



recht als kultur

käte hamburger kolleg  
law as culture  
center for advanced study



# *Some Colours of the Law*

**Exhibition by  
Professor Werner Gephart**

with the assistance of  
**Nazgol Majlessi**

**October 2016 – July 2017  
King's College, London  
The Dickson Poon School of Law  
Somerset House East Wing**

## *Some Colours of the Law*

The Dickson Poon School of Law is pleased to present Professor Werner Gephart as its Honorary Artist for the 2016-17 academic year. *Some Colours of the Law* is an exhibition of Professor Gephart's paintings and installations that he has developed alongside his career as a legal academic and sociologist.

The exhibition is divided into four parts dealing with the traditions of Anglo-American, French, German and transnational law. These chapters can be viewed on Floors 2 and 3 of Somerset House East Wing. *Some Colours of the Law* explores the implications of these traditions, examining how our understanding of legal cultures is shaped by these praxes in a globalised world. Statements made by the artist feature in the exhibition explaining these themes and ideas.

*Some Colours of the Law* also presents a series of installations that engage with law's use of metaphor. One particular piece, which can be viewed in the Archaeology Room, explores the idea of the 'legal transplant' while other artworks throughout the exhibition deconstruct key symbols associated with legal cultures, the theme of punishment, and the classical image of Lady Justice. These particular pieces can be viewed on Floors 2 and -2.

Professor Gephart is the Founding Director of the University of Bonn's Käte Hamburger Institute for Advanced Study in the Humanities "Law as Culture". He has published over 50 books on the subject of law, sociology and culture. *Some Colours of the Law* provides a broad overview of this unique body of work, which has been specially curated for this exhibition.

Professor Gephart would like to personally thank Nazgol Majlessi and Candice Kerestan (University of Bonn) as well as Kieran McGrath (King's College London) for making this exhibition possible.

For more information on *Some Colours of the Law*, please visit our website.

## *Introduction to the Exhibition*

In an ideal oversimplification, my exhibition brings together three traditions from reflections on law and society: an Anglo-American, French and German line of tradition, which is reshaped through transnational and global development.

The exhibition's medium is neither the spoken nor written word, but rather the representation in images, sculptures and installations. But how does a scholar who earned his doctorate in Law and his post-doctorate in Social Sciences with the goal of teaching Cultural Sociology – in addition to his list of publications which tops over 50 books – also choose this form of portrayal? This certainly has something to do with the fascination that portraits, as a medium of representing uncatchable uniqueness, exert. It is in this manner that my portrait illustrations and pastels came about – from those depicting Thomas Hobbes, Herbert Spencer, John Stuart Mill and H.L.A. Hart in England to portraits of Rousseau, Comte, Durkheim and Foucault in France. In the German tradition, meanwhile, Goethe appears as a researcher of society, and superior icons in the field like Max Weber and Georg Simmel are depicted alongside figures like Tönnies and Luhmann.

Postcolonial criticism has certainly made us sensitive to the idea that we may not view the world through perspectives of occidental cultures alone. Rather, horizons of knowledge and conceptual worlds must incorporate other cultures. This epistemological uncertainty appears in a series of works, for example when Durkheim and Mauss find themselves under the tree of knowledge and are cast as arm chair ethnologists or, when Weber is placed in an enchanted garden in India.

My chosen medium also allows for a glimpse into the portrayal of great thinkers who are often observed either in an indiscrete manner from the keyhole-perspective or even fully neglected as they are also just human beings who suffered from the oppression of their emotional lives. This reveals an astonishing parallel between John Stuart Mill, Auguste Comte and Max Weber who in their specific cultural contexts were liberated by the discovery of a romantic relationship. As such, some beautiful ladies appear in the surroundings of these over-rationalised intellectuals.

In my exhibition, installations can also be seen for the first time which convert individual figures of speech into a material form: legal transplants that are represented through plants; a deconstruction of the law in which the iconic components of Lady Justice are literally taken out of each other; and a piece called “Layers of Legal Cultures” in which the metaphor is translated word-for-word into levels of various legal cultures laid upon each other.

A last word on the omnipresence of Max Weber (1864-1920) in my work: he is portrayed as a paradigmatic case for the birth of the social sciences out of the spirit of the law. Schooled in juris prudence, this juristic socialisation can be felt in his way of constructing the categories of sociology. On the other side, Weber, clothed in a leopard print blazer, is openly a space for the projection of my personal view of the world, as signified by the German word for cheetah: *Gepard*.

Professor Werner Gephart

## *The Anglo-American Tradition*

This section brings together a series of meaningful figures that belong to the history of Anglo-American academia starting with Thomas Hobbes, who is considered the forefather of the philosophy of law and whom Talcott Parsons considered a major figure in sociology, placing the Hobbesian problem of order in the focus of his analyses.

My pantheon of British intellectuals does not aim for completeness, aligning itself instead with figures such as Herbert Spencer, a technical inventor and social scientist, while my image of John Stuart Mill references his relationship to a woman who was thought to free him from the pains of a dull childhood, just as literature, with a healthy dosage of Wordsworth, unfolds its healing effect.

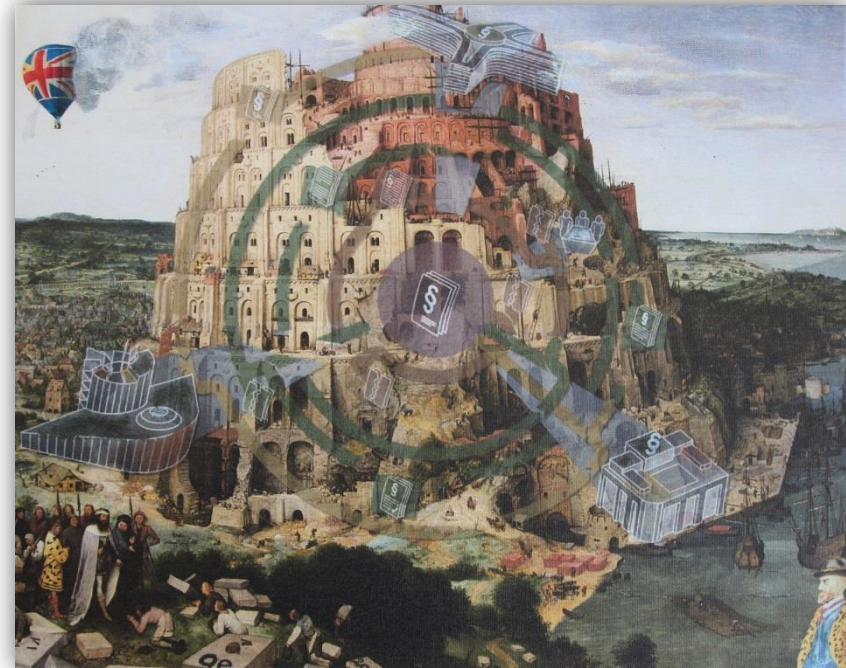
H.L.A. Hart's impact on the philosophy of law in the world is unbroken. Likewise, he is a contemporary witness to the dramas of the 20<sup>th</sup> Century. This also applies to Norbert Elias who fled from Nazi-Germany and found a new home in Great Britain. Here, he is together in conversation with Wittgenstein in which the rules of the game, as manners or legal rules, unfold into civilising effects.

The British tradition is, however, also characteristic of the description of the abyss of society, just as Thomas Hobbes imaged the "State of Nature" in *Leviathan*: "no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, *solitary, poor, nasty, brutish, and short.*" The events of September 11<sup>th</sup> 2001 are also to be seen in this light which coincided with a lecture on Hobbes that I shared with some American students in St. Louis.

Professor Werner Gephart

**1. Babylonian Production of Normativity in Europe (with the help of Pieter Bruegel), 2016**

It is interesting that one of the recurring critiques of political Europe is seen in the non-transparent production of a multitude of legal rules that overlay national legal cultures. In this image, the Babylonian Tower on one side stands for the multiple languages and cultures, in which an abstract scheme of the non-production process is inserted. As with *Brexit and its spectators* [Artwork 2 in this series], Great Britain is represented by the hot air balloon drifting away to the left. Weber, meanwhile, is on the right, critically observing the scene.



## 2. Brexit and its spectators, as seen from the jungle of Brussels, 2016

The image takes a double perspective with regards to the “Brexit” phenomenon. The hot air balloon - identifiable by the Union Jack – and its departure from the legal jungle of Brussels, expresses my understanding for the motivation of people in Britain who wanted to leave this non-transparent field. On the other hand, the observer’s position, here again taken by Weber, expresses some concern about the future of Europe and the befriended nation. There is no plea for either a “soft Brexit” nor a gesture of triumph, just a nostalgic and melancholic wish to stay with good friends.



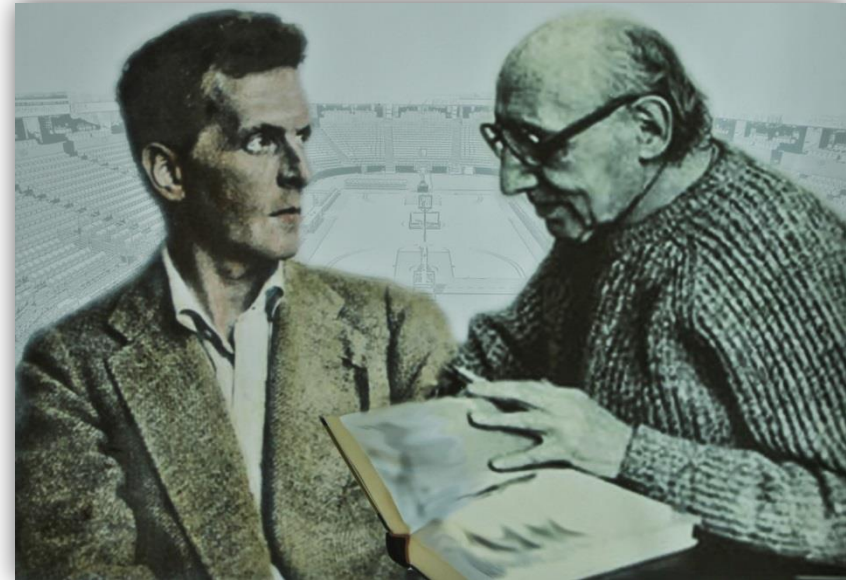
### 3. The Game of Civilization: An Encounter of Wittgenstein and Elias, 2014

Wittgenstein writes: “We can easily imagine people amusing themselves in a field by playing with a ball so as to start various existing games [...] And now someone says: The whole time they are playing a ball-game and following definite rules at every throw. And is there not also the case where we play and make up the rules as we go along? And there is even one where we alter them – as we go along.”

This painting was inspired by a book written by Marta Bucholc (published in the Käte Hamburger Kolleg ‘Law as Culture’ series) in which she tackles one of the most salient problems in our current debate about globality: How is a global community possible? If the Hobbesian solution by way of rules is accepted, the follow up question must be: How do we make the rules of our global games? Where does the normativity of our moral laws, statutory provisions and table manners come from? How do we strive to keep naked violence at bay by allowing power to be vested with the right of correction? Can humanity as a whole become a global community of self-defence?

While watching the invisible players on the field, Wittgenstein may think about the role of rules, whereas Elias introduces the completely underestimated realm of courtly manners as a means of communication between civilisations.

“Illustrating” and “elucidating”, or even deepening, the main ideas of Bucholc’s book has been my challenge for this painting.



#### 4. H.L. Hart, Conceptualizing the concept of law, 2016

My imaging of one of the greatest philosophers of law is very much influenced by Nicola Lacey's brilliant biography, *A life of H.L.A. Hart: The Nightmare and the Noble Dream*, which tells us as much about secondary rules in the law as about wartime espionage, the experience of antisemitism, and Oxford in the 1950s.

His digressions about Durkheim, some elective affinities with Weber on "externally guaranteed orders" and a subtitle "Essays in Descriptive Sociology" make this brilliant analytical philosopher closer to sociological traditions than he himself might have intended.





## 5. Talcott Parsons as a pop artist, 1998

This protagonist of pure sociological reason who deplored “law as an intellectual stepchild” (1977) was, however, very close to legal thinking. His famous convergence theory of Durkheim and Weber (*The Structure of Social Action*, 1937) is based on their commonness in finding a solution to the Hobbesian problem of order by way of imputing an overarching “normative order”. At the same time, he declared “Spencer is dead. Who now reads Spencer?”, something which ironically turned against him when becoming a leading figure in evolutionary thought of the social sciences, a tradition for which Spencer boldly stands. His famous verdict of “the fallacy of misplaced concreteness”, which thereby justifies his abstract way of constructing the social world, is turned against him in my painting where he is presented in colour, with leopardprint glasses in a pop art style!



## 6. Leviathan on Plexi-glass, 2016

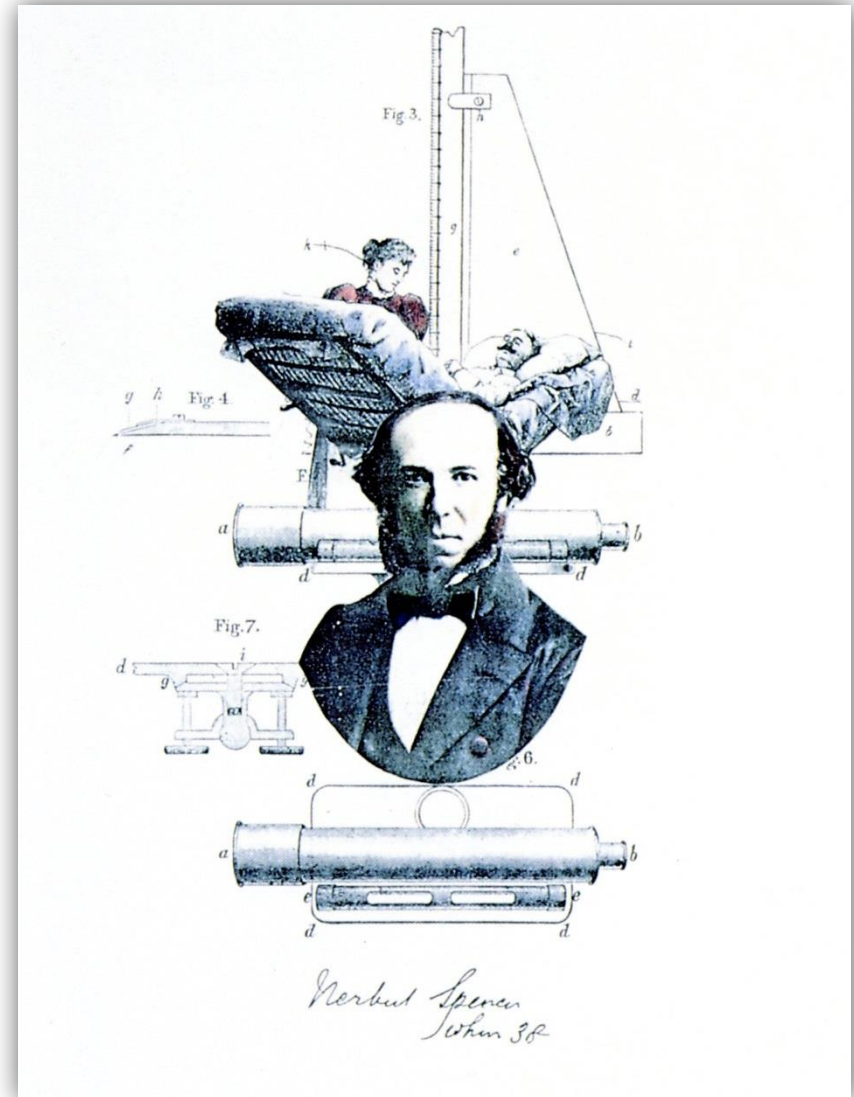
This object takes the idea of a body politic composed by human bodies seriously. Whereas the original frontispiece of the Leviathan is realised by gravure, my intention had been to sculpt the body politic using bodies made of clay or glass. However, the multidimensional technique of printing on different layers of Plexi-glass allows for a three-dimensional effect that comes closer to a materialisation of the metaphor. The technical difficulty in the realisation of this piece brought me closer to the idea of the state of nature, where life is – according to Thomas Hobbes – “nasty, brutish and short”.



