangled, there is a general sense that we may lack the appropriate frameworks to apprehend the state of affairs on the ground or to predict how things will play out in the future. International law offers a variety of instruments, including the whole battery of mechanisms that can be lumped together under the rubric of human rights. Constitutional frameworks can also open up possibilities to address plurality and the intermingling of normativities. Understood in a traditional sense, law consists of rules and regulations that either *prohibit* or *mandate* certain courses of action; some laws, however, are designed or adapted to open up borders and *allow* people or groups (whether religious, cultural or ethnic) to pursue their own perceptions of the good life. These laws, policies or practices may go beyond merely permitting unfamiliar or potentially controversial practices; they may, in fact, even provide incentives to negotiate the choices that people value.

The conference is not intended to offer theoretical models or posit one analytical approach over others. Rather, the aim is to focus on concrete illustrations of situations in which diverse stakeholders have engaged in processes leading to the elaboration of



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creative, innovative and, to a certain extent, sustainable solutions via accommodative laws or practices. The conference aims to be a platform for sharing illustrations and unpacking experiences by asking questions such as: Who were the protagonists and stakeholders involved in reaching the solution? How did they proceed? How did a certain solution become accepted by the diverse stakeholders? How innovative was it? Did the inspiration come from a precedent elsewhere? Who were the most influential people in arriving at this solution and pushing it through? Was the solution sustainable and can it serve as a model for other actors, other places or in other times (the question of 'legal transplants')? And what are the limitations and pitfalls one needs to be aware of in addressing similar issues elsewhere?

This will be the third in a series of three consecutive annual conferences convened by the Law & Anthropology Department addressing in an experimental way the question of how legal practitioners and anthropologists can draw on their expertise to reach creative solutions to (legal) problems that arise out of the encounter between often seemingly irreconcilable normativities. The first conference (2015) focused on the work of national advisory commissions on ethnic, cultural and religious diversity set up in the UK, France, Quebec and Belgium, while the second conference (2016) offered a platform to critically assess concrete experiences of close collaboration between legal practitioners and anthropologists in advocating individual cases.

The 2017 conference is framed in a slightly broader way. It will bring together people who, directly or indirectly, have been involved in the search for legislative, administrative, judicial or practical solutions to issues of accommodating diversity and/or who have engaged in empirical research to gain insight into how solutions could (or could not) be achieved. The illustrations, coming from different countries and regions, encompass a broad palette of topics including untitled housing in Latin America, environmental protection in New Zealand, language minorities in Europe, private international law, accommodation of religious practices under secular state law, requests for exceptions on religious grounds, and claims for recognition of collective rights, to give but a few examples.



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– Programme –

Wednesday, 14 June 2017

13:00 Registration

SESSION I: ACCOMMODATIVE PRACTICES: OPPORTUNITIES AND PITFALLS

Chair: **Michele Graziadei** (University of Torino, Italy)

14:00 **Marie-Claire Foblets** (MPI for Social Anthropology, Halle, Germany)
(Re)designing Justice for Plural Societies: Accommodative Practices Put to the Test

14:30 **Markus Böckenförde** (Centre for Global Cooperation Research, Duisburg, Germany)
Self-Reflection as a Precondition for Sustainable Rule of Law Promotion Abroad

15:00 **Symeon C. Symeonides** (Willamette University, Oregon, USA)
One Step Forward, Two Steps Back: Perspectives from the Trumped States

15:30 Coffee break

SESSION II: ISLAM AND POLITICAL, LEGAL AND ECONOMIC INCLUSION

Chair: **Dominik Müller** (MPI for Social Anthropology, Halle, Germany)

16:00 **Kilian Bälz** (Amereller Rechtsanwälte PmbB, Berlin, Germany)
Sharia Compliance and Sharia Risk: Defining Islamic Law in Islamic Finance

16:30 **Jaelyn L. Neo** (National University of Singapore)
Regulating Islam in Singapore: Techniques and Tensions

17:00 **Laura Haddad** (University of Hamburg, Germany)
House Rules for Islam in Hamburg: The Contract between the State of Hamburg and Three Islamic Communities

17:30 Coffee break



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KEYNOTE ADDRESS

Chair: **Maria Sapignoli** (MPI for Social Anthropology, Halle, Germany)

18:00 **Richard A. Wilson** (University of Connecticut, USA)
Incitement on Trial: Prosecuting International Speech Crimes

