

Law and Anthropology

Many different conceptions of law exist side by side in multicultural societies – a reality that formal legal systems have ignored for far too long, according to **Marie-Claire Foblets**. As Director of the new Department for Law and Anthropology at the **Max Planck Institute for Social Anthropology**, she hopes to help change this situation.

TEXT **BIRGIT FENZEL**

There is something curiously British about the way Marie-Claire Foblets makes her way through the streets of smart townhouses in the shopping district of the old university city, wearing a trench coat and carrying an umbrella. However, this isn't Oxford, but the capital of the province of Flemish Brabant. She just returned from Halle a few days ago, where she has been heading up the new Department for Law and Anthropology at the Max Planck Institute for Social Anthropology since March of this year.

The fact of the matter is, when Foblets agreed to heed the call of the Max Planck Society to Germany, it was on condition that she would be able to continue in her post as Director of the Institute for Migration Law and Legal Anthropology at the Catholic University of Leuven. Now she travels between the two locations, and feels quite comfortable doing so. There's just one thing

that concerns her: "I hope I'm around enough for my doctoral students," she says on the way to the old market square, where she has suggested a restaurant for our lunch. Even having just met her, it sounds improbable that someone for whom she has assumed responsibility could feel neglected.

BACKGROUND INFLUENCES ONE'S THOUGHTS AND ACTIONS

Born in Brasschaat, a Belgian town in the Antwerp area of Flanders, Marie-Claire Foblets has spent most of her life in Belgium. She studied in Antwerp and Leuven and has worked there for most of the last 20 years. The legal anthropologist wouldn't necessarily subscribe to the view that she is a typical Belgian, but she is convinced that certain characteristics of this small kingdom in Western Europe have had a major influence on her way of thinking and acting.

"I grew up in a small country, full of cultural and linguistic diversity," she explains in relation to the origin of her interest in multicultural societies and strategies for conflict resolution. "You could also say that I was socialized in an awareness that well-negotiated compromises can increase the potential for reconciliation, even in cases where there are huge differences."

For 20 years, she has researched, lectured on and written about the legal problems affecting multicultural social systems. "It's fascinating to look into the normative logic of cultures," says the scholar about her work. Of particular interest is the development of Europe, where globalization and migration made societies everywhere increasingly multicultural, even in relation to law. "We get migrants who have com-

Characterized by linguistic and cultural diversity: The Belgian Marie-Claire Foblets, Director at the Max Planck Institute for Social Anthropology.

Photo: Sven Döring





Research in dialogue and alone at her desk: Marie-Claire Foblets works with Bertram Turner (center) and Martin Ramstedt (right) on a comprehensive international database. It's intended to enable legal experts and politicians to access past legal proceedings in which people from other cultures and legal conceptions came into conflict with the official national legal system.

pletely different conceptions of justice or what is just, and they keep their law codes. Of course they adapt, just as we do, but in the course of that process, certain issues prove difficult and end up before the courts," Foblets says, describing the impacts of the new legal pluralism on society.

ENTICING OFFER FROM THE MAX PLANCK SOCIETY

An increase in nationalistic tendencies is also being seen all over Europe, and "Belgium is no exception," she says. These considerations may have played a role in her decision to open a new chapter in her career, swapping the familiar life of a professor for that of a commuter. "The offer to continue my research long term and on an international level under the aegis of the Max Planck Society was very enticing."

She stops frequently as we make our way into the center of Leuven, to point out interesting details on the buildings. Most of the townhouses, richly decorated in typically Flemish style, look older than they are. "These here were simply reconstructed after they had been destroyed by the Germans during World War I," she recounts, indicating a particularly attractive row of houses. It's clear that she has a wealth of knowledge about the history of the old university city, and enjoys sharing it.

From this perspective, it would seem that her choice of "Rodins" in the Oude Markt was no random selection. With its dark interiors, it reflects the flair of Dutch "brown cafés" for "Gezelligheid," roughly translated as coziness and conviviality. The food should also be typically Belgian, and the waitress serves this German visitor steak tartare, fries and a beer from the local brewery, for

which the city of Leuven is also world renowned. My hostess, in turn, is served carpaccio and a small glass of dry white wine.