## 7. Herbert Spencer, when 38, 1992

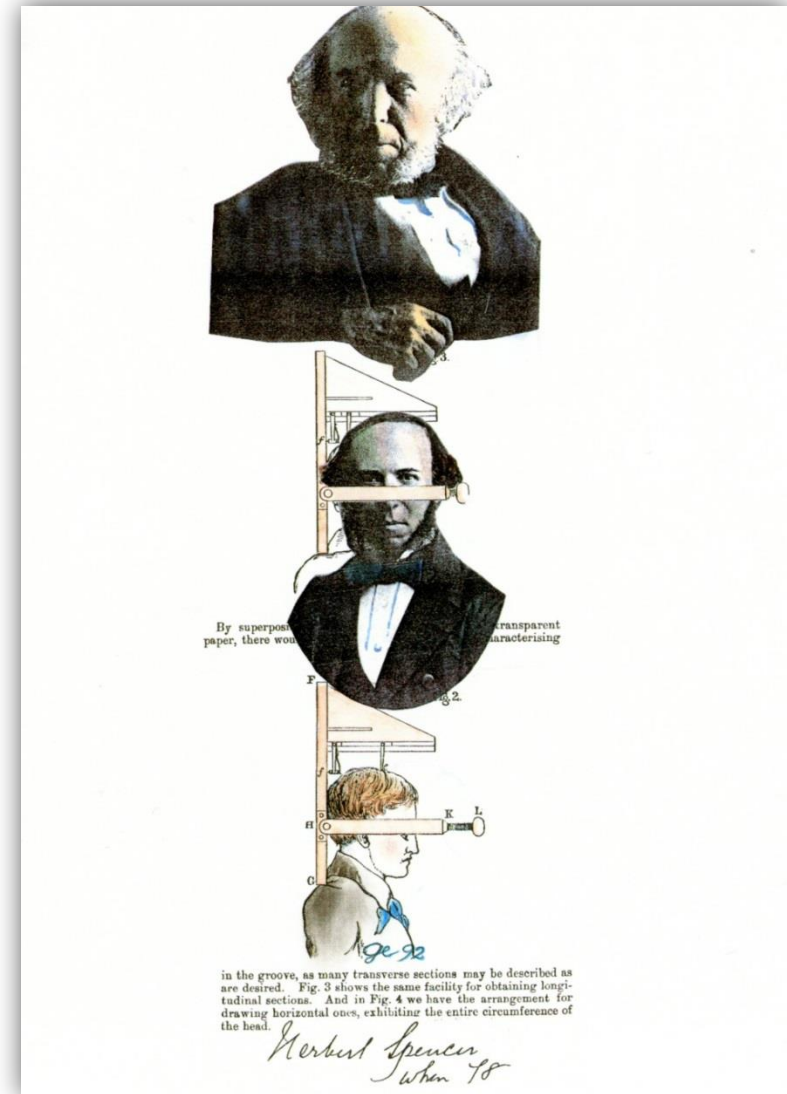
Spencer's inventions, described in his autobiography, surround him here as he projects himself into a family life in which a woman takes care of him, something that he rarely experienced.

Durkheim was very critical of Spencer because he tried to explain social integration in differentiated societies by way of purely utilitarian arguments. His *Principles of Sociology* are much underestimated, in my opinion, and rereading Spencer could also give a taste of how his famous chapter on "Ecclesiastical Institutions" could be transferred to legal institutions, proving certainly that "Spencer is (not) dead".



### 8. Herbert Spencer, the evolution of H.S., 1992

This image shows different stages in the evolution of Herbert Spencer, from a boy to a middle aged man to a wise and learned man. The horrible instruments of measurement in which he is pinched are his own inventions! Typical for the English intellectual culture, he was not a pure academic, but a technician, an inventor at the same time who declared himself to be the real creator of evolutionary theory, even before Charles Darwin!



### 9. Harriet Taylor, the beautiful feminist, 2016

Both John Stuart Mill and Thomas Carlyle were deeply impressed by Harriet Taylor, naming her a young philosophical beauty and a living heroine of romance. Though she did not reciprocate Mill's advances, Harriet Taylor recognised the compliment and she later married Mill after the death of her husband John Taylor. Mill praised her majestic intellect, attributing her not only with a major part of his feministic writings, but also in his *Principles of Political Economy* and his famous *Essay on Liberty*. After her death in Avignon, Mill settled in France so that he could remain close to her.

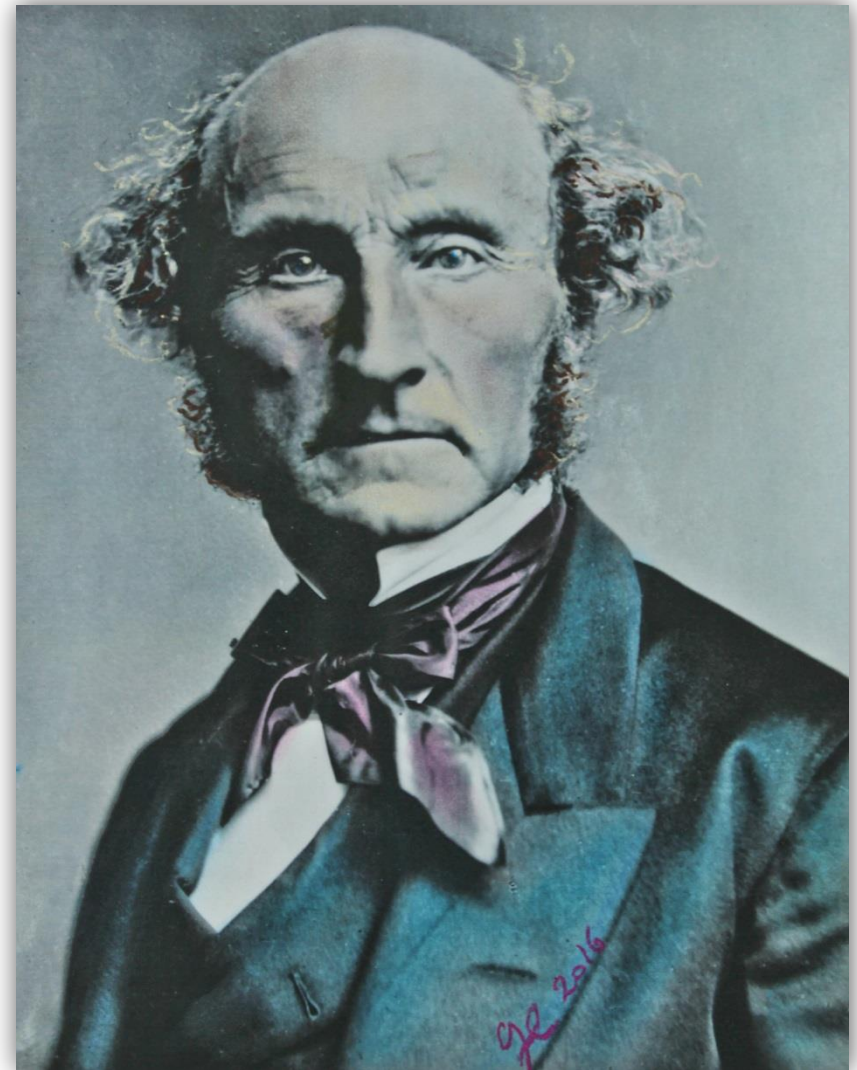
Mill's grief took on a nearly religious character, though it was far less systematic than Auguste Comte's religious phantasmagoria inspired by Clotilde de Vaux who became the real saint of positivism. The aura of a beautiful saint resembles that of Clotilde de Vaux, which is to be admired in the French chapter of this exhibition [Artwork 10].



### 10. John Stuart Mill, in all his ambiguity, 2016

This image tries to paint Mill in all his ambiguity: as the son of James Mill, he was forced to learn Greek at the age of three, followed by Latin, which he was obliged to teach to his sister and his brothers. He was brought up as a model of English intellectualism, far away from any extravagances. Pure logic was preeminent and no logic of the sentiments seemed to be allowed. Interestingly enough, the cure he prescribed himself, namely to read poetry, started with Lord Byron, although without any success. However, the poetry of Wordsworth had an enduring healing effect on him, representing what he had looked for as a “culture of the feelings”. As for Auguste Comte who suffered from the same kind of oppression, the process of an emotionalisation of life was accelerated by way of his relationship with a woman (See Wolf Lepenies, *Die drei Kulturen*, 1983).

When a rediscovery of affect, emotions and sentiments are discussed in legal theory, should we follow the advice of John Stuart Mill and create more room for poetry and art in the training of incurably rational legal personnel?



## 11. Max Weber and the four schools of Islamic law, 2001/2012

The dominant narrative on Islamic legal culture tells of precisely four schools of law known to Islam. Max Weber adopted this representation as well. Through the backgrounds of Arab ornamentation that accommodates the prohibition of likenesses, my painting offers a symbolic depiction of the differences: a certain severity, on the one hand, interpretive freedom, on the other. However, a decisive attribution cannot be made and is not intended as it remains a game that has already been played by many Islamic studies scholars.



## 12. Weber and the four inns of court, 2016

The particularities of English law can be explained – according to Weber’s sociology of law – through those of the estate in charge of administering the law, while the *Freirechtsschule* identified England as the ideal kingdom of the judge. Eugen Ehrlich also described English law’s separation from Roman legal influences in the early Middle Ages as a “stroke of luck” which is also the reason why Weber considered its rationality inferior to continental law.

Weber’s informants on English law – with which he had no first-hand experience – were particularly Julius Hatschek, Frederic William Maitland, Frederick Pollock and Ernst Heymann. They delivered the intellectual building blocks of Weber’s own image of English law, which he considered to reveal its structural “deficits” on the organisational level of law: “The craftsman-like specialisation of lawyers alone stood in the way of a systematic overview of the entirety of legal content matter”. A guild-like *esprit de corps* initiated by a “novitiate” is enforced even more strongly through the monopolisation of legal education in the Inns of Court<sup>1</sup>, where university scholarship is first confronted and then eliminated. This spirit primarily has the legal personnel’s own interests in mind and is oriented in a purely “empirical, practical” manner.

My projection of Weber into the four emblems of the Inns of Court is meant to make him as strange to the “lived law” of England as he was to other legal civilisations.

There is also a surprising resemblance to my depiction of the four schools of Islamic law [Artwork 11]. The presence of Islamic traditions within common law seems to be very much doubted, though some lines of influence have been supposed from Southern Italy to England.



<sup>1</sup> Weber’s depiction, *ibid.*, pp. 478 et seq., which also details the relationship to the universities as well as the guild-like organisation.



**13. “Rauhe Wirklichkeiten” (Morgenthau, Weber, Nietzsche), 2005**

Under the heading of “Freiheit” (freedom) and realism, the great American jurist and political scientist Hans Morgenthau is represented in a context where influences from Nietzsche to Weber are visualised.

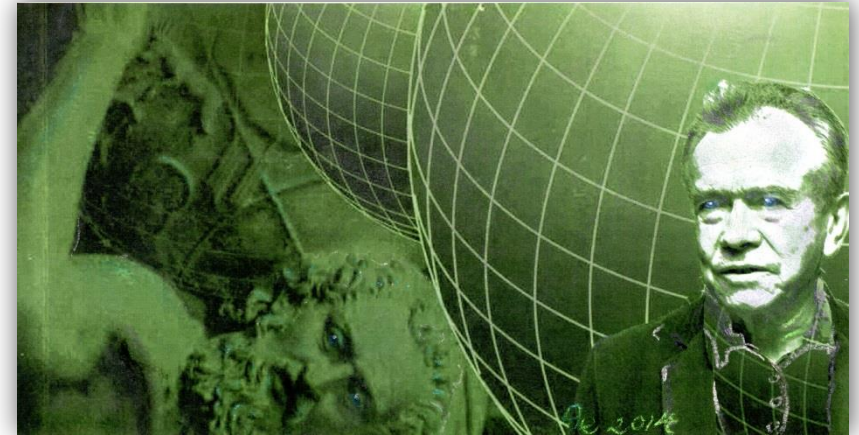


#### 14. The global age (Martin Albrow), 2014

British sociologist Martin Albrow developed the Global Age thesis that he first proposed in the 1990s to capture the novelty of our own epoch. Absorbing insights from Max Weber, Émile Durkheim, Arnold Toynbee and Norbert Elias, Albrow presents an insight into a global discourse that shapes new approaches to abiding human dilemmas of faith, justice and responsibility.

Even in resisting the idea that globalisation and Americanisation are inevitable, he argues that framing our time as global promotes a collective response to the challenges facing humankind. The hope for a human future depends on a normative ordering of global society and on global governance that allows local, national and global cultures to co-exist and thrive.

In this image, the cover of the first edition of *The Global Age* is reproduced while projecting Martin Albrow onto the globe because he is a real globetrotter in the social world!

