Reply to Bernhard Waldenfels The power of events

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Reply to Waldenfels by Bert van Roermund

Events, Law and (Some) Wisdom in Law Schools

Can law afford to take events into account? A silly question at first sight, until one realises that, invariably, law transforms events into cases as it takes them into account. As a legal subject, if you have no case, you will have no law; and it will be the law that tells you whether you have a case or not. As a legal scholar, if you have no case, you will have nothing to look into. This is the price, lawyers will say, of safeguarding the unity of law – the ultimate precondition of there being a legal order in the first place. This, then, will be my question: can a legal order "handle" the plurality that comes with what Waldenfels presents as "the power of events"?[12] And what follows from that for academic legal education?

For lawyers, law is always positive law, whether they are aware of it or not. Mostly they are completely unaware of it, as it is not what they are staring at but rather what makes them see. For the attentive philosopher, lawyers signal their hang-up with law as positive law, for instance when, in languages other than English, students inform you that they do "rechten" or "iura"; a plural we also encounter in Anglo-American academic titles for lawyers: the double L in LLM, for instance. Laws, indeed legal orders, come in the plural, precisely because they are positive, both in the sense of being posited by authoritative acts of those we call officials or politicians, and in the sense of being contingent on certain data that are believed to be simply there (political, socio-economic or geographi-

12 It is truly a great honour to respond to professor Waldenfels, and the fact that my response is one more turn in a series of communications between him and our research group in legal philosophy over the last few years only adds both gratitude and pleasure to this honour.

cal conditions, for instance). The question of unity in this plurality, therefore, does not ask for a unity that precedes the plurality of laws or law enactments. That would be utter nonsense. Unity in law, as I shall argue, is itself an event, something emerging from, rather than being the product of, the clash of two opposite hierarchies in the relation between law and event. The question of unity only arises and exists in the quest for unity, and the quest is the response to the question.

1 Law Facing Events

Law maintains an uneasy relationship to events, or rather to what is "eventful" about events. On the one hand, it has to deal with events all the time. Both legal scholars and practitioners experience and face the power of events on a daily basis. On the other hand, however, they allow it to enter into legal discourse only via a complex sieve of narrative and normative formats: a sort of deep-structure underlying the surface structure of rule- and decision-making. Let me illustrate this by briefly rehearsing the fourfold root of the power of events Waldenfels explained and analysed in his paper, and bring out its relation to law.

- Portalis, in his *Discours préliminaire* to the *Code civil* at the beginning of the 19th century, famously stressed that the code as a system of rules should never be regarded as providing the solution to the "mille questions inattendues", that would arise in daily practice, and that were bound to require the sound judgement of the judiciary. His observations were not new. They hailed back from Antiquity, as Digests 50.17.1 illustrates: "Not from rules is law to be inferred, but from law as it is the rule is to emerge."[13] Anno 2005, the

13 Non ex regula ius summatur, sed ex iure quod est regula fiat.

exhortation seems as relevant as ever. Recently, my colleague at Tilburg's Faculty of Law, Jan Vranken published a prestigious book (Vranken 2005) that basically conveys the same message in modern times: the preformatted, discursive strategies of law, important as they may be, should not get in the way of judging the "real" issues; and part of what it means to identify the real issues, in terms of facts and interests, is to integrate descriptive disciplines like sociology, psychology and economics into the prescriptive attitude of legal scholarship. No legal problem can be solved by looking at the rule, retrieving a certain semantic content from it, and applying this to what goes on in the world out there. The ensuing discussion in Dutch law journals[14] shows that the point is taken, but mainly as an inspiring overstatement of where improvements are lacking in daily legal practice. As a radical critique of our deeply entrenched concept of law, Vranken's stance is largely regarded as risky, if not dangerous.

