

Hybrid
Conference

Call for Papers

Hybrid Conference on European Law and Cultural Diversity

22. – 24. November 2023, Wrocław (Poland)



The notion that cultural differences have a significant impact on the way the Rule of Law is understood across countries, and that such differences should be taken into due account when evaluating the ways in which it is practiced, has been long acknowledged by key international institutions. The United Nations General Assembly, for instance, “while also recognizing that there are common features founded on international norms and standards,” calls in its Resolution 69/123, on The Rule of Law at the National and International Levels, “for dialogue to be enhanced among all stakeholders with a view to placing national perspectives at the centre of rule of law assistance in order to strengthen national ownership, while recognizing that rule of law activities must be anchored in a national context and that States have different national experiences in the development of their systems of the rule of law, taking into account their legal, political, socioeconomic, cultural, religious and other local specificities.”¹

The calls for further research and the international debate in general, however, have been so far limited to the differences between the “West” and the rest of the World. Thus, for example, the International Law Association in its 2018 Conference reminds that “[w]hilst there is often presumed to be a universal conception of what is just, fair, or good, there is the need to be more cognizant of specific local, cultural and social factors which may contribute to different notions of the rule of law than that accustomed in Western societies.”² That is, as far as the Rule of Law debate goes, there seems to be at least at the practical level a general assumption that the “West” is a more or less monolithic cultural unit whose internal diversity has little importance and deserves little attention in terms of the way the Rule of Law is understood and practiced across countries as diverse as, e.g., Greece, Lithuania, the Netherlands or Canada.³

This one-size-fits-all approach also dominates the European debate, where it is commonly assumed that there is one relatively homogeneous cultural understanding and experience of (legal) notions as fundamental to the Rule of Law and as deeply conditioned by culture as those of “(un)certainly,” “participa-

tion” or “to be heard.”⁴ Although academic and institutional work often acknowledges the diversity of cultural views about the Rule of Law that exists in Europe, this insight is usually brushed aside by standard references to the consensus among European institutions and a part of the academic community.⁵ Yet, even if such assumptions about the general consensus were correct, the increasing tensions across the EU and its MS about the Rule of Law debate suggest that further research is needed.⁶ The question becomes even more pressing if we acknowledge that, while differences across national cultures are important, no nation is culturally homogenous due to the presence of different ethnic groups and cultural minorities, especially if the perspectives of migrant citizens and non-citizen residents are taken into account as well.

From the perspective of cultural diversity, the Rule of Law debate is only one manifestation of the broader importance of taking cultural nuance into account when approaching cross-national legal debates. With that in mind, this conference sets out to revisit the meaning and scope of European cultural differences in relation to a variety of cross-national legal debates, and explore whether and to what extent the insights developed in the area of multi-cultural research can help facilitate a more nuanced and deeper mutual understanding in European legal relations. The initiative, however, is far from a call to total cultural relativism and acknowledges that some basic limits to the use of cultural diversity in relation to European legal relations must be clearly set, including but not limited to the absolute prohibitions of torture, racism or gender discrimination. Although these limits are usually linked to large lists of human rights, these are strongly dependent upon the interpretation of their meanings, scopes, and practices and should be also examined to a certain extent through the lens of cultural diversity.

Within such broad limits, the conference aims to explore with an open mind the possibilities of applying the insights and tools of intercultural studies regarding European cultural differences (and similarities) to deepen our understanding of key European legal debates and the operation of common legal regimes. To

1 UNGA Res. 69/123, of 10 Dec. 2014, para. 9

2 Cf. 2018 Report of the International Law Association’s (ILA) Committee on the Rule of Law and International Investment Law, p.24, available at <https://www.ila-hq.org/index.php/committees>

3 This is all the more surprising in view of the relevance of the internal cultural diversity factor in some of these countries, cf. e.g. Ronald Niezen, „Culture and the Judiciary: The Meaning of the Culture Concept as a Source of Aboriginal Rights in Canada,” *Canadian Journal of Law and Society* 18, no. 2 (2003): 1-26

4 European Commission for Democracy through Law - Venice Commission (2011) Report on the Rule of Law (Study No. 512/2009 - CDL-AD (2011) 003rev), para 41ff; and 2004 Report of the UN Secretary-General, Doc. S/2004/616, 23 August 2004, para. 6

5 Barbara Grabowska-Moroz and Dimitry Vladimirovich Kochenov (2021) „EU Rule of Law: The State of Play Following the Debates Surrounding the 2019 Commission’s Communication.” In *Rule of Law vs Majoritarian Democracy*. Ed. Giuliano Amato, Benedetta Barbisan and Cesare Pinelli. Oxford: Hart Publishing, 2021. 63–80. Bloomsbury Collections. Web. 12 Jul. 2022. http://dx.doi.org/10.5040/9781509936878.ch-005_2f

