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## Doing Kinship by Doing Law?

### Conference Report

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The rigidity of law, according to an early founder of the German-language strand of the sociology of law, signals the domination of the dead over the living (Ehrlich 1913: 323). Legally standardized ideals of action and the actual everyday practice of dealing with the law are not necessarily compatible. Such contradictions become visible, for example, in moments in which there is a struggle for interpretative sovereignty over legal claims. Through a practice-oriented lens, law is woven into relationships between persons, but at the same time it is reinterpreted, contested, acted out, or even rejected in these relationships.

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The everyday effects of law become tangible in family and kinship relations. Nevertheless, socio-legal studies, as well as gender, family and kinship studies have hardly addressed the intertwining of law, power, kinship, and everyday practices. Under the open question "Doing Kinship by Doing Law?", the interdisciplinary conference at the University of Vienna (9-10 December 2022), organized by the European ethnologist Felix Gaillinger, approached the everyday meaning of law for and in practices of kinship and family making. Thus, it opened a discussion about relations and overlaps between kinship studies, family studies and socio-legal (gender) studies in terms of research subjects, objectives, methods, and methodologies. The participants of the two conference days received insights into research projects from various disciplines such as social and cultural anthropology, sociology, philosophy, legal studies, gender studies and social education. All participants emphasized that processes of family and kinship making and law are closely interwoven, and that lived relationships ground the law.

The conference opened with a keynote by Beate Binder (Humboldt-Universität Berlin) who explored different approaches to feminist legal research in cultural anthropology. Binder argued that an understanding of processes of everyday kinship making in legally structured fields can take different forms and might start at different points, such as in the field of jurisprudence, in legal mobilization, or legal consciousness. According to Binder, law is processual and contested, endowed with power, interwoven with politics and moral orders, but also linked to actors, spaces, situations, and materialities.

Karin Jurczyk (Munich), who gave the second keynote, presented a care-centered conception of family, and asked how it relates to the highly standardized legal concept of kinship. Family, in this understanding, is not so much a given resource, but rather a process that can also take place beyond blood relations. However, kinship is also a legal assignment (usually in status law) that often contrasts with the family as a social reality. Because not every kinship relation is also a family relation and vice versa, it is necessary to examine the legal distinction between kinship and family – especially if it runs beyond lived reality.

According to Jan-Christoph Marschelke (University of Regensburg), notions of collectivity, including conceptions of family and kinship, tend to reify social reality. In order to avoid

this, the conference call proposed to think of collectivity as an open process of *doing* collectivity. This conceptual openness serves to include states of interconnectedness between social groups and actors who allegedly lie outside of family and kinship relationships: neighborhoods, circles of friends, school classes, work teams, and other associations. Marschelke argued that doing family always involves “doing social categories”. Conversely, social categories influence concrete practices of doing family and doing kinship in everyday life.

The first panel discussed legal definitions for conceptions of kinship and how these change over time. Legal scholar Fiona Behle (University of Zurich) focused on Swiss parentage law, which regulates the legal assignment of children to “their” parents and therefore constructs legal kinship. She discussed the so-called “two-parent-principle”, which prevents multiple parenthood, and pointed out that, although this principle is invoked to argue against parentage law reforms, there is no clear justification for the two-parent-principle itself. Using historical examples, Behle demonstrated that the two-parent-principle only appeared in the second half of the 20<sup>th</sup> century, when the differentiation between legitimate and illegitimate children was abolished, and repositioned this body of law to propose a broader definition of parenthood.

Julia Böcker (Leuphana University Lüneburg) focused on a law amendment in Germany which created a civil status for miscarried fetuses and addressed its heteronormative implications. Unlike before, when miscarried foetuses were usually discarded as clinical waste, parents are now allowed to register and bury these miscarried foetuses, regardless of the gestation week. On the one hand, Böcker argues, the law amendment leverages more self-determination, choice, and kinship-making after miscarriage. Now affected people decide for themselves what will happen with their miscarried babies or “tissue” and have the option to perform practices of family-making like taking photographs. Yet, on the other hand, the law amendment attributes personhood to lost foetuses and strengthens heteronormative family values on an institutional level. For example, only married heterosexual couples are legally permitted to receive an official certificate of the miscarriage and, thereby, to be acknowledged as (“angel”-)parents.

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The second panel on "Queering Law" focused on the intertwining of change and permanence and drew attention to the production of (new) legal kinship relations through parentage law. According to Sarah Mühlbacher (Goethe-Universität Frankfurt), despite multiple processes to improve the parental rights of same-sex couples, inequalities persist. For example, lesbian co-parents still have to adopt their children in order to become legal parents. Mühlbacher addressed the structural conditions that cause such exclusions, and noted that familial notions of care and the concept of solidarity are both premised on the idea of belonging. In families, however, people care for each other in an existential way that excludes non-members. Thus, non-members are deprived of care.

Mona Mokatef (TU Dortmund University), Christine Wimbauer and Julia Teschlade (Humboldt-Universität Berlin) discussed their qualitative study on LGBTQ\* family formations and showed how legal injustices influence queer people's everyday family practices. First, the authors elaborated on three areas of (un)acknowledgement and discrimination of LGBTIQ\* families in German law. Second, they pointed out different strategies that queer people use to normalize everyday life and deal with these inequalities, and emphasized that these strategies are responses to (anticipated) discrimination, exclusion and devaluation and therefore constitute means of dealing with potential threats, and not (just) an assimilation to heteronormative society.

