

Studying Legal Cultures and Encounters? Methodological and Other Reflections

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“Vi forstår ... at intet her er tilfældigt, men at der findes en mystisk indre Sammenhæng mellem en Tidsalders Principper, Idealer, Ambitioner, Fordomme og Drømme – og saa dens Sofaer, Blomsterbuketter og Damehatte.” (Karen Blixen 1951 & 1977)¹

”Når Seneca kan forekomme mere samtidig end tænkere der er os meget nærmere i tid, hænger det naturligvis sammen med at det moderne Europa har mere til fælles med storbyen Rom end med det før-industrielle Europas mindre, og mere lukkede samfund. Rom med sin kvantitetsdyrkelse, sin mangel på fælles åndelige værdier, sin rigdom og sit armod, sin livsnydelse og sin livslede, sit behov for underholdning og for frelse, sin individualisme og sin massepsykose, er det store fortilfælde for vor egen storbycivilisation.” (Villy Sørensen 1976 & 1995)²

1 The Cultural and Other Turns

During the last decades of the 20th century the humanities and the social sciences experienced and debated a number of so-called ‘turns’, related to the growing interest in novel approaches to cognition and knowledge. The linguistic turn has been especially important in the humanities, and interest in relations between law and language has been growing (Anne Lise Kjær 2008). The ‘cultural turn’ was introduced as a term by Frederic Jameson in his 1998 collection called *The cultural turn: Selected writings on the postmodern*, which has strongly influenced sociology of culture. As a demonstration of the continued importance of technological development for development of knowledge his book is now also a Google-book. Other interpretational ‘turns’ are the literary turn, the iconic turn, the narrative turn and the topological turn. These turns all seem to focus on processes and practices of meaning, and in this respect they may all have relevance for studies of legal cultures. They are terms and concepts which seem to encompass aspects of both approaches and methods – linguistic, cultural, visual, narrative and topological, which may also be useful when studying legal cultures and normative frameworks.

In a small book from 2009 on *Kulturgeschichte* (Cultural History) the German cultural historian, Achim Landwehr writes that the contemporary – and wider – concept of culture has four dimensions: the interpretational, the

1 Karen Blixen, *Daguerreotypier*, Gyldendal, Copenhagen 1951/1977, p. 11 “We understand that... nothing is coincidental, but that there is a mystical inner connection between the principles, ideals, ambitions, prejudices and dreams of an era, and then its sofas, flower bouquets and ladies’ hats.” (My translation.)

2 Villy Sørensen, *Seneca. Humanisten ved Neros Hof*. [Seneca. The Humanist at Nero’s Court], Gyldendal, Copenhagen 1995, p. 7. “That Seneca may *See* in more contemporary than thinkers, who are much closer to us in time, is of course connected to fact that modern Europe has more in common with the metropolis of Rome than with pre-industrial Europe’s smaller and more closed societies. Rome with its celebration of quantity, its lack of common spiritual values, its wealth and its poverty, its joy of life and its depression, its need for entertainment and for salvation, its individualism and its mass psychosis is the grand precedent for our own metropolitan civilization.” (My translation.)

‘ergological’³, the social and the temporal. He writes that it is not the first time in the history of Europe and the Western World that the concept of culture is related to a hope for orientation in a world which is lacking clarity. It is especially experiences of difference which are related to the concept of culture – topics such as multiculturalism, religious and national conflicts, globalization processes and the recognition of increased social and economic differences. Culture stands for difference.⁴ Culture is understood as ‘*Sinnproduktion*’ – production of meaning, and it is no longer the object of study which is the focus, but the perspective. Cultural history has no specific object, culture is not everything, but it is everywhere. This perspective looks for the cultural in societies (of the past) and underlines its meaning. The cultural perspective is:

“the question of patterns of meaning and contexts of significance, with which societies of the past have provided their world in order to make them into a meaningful reality. Culture is understood as systems of meaning and differentiation which are specific forms of interpretation of the world, brought forth transmitted and changed in a historical process”.⁵

The ‘literary turn’ which has influenced political theory, has also been quite influential in legal theory and legal studies. Amongst the ‘law and’ studies the focus upon ‘law and literature’ has been particularly strong for some decades. This field of study uses normative analysis of literary works – or literary analysis of legal texts and normative phenomena. It has allowed for a representation of ‘voices’, views and arguments which have otherwise been difficult to encounter in analysis of modern legal sources. There seems to have been a focus on post-colonial literature – thus allowing for a representation of ‘minority voices’ which are otherwise not necessarily heard. The ‘law and literature’ trend has come from the US, but has its distinct European voices.⁶ Ian Ward has tried to broaden the understanding of Turkey’s accession to the EU through an analysis of Orhan Pamuk’s novel *Snow*.⁷ The law and literature discourse seems to be concerned with the relations between laws and morality, which have been severed – perhaps especially in Nordic and continental European legal culture influenced by post-protestant secular thought.

3 This indicates the fact that culture is not given but is a concrete result of human work and effort, Achim Landwehr, *Kulturgeschichte*, Verlag Eugen Ulmer 2009, p. 8.

4 Landwehr, 2009, pp. 8-10.

5 „die Frage nach Sinnmustern und Bedeutungskontexten, mit denen Gesellschaften der Vergangenheit ihre Welt ausgestattet haben, um sie auf diesen Weg überhaupt erst zu einer sinnvollen Wirklichkeit zu machen. Unter Kulturen sind demnach Sinn- und Unterscheidungssysteme als spezifische Formen der Weltinterpretation zu verstehen, die im historischen Prozess hervorgebracht, fortgeführt und verändert werden“, Landwehr, 2009, p. 12 (my translation into English).

6 See Ian Ward, *Law and literature, Possibilities and perspectives*. Cambridge University Press 1995; and Maria Aristodemou, *Law & Literature. Journeys from her to eternity*, Oxford University Press 2000.

7 Ian Ward, *The Culture of Enlargement*, in *Columbia Journal of European Law*, Vol 12, No. 1 (2005/2006), pp 199-241.

1.1 Assumptions about Legal Cultures

The 20th century assumptions about legal culture were assumptions about and understandings of legal culture (in Europe and the Western world) as being national, written texts (in the form of legislation) primarily created through democratic procedures (abandoning custom and tradition), in industrial societies, and historically characterized by considerable male dominance, most often secular (but based on primarily a Christian tradition), embodying modern values perceived to be universal (freedom and equality foremost), and based on a modern scientific world view (which has strongly influenced also legal methods and the self-perception of lawyers).

In a western and European context the interest in legal cultures seems to be related to experiences of coexistence, tension, interaction between and successions of different legal-political systems, which have for a large part of the century been organized on a national basis. With the development and enlargement of the EU, national legal systems to a certain degree become examples of different ‘European ways’ of dealing with similar and related issues⁸ and the need for a common legal cultural heritage becomes more necessary. Aleida Assmann, a German professor and cultural scholar has coined the term ‘*cultural memory*’ and claimed in 2014 that “Memories of World War I are being recycled, restaged and transformed for the future. And a common historical frame allowing European nations to remember their stories collectively is within reach.”⁹ Landwehr in his 2009 presentation of cultural history and its tensions and attempts of meaning making writes about memory and remembrance, body and gender, science, the political, war and violence and economy.