6 A cursory look at mainstream literature and institutional debates proves the consensus assumption problematic in relation to the so-called substantive content of the Rule of Law. Cf. e.g. Adriaan Bedner (2010) ‘An elementary approach to the rule of law’ 2 *Hague Journal on the Rule of Law*, 48–74; and contrast the submission of the European Trade Union Confederation and other stakeholders with the final versions of the 2019 European Commission Communications (COM (2019) 163 final) and (COM (2019) 343 final), https://ec.europa.eu/info/sites/default/files/stakeholder_contribution_on_rule_of_law_-_european_trade_union_confederation.pdf. See more generally Brian Z. Tamanaha (2004) *On the rule of law: history, politics, theory*. Cambridge: Cambridge University Press, 60-113; and contrast e.g. Joseph Raz (1979) “The Rule of Law and its Virtue”, in *The Authority of Law: Essays on Law and Morality*, Oxford: Clarendon Press, 210-229; Lon L. Fuller (1969) *The Morality of the Law*, Yale University Press, revised edition, 33ff, 170ff; and Evan Fox-Decent (2008) “Is the Rule of Law really indifferent to Human Rights?”, 27 *Law and Philosophy*, pp. 533-581

that end, this attempt at cross-disciplinary pollination brings together in five streams contributions from the areas of legal and multi-cultural research.

The first stream opens the conference by looking at cultural research coming from fields like social and community psychology or anthropology and its possible connections to different legal methodologies and approaches to legal research (comparative law, legal sociology, etc.). This stream aims to explore structured ways to bring together the insights of cultural research and legal studies in the hope that this may help lawyers and legal academics approach in more meaningful ways the crucial challenge of cross-European cultural difference and its impact on European legal governance.

The rest of the conference features four streams that will discuss a variety of legal issues placed at the intersection between European law and cultural differences where legal debates call for a deeper understanding of the European cross-cultural component.

The Partner-Universities of the EDELNet (edelnet.eu), the Fern-Universität in Hagen (Germany), the Open Universiteit (Netherlands), the Universidad Nacional de Educación a Distancia-UN-

ED (Spain), the open University (UK), the Università di Bologna (Italy), the University of Miskolc (Hungary) and the hosting Partner, the University of Wrocław, invite members of the academia across Europe, incl. PhD and post-graduate students, to submit paper proposals (title and 250 word-long abstract) until 7 May 2023 to applications.rewi@fernuni-hagen.de. Note that the streams are open-ended lines of research. Potential participants are invited to submit other research questions and topics along similar lines.

The conference will take place both online and in face-to-face format at that Faculty of Law, Administration and Economics, University of Wrocław (ul. Uniwersytecka 22/26, 50-145 Wrocław). A final conference programme will be published by summer 2023. The conference proceedings will be published in an edited volume.

The ultimate goal of the conference is to gather a cross-European network of legal and cultural scholars to work during and after the conference towards a common research program on European Law and Cultural Diversity. Therefore, we will be happy to consider participants for a future collaboration within the framework of a larger cross-European research funding proposal.

Stream I: European cultural diversity and the use of multi-cultural research in legal studies

Possible topics:

The concept(s) of culture in general and legal culture(s) in particular
Looking at the Law from a Social and Community Psychology perspective
The relevance of culture in comparative law
Do socio-legal studies integrate cultural diversity factors and how?
The cultural study of law

Stream II: Substantive Rule of Law beyond cultural diversity?

Possible topics:

How does the meaning of human rights and liberties differ in diverse cultural contexts in Europe, for example, with regard to the freedom/security binomial; freedom of expression; marital unions; or the various levels of protection of social rights? Are some violations of the ECHR connected to cultural differences creating fundamentally divergent interpretations and meanings of rights?

Does European internal cultural diversity produce significant divergencies about the meaning and ordering of EU's values and fundamental rights? Does this have an impact on the legitimacy of policy outcomes?

Is the notion of the universality of human rights in jeopardy because of the claims of cultural diversity?

Stream III: Cultural diversity and the institutional Rule of Law debate

Possible topics:

Do divergencies about the meaning and ordering of EU's values have an impact on the legitimacy of EU's institutional system?

The European Commission's 2022 Rule of law report: any room for cultural differences or one Rule of Law serves all?

The EU's obligations under Articles 3(3) and 4(2) TEU and Article 17 TFEU vis-à-vis European cultural diversity

The CJEU's understanding of the Rule of Law in the context of Rule of Law backsliding in Hungary and Poland: establishing the limits for all EU Member States

Cultural factors in the diverse configurations of the judiciary, including Constitutional Courts, and its relations to the other branches of government across Europe (e.g., Spain's reform of its National Council for the Judiciary (CGPJ) and the 'European standards' of Rule of Law)

Stream IV: The cultural architecture of private law: market law unification vs cultural diversity

Possible topics:

The problems of unification of concepts and methods in European competition law.

Cultural differences and the protection of 'vulnerable' groups in the market (e.g. the case of consumers).

Market law unification through technology regulation in the face of cultural diversity?

Stream V: The cultural divides of legal homogenization beyond the market

Possible topics:

Inheritance law in EU countries and the impact of EU law

Family law across the EU and the role of European standards (e.g. the ECHR's)

European education rights and standards vis-à-vis European cultural divides

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Faculty of Law

University of Hagen

applications.rewi@fernuni-hagen.de

