Utrecht Law Review
igitur
Utrecht Publishing & Archiving Services

Multiple modernities and law

Introduction

Lyana Francot-Timmermans
Ubaldus de Vries*

Contemporary social developments require, now maybe more than ever, a critical perspective on law and legal scholarship. These developments become manifest in phenomena such as the financial and economic crisis, the ongoing humanitarian wars, civil unrests, ecological disasters caused by man, increasing intolerance towards 'others' and the perceived threat that they pose. These developments and phenomena can be captured in the notions of enforced individualisation and multidimensional globalisation as formulated by Ulrich Beck.[1]

Enforced individualisation refers to the insight that individualisation is no longer or not only a matter of individual choice, but is caused by developments and decisions which are beyond the control of the individual. Multidimensional globalisation refers not only to the idea that structural societal developments are global in nature but that these developments confront us with self-produced side-effects. If, for instance, global free trade refers to the free movement of goods and services, it implies by necessity the free movement of adverse side-effects, for example, the risk of spreading disease such as bird flu or BSE. It follows that globalisation is not restricted to the economic dimension but includes political, cultural and moral dimensions as these side-effects demand different responses. It is the critical perspective of globalisation that discloses society's confrontation with these self-produced side-effects.[2]

Both notions – enforced individualisation and multidimensional globalisation – illustrate the factuality of a still increasing social complexity. Social complexity exists in the multitude and variety of roles which we execute and relations between people. It also includes options and possibilities that we value and do not wish to forgo. Examples are global transportation and communication, the possibility to make life choices with regard to education, family, religion, life-style, etc., and choices about the end and beginning of life and its quality. Hence, social complexity bestows us with freedom. At the same time, though, complexity burdens both individuals and their community, aware as they have become that this freedom exists in a

* Lyana Francot (email: L.Francot@uu.nl) and Ubaldus de Vries (email: U.deVries@uu.nl) are lecturers at the Department of Legal Theory, Utrecht University School of Law, Utrecht (the Netherlands), and co-founders of the Working Group Reflexive Modernisation and Law.

1 U. Beck et al., *Das Kosmopolitische Europa*, 2004, p. 50.

2 U. De Vries & L. Francot, 'As Good as it Gets: On Risk, Legality and the Precautionary Principle', in L. Besselink et al. (eds.), *The Eclipse of the Legality Principle in the European Union*, 2011, pp. 11.

URN:NBN:NL:UI:10-1-101279

multitude of choices that cannot all be realised and that, consequently, they must make decisions about these choices without the certainty that the choice made is a 'good' one. Hence, beside freedom, social complexity brings along a great deal of uncertainty. Dealing with social complexity – both its positive instantiation as freedom but, in particular, in its negative appearance as uncertainty – necessitates instruments or mechanisms that help to reduce this complexity to a manageable level. Modern society has brought about a variety of instruments and mechanisms to deal with social complexity. Indeed, it is possible to understand the process of modernisation as the development of such a 'gear'. Modern law in particular is often presented as being well geared to this task. Arguably, that modern society has developed mechanisms to deal with social complexity, in terms of reduction or transformation, attires those mechanisms with the cloak of legitimacy: as long as the instruments deal effectively with complexity, their use is legitimate. Modern law might be the ultimate example. Nevertheless, it hides in it the danger that this cloak veils the potential normative abuse of law. The ongoing discussion about human rights is a case in point.[3]

It was this theme – the exposure of the potential normative abuse of modern law – that was the angle of the 2010 Critical Legal Conference held in Utrecht. Indeed, a critical legal perspective is required to expose this abuse. The Conference aimed at reaffirming, in our global age, this critical perspective on law and its relationship with politics and contemporary society. Modernisation theory seems to be a suitable (and effective) tool to frame and analyse the relationships between law, politics and other systems in a critical way. Once this theoretical path is chosen, the question comes to the fore whether to speak of a single modernity (be it a reflexive modernity, a liquid modernity, a second modernity, a post-modernity, etc.) or whether we should consider the possibility of what Eisenstadt terms 'multiple modernities'. According to Eisenstadt, the notion of multiple modernities:[4]

> '(...) goes against the views long prevalent in scholarly and general discourse. It goes against the view of the "classical" theories of modernization and of the convergence of industrial societies prevalent in the 1950s.'