20:00 *Dinner at Restaurant 'Wildschütz', Barfüßerstraße 8, 06108 Halle*

20:45 Wrap-up & Discussion

Thursday, 15 June 2017

SESSION III: ACCOMMODATING DIVERSITY UNDER STATE LAW IN EUROPE

Chair: **Werner Menski** (School of Oriental and African Studies, London, UK)

09:00 **René Pahud de Mortanges** (University of Fribourg, Switzerland)
represented by **Burim Ramaj** (University of Fribourg, Switzerland)
Recognition under Public Law as Accommodation Tool: The Swiss Example

09:30 **Eduardo Ruiz Vieytes** (University of Deusto, Spain)
*The Spanish Observatory of Religious Pluralism: The Challenge of Fostering
Accommodation through Information, Dissemination and Research Activities*

10:00 **Jonathan Bernaerts** (MPI for Social Anthropology, Halle, Germany)
Local Linguistic Accommodations: Discussing Sustainability

10:30 **Markus Klank** (MPI for Social Anthropology, Halle, Germany)
*From Home Schooling to Formal Schooling: The Case of the Twelve Tribes in
Germany*

11:00 *Coffee break*

SESSION IV: LAND, HOUSING AND ENVIRONMENTAL ISSUES

Chair: **Olaf Zenker** (University of Fribourg, Switzerland)

11:30 **Jorge L. Esquirol** (Florida International University, Miami, USA)
Untitled Housing, Informality and Legal Forms

12:00 **Elizabeth Steyn** (University of Montreal, Canada)
*Seeking Solutions in the Land of the Long White Cloud: The Whanganui River
Settlement in Aotearoa New Zealand as Accommodative Measure*



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CHANGE OF VENUE: SESSION V IN THE SEMINAR ROOM OF THE NEW BUILDING

12:30 *Lunch break*

Session V: EXPERIENCES IN LATIN AMERICA

Chair: **René Kuppe** (University of Vienna, Austria)

13:30 **Mark Goodale** (University of Lausanne, Switzerland)

Living Well Through Law: Legal Pluralism in a Plurinational State

14:00 **Armando Guevara-Gil** and **Roxana Vergara** (Pontifical Catholic University of Peru, Lima, Peru)

The Intercultural Justice Program and Anthropological Expert Opinions in Peru

14:30 **Annette Mehlhorn** (MPI for Social Anthropology, Halle, Germany)

'Vivir Bien': Law and Social Change in the Bolivian Altiplano

15:15 *Coffee break*



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Inauguration of the new building of the
Max Planck Institute for Social Anthropology

16:30 – 18:30 Main Seminar Room



18:45 Reception



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Friday, 16 June 2017

SESSION VI: THE ROLE OF THE JUDICIARY IN NEGOTIATING PLURAL NORMATIVITIES

Chair: **Bertram Turner** (MPI for Social Anthropology, Halle, Germany)

09:00 **Yüksel Sezgin** (Syracuse University, USA)

Accommodation and 'Reformation' of Muslim Family Laws by Non-Muslim Democracies: Examining the Role of Civil Courts as Viable Agents of Change?

09:30 **Christa Rautenbach** (North-West University, Potchefstroom, South Africa)

Redesigning Tsonga Living Customary Law: The South African Constitutional Court has spoken in MM v MN 2013 (4) SA 415 (CC)

10:00 **Ido Shahar** (University of Haifa, Israel)

Control or Legitimacy? An Inherent Dilemma in 'State Legal Pluralism'

10:30 *Coffee break*

ROUNDTABLE: CHALLENGES AND CROSSROADS, COMPARATIVE BORROWING

Moderator: **Katayoun Alidadi** (MPI for Social Anthropology, Halle, Germany)

11:00 Panelists' opening statements

- **César Arjona** (ESADE Law School, Barcelona, Spain)
- **Joseph David** (Sapir Academic College, Scha'ar HaNegev, Israel)
- **Echi Christina Gabbert** (Georg August University, Göttingen, Germany)
- **Jean-François Gaudreault-DesBiens** (University of Montreal, Canada)
- **Ian Kalman** (University of Western Ontario, London, Canada)
- **Wojciech Postulski** (European Judicial Training Network, Brussels, Belgium)
- **Eugenia Relaño Pastor** (Complutense University of Madrid, Spain)
- **Mathias Rohe** (Friedrich Alexander University of Erlangen-Nürnberg, Germany)

11:45 Roundtable discussion

13:00 Closing remarks

Marie-Claire Foblets (MPI for Social Anthropology, Halle, Germany)