Universalization, Particularization, and Discrimination. European Perspectives on a Cultural History of 19th century International Law

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Among the various areas of positive law, international law claims to be the most universal regulatory regime: one law for all sovereign nations of the world. Its universalization, so it is usually said (Verdross 1960: 678), took place beginning in the late 18th century, when it expanded from *jus publicum europaeum* (Steiger 2007: 1148–1154) to *jus publicum universale*, from a »droit des gens Européen« (Steiger 1992: 125) to a law of nations—or international law without any geographical restrictions.

But was it really ›one law for all,‹ the enlightened dream of equality? Equality has always been a delicate topic (Dann 1975: 997–1046), not only in domestic law, but also with regard to the international order. Hegemons and minor powers existed both before and after the 18th century (Simpson 2004; Wolfke 1961). Diplomacy and its theoretical masterminds notoriously struggled with issues of rank and precedency (Vec 1998). Pre-modern European history is filled with conflicts about equality vs. hierarchy and the symbolic ordering of sovereigns and nations. This was not only a challenge for politics, the academic world as well elaborated extensively on these issues. In academic tracts and dissertations, the normative fundaments of political and legal claims were discussed, approved, and dismissed all over Europe. The underlying principle and shared assumption was one of widespread inequality; only the categories and ranks were up for discussion. Diplomacy and international law were, on the one hand, founded on these conflicts and seemed at least to some observers to be barely more than an expression of such symbolic orderings. On the other hand, diplomacy and international law

offered tools for the management and resolution of these conflicts, which partly hindered pre-modern political communication and partly constituted it.

According to contemporaries, many of these problems seemed to have been overcome in the first decades of the 19th century. The principle of sovereign equality was now firmly established and widely recognized: »No principle of public law is more generally acknowledged than the perfect equality of nations« (Wildman 1850: 15). Furthermore, ranks of diplomatic agents were disconnected from the ranking of nation-states and their honors (Vec 2001: 559–590). My aim in this paper is to discuss some issues linked to this process of the universalization of international law in the 19th century. Which were the achievements of ›one law for all‹ in international law, what were its methodological premises, and what were its alternatives? In what ways was 19th century international law exclusionary? Which particularizations and discriminations did its doctrine incorporate, and to what extent can a cultural history of law contribute to its analysis? And finally, why should we go beyond legal pluralism?

When telling histories of international law, there is a need for a wider definition of normativity, for a proper understanding that goes beyond the investigation of international order as a juridically constructed system based on laws and other juridical rules (the traditional approach of classical legal history). More than in other areas of law, the long-lasting focus of legal historiography on the state as the principal entity, courts as the regular (or even the one and only) institutions that solve conflicts, and statutory law as the main normative instrument has to be overcome. Legal history should widen its focus to also incorporate the entanglements of law with other normative orders, not for the sake of making legal history less juridical, but for a better understanding of what essentially constitutes the juridical order and of how law really works.

Writing history of international legal practices and legal doctrines thus brings not only particular challenges to the historiography of law, but is also a means of enriching our understanding of complex normative orders. Given the post-modern processes of pluralization and globaliza-

tion, these normative foundations become even more important for our understanding of the current world order. The instruments for the analysis of normative orders beyond the state will emerge from our re-telling of historical experiences, thus re-modeling our analytical frame. The history of international law is thus a tool for a critical and conscious moving of frontiers, not only between the national and the international, or the public and the private, but also as regards, on a global level, the contents of basic concepts such as authority, power, order, law, and the state. Such a history of international law would display the entanglements between different normative orders of law, morality, and social rules.

