Call for papers: Decolonial Comparative Law Workshop

By:

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6 October 2020 Johannesburg, South Africa *Abstract submission deadline*:6 February 2020 *Draft paper submission deadline*:20 August 2020

The Max Planck Institute for Comparative and International Private Law (Hamburg) and the University of the Witwatersrand School of Law will host a one-day workshop on decolonial comparative law on 6 October 2020 at the University of Witwatersrand (Johannesburg). The workshop precedes the International Academy of Comparative Law Thematic Congresson “Diversity and Plurality in Law,” which takes places 7-9 October in Pretoria (South Africa). (Our workshop is not connected to the International Congress and participation in our workshop is not limited to or dependent on attendance of the International Congress.)

THEME:

Although traditional comparative law methods have been criticized for several decades now, a clear alternative has not emerged. Debates between doctrinal, functionalist, and culturalist comparatists remain unresolved. One reason may be that despite such differences, a deeper, and problematic, agreement remains intact: agreement on certain ideas of law (as a matter of expertise) and of society (as either already or seeking to be liberal/democratic) that emerged within a European colonial context. Conventional comparative law—with all its valuable methodological and theoretical disagreements—remains mired within a Eurocentric paradigm encompassing the objects of comparison (too often civil vs common law) and theoretical and methodological presuppositions (the concept of law, the role of the state and of community, the mode of thought, etc.). Because conventional comparative law is mired in colonial epistemologies, we seek to explore decolonial comparative law.

Decolonial theory is a school of critical theory developed by scholars (primarily in South America) engaging with the epistemological distinctiveness of coloniality in settler-colonies, as compared to colonies. (Decolonial theory is related to, but different from, decolonization, a historical process by which colonized states become formally independent. By way of example, whereas decolonization necessitates redistribution of property, decolonial theory necessitates a radical rethinking of property.) Decolonial scholars emphasize that modernity and coloniality are inseparable, such that the world today is dominated by the epistemic assumptions of modernity/coloniality. To overcome the hegemony of modernity, decolonial theorists call for pluriversality. Pluriversality rejects universality and emphasizes the simultaneous legitimacy of multiple traditions and social orderings from intellectual—not only geographic—borderlands. A basic presumption of decolonial theory is that the native/indigenous societies that were nearly eradicated by settler-colonialism are important sources of resistance to European epistemological hegemony.

Our project brings together the broad insights and challenging ideas of decolonial theory to the field of comparative law. We are interested in both identifying the colonial structures and presuppositions in conventional comparative law and examining what a decolonial comparative law could look

like and what it could achieve. Such a program operates both on a theoretical and a practical level, bringing together concrete case studies and theoretical considerations. Most importantly, decolonial comparative law is a pluriversal project that includes multiple voices and perspectives, rather than reinforcing coloniality through a European-dominated effort of decolonization. To that end, our project emphasizes giving voice and authority to legal scholars in the global South. (We invite those interested to view and to suggest additions to our work-in-progress bibliographies of decolonial theory and decolonial legal studies: http://www.mpipriv.de/decolonial)

We invite papers that address any aspect of decolonial comparative law, including:

- How was the development of the modern discipline of comparative law in nineteenth-century Europe intertwined with European colonialism?
- How do legal transplants manifest coloniality?
- How do both functionalist and culturalist methods reflect particular colonial ideas of the relation between law and society?
- What were the premodern precursors to the modern discipline of comparative law?
- How is the bifurcation between secular law and religious law implicated in coloniality?
- How do neo-colonial relationships of power continue to shape conventional comparative law?
- How can indigenous and native legal traditions transform theconventional discipline of comparative law?
- How can a decolonial comparative law be theorized and practiced?
- What are the decolonial alternatives to the use of the modern nation-state as the key analytical category of comparison in conventional comparative law?

Attendance in the workshop is open. We ask those interested in attending to register as engaged listeners by emailing decolonial@mpipriv.de with “Decolonial comparative law, engaged listener registration” in the subject line. Please indicate your full name, your institutional affiliation (if any), and your preferred email address. (Engaged listeners are asked to attend the entire workshop and read all the papers in advance.)

ABSTRACT SUBMISSION:

Please send your title and abstract *in any language* of no more than 750 words (including a bibliography of up to five entries) to decolonial@mpipriv.de as an attachment by 6 February 2020. Authors of accepted papers will be asked to submit a draft paper by 20 August 2020. Please indicate if you will need funding in order to attend the workshop. (MPI will provide two-nights of accommodation for participants; some needs-based reimbursement for travel will also be available.)

ORGANIZERS:

The Decolonial Comparative Law Workshop is co-organized by Tshepo Madlingozi (tshepo.madlingozi@wits.ac.za), Ralf Michaels (michaels@mpipriv.de), Lena Salaymeh (salaymeh@mpipriv.de), and Emile Zitzke (emile.zitzke@wits.ac.za).

ABOUT the University of the Witwatersrand School of Law: Wits School of Law is based in Johannesburg, South Africa. Alongside equipping students with critical thinking skills across our undergraduate and postgraduate teaching offerings, we host three Centres –the Wits Law Clinic, the Mandela Institute and theCentre for Applied Legal Studies (CALS). Our centres help us to produce locally significant and globally important interventions, research and advice. We are based at Wits University's Faculty of Commerce Law and Management on West Campus. Our roots go back to 1922 when our initial offering was the Law Certificate for attorneys and the Civil Service Lower Law Examination. As we approach 100 years of existence our modern day offering is vast. We teach a variety of undergraduate programmes, specialised master's degrees, PhD programmes and international exchanges.

ABOUT the Max Planck Institute for Comparative and International Private Law: The MPI in Hamburg is dedicated to performing foundational research and promoting the transfer of knowledge in the field of comparative law. The results of the Institute's research are reflected in academic publications as well as in the recommendations and expertopinion papers prepared for commissions, governments and courts. Additionally, the scholars employed at the Max Planck Institute for Comparative Law regularly play a role in the formulation of laws at both the national and international level. MPI is committed to international

partnerships and the establishment of academic networks with domestic and foreign research institutes and universities in order to foster new directions in scholarly inquiry.

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