In a non-Western context there have been reservations about the inability of the culture of rights – and the culture of human rights¹⁰ – to fulfil its promises. Professor Julie Stewart, who has been working with the project Women and Law in Southern Africa (WLSA) for decades, wrote in 1997 that

“It is well recognized that there is an exponential growth in rights intended to deliver an improved human condition. However, this growth is not matched by an effective system for pursuing these rights, there is *an increasing crisis of expectation*. Human, logistical and financial constraints feed into already overloaded and complex bureaucratic and judicial systems which cannot deliver even the most basic of entitlements to the majority of the population. The inherent paradox is that whereas on paper people have more and more

8 Volkmar Gessner & David Nelken (eds), *European Ways of Law. Towards a European Sociology of Law*, Hart Publishing, The Oñati International Institute for the Sociology of Law 2007.

9 Aleida Assman, *Reflections on 1914/2014. A year of commemoration* (eurozine.com, last accessed January 7, 2015).

10 See Kirsten Hastrup (ed), *Legal Cultures and Human Rights. The Challenge of Diversity*, Kluwer Law International 2001.

rights, the judicial processes for accessing them are more remote and inaccessible, both physically and economically, than ever before.”¹¹

This is a crisis of expectation – and a crisis of a rights based legal culture – which is no longer specific to the world outside the Euro-American sphere.

While economic globalization has led to increased economic interaction and to development of needs for communal market norms and practices, Europeanization of private law has led to increased discussion including criticism of the concept of legal culture. Ralf Michaels claims that discussions on legal culture often have a conservative or reactionary potential, and that changes are rejected due to often explicit irrational references to legal culture.¹² There is no doubt that national law and thus national legal culture is weakened at the end of the 20th century.¹³ This is perhaps felt particularly strongly by small nation states, who are becoming subjected to both larger economic and political forces. In his description of five discourses on globalization Göran Therborn has described this (im)potence of state power.¹⁴

These experience have brought with them cultures of fear. The Danish legal philosopher Peter Højlund has studied what he terms ‘*Law of fear*’ (*Frygtens ret*) in a small book, where he uses Supreme Court cases and legislation related to the security discourse to argue that democratic legal culture is being undermined by a policy and law of fear.¹⁵

When Sigmund Freud published his essay *Das Unbehagen in der Kultur* in 1930, he had an experience of the moral collapse after World War I and of a time, when the economic depression was beginning to wreak havoc on the Atlantic-European legal culture.¹⁶ Aggression, violence and brutality were elements of the emerging totalitarian culture. In this essay Freud also writes about ‘*the narcissism of minor differences*’ which lead cultures close to each other to fight and humiliate each other strongly. Such narcissism allows members of communities to stick together more easily.¹⁷

The legal and normative culture of the globalized era of the 21st century seems much more (but not only) concerned with negotiated norms for the market (often but not necessarily written), often created in secretive procedures (returning to business specific interrelations), still highly male dominant in the

11 Julie Stewart (ed), *Paving a way forward. A review and research primer of WLSA methodologies*. Published by Women and Law Southern Africa Research Project, Harare, Zimbabwe 1997, p. 74 (emphasis added here).

12 Ralf Michaels, *Rechtskultur*. In *Handwörterbuch des Europäischen Privatrechts*. (Hrsgb) Basedow, Hopt & Zimmermann, Bd.11, Mohr Siebeck 2009, pp. 1255-1259.

13 Jørn Øyrehagen Sunde & Knut Einar Skodvin (eds), *Rendezvous of European Legal Cultures*, Fagbokforlaget, Bergen 2010.

14 Göran Therborn, *Globalizations: Dimensions, Historical Waves, Regional Effects, Normative Governance*, in *International Sociology*, Vol 15, No. 2, June 2000.

15 Peter Højlund, *Frygtens Ret* [Law of Fear], Hans Reitzel, Copenhagen 2010.

16 Sigmund Freud, *Das Unbehagen in der Kultur*, [Kulturens byrde. Civilization and its Discontent] (Original from 1930).

17 Here quoted from Sigmund Freud, *Kulturens byrde*, Hans Reitzel, Copenhagen 1983, p. 58.

‘global-private,’¹⁸ more post-secular than secular, embodying market values (competition, wealth and growth/expansion), and based on a mixture of world views – many of which may perhaps be described as conservative in a broad sense (traditionalist, conventional, conformist). The growing concern with inequality¹⁹ and unease about the hegemony of market economy²⁰ indicates that we are witnessing a pluralist, sometimes brutal, sometimes hopeful, often deeply insecure and uncertain (legal) culture emerging. As Reza Banakar writes in an introductory chapter called *Emerging Legal Uncertainty*:

“Globalization has reconfigured the social landscape of modernity by intensifying economic exchanges and trading interconnections across the world, which in turn have interlocked social, economic and cultural activities and processes amongst nations and beyond nation states, thereby bringing about a number of interrelated societal and ideological changes. Furthermore, it has compressed time-space, eroded socio-cultural borderlines, thus creating hybrid cultural and legal spaces, and brought about a gradual transformation of the nation state. At the same time, it has cast doubt on the viability of the welfare ideology, undermined traditional forms of regulation and subsequently recast the relationship between law, state and society.”²¹

Annelise Riles, American professor of law and anthropology, who has worked on comparative law, claims that we are seeing a shift ‘*From Comparison to Collaboration*’ because

“in the post-financial crisis era, politicians, publics and most of all financiers have lost faith in this neoliberal vision of coordinated societies, institutions, nations and individuals... In a collaborative economy, in which there is a loss of faith in the coordinative power of the price, and the market is no longer sustained entirely by the liberal legal institutions (tended by professional lawyers) but begins to collapse into data politics, a different kind of epistemology and a different scholarship ensues. There is less need for

18 Raewyn Connell, *The Rise of the Global-Private. Power, Masculinities and the Neo-liberal World Order*. In Larin Jurczyk/Mechtild Oechsle (Hrsg): *Das Private neu denken. Erosionen, Ambivalenzen, Leistungen*. Westfälisches Dampfboot 2008, pp. 315-330.

19 See Wilkinson, Richard and Kate Pickett, *The Spirit Level. Why Equality is Better for Everyone*, Penguin Books 2010. (Originally published in 2009 by Allen Lane. Later republished and translated into several languages with somewhat varying titles). Recently the market success of the publication of Thomas Piketty’s book, *Capital*, and the debates raised by the concern with rising inequality indicates the concerns about value changes.

20 Klaus Riskær Pedersen, *Socialkapitalisme. Vær forberedt på forandringer* [Social Capitalism, Beware of Changes], Tiderne Skifter 2014. The author of this small book is a Danish entrepreneur, former member of the EU parliament and also repeatedly sentenced to imprisonment in Denmark and France and serving sentences for several years, due to different forms of financial fraud. The book argues against market economy and for the moral foundation of a socialcapitalist economy and is in favour of network democracy.

21 Reza Banakar, *Normativity in Legal Sociology. Methodological Reflections on Law and Regulation in Late Modernity*, Springer 2014, p. 2.

academics to compare in order to facilitate coordination since the starting point of collaboration is not commensurable difference.”²²

No wonder, we feel that our times and normative cultures are similar to those of ancient Rome, as the Danish philosopher Villy Sørensen, wrote in the mid-1970s, before he became involved as a philosopher-activist in a movement called “Oprør fra Midten” – ‘Rebellion from the Middle’ based upon cooperation between philosophers, natural scientists and politicians – as well as many others.

