Call for Papers

Conference « The Philosophy of Customary Law »

May 14-16, Nice

Organized by the Centre of Research in History of Ideas
Philosophy Department of the University of Nice Sophia Antipolis

Member of the Université Côte d'Azur
Member of the MSH Sud-Est

This conference will gather a wide range of contributions dealing with the philosophical issues concerning customary law. Far from considering the phrase "customary law" as a self-evident truth, this event aims to identify and try to solve the many tensions created by the juxtaposition of two separate but parallel forms of social regulation: law and custom.

The ontology of customary law

The very expression of customary law brings us to a first, preliminary acknowledgment: speaking of a customary law compels to single out the genus (law) from the species (the so-called customary law). Customary law appears then like a specific form of law, sharing with it the general features and categories of a legal approach. However calling a law customary is not the same as to speak about contract or penal law.

Customary law is indeed not one of the sub-species of law, and can itself be called genus. It is also worth reminding that the expression "customary law" seems to single out a specific source among the four traditional ones - legislation, doctrine, custom and precedents. It would seem odd, indeed, to speak about a "legislative law", "doctrinal law" or even "precedents law". What matters then is to investigate the ambiguity behind the very idea of customary law. Does it point out one more sort of law, or does it designate an autonomous kind of law, with its own features and not reducible to the law?

Principles of customary law

Answering these questions requires without any doubts an enquiry about the peculiar dynamics of customary law, grounded on both empiricist and theoretical perspectives. To know whether it is a form among others of law or it is specific enough to be called a genus of law, it is crucial to define its principles. If this law is called customary it is because custom is key to it as a source of law. Understanding the specific features of customary law means therefore striving to understand what role custom plays to shape the very nature of customary law.
It will be necessary to investigate the way the main role assigned to customs determines the very existence of specific institutions and peculiar criteria of the bigger law frame that regulates the individual. As Blackstone's Commentaries show, any legal system that includes custom as its element must establish spatial, temporal and logical frame of custom proofs. Nevertheless, Anglo-Saxon Common law and its peculiar principles mustn't overshadow any attempt to grasp the principles and the peculiarities of customary law; and we will be particularly sensitive to the way the customary law settles in pluralist contexts, where different customary laws can be concurrent. In these conditions the interaction between law and custom takes the shape of a normative conflict more than of a coherent customary law.

Exploring the limits and the fictions of customary procedures adopted by the Common Law could be the first step of both a new deployment of the customary law potential and an enquiry about its foundations. Indeed, it would be of extreme interest to study the different forms of customary law in eras where the Common Law model is spreading at different levels and domains, especially in international law, and where customary law is adopted in de-colonized regions where the law system is marked by a strong plurality of contexts.

Peculiar stakes of these contexts force to investigate both the limits and the flexibility of customary law. Do evolutions of scales and domains concern the essence of customary law, if this nature exists? Or are they only variations of a single nature beyond the peculiarities of each embodiment? It will also be necessary - among other issues - to address the specific effectiveness of customary law, and to determine if it lays on the same constraint as the law; and if it is supported by peculiar institutions and applications. The question of the role of the sanction is in this respect essential. Underlying this is the very issue of the self-sufficiency of custom as a social regulation form.

**Customary law without custom?**

In the wake of these reflections it is necessary to note that custom is reduced to the status of simple source of the law in every law called customary, and is therefore deprived of every autonomous form of normative power. It is not custom that is not acknowledged as custom according to the processes required and in the name of the institutions and criteria defined by law. In this case, custom is not anything more than one of the many possible sources of law, and concurring with them; it has not a primary juridical existence.

This is the reason why John Austin could so easily disqualify custom self-sufficiency, arguing - with Hobbes and against the historical school - that the very nature of law prevents custom to be effective on its own besides the implicit or explicit, direct or indirect acknowledgement by the sovereign. One of the main ambitions of this conference would be indeed to question Austin's position. This could in turn allow to address the issue of the substantial or accessory priority of the phrase "customary law". Beyond this lies the very issue of the autonomy of custom as a social regulation tool.

**The problem of codification**

In order to do that, one could be tempted to consider what disappears of custom and what does not, in customary law, so as to really understand its very nature. This brings us to discuss the specific subject of the codification of custom, the cornerstone of customary law. This codification is never de facto a neutral act, and it will be more relevant to point out from every point of view all the implicit tensions of the codification, which standardize and stabilize power balances or social and economical struggles. One of the axes of the study, already well known in social science but
overlooked by philosophy, would be that of interaction between formal law and custom in de-colonized countries.

Legal codification is one of these moments when powers and knowledge meet with most intensity. The “historical school” of law maintained the necessity of combining law studies with humanities, and we can now include social sciences such as economy, anthropology and sociology. We will therefore investigate which place these disciplines can or should have within the codification and definition of custom; we will also enquiry about their legitimacy, methods and approaches.