A long-held view was that globalisation entailed global modernisation: the global victory march of Western democracy, values and norms. The notion of 'multiple modernities', however, suggests an approach that does *not* take as its point of departure the idea that the Western programme of modernisation would result in a universal and homogeneous societal model. According to Eisenstadt:[5]

> 'The actual developments in modernizing societies have refuted the homogenizing and hegemonic assumptions of this Western program of modernity. While a general trend toward structural differentiation developed across a wide range of institutions in most of these societies (…) the ways in which these arenas were defined and organized varied greatly (…) giving rise to multiple institutional and ideological patterns. These patterns did not constitute simple continuations in the modern era of the traditions of their respective

3 As illustrated by, for example, Can Öztaş in his contribution to this special issue (pp. 180-191): 'The march of the Mehteran – Rethinking the human rights critiques of counter-terrorism'. See also C. Douzinas, *The End of Human Rights,* 2000.

4 S.N. Eisenstadt, 'Multiple Modernities', 2000 *Daedalus,* no. 1, p. 1.

5 Ibid.

societies. Such patterns were distinctively modern, though greatly influenced by specific cultural premises, traditions and historical experiences.'

While the debate on 'multiple modernities' retains a dominant place in social theory since Eisenstadt introduced the concept, its meaning for legal theory in general and critical legal theory in particular has not yet been sufficiently explored.[6] One reason for this is, perhaps, that the notion of multiple modernities is not yet fully crystallised.[7] Be this as it may, the notion of multiple modernities offers the possibility of a critique per se, as to the homogenizing and convergence claims of the traditional modernization theories.[8] In doing so, it also offers an alternative view: to understand modernisation as a route along different paths.

It contributes to understanding and criticising modern law and legal scholarship and their manifestations in different legal systems and may help us to understand and deal with (global) contemporary problems from different perspectives, exploring, for example, human rights as a manifestation of *global law*, penetrating legal systems around the world. A critical attitude, hence, is not merely directed at others, as in submitting other modernities (and their legal systems) to the test of Western modernity and law. Rather, it also, or perhaps, in particular, expects an attitude of self-criticism, i.e. a reflexive attitude. The main theme touches, in this way, upon many different issues pertaining to law and Western society, comparative legal studies, law and culture, concepts of positive law, the administration of law and its organisation. It also raises questions of methodology as it crosses disciplinary boundaries.

The theme and perspective apparently hit a nerve with many scholars. During three days, some 200 scholars from the global North and South discussed the general theme in various streams and panels, from a variety of theoretical perspectives. There were seven thematic streams: *Critical Autopoiesis*; *The turn to emotions: law, geopolitics, aesthetics*; *The critical attitude*; *Disciplinarity and methodology*; *Critical legal geographies: law and space*; *Spectres of the social*; and *Carl Schmitt in an age of globalization and individualization.* In addition, there was a graduate stream that allowed graduate and PhD students to present their work and to discuss it with their peers and senior researchers. All streams were well attended and the attendance at the graduate stream showed the critical potential among our academic 'offspring'.

The success of the conference induced the organisers to ask the editors of the Utrecht Law Review to dedicate a special issue to the theme, to which they agreed. As guest editors, we invited participants of the Critical Legal Conference to submit their contributions. The huge response necessitated a selection, based on peer review, the variety of themes and the scope of the Utrecht Law Review and its readers. The contributions include those by the four bursary winners: Perveen Ali, Stephen Connelly, Mariano Croce and Anna Selmeczi. In addition, there are contributions by Jacques de Ville, José-Manuel Barreto, Pablo Holmes, Hendrik Gommer, Igor Stramignoni, and Can Öztaş.

We would like to thank all those who made this special issue possible, including the contributors and the reviewers, as well as Titia Kloos, the managing editor, and Peter Morris, the language editor.

---

6 One of the first scholars who explored the legal theoretical possibilities in respect of multiple modernities was Werner Krawietz. See, for example: W. Krawietz, 'Juridische Kommunikation Im Moderne Rechtssystem in Rechtstheoretische Perspektive', in W. Brugger et al. (eds.), *Rechtsphilosophie Im 21. Jahrhundert,* 2008, pp. 181-206.

7 Others, such as Volker H. Schmidt, suggest that such a legal exploration is futile because multiple modernity theory lacks a clear concept of modernity itself; see: V.H. Schmidt, 'Multiple Modernities Or Varieties of Modernity?', 2006 *Current Sociology,* no. 1, pp. 77-97.

8 As described by Kaya, in: I. Kaya, 'Modernity, Openness, Interpretation: A Perspective on Multiple Modernities', 2004 *Social Science Information,* no. 1, pp. 35-57.