2 Western Legal Culture in Context

2.1 *Pre- and Early Democratic Examinations of Legal Culture – and their Contemporary Relevance*

Work in the field of legal culture in Europe has demonstrated the relevance of pre-modern and pre-democratic philosophers and texts. The Danish-Norwegian polyhistor, comedy author and professor of international law, Ludvig Holberg (1684-1754) was a Nordic/European scholar, whose European cultural and professional experiences are clearly reflected both in his writings on international law (which nobody reads any longer) as well as in his very popular comedies, which are still played regularly in both Denmark and Norway.²³ Holberg (also) used fiction to criticize the political and legal conditions of his time as for instance in his book *Niels Klim's Underground Travels* – first published in Latin in 1741. In this satirical science-fiction/fantasy Enlightenment novel he criticizes intolerance, lack of equality between men and women, power-hunger in the form of colonization, and the spiritual delusions in Europe at the time. Publishing in Latin and outside the empire was a pragmatic way to circumvent local censorship.

This interplay between different genres is also used by his own contemporaries as well as by present day legal author-academics in the field of law and literature.²⁴

The Italian philosopher, Giambattista Vico (1668-1744) from Naples, deals with both law and methods in his two works “On the Study Methods of Our Time” (from 1709, Danish translation 1998) and “New Science” written

22 Annelise Riles, *From Comparison to Collaboration: Experiments with a New Scholarly and Political Form*, in *Law and Contemporary Problems*, Vol. 77, Forthcoming, Cornell Legal Studies Research Paper No. 14-35, 2014 (SSRN-id2502126.pdf).

23 Hanne Petersen, *Holberg – den store formidler af europæisk rets/kultur*, [Holberg – the Great Mediator of European Law and Culture] in Henning Koch & Anne Lise Kjær (eds), *Europæisk retskultur – på dansk*. Forlaget Thomson, Copenhagen 2004, pp. 33-60.

24 The German lawyer-author, Juli Zeh, has called democracy a taboo. In her essay ‘*Supranationales Glänzen*’ on the EU and democracy, she uses what might be termed a literary ‘science fiction method’, where she views European post-democratic legal culture around the turn of the millennium through the eyes of a female international lawyer in the year 2025. In Juli Zeh, *Alles auf dem Rasen, Kein Roman*. Schöffling & Co. Frankfurt/Main 2006.

between 1730 and 1744.²⁵ Vico, who was also a polyhistor, was political philosopher, rhetorician, historian and jurist. He presents a humanistic and pre-positivist approach to knowledge, including legal knowledge, and he argues against the compartmentalization of knowledge resulting from the Cartesian world view. His texts, dealing with ‘poetic wisdom’ and the recurrent *three* kinds of natures, customs, natural law, governments, language, character, legal science, authorities, law, and judgments, illustrate a tradition and possibility of thinking about law and legal culture in ways very different from the modern and contemporary approach. The recent translations of his work demonstrate increased current interest in his work by legal and other academics.²⁶

Montesquieu (1689-1755) in his famous work “The Spirit of Law” (from 1748, with a new Danish translation 1998) also deals with three different types of government (democracy, aristocracy and monarchy) and their foundational principles. Apart from his well-known discussions of the relations between laws, nature and climate (in Books 14-118) he also deals with the relations between laws, commerce, demography, religion (Books 20-24), as well as with luxury consumption and the status of women (Book 7).²⁷

All these authors from different parts of Europe lived roughly during the same period and all deal with pre-democratic and pre-positivist law, and law that is related to the first century after the Westphalian Treaty (1648), where the relationship between law and religion was reorganized, but where law was not yet claimed to be secular. They use literary, historical and cultural studies and methods to describe and argue normatively. These studies also provide sources for understanding the cultural normative frameworks of later periods.

The Norwegian legal scientist, politician and diplomat, Georg Francis Hagerup (1853-1921) in 1919 published a book on *Ret og Kultur i Det Nittende Aarhundrede* (Law and Culture in the 19th Century).²⁸ He writes in the introduction that his book is based upon the insight that law is in itself a cultural phenomenon, and at the same time it is interacting with all other elements in the cultural development, that is all those economic, political, social, ethical and intellectual currents which decide this cultural development.

25 Giambattista Vico, *Den nye videnskab*. (The New Science) (*Principper for en ny videnskab om nationernes fælles natur, i denne tredje udgave talrige steder korrigeret, tydeliggjort og betragtelig udvidet af forfatteren selv*). Translation, introduction and notes by Arne Jørgensen & Conni-Kay Jørgensen, Gyldendal, Copenhagen, Klassiske Tænkere 1998. Giambattista Vico, *On the Study Methods of Our Time*. Translated with an introduction and Notes by Elio Gianturco. With a translation of The Academies and the Relation between Philosophy and Eloquence by Donald Phillip Verene, Cornell University Press, Ithaca and London 1990.

26 See Willem J. Witteveen, *Reading Vico for the School of Law*, in Chicago-Kent Law Review, Vol. 83:3 2008 pp. 1197-1223. See also Landwehr, 2009, pp. 20-21.

27 Charles de Secondat Baron de Montesquieu, *Om Lovenes Ånd*, [The Spirit of Laws] (Danish translations from 1771 and 1998) Gad, Copenhagen 1998 (French original from 1748).

28 Francis Hagerup, *Ret og Kultur i Det Nittende Aarhundrede*. In a series on ”Det Nittende Aarhundrede Skildret af Nordiske Videnskabsmænd” edited by Aage Friis. Gyldendalske Boghandel, Nordisk Forlag 1919.

Hagerup discusses classical legal topics in the six chapters of this small book: legal sources, constitutional law, criminal law, procedure and private law – which include property law, trade law, family law, inheritance law and a large chapter on international law. This book has neither notes nor references, and is probably to a large degree based upon experiences of the author. It is probably collected and written in Copenhagen during World War I when Hagerup was Norwegian ambassador to Copenhagen, den Haag and Brussels at the same time. Hagerup was a conservative politician and Norwegian prime minister during several periods before the Personal Union with Sweden was dissolved in 1905 and Norway finally became an independent country. He was also an active supporter of the Union and against the secession of Norway from Sweden. Norway was established as a monarchy and not as a republic already in 1814, and its constitution – as well as the colours of its flag – was greatly influenced by both the American and French Revolutions and constitutions. Politically and scientifically he was strongly engaged in international law and from 1903 he became Norway's representative at the International Court in den Haag.

Besides the important struggle for independence as well as class struggles and political struggles between an emerging left and right, Hagerup's time had been influenced by what was called *The Great Moral Feud* (Sædelighedsfejden) which took place in the Nordic countries – and beyond – in the 1880s with its critique of the patriarchal family and its repression of women in marriage and in prostitution. The authors Bjørnstjerne Bjørnson, Henrik Ibsen and Georg Brandes were all involved in this feud – with different arguments and positions.²⁹ The continued relevance of the mutual influence of and interaction between art, literature and legal culture is indicated by the fact that especially Ibsen's *A Doll's House* from 1879 – presenting a strong criticism of Victorian values and morality in marriage – is still played on many European and global scenes. One can perhaps detect certain similarities with the 'moral panic' of so-called secularist and religious forces in the globalized age of desecularisation and (renewed) anxiety.

