Introduction

For centuries scholars and students of law had no problem with law's interdisciplinary character: They accepted the artes liberales and theology, later philosophy, as a given precondition and part of their research subject. The implications of these fields of academia were part of legal argument; the methods of logic, topic, and rhetoric, as of theology were methods of law. Finally, Leibniz applied his mathesis universalis on the law. Even the gradual replacement of theology and the artes liberales by philosophy did not change the overall dependency of law on extralegal academic scholarship.

Things started to change when neither theology nor philosophy were regarded as the "leading" faculty anymore. When in the 18th century medicine changed its methods towards becoming a science, it emancipated itself the same moment from the methods and arguments of philosophy and theology. The same step became available to legal academics. The German name "Rechtswissenschaft" bears witness to the aspirations of lawyers working in the enlightenment's spirit. But even then many scholars of law stuck to philosophy and theology. Until the 1750s Samuel Pufendorf's magisterial "De iure naturae et gentium libri octo" (1672), remained the most successful textbook in law. And in the 1780s Immanuel Kant's treatise on legal philosophy was eagerly awaited by as many lawyers as friends of philosophy. The shift of natural law in the title from Gustav Hugo's "Naturrecht als eine Philosophie des positive Rechts" to Georg Wilhelm Friedrich Hegel's "Grundlinien der Philosophie des Rechts – Naturrecht und Staatswissenschaft im Grundrisse" marks more than a decrease of the importance of natural law; at the same time it signifies a separation of jurisprudence and philosophy and finally the emergence of positivism. Friedrich Carl von Savigny, although himself influenced by Kant, denied philosophy its influence on jurisprudence. Historicism became the precursor of positivism in the 19th century. Since Marx considered law to be part of a class-dependent superstructure of society, all disciplines analyzing the social basis were considered useful for analyzing the law as well. If law is defined by its goals, and the goals as serving some social interests – as in Jhering's concept of law – sociological methods and teleological interpretation were introduced into jurisprudence and hindered the separation of disciplines. When in 1844 Robert von Mohl started his interdisciplinary periodical "Zeitschrift für die Gesammte Staatswissenschaft" he wanted to fight this trend, include all sciences related to the state and "never let go economics" as far as they concerned the state.[1] On the long run, however, von Mohl was not suc-

1 Robert von Mohl: Vorwort. In: Zeitschrift für die Gesammte Staatswissenschaft 1 (1844), pp. 4 f.: "Es sind sämmtliche Staatswissenschaften, welche wir zu besprechen beabsichtigen. Somit Staatsrecht und Völkerrecht; politische Oekonomie in ihrem ganzen Umfange, Polizeiwissenschaft, Politik; Statistik und Staatengeschichte. Wir setzen uns dabei vor, einerseits die Erscheinungen des Lebens mit dem Blicke der Wissenschaft aufzufassen und zu beurtheilen; andererseits über die theoretischen Fragen aus den genannten Gebieten, so wie sie sich geltend machen oder wenn sie eine neue und nähere Erörterung verdienen, unsere Ansicht zu entwickeln … Dass wir die privatwirthschaftlichen Fächer nicht nach ihrem technischen Theile heranziehen, versteht sich. Nur in so ferne sie in das Staatsleben eingreifen, sei es durch Lieferung von Stoff zu staatswissenschaftlichen und polizeilichen Betrachtungen, sei es durch Forderungen, welche sie im Interesse ihrer Organisation an den Staat stellen, können sie in unserer Zeitschrift besprochen werden".

cessful. As early as 1876 Lorenz von Stein lamented, "We do not have a science of the state but only jurisprudence".[2] In the science of civil law, the historical school turned into the Pandectists, rather preparing a codification that later became the German civil code ("Bürgerliches Gesetzbuch") than unfolding the purity of the roman sources.