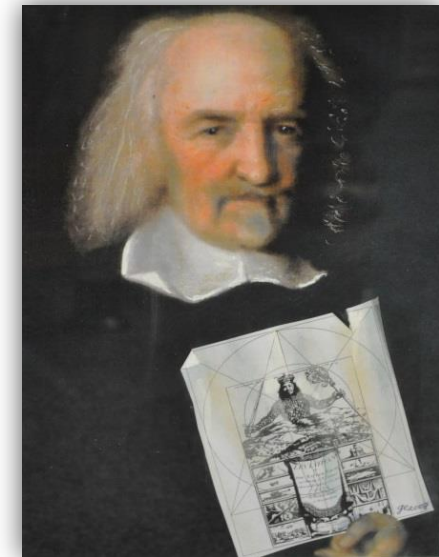
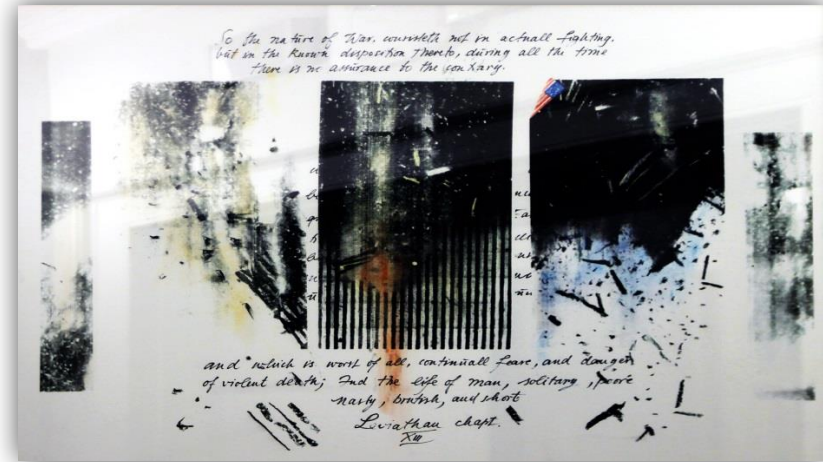


**15. The Leviathan chapter XIII, 2001/2002**

**16. Thomas Hobbes, holding the frontispiece in his own hand, 2008**

Hobbes's famous description of the state of nature where there are "no letters, no society, and which is worst of all, continual fear and danger of violent death, and the life of man, *solitary, poor, nasty, brutish, and short.*"

Linking this famous phrase with the events of September 11<sup>th</sup> 2001 is not the result of a theoretical reflection, but of a horrible experience that I had during my stay at Washington University, St. Louis, when I held the Fulbright Distinguished Chair for German Studies in 2001/2002. The very day before the attacks I read the famous chapter XIII of the *Leviathan* with my students. Over the following three hours, we discussed the analysis of Hobbes's theory of power, allowing the weakest to overcome the strongest in the use of destruction without moral restriction.



### 17. The community and the flag, 2002

As a member of the patriotic community during my stay in the US in 2001, it was impossible not to be impressed by the emergence of flags and a spirit of strengthening community ties, rejecting the era of “bowling alone” (as described by Robert D. Putnam’s study of the same title). In the expression of this spirit of reunion I detected the quality of sacrifice, even if it was just a blood donation, which was symbolised by patriotic flag-painting, something which a German scholar could never have imagined due to all the misuse of flags in German history.

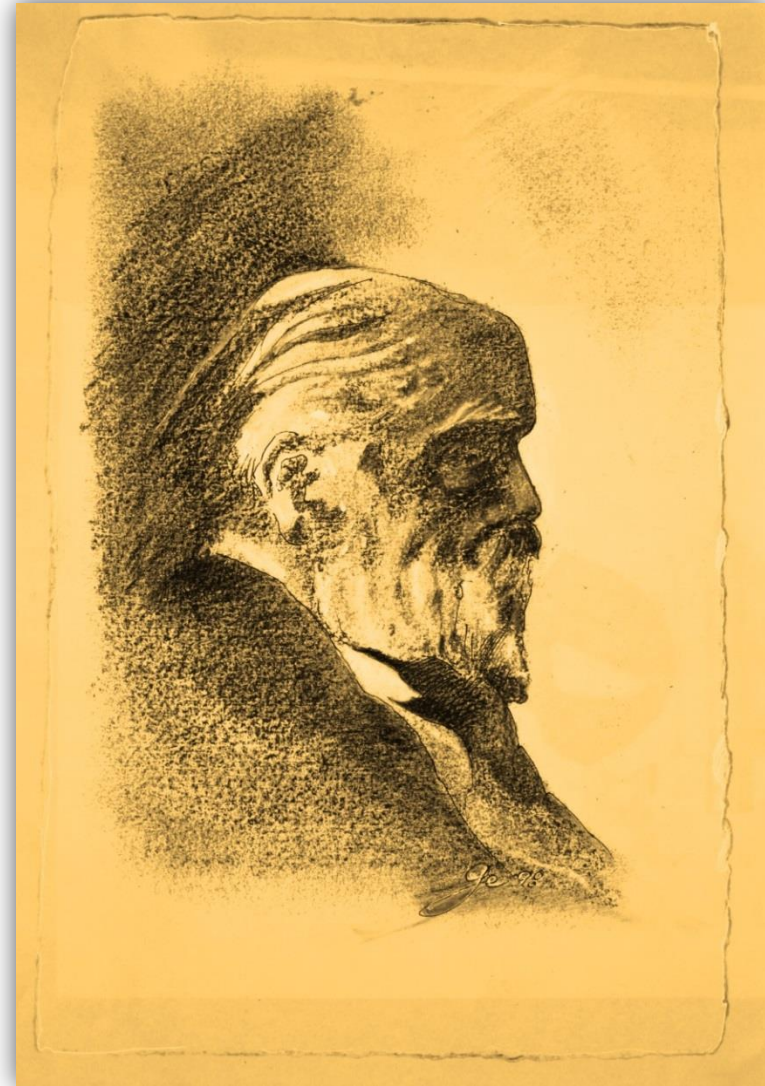


### 18. Ferdinand Tönnies (Yellow Version), 1998

Ferdinand Tönnies, the famous author of *Gemeinschaft und Gesellschaft*, had a great impact on the reception of Thomas Hobbes as a central figure of early modernity. He was the editor of *The Elements of Law and Natural Politic* and he discovered the original text of *Behemoth* (or *The Long Parliament*). At the same time, he is the author of the first biography of Hobbes in the German language. In short, his answer to the Hobbesian problem of order, as Talcott Parsons called it, is to intensify structures of “community”.

What does Tönnies’s insight mean in the global age? And what kind of role has to be attributed to the law in this process? One should not forget that in Tönnies’s famous book *Gemeinschaft und Gesellschaft*, the third part deals with the “Soziologische Gründe des Naturrechts”, or the sociological foundation of natural law.

His understanding of the law still requires a complex and sophisticated analysis. His relation to Thomas Hobbes will be crucial for such an undertaking.



## ***The French Tradition***

The ideal of a systematically rationalised law had nowhere been realised as much as by Napoleon's codifications. They began their triumph throughout Europe and have left their mark on many legal systems. It is no wonder that the idea of concretisation and the interpretation of the law were afforded less space than the acceptance of a function of a judge who is nothing more than the "bouche de la loi".

Interestingly, the social sciences were born in France, regardless of whether one considers Saint-Simon or Auguste Comte as the actual true founding father. Without the background of the French Revolution on the one hand, which, if nothing else, also based itself on the "volonté générale" found in Rousseau's *Contrat social* and the philosophical tradition of Descartes on the other hand, this genesis is inconceivable.

However, Émile Durkheim, or the prophet and patron as he was once called, bases his strongest arguments on an entirely different discipline: legal studies. His famous analysis of the "non-contractual elements of contact" touches on an extensive study of French civil law. Even today, his emotive theory of punishment and crime has still not been fully thought-out, permitting Foucault, with his theory of a disciplinary society to also emerge from this tradition.

But the criticism of categorical reason, as formulated together by Durkheim and Marcel Mauss, also remains an epistemological irritation that can be used in discourse with postcolonial thinkers.

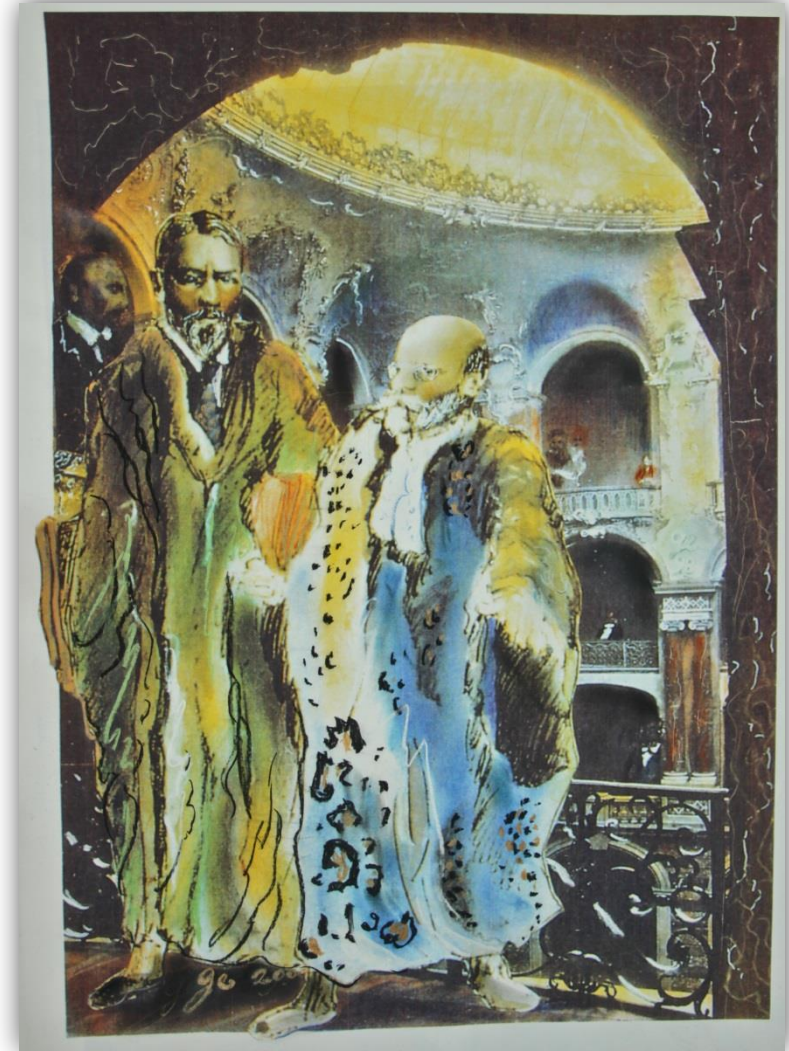
When Émile Durkheim and Max Weber are portrayed together as jurists in Daumierscher Manier in the Theater of Justice, it references relationships (Durkheim's d'outre-rhine) which, on the eve of World War I during the "crise allemande de la pensée française", Durkheim seemed to have forgotten.

As such, this chapter of my exhibition also asks the following questions: How then are the interactions of legal culture's traditions in France and their social science counterparts constituted? And does the fictional social novel in France, together with Eugène Sue, Honoré de Balzac, Émile Zola, etc., play a role here?

Professor Werner Gephart

## I. Weber et Durkheim au théâtre de la justice – Recht als Kultur, 1998 (II)

Based on a drawing by Daumier, Émile Durkheim and Max Weber are clad in legal attire and involved in a dispute that, as we know, never actually took place – a mystery in the history of science, brought together only in the theoretical imaginary by Talcott Parsons or Anthony Giddens. Both figures are projected onto a depiction of the Palace of Justice in Munich. Like a theatre, it shows box seats that – by pure chance – are occupied by Paul Fauconnet and Marcel Mauss.



## 2. Georg, Simmel à Paris, 1997

On the one side, this image possesses a very personal background: it is the view one has from an apartment that the artist inhabited during his professorship at SciencesPo in Paris. On the other side, the Rue Vaneau is a special location in the city, for it is close to the garden at the Matignon and close to some of the former homes of the most famous intellectual figures that lived in Paris: Karl Marx and André Gide. Georg Simmel is brought into this context, for good reason, because he visited the very much adored French sculptor Auguste Rodin, who became very important for his aesthetics. The Museum Rodin is nowadays very close to this place.

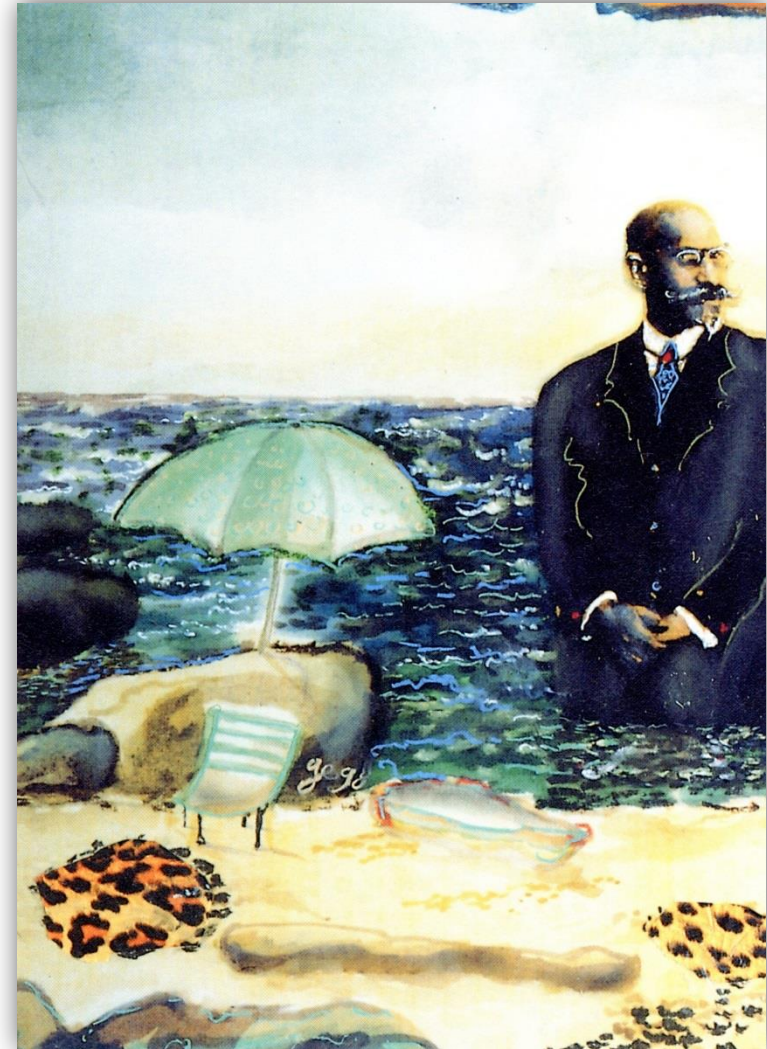
Simmel has never written a treaty about the law, but his *Einleitung in die Moralwissenschaft* (Introduction to Moral Science) and his famous long essay on “Das individuelle Gesetz” (The Individual Law) contain enough material to conceive law as a “forming form of society” in a very fundamental way.





### 3. Le monument au sociologue inconnu (Robin), 1998

In the age of commemoration and musealisation, one may be tempted to raise a monument not only for soldiers, but also for sociologists, a discipline which has been under threat for some years all over the world! Here, a certain M. Robin, member of the *Année sociologique*, who left no remarkable traces on the history of the social sciences, remains alongside emblems of vacations in a landscape that was the territory of the intellectuals of the Third Republic, namely “La Bretagne”.



#### 4. La famille nucléaire, Émile Durkheim, his family (with a Dogon sculpture), 2013 [mixed media]

Marriage and familial relations were allotted much space in the *Année sociologique* (1898-1912), which was edited by Émile Durkheim and must also be regarded as one of his main works. Hence, this prompted Claude Lévi-Strauss to dedicate his groundbreaking ‘Anthropologie structurale’ to Durkheim, whom he considered to be the “real” author of the recensions that constituted a kind of “studio” of contemporary ethnology.<sup>2</sup> The numerous reviews can be reconstructed into a sociology of family that goes beyond the fragments found in ‘*Famille conjugale*’<sup>3</sup> and the corresponding passage in ‘*Division du travail social*’<sup>4</sup>. The introductory lecture to the ‘*Cours de science sociale*’ in Bordeaux, however, with which a lecture series on the sociology of family was opened, is particularly insightful.