Revolutionary France and the Napoleonic wars had influenced the legal culture of 19th century Europe. During the period after WWI and the Russian Revolution a lot of legal, constitutional and political changes took place in Europe. The 'world wars', the Russian Revolution, the socialist Soviet Union, Nazism and a number of totalitarian and authoritarian regimes in (Eastern and Western) Europe have clearly influenced the legal cultures of 20th Century Europe. The secular legal cultures as well as the culture of the social conservative and social democratic welfare states are strong elements of this historical European legal culture. The influence of American legal culture – 'modern legal culture' has increased in most parts of Europe during the last part of the 20th century. The gradual development of the European Union also increases its emerging influence beyond the regional level.

29 Georg Brandes (1842-1927) had translated John Stuart Mill's *The Subjection of Women* in 1869, the year of the original.

2.2 20th Century Developments

The German legal historian Harriet Rudolph writes that in the first half of the 20th century and in a German context it was especially Gustav Radbruch, who understood law as a cultural concept related to contemporary societal values.

“According to Radbruch, law (Recht) serves the realization of an ‘idea of law’, which is not philosophically abstract, but relates to notions of being human”.³⁰

Gustav Radbruch (1878-1949) was born in ‘northern central Europe’ in the same city – Lübeck – and during the same period as the later Nobel Prize laureate Thomas Mann (1875-1955). In 1901 Mann published his novel on the collapse of a German bourgeois family ‘*Buddenbrooks. Verfall einer Familie*’, and Radbruch passed his first ‘Staatsexamen’ in Berlin. Both were born a few years after the establishment of the German Kaiserreich, and both lived to experience the rise and collapse of the German empire, the short-lived Weimar Republic of industrial society and the atrocities and downfall of the Third Reich. Both came from merchant families in a city of merchants with a history going back to the Hanseatic League.³¹

A changing gender order was an important part and ambition of the policy of both the Weimar Republic and the Third Reich – although in opposing directions.

In 1920 Radbruch and other members of the Reichstag suggested a limited decriminalization of abortion challenging Christianity and especially the Catholic Church.³² It was to take many years and struggles before a limited right to abortion was accepted in Germany demonstrating the protracted influence of patriarchal Christianity on European legal culture. Another of the proposed laws during Radbruch’s time in office was a law giving women access to the justice system. During and after WWI women got the vote in a number of especially Northern European countries as well as in the Soviet Union (in 1917), and with the establishment of the Weimar Republic German women received the vote in 1918.³³ Not surprisingly the 1922 legislation,

30 Harriet Rudolph *Rechtskultur in der frühen Neuzeit. Perspektiven und Erkenntnispotentiale eines modischen Begriffs*, in *Historische Zeitschrift* 2004, p. 356, ‘Recht dient nach Radbruch der Verwirklichung einer “Rechtsidee”, die kein philosophisches Abstraktum ist, sondern auf die Vorstellung vom Menschsein verweist’ (my translation to English). See also Hermann Klenner’s introduction to *Gustav Radbruch: Literatur und kunsthistorische Schriften*. Gesamtausgabe, Band 5, C.F.Müller Verlag, Heidelberg 1997.

31 In my article, *Legal Cultures on the Move*, in *RETFÆRD* no 4/123, 2008, pp. 3-22 (written before I knew of Harriet Rudolph’s article) I present Radbruch as one of three ‘figures’ (a figure of the past, a figure of East and West, and Radbruch as a modern legal figure) exemplifying encounters in and between normative cultures to underline that law is about human affairs.

32 Radbruch held a seat in the Reichstag from 1920-24 as a member of the Social Democratic Party of Germany, and during the period from 1921-23 he was Justice Minister for 15 months.

33 Women got the vote in Finland in 1906, in Norway in 1913, and women – and men with no property – got the vote in Denmark in 1915, and Swedish women obtained the vote in 1921. “en.wikipedia.org/wiki/Timeline_of_women%27s_suffrage”.

which allowed women to become judges, met serious resistance in the legal profession, among judges and advocates. Women were not considered suited for objective judicial decisions due to their biological constitution commented the female minister of justice, Brigitte Zypries, at a conference in 2004 in Berlin where she spoke about Radbruch's role as a legal politician.³⁴

The uneven political and historical heritage of women's suffrage has undoubtedly had an effect on both national and European legal cultures. When the European Economic Community was established in 1957 women had only very recently gained suffrage in the majority of the countries. The Netherlands and Luxemburg had already granted women suffrage in 1919, but in Italy and France women only gained full suffrage in 1945 and in Belgium in 1948.

For most of his career Radbruch was a law professor in different German cities.³⁵ In 1933 he was forced to resign, and during the Nazi regime he worked on issues of legal history. From 1935-36 he went to University College in Oxford and worked on a book called *Der Geist des englischen Rechts* (The Spirit of English Law) which could not appear until 1946. He wrote on criminal law, philosophy of law, but also on literature and art in a turbulent period of European and especially German history. Radbruch and several other German and most often Jewish legal academics became practical comparativists in exile due to the transformation of the recent and weak democratic legal system into a totalitarian legal culture. Other important examples are Sir Otto Kahn-Freund in England and Max Rheinstein in the US.³⁶

In a 20th century US-American context the interest in legal culture has been strongly voiced by legal historian and Law & Society activist Lawrence Friedman, who since 1968 has been professor at Stanford University in California. He is the foremost representative of the 'legal culture movement' and he has inspired many other researchers to deal with this topic. In 1969 he published his first and still famous article '*Legal Culture and Social Development*' – an article without any footnotes. In this article he distinguishes between internal (professional) legal culture and external (popular) legal culture. In a later article from 1989 he underlines that popular (legal) culture in its many expressions is central for a social theory of law and contrasts it to 'mandarin culture' – another term for 'high culture'. He claims that legal theory of the 'Mandarin culture' threatens to ignore 'real' events and only deals with the inner world of legal thinking.³⁷ In this article he defines popular

34 Brigitte Zypries, *Gustav Radbruch als Rechtspolitiker*, 9-22. in Friedrich Ebert Stiftung, *Gustav Radbruch als Reichsjustizminister (1921-23)*. Berlin, Friedrich Ebert Stiftung 2004, p. 17.

35 In Heidelberg (1910-14), Königsberg (1914-15), Kiel (1919 – 1926) and again Heidelberg (1926-1933).

36 The Swedish legal historian, professor Kjell Åke Modeer compares Sweden, Germany and the US in his book on changes in legal cultures, *Juristernas nära förflutna: rättskulturer i förändring*, Santerius, Stockholm 2009.

37 Lawrence Friedman, *Law, lawyers and popular culture*, in Yale Law Review, Vol. 98, No 8, 1989, p. 1586. See also Jo Carillo, *Links and Choices: Popular Legal Culture in the*

culture as ‘*ideas, values, expectations and attitudes towards law and legal institutions, which some public or some part of the public holds.*’

The US in the late 1960s is strongly influenced by the period of the Civil Rights Movement and the 1968 youth movement. Tensions between races, generations and gender were notable during this period. The ‘Mandarin culture’ of the legal profession clearly did not represent the thoughts and ideas of the members of the new movements. Without the involvement and development of a popular legal culture concerned with rights of black or Afro-American people and without the critiques of generational and gendered patterns of authority it would probably not have been possible to elect a black American president and the third female Foreign Secretary in the US in 2008. Nor would it have been possible for the American president in 2009 to appoint the first Hispanic justice, Sonia Sotomayor, who was only the third female justice of the Supreme Court of the United States. The racial unrest at the end of 2014 seems again strongly related to continued and perhaps revitalized black distrust in contemporary American legal culture.