Purity instead was meant to be a feature of legal dogmatics themselves – at least in the eyes of Hans Kelsen's legal theory.[3] Methodological plurality became so overwhelming that H. Kelsen had enormous success in asking for a pure theory of law. Kelsen was not searching for a "theory of pure law", however. Neither did he believe in the separate content of law, independent from influences from the outside, and be it for the sake of argument. Accordingly, his approach supported the differentiation of the so-called basic disciplines of law for its investigation following a descriptive perspective as in the sociology of law, a historical perspective like in legal history etc. Nor did he believe in legal argument as a part of science: It remained impossible to translate legal evaluations into mathematical numbers and mere logic. Every such attempt of conceptual clarity and rigidity proved at best to be sterile and out of touch with reality. So, lawyers had to find their own way of argumentation, their own methodology, and their new place in academia.

After World War II a common move to re-idealization united lawyers across legal cultures: legal argument was again based on philosophical and theological grounds as the second renaissance of natural law in the 20th century proved, schools of history of law became as influential as those looking for a scientific approach to legal argument, sustained by, e.g., cybernetics. This development deeply questioned legal scholarly self-understanding, as Dieter Grimm, one of 1970s precursors of interdisciplinarity in law put it.[4] According to Grimm, it was the claim to social justice that called for an interdisciplinary approach of jurisprudence.[5] In the 1970s

2 Lorenz von Stein: Gegenwart und Zukunft der Rechts- und Staatswissenschaft Deutschlands. Stuttgart 1876, p. V: "Denn wer die deutsche Universität kennt, der muß mir zugeben, wir haben nun einmal keine Staatswissenschaft, wir haben an ihrer Stelle an unsern Universitäten nur eine Rechtswissenschaft. Formuliren und bestimmen Sie den Begriff beider wie Sie wollen, das Recht als Recht ist bei weitem die Hauptsache, ja die ausschließliche Sache der gesammten Berufsbildung für unser öffentliches Leben. Die Universität versteht von diesem öffentlichen Leben nur das, was sich als Recht formuliren, interpretiren, dociren läßt".

3 Hans Kelsen: Reine Rechtslehre. Studienausgabe der 1. Auflage von 1934. Hrsg. v. M. Jestaedt. Tübingen 2008, S. 15: "Wenn sie sich als eine 'reine' Lehre vom Recht bezeichnet, so darum, weil sie eine nur auf das Recht gerichtete Erkenntnis sicherstellen und weil sie aus dieser Erkenntnis alles ausscheiden möchte, was nicht zu dem exakt als Recht bestimmten Gegenstande gehört. Das heißt: Sie will die Rechtswissenschaft von allen ihr fremden Elementen befreien".

4 Dieter Grimm: Rechtswissenschaft und Nachbarwissenschaften. München 1973, p. 7: the debate with the neighbor disciplines would be "ein Ausdruck schwindender Selbstsicherheit der Rechtswissenschaft. Vor siebzig Jahren noch hätte sie die Frage [nach den Berührungspunkten mit den Nachbarwissenschaften, S. K.] als Angriff auf ihre Wissenschaftlichkeit zurückgewiesen. Wissenschaftliche Aussagen schienen nur dann möglich, wenn das Recht ausschließlich aus sich selbst verstanden wurde. Das methodische Bemühen richtete sich gerade darauf, die juristische Erkenntnis von allen fremden Einflüssen zu reinigen. Ethik, Politik, Wirtschaft gingen den 'Juristen als solchen' nichts an. Grammatik und Logik waren das einzig erlaubte Handwerkszeug. Der politisch-soziale Begründungszusammenhang, in dem das Recht steht, wurde für seine wissenschaftliche Behandlung bedeutungslos … Mit den Nachbarn verkehrte man nicht".

5 Grimm op. cit. p. 7: "Eine 'reine' Rechtslehre war freilich schon damals eine Täuschung … Das

everything was at offer, including now legal scholars consulting the arguments of psychology or the social sciences for their work. The Critical Legal Studies movement in the US was the American variation of this shift of paradigms in jurisprudence. In the 1980s the paradoxical situation can be observed that on the one hand interdisciplinarity appears to be a "repairing phenomena to overcome the epistemological disciplinarity"[6] postmodernism with its emphasis on contingency took hold in lawyers' circles as well.