- Lawyers are very much aware of what Waldenfels describes as the pathic character of the event: "to whom does that which happens, happen?". Questions of liability in tort, or contract, or even family relationships, for instance, emerge if and only if someone is regarded as "affected", which in many a legal context means "harmed". There are no acts or events that are so to speak intrinsically harmful. They become harmful only when they are qualified as harmful with sufficient persuasive power: someone harmed (or representing someone harmed) argues that harm is done to her or him. Only then, if and when such persuasive forces are strong enough, law goes on to construe a causal

14 Most prominently in *Nederlands Juristenblad*, afl. 36, 14 oktober 2005.

sequence of acts, which will point, eventually, to the agent who has to pay damages. If a claimant would go for a judiciary declaration that some course of action had been "unjust" without claiming that it caused harm, she would not have a case.[15] Moreover, the ensuing decision will regard (or "bind") only the parties involved, even if non-involved agents in the legal community are well advised to take its *ratio decidendi* into account. But then again, it is from the vantage point of the legal system that agents will count as "involved" or not, e.g. by officials exercising "discretion" as to whether someone is or is not a citizen of the UK or the EU[16], whether or not a group of people is granted a class action in court, or what cut-off date will count for attributing or exonerating liability.

- Lawyers will readily acknowledge their practice as dealing with and contributing to "an intersubjectivity without an 'inter'", as Waldenfels puts it. A lawsuit or a trial is precisely this "gap being traversed, which separates af-fects from ef-fects".[17] It is indeed a sort of intermediary event (*Zwischenereignis*) – which is one of the reasons why a trial is not a *Sonderfall* of practical reason and dialogue.[18] Habermas is right in claiming that law purports to establish a form of "Solidarität unter Fremden", though he may well be right for the wrong reasons, depending on how one would

15 This is, roughly, what was at stake in HR 9 oktober 1998, NJ 1998, 853 (Van Aalten / De Vereniging voor Christelijk Wetenschappelijk Onderwijs).

16 Cf. some salient examples in (Lyons 2003).

17 Cf. the most interesting research project coordinated by Antony Duff, Sandra Marshall, Lindsay Farmer and Victor Tadros, under the title *The Trial on Trial*, with the second volume about to appear at the time of this writing.

18 As, at the time, Alexy would have it (Alexy 1978).

translate "Fremden".[19] Indeed, chances are that this solidarity among aliens appears available only at the cost of an alienating form of solidarity, where we do not just allow each other to remain strangers, but actually coerce each other to become strangers. A major case in point here is the position of the victim(s) in criminal prosecution, which under the rule of law amounts to very little, as the Prosecution acts on behalf of "the state" rather than its citizens or, for that matter, ordinary human beings.[20]

- Fourth, last but not least, lawyers will be the first to emphasise that law registers in spatio-temporal orderings. One of their classical definitions is that law is the "persistent and unremitting will to give everyone his due" – which entails law covering an area and pursuing its covering over time. As said above, this is one sense in which they regard law as intrinsically "positive". It is also why a legal order is intrinsically bound up with the concept of a state. Yet, on closer inspection, this conceptual link appears to meet with a huge amount of ambivalence. Often enough, the decline of the 19th century boundaries of nation states, or the rise of cross-boundary cooperation between nation states, are taken as sure signs that we are heading towards "law without a state". For a critical approach, I gladly refer here to work done by my colleague, Hans Lindahl, for instance in his incisive analyses of Art. 3.2 of the (Draft)

19 Cf. (Habermas 1992 [1992]) 374. For an incisive analysis of the predicate "fremd", see (Waldenfels 1990) and the four Studien zur Phänomenologie des Fremden, (Waldenfels 1997; Waldenfels 1998; Waldenfels 1999; Waldenfels 1999).

20 The newly established Tilburg institute INTERVICT directed by Marc Groenhuijsen, investigates the effects and possible remedies of this major presupposition.

Treaty on a Constitution for Europe, claiming it to be the goal for the Union to offer its *citizens* "an area of freedom, security and justice (...)".[21] Far from presenting space and time as forms that appear in law as preceding law, Lindahl focuses on the reflexivity of law, both in the sense of the reflexivity of space and time in law, and the spatio-temporal character of reflexivity.