*Windows on arts*

Other domains of knowledge and creation cannot be excluded from the discourse we would like to build. We could especially ask ourselves if literature and other arts are able to produce introspective discourses about the nature of customary law, in the wake e.g. of Ismaïl Kadaré *Avril Brisé*. An artistic perspective could actually open to other stakes of customary law and of societies concerned by it. Among these concerns we can find the issue of the "tradition" - "modernity" dialectics and the role and place of an individual. The way in which customary law of different peoples confronts the evolution of global communities is certainly a shared issue among many artists and authors, be their perspective nostalgic, aesthetic or critical.

*Empirical concerns. Customary laws, social sciences and the humanities*

The question arises of which place one should give to specific case studies during this conference. It is clear that they must be crucial while studying customary law as a theoretical object; but no discourse should be limited to a series of descriptions of different customary laws. It will be of particular interest to adopt a comparative approach, analyzing especially how specific branches of customary law - such as the property rights - codify all the issues we have seen, and how different law categories allow to reformulate.

Every example is an opportunity to explore these topics without excluding other issues. Besides, it is neither required to address only contemporary stakes of customary law nor to unfold historical processes. The topicality of customary law is acknowledged, and the history of its evolution is essential to understand the contemporary dynamics it implies. The various questions arising from this conference should reflect the historical deepness of customary law, without overlooking to explore how social sciences and humanities address the customary law from different perspectives.
The following, non-exhaustive list of questions should allow to prefigure various leads:

Does "customary law" locution show a specific mode of social regulation between the juridical and the customary?

Is custom a source of law? Or could be considered as an object beyond or before it?

Does a specific form of customary law exist despite its different expressions? Does a model of customary law exist - such as the international law?

Which transformations does custom endure when integrated with the "customary law"?

Which philosophical implications does codification of custom produce within customary law?

Which are the stakes of the very existence of customary law in pluralist and decolonized contexts?

What are the relationships between customary law on one side and moral or juridical standards such as human rights on the other?

What is the place of customary law within social change dynamics?

What is the place of the relations between law and custom in arts? Does a specifically artistic point of view exist about custom? Does it consist in representing, criticizing or glorifying custom?

Which interactions and which concerns exist about humanities, social sciences and law with respect to custom?

Which are the links of customary law with localities, territories, their history and their social displaying?

How different disciplines of social and human sciences allow to reflect upon these phenomena and their conflict with law's peculiar formality?

**Organizing Committee**

Pierre-Yves Quiviger. Professor of legal philosophy at the Philosophy Department of the University of Nice Sophia Antipolis
Marc Goetzmann. PhD student at the University of Nice Sophia Antipolis
Edoardo Frezet. PhD student at the University of Nice Sophia Antipolis

**Scientific Committee**

Philippe Audeagean. Professor of philosophy at the University of Nice Sophia Antipolis
Laetitia Guerlain. Associate Professor of Law at the University of Bordeaux
Philippe Hameau. Associate Professor of Anthropology at the University of Nice Sophia Antipolis
Nader Hakim. Associate Professor of Law at the University of Bordeaux
Mélanie Plouviez. Associate Professor of philosophy at the University of Nice Sophia Antipolis
Pierre-Yves Quiviger. Associate Professor of philosophy at the University of Nice Sophia Antipolis
Submissions

The organizers are looking for a series of papers to complete the list of speakers for the conference. Languages of the conference will both be French and English.

Any researcher, junior or senior, may submit a proposal. The interdisciplinary nature of the conference calls for a broad number of subjects. Therefore, only the relevance of the proposal to the conference, and not the field of the potential speaker, will be evaluated.

Please note that the organizers want this conference to be as inclusive as possible.

Proposals (with a title) will be between 300 and 750 words and anonymous, but the applicant is asked to join a presentation with his or name, with the title of the proposal. CV are accepted. Please be aware that institutional information will matter in the selection process (see below).

Submission calendar

1st submission deadline: November 15

Communication of the results after review by the scientific committee: December 15

Final list of speakers: February 2018

Full papers: by April 15

Funding

There is no registration fee for the conference.

We will provide accommodation (2 nights) and food for the whole conference, with a conference dinner included.

We will not systematically cover the cost of transportation. Depending on the available funds, we will prioritize junior researchers that cannot be supported financially by their institution.

Conference guests (not concerned by this call) will see their transportation expenses covered, unless their institution can provide for it, allowing therefore more funds to be used for junior researchers.

Consequently, please indicate very clearly in your presentation whether your institution can cover transportation costs.

Send your proposals to:

Marc Goetzmann: mgoetzmann@unice.fr

Edoardo Frezet: edoardo.frezet@gmail.com