3 Concepts and Comparisons

In 1997 David Nelken published an anthology called *Comparing Legal Cultures*, strongly inspired by Friedman’s work and based on a seminar which had taken place in Macerata, Italy in 1994, only a few years after the fall Berlin Wall and the collapse of the Soviet Union, and thus in a period of a sense of victory but also worry for Western legal cultures not least in Europe. In his introduction, David Nelken raises a set of questions and dilemmas:

“What is culture? Should we concentrate on the world system, on national legal cultures or on specific institutions? Should we take culture to be the set of behaviours and ideas of a given population or embrace more post-modern accounts of culture as a constructed flow of images? What about legal culture? Are we interested in the definitions of law used by politicians, legal officials, legal scholars or more in lay or popular definitions of law? How do all these relate to sociological definitions of law? How should we go about studying (legal) culture? Are we aiming to learn more about other cultures or more about what we take for granted about our own? What sources shall we use to make sense of culture? Does behaviour count more than words? Should we rely on what people can tell us, or search for the assumptions that make sense of their world views?”³⁸

Roger Cotterrell has a long article in this book called “The Concept of Legal Culture”, where he claims that the concept, “as developed and applied in Friedman’s work, lacks rigour and appears – in certain crucial respects –

Work of Lawrence M. Friedman, in *Southern California Interdisciplinary Law Journal*, Vol. 17:1, 2007.

38 David Nelken (ed): *Comparing Legal Cultures: An Introduction*, Dartmouth 1997, pp.1-2. The title of my own article in this anthology reflects my ongoing concerns *Gender and Nature in Comparative Legal Cultures*, 1997, pp. 135-154.

ultimately theoretically incoherent.”³⁹ Cotterrell personally prefers the concept of legal ideology, but in a section called *The Explanatory Significance of the Concept*, he writes

“The appeal of the concept of legal culture is that it seems to suggest a way of ranging across important but indeterminate matters – relating especially to the significance of general changes in social beliefs, opinions, values and outlooks – that cannot be easily encapsulated in the kind of testable hypotheses about social action that American law and society research has usually sought. Discussion of legal culture is a means of inferring and suggesting rather than explaining in behavioural terms; of describing general impressions where these cannot easily be supported by systematic empirical analysis.”⁴⁰

In a reply to Cotterrell’s article Friedman writes that ‘legal ideology’ ‘tends to focus attention on doctrine and on ‘mandarin’ materials of legal scholarship.’⁴¹

Almost a decade later Roger Cotterrell in his book on *Law, Culture and Society* suggests that the *unit of study* – in the Weberian tradition – should be communities, and the communities he suggests are affective, instrumental, traditional and belief communities. This is a socio-legal approach, which indicates that studies of legal culture do not only deal with large trans-national units, but also with units and communities constructed according to other criteria. Cotterrell describes the fragmentation of society as having serious implications for law – ‘if society becomes fragmented, so too becomes law’. He considers community a more flexible term than society, because it can ‘express complex contemporary variations in the character of social groupings and allegiances and their reasons for existence.’ Community for Cotterrell is ‘a web of understandings about the nature of social relations. Community is something for people to think with; a way to make meaning; a sense of belonging to a local social context’.⁴² Cotterrell discusses concepts – of community and legal culture in his book. He is still generally very sceptical about legal culture, and prefers a community approach. He discusses comparative law and its relation to sociology and interpretation. But he does not write specifically about how to study communities and their normative cultures. The quantitative methods were important in early sociology including sociology of law, but they have increasingly been supplemented or perhaps even replaced by the so called qualitative methods – which have always dominated legal studies – and issues of interpretation have been important here.

The German legal historian, Harriet Rudolph, claims in her article from 2004 on legal culture and the perspective and cognitional potential (Erkenntnispotentiale) of the concept that it is a concept which is or has become fashionable – ‘ein modischer Begriff’.

39 Roger Cotterrell, *The Concept of Legal Culture*, in David Nelken (ed): *Comparing Legal Cultures*, Dartmouth 1997, pp. 14.

40 Ibid, p. 21.

41 Friedman, *The Concept of Legal Culture: A Reply*, in David Nelken (ed): *Comparing Legal Cultures*, Dartmouth 1997, p. 38.

42 Roger Cotterrell, *Law, Culture and Society*, Ashgate 2006, p. 67.

“New concepts, approaches and models mostly appear in science when there is a deficit of explanations“⁴³

My colleague, the legal historian, Ditlev Tamm claims in his book on Global legal culture (2009) that it does not make much sense to define the concept of ‘global legal culture’.⁴⁴ This resistance to abstract definitions may in itself perhaps be part of a Danish/Nordic legal culture, to which I also subscribe.

3.1 *Fashions and Encounters in Legal Cultures*

“Fashion, which aims for consensus while knowing that all consensus is provisional and precarious, is about the fact that things keep changing, that already existing materials can be remade into something new.”⁴⁵

I consider it possible and useful to study elements and examples of what may be or is *described* as legal culture. I also find it worthwhile and important to try to understand what makes such a fluid concept so attractive at this period of time. Why does this concept (again) become a fashion? What needs does it serve? Is one need that of understanding an era – similar to that of ancient Rome – characterized by uncertainty, fear, individualism and diversity as well as wealth and joy, along misery and brutality. Can it help us to understand and act under such conditions? Can it create a provisional consensus about things changing? For the time being, I tend to believe and hope so.

The concept of fashion itself indicates a certain impermanence and distance. Fashion probably belongs more to the field of popular culture than to ‘high culture’ – unless we deal with ‘haute couture’ – ‘high dress culture’. Professor Elisabeth Wilson writes in her early and influential book on fashion that fashion is linked to development of style in avant-garde art and in popular culture, and she underlines that its function is ‘*at an imaginary level to solve social contradictions, which are unsolvable.*’⁴⁶

The concept of legal culture may allow for an understanding of conflict, overlap and continuity⁴⁷ in periods of change or challenges to and attenuation of existing legal ‘systems’. In its American version and context it allows for a

43 Harriet Rudolph, 2004, pp. 349 (, ‘Neue Begriffe, Ansätze und Modelle kommen in der Wissenschaft zumeist dann auf, wenn aktuell Erklärungsdefizite bestehen.’ – my translation into English).

44 Ditlev Tamm, *Global retskultur - en indføring i komparativ ret på et historisk grundlag*. Samfundslitteratur 2009, p. 17.

45 Adam Phillips, *Look it up*, in Judith Clard & Adam Phillips, *The Concise Dictionary of Dress*, Violette Editions in association with Artangel, London 2010, p18. Here quoted from my article, *Retskultur – “ein modischer Begriff”* in, *Liber Amicorum Ditlev Tamm. Law, History and Culture* (Per Andersen, Pia Letto-Vanamo, Kjell Åke Modéer & Helle Vogt, eds.), DJØF Publishing 2011, p. 599-609.

