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BOOK REVIEWS

European ways of law. Towards a European sociology of law. Edited by Volkmar Gessner and David Nelken. Oxford and Portland, Oregon: Hart Publishing, 2007. xiv + 393pp. Pb. £26.00.

Like the other two dozen or so titles in the Oñati International Series in Law and Society, the selection of papers which comprise this volume were the product of a conference organised by the Oñati International Institute for the Sociology of Law. In this particular case it was the first conference on 'European Ways of Law' that was held at the Institute on 6–8 July 2005.

The conference, and the papers that were chosen for publication in this volume, dealt with a variety of intellectual issues, all of which may ultimately be seen as a first step toward building a particularly 'European' sociology of law. To that end, the editors—who are two of the most distinguished sociolegal scholars in Europe—have organised the book with the aim of identifying the commonalities, as well as the divergences, in the European ways of approaching law.

At the centre of this endeavour, and indeed as a chronologically prior conceptual concern, is the problem of identifying a distinct *European identity*; an identity that has been articulated socially, politically, culturally, and, as most of the contributors to the volume are wont to have it, legally. Uncovering such an identity is no mean feat given the complexities, to say nothing of the deep-seated passions, involved in what is meant by the term 'European'. And, as I write this from the eastern edge of the Continent, in a former Soviet Republic (Moldova) where the people who are of diverse ethnicities—Romanian and Russian, Gypsies and Gagauz—are struggling daily to find their place in their own country, it appears to me (an American) that a pan-European identity, legally based or not, will be hard to come by, if not conceptually then certainly in sentiment. So at least for the purpose of initially formulating a 'European' sociology of law most of the contributors to the volume prefer to stick to the Western part of Europe where there is at least something that is called a 'Union' and where, rightly or wrongly, the harmonisation of those countries' legal systems (considered by many to be a necessary move toward the formation of a European identity) has been ongoing for some time.

It bears noting that one of the book's editors, Volkmat Gessner, in the Acknowledgements expresses his disappointment of the fact that although Russian sociolegal scholars had been contacted to take part in the conference (and presumably have their contributions included in the volume) 'we weren't successful', he explains, 'in raising sufficient funds to invite them to participate'. Fair enough. But as Nelken and Gessner also point out in the Introduction, readers will 'rightly note the many gaps in what is included' (p. 15) in the collection. They, however, justify the book's obvious omission of transitional legal systems like those of Eastern Europe as well as the challenges posed by the ongoing enlargement of the Union (particularly efforts to admit into the EU 'club' such not-traditionally-European countries like Turkey) as nonetheless helpful in illustrating aspects of European legal culture.

Whether there is, can be, or should be a common European legal culture is debatable. In fact, it's difficult to even begin accepting this notion given Europe's patchwork of many divergent and conflicting communities, ideas, and institutions. But this, as the editors correctly argue, can be regarded as an opportunity, rather than a problem, in devising a comparative European sociology of law. And let us not forget that there is, in fact, a specific body of formal EU Law with which legal sociology must contend in considering attempts at social integration through law.

It is largely for these reasons that Roger Cotterrell's splendid essay, 'Images of Europe in Sociolegal Traditions', opens the volume. Cotterrell begins with the assertion that sociolegal scholars have a crucial part to play in re-imagining Europe as an image of the future. Accordingly, he invites them to revisit the general ideas of Europe as a sociolegal entity that are present in the classic writings of three of the early founders of the sociolegal tradition: Eugen Ehrlich, Max Weber and Emile Durkheim. He then contrasts their images of Europe—as legal plurality, as legal iron cage, and as civic solidarity—with Jurgen Habermas's recent ideas on the EU as a vehicle for a kind of cosmopolitanism. Taken together, Cotterrell contends, these four sociolegal theorists' conceptualisations of Europe can serve to guide EU legal regulation on issues that are centrally important to the idea of Europe of today.

The remainder of the essays in the volume's first section, each in their own way, compare and contrast European and American legal cultures. While Europe is heir to a variety of legal traditions—Roman, Germanic, Scandinavian and Common law—it is in reference to 'the American way of law' (what Robert Kagan calls the US adversarial system) that the authors in this section are able to theorise the place of law in European societies. For example, in Chapter 2 Kagan identifies six 'entrenched differences' between the American and European legal systems that he believes serve as impediments toward the Americanisation of European law, particularly at the level of European nation states.