Durkheim selected “family” as a thematically and didactically appropriate subject to explain the fundamental problem of sociology, i.e. the changing forms of solidarity from mechanical to organic solidarity. In order to exemplify this structural change, Durkheim turns his attention to the group that is both the simplest and the oldest: family. In a first step, Durkheim develops a “model” of family

elements. One fundamental distinction is that between goods and persons. Durkheim arrives at the following picture of structure and functions, in which the aspect of exchange and barter is further systematised. According to this scheme, the cycle of goods can be differentiated from the cycle of personal relationships, as parents and children distinguish between their respective group of relatives and the state or pre-statal collective order.

In this picture, however, foreign elements are inserted: on the one side, a *giovane* who does not want to leave his familial home, bears an infantilising “dummy” in his mouth and, on the other side, an African family model, that is reduced unexpectedly to what Durkheim called the “*famille nucléaire*”.



<sup>2</sup> Cf. also Lévi-Strauss, Ce que l’ethnologie doit à Durkheim, in: *Annales de l’Université de Paris I*, 1960.

<sup>3</sup> Emile Durkheim, *La famille conjugale*, published posthumously in: *Revue philosophique* 90, 1921, pp. 2-14 (reprinted in : *Textes 3*, Paris 1975, pp. 35-49).

<sup>4</sup> Cf. Emile Durkheim, *De la division du travail social*, op cit., pp. 184 sqq.

5. Michel Foucault au panoptisme – in the centre of the “Panopticon or the Inspection-House”, 2000 [mixed media]

Foucault’s discovery, if not obsessive treatment in *Surveiller et punir*, of what he calls the microphysics of power (in particular following *Discipline and Punish: The Birth of the Prison*, New York: Pantheon 1977) led him to Jeremy Bentham’s model of the universal “Penitentiary Panopticon”, in which the latter himself is now placed by the artist as a controlling observer of the system.



## 6. Le suicide. Étude de sociologie, 1997

In his famous study “Le suicide” (1897), Émile Durkheim delivered a complex model for explaining different suicide rates in society. His interest was spurred not by individual suicide as such, but by suicide rates as indicators of a moral crisis in society, especially in the type of the “individualistic” and the “anomic” suicide. Here, the faceless beauty, thereby representing a statistical item, is throwing herself from a rock in a suicidal manner.

The sea and mountain landscape is done in an ornamental way, appealing to the ornament as a crime and its inversion (see Artwork 7).



## 7. On the shoulders of giants or crime as an ornament, 1998 / 2005

Referring to a theme from Antiquity – the exciting history of reception, described by Robert K. Merton – it is at first unclear in this depiction on whose shoulders the gentlemen standing and just how far can they see from their perch. Upon closer inspection, it turns out to be the second generation of the Durkheim School (Bouglé, Robin, Lapie and Lévy-Bruhl) that came together in the *Année sociologique deuxième série*. They braved the leap across the Atlantic.

In a second dimension, crime and punishment is represented in a way that allows for inverting the famous words of Adolph Loos, calling the ornamentation culture of Vienna a “crime” (*Das Ornament als Verbrechen*), into its opposite, namely the crime as an ornament. For this very reason of multiple meaning, it was chosen to “decorate” the wonderful treaty *System der strafrechtlichen Zurechnung* by Günter Jakobs, Senior Fellow at the Käte Hamburger Center.



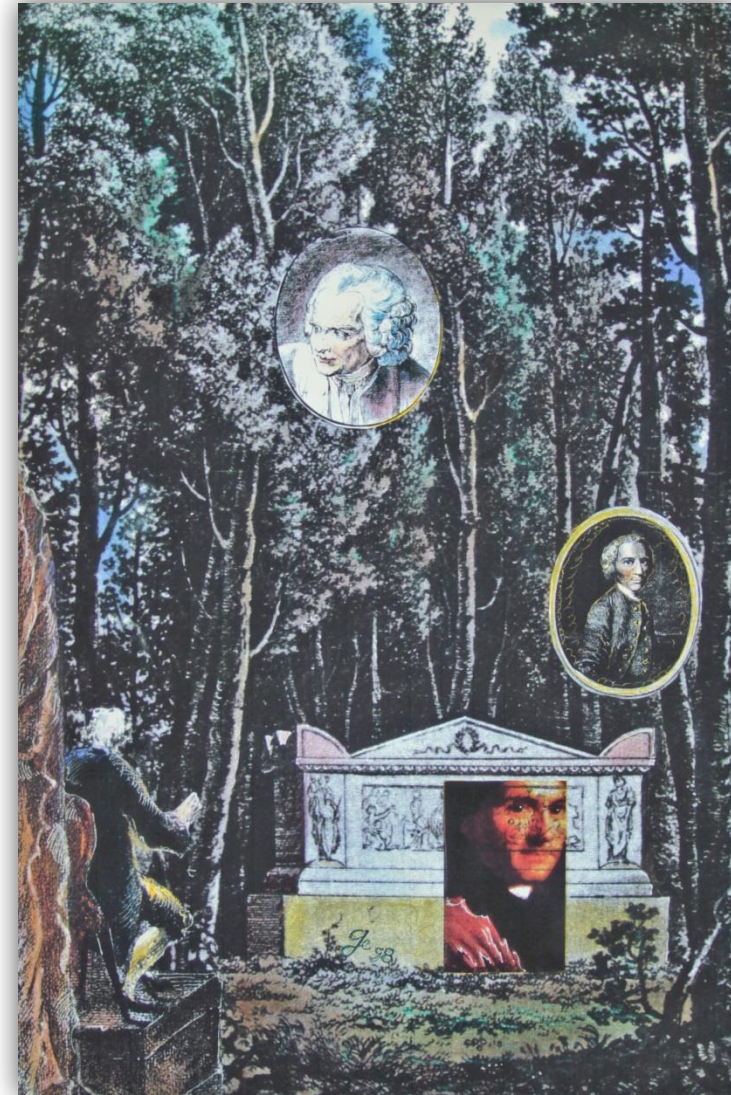
### 8. Rousseau, l'amant de lui-même, 1998

In his Latin thesis, Durkheim was aware of Rousseau's role as a precursor to the social sciences. The title refers to Rousseau's theatrical essay "Narcisse ou l'amant de lui-même", written at the age of 18.

In the essay, Lucinde imagines inducting her overly effeminate brother Valère on a programme of "masculine reasoning" using a painted portrait in which she garnishes his feminine facial features with jewelry and a new hairstyle – something which symbolises only a deeper truth of the female soul in a now masculine figure: "Valère est, par sa délicatesse et par l'affectation de sa parure, une espèce de femme cachée sous des habits d'homme, et ce portrait ainsi travesti, semble moins se déguiser que le rendre à son état naturel."

Entirely altruistic is certainly not the male brother's travesty to the true nature of his feminine parts, as they themselves hereby hoped that Angélique, the brother's future spouse, would prove to be an educational service that was hoped to keep her – Lucinde – distant from the courting Léandre.

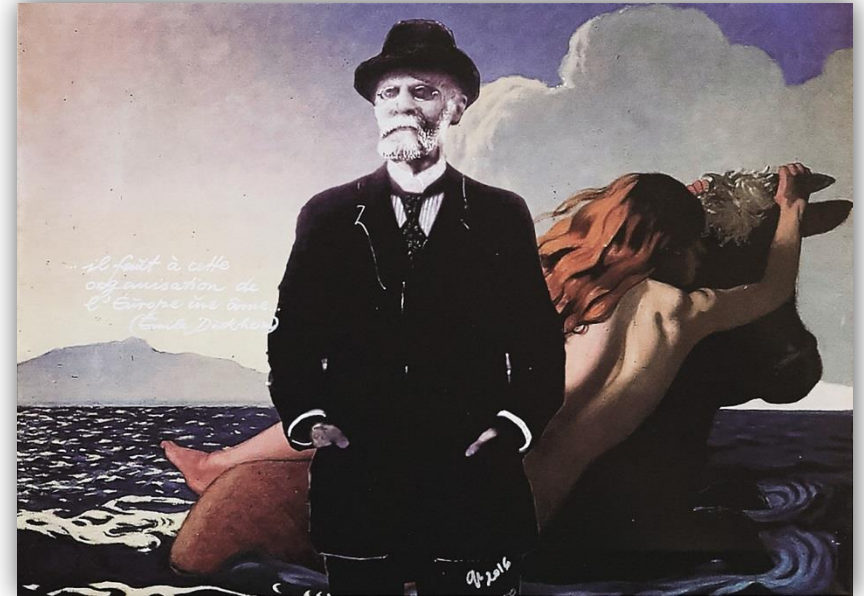
But this scheme takes a turn of course: the portrait, meant to be a caricature, becomes an actual possession of the dear Valères once the spectators learn of his narcissism. This narcissism attaches itself to a separated object of love, which represents nothing more than his other "I", his doppelgänger.



## 9. L'âme de l'Europe (Remarques d'Émile Durkheim), 2016

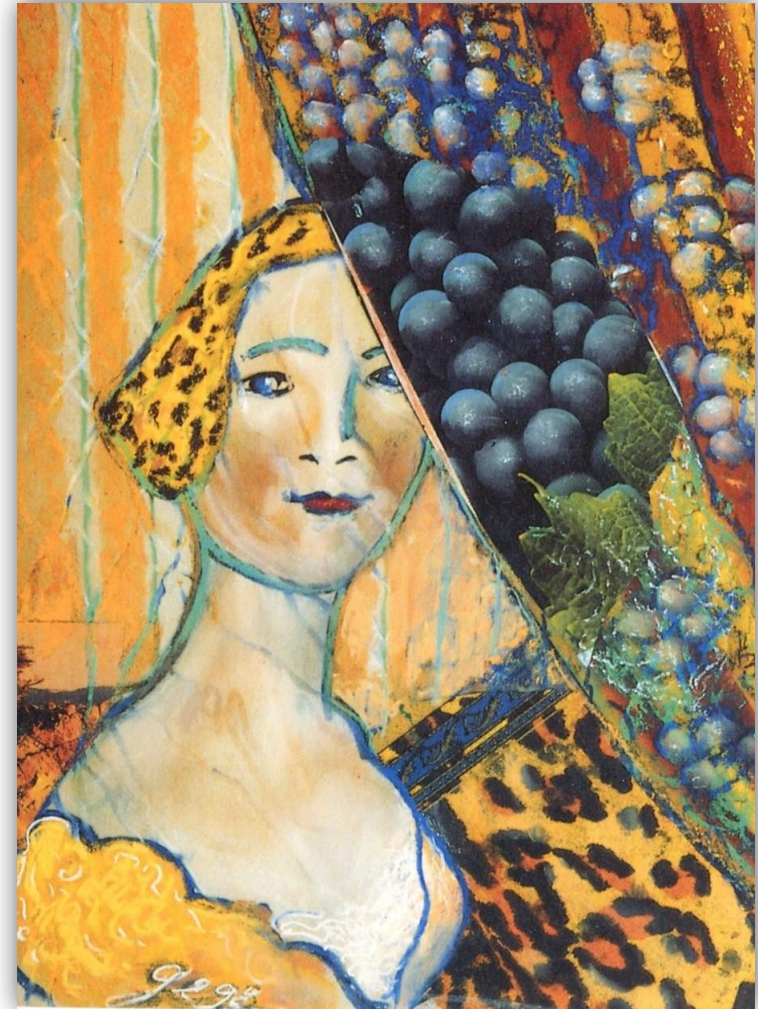
In his insufficiently known analysis of Europe from his lectures on socialism, Durkheim points with visionary power to a fundamental lack in the construction of Europe: the emergence of a “collective consciousness” or, as he said more poetically, the lack of a “soul”: "Autrement dit, ce n'est pas assez d'organiser la vie économique de la société européenne, il faut à cette organisation une âme, c'est-à-dire un corps de doctrines, de croyances communes à tous les européens, et qui en fasse d'unité morale."

Against this backdrop, Durkheim stands near the sea looking at an indefinite European public with the mythological elements of Europe behind the bull and the lady as painted by Félix Vallotton.



### 10. Clothilde de Vaux, 1998

The “saint” of positivism is presented here in her fresh beauty, whereas the yellow curtain hides her real feelings towards the founder of positivism, Auguste Comte, whom she formally rejected. Her immaculate décolleté may also hint at a hidden sensuality.





## 11. In writing Auguste Comte always looked at himself, 1998

Whoever visits the rue Monsieur le prince, No. 10, will discover not only the bouquet of flowers that Comte offered to Clotilde de Vaux but also the mirror he looked at when conceiving his famous law of the three stages, advancing from metaphysics to theology and leading to positivism. This positivism turned into the invention of a religion, with peculiar rites, symbols, holy times, a new sacred calendar and holy spaces as the “catéchisme positiviste” in this painting indicates.

As a founding father, Comte was influential not at least for Durkheim, foreshadowing the main structural variables of “system size” and “moral density”, though leaving open the question of how modern societies may integrate. Durkheim’s answer was: by way of legal orders, avoiding states of anomie and despair...



**12. De quelques formes primitives de classification or under the tree of knowledge (Durkheim & Mauss), 1999/2013**

Durkheim and Mauss are located in a Rousseauian tropical landscape on which these ‘arm chair ethnologists’ never set foot. In a place of wild thought, seated beneath the tree of knowledge, they are nevertheless aiming to achieve “knowledge of the world”, as indicated by the journal *Le Monde*.

According to this image, as observers of the “formes primitives de classification” (*Année sociologique*, 1903), we suspect them of clinging to their Eurocentric classificatory scheme. But how to define the world, through what kind of lenses? Are the postcolonial critics right? And what does it mean for conceptualising the law in a global context?



### 13. Marcel Mauss – the nephew, 2000

The letters written by Émile Durkheim to his nephew Marcel Mauss (*Lettres à Marcel Mauss*, ed. by Philippe Besnard) give us a colourful image of a mixture of family and professional concern for the moral and professional evolution of his élève who became one of the most impressive figures in sociology, anthropology and the comparison of civilisations. He would have been capable of writing the study on “Law as Myth” and the principle of reciprocity in law (in a way he realised this in his famous essay “Le don”).

Here, the commencement of a letter to his uncle (“Mon oncle”) is literary inserted into his mouth!



#### 14. Les rêveries du sociologue solitaire 1997-1998

By way of alluding to the “Rêveries d’un promeneur solitaire”, one may remember the location of nature as the space of finding one’s identity: “Ces heures de solitude et de méditations sont les seules de la journée où je sois pleinement moi et à moi sans diversion, sans obstacle, et où je puisse véritablement dire être ce que la nature a voulu.”<sup>5</sup>

To have taken part in this production of uniqueness fascinates the sociological observer who surmises Rousseau as a figure, a theatrical projection of Narcissus and Jean-Jacque’s “Real Person”, in which one knows at the same time that he is concurrently the author that postulated the rising of the “I” as a community fiction in the *volonté générale*.