2 *Ambiguities*

So I think one may conclude that lawyers, in their right mind, are familiar with the four phenomenological aspects of the power of events, and that they are even used to coping with it. There is, one could say, an initial openness to the overwhelming abundance of reality catching the law's eye. And yet, as said, positive law maintains an uneasy relationship to the event, in particular when it comes to "conceptualising" it as something producing itself in the practice of law. At even the lowest level of "Reflexion auf eigenes Tun", the conceptual framework of law is geared towards forgetting about the event, hiding away from it, denying its disruptive force and confirming law as the *ordo ordinans et ordinatus*[22] *par excellence.* The more political pressure is put on law (e.g. in ideological defence of its particular form and content), the more it will retreat into this framework, thus making it come true at the cost of its initial openness to the power of events. It is as if there is an implicit basic rule in law that prohibits events from entering the legal scene. In the event of an event, the maxim goes, rule by the rules.

21 Cf. (Lindahl 2004).
22 Cf. (Waldenfels 1987; Waldenfels 1996).

Waldenfels' analyses, I submit, allow us to point to the discursive knots that underlie the ambiguous attitude of (the representatives of) law towards the event. At each of the four corners of his phenomenological tetragon, Waldenfels points to a dualism lurking in the background of his initial observations. What lawyers often do is criticise one of the positions of the dualist scheme by occupying the other. But this, in the end, reinstates and, indeed, reinforces, the dualist scheme. For instance, in order to criticise the belief that every situation can be subsumed under a rule, one will argue that the facts always escape from the rule and that therefore one has to go by one's intuition, gut feeling, sense of justice, and their ilk. *Ius in causa positum*, as the slogan goes.[23] Or: *da mihi facta, dabo tibi ius*.[24] But this so-called realist understanding of *ius in causa positum* is just as dualistic as its legalist counterpart. The belief that "the facts" will provide some of us with a pattern of behaviour that we will recognise immediately as "just" leaves us with the same unexplained gap between facts and norms as the belief that whatever happens will be captured by pre-established rules. The same goes for the other dualist schemes at the other corners of the tetragon: the dualism between events and acts, between association and submission, between physical time and psychic duration. Criticising one pole of these schemes by mobilising the other pole is finding oneself caught between a rock and a hard place. For reasons of space, let me briefly elaborate only on the first corner and link it up with academic legal education.

The preoccupation with the code as a manual, and with rule-following as "retrieval of meaning", often hides

23 Law is to be set in the specific circumstances of the case.
24 Give me the fact, and I will give you the law.

behind incisive critiques of the same. Each and every freshman in our law schools has to go through a rite de passage: the exorcism that is supposed to expel the devil of legalism. However, at the end of any critique of legalism, legalism returns to strike back, as if – with a felicitous observation by Jan Broekman – "one man's (sc. critical; BvR) legal theory is another man's legalism".[25] Apparently, legalism can take on as many guises as one can think of by modulating the archetypical concept of "rule" (principle, system, type, consensus, form of life).[26] Our students are expected to believe that legalism was abolished long ago, only to welcome its latest appearance with more enthusiasm. So, in spite of his much recited warning about the "mille questions inattendues", Portalis ends up as the godfather of codification. By the same token, the exegetic school of legal interpretation counts as the paragon of legalism. His fame and fate are similar to those of Von Savigny, who admired the Roman lawyers so much because it looked "(...) as if they were calculating with their concepts"[27] – an ideal he very much wished to revive in his *System des heutigen römischen Rechts*. Or one abominates the days of the young Von Jhering, who advocated what came to be known as "Begriffsjurisprudenz". Disregarding the label, one may say that he advocated a "higher" or more advanced form of legal doctrine that, as he expect-

25 (Broekman 1982) 145.

