Laura Magdalena Jung

Verfassungsvergleichung als Postulat
Eine deutsch-französische Wissenschaftsgeschichte seit 1870

[Comparative Constitutional Law as a Postulate. A Study of its German-French History since 1870.]

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What do comparatists do exactly when they compare constitutions? What seems to be a rather mundane question at first glance, quickly turns out to be quite intricate when looking closer. This book does take a closer look. Its starting point is the observation that the answer to the mundane question asked above fundamentally depends on when and whom you ask – and maybe also on where you ask them.

This contingency leads to an approach which takes seriously the observer's perspective, and tries to give answers by juxtaposing French and German answers over the last 150 years. My approach does however not stop there, its main focus being the entanglements of those two academic communities over the course of the years. In doing this, it questions whether national categories are suited to explain historical processes without denying how relevant those categories can still turn out to be. It is, however, exactly those discourses which in the end construct and produce national categories.

This book traces the arguments within French and German constitutional law academia on what laws to compare and how to do it. Topics in comparative constitutional law shift from an 'era of parliaments' to an 'era of constitutional courts', albeit not simultaneously. Meanwhile, academics sometimes intensively debate across national borders, sometimes they tend to limit themselves to talking about one another. At other times, German and French comparatists bluntly ignore each other or talk at cross purposes.

Methods in comparative constitutional law can tell us a lot about how constitutional law as a broader university discipline works differently in France and in Germany. Whereas in French constitutional thought, comparative law is at the core of constitutional law as an academic subject, the same does not hold true for the German situation. This might be one of the explanations why German constitutional law scholars in the second half of the twentieth century tend to rely on the purportedly more developed methods of comparative civil law – they seem to have forgotten historical antecedents in comparative methodology stemming from their own discipline or deem them not to be state of the art anymore. Be that as it may, it is telling that German constitutional law comparatists in recent times almost always make sure of themselves methodologically whereas their French counterparts hardly ever feel the need to do just that: they perceive comparisons as an integral part of the discipline of constitutional law as a whole.

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