In this century, or possibly even in this millennium, who could have unclasped a similar tension of a claim to objectivity and phantasies of forming communities as Rousseau? Durkheim’s central question in “Division du travail social” appears to have lip-read the works and person of Jean-Jacques Rousseau when he raises the conundrum: “Comment se peut-il que tout en devenant plus autonome l’individu dépende plus étroitement de la société?”



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<sup>5</sup> Vgl. Rousseau, *Les Rêveries du promeneur solitaire*, in: *Oeuvres complètes de Jean-Jacques Rousseau*, Bd. I, Paris 1959, S. 1002.

## 15. Jacques Derrida with his own handwriting, 2014

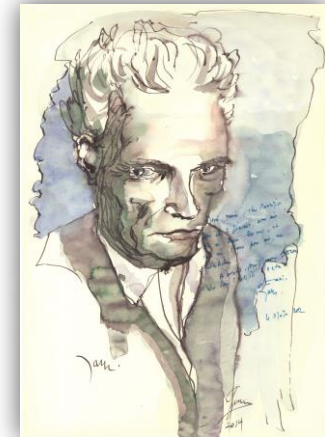
In his deconstruction of the law, Derrida refers to the ‘mystical foundation’ of the law. According to him, Pascal and Montaigne were witnesses of a ‘demystification’ of the law that sees the foundation of the law in no other mystery than its own facticity. If we follow reason, he argues, then there is nothing that is in itself just. “La coutume fait toute l’équité, par cette seule raison qu’elle est reçue. C’est le fondement mystique de son autorité.” (Pascal) When reading Montaigne, the results are no less disillusioning: “Les Lois se maintiennent en crédit non parce qu’elles sont justes, mais parce qu’elles sont Lois. C’est le fondement de leur autorité, elles n’en ont point d’autres” (Montaigne).

Derrida does not leave it at that, but sees the reference to the mysticism of the factual as an indication of another ‘force’ or ‘force de droit’. According to him, the process of the formation of the law implies another kind of force: “non pas cette fois au sens où le droit serait au service de la force, l’instrument docile, servile et donc extérieur du pouvoir dominant, mais où il entretiendrait avec ce qu’on appelle la force, ou le pouvoir ou la violence une relation plus interne et plus complexe.”

“Le discours rencontre là sa limite: en lui-même, dans son pouvoir performatif même.”<sup>6</sup> Or else, as in Habermas, following John Searle and Austin, language has to shoulder the burden of the mystical foundation of law, and as a result of a reversal of a ‘linguistification of the sacred’,<sup>7</sup> language itself becomes sacred. Here, the illocutionary

‘force’ of a speech act is supposed to achieve the miracle of a binding rule of law!

This is the act of deconstructing the law, tracing and proving the violent origin of its respective circles and loops of reasoning. This deconstruction reaches its own limits whenever new bottomless acts of foundation, whose nature – in contrast to legal positivism – does not unfold in *pure* force but points towards a further dimension of force, which leads it away from facticity to a non-deducible sphere of validity. Violence is closely associated with the ‘sacred’,<sup>8</sup> a non-justifiable ‘justice’ such as that which can be produced by religions but not by secular systems.



<sup>6</sup> Ibid, p. 942.

<sup>7</sup> Cf. Jürgen Habermas, *Theorie des kommunikativen Handelns*

[Theory of Communicative Action]

<sup>8</sup> Cf. René Girard, *La violence et le sacré*, Paris 1972.

## 16. The Deconstruction of Justice, Installation, 2016

The installation responds to the theoretical claim of Derrida (see Artwork 15). But to where does it lead? To a sphere of the Sacred? To pure violence? Or to the Violence and the Sacred in René Girard's sense?

Separating the classical elements of the image of Lady Justice, the blindfoldedness, the sword, the "bouche de la loi", the absence of the scales may lead us to new questions about the hidden emblematic context (see Peter Goodrich) of the *obiter pictum* of the law...



## *The German Tradition*

German intellectual history is burdened with the question of whether there is a connection between German Idealism and the horrors of the Nazi period. In this vein, even Max Weber was partly accused of having offered a prelude to the role of the dictator in Nazi-Germany in his sociological analysis of charismatic leadership.

The images on display here cannot provide an answer to the question above. They present Weber between law and substantive justice who referred to Emil Lask's idea of "Geltungsarten" (varieties of validity), making eulogies about the "formal qualities of modern law", which are sometimes misread as a plea for simple positivism.

The images also show the "Volksgerichtshof", horrible enough and still thought to be part of the law. Inspired by an artwork of Marcel Odenbach, which my Center discussed with him at the Kunstmuseum Bonn, I have tried to represent this horrible figure. While trying to seize the Nazi-red on the paper work, I learned a lot about how close this colour is to blood.

Weber's role in the birth of the social sciences should not be underestimated, and his heritage is manifold. He certainly brought forward legal thinking and the role of judicially conditioned concepts as the basis of sociological categories. That is why one can speak of a birth of the social sciences out of the spirit of the law in Germany. But what kind of legal culture is Weber referring to? It is the science of the Pandects which he perceives as the culminating point of legal rationality. This sounds so deeply culturally-biased that one wonders how much Weber went beyond the occidental world to travel in China, Japan, India and

the Islamic world in his writings on the law as part of "Wirtschaft und Gesellschaft".

One must note: only a very few poets of the German language did not study the law: from Goethe to Novalis, from Eichendorf and Grabbe to Peter Handke. The poet jurists are the dominant figure in literature.

Professor Werner Gephart

## 1. Georg Simmel and the philosophy of money, 2002

This image was produced while I was preparing an article for the *Frankfurter Allgemeine Zeitung* on Georg Simmel's famous *Philosophy of Money* (1900). In the chapters about the "Stil des Lebens" (Style of Life), Simmel, the sociological painter of modernity, reflects upon the multitude and simultaneity of different styles in architecture as the signature of his time. His analysis of money as a medium of communication is still worth a detailed reading!





## 2. Franz Kafka with “fear” written on his face, [Mixed Media], 2010/2014

The mystery that is Franz Kafka also contains the question as to the relationship of law and literature. Parables (‘Before the Law’) and novels (*The Castle*, *The Trial*) relate to the topic of law and the “reason” of law. The word “fear” (*Furcht*) is highlighted in his famous letter to his father and is literally written on his face as he is subjected to paternal law in a psychoanalytical sense.

The man from the country had not expected such difficulties. Because while the law is meant to be accessible to everyone at all times, Kafka places a gatekeeper before the door that is supposed to give entry to the law. Only he who receives permission can find the right way to the law – and it is not an easy path. It is not adherence to formal or informal procedures that opens the door to the law, including the bribes which the gatekeeper merely accepts so that the seeker of the law does not feel that he has left anything untried. Behind each procedural hurdle lurks a further barrier to the law, each of which is defended by a more powerful gatekeeper. It is an entry into an area of increasingly dense omnipotence, allowing the seeker of the law to glimpse an illumination “which breaks inextinguishably out of the gateway to the law.” But why is he the only one who has searched for entry into the law all these years, the man from the country asks himself. Before his death, he collects all of his experiences into one devastating question which he has not yet asked the gatekeeper: “Everyone strives after the law [...], so how is it that in these many

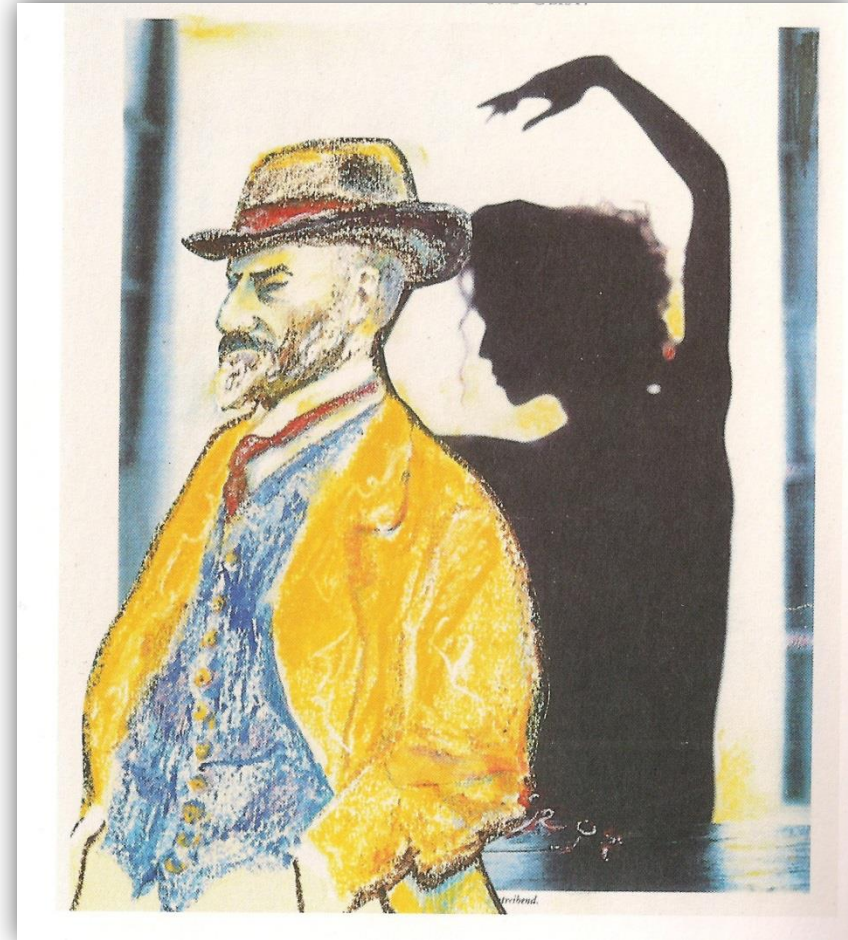
years no one except me has requested entry?”<sup>9</sup> We know the reply of the gatekeeper who indicates that there is no general access to the law, no universal admission, but rather a very individual doorway to the law that only permits a reflection of justice which is unbearable for men. This law, however, is no longer determined procedurally; furthermore, it is not created procedurally nor is it accessible through procedures. As it unfolds in Kafka’s *The Trial*, it evades all procedural rationality. Neither is it simply ‘unjust’ because it contains another scale of justice than the inward-looking tenets of legal validity; it is *the* law that merges with the ‘holy’ and deflects all standards



<sup>9</sup> Franz Kafka, “Vor dem Gesetz” [Before the Law], in: *Erzählungen, Gesammelte Werke*, ed. Max Brod, Frankfurt a.M. 1983, p. 121.

### 3. The Shadow of Max Weber (Für Körper und Geist), 1992/1997

This image, which has become a kind of icon, is the result of a contingent operation: to bring a Weber portrait into the context of the motive of “Körper and Geist” (body and mind) which was so difficult to reconcile, seen in a permanent tension of the spheres, as Weber developed in his famous *Zwischenbetrachtung*. The lady behind him here may be Mina Tobler or, more likely, Else Jaffé (born von Richthofen, the sister of Frieda, married to the famous British author D.H. Lawrence and a relative of the Red Baron). Instead of taking a ridiculous, obscene perspective, this image tries to generalise the role of woman in the legal and the social sciences.



#### 4. The Magician of Sobriety (Sachlichkeit) (Niklas Luhmann), 1997

Whoever had the chance to meet Niklas Luhmann might say that the man would never have agreed to the epithet of magician nor to the implication of being placed in a circus-like scene. The image was created as a present to him, but Luhmann was too sick in order to be able to respond to its suggestions.

As a jurist by training, famous for his sociological analysis of human rights, his profound “sociology of law” (re-edited by Martin Albrow) contains completely new ways of defining the concept of law and a sophisticated analysis of constitutionalism which is met with descriptions of “sociological semantics” like “Love as Passion”, which might be the most famous one. The subtitle “On the coding of intimacy” brings the inner tension between great feelings and a technical language to the focal point.



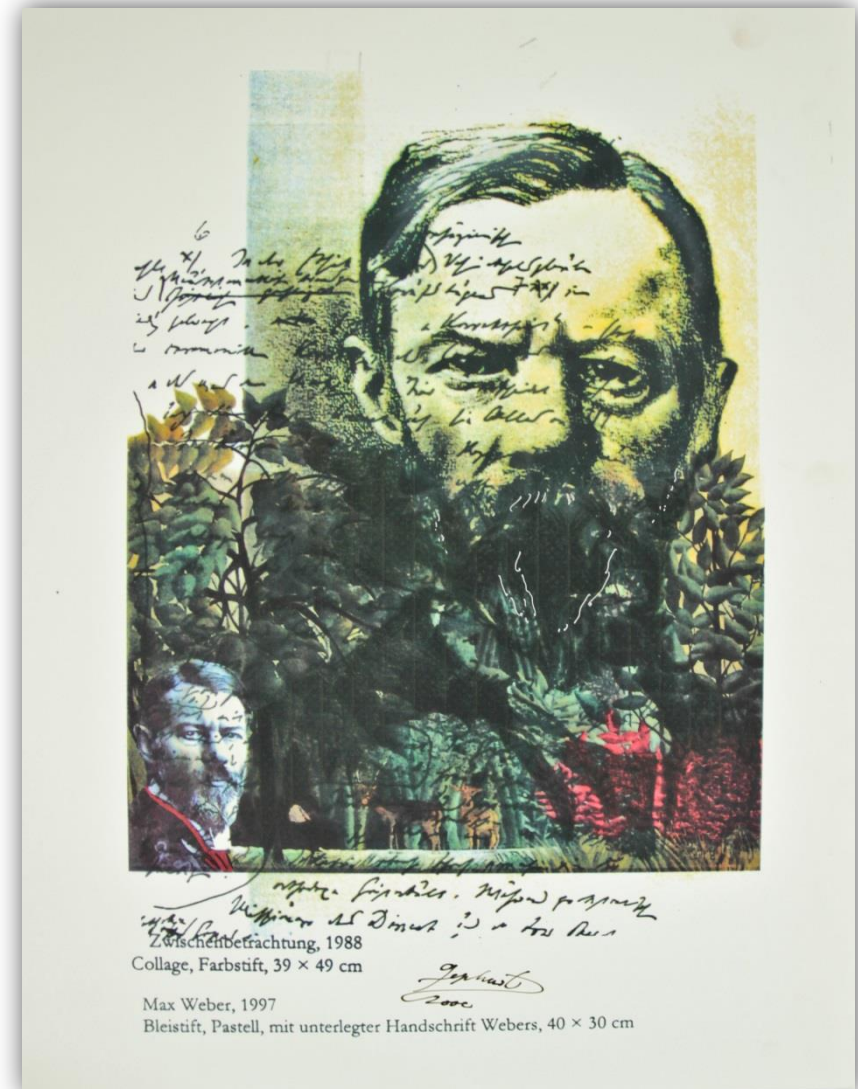
## 5. Between law and substantive justice, 2007-2012

The question as to the relationship between “positive law” and “substantive justice” is one of the eternal issues dealt with by the normative sciences. Weber is placed between these two winged creatures that grasp both the law and the scales of justice. For Weber, the “formal qualities of modern law” are in danger when sentiments and value judgements are imposed over a law he called “rational”. But neither blindness nor ritualistic formalism would fulfill the exigencies of modern law, in which formalism has to be seen in the light of procedural rationality. A lot remains open to interpretation: the angel-like figures of Justice, the scales and the book...