Legal regulations concerning the notion of family may lead to exclusion and discrimination. In addition, families are all too often not a haven of happiness and care, as Manuel Bolz's (University of Hamburg) contribution made clear. Manuel Bolz's ethnographic research addressed narrations of revenge practices, and paid particular attention to revenge fantasies towards family members, including withdrawing affection, withholding information, or destroying objects, among others. Bolz interpreted these acts of revenge as a means of communication that is functional for biographical work. Bolz argued that revenge becomes a means by which actors restore their ideas of justice, and noted that the figure of the female revenger can be traced back to gendered relations of inequality within the family.

The conference also paid attention to understandings of family as a compulsory community or a compulsory affiliation. Antinatalism and decisions not to enter into any biological or genetic relationship appeared as the ultima ratio of emancipatory family policies — also in view of planetary destruction. Clémence Demay and Mathilde Krähenbühl (University of Lausanne), who conducted an ethnographic study on climate change trials in Switzerland, asked how different actors – activists, lawyers, and judges – take up the theme of “eco-reproductive concerns”, and observed the recurring appearance of precarious reproductive futures as a litigation strategy to defend civil disobedience action during trials.

The legal regulation of family enables another socio-politically significant effect. Through family membership and the legal status of a person within a family, wealth and poverty are inherited and passed down. The reproduction of social inequality through law was the subject of the last panel.

Franziska Wiest (University of Cologne) explored conflicts over property in super-rich families, namely in the 0.01 %. The transfer of assets within these families plays a major role in reproduction of global social inequality, and is also associated with certain expectations on the family members. To mediate potential conflicts, these families have complex procedures, such as family constitutions (Familienverfassungen), which lead to further social insularity and closure.

Felix Gaillinger (University of Vienna) focused on young adults who are in a maintenance conflict with their fathers who are obliged to provide financial support through kinship law. In addition to their fathers’ refusal to provide financial support, these young adults are also confronted with the withdrawal of welfare state benefits: At the age of 18, the right to advance maintenance payments by state support – a compensatory benefit if a parent refuses to pay maintenance – is abolished, as is legal guardianship by the German Youth Welfare Office. These welfare state regulations create a specific mode of vulnerability that often intensifies young adults’ experiences of rejection and forces them to perform emotional work to prevent the conflict from escalating and taking on a violent character.

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Social educator Tanja Abou (University of Hildesheim) dealt with the difficulties of young people in the transition from youth welfare to adult life, and the lack of institutional support offered to so-called care-leavers. Because the German system of social services is so deeply couched on the assumption that young people grow up with their legal parents, it ends up creating additional administrative obstacles for care-leavers. For example, when young people apply for social welfare benefits they are often referred to their parents' maintenance obligations. Additionally, young people are often required to pay their parents' debts or funeral costs.

In her closing remarks, Michèle Kretschel-Kratz (Humboldt-Universität Berlin) noted that exploring family forms through law reveals how families – even the supposedly “biological” ones – always emerge through relation work, whether this involves bringing a relation into existence, or being brought into existence through relations. In forming and standardizing categories, law may create and prevent certain relationships, or it may dissolve them, thus having an individualizing and collectivizing effect at the same time. The conference's contributions were united by the effort to investigate this characteristic synchronicity of compulsory community, as well as its legal consequences for insider members and the exclusion, isolation, and non-belonging experienced by non-members.

Michèle Kretschel-Kratz pointed out that the transformative and democratizing potential of family, kinship and law must be explored in concrete moments of legal practice and made three key points. First, it is the entire juridical apparatus behind state law that makes it so particularly powerful and arouses corresponding desires. Law, however, as Beate Binder suggested, is not just another thing enthroned above us; it is always already interwoven with orders of knowledge, moralities, political formats, and social practices. Democratic participation requires a persistence on linking these moments. It must keep an eye on when and how experiences of social movements and marginalized actors with family and kinship are transferred into legal norms and practices, and on what is gained but also lost in doing so.

Secondly, democratic transformation – whether in the course of centering care relations based on solidarity or recognizing fundamental vulnerability – also requires attention to

what Karin Jurczyk described as the pitfalls of freedom. Undoing family, as its flexibilization, pluralization or fluidization, but also calls for the “undoing” of state law as forms of deregulation and decriminalization, bear the marks of bourgeois private autonomy on their face and thus ambivalent distortions of emancipatory concepts such as self-determination or solidarity. In this sense, rather than taking a normative approach to research, we should explore the productivity of law and family, and their interconnections.

This leads, thirdly, to the issue of queering family which means to center the ambiguity of membership as necessarily uncertain and precarious, and to deal with each other in solidarity and care. How can this be done? Which of our familial practices and networks of kin-relations are likely to transgress the structural features of the enclosed, familial norm? When is family an act of solidarity and transgression? And to whom? A hint may perhaps be given here by so-called political marriages and other constellations in which parentage and family law, family-relevant social law, or labor law are used strategically or subversively in favor of transformative futures rather than a private utopia for some. “In this respect, the conference was able to establish an important parallel in the desire for law and the desire for family: We have our problems with both, and yet we cannot simply reject either family or law. On the contrary, they are always objects of political hopes and emancipatory plans for the future,” as Michèle Kretschel-Kratz has put it in her closing statement.