Universalization: From Europe to the whole world

Jus Gentium universale or the extension of natural law

In the 18th century, international law was mainly inspired and founded on natural law. The rules of natural law, grounded in pre-modern European moral philosophy and designed by authors like Hugo Grotius and Samuel von Pufendorf in the 17th century, were transferred from the individual level to the level of nations (Wolff 1769: 780, § 1088). The Leipzig based German lawyer Georg Stephan Wiesand wrote in 1759: »Natural law has come to be applied to peoples. For what is lawful among private individuals is also lawful among entire peoples.« (Wiesand 1759: 84).[1] This was a commonplace that could be found in pre-modern natural law textbooks throughout Europe, and became later known as the »domestic analogy.« Through this parallelization of states and individuals, international law received a distinct place in the legal system. Rights and duties were derived from and dependent on those of the individual in the national legal order. In this respect, the doctrinal developments of natural law seemed to be very similar or even identical all over Europe—as one would expect as they were connected in manifold ways.

1 »Das Naturrecht wird nun auf die Völker angewendet. Denn was unter einzelnen Privatpersonen Rechtens, das ist auch unter ganzen Völkern Rechtens.«

The definition of the law of nations was abstract and the method of its creation was, in some but not all cases, deductive (Schröder 2001: 175). Rules were therefore very general and at the same time very theoretical, particularly as expressed by authors like Christian Wolff who, even though he was no specialist in international law, treated it as an extension of his system of natural law. However, there was little use for his doctrine of international relations in state practice. Several critics even argued that some of Wolff's statements were absurd or lacked practical importance.[2] This critique could also be applied to most of the pre-modern juridical, philosophical, or theological tracts that were written across Europe and contained similar elaborations on the various aspects of the law of nations. However, Wolff's style of writing carried the natural law doctrine to extremes that few other authors reached.

On the other hand, these rules were beyond doubt very general. Although written by authors who were often employed by local universities or minor princes in small territories that had neither the desire nor the money to rule Europe or the world, they drafted a normative order with universal claim. Their law of nations, designed in the provinces, was insofar lacking practical relevance for inter-state relations on a large scale, but it was truly universal—just as natural law generally was a universal system of norms.

Equality and its limitations

Formally, no geographical limitation[3] was placed upon this normative order and not even civilizational distinctions were made on the level of abstract definitions. As the bibliographer of international law, Dietrich Heinrich Ludwig von Ompteda (Wijffels 2003), noted in 1785: »The purely natural law of nations extends its rule over every and all peoples

2 For critical characterizations see Nussbaum 1961: 155. His scientific method »led him to frequent pretentious trivialities and tautologies«; Schröder 2001: 171; Schröder 2000: 55.

3 On limitations (inequality) see Weeber 2010: 305, 307.

of this earth, be they civilized or uncivilized.« (Ompteda 1785: 18).[4] This system was named the »Law of nature and of nations«—to quote the English translation of a work by Pufendorf (Pufendorf 1710). This terminology indicated not only the general perspective, but also implied that the authors did not necessarily treat inter-state relations. »Law among nations« was also a synonym for all habits and customs that were globally in use among all peoples. The tardiness of the changes of semantics in »*jus Gentium,*« »*droit des gens,*« and »law of nations« should not be underestimated.

Yet, as the adjective »European« was usually included neither in the title nor in the text,[5] the origin of the doctrine and its addresses and aims were not clarified. *Jus gentium naturale* and *jus gentium universale* were synonyms (Abicht 1795: 143). In this system, all nations were theoretically equal (Vattel 1797: lxiii, B.II, C.III, 149; Wolff 1769: 781) and deserved equal respect. As such, one law for all was the enlightened claim of the masterminds of social theory—as long as these nations were legal subjects. Doctrines such as the »fundamental rights and duties,« originally designed for humans and for the domestic order, were thus transferred by analogy to the level of states and to the international order. Here, they managed to survive up until the 21st century (Vec 2011b). Sovereignty was proof and requirement of legal actorhood, but it also was a very flexible doctrinal instrument. At the same time, it was clear that distinctions had to be made in terms of rank and precedency, and this affected exactly those sovereign rulers and nations that were claimed to be legally equal. Thus, the construction of juridical equality incorporated similar paradoxes and inherent hierarchies on the level of states as it exhibited on the level of individuals. The following paragraphs show more precisely how ideas of cultural or biological supremacy shaped normative standards within the universal law of nature and of nations.