**6. Zwischenbetrachtung der Zwischenbetrachtung (Max Weber),  
1998**

The image appeals to Weber's famous text entitled *Zwischenbetrachtung* (Between Contemplation). In contrast to the modesty of this formulation, many "Weberians" consider it to be the key text for understanding his intellectual project. Ultimately, the reflexive naming grasps Weber's verbal gesture of humility.

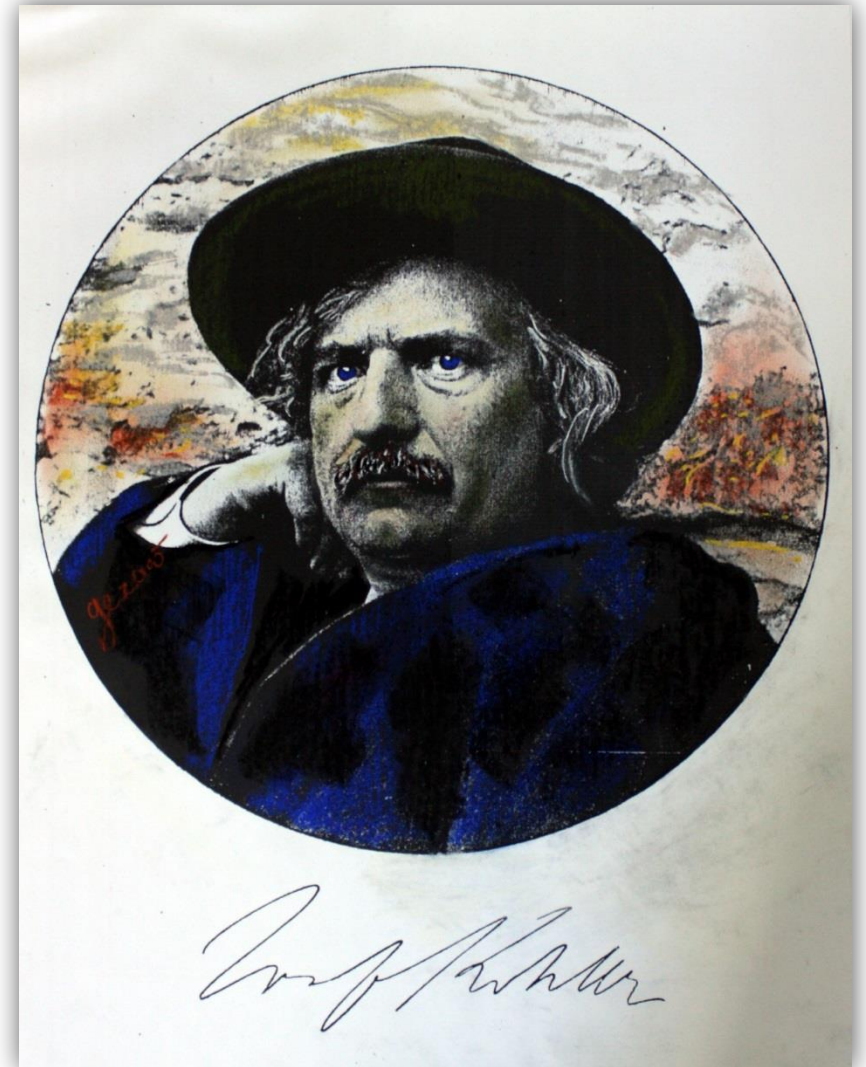


Max Weber, 1997  
Bleistift, Pastell, mit unterlegter Handschrift Webers, 40 × 30 cm

Zwischenbetrachtung, 1988  
Collage, Farbstift, 39 × 49 cm

## 7. Legal Romanticism: Josef Kohler, 2005

Josef Kohler is depicted as a representative of the Romantic stream of legal thought in Germany. His productivity with over 2,500 articles and more than 100 monographs to his name is legend. His vast interests in comparing legal cultures raises doubts about the necessary knowledge one must have. His late turn to a science of legal normative orders from the point of view of the “Kulturwissenschaften” (badly translated as “cultural studies”) also made him suspicious in the eyes of positivistically oriented jurists. However, his contributions to legal doctrine were very innovative and his readings of Shakespeare were unique... There is a reason to celebrate this figure, who evokes some Romantic associations here by way of a hat that was not the typical “Kopfbedeckung” in the Germany of his time.



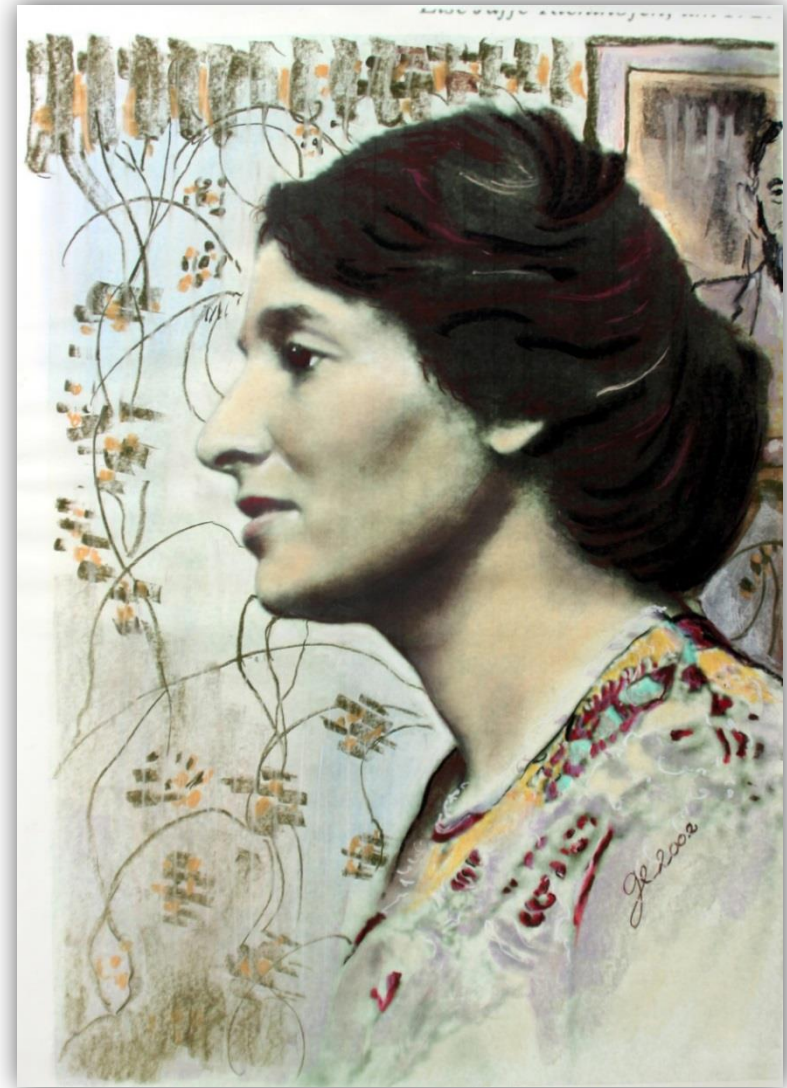
**8. The formal qualities of modern law or § 8 of Max Weber's so-called "Rechtssoziologie" (Weber and Kelsen, with Aurelia as Lady Justice), 2002**

In paragraph eight of his *Rechtssoziologie*, Weber deals with the so-called "formal qualities of modern law". To some critics, this seemed to suggest that he equated the formal with the modern, committing questions of substantive justice to the backwards realm of the pre-modern or even to a misguided sense of modernity, such as one guided by socialist values. In the edition of Weber's legal writings (MWG I/22-3), I was able to show what grave error one succumbs to when stripping the "formal" of its intrinsic procedural value.



### 9. La parure (Else Jaffé, née von Richthofen), 2002

Else Jaffé is presented here due to her extraordinary beauty, without wishing to enter into the debate on her relationship to Max Weber, which was further fueled by the publication of his letters in 2012 (MWG II/9) and some fine analysis by M. Rainer Lepsius. Weber is discretely placed as an icon in a picture frame, whereas the “parure” (jewelry) is reminiscent of Maupassant’s melancholic story of the same name.



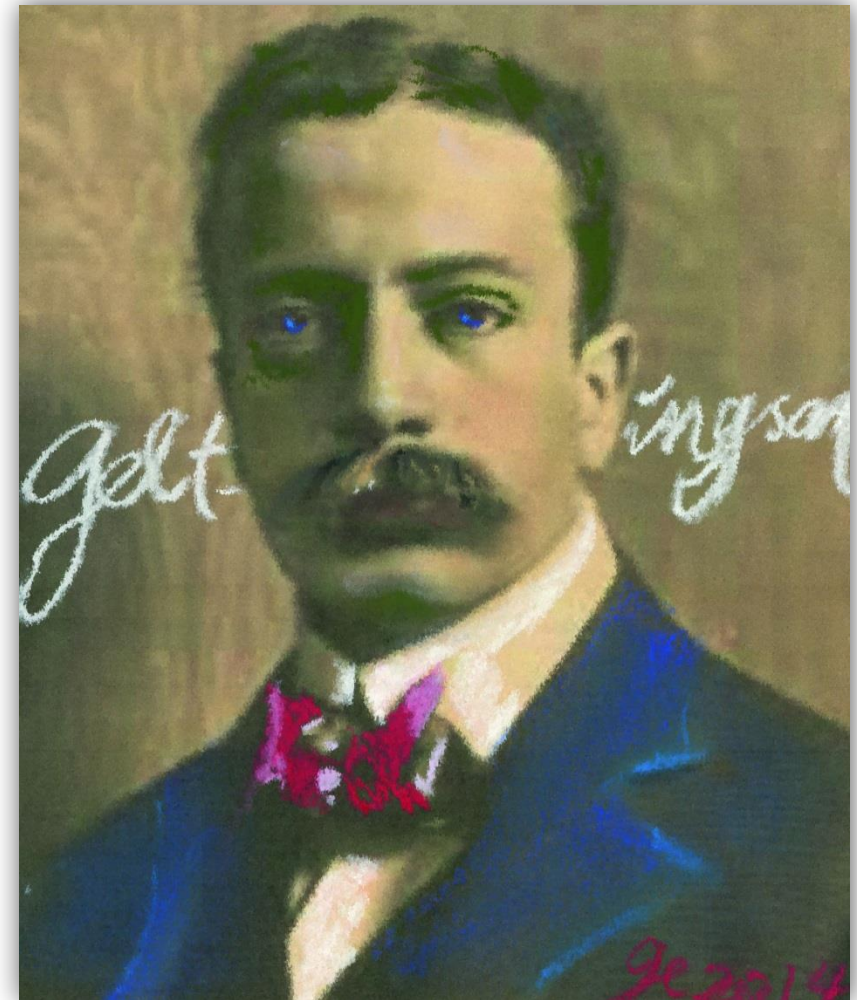


## 10. Validity culture: Emil Lask, 2014

In the preface to the complete three volume edition of his collected writings, Heinrich Rickert expresses great affection for his student Emil Lask, who fell in the Carpathians in 1915: “...some placed their hopes in him as they did in no other of his generation...”. A glance at his 48-page habilitation treatise makes this appraisal understandable, which was not only relatable to Max Weber, but also to Marianne Weber in her glowing praise. She writes: “This longtime friend was a philosopher and a stranger to the world of deeds. His home was in the cool, snow-capped peaks of contemplation.”

Some ideas in Weber’s writings on law seem to stem more from Lask than from the former’s dispute with Stammler, such as the following: the distinction between legal and empirical perspectives of law; the critique of historicism as an “inconsistent, uncontrolled, dogmatic way of valuing”; the view of law as a cultural phenomenon; the praise of formalism in law which – in the works of Cohen – becomes a “symptom of its absolute value-ladenness”; the methodological dualism that “conceives of law either as a *real* cultural factor: as a social process of life, or as a complex of *meanings*, more precisely of meanings of norms pertaining to its ‘dogmatic contents’”; and finally, to the role of law as a pre-conceiver of concepts that is explicitly stated and imminent to Weber’s doctrine of categories.

The image has no foreshadowing of Lask’s premature death, equal to his contemporaries in France and in the UK who all ironically called this horrible war the Great, la Grande Guerra, La Grandeguerre or der Große Krieg.



## 11. Culture of injustice: Volksgerichtshof (Freisler in front of the Svastica and a bust of the dictator) - (Gephart / Odenbach), 2016

Proud of all the Webers, Kelsens, Jellineks, Kantorowicz, Luhmanns, and Habermases that I have enjoyed portraying during the last decades, I never found a way to approach the culture of profound injustice and, even more, the systematic creation of the *homo sacer* who is defined by being the outlaw, eternally before the law. Cultural sociology of law has not brought very much insight to the un-culture of pseudo-legalism, though one could have known much better when the access to public places, swimming pools, public gardens, and parks was prohibited!

The “Volksgerichtshof”, horrible enough, is still thought to be part of our law. Inspired by an artwork of Marcel Odenbach that our Center discussed with him at the Kunstmuseum Bonn, I tried to represent this horrible figure. By the way, when trying to seize the Nazi-red on the paper work, I learned a lot about how close this colour is to blood.



## ***Introduction to Global and European Traditions***

Does globality change our categories of thinking about the world? Do we have to throw away the old-fashioned categories of the container theorists, as Ulrich Beck once called our much cherished classical theorists Weber and Durkheim, because they never looked beyond the nation state? Do we need a new theory of the social being we call global society? And if economics and society remain the main categories for analysing globality, then what is the role of culture beyond that of McDonaldisation and *la civilisation du Coca-Cola*, i.e. Americanization or globalisation as some say? And last but not least, what is the role of responsibility if the logic of functional differentiation – a term Ulrich Beck rightly borrowed from Luhmann – is one of the main reasons for accountability being shifted from one sphere to the next as no overall system's competence is conceivable and nobody is therefore accountable in this system of structural irresponsibility? These topics are highly normatively loaded and demand normative answers.

By now, it is hard to speak of globalisation without assuming a mocking tone. Glocalisation, grobalisation, McDonaldisation, globalisation of nothing – the list of neologisms continues unabated without conveying any meaningful information. In a ritual manner, one has finally called the evil by its name and found an excuse for everything undesirable taking place in our world. The verve with which globalisation is represented on the marketplace of novelties gives rise to the suspicion: are we merely dealing with a passing theoretical fashion?

The global age is represented here – with Martin Albrow alongside Anthony Giddens, the founder of this debate – found on an image that constructs the cover of the former's last book. No systematisation of the regions of world society should be expected in this chapter, but rather perspectives through which one can look at different regions of the world – from India to Russia, from China to Japan – accompanied by a multitude of Justices, representing a global legal pluralism.

Professor Werner Gephart

**1. Babylonian Production of Normativity in Europe (with the help of Pieter Bruegel), 2016**

It is interesting that one of the recurring critiques of political Europe is seen in the non-transparent production of a multitude of legal rules that overlay national legal cultures. In this image, the Babylonian Tower on one side stands for the multiple languages and cultures, in which an abstract scheme of the non-production process is inserted. As with *Brexit and its spectators* [Artwork 2 in the Anglo-American Tradition series], Great Britain is represented by the hot air balloon drifting away to the left. Weber, meanwhile, is on the right, critically observing the scene.