In contradistinction to Kegan, Wolf Heydebrand in Chapter 4 sees a movement toward a convergence of the two legal systems. He maintains that since 1992 the expanding political economy of globalisation has given rise to, and has kept reinforcing, the trend toward informal, flexible legal procedures in *both* American and European law. This efficiency-oriented procedural informalism consists of such 'soft' legal strategies as discretion in procedural decision-making, as well as negotiation, mediation and arbitration in dispute resolution. And although Heydebrand is silent on the important issue of restorative justice, it has certainly been the case that in recent years, there has been a *reciprocal* influence between the more conciliatory (and I daresay, progressive) aspects of the criminal justice systems of the US and those of European countries like Norway, Italy, and Belgium.

The four studies that comprise the book's second part focus on how the EU's political and economic institutions can produce an integrated Europe. In this regard I found of especial interest Victoria Jennett's essay in which she examines the expressive and instrumental aspirations that motivate sub-state nationalists (such as, one might suppose, those of Northern Ireland, the Basque country, Flanders and Wallonia) to seek political authority. She points out the challenges involved in accommodating these sub-state nationalist aspirations within the EU's supranational political framework. Finally, Jennett identifies three cultural values that are unique to the EU supranational polity that she contends can accommodate the expressive and instrumental aspirations of sub-state nationalists. These values include the acceptance by each nationalist and sub-nationalist community to be bound by precepts articulated by a larger community

composed of distinct political communities; the desire for a lasting peace between the nation-states of Europe and prosperity for all the peoples of Europe; and the economic values that foster a 'social' as well as a 'free' market.

The final section of the volume offers examples of a variety of attempts to use case studies and other methods of empirical research to provide various descriptions of European styles of legal regulation. The last chapter by Stewart Field and David Nelken is particularly salient as they present their ongoing comparative study of differences in systems of youth justice between Wales and Italy. Their research objective was to find out whether the Italian system was less interventionist or punitive than that of Wales. To determine this they compared the diversionary and disposal practices of the two jurisdictions. Utilising file-based evidence reports as well as semi-structured interviews, Field and Nelken established a profile of patterns of diversion and disposal in the two criminal justice systems. In endeavoring to explain why the number of incarcerated youth in England and Wales is six times that of Italy the authors found that social workers and magistrates in Italy worked from the assumption that offending probably had no deeply entrenched roots in family or community problems. Since they believed that the best response for most Italian youths was to avoid intervention they were therefore more apt to make use of several diversionary 'filters'. In contrast, the assumption made concerning youth culture in Wales 'seemed to be more that most offenders needed and would benefit from state social intervention in the community' (p. 360). Field and Nelken then identify four elements that enable the Italian system to place much more emphasis on welfare and minimal intervention.

Taken together, the collection of essays that makes up *European Ways of Law* is essential reading for sociologists of law and legal scholars, and anyone else seeking to understand European legal culture—now and in the future.

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The Ethics and Governance of Human Genetic Databases: European Perspectives. Edited by Matti Häyry, Ruth Chadwick, Vilhjálmur Árnason and Gardar Árnason. Cambridge: Cambridge University Press, 2007. xi + 283 pp. Hb. £50.00.

Human genetic databases are now commonplace in the EU and further afield. A database is essentially a collection of DNA samples, together with linked data relating to demographic characteristics of the donor and other relevant information. In most cases, a database will hold this information in a form which does not allow data users to identify sample donors directly, but can permit linkage to medical or other records of the donor in a deidentified form. Uses of such databases include medical research, forensic science investigations, and other more recherché uses such as personal genealogical research and biological anthropology. Databases may be operated publicly (as in the UK National Forensic DNA Database), privately (as in sample collections held by pharmaceutical companies for their research), or on a mixed economy basis, where fees for use may be charged.

Genetic databases present complex problems for law and governance. How should intellectual property rights be managed? Who has stewardship over their integrity and access to samples and data? How far does the consent of a donor extend, beyond the initial purposes of the collection consented to at donation? Can samples be collected, stored, or used without consent if there is a public interest in permitting this? Can