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4 »Das bloß natürliche Völkerrecht nehmlich verbreitet seine Herrschaft über alle und jede Völker dieser Erde, selbige mögen oder ungesittet seyn.«

5 See Abicht 1795: 143–151 and Wolff 1769: 780–902, neither of whom discuss any limitations of scope.

Particularization

Positivistic turn and explicit Europeanization

At the end of the 18th century, a change of paradigms took place. It was Georg Friedrich von Martens, a professor from Göttingen, who finally brought a so-called positivistic turn to the discipline.[6] His law of nations was founded, as expressed in the title of the first American edition in 1795, *Upon the Treaties and Customs of Modern Nations in Europe*. This modification had enormous consequences. It did not change the claim of being a general system of norms, to the contrary, Martens emphasized that the law of nations had a general character that was binding for all nations (Martens 1795: 2). Yet its impact was intricate. Martens criticized natural law as insufficient to regulate the frequent encounters and conflicts among peoples (Martens 1795: 2). Instead, he focused on the customs (and their history) that were observed by many peoples (Martens 1795: 5). The historic dimension of law traditionally emphasized by the Göttingen school (Hammerstein 1972; Stolleis 1988: 309 ff.; Loughlin 2010) became stronger than ever before in international law.

Subsequently, Martens and his followers scrutinized the customs of former centuries: Which principles and manners could be observed, which general rules of international law could be drawn by comparison? The historical focus contained a geographical and cultural dimension. The European states delivered the material. Christian times, rulers, and manners were now identified as vital elements of the development of the law of nations (Ward 1795; Martens 1795: 6). Neither a world state nor a European republic of states existed, but in this view Europe constituted a community of nations since its legal subjects contributed to the emergence of the rules regulating their relations (Römer 1789: 3; Klüber 1821:

6 One should also mention his predecessor Johann Jacob Moser, see Stolleis 1988: 264 (with further references). The program was elaborated in Martens, *Versuch über die Existenz eines positiven Europäischen Völkerrechts und den Nutzen dieser Wissenschaft. Nebst einer Anzeige seiner in dem nächsten Winter halben Jahre zu haltenden Vorlesungen*, Göttingen 1787. On Martens see Koskenniemi's contribution in Calliess et al. 2006: 13–29.

16). Non-European customs, manners and rules were rarely mentioned by contemporary lawyers (Martens 1795: 27) and if they were, then only to enhance Europe's special character/nature by comparison with other parts of the world. This positivistic turn was at the time regarded as a fruitful innovation. Martens' books were reprinted and translated several times, particularly in the Anglo-American world (Macalister-Smith and Schwietzke 2001: 100–101). Other authors, all of them jurists, followed his method. Many textbooks now carried titles that were notably different than previous books on the topic: They shifted from the *jus gentium* universalism to a regional focus. The »European law of nations« was their subject, and they began promoting it in the titles of their textbooks.[7] The result was a practical and positive doctrine (Lingens 2010:

7 See the following selection of classical titels of the discipline, all containing »European«: Moser 1750, *Grund-Sätze des jetzt-üblichen Europäischen Völcker-Rechts in Fridens-Zeiten, auch anderer unter denen Europäischen Souverainen und Nationen zu solcher Zeit fürkommender willkührlicher Handlungen*; Neyron 1783, *Principes Du Droit Des Gens Européen Conventionnel. Ou bien Précis historique politique & juridique des droits & obligations que les Etats de l'Europe se sont acquis & imposés par des conventions & des usages reçus, que l'interêt commun à rendu necessaries*; Anonymous 1790, *Erste Grundlinien des europäischen Gesandschaftsrechtes*; Alt 1870, *Handbuch des Europäischen Gesandschafts-Rechtes, nebst einem Abriss von dem Consulatswesen, insbesondere mit Berücksichtigung der Gesetzgebung des Norddeutschen Bundes, und einem Anhange, enthaltend erläuternde Beilagen*; Günther 1777, *Grundriß eines europäischen Völkerrechts nach Vernunft, Verträgen, Herkommen und Analogie, mit Anwendung auf die teutschen Reichsstände*; idem first part 1787, second part 1792, *Europäisches Völkerrecht in Friedenszeiten nach Vernunft, Verträgen und Herkommen mit Anwendung auf die teutschen Reichsstände*; Köhler 1790, *Einleitung in das praktische europäische Völkerrecht zum Gebrauch seiner Vorlesung*; Saalfeld 1809, *Grundriß eines Systems des europäischen Völkerrechts. Zum Gebrauche akademischer Vorlesungen*; Schmalz 1817, *Das europäische Völker-Recht; in acht Büchern; Schmelzing, Systematischer Grundriß des praktischen Europäischen Völker=Rechtes. Für akademische Vorlesungen und zum Selbst=Unterricht entworfen*, 3 volumes 1818-1820; Heffter 1844, *Das Europäische Völkerrecht der Gegenwart*, 1st edition; Klüber 1821, *Europäisches Völkerrecht*; Miruss 1847, *Das Europäische Gesandschaftsrecht. Nebst einem Anhange von dem Gesandschaftsrechte des Deutschen Bundes, einer Bücherkunde des Gesandschaftsrechts und erläuternden Beilagen, 2 Abtheilungen*; Pözl 1852, *Grundriss zu Vorlesungen über europäisches Völkerrecht*; Freiherr von Neumann, 1st edition 1856, 2nd edition 1877, 3rd

174) that tried to distance itself from the metaphysical speculations and a non-positive philosophy of law.

For most of these authors the claim of Europeanism was so explicit and self-evident that they did not bother with many words of justification (Klüber 1821). Only occasionally can one find explicit lines justifying Europe's predominance in the system of the law of nations. For nearly a century, writing a »European law of nations« had been considered the state of the art in contemporary international law textbooks. As this example shows, modernization and scientific progress did not necessarily go together with universalization and equality, but rather with elaborate, learned eurocentrism. This positivistic turn substituted the European tradition of natural law which claimed to be universalist (while having its blind spots) through a positivist perception that was explicitly European, but in a different way.

Historicism and sources of international law: the Europeanization of Europe

The 19th century doctrine of international law was in a certain sense less universal and more particular than that of the 18th century natural lawyers. Europe now became the center of legal scholars' accounts. For them, the course of history clearly demonstrated that it was in Europe that the genesis of rules took place. Not only Johann Ludwig Klüber included a »cultural history of international law« in his textbook that was first published in French in 1819 (Klüber 1821: 29–43).

The history of Europe was now exploited as a contribution to the sources of international law; it became a legitimate part of a historical and positivist doctrine. For the European writers of the positive doctrine

edition 1885, *Grundriss des heutigen europäischen Völkerrechtes*; Holtzendorff, ed., *Handbuch des Völkerrechts. Auf Grundlage Europäischer Staatspraxis*, Band 1 1885: *Einleitung in das Völkerrecht*, Band 2 1887: *Die völkerrechtliche Verfassung und Grundordnung der auswärtigen Staatsbeziehungen*, Band 3 1887: *Die Staatsverträge und die internationalen Magistraturen*; Meister 1886, *Repetitorium des Europäischen Völkerrechts für Studierende und Prüfungskandidaten*; Resch 1890, *Das Völkerrecht der heutigen Staatenwelt europäischer Gesittung. Für Studierende und Gebildete aller Stände systematisch dargestellt*, second edition.

of international law, it became a matter of course to deal more or less exclusively with Europe.