## 2. Multiple Justitiae, 2016

Justitiae is represented in the iconological occidental tradition as a woman accompanied by different items such as the sword, scales and blindfold. All this has been constructed to a kind of ideal-typical figure, originally taken from an Aurelia representation. But in this picture she is projected into the dark realm of normativity where she seems to be groundless, floating in the dark air in different sizes. As this insinuates, however, a shared meaning in a global legal world is also to be understood.



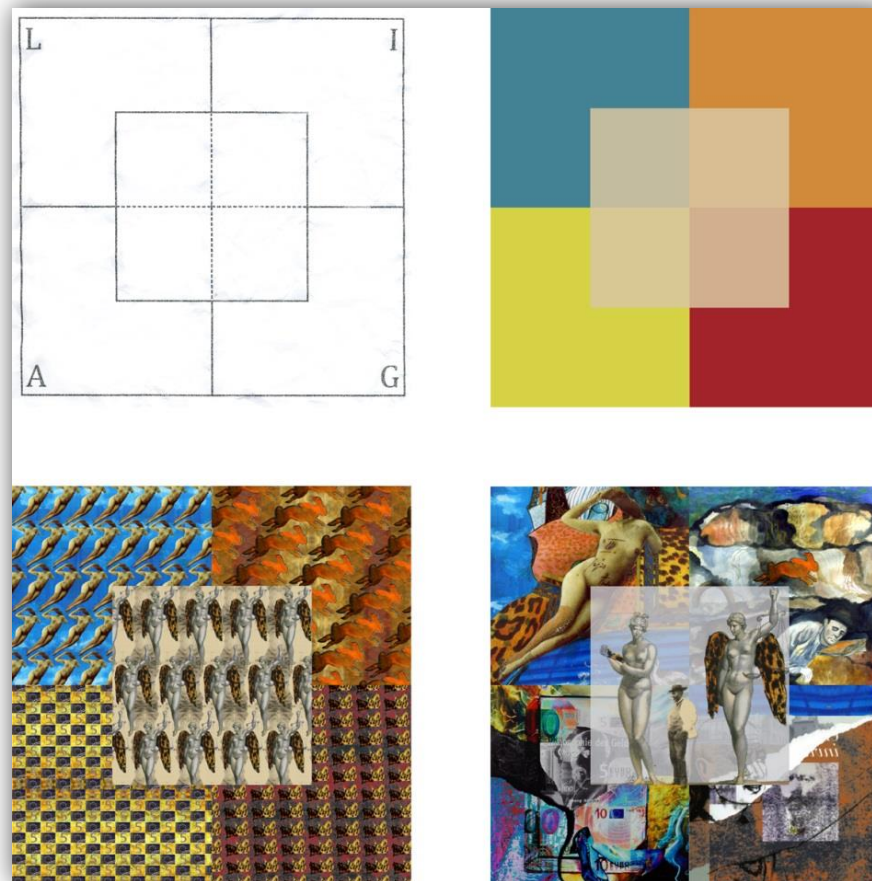
### 3. The Altar of Abstraction, 2016 [on canvas]

My starting point of this image had been a conference, organised by the Käte Hamburger Center for Advanced Study in the Humanities “Law as Culture”. Abstraction is such a *phénomène totale*, as Marcel Mauss put it, that we can scant make out a sphere of life or art in which the idea of abstraction is not relied upon. Calling a theory insufficiently “abstract”, let alone “narrative”, was a devastating judgment signifying that it did not possess clarity of style or the necessary reduction of complexity demanded by the “high altitude flight” of abstract thought: “The flight must take place above the clouds and a pretty dense cloud coverage is to be expected. One must rely on one’s own instruments” (Luhmann, *Social Systems*).

The principle of abstraction is generally – almost as a matter of course – taken for one of the great achievements of the Occident. It is found not only in the rationalisation of law, but also in philosophy and artistic forms of expression including not just painting, but also literature, poetry, music, architecture, sculpture, theater, etc. But to what extent can this really be considered a genuinely Western invention that, in its social dimension as objectification or estrangement, simultaneously also casts a spotlight on the dark side of modernity? And to what extent is this an unstoppable evolutionary trend, as if there were no re-figurations or as if there was no need for an abstract concreteness?

The abstraction mode in this picture starts from the highly non-concrete form of Talcott Parsons’ four-function scheme that any system has to fulfill in order to survive: Latent Pattern Maintenance (L), Goal Attainment (G), Integration (I) and Adaption (A). My next

step was to transfer this into a kind of “figurative abstraction” onto pictures from my portfolio associated with culture, community, polity and economy. This turned me towards a serial abstraction, as in ornamental cultures, in order to culminate in a multi-chromic form of colourful abstraction.



#### 4. Weber in Japan, 2002-2009

The Weber-figure is confronted with a famous engraving by Utamaro, one of the most highly regarded practitioners of the ukiyo-e genre of woodblock prints, known especially for his portraits of beautiful women, or bijin-ga. Owing to his travels around the world, Weber has adapted so closely to Eastern culture that his eyes in this image look more Japanese than those of a traditional occidentalist.



## 5. Aktaion in japanischer Flusslandschaft II, 2014

The image was conceived as the cover of a book entitled *Rezeption und Rechtskulturwandel. Europäische Rechtstraditionen in Ostasien und Russland* edited by myself and Martin Schermaier.

Legal cultures are neither distinctive formations nor do they follow an autopoietic logic. In regard to this however, just as the dynamic contact between and intertwining of legal cultures is to be considered (whether in dialogue, diffusion, transplantation, conflict, interaction or irritation) highly controversial legal debates exist. This book dedicates itself to the historical processes of the reception of Roman law and other European legal cultures in Japan, China and Russia, outlining the area of conflict between normative unification and the persistence of cultural peculiarities. Finally, the contributions from a law-as-culture paradigm perspective are observed, and the question is asked as to what extent reception research can be read as research into legal culture.

Here the mythical figure Actaeon turns towards his own dogs who Diana has sent to attack him as punishment for the incredible fact that he dared to observe the goddess while she was bathing (of course, he did not ask permission). This image is transplanted onto a landscape by Hokusai and framed by some pop art elements made of leopardprints. My painting explores the transplanting of normative orders, visualised here by a transferring of iconologically diverse traditions between the West and the Oriental world.





**6. Max Weber in China (Qui Jin), 2012 [Mixed Media]**

Weber's study on China is famous. On his journey around the world, he could not leave China aside. We assume that Weber would have been fascinated by Qui Jin, the revolutionary, had he met this contemporary of his. Weber was well-versed enough in Taoism and Confucianism that there is a renewed interest in Weber's writings in present-day China, and his works are successively being translated. Here, Weber's doubtful gaze meets the assured one of Qui Jin, giving rise to a certain tension.



## 7. Conflict of Legal Cultures (with Ship Sculpture), 2009/2011

Here, the artist's handwritten notes on a talk that referred to legal conflict are inserted into this picture as inscriptions into our image of the world, trying to represent the necessary balance by way of posing a thoughtful Weber on a feather while a Dogon ship transports some legal transplants.



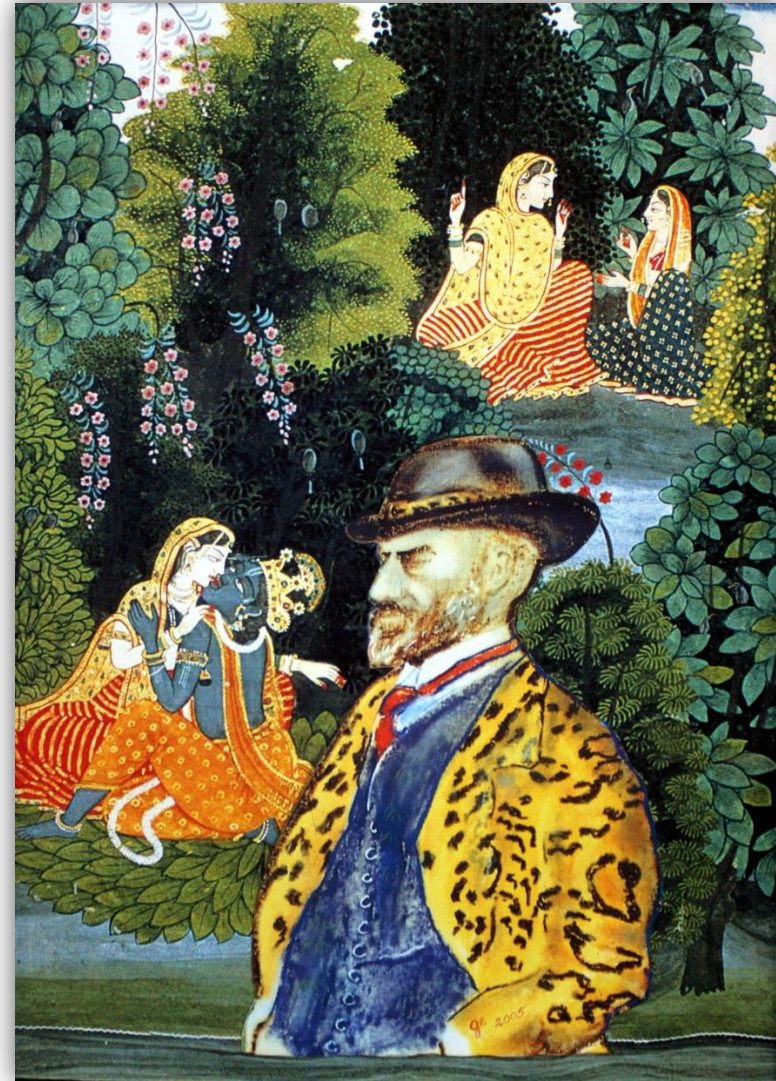
### 8. Weber in Africa, 2000/2003

References to sub-Saharan Africa are sparse in Weber's work. However, Weber did discuss "African jurisprudence" in his *Rechtssoziologie* (the subject of Artwork 8 in the German Tradition Series, Floor 3). Phantasms of the European observer of the world are also directed at Africa. Clad in a leopardprint coat, Weber has already hermeneutically adapted himself to the "Dark Continent". The backdrop of the Rousseauian tropical landscape evokes the imagination of the European who has not yet freed himself from Orientalism and Africanism.



### 9. In the enchanted garden, Max Weber in India, 2005

Weber was fascinated by the enchanted garden of India. We know from his letters that he longed to be there while absorbed by the Great War. Since he was particularly moved by the sociological analysis of the erotic sphere (also biographically) this now fulfilled dream of Weber's is represented here. Whether this representation goes so far as to enlarge Weber's concept of the law by embracing "dharma" as a key concept of normativity in Indian society remains open. His gaze may be shaped by occidental lenses, but he is deeply involved in the otherness of Indian society.



**10. African Jurisprudence (three sages with sculpture), 2013 [Mixed Media]**

This piece was first painted in watercolours based on a wood statue by Maula (which is in the artist's possession). The debating sages (magicians, or those trained in medicine or law) are joined by a woman carrying water who is possibly the subject of dispute. It is a figure from Dogon culture (Eastern Mali). The image simultaneously describes a gap in our knowledge, which continues to shield the "Dark Continent" from sight, but we are more and more aware of the fact that dispute resolution by way of "mediation" may find an interesting model in Africa.



## 11. *Ius utrumque*, 2002

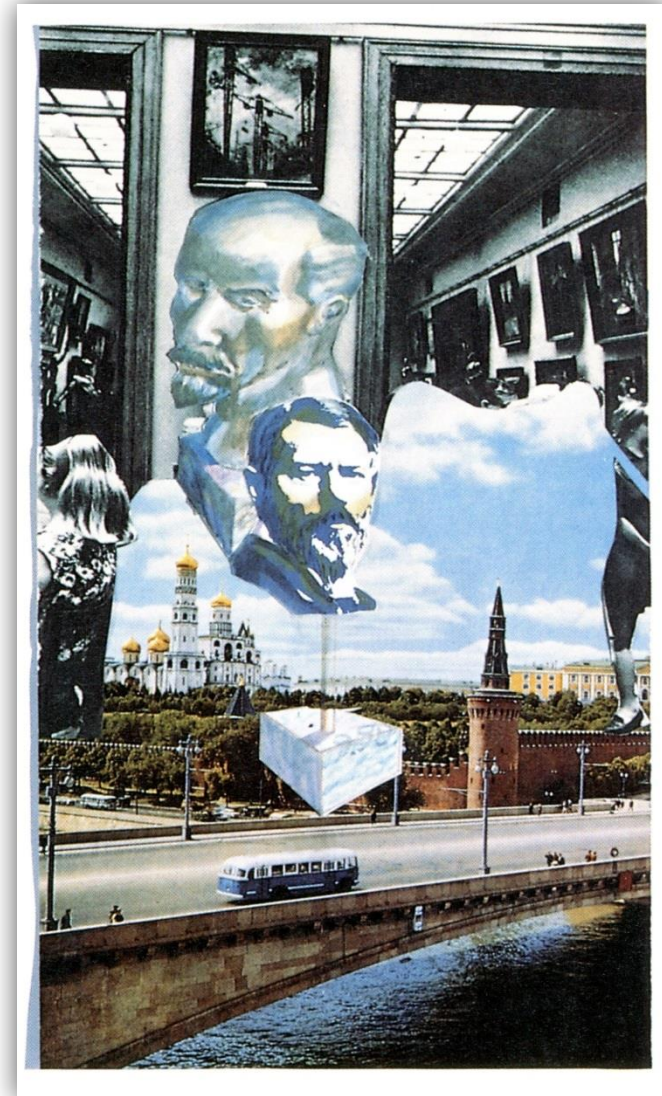
A Doctor of Canon and Civil Law is a scholar who has acquired a doctorate in both civil and canon law. The degree was common among Catholic and German scholars of the Middle Ages and in early modern times. These laws were, together with feudal law, the constituent parts of the *Ius commune*, being a pan-European legal system that held sway over Europe from approximately the 12<sup>th</sup> through to the 18<sup>th</sup> centuries.

How can these two pillars of normative knowledge, which shaped the modern world, be represented? Here I take the relationship literally, projecting two columns onto an Italian landscape, a place from which important impulses were drawn through Roman law, on the one hand, and, by way of the Pope's normative reign, on the other.



## 12. Lenin, jealously observing Weber in Moscow, 1990

From Vienna, I turn to Moscow where I had the privilege of teaching at the former Comsomol School in 1990 and 1991 during the fever period of Glasnost and Perestroika. Here, Lenin observes Max Weber with jealousy. Weber became readable with Glasnost, allowing the Protestant ethics to escape from the poison cupboard of the Nomenclatura.



**13. Russian Legal Culture – Malevitch meets Tolstoi or some nihilistic tradition in Russia, 2016 [Mixed Media]**

With this work I wanted to visualise a discussion about Russian Legal Nihilism. Julia Mehlich, a fellow at our Centre in Bonn, worked on this topic in a tradition that includes literature (Tolstoy, Dostoevsky) and philosophers of neokantianism, like Kistiakowski, Stpuhn and others. I was fascinated by her cultural analysis and a very controversial debate that it inspired in our Forum Meetings. Following this inspiration, I brought a further discipline into the colouring of the law: the Black Square from 1915 which I used as a kind of background for the small Tolstoy statute, thereby constructing an encounter between Tolstoy and Malevich. (Kandinski's juristic socialisation had indeed brought a lot of colour into the art world, not at least by way of his last judgment).