It seems that under the conditions of functionally differentiated social systems and their respective sciences, interdisciplinarity – although it is considered to be necessary – has never received a convincing methodological and institutional foundation. It is time to ask where we stand today and elaborate these. The present volume contains surveys in this field and exemplary interdisciplinary studies, mainly in the area of constitution and economy. To this purpose a group of mainly younger scholars convened at the Krakow World Congress of the International Association of Legal Philosophy (IVR) in 2007 and met again in a larger setting at the "Centre for Interdisciplinary Studies" at Bielefeld/Germany (ZIF) in 2009. At Cracow the group met for a workshop entitled "Metatheory of Law: Import into and Export from Jurisprudence"; some of its members also came together with distinguished scholars for another special working group on "Constitutionalism Between Economic and Legal Theory: Factual and Theoretical Complexity in the Process of Globalization and European Integration". Both groups held special opening and final sessions together. In this reader the revised papers of the two groups are published together. The responsibility for the papers of the group working on the general subject of "Metatheory of law" was vested in Stephan Kirste and Michael Anderheiden, the management for the group working on "Constitutionalism Between Economic and Legal Theory: Factual and Theoretical Complexity in the Process of Globalization and European Integration" was taken care of by Anne van Aaken and Pasquale Policastro, who also held the responsibility of the respective parts of this volume.

The first part of this volume provides more general investigations in the possibilities, difficulties and limitations of interdisciplinary research using sociological, philosophical, historical and economic arguments. These methods are the topic *Sanne Taekema* and *Bart van Klink* ("Limits and Possibilities of Interdisciplinary Re-

Problem einer gerechten Sozialordnung läßt sich immer seltener unmittelbar durch Rechtsetzung lösen. Gerechtigkeit wird vielmehr zunehmend wirtschafts-, sozial- und bildungspolitisch vermittelt. Im selben Maß verliert das Recht seine Gerechtigkeitsunmittelbarkeit und nimmt instrumentellen Charakter an. Seine Steuerungsfunktion, die neben die alte Garantiefunktion tritt, kann es aber nur erfüllen, wenn es fähig ist, die Komplexität der zu steuernden Sachbereiche in sich aufzunehmen. Es partizipiert notwendig an der Verwissenschaftlichung der Welt insgesamt".

6 Mittelstraß, Jürgen: Interdisziplinarität – mehr als ein bloßes Ritual? in: Universitas 41 (1986), pp. 1052–1055, 1052: "Der Ruf nach Interdisziplinarität setzt voraus, daß die Grenzen der Disziplinen zu Erkenntnisgrenzen zu werden drohen und daß es … so etwas wie die Einheit der Wissenschaft oder die Einheit der wissenschaftlichen Rationalität nicht mehr gibt. Im einen Fall ist Interdisziplinarität ein Reparaturphänomen zur Aufhebung erkenntnisbegrenzender Disziplinarität, im anderen Fall ein Kompensationsphänomen zur Wiedergutmachung gegenüber einer Idee, die etwa für Leibniz noch das Selbstverständliche war, für uns hingegen nur noch eine Erinnerung an unentwickelte wissenschaftliche Verhältnisse oder eine Utopie ist".

search into Law. A Comparison of Pragmatist and Positivist Views") deal with. As part of their broader investigation of interdisciplinary research in jurisprudence, they discuss the perspectives of a skeptical, positivist view vs. a more optimistic theory about the possibilities of knowledge-exchange between disciplines, presented by pragmatist thinkers such as Dewey and Putnam. In the end, they elaborate a dynamic model of interdisciplinarity. In his paper "Abstraction and Idealization as bases of Interdisciplinary Research Including Jurisprudence" *Michael Anderheiden* explores the possibility of long-term interdisciplinary research (LIR). Although it is generally seen as a promising endeavor it must be asked why it does not either produce a new discipline or if unsuccessful is terminated after short time. After consulting Luhmann on the issue the paper turns to mapping kinds of LIR and then to a philosophical answer to the question: For rational researchers it may be efficient to participate in LIR because it allows to give up some of the less important idealizations of one's own discipline, e.g. the law, in return for fresh insights and valuable hints from other disciplines. The arguments for this point will crucially rely on the difference between abstraction and idealization as proposed by O. O'Neill.