26 For a full-blooded argument I refer to (Roermund 1990).

27 Cf. (Savigny 1828 (1814)) 28-29: "Es ist oben (S. 22) gezeigt worden, daß in unsrer Wissenschaft aller Erfolg auf dem Besitz der leitenden Grundsätze beruhe, und gerade dieser Besitz ist es, der die Größe der Römischen Juristen begründet. Die Begriffe und Sätze ihrere Wissenschaft erscheinen ihnen nicht wie durch Willkühr hervorgebracht, es sind wirkliche Wesen, deren Daseyn und deren Genalogie ihnen durch lang en vertrauten Umgang bekannt geworden ist. Darum eben hat ihr ganzes Verfahren eine Sicherheit, wie sie sich sonst außer die Mathematik nicht findet, und man kann ohne Übertreibung sagen, dass sie mit ihren Begriffen rechnen."

ed, "would no longer be embarrassed by history".[28] And if all that sounds too sophisticated or, for that matter, too "Teutonic", one can always blame it on Montesquieu, who famously qualified the judge as the "mouthpiece" of the law, a lifeless automat that would just recite the enactments of the legislator without changing a single letter. Note that this is the same Montesquieu who, in other con-

28 (Jhering 1857 [1969]) 14: "Wenn der Gattungsbegriff erfasst und gehörig ausgebildet ist, so ist damit nicht bloss für alle jetzt bereits vorhandenen, sondern auch für alle künftig auftretenden Species ein stets bereites Rechtsmaterial gewonnen. Hierin hat es seinen Grund, dass eine ausgebildete Jurisprudenz nie ein absolutes Deficit an Rechtssätzen zu befürchten hat. Denn in wie ungewöhnlichen, abweichenden Bildungen sich auch der fortschreitende Verkehr ergeben möge, die Besorgnis, dass er uns etwas absolut neues bringen könnte, d.h. etwas, was nicht unter irgend einen unserer bisherigen Begriffe fiele, und wäre derselbe auch noch so allgemein, – diese Besorgnis ist eben so unbegründet, als wenn man glauben wollte, es könnten heutzutage noch Thiere entdeckt werden, die im zoologischen System der heutigen Wissenschaft absolut kein Unterkommen fanden. Eine Jurisprudenz, die seit Jahrtausenden arbeitet, hat die Grundformen oder Grundtypen der Rechtswelt entdeckt, und innerhalb ihrer verläuft auch jede fernere Bewegung, so sehr sie im Übrigen von der bisherigen divergiren möge; eine gereifte Jurisprudenz lässt sich nicht mehr durch die Geschichte in Verlegenheit bringen." Some twenty years ago, (Foqué 1987) 65 pointed to this passage as quoted in Walter Wilhelm, *Zur juristischen Methodenlehre im 19. Jahrhundert. Die Herkunft der Methode Paul Labands aus der Privatrechtswissenschaft*. Frankfurt a. M., 1958, p. 114. With all due respect and acknowledgment, I wonder (having read the context) whether the quote is interpreted correctly, even quite apart from a few differences in wording. Von Jhering argues law as a scholarly enterprise ("Rechtswissenschaft") is on a par with, rather than inferior to, natural science, on condition that it exemplifies the method of "advanced doctrine" which he calls "naturhistorisch". My claim would be that there is only one correct contemporary translation for "naturhistorisch": we would call it "Popperian" – a claim I hope to substantiate in another paper. Von Jhering appears to believe in new insights in legal scholarship, similar to scientific discoveries, and he even asserts that, in the final analysis, legal "science" will turn out to be of practical use only if it is not limited to rephrasing norms enacted by authority: "*daß die Wissenschaft, um wahrhaft* praktisch zu sein, sich nicht auf das Praktische beschränken darf [16], acknowledging throughout that praxis confronts theory by 'bisher nicht aufgeworfene Frage" [16].

texts, is celebrated for having "discovered" the eventfulness of legal orders and for having integrated legal sociology and political theory into legal doctrine. I would venture that this paradox can only be explained by arguing either that the phrase on "le bouche de la loi" is not as legalistic as it sounds, or that the sociological turn is just a way of reiterating the legalist bias. Tertium non datur, unless of course one wishes to retreat to the trivial thesis that even a great author like Montesquieu should be granted his off-days.

Not only is it unhelpful to disguise a legal theory as the latest form of legalism, it also works the other way round: in many a rejected form of alleged legalism, one may discover a core that tries to escape from it. To a large extent it is immaterial indeed whether one focuses on the concepts of rule, principle, type, consensus, or form of life. What matters is how these are viewed, in particular what it means to be "guided" by them, or to "follow" them. For instance, it is quite a feasible and interesting view, I think, to conceive of Von Savigny's "System" or, for that matter, Leibniz's "Nova methodus", as instances of many attempts to address the power of events in law, rather than to hide behind the screens of daily legal routine which, from times immemorial, has been celebrated as "practice".

