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Normative Competition and the Early Modern Culture of Ambiguity

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Wert vor, nicht zuletzt durch die gedankliche und sprachliche Durchdringung komplexer Sachverhalte. Große Teile des Buches sollten von den Studierenden, die sich der Reformation und dem Recht widmen wollen, intensiv durchgearbeitet werden, und dem fortgeschrittenen Leser schadet die Lektüre auch nicht.

An einzelnen, ganz kleinen Stellen, beispielsweise im Hinblick auf die Frage, inwieweit Luthers Naturrechtsauffassung nun richtunggebend für spätere Vorstellungen vom modernen Staat war, mag man noch weiter diskutieren wollen (581 f.): Für zentrale Argumentationslinien des jüngeren Naturrechts bei Pufendorf und Locke würde ich seine langen Linien gelten lassen (und lehne mich dabei schon weit aus dem Fenster), aber zu dem modernen Anstalts- und Sozialstaat des späten 19. Jahrhunderts, zu dem im Register (982) der Bogen geschlagen wird, würde ich nun nicht gleich weiterargumentieren. Auch bleibt es die Frage, ob man für das 15. bis 17. Jahrhundert vom ›Territorialstaat‹ und nicht besser einfach vom ›Fürstentum‹ sprechen sollte. Aber das sind Quisquilien.

Sie ändern nichts an dem grundsätzlichen Glanz dieses Werkes: In einer geschichtswissenschaftlichen Lage, in der weithin Konzentration auf wenige Jahrzehnte oder die Dichotomie von ›Vormoderne‹ und ›Moderne‹ zu dominieren scheint, hat Heckel noch einmal auf der Höhe der weitverzweigten Forschung und mit einer direkten Quellen- und Sachkenntnis, die wohl nicht viele gleichwertige Kenner auf Augenhöhe hat, die mittelalterlichen und neuzeitlichen Zusammenhänge der lutherischen Reformation und der Rechtsentwicklung vorgestellt, auch wo sie in unsere eigene Zeit weisen. Die Rechtsgeschichte erscheint hier, in der umfassenden und informierten Form, in der Heckel sie uns präsentiert, der ›Normalgeschichte‹ in weiten Teilen bei der Fähigkeit, auch große Linien sachgerecht zu beschreiben, als Fach überlegen.

Das Mindeste, was wir tun können, ist dem Buch die Anerkennung zollen, die es verdient, und das heißt, es fleißig und ständig zu gebrauchen. ■

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Normative Competition and the Early Modern Culture of Ambiguity*

This special issue of one of the leading German historical journals features case studies and a theoretical model to conceptualize multinormativity in the early modern period. The overarching concept that holds the contributions together is that of »normative competition« (*Normenkonkurrenz*), developed by Hillard von Thiesen. It offers a dynamic, interactive, and actor-centered approach to the co-existence of potentially conflicting normative

orders in the early modern period. Von Thiesen draws attention to the manifold ways in which subjects consciously or unconsciously contribute to the shape and operation of norms. He offers an alternative to existing models that try to describe and explain normative change in the early modern period, such as Gerhard Oestreich's model of »social discipline« (*Sozialdisziplinierung*) and Wolfgang Reinhard and Heinz Schilling's model of

* ARNE KARSTEN, HILLARD VON THIESEN (eds.), *Normenkonkurrenz in historischer Perspektive* (Zeitschrift für Historische Forschung, Beihefte, 50), Berlin: Duncker & Humblot 2015, 343 p., ISBN 978-3-428-84635-1

»confessionalization« (*Konfessionalisierung*). In von Thiessen's view, these models are inadequate. They are implicitly indebted to Max Weber's paradigm of the gradual rationalization of Western civilization, and they assume a static opposition between norm-creating authorities and norm-receiving subjects. The models of »social discipline« and »confessionalization« start from the belief that citizens' behavior gradually and homogeneously adapted to the norms laid down by the authorities. Recent historical scholarship has demonstrated that the top-down imposition of norms by state authorities and religious institutions often failed. A gap existed between the norms on the books and the norms in action, to the extent that daily life deviated from norms imposed by central authorities like the state or religious institutions in the first place. Von Thiessen, however, wants to avoid narratives of failure or success. Rather than starting from an antagonistic vision that pits institutional norm-producers against passive norm-receiving subjects, von Thiessen emphasizes the synergistic role played by all actors in the production and implementation of norms.