What forms a discipline and which mechanisms can transcend the walls of differences in language, method, professionalism, are questions *Stephan Kirste* asks in his article. On the basis of a distinction between epistemological and organizational interdisciplinarity he does not rely on abstract and "bridge building" concepts, but rather on different forms of institutionalized interdisciplinary discourse from frequent contacts during scientific conferences, research networks to building up new sub-disciplines such as the basic disciplines of law (legal history, philosophy of law, sociology of law).

Elucidation about the interdisciplinary communication between political sciences and jurisprudence is *Oliver Lembcke's* goal in his contribution ("Balancing Law and Politics – The Contribution of Political Theory"). Politicization of law and juridification of politics are matters that necessarily need an interdisciplinary investigation. In his view, political sciences can help jurisprudence in the critical reflexion of its normative foundations, the political impact on legislation and the ethical preconditions of legal decision making.

In her presentation *Vasiliki Christou* takes legal theory to give meaning to law as whole and as an integral system by filtering the information coming from other disciplines. By means of example she focuses on the insights that jurisprudence gets from philosophy of language. She points out that speech-act theory is of analytical importance to the interpreter of the free speech principle but due to its normative open-endedness is not in a position to dictate solutions to practical problems. Christou further shows that there is little gain in thinking of the legal sentence itself as a performative, because questions of rightness and morality are set aside and are replaced by an emphasis on the expressive function of law. In this way, thinking of a legal sentence as a performative one lays emphasis on a metaethical, instead of a substantive moral analysis of law.

Juliana Neuenschwander-Magalhães ("Law and Cinema: Knowing Law Through Art") reports interesting results of her research at the Federal University of Rio de Janeiro on the presentation of dictatorial regimes in the movies. Far from merely describing the concept of law in the plots of the respective films, on the basis of

systems theory, she tries to substantiate the assumption that legal validity can also be determined by the structural coupling of law and cinema.

In his article "Collective Rights – A Case Study of Interdisciplinary Approach in Jurisprudence" *Miodrag Jovanović* exemplifies the shortfalls of Kelsen's Pure Theory of Law, analyzing norms that entitle minorities or other groups' rights. These norms cannot define the subject of the right, but have to presuppose it and accept the social definition of the groups themselves. Because of this structure, jurisprudence too cannot restrict itself to merely legal methods.

Though economic analysis of law applies concepts and categories of economics on law, the mere descriptive economic analysis of law does not ask to use efficiency as a normative principle in law. Still if the principle of efficiency is used in law questions arise as to how this principle is placed towards other legal principles, esp. justice and equity, and how it is used in law making and practice. *Klaus Mathis* gives some answers to these questions in his "Efficiency as a Normative Principle".

In his paper "Import, Export, and Multilateral Translation: Methodological Lessons from an Economic Analysis of Paternalism in Contract Law" *Péter Cserne* focuses on the conceptual and methodological background of an economic approach to paternalism in contract law. He takes up the different legal provisions of usury laws to serve consumer sovereignty in Europe and compares them to the many aspects of "paternalism" discussed primarily in economics. His in-depth discussion aims to serve as a case study to a more general problem: the role of inter- and multidisciplinary research in jurisprudence and legal studies in general.