However, if one looks more closely, it is obvious that »Europe« did not encompass the entire European continent. Not all countries contributed equally to the development of international law. Rather, as Klüber wrote, »the majority simply accepted these rules« (Klüber 1821: 7). Moreover, Martens had already indicated in the title of his book that it was the »modern« nations that promoted international law.[8] These and similar distinctions were made in nearly all cases; discriminatory intent was a common heritage. At the same time, the concrete achievements made and benefits held within the European borders remained somewhat vague. Whereas it was easy for the authors to invoke remote external examples, they hesitated to make internal characterizations of the individual European countries and to judge their contributions to international law. It seemed politically appropriate to embrace a rather vague »us« that was regularly contrasted with the »other«—basically denoting everything non-European.

With this methodological empiricism and Eurocentric focus, the perspective on non-European legal entities became most critical. The recognition of international law by non-Europeans soon ended outside of Europe, as most writers did not fail to notice. At the beginning of the 19th century, it was only recognized in North America and also, a late addition, in Brazil, whereas the situation in the Ottoman Empire was already doubtful (Klüber 1821: 17). In no legal field were universal rules to be found: »As there are no universal principles of the civil jurisprudence which belongs to each community, so there are no universal principles of international law which are common to all communities« (Cornewall Lewis 1852: 35). The historiography of international law clearly made Europe's international law more European than ever.

8 Martens 1795, *Summary of the Law of Nations, Founded on the Treaties and Customs of the Modern [!] Nations of Europe; with a list of the Principle treaties, concluded since the year 1748 down to the present times indicating the works in which they are to be found.*

Welcome to the club, sovereigns!

The impact of the doctrine of international law and its methodology comprised a focus on concepts in jurisprudence that had developed over time. This focus had intricate implications for some key concepts.

One of the undisputed dogmas of international law was that only sovereigns and independent states were the subjects of international law (Klüber 1851: 24; Wildman 1850: 7, 29): »The law of nations is the law of sovereigns« (Vattel 1797: xviii). Thus a universalistic claim of applicability was part and parcel of Emer de Vattel's theory on sovereignty. Yet it had a cultural bias as it operated with contingent categories that had emerged during the early modern process of European nation-building.

This all-encompassing law in the above-mentioned sense excluded entities that did not fit into the scheme of European sovereignty (Anghie 1999: 25; Idem 2009: 49–63). As an example, although the doctrine spoke about »nations« and »peoples,« the concept of these terms was rather narrow. The jurists of the classical doctrine simply identified peoples, nations, and states (Vattel 1797: 1, § 1; Vec 2011a: 1–4). These terms, they claimed, were interchangeable. Nations were always states, but only in Europe. Thus not all peoples of the globe were welcome to the club. American Indians like the Iroquois, to give an example that was critically discussed at the time (Eschbach 1856: 54), were simply categorically barred from access to international law.

The criteria of sovereign equality did, on the formal level of doctrine, bring some equality of legal subjects. However, the practical implementation and doctrinal transfer to other parts of the world occurred on a highly selective level, a level that adopted juridical doctrine to European moral standards and self-understanding and excluded others. The universalistic claim was in fact a European myth.

Christendom

The science of international law flourished in the second half of the 19th century. More textbooks than ever were published and the first journals on international law were introduced (Hueck 1999: 379–420). In 1873, the *Institut de Droit International* was founded, and around the same time

chairs of international law were established at universities (Hueck 2001: 194–217). In short, international law received more attention than ever. One of the reasons for this was probably the internationalization of communication, trade, and economies (Klump and Vec 2012; Vec 2006: 21–164), as well as the ongoing colonization of many parts of the world. This process was particularly important for the evolvement of international law textbooks in countries like the United States, England, and France which had had, in contrast to Germany, hardly any textbook tradition in this subject until the second half of the 19th century. For most countries, it can be claimed that international law as an academic discipline was born in these decades (Nuzzo and Vec 2012), inspired by multiple factors in international relations and diplomacy, jurisprudence, political sciences, and related academic subjects. The different political and academic backgrounds and experiences also shaped different styles of conceptualizing international law and its doctrine in different countries.[9]