46 Here quoted from the Danish translation of Elizabeth Wilson, *Klædt i drømme. Om Mode*. Tiderne Skifter, Cph. 1987, p. 13 (English title: *Adorned in Dreams. Fashion and Modernity*. Virago 1985) (emphasis here).

47 See also Harriet Rudolph 2004, p. 352.

‘transcendence’ of the distinction between ‘high/fine’ culture and ‘low/popular’ culture. American influence on popular culture has been strong globally as well as in Europe. Continental European (legal) culture has historically been characterized by considerable hierarchical division and focus on doctrinal research.⁴⁸ The American and British Critical Legal Studies Movements started from the 1970s, and perhaps their relationships to social and political tensions called for more activist and participatory methods. England was invaded by American popular culture after WWII, which underlined the class character of English society.⁴⁹ This process created a change of public consciousness.⁵⁰ (Legal) Culture is no longer understood only as elite culture, upper class culture or ‘Mandarin’ culture, or as primarily national culture. The use of the concept of legal culture allows for an expansion or contraction of the field of study beyond and or ‘below’ the ‘national’ legal culture (Irish, Welsh, Scottish, Basque, Catalan, European, migrant, Muslim). In a period which has reluctantly but repeatedly been characterized as being ‘post-’ – be it post-modern, post-industrialized, post-colonial, post-national, post-parliamentarian, post-migration or even increasingly ‘post-western’⁵¹ – the concept of legal culture could offer one way of dealing with changing realities and normative practices.

The German legal historian Franz Wieacker, wrote in 1985 that no ‘planetary legal culture’ does yet exist, but there exists a plurality of ancient and contemporary often very old legal cultures outside of Europe. The challenge emerging from these other global legal cultures has been growing in the decades since Wieacker gave his lecture on the conditions of a European

48 At a conference on European Legal Method in Copenhagen, November 2010, Hans W. Micklitz, then professor of Economic law at the European University Institute discussed the importance of the relationship between ‘the events of May 1968’ (which has different names in different contexts) and what he described as a theoretical deficit in European legal research. He claimed that after 1968 law was increasingly seen as a political project and a vehicle for social change by legislatures all over Europe, that also EU law has been highly policy driven, and that we have witnessed a shift from fundamental to applied research. Doctrinal legal research has been replaced by multidisciplinary law and... approaches requiring different methods and theories. See also Rob van Gestel & Hans-W. Micklitz, *Revitalizing Doctrinal Legal Research in Europe: What about Methodology*, in Ulla Neergaard, Ruth Nielsen & Lynn Roseberry (eds), *European Legal Method – Paradoxes and Revitalisation*, DJØF Publishing 2011, pp. 25-73.

49 Cultural Studies were institutionalized in Britain in 1964 with the establishment of a Centre for Contemporary Cultural Studies (CCCS) at Birmingham University.

50 Ziauddin Sardar & Borin Van Loon, *Introducing Cultural Studies*, (Text & illustrations copyright) Originating Editor Richard Appignanesi, Icon Books UK, Totem Books USA 1999.

51 William A. Callahan, *China’s grand strategy in a post-western world*. opendemocracy.net (2010) (last visited January 5, 2015); See also G. John Ikenberry, *The Rise of China and the Future of the West: Can the Liberal System Survive?* In *Foreign Affairs*, Vol. 87, No. 1, 2008, pp. 23-37.

legal culture, which he also calls an ‘Atlantic-European’ legal culture.⁵² The superiority of this Atlantic-European legal culture has long been assumed directly or indirectly, but in the 21st century this superiority can no longer be taken for granted. Agnes S. Schick-Chen writes in a book on the discourse on Chinese legal culture that legal culture is a totality of relations between law and society and law and politics as well as the synapses created through overlaps between these.⁵³ The attempt in China to adapt to new values and concepts (rule of law, market economy, and democracy) led to an intensive reflection on old traditional values and their cultural roots.⁵⁴ A Chinese contribution to this discussion from 1987 refers to Montesquieu in its title ‘Neue Persische Briefe: Rechtsauffassung im Wandel’.⁵⁵ Translation, interaction and comparisons are important elements in reflections on and understandings of legal culture. These processes are taking place through global contextualization of regional, national and local legal cultures.

Besides these contextual changes professional culture and popular culture relating to legal issues have changed considerably over the last decades. The professional culture has to some extent become ‘de-masculinized’ and is to a certain lesser degree also becoming ‘de-nationalized’ and ‘de-euro-americanized’ as well as ‘globalized.’⁵⁶ It may also be moving towards a certain ‘de-secularization’ or a questioning of the strong emphasis on the secular nature of European law with differences, exceptions and expectations due to local and national legal cultures.⁵⁷

Both the popular and the professional legal culture has been forced to deal with changing expressions and representations of legal and judicial authority – female lawyers and female authority in general in communities and societies characterized by inherited patriarchal yet modern legal cultures. This continues to create tensions.

‘Post-migration Europe’ as Werner Menski has called it in a lecture on ‘*Fuzzy Law and the Boundaries of Secularism*’ has to deal with tensions related to the coexistence of different national, local, religious and secular cultures. He claims that this forces us to ‘reconsider whether our existing categories and legal frameworks are useful, or whether we need new terms, concepts and

52 Franz Wieacker, *Voraussetzungen europäischer Rechtskultur*. Bursfelder Universitätsreden herausgegeben von Lothar Perlitt, Abt von Bursfelde, Verlag Göttinger Tageblatt GmbH & Co 1985.

53 Agnes S. Schick-Chen, *Der Diskurs zur chinesischen Rechtskultur in der Volksrepublik China*, Peter Lang 2009, p. 22-23. A synapse is a junction that permits a neuron to pass an electrical or chemical signal to another cell.

54 Schick-Chen, p. 27.

55 Schick-Chen, p. 39.

56 Hanne Petersen, *Gender and the Legal Profession – Changing Legal Cultures? Introductory Reflections*, Journal of Law & Social Research. Special issue on Gender and the Legal Profession, No. 3, 2012 (available at “jlsr.tors.ku.dk/”).

57 Hanne Petersen, *Contested Normative Cultures: Gendered Perspectives on Religions and the Public/Private Divide*. In / Silvio Ferrari; Sabrina Pastorelli (eds) *Religion in Public Spaces. A European Perspective*, Ashgate 2012, pp. 119-138.

methods to handle the growing diversities around us today.’⁵⁸ Present day European realities are clearly multicultural and multi-religious, however most of the ‘modern national legal systems’ in Europe and most of the both popular and professional legal cultures in most national contexts are not yet used to or more or less explicitly fears such multiculturalism as well as the concurrent post- and cross-national socio-religious-political movements. Especially the small EU member states may experience a development, where they are becoming minorities in an – expanding – European context (both in the European Union and the Council of Europe) while they have for long been used to being ‘majorities’ in (relatively small) nation states.⁵⁹ As we have witnessed in all Nordic countries as well as elsewhere, this has contributed to insecurity – and growing nationalism – in and among the former dominant legal systems.⁶⁰ The Nordic reactions also seem to reflect certain local differences – and time lags – of normative, political and legal cultures.

