

Remarks at the Opening of the Symposium Celebrating the 10th Anniversary of the *German Law Journal* — Positioning German Scholarship in the Global Arena: The Transformative Project of the *German Law Journal*

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A. Meaning of Globalization in the Transnational Sphere

The 10th anniversary of the *German Law Journal* marks ten years of a seminal project to transform legal scholarship and adapt it to globalization.

As the transnational sphere becomes dominant, globalization means more than interdependence. It entails profound change to the academic systems as currently understood. These systems were formed in the nineteenth and early twentieth centuries as national institutions. Academics were (and often still are) public servants; future academics — particularly those representing the interests of the state in core areas like education, law, forestry, and theology — can only become public servants after they undergo state examinations. National institutions have financed academic scholarship in order to achieve effective administration, national fame, and economic profit. Accordingly, academic scholarship organized itself into national associations, nurtured national publication bodies, whose public voice spoke in the mother tongue. Certainly, international contacts were maintained with varying intensity, and comparative law has had an enduring and prominent history in many legal fields. However, these contacts had a national foundation that largely determined orientation, style, media, means, career and reputation. Under the bell jar of the nation state, national academic communities developed strikingly individual characteristics.

This national foundation is becoming shaky because of globalization, the phenomena of increased interaction between different nation states leading to the fusion of realms that previously had been separate. New communication techniques have made temporal and spatial distances shrink, or even disappear. There is only a slight difference between the travel and international activities of successful academics and those of famous musicians

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or international investors. In the academic world, globalization means much more than merely publishing an article in English once in a while. It means that orientation, style, media, means, career and reputation are no longer mainly determined by a largely autonomous national system because that system is increasingly transnationally embedded.

B. Challenges of Globalization in German Legal Scholarship

The challenge of globalization is particularly acute for German legal scholarship. At least three major developments are defying its traditional modes. One is the European project of creating a European research area, including the humanities, social sciences, and legal scholarship. As the European research area is mostly conceived in likeness of the European market, the overwhelmingly national organization and outlook of legal scholarship will come under pressure. A second challenge stems from the rapid development of the European legal area. An eminent legal scholar today needs to know not just about his or her domestic law and some law of the European Union. Good contemporary scholarship comes with a comparative component and an international dimension. This undermines the traditional scholarship's usual focus on one single source and its epistemic nationalism. Whereas the domestic legal system was formerly conceived as creating a normative universe, it is now increasingly understood as being but a part of a normative pluriverse. A third challenge arises from the legal research of leading Anglo-American, in particular United States, institutions. As varied as legal research is in these institutions, it almost always contrasts with the usual way of carrying out legal research in Europe. In a globalized system of legal research the sheer prestige and the intellectual excitement of these institutions, but also the competition for winning the best minds and influence abroad, call for stocktaking of legal scholarship in Europe.

C. Legal Scholarship's Responses to the Challenges of Globalization

1. The Cultural Option

One response to these challenges is to ignore them and pursue business as usual, a strategy, as Mattias Kumm points out in his contribution to this issue of the *German Law Journal*, that was tested in the automobile industry by General Motors, with well-known results. Equally unpromising is a strategy that seeks to defend the national integrity of academic systems, at least in the areas of research that are relevant to national culture.

At the same time, certain aspects of this strategy merit support. Intellectual life, as the expression and motor of a national culture, ought not be fully separated from the national language and the national context. Moreover, the approach is convincing for the professional training of the mainstream of legal practice. It is beyond question that large parts of legal practice will remain overwhelmingly national. Accordingly, this cultural

option has respectable elements but is not likely to position an academic system for leadership in a globalized world.

II. The Market Option

The contrasting option, the market option, is to develop academic communities following the model European market. This option underlies many of the pronouncements on European academic policy, which is dominated by the hard sciences, in particular the so-called life sciences. What does that imply? The central idea of the European market is that it replicates national markets on a larger scale. It follows that the definitive area no longer consists of the national area but the European area. This area defines itself through free market competition, non-discrimination, and international openness. Most “major” products are those that are directed towards the European, and global, market and not towards any specific national market.

With regard to the disciplines of academic knowledge, the market model requires that research activity occurs in a European and increasingly global domain. Many academic disciplines, particularly the sciences or economics, seem to have taken this course of development. These disciplines address global issues, publish important contributions in only a handful of global journals, and determine the future of research through just a few centers.

The removal of borders and the creation of new areas follow the rules of the most powerful system, namely the Anglo-American system. As the creation of the European currency area largely grew out of German ideas and from the example of the Deutschmark, the European research area largely obeys Anglo-American rules.

