

›Private Law Theory‹ (PLT) – A Program

PRIVATE. Private rights serve the autonomy of the individual. At the same time private rights possess a social function. The public dimension of private law can be seen in fields such as labor law or consumer protection law. But political and administrative tasks are also increasingly transferred to private actors. Long established structures and legitimacies fuse. Globalization ultimately blurs the public/private distinction. Private governance regimes emerge alongside public entities such as states and supranational organizations. At the global level hierarchy between norms and among actors is replaced by the need to coordinate behavior horizontally. Global law has to make recourse to the forms of private law. Private law enables the self-regulation of individual action in spontaneous orders. It essentially is a non-hierarchical normative structure for non-state social orders. Private law reveals its constitutional function in establishing normative orders in multiple social contexts. Globalization of social interaction and norm production requires a redefinition of the identity of private law.

The *common “private” core* of PLT is the trans-cultural aspect of self-organization. PLT translates national legal forms into a global private law. It redefines its objects beyond the classical distinction of public and private, and reveals the public within private law.

LAW. Law establishes a conceptual basis for social interaction. Law is a social fact. It is not only lawmaking that involves different social powers, but every legal interpretation underlies a distinct social perspective. Law is normative. It provides a structural framework that justifies the use of social power on the basis of reasons. Every branch of the law has its own forms. The basic forms of private law (such as contract, property, tort) create and limit social institutions. While being responsive to social norms law preserves its own normativity. National statutes and court decisions are interpreted in order to provide a consistent whole of rules. By drawing on existing rules the law creates new ones. Law evolves from a reading of its own application.

The *common “legal” core* of PLT is its reflection on legal forms and concepts. PLT liberates legal doctrine from its national limitations. It structures the forms of global private law. It reveals the multiple social contexts of legal interpretation and their respective political rationalities. PLT makes reasons underlying the legal grammar explicit.

THEORY. Theory implies theories. There is not one legal theory but a plurality of concepts. Legal theory cannot afford to understand the law from within. Different theoretical perspectives mirror different ways of justifying the law. As a matter of fact, they favor distinct social interests. Liberal theory focuses on the autonomy of will in private legal interactions. Justice theories assess private law according to “just” standards. Deliberative theories reconstruct normative reasons and argumentative structures underlying private law. Systems theory observes the function of private law for social evolution. Economic analysis asks whether private law serves economic incentives and goals. Critical and deconstructive theories look for the social power structures forming legal realities. None of these theories may claim a monopoly in explaining modern society and its legal structures. All of them, however, have to explain what makes them legal theories of the law.

The *common “theoretical” core* of PLT can only be meta-theoretical. PLT clarifies what unifies, distinguishes, and relates different theoretical approaches to private law. It does not aim at developing shared definitions or concepts among scholars, but in establishing a forum that reflects the diversity of approaches. It tries to disclose the continuous process redefining the institutional boundaries and the foundations of private law. PLT wants to open up a dialogue among theories. The form of a transnational network of researchers intentionally seeks to institutionalize theoretical inquiry about law on equal terms with the globalization of its object. Global law needs global theory.