The present and ongoing period of changes, tensions and transformations in a European and global context may lead to increased interest in the concept of legal culture. The Brazilian professor in political sociology, Elisa Reis, describes ‘democracy’s critical challenge’ as that of ‘reconciling equality and difference’, and she claims that ‘difference joins equality as a key demand for democracy’.⁶¹

4 Methodological Reflections

Interdisciplinary methods are often mentioned as necessary or relevant in relation to studies of legal culture. This approach however most often also requires interdisciplinary cooperation, as few scholars are able to master both theories and methods originating in different disciplinary traditions.

The increased mobility of both legal academics and not least students allows for some loosening of the strict black letter law approach in studies and teachings of law, and this makes a legal culture approach both more relevant and easy to produce also in courses.

58 Werner Menski prof. em. from School of Oriental and Asian Studies in London), *Fuzzy Law and the Boundaries of Secularism*, 2010 (available at “papers.ssrn.com/sol3/papers.cfm?abstract_id=1752910”).

59 See my articles, *Når religioner udfordrer ytringsfriheden*, in Lisbet Christoffersen (ed), *Gudebilleder. Ytringsfrihed og religion i en globaliseret verden*. [Images of Gods. Freedom of speech and religion in a globalized world], Tiderne Skifter 2006, pp. 89-108; and *Beyond National Majority/Minority Dichotomies. Towards Legal Traditions & Religions of World Society – A Local Example*, in Lisbet Christoffersen et al (eds.): *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing 2010, p. 321-344.

60 For a local Danish example of some elements of this general development, See Peter Højlund, *Frygtens Ret* [Law of Fear] Hans Reitzels Forlag 2010.

61 See Elisa Reis, *Democracy and the Challenge of Reconciling Equality and Difference*, in her co-edited book *World of Difference* (with Said Arjomand), Sage 2013, pp.187-206.

The use of the concept of ‘legal culture’ carries methodological problems concerning complexity, delimitation and comparability.⁶² However, if there is a need for new concepts and understandings, it may also be necessary to expand, adapt or transform existing methods, and probably experiment with new methods and to accept the insecurity which goes with these attempts. This seems to have been the case in some of the existing studies of legal culture. The relevance of these approaches for readers and later followers probably depends on where the researcher(s) have wanted to and may want to go. What is it the researchers have wanted to understand? Is it how to get from A to B, how to navigate and do business in a certain area, how to improve a certain situation or frame, how to survive under hostile conditions, or how to contribute to a changing understanding and a ‘new’ paradigm of thought? Or to learn how to collaborate better?⁶³

Friedman’s early studies relate to *social categories of status*: professional and popular legal culture – or to ‘high’ and ‘low’ forms of legal culture in a vertical relation influenced by both time and space.⁶⁴ Not surprisingly several studies use *a time variable* as distinction and study issues such as: legal culture of the 19th century,⁶⁵ modern legal culture,⁶⁶ legal culture ‘in der frühen Neuzeit’,⁶⁷ legal culture in the age of globalization.⁶⁸ An improved understanding may contribute to improved conditions for action – probably both for the purpose of change and conservation of the investigated legal cultures. Other studies use distinctions relating to *spatial categories*. Comparative methods have been used to deal with more ‘traditional’ (modern) national legal ‘systems’ often described as interrelated in ‘families of law’.⁶⁹ Attempts to compare legal cultures from a socio-legal perspective have discussed concepts and presented case studies as well as compared specific fields of sociology of law.⁷⁰ H. Patrick Glenn’s studies of *Legal Traditions of the World*⁷¹, which became an instant classic, when it first appeared in 2000,

62 See also Harriet Rudolph, above, 2004, p.361.

63 See Annelise Riles, above, 2014.

64 Lawrence M. Friedman, *Legal Culture and Social Development*, in *Law & Society Review*, Vol. 4, No. 1 1969, pp. 29-44; and *Law, Lawyers and Popular Culture*, in *Yale Law Journal*, Vol. 98, No 8, 1989, pp. 1579-1606.

65 Francis Hagerup, *Ret og Kultur i Det Nittende Aarhundrede*. (See above) 1919.

66 Lawrence M. Friedman, *Is There a Modern Legal Culture?* in Vol.7, no. 2 *Ratio Juris* 1994, pp. 117-131.

67 Harriet Rudolph, in *Historische Zeitschrift* 2004, pp.347-74.

68 See Lawrence M. Friedman and Rogelio Perez-Perdomo (eds.), *Legal Culture in the Age of Globalization: Latin America and Latin Europe*, Stanford University Press 2003; and Ditlev Tamm, 2009.

69 Zweigert & Kötz, *Introduction to Comparative law*. Oxford University Press 1998, (First edition 1977, second 1987).

70 David Nelken (ed), *Comparing Legal Cultures*, Aldershot 1997.

71 H. Patrick Glenn, *Legal Traditions of the World. Sustainable Diversity in Law*, Oxford University Press (2000, 2004 & 2007).

probably because it served a then pressing need to understand the legal beyond the frame of the nation, is less concerned with comparing national legal systems and more concerned with contemporary ‘mapping’ of cross-national traditions, and thus moves beyond the method of comparison of national legal systems or cases.

21st century studies often go beyond the national realm in descriptions of (combinations and interrelations of) legal cultures: Latin America and Latin Europe,⁷² European legal culture – in Danish,⁷³ European Ways of Law,⁷⁴ European legal cultures and Nordic legal culture.⁷⁵

The concepts and methods used to study legal cultures are influenced by the ‘modern tradition’ which distinguishes between a historical, a sociological – or socio-legal and a philosophical approach to law. Studies dealing with phenomena concerned with legal culture/s are however going beyond these theoretical and methodological approaches.

In the following, I will briefly draw upon some of my own experiences with studies of legal culture, which are similar to or overlapping to some of the methods and approaches used by some of the authors mentioned above, as well as introduce further reflections.

The role of *personal experience* is important for several of both the early and the 20th century writers on legal culture – and on comparative law. Living and working in a culture more or less different from one’s own linguistically and culturally as well as climatically – either due to refugee status or due to more voluntary moves as those of many researchers in the latter part of the 20th century have been important motivations for many scholars and practitioners.

The number of lawyers with inter-cultural experience has grown considerably over the last decades, not least through student exchanges. Today the needs for more awareness about the role of ‘one’s own’ legal culture and its interaction with other normative cultures are often demonstrated in courses at European law faculties for Erasmus students.

The *overlapping roles* of legal scholar, politician, diplomat and/or activist have also provided insights and sources for understandings of different legal cultures. My own *personal participation* in European interdisciplinary research and other inter-cultural, interdisciplinary and trans-national research has demonstrated the importance of issues of professional identity, the necessity of adaptation of knowledge to a European and trans-national level, and practical difficulties when using disciplinary methods, concepts and interpretations in

72 Friedman and Perez-Perdomo, 2003.

73 Henning Koch & Anne-Lise Kjær (eds), *Europæisk retskultur – på dansk*. [European Legal Culture – in Danish], Thomson Reuters 2004.

74 Volkmar Gessner & David Nelken (eds), *European Ways of Law. Towards a European Sociology of Law*, Hart Publishing, The Oñati International Institute for the Sociology of Law 2007.