3 The vanishing point of law

Now I have prepared the ground for a question, that is perhaps more a question formulated together with Bernhard Waldenfels rather than one addressed to him. In any case, I consciously ask it against the backdrop of *Phänomenologie der Aufmerksamkeit*, and the other books. Given Waldenfels' critique of the various dualisms inherent in our dealings with the power of events, the question is, to put it rather bluntly, whether there is not a similar dual-

ism remaining at a higher level: the dualism between the power of events and the power of reason. Let me add that it is a question that bears some particular relevance to law, to the extent that law is traditionally regarded as *ratio scripta* – reason written down. So an alternative wording of my question could be, I suppose, whether this phrase is sensible? To recapture briefly what registers in a phenomenology of attentiveness towards the event: Something gets out of line and breaks away from the discourse that holds us captive. Something affects us before we bring about any effect by acting. Something happens between us before we have established this "between" in the form of a polity. Something takes place and proceeds before we have set up the coordinates by which we can locate it. To sum up, the power of events is pictured as an eclipse of our categories and narratives. The bottom line seems to be: the event is "was in allem Erzählen unerzählbar bleibt".[29] And Waldenfels goes on to point out: "Dieses Unerzählbare bildet nicht etwa das Negat der Erzählbarkeit, sondern ihre Kehrseite und Hohlform. Das Unerzählbare wohnt der Erzählung inne, indem es diese zugleich übersteigt und sprengt."

These phrases are easily misunderstood, I believe. The metaphor of a reverse side or a concave form allows a more and a less dualist interpretation. In a dualist vein, one may conceive of it as a restatement of the view that reason or discourse will never exhaust reality, and that this precisely comes to light in the effort to exhaust it, i.e., to attribute sense, again and again but never in a definitive way, to something preceding this process of interpretation, narration, explanation, etc. My concern is with these words "übersteigen" and "sprengen", which seem to sug-

29 (Waldenfels 2004) 50.

gest that a narrative is always about something non-narrative, that the narrative is manifested as prior to itself – indeed, "ein entrückter Anfang".[30] I think that this would be a misinterpretation, as it would indeed leave us with a dualism of the sort with which lawyers typically struggle. It would mean the return of yet another futile strategy to escape this dualism.

However, there is another interpretation of "what remains non-narrated in narrating". We might say – taking our cue from Jonathan Culler[31] – that a narrative is received by an audience through a double hierarchy between two terms that are basic to the understanding of any narrative. We may call them Event and Interpretation. Obviously, telling a story or hearing a story is predominantly based on a hierarchy in which the Event is prior to the Interpretation. That is to say, we take stories to convey the meaning of a certain event, even if we grant that the event is not something that took place in a spatio-temporal slot defined by science. Now on the basis of great literature like Ancient Greek drama, but also stories from the psychiatrist's sofas or children's playgrounds, Culler argues that good narratives (not necessarily literary ones), are exciting to the extent that they *also* mobilise the opposite hierarchy, in virtue of which the Interpretation is prior to the Event. This means, to put it simply, that good storytellers create the event, as it were, insofar as their story telling is coherent. The story is good to the extent that it creates this event as a vanishing point in which the narrative lines disappear.