#### 14. Legal “Kitsch” with Gustav Klimt, 2016 [Object]

If law is aestheticised, we end up with kitsch or legal fascism centered on the production of a more or less tasteful and pretty appearance of legal reality. Meanwhile, the search for truth, the pursuit of the idea of justice or the factual formation of order is made subject to an aesthetical logic. If law not only protects the intellectual property rights of artists, but bindingly prescribes the content of art or selects it through censorship, then art becomes impossible: an iniquity of spheres. And, conversely, if artists no longer know whether they are judge-priests in the realm of the normative or if judges, with their sharp analysis and artful words, wonder whether they are not the real poets to whom linguistic measure is more important than a respect for procedural rules, then law is in danger, too.

Regardless of those warnings, I, myself, have worked out some kind of legal kitsch: The “Fakultätenbild” by Klimt remains one of the most challenging representations of Justice as the accused person is seen at the same time as a victim. Much could be said about this unfortunately lost painting done by the great artist Gustav Klimt. His reception in Vienna and elsewhere is linked with the golden glamour of “fin de siècle” beauties that I am alluding to when imitating the bad manners of some Vienna Kaffeehäuser by applying some golden ornaments on a mug decorated with the *Fakultätenbild*.



### 15. Layers of Legal Cultures (Installation), 2016

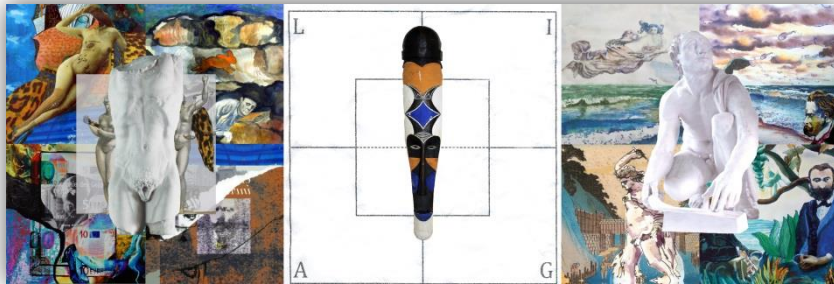
The illusion of abstract thought, so cherished in continental law, is here again disenchanted by way of transferring the metaphor of layers into materiality. Thanks to Professor David Nelken's work, we have got a better understanding of what legal cultures mean in a scientific context. Comparing, analysing and understanding legal cultures is one the great tasks of a cultural sociology of law that tries to understand global legal pluralism.

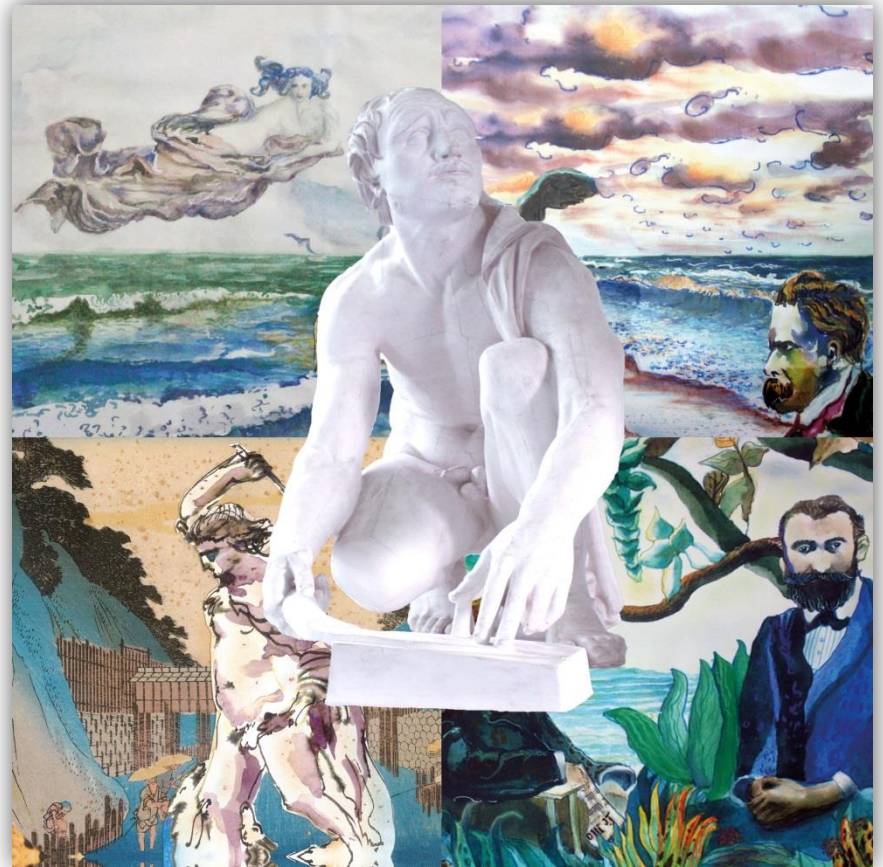
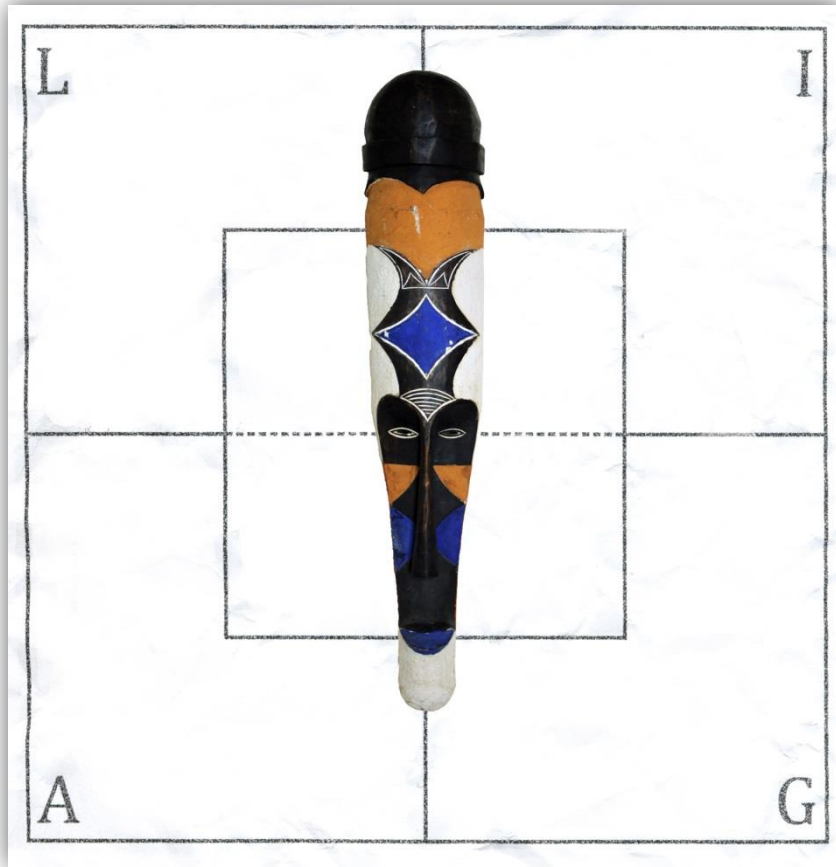
This installation is made of different material layers: cardboard, felt, plastic foam, wood, etc. Their colours, from European blue to Islamic green, represent the tensions that run through the veins of this legal "body", finding inscriptions in Latin, Arabic and German, for example. In surplus, some red traces, resembling the blood that is caused by law and even legitimately used violence, cut across the different layers. Finally, vulnerability, as a recently focused subject of legal thought, is represented by an injured Cockatoo, surrounded with feathers. The balance of justice posed on that block of legal cultures has not yet found its centrifugal power.



**16. La Condition Humaine (with African Mask), triptych, 2016**

I made the first version of this collage in 2015 in the form of a 360cm by 100cm painting. Making the Human Condition proved to be a challenge, and the image remains very mystical to me. To summarise this kind of colouring of the law is very difficult. Therefore I will try to remain tacit! A good friend found it interesting that the different layers of the foreground and the background also represent different levels of violence, punishing scenes of great cruelty in the foreground, and more tranquil scenes in the background, disciplining the chaotic gluing of diverging motives by the rational spirit of sociology, suffering sometimes from the fallacy of misplaced abstractionism.





### 17. Legal Transplants in the Luggage (Installation), 2016

Legal cultures are not distinctive formations and nor do they follow an autopoietic logic. In regard to this however, just as the dynamic contact and intertwining of legal cultures are to be considered (whether in dialogue, diffusion, transplantation, conflict, interaction or irritation) highly controversial legal debates exist.

Here the metaphor of legal transplants is represented through plants, installed in two suitcases which, at the same time, bear some food, sand and holy books. We may imagine how many problems arise when legal concepts travel. Dictionaries, but also cultural and social contexts have to be transferred. The vintage cases here may also allude to the fact that law has to do with memory, with creating identity and mediating traditions. In this manner, the installation aims to appeal also to the senses, evoking travel experiences in vacation times but also the horrors of forced migration and exile.



**18. From Titanic to the refugees' catastrophe, installation with  
4 pictures and broken boat, 2016**

Having lived for a while in the Midwest near the campus of Washington University in St. Louis, I became familiar with the late work of Max Beckmann who, during his lifetime, felt very much underestimated, though he perceived himself to be at the same level as Picasso or Matisse.

His late works were made during World War II and concerned with a major event at that time: the sinking of the Titanic. One of Beckmann's remarkable pictures (top right) can be found here, alongside an image featuring Leonardo DiCaprio (top left) as well as images of refugee painted recently (bottom left and right). These are linked with an installation that represents the boat, the people, and the sunken planks inscribed with Article 16 of the German Constitution, which regulates asylum, and Paragraph 3 of the German Asylum law, which defines refugee status.

The refugee's destiny had nowhere such dramatic grounds and roots than in the German tradition.



## About the Honorary Artist 2016

Professor Werner Gephart is an artist, jurist, and sociologist in the field of law, culture, and society. He is the founder of the University of Bonn's Käthe Hamburger Center of Advanced Study in the Humanities "Law as Culture" and has been a visiting professor in France, Russia, the US, Israel, and the Maghreb. He has held exhibitions in Paris, Düsseldorf, Cologne, Bonn, St. Louis, New York, and New Delhi. In 2014 he was awarded a doctor honoris causa by the University of Turin, alongside Anselm Kiefer. He is The Dickson Poon School of Law's current Honorary Artist.

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## Selected exhibitions

2013: "Under the Tree of Knowledge: The Founding Fathers Viewing the Global World" (New Delhi, February 2013 at the School of the Arts and Aesthetics Gallery, Jawaharlal Nehru University (JNU)) 2002: "Mind, Body and the Text", (New York, October 2002 at the German House Gallery, United Nations Plaza, opening by Prof. Jeffery Alexander, Yale University)



## Exhibitions

- 2016: “Some Colours of the Law”. Upon the invitation of the Dickson Poon School of Law (King’s College, London), an exhibition will showcase works of Prof. Dr. jur. Dr. h.c. Werner Gephart in the East Wing of Somerset House (Winter Term 2016/2017)
- 2013: “Under the Tree of Knowledge: The Founding Fathers Viewing the Global World”, School of the Arts and Aesthetics Gallery, Jawaharlal Nehru University (JNU), New Delhi
- 2012: “Max Weber and the Law”, at the residency of the Käte Hamburger Center for Advanced Study in the Humanities “Law as Culture“, Bonn, Introduction: Prof. Dr. Dieter Ronte)
- 2010: “Recht als Kultur”. “Rechtsbilder” by Werner Gephart with sculptures of the collection of the Academic Art Museum as well as of the South American collection of the University of Bonn, July 2010, at the residency of the Käte Hamburger Center for Advanced Study in the Humanities “Law as Culture”, Bonn
- 2006: Orient/Occident, Tunis, opening: Prof. Dr. Hamadi Redissi)
- 2005: Max Weber und das Recht, University of Trier, June 2005, introduction: Prof. Dr. Uta Gerhardt
- 2003: Ausstellung im Rahmen der Internationalen Tagung “Body as Interface“, Universitätsclub Bonn
- 2002: “Mind, Body and the Text”, German House Gallery, United Nations Plaza, New York, opening: Prof. Jeffrey Alexander, Yale University
- 2002: Exhibition accompanying a lecture on Law in the Sociological Discourse of Modernity, Bloomington, opening: Prof. Marc Weiner
- 2002: Exhibition accompanying a lecture: Collective Symbolism and Community, Macalester College, introduction: Prof. Linda Schulte-Sasse
- 2002: Exhibition accompanying a lecture: The Community and the Flag, Rice University, Houston, opening: Council General von Graevenitz
- 2001/2002: “Max Weber in America and other paintings”, Law School Washington University, St. Louis, opening: Prof. Joel Seligman
- 2001: “Marcel Mauss et son réseau”, Maison des Sciences de l’Homme, Paris, opening: Prof. Dr. Marcel Fournier, Montreal
- 2000: “Werner Gephart. Eine Soziologengalerie” (Вернер Гепхарт. Галерея социологов. Предуповедомление.), comment: Prof. Dr. Alexander Filippov)
- 2000: “Auf den Schultern von Riesen. Die Beobachter der sozialen Wirklichkeit”, opening: Dr. von Wedel, president of the German Federal Court of Auditors
- 1999: “Gründerväter”, University jubilee Oldenburg
- 1998/99: “Neues von den Gründervätern?”, Universitätsclub der Universität Bonn, opening: Prof. Dr. Dieter Ronte, director of the Kunstmuseum Bonn and Prof. Dr. Heijo Klein, Kunsthistorisches Institut of the University of Bonn
- 1998: “Figuren, Landschaften, Intérieurs” in Galerie and Café “Bonngoût”, Bonn, opening: Prof. Dr. Gerd Krumeich, Historisches Seminar Düsseldorf
- 1998: “Meeresbilder” in Galerie and Café “Extro” (Bonn, Opening: Prof. Dr. Detlev B. Linke, University of Bonn)
- 1997: “Founding Fathers“ as part of the 33rd IIS World Congress of Sociology (Universitätsgalerie Köln, opening: Prof. Dr. Erwin K. Scheuch as President of the Institut International de Sociologie)
- 1993: “Max Weber. Das Werk und soziologische Bilder von Werner Gephart”, University Library of the University of Bonn, opening: Prof. Dr. Wolfgang J. Mommsen, University of Dusseldorf
- 1992: “Gründerväter. Soziologische Bilder von Werner Gephart”, 26th German Sociologists’ Day in Dusseldorf, opening: Prof. Dr. Alois Hahn, University of Trier
- 1988: exhibition in the framework of an André Masson-Retrospektive: Werner Gephart, Gouachen, Zeichnungen, Aquarelle (opening: Prof. Dr. Michel Maffesoli, Sorbonne, Paris)