75 Jørn Øyrehagen Sunde & Knut Einar Skodvin (eds), *Rendezvous of European Legal Cultures*, Fagbokforlaget, Bergen, Norway 2010.

cooperative projects.⁷⁶ Experience – and to a certain extent an *autobiographical element* – becomes a source which seems to be used for analysis of specific topics from the perspective of legal culture. In a post-western world, where (student) migration and physical and social mobility have become much more widespread, experience based and narrative methods may become more important also in studies of legal culture. These methods are also useful when dealing with contexts and audiences, where illiteracy is prevalent (as among many women in the world), where knowledge of formal legal language is limited (almost everywhere in the world) or where the formal language of law is plural and thus often foreign (as in EUrope and many other parts of the world).

Teaching experiences are central to legal academics. Addressing a diversity of audiences requires an approach to law that takes the background of the group to be taught into consideration. This also requires an increased awareness about the teacher's own position and legal culture and of the position and development of that legal culture.

Communication of legal issues beyond one's own professional cultural context requires a development of consciousness about style and instruments of presentation. Oral sources and methods are important in many legal cultures, and providing and dealing with such sources may be necessary or useful.⁷⁷ Interest in *legal rhetoric* has returned in the 21st century also in the Nordic countries, perhaps not least because it is a method and concern of considerable importance for minority cultures.⁷⁸ A narrative and visual approach and method is very valuable in intercultural legal work.⁷⁹ *Film, visuality* and *images* are examples of normativities which may be understood and interpreted across national and linguistic boundaries – and these interpretations may differ dramatically and significantly, as the Cartoon Crisis taught Danes and many others in 2006, and the attacks on Charlie Hebdo repeated in 2015. Visuality is a growing field of study of importance for the understanding of not least popular legal culture in a globalized world, and it requires a development of knowledge of interpretations and contextualization of visual images of

76 From 2001-2004 I participated in a research project GRINE – Gender Relations in Europe at the Turn of the Millennium. Women as Subjects in Marriage and Migration. (See Passerini et al. (eds) *Gender, Mobility and Belonging in Contemporary Europe*, Berghahn Books 2007). From 2010-2013 I participated in another EU/-funded research project RELIGARE – Religious Diversity and Secular Models in Europe – Innovative Approaches to Law and Policy. Also from 2009-2014 I served on one of the panels of the European Research Panel.

77 Walter J. Ong, *Orality and Literacy: The Technologizing of the Word*, Routledge 1996 (original 1982).

78 See Ande Somby, *Juss som Retorikk*, Oslo, Tano-Aschehoug 1999; See also Hans Petter Graver, *Rett, retorikk og juridisk argumentasjon* Oslo, Universitetsforlaget 2010.

79 See Hanne Petersen, *Discard Yet Embrace Customary Law??* in WLSA Working Paper No 9 Changing Families: Changing Legal Needs, Harare, Zimbabwe 1994; and Hanne Petersen, *The Lion King and the Unicorn. Jurisprudential Considerations on Visual Normativity*, in European Yearbook in the Sociology of Law. *Social Processes and Patterns of Legal Control*. (Eds.) Alberto Febbrajo, David Nelken & Vittorio Olgiati, Giuffr  Publisher 2001, pp. 173-196.

audiences. The development of the internet and of cheap access to visual representations has made a focus on visual sources of legal culture much more accessible and important. Studying examples or representations of legal culture thus leads to an expansion of methods but also to an expansion of the theoretical framework needed for analysis.

In the introduction to a special journal issue on the topic of “*Law and Art: European and Global Perspectives*” we wrote

“One reason for the growing interest to integrate law with various art forms perhaps has emerged from a necessity of understanding plurality in the globalized world. The language of art can be interpreted in multiple ways regardless of linguistic, literacy and professional skills. Thus they may give more space to law professionals to open up for diversities. Art has the potential to help in comprehending the complex human experience of law and legal process in a globalized world. And it may give voice to experiences of (in)justice and ambivalence as well as to many other emotions, which may have difficulties in reaching the ears of professionals and of normative institutions.”⁸⁰

In an early article on methods ‘*Grasping Kaleidoscopic Circumstances - Methodological Considerations for Animating Legal Sensibility*’⁸¹ and in the introduction to an anthology on Legal Change in North/South Perspective I argued that both Southern and Northern legal academics have mostly been trained in the paradigm of legal positivism. However, the limitations of this paradigm have been more striking in both practice and theory in a Southern context. The South has witnessed profound changes in law and society during the second half of the twentieth century through the creation of new states and postcolonial political and legal regimes. Maps have been redrawn and societal systems reconstructed. The North - which in this context is understood mainly as Europe - has only recently – since 1989 – experienced similar dramatic changes.⁸² The article argues that

‘(L)egal sensibility is needed because the tools for understanding and acting which we have utilized in the West up to now are being worn out, and are no longer serving us well. We are reaching a point, where we are beginning to understand science not as objective knowledge but as one cosmology or world view among others... A *kaleidoscopic method*... could perhaps be characterized by the fact that it brings together elements which seemingly do

80 Hanne Petersen & Rubya Mehdi, Introduction to *Law and Art (Special Issue)*, in Naveen Reet: Nordic Journal of Law and Social Research, Copenhagen 2014 (available at “jlsr.tors.ku.dk”).

81 Hanne Petersen, *Grasping Kaleidoscopic Circumstances - Methodological Considerations for Animating Legal Sensibility*, in Signe Arnfred & Hanne Petersen (eds): *Legal Change in North South Perspective*. RUC Occasional Papers 1997.

82 In the period from 2003-2008 I was involved in a Nordic research project on changes of Nordic legal culture - “Nordic Legal Maps in Transition” using amongst others oral and visual methods. See my contribution *On-Stage and Off-Stage European and Global Scenes*. In *Legal stagings: The Visualization, Medialization and Ritualization of Law in Language, Literature, Media, Art and Architecture*. red. Kjell Åke Modéer; Martin Sunnquist. Copenhagen, Museum Tusulanum 2012. pp. 25-49.

not belong together – which may not be causally related, but which may nevertheless form a pattern.’⁸³

Professor Julie Stewart has described the research experiences and research methodology of the WLSA project – a both transnational, interdisciplinary, multilingual and multicultural research project dealing with a multiplicity of norms, values and traditions regarding gender in a post-colonial context.⁸⁴ The headline for the section on the ‘WLSA methods’ is “*Adapt, evolve and survive*”. Here she describes the development of ‘an eclectic approach to methods, using those that seem to be best suited to the immediate research needs.’ The WLSA-project moved from individual interviews, key informant interviews, focus group discussions to ‘the collective individual interview’, life or event histories, individual and group case studies, open group discussions, event and other observation opportunities including especially court observations. The emphasis on dialogue, interaction and change was very strong. It was an early collaborative project.

Rapid and dramatic changes – which individuals, groups and countries have experienced over much of the 20th century and are continuing to face – also lead to experiences of trauma. Stewart writes that when “significant or traumatic events happen in people’s lives, the ability to recall the events surrounding them accurately is heightened as they have often analyzed the issues thoroughly in their own minds...”⁸⁵

As studies of legal culture tend to take place under conditions of tension, challenge and change this may be of general relevance. We need to continue working across different normative cultures in mutual interest.

83 Petersen, 1997, p. 139 & 144.

84 Julie Stewart (ed.), *Paving a way forward. A review and research primer of WLSA methodologies*. Published by Women and Law Southern Africa Research Project, Harare, Zimbabwe 1997.

85 Stewart, 1997, p. 44.