The papers concentrating on Constitutionalism in the second part of this volume are unified by the question of how to analyze constitutionalism, especially in the process of Europeanization and Internationalization. The first two papers concentrate on challenges and methods of constitutionalism. *Anne van Aaken* takes a functional view on constitutionalism by using an old categorization of Hermann Kantorowicz for legal science. By clarifying the different methodological statements possible in law (normative statements in legal philosophy and policy, social science statements, and doctrinal statements), this permits to outline opening windows and connecting bridges between law and social science in the debate on constitutionalism and on international constitutionalism. Indeed, the use of common principles in the perspective of constitutionalism is deemed to be necessary but not sufficient. The search of the function of the legal institutions, related to the underlying problem structure, is an essential activity which ought to be performed to a growing extent especially to be international constitutionalists, in the attempt to concentrate on the values we aim to attain by means of law.

Pasquale Policastro outlines the possible connection between meta-theories of law and theories that he has been considering as complementary theories, and namely from one side constitutionalism and from the other side economic analysis. Interconnecting those theories permits to conceptually answer the question of the respondence of the economic system to the values of constitutionalism and vice versa. Under a poietic system of a dynamic constitution, considered by the author as a constitution which relies on the possibility to transform the rules concerning the influences of the political, social and economic processes, an open interpretation which also takes into account economic theory is possible. However, the results of the economic models may be used within the legal reasoning only after the trans-

position of the yielding of the economic models, within the terms of legal reasoning. For this reason it is essential to find adequate methods to match complementary theories with our object theories without leading to paradoxes. To this regard, the paradigms of constitutionalism, and more in general, the research of a hypertext to overarch between theories appear worth of a growing consideration.

The other papers focus on the process of Europeanization. *Markku Kiikeri* understands the European legal system as a legal-cultural system, elaborating a framework for future research. For him, in order to understand and explain the phenomenon of the European legal system, a "legal-cultural approach" and the theory of the European legal system needs to be taken seriously instead of the institutional, legal "order" and pragmatic point of view. By taking this approach he then asks, what were and are the basic legal philosophical and comparative approaches within the system and how the court thought and thinks now itself as a social actor as well as what would be the basic concepts to be considered and why. The approach to consciousness and to the intentionality of the activity of the European lawyer plays to this regard a paramount role in this cultural-spiritual integration, in which need and reality appear as a consequence of the seminal decisions of the European Court of Justice.

Jelena von Achenbach focuses on the democratic principle of the European Union and elaborates a methodological approach to develop a concept of a democratic supranational legislature by means of a critical and progressive analysis of the co-decision procedure. By looking at the democratic principle as a falsification standard for the setting-up of the organizational constitutional procedures and institutions of the European Union, she is also able to constructively criticize them.

Raffaele Lapenta, who takes the move from a criticism concerning the possibility to grant rights and freedoms outside the range of a formally defined constitution, concentrates on the right of defense in the framework of multilevel constitutionalism. After comparing several national constitutions finding stronger rights protection under those than under the European Treaties, including the European Union Charter of Fundamental Rights, he comes to the conclusion that multi-level protection of human rights may also weaken those very same rights. For this reason it seems that the standards of protection of specific fundamental rights, such as the rights to defense, granted in the national legal orders, ought to be seen as a baseline to be rendered more substantive by their protection at the European level.

Teresa Freixes and *Mercè Sales* analyze equality and discrimination under multilevel constitutionalism (Pernice). After outlining the main features of the concept, they illustrate the reality of the phenomenon of multilevel constitutionalism, by means of a practical case: equality in the multilevel system. They analyze the international, the European, the national as well as sub-national norms and case-law on the subject-matter (with a focus on Spain) and find that by this way of analysis, since norms and application differ, it is possible to apply the legal system that best protects the fundamental right concerned. This implies the necessity not only of a case-to-case analysis, but a clear attention to the different branches of law concerned by the cases in question.

Put together the articles provide for an overview of in-depth analysis in interdisciplinary research on law at large and constitutionalism taken as an example. The

wide array of open questions, however, calls for continuation in some follow-up volumes.

Stephan Kirste, Anne van Aken, Michael Anderheiden, Pasquale Policastro