These changes challenged Europe as a whole. The search for an identity that fit the new situation also left traces in the doctrine of international law. Concepts of European history were now stronger than ever affiliated with values and connected to a very special understanding of interstate morality. Carl Baron Kaltenborn von Stachau, author of »Kritik des Völkerrechts,« strongly emphasized the idea of an international community founded particularly on Christendom (Kaltenborn von Stachau 1847). Very similar ideas can be found in Friedrich Carl von Savigny's works (Savigny 1840: 33). In the latter, both the excluding components of the legal doctrine as well as its requirements and extra-legal assumptions had the strongest influence on the construction of the discipline seen to date. The struggle for an international order was carried out in juridical terms that were often heavily moralized. The American author and diplomat Henry Wheaton, influenced by European ideas, put it bluntly: »Is there a uniform law of nations? There certainly is not the same one for all the nations and states of the world. The public law, with

9 For Germany see Carty 2007; for Italy, Nuzzo 2012: 87–168; for England, Sylvest 2004.

slight exceptions, has always been, and still is, limited to the civilized and Christian people of Europe or to those of European origin« (Wheaton 1866: 17 [also in former editions]).

Civilization

»Christendom,« in that sense, seemed to be just a code, a symbol for the self-understanding of European states, and it usually went along with affirmative remarks on the »standard of civilization« (Gong 1984; Osterhammel 2005: 363–425; Bowden 2009; Pauka 2012) that should govern international relations and limit access to the international legal community (Snow 1895: 17). »Civilization« became a key term in late 19th century doctrine (Kroll 2012a). Only the civilized states of the world were part of this community, the others were deemed »barbarous« or »semi-barbarous,« and simply excluded (Snow 1895: 22). Some authors frequently referred to what they called the »moral law of nations« (Gardner 1844: IX; Atkinson 1851). Civilization, culture (Fisch 1992: 679–774), and religion easily went together when they were used to justify the exclusion of some subjects from international relations. Against this background, the factual scope of international law was much narrower than the semantics of the times would make us believe. In 1883, the Russian-Baltic lawyer F.F. von Martens stated with regard to the scope of international law:

> Accordingly, the scope of international law is restricted to such peoples who accept the basic principles of European culture and thus deserve to be called civilized nations. The peculiar social and public circumstances under which the Mohammedan people, as well as the heathen and primitive tribes, live make it absolutely impossible to make international law applicable in any dealings with these uncultured or semi-cultured nations.[10] (Martens 1883: 181)

10 »Demnach beschränkt sich das Geltungsgebiet des Völkerrechts auch nur auf diejenigen Völker, welche die elementaren Grundsätze der europäischen Cultur anerkennen und also des Namens gesitteter Nationen würdig sind. Die eigenthümlichen socialen und staatlichen Zustände, in denen sowohl die muhamedanischen Völkerschaften als auch die heid-

For these peoples and particularly for their individual members, the normative fundament of their treatment was often not international law, based on the principal equality of the legal subjects, but colonial law—a juridical discipline born in the late 19th century that represented many of the »dark sides« of the new legal world order (Nuzzo 2011; Nuzzo 2012: 187–286).

A structural discrimination

It is usually agreed upon that those who discriminate are often not conscious of their discriminatory behavior. The highly estimated jurists of the late 19th century were not driven by what they would have regarded as questionable intentions. However, their universalistic systems were underpinned with contemporary ideas of civilizational progress and a mission for global implementation—and often even for conquest and exploitation. Modeling international order in this way meant giving the most vivid effect to its legal frameworks. Therefore, they combined legal ideas with their cultural and religious convictions of superiority and their belief in civilizational progress. Their optimism was founded not least on technological and economic advancements that seemed to be dramatically accelerated. Jurisprudence, so it was commonly believed, should and could at least support this development. An all-encompassing law had to follow the European model, which had allegedly proven its superiority many times. Structural discrimination through concepts was the consequence. Even if the term »European« did not necessarily refer to its geographical range (Ompteda 1785: 19),[11] but only to the historical source of the doctrine (Lingens 2010: 185), the effects were incisive. Unequal treaties (with China, Japan, and Siam) were justified, and colonial warfare and imperialism were legally regarded as politically legitimate strategies.