30 Ibid., 51: "Das Erzählte geht also aus von Unerzählte, das lediglich angedeutet wird".

31 Cf. (Culler 1981). I developped the full argument in (Roermund 1997).

Caller's locus classicus is Oedipous Rex, which is of course all about the unfolding of the meaning of a basic series of events: on his return to Thebes, Oedipus kills an old man at the crossroads, solves the riddle of the Sfinx, becomes king of Thebes and marries the queen. One will recall that at a certain point the tragic true meaning of these events (Oedipous having killed his own father and married his mother) crucially hinges on the witness of the killing, who has to declare whether Laios was killed by one man or by many. The witness is found, and now you would expect that he is asked to testify whether there were many men attacking Laios at the crossroads or just one. But the question is never asked. Instead, the witness reveals Oedipous' youth, as he is the shepherd who found the infant Oedipous at mount Kithairon. And yet, nobody doubts that these events took place, not even Oedipous himself, as he freely accepts his destiny. Culler notes: "Oedipous becomes the murderer of his father not by a violent act that is brought to light, but by bowing to the demands of narrative coherence and deeming the act to have taken place".[32] Indeed, the narrative lines of the story produce the murder of Laios as their vanishing point, so to speak. The event is a function of their being the constituent parts of the narrative.

The most interesting point, however, is that this reversed hierarchy does not come to replace the previous one, as if it would provide a better reading by suggesting that events are just discursive effects. The exciting thing is that both readings become feasible in a dialectic that could never be captured by a synthesis. They intercept one another's claims before any of them can acquire definitive supe-

32 (Culler 1981) 174.

riority. But there is no third claim to which they both revert or yield in the end, or which they can both anticipate from the beginning.

In my view, then, the power of events is neither that they precede our response, nor that they respond to our prefigurations and projections, but that they do both, as if they can mobilise two countervailing powers at once. So they are indeed each other's flipside, but in an oblique way. Event and Interpretation, *Interpretandum* and *Interpretans*, change places and challenge each other in perpetual oscillation; which, I submit, is a model significantly different from one in which the Interpretandum is perpetually chasing the Interpretans. In a legal context, the latter model would suggest that law, whatever else it may be, is always the answer, never the question; always the norm, never the fact; always the solution, never the problem. It would occupy the place of the Interpretans, the Interpretation, Ratio. The former model, on the other hand, would allow us to tactically intercept this hierarchy and undercut its predominance at certain moments, using the occasion to challenge the self-imposed evidence of a legal order together with its "unruly" character. In particular, it will allow us to sense and to argue when and where the legal framework is a problem rather a solution, a fact rather than a norm, a question rather than an answer. Only if the relation between law and event is a two way street, can we begin to think of law as *ratio scripta* – reason written down as a constant and persistent readiness of a body politic to revise the terms of its self-inclusion.

At an admittedly abstract level, this quasi-dualism between event and reason may also provide the key to the question of unity in law. The model I promote goes against two popular views on the nature of this unity. There is

the view, on the one hand, that the unity of a legal order should be rooted somehow in a Schmittian *Gleichartigkeit* (homogeneity) of its constituent parts, i.e., its members. It is the view that says, for instance, that Turkey can never be a Member State of the EU because it has a different culture; or that there can be no democracy in a polity (like the EU) that has no demos (yet). On the other hand there is the view that legal unity is a sheer projection of those in power or their beneficiaries, an instance of fraud that should be uncovered on each and every occasion in the name of pluralism. On this account of the matter, a legal order feeds on permanent negotiations of interests by all those who regard themselves as "involved". Both views are bound to trigger war without end, in the academy as well as in the political realm. For it is obvious that, on the one hand, a polity cannot be open to "anybody" if it is to give "everybody" his or her due; it is bound to trace its origin and its unity back to some act of self-enclosure. It is equally obvious, on the other hand, that such self-enclosure cannot be based on a pre-existing property (language, culture, religion) that is distributed over a certain population so that the "impartial spectator" could establish where it appears and where not.

My proposal is not that there is some truth in both and that one will have to strike a balance between them. Since there is no synthesis, the metaphor of the balance will collapse and yield to the model of resistance against pressure, in particular political pressure in either of the two directions sketched out in the previous paragraph. This resistance itself may grow to "eventfulness", lending legal authority to those who are able to mobilise and direct it. Indeed, from a conceptual point of view, law counts against the authority of the powers that be, necessitating them (to use Rousseau's phrase) "to transform their force

into norms and obedience into duties".[33] It makes them dependent on conceptual instruments that may get in their way when they are up to something powers want most: expanding their empire. By contrast, it comes in support of those who remain aware of what counts against their body politic, "even if no one coerces them to do so".[34] If one considers it along these lines, one catches a glimpse of law as an event itself, one that is not without power.