1. Advantages of the Market Option

A European and globally integrated research area that follows the rules of Anglo-American academic communities has many advantages. Worldwide specialization and global competition are, in principle, positive and beneficial. This model does not in any way imply American hegemony; there are numerous centers of scholarship outside the United States. Some countries — especially the Scandinavian countries, the Netherlands and Switzerland — have adapted important sectors of their academic system in this light. According to the global scholarship criteria of “citation indexes” they are even more successful than the United States or the United Kingdom. Similarly, this development does not necessarily mean the end of academic publishing in non-English-speaking countries; Dutch publishers are very successful. Furthermore, many academics would be happy to work with publishers who read books in detail and are available for in-depth discussions. In general, the academic systems in continental Europe would benefit from the more open style of Anglo-American discourse.

2. *Disadvantages of the Market Option*

On the other hand, adoption of the market approach has severe implications for German, French, Spanish, or Italian academic systems. The concentration of resources within a small number of research institutes will be necessary because the disappearance of borders makes migration easier and international competitiveness raises the salaries of good scholars. The further erosion of the postulate of equality between academic institutions and academics will be painful; correspondingly bitter distribution battles are to be expected. As in the United States and the United Kingdom, the education of the next generation of academics might take place only in a handful of institutions.

III. *The Civilization Option*

A third strategy, the civilization option, aims to connect the first and second options. Accordingly, the humanities in particular should be taken seriously and maintained as an expression and form of reflection of diverse national cultures. They should, however, be relocated to a transnational domain. The construction of a transnational research area, particularly in the humanities, should constitute a meaningful addition to intercultural learning between national cultures as well as contributing to a multifarious European and international civilization. The example to be taken is not that of the European market but that of the European constitutional area. It rests on the idea of developing the specific academic paths as parts of a dense global discourse. The *German Law Journal* is a successful and prominent project within this strategy.

1. *The German Law Journal: A Successful Implementation of the Civilization Option*

It is worth highlighting some of the features that make the *German Law Journal* distinctive. First of all, it reports on legal developments in practice and doctrine, but puts them in a global framework. Accordingly, German legal thinking, in particular the reasoning of the Federal Constitutional Court, has become globally accessible. In contrast to leading American journals, doctrine forms a focus of the *German Law Journal*, thereby developing the path of Continental legal scholarship. Yet, these pieces are often not just translations of German papers. Many authors put much effort into explaining and purifying established doctrines in light of a transnational discourse, thereby providing an important stimulus for the development of domestic doctrine.

Moreover, the *German Law Journal* often has taken the intellectual lead in furthering transnational discourses on key issues of global interest such as terrorism, corporate governance and responsibility, and legal education, to name just a few. Moreover, it brings excitement to an academic field that too often appears bureaucratic. This helps convince smart students to engage in scholarship. Most importantly, it has triggered a transnational discourse and thereby a transnational communicative sphere among scholars in their formative years, and thereby created a community with a new outlook.

2. *The Future of the German Law Journal: What to Expect from the Civilization Option*

Where is the *German Law Journal* heading? If its project succeeds, what might legal scholarship look like? The research landscape will be differentiated even further. Far from drying out, national scholarship on the various domestic legal systems would rather be enriched. The project aims at producing more than just occasional irritation of national production, but rather at the emergence of comprehensive doctrinal patterns. One can expect the knowledge of its scholars to be fragmentary and heterogeneous. No one will know the law and the scholarly output in the European and global legal arena to any similar extent as was possible in a national legal area.

It appears to be quite possible to respond to the heterogeneity of the legal material with a strengthening of theoretical components, as shown by the United States' research landscape, which encompasses fifty-one different legal systems. This could lead to stronger recourse to legal philosophers who are considered part of the common European heritage, from Aristotle and Hobbes to Habermas and MacCormick, but also to the formation of disparate and separate transnational scientific communities, engaging in specific discourses on legal theory. Yet the strong doctrinal component of most scholarly traditions in Europe makes a general substitution of doctrine by theory unlikely, and the *German Law Journal* is right to emphasize doctrine. The mindset of a lawyer educated in the tradition of doctrinalism is quite different to that of a lawyer taught to believe that doctrines are more or less fronts for other forces.

Accordingly, the various doctrines could evolve by thickening the comparative component. A European comparative doctrinal discourse can distill legal arguments that are of general use when construing domestic law. Of great importance along this path will be legal education and the identity of the upcoming generation.

D. Conclusion

Can the project of a thick, transnational scholarly discourse succeed? The road ahead is long, and the journey will be arduous. Yet the rise of the *German Law Journal* proves that many scholars believe in it. With such authors and academic entrepreneurs as Russell Miller and Peer Zumbansen the transformation is likely to come true, as it responds to the challenges of its time.