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nischen und wilden Stämme leben, gewähren absolute keine Möglichkeit, beim Verkehr mit diesen uncultivirten oder halbcultivirten Nationalitäten das Völkerrecht in Anwendung zu bringen.«

11 For this reason, Ompteda finds the term »European« too restrictive.

This argumentation, however, did not remain undisputed. Some critics argued that the idea of genuine European legal principles was doubtful, stating that they were simply too vague (Bergbohm 1901: 9). This criticism did not address the relation between Europe and the rest of the world, it merely focused on the method of identifying principles and on cases of doubt.

At the same time, a globalization of juridical doctrine took place. Lawyers, translators, and politicians at the political and geographical periphery of the Eurocentric, imperial world order adopted this ideology (in Russia, Japan, China, and Latin America). They thereby transformed and re-interpreted the juridical systems for their own needs (Becker Lorca 2010). This internalization enabled them to be part of a world society that communicated via the global code of international law (Kroll 2012b).

Conclusion

The doctrine of international law and its practical application in the 19th century represented a distinct social order with ambivalences. The problems of universalization, equality, and structural discrimination were only three among many. Law and culture has become a popular topic in the last years, and it is evident that such matters effect the question of culture as a resource for identity, which is linked in many ways to jurisprudence (Kirste 2010: 1–32; Hofmann 2009: 1–10; Senn and Puskás 2008).

A cultural history of law as I understand it should draw attention not only to the written statutory law and its doctrinal history (*Dogmengeschichte*), but also to the social, philosophical, and political contexts of legal thinking and legal practice. Such a cultural history of law would soon realize that concepts such as legal pluralism could help our understanding of the coexistence and conflicts of juridical orders, both local and global. Legal theory and the sociology of law traditionally work on these and related topics; thus, their combination with legal history looks very promising. This article has shown in some detail, although many more examples are available, how social, philosophical, and political contexts shaped legal thinking in the area of international law, thus pro-

viding an example of how a cultural history of law might be conceptualized.

But the concept of legal pluralism does not go far enough. Legal pluralism is commonly understood as the coexistence of different legal norms or different legal orders. However with regard to the 19th century doctrine of international law, a much broader focus is needed to understand the legal constructions. These sometimes included and sometimes excluded the notion of morality (Lovrić-Pernak 2013). Very often, social customs play a crucial role in the development of legal norms. Particularly in the field of pre-modern European international law, even the distinction between social custom and customary law is difficult to establish, as ceremonies such as receptions of ambassadors and the related issues of rank and precedence were already considered intricate phenomena by the contemporary lawyers who had to clarify the normative fundaments between law, customs, and pure factuality. In other areas, very technical norms became part of 19th century international law, a process still largely unknown in detail (Vec 2006: 21–164).

Therefore, my final call is to be more ambitious and to aim for concepts beyond legal pluralism. Not only law's plurality, but also the problem of normative orders demands our attention; the interweavement, transfer, and hybridization of norms from different spheres. This might include morals, theology, social norms, customs, and technical rules (Bora 2006: 31–50). My suggestion, which I can only briefly hint at here, is to introduce a concept of »multinormativity« (Vec 2009: 155–166). This term indicates a focal interest in plural types of normativity that go beyond the plural worlds within legal regimes (e.g. different legal orders colliding, merging etc.). It could be included in more traditional approaches to a »cultural history of law« and would presumably enrich them. Multinormativity expresses an extensive interest in the various entanglements between norms of the law and norms deriving from morals, religions, social customs, and technical standards. The concept of multinormativity can help to establish a cultural history of law that makes the interweavement, the transfer, and the hybridization of rules with legal regulations

visible, and which allows us to understand normative orders in their astonishing complexity.

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