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EDITORIAL

Editorial

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How and what is researched when law is studied as a social phenomenon not only depends on the different theoretical approaches but also on variations in scientific culture. In the European and especially in the German-speaking context, the social-scientific analysis of law has traditionally held the status of a specialized sociology or – as "Rechtstatsachenforschung" (Nussbaum 1914) – that of an auxiliary discipline of legal institutions and legal studies. As such, the moderately institutionalized sociology of law has not always shown much reference to socio-philosophical theory, in which state and law, power and norms have always constituted fundamental factors for the constitution of society (Machura 2012). In the UK in turn, the social-scientific study of law is primarily carried out by the genuine interdisciplinary socio-legal studies; there, the realisation of law in the social context as well as the contribution of law for the constitution of social realities are studied in a rather pragmatic and application-oriented way. In the US, the "law and/in society" movement declared law to be a too important social fact to leave its analysis to legal scholars; hence, an extended, transdisciplinary exchange among sociologists, anthropologists, political scientists, economists, psychologists and other scholars and practitioners dealing with the interconnection of law and society has advanced (Banakar 2009).

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At present, in view of globalization, international entanglements, and European integration, the law itself changes; European legal norms, supra- and international law immediately affect the national level. This kind of law plays an important role for the societal transformation process, and even as a framework of everyday life it cannot be ignored. At the same time, traditional geographical orientations of particular research foci become blurred. New questions arise regarding the possibilities, consequences, and limits of a global legal order as well as on how law can be defined in the context of globalization where on the one hand the nation state loses significance, and on the other hand cultural pluralisation increases (Pilgram et al. 2012; Röhl and Magen 1996; Fischer-Lescano and Teubner 2006). In addition, theoretical and empirical approaches dealing with law as a social phenomenon are broadening and mutually enrich each other.

Reflecting these developments, the call for papers for this present issue of the Austrian Journal for Sociology (ÖZS) was launched with the expectation to receive heterogeneous suggestions for contributions, regarding subject, theoretical perspective as well as methodological framing. The actual response to the call confirmed the multitude of possibilities to enrich the study of law from a social scientific and, in particular, sociological perspective. Finally, the present thematic issue on law and society is comprised by five articles:

The first article by Fatima Kastner addresses the emergence of global law drawing on the example of the universalization of human rights. From a macro-sociological perspective of analysis in the tradition of sociological neo-institutionalism the author describes and explains the processes and dynamics characterizing the dissemination of a global human rights culture in the era after 1945. On this basis, Kastner shows how and under what conditions such world cultural patterns of interpretation and interaction have an impact on local processes of politicization. However, as her key findings demostrate, processes of the permeation of local with world culture are not to be perceived as a top-down implementation of global norms. Rather, their local contextualisation leads to the transformation and diversification of norms. As universal norms can be used by very different actors as a formula of contingency for claiming alternative social orders, they work less towards a global normative consensus, but rather turn out to be a vehicle for political dissent.

In her contribution, Doris Schweitzer, refers to a 2014 judgment of the European Court of Justice, where the “right to be forgotten” has been postulated in a case against Google as a new “internet-fundamental-right”. Based on this legal situation the author gains social theoretical insights that allow to complement at an important point existing approaches of sociological theory concerning the constitution of the subject. Albeit focusing on the particular research area of digital reality, Schweitzer positions herself in the tradition of theoretical predecessors who gained inspiration for sociology via legal theory, that is, via legally produced knowledge. To ensure the protection of privacy, the “right to be forgotten” recognizes the natural person’s right to erasure of past data (independent from its truth) in the “digital person’s” profile. However, this right not automatically comes into being after a certain lapse of time, but has to be claimed individually and needs to be legally assessed. Thereby, attention is called to the necessity of complementing the theory of the “enterprising self” – the management of the self and the future; the self-optimization and

-regulation imperative not only refers to future development but also extends to the administration of one's own past.

Positioned in the tradition of Max Weber's interpretative sociology, the contribution of Sarah Jahn focuses on the relation between law and religion in the context of Germany's penal system. On the basis of her empirical research, the author describes how the heavily regulated institutional setting of prisons deals with the constitutionally granted right to religious freedom. Jahn's findings reflect the dynamic relation of law and religion within legal practice. The article depicts processes of interpretation and negotiation of religious meanings and practices within the German penal system and shows how these are significantly co-determined by the set of values as well as practical routines of the institutional decision-makers.

In the framework of recent transformations of the French welfare state, laws with deliberately "open texture" have been adopted in order to offer individualized solutions for citizens. Axel Pohn-Weidinger refers to these changes as a starting point of his research and asks for their practical consequences with regard to access to justice. In doing so, he draws on ethnographic fieldwork in a Parisian association for debt counselling to analyse how evidence of facts is established in encounters of public service users and *street-level bureaucrats*. Pohn-Weidinger demonstrates clearly how the contradiction between the legal idea of an entirely bureaucratic reality, where "normality" equals documentability, and the contingencies of social life, where documentation is often insufficient, dubious or non-existent, have to be resolved in practice. In encounters of public service users and *street-level bureaucrats* legal norms are not simply applied, but the production of law is enabled; moreover, the concrete form of a legal entitlement and access to social rights is determined. The author stresses that not only legal knowledge is decisive for access to social rights but also knowledge regarding bureaucratic operations and the social production of textuality is crucial. As efforts of the law to better grasp individual lifeworlds via openness in legal rules compels the individual to make social facts documentable and to present one's own story and situation in a coherent written form, bureaucratic encounters can become moral tests, and access to justice hampered.

From a comparative and interdisciplinary perspective, Karin Sardadvar, Ingrid Mairhuber, and Karin Neuwirth look into Austrian maintenance law and its social implications. In this context, the last four decades are marked by ambivalent developments, characterized by major legal and social transformations such as the shift to a formal family model based on partnership, changes with regard to relationship pattern and women's integration in the labour market on the one hand, and persisting inequalities such as gender pay gaps and distribution of reproduction work on the other hand. The authors ask for the significance of these developments for material and social security and analyse their legal effects. Drawing on empirically informed comparisons with Sweden and Denmark, potentials and consequences of different legal approaches are assessed. Even though Sardadvar et al. conclude that in the long run and with factual gender equality in mind individualization of livelihood and thus a cutback of maintenance regulations are desirable, they stress concomitant challenges linked to the fact that legal and social realities do not keep pace. Particularly the international comparison shows that legal changes have to be sensitive to actual empirical realities to not create new gendered inequalities. To move towards factual

gender equality, a stronger connection between legal and social-scientific empirical research is necessary.

Although each of these contributions is particular in its topic, theoretical perspective and approach, on a more general level three topical orientations can be identified according to which the articles are presented in this special issue: The first part deals with the impact of human rights regulations and their implementation in particular legal areas; both Kastner and Schweitzer discuss in detail the consequences of the diffusion of fundamental and human rights in local contexts, their application in the digital era and on the "digital person" respectively. The second part focuses on the realization of law "from below" – how the constitutionally assured right to religious freedom is effectively guaranteed in the restrictive institutional setting of German prisons and how access to justice is provided by street-level bureaucrats are the subjects of investigation of Jahn and Pohn-Weidinger. The last contribution rounds off the discussion by providing an analysis from a legal and social comparative angle: Sardadvar et al. analyse the juridical arrangements and implementation of maintenance law and debate how these relate to differences in gendered division of labour in three European societies.

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