

ABSTRACT: KEYNOTE ADDRESS BY PROF. DR. PEER ZUMBANSEN, PROFESSOR FOR LAW AT MCGILL UNIVERSITY, MONTREAL, ON TRANSNATIONAL LAW AND INJUSTICE

The term “rule of law” combines aspiration and reality

The essence of the constitutional state can be defined scientifically. However, the concepts of and the experiences with the rule of law vary locally. Therefore, the reality of the constitutional state and the practical application of the rule of law can only be understood to a limited extent by the interpretation of the concept of the rule of law itself. What is rather essential is the philosophical and historical debate on how the rule of law is experienced individually and collectively in social life.

The rule of law as a “palace in passing”

The constitutional state and the rule of law are compared to a painting by Paul Klee “Palace in Passing” (1928), in which the simultaneity of past and present prevent clarity about the former or future appearance of the palace. What is emphasized, however, is the role of the spectator who, through his work of understanding, gives meaning to the forms. Klee's palace is instructive in another respect, as he seems to succeed in depicting the extraordinary fragility of the building. The “palace parable” accentuates the vulnerability of the constitutional state under the rule of law but also represents the possibility of an ideal unattained state and promise, but also of an eternal construction site.

The constitutional state manifests itself in the rule of law

The rule of law does not exist in the abstract space of philosophical conception, but in everyday social practice. Hence, it manifests itself not only in parliamentary legislation or in judicial and administrative proceedings, but in the ability of people to perceive their own role in the dynamic processes of change and preservation in society. This includes the awareness of an actual, not just formal, opportunity to participate, which transcends the local space, but also the importance of the rule of law in a sphere of socio-political practice.

Promoting a socio-political practice of the rule of law instead of exporting the constitutional state

The rule of law is under scrutiny in the face of populism and authoritarianism but is not (yet) the subject of an open global legal and political conversation. While global threats have long crossed legal boundaries, lawyers still think in terms of nation-state and classical international law categories. While the concept of the rule of law is exported into every area of the world, it lacks the historically informed, critical, global grown discourse about the conditions of the rule of law. The reason for this is that the history of the rule of law is written nationally; the specifics of history and place are forgotten as the history of constitutional progress is universalized and exported.

Rule of law as transnational socio-political practice

To establish a global dialogue on different experiences with the rule of law and the constitutional state, one's own experiences must not be universalized in international legal and development aid and presented as generally valid principles. This dialogue should consider the alleged different speeds in achieving certain states of rule of law understood as universal as well as the local socio-political, cultural and religious and socio-economic circumstances in different parts of the world. The present and future challenge to a global discourse is the multiplicity of zones of struggle, manifestations of injustice, and our continuing blindness to think differently about law.

Conclusion

We have to think "outside the box" if we want to recognize how threats to the constitutional state and the rule of law manifest themselves today and how we can counter them, given global socio-economic conditions under which we no longer have the luxury of simply dismissing socially disputed normativity as "non-law". Therefore, our commitment to the rule of law should be the starting point for creative, transnational legal projects with partners around the world, working formally and informally and in socio-political practice for actual rule of law.