

Legal Cultures – Confrontations Beyond Comparison. The Berlin Law Fellow Program.
A project of the Berlin Research Network Law in Context at the Forum Transregionale Studien.

Pre-Inaugural Workshop I

**PUBLIC DIFFERENCES, PRIVATE DOMINATIONS:
TRANSCENDING THE PUBLIC/PRIVATE SPLIT BY GENDERING LEGAL DICHOTOMIES**

Wissenschaftskolleg zu Berlin, 11 - 12 October 2010

Conveners:

Susanne Baer (Humboldt-Universität zu Berlin)

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The workshop “Public Differences, Private Dominations: Transcending the Public-Private Split By Gendering Legal Dichotomies” (11 - 12 October 2010, Wissenschaftskolleg zu Berlin) is the first event of a four-part workshop series at the outset of the new Berlin postdoctoral fellow program *Legal Cultures: Confrontations Beyond Comparison*, a project of the Berlin Research Network *Law in Context* at the *Forum Transregionale Studien*. The program will host its first group of fellows in 2011/2012. During the preceding initial phase of planning and conceptualization, a series of workshops shall sharpen the project’s scholarly profile and allow for the mapping and exploration of guiding research themes and questions for the coming years. Bringing together participants from a broad range of regional and (intra-)disciplinary backgrounds, the small-group workshops will each focus on one particular topic, through short papers and intensive discussions. The respective systematic, historical and theoretical research questions at the core of each workshop will be confronted with a broad diversity of multifaceted and sometimes contradictory regional approaches.

The law is shaped by its inherent dichotomies. One of these dichotomic constructions that can be discovered on various levels, in all layers and spaces of the law and its normative orders, is the public/private distinction. The public/private divide is mirrored in our theories on democracy and the state, and hence in our doctrinal approaches to human rights and fundamental freedoms, where the protection of privacy is traditionally juxtaposed to regulation of the public sphere. Inside the law, in its internal structures, the public/private divide is mirrored in a distinction between public and private law – a distinction, however, that can take different shapes in different legal systems and normative cultures. This workshop aims to transcend the usual dichotomisation by bringing together and combining three perspectives that allow for a critical and constructive reassessment of the law and its contexts. Throughout our explorations, the central point of orientation will be a gender perspective on the law and its context(s).

From a gender perspective, the public/private split unveils its profoundly ideological character: sex, marriage and family are placed in private spheres hardly accessible for the state and its regulative forces, thereby giving space also for patriarchal structures; at the same time, marriage and family are, as “institutions”, intensely regulated by law, to the exclusion of other social forms and formations. The public/private split prompts questions and debates as to its gendered character. Throughout European history, “female” and “male” spheres have traditionally been divided into spheres of greater and lesser legal and social relevance, into spheres of “caring” and “productivity”, “emotion” and “rationality”.

Yet, the boundaries are blurring, “legal pluralism is an everyday matter of risk and opportunity” (David Kennedy) - not only for lawyers, investment bankers, professional humanitarians and military professionals navigating in the high seas of an increasingly disaggregated and fragmented global legal order. Facing the “law’s elusive boundaries” (Graf-Peter Calliess/Peer Zumbansen), we need to think beyond clearly demarcated fields of public and private law. When we think of economic governance, of welfare and the social, the public/private distinction becomes visible as legal (re-)construction of social phenomena, reminding us that “each time we produce law to match the world, we produce world to match the law” (Fleur Johns).

How does the western experience correspond to the historical development of societies and legal cultures in other global regions? Are such normatively loaded delineations as the public/private split changing, in the face of current challenges such as global migration, phenomena of (extremely heterogeneous) demographic changes and failing economies? While legal constructions based on the public/private divide are still at the core of dominant conceptualizations of *Rechtsstaatlichkeit* / rule of law, their contextualization and functionality is in question – and in dire need of rigorous analysis. We need to emphatically acknowledge the “equal discursive dignity” (Upendra Baxi) of those legal cultures that neither share nor identify with the legal traditions shaping the legal systems falling along the Euro-American axis. And we need to critically rethink our perceptions of legal traditions and cultures, beyond all essentialisms. While confronting concepts and perspectives in a transregional discourse, our very perceptions of “center” and “periphery” are to be questioned. Transcending inherited dichotomies, we aim to expand the analytic terrain within which to address the role of law in today’s world.

Workshop participants include Anne van Aaken (St. Gallen), Helena Alviar García (Bogotá), Upendra Baxi (New Delhi), Andrea Büchler (Zürich), Dieter Grimm (Berlin), Robert Howse (New York), Sitharamam Kakarala (Bangalore), Pierre Legrand (Paris), Vasuki Nesiah (New York), Kerry Rittich (Toronto), Prabhakar Singh (Sonipat), Yofi Tirosh (Tel Aviv), and Peer Zumbansen (Toronto).

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