Drawing on the work of Hans-Georg Soeffner, a sociologist, von Thiessen conceives of individuals in the early modern period as simultaneously participating in three competing normative systems: a religious, a political, and a social normative system. Each in their own way, those systems communicated potentially contradictory behavioral expectations to individuals, who actively managed them. The religious normative system drew on divine revelation and theological wisdom. Religious norms were largely stable, recorded and communicated in different media, like theological treatises, sermons, religious iconography and confession. Increasing concern with the salvation of the soul and the rise of confessional states meant that the religious normative system was dominant in the early modern period. At the same time, the political, or rather »common good-oriented« (*»gemeinwohlorientiert«*), normative system gained importance. It rested on collective decisions for the sake of the common good. Common-good-oriented norms were mostly recorded and valid for different regions, regardless of personal interests and social networks. They fundamentally contributed to the legitimization of the modern state, as long as they did not contradict fundamental religious norms. Most early modern individuals, for example, did not accept Macchiavellian reason of

state. Common-good-oriented norms were also very much connected to social norms, to the extent that the political loyalty of early modern citizens was principally oriented towards the person of the prince rather than the abstract notion of the state. As a result, expectations following from political norms often conflicted with social norms. In von Thiessen's view, the social normative system was closest to the individual. Even if it was less stable and largely unwritten, the social normative system was immediately present and ubiquitous. It included social expectations, such as the consumption of goods according to status, the protection of clients, supporting relatives, and the preservation of class honor.

Normative competition between the religious, political, and social normative systems could lead to conflict or collaboration. Political and religious norms often mutually reinforced each other in communities that considered themselves to be elected by God. Florian Schmitz shows in his contribution on a 1534 corruption trial in Bern that anti-bribery legislation received additional justification on religious grounds by followers of Zwingli. But competing norms could also lead to conflict. Against the background of the rising bureaucratic state, the common good dictated that positions should be distributed according to merit, while the persistence of social norms put pressure on leaders to appoint family members and friends. The growing rejection of corruption in the early modern period is symptomatic of this tension. By the same token, social norms prompted litigants to offer gifts to judges, while the common good and religious authorities rejected those practices as bribery. In practice, individuals managed those competing normative expectations by developing pragmatic solutions that could differ from one situation to another. For example, as Florian Schmitz shows in his contribution on the Bern corruption trial, some of the fiercest anti-corruption advocates wanted the defendants to be sentenced to death so as to show their own loyalty both to the anti-corruption legislation and the Gospel, but they readily accepted bribes from their friends once they were in office.

In what is probably the most interesting part of von Thiessen's theoretical model, he gives an overview of strategies to cope with normative competition, including »organized hypocrisy« (*organisierte Heuchelei*), »ambiguity tolerance« (*Ambiguitätstoleranz*), and »normative division of labor«

(*normative Arbeitsteilung*). Those strategies were so ubiquitous at the time that, in this reviewer's opinion, von Thiessen rightly considers them constitutive of early modern normative culture. Following André Krischer's adoption of the term »ambiguity tolerance«, originally developed by psychologists, von Thiessen rightly insists that it is central to understanding early modern normative culture. He cites the example of Giovanni Maria Campani (c. 1589–1656), who authored a treatise on the morality of judging but was incapable himself of refusing bribes. Ultimately, he remained faithful to social norms and face-to-face values, including the acceptance of bribes, regardless of his profound knowledge of the parallel existence of political and religious norms that prohibited bribery. Apparently, Campani accepted that different contexts required different modes of action. As a writer of a deontological treatise, he had to give theoretical priority to religious and political norms, but social norms obliged him to adopt a different attitude in practice. This tolerance of ambiguity was facilitated by a casuistic approach to normativity, turning the early modern period into the golden era of casuistry, as von Thiessen rightly points out. This is obvious from the practice of confession and the hundreds of casuistic moral-theological treatises that were generated both in Catholic and Protestant territories around the globe and that, strangely enough, receive little attention in the work under review – apart from occasional references to authors such as Diego

Laínez and Martín de Azpilcueta in Julia Zunckel's masterful contribution on the normative controversy surrounding the Genovese market for bills of exchange during the pontificate of Gregory XV. For the early modern citizen, the parallel existence of divergent normative systems did not necessarily lead to the kind of perplexity a modern individual would face. In a brilliant contribution explaining the rupture between early modern and modern understandings of normativity, Jens Ivo Engels explains why. Drawing on insights from Zygmunt Bauman and Bruno Latour, he sees the defining characteristic of the modern period in the obsessive and yet futile attempt to induce normative uniformity by excluding casuistic approaches to morality and discrediting normative ambiguity.

To conclude, this special issue offers both major theoretical contributions and skillful case studies on »normative competition« in the early modern period. While jurists and legal historians, in particular, will regret that the contributors have not integrated debates on »legal pluralism« (John Griffiths), »jurisdictional pluralism« (Richard Ross/Lauren Benton), »legal hybridity« (Seán Donlan), or »multinormativity« (Miloš Vec/Thomas Duve) into their analyses, they will appreciate the attempt to offer a comprehensive model for understanding the ambiguous co-existence of social, political and religious norms in the early modern period.