Unity in law, then, will always be bound up with this reflexive quest for openness in politics, whatever form and content such politics may take. It cannot be defined by the content of norms, whether these are norms of allegedly natural law or of allegedly accepted positive orders. It remains a virtual unity, a function of the interdependence between the viewpoint and the vanishing point of a legal order at a given stage in its development. Which is neither to deny that, for instance, human rights standards may be good instruments to capture this interdependence at a specific point in time, nor that these instruments may be used in several legal orders at the same point in time or at various points in time. What the idea of a virtual unity of law denies is that there is a common semantic core lying at the bottom of all the norms of a legal order, and that this justifies curtailing the singularity of events by pre-established categories. Even if there is no escape from such a curtailing, we are not justified in performing it. On the contrary, our enactment should give testimony of our predicament.

33 Cf (Rousseau 1762), I, the opening phrase of ch. 3.

34 I borrow this phrase from Gadamer's definition of "openness" in (Gadamer 1975) 343: "(...) die Anerkennung (...) daß ich in mir etwas gegen mich gelten lassen muß, auch wenn es keinen anderen gäbe, der es gegen mich geltend machte".

4 (Some) Wisdom in the Law School

Even if these remarks are pertinent, nothing would follow *directly* in response to the question of wisdom in legal academic education. My first concern has been to give a philosophical account of law, taking my cue from Waldenfels' analysis of the power of events. It may be at odds with some more received philosophies of law, even those offered by professional lawyers when they try to philosophise about what they are doing. This would not worry me too much. I would be far more worried if it would be an account that is at odds with what lawyers or, for that matter, legal scholars are doing when they are doing their job. I hope I am not overestimating my position when I say that, considering the enormous and daily political pressure on the legal order in all of its divisions, the legal academy shows intense awareness of what I tried to capture. For instance, it is keen on criticising an all-out war on terrorism; it explores the marshy grounds for damages in cases of "wrongful birth" and "wrongful life"; it challenges authorities that would prefer one of the easy ways around euthanasia; it engages in the debate on the fine line between free competition and fair competition in the EU or the WTO framework.

Yet, one of the main problems in our day is that this awareness is carried astray as soon as the discussion changes to a higher gear of abstraction. The contemporary inability to engage in legal reasoning on a high level of abstraction is often, and in my view unjustifiably, read as a form of sensitivity or attentiveness towards the eventfulness of law. I think it is the exact opposite: a sure sign of our conviction that law can capture any event a priori. Conceding that the analogy is somewhat inappropriate, I would like to compare law to billiards. Lawyers are excellent billiards players, gathering their points in local pubs and pres-

tigious theatres regardless of the often poor quality of the materials they have to work with. However, they eschew any account of their game that purports to introduce Newtonian laws even at an embryonic stage, and deny in advance that such an approach might just improve their play in the long run. Increasingly, "doctrine" is considered to be old-fashioned vocabulary; "jurisprudence" or "allgemeine Rechtslehre" is traded for philosophical or sociological dilettantism; half-understood market modelling is applied, without any caveat or constraint, in areas where law should warrant subsistence of a market in the first place. Now I don't want to argue that there is no good sense in integrating economic, sociological or probability theory in legal theory. My thesis is that such integration makes no sense when there is no legal theory at a similar level of abstraction within which to integrate these other theories. The problem lies in (half-hearted) substitution and (blunt) reductionism, not in integration as such. Consequently, the problem lies in research councils' funding policies that tend to support these "innovations". What we need is more "legal phenomenology" in order to meet other disciplines at comparable levels of abstraction. Only then can we begin to make scholarly sense of the interceptive antithesis between law and event. It would not surprise me at all if future LLB programmes would find reason to revisit the "grand style" of legal doctrine and transpose it into a new key. At very least, the gist of it would correspond beautifully with the requirements of methodological thoroughness that go hand in hand with the call for "a strong concept of experience, i.e., a sort of experience which does not supply us with pure data, but organises, structures and forms itself without being governed by fixed laws", as Waldenfels put it in the introductory paragraph of his paper.

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