BACKGROUND KNOWLEDGE FOR POLITICS AND SOCIETY

Marie-Claire Foblets would also make quite a respectable tour guide – perhaps because she already is one in a way, only on another level. As a legal anthropologist, she has studied the social rules and structures of other cultures in theory and practice and is committed to ensuring that this knowledge makes its way into society. Of particular concern to her is equipping decision-makers in politics and society with the necessary background knowledge to deal appropriately with the legal problems and issues that the day-to-day coexistence of people from different cultures brings with it.



It's quite remarkable that those people who really have something worth sharing are very hesitant to reveal things from their own lives – not because they have something to hide, but out of modesty. Marie-Claire Foblets is no exception to the rule. The 52-year-old, now relaxed and sipping her wine unpretentiously, is one of Belgium's most important scientists. There is even a stamp bearing her portrait, and in 2004, her work in the field of legal anthropology was honored with Belgium's most prestigious science award, the Francqui Prize; conferred in a three-year cycle, it is worth 150,000 euros. Two years later, King Albert II made her a baroness in recognition of her work.

"What pleased me most was the recognition of my research findings," she recalls. But she waves all personal questions aside: "That's really not important." She would much rather talk about

her work – the political interaction between different legal systems, for example, and under what circumstances this suddenly becomes relevant. Or how people in a multicultural society navigate the different legal spheres.

CIRCUITOUS ROUTE TO LEGAL ANTHROPOLOGY

She studied this issue for ten years in legal practice, when she was admitted to the French-speaking section of the bar association in Brussels upon completion of her studies in law and philosophy. The law firm she worked in specialized in migration and asylum law. "I gave my clients legal advice and then, when the conflict or issue was resolved by a court decision, I frequently remained in contact to see how they lived with the solution," recounts Marie-Claire Foblets.

In doing so, she frequently observed that people aren't interested in using the courts to set precedents. "Some of them just wanted to know they were in the right; they never actually implemented the ruling." From this, Foblets drew the conclusion that people use the law for their own power games. "I always found that fascinating, and in fact that's what brought me to legal anthropology," she says.

In fact, when she started out, it wasn't at all clear where her career would lead her. "It's only in hindsight that everything seems so obvious," she observes. When she registered to study law at Antwerp University at the age of 17, she wasn't necessarily intending to pursue a career in law. "I was in the fortunate position that my parents didn't expect me to immediately select a path that would guarantee secure access to employment," she recalls of her deci-

sion, which she hoped would broaden her personal horizons. She was simply curious about the world. And just as some learn a language by studying its grammar, she used her freedom to grasp the structures of the world.

The discipline of law, with its different types of normative logic and the resulting rules, was evidently just right for her. But there was a snag. "The answer is there, and you always have to try to line up the facts with the rules, but I found that a little too dry," she says about her first, rather insipid experiences with academic life. It was a similar story with her second subject, philosophy. The philosophical theories about the origin of moral concepts and related norms were quite relevant to her legal studies, but she found them very abstract.

The exception came upon completion of her master's degree in Belgium,

with a scholarship that took her to the University of Münster for a semester of philosophy. There she came across the phenomenologist Hans Blumenberg, who believed that those who take too narrow a view when interpreting human life and living environments fail to do justice to their subject.

PARALLEL UNIVERSE OF CONFLICT MANAGEMENT

However, Marie-Claire Foblets would only truly encounter this open-mindedness when, back in Belgium once more, she devoted serious attention to anthropology. This science, which probes all aspects of human existence and co-existence, opened up new worlds to her. "It was as if a door opened that I was completely unaware of as a law student," she remembers. Suddenly, her direction seemed clear. "Anthropology

sharpened my awareness of how different mindsets exist alongside each other all over the world."

Her work in Brussels was taking place during the time that Europe was beginning not only to constitute itself as a supranational alliance of member states with a joint foreign and security policy and cooperation in justice and internal affairs, but also to align its asylum and migration policy. "It was an exciting time for me as a young lawyer, and I learned a lot about how issues of international migration are dealt with in law," says Foblets. "At the same time, I was able to observe the increasingly rapid development of unprecedented legal pluralism in immigrant societies."

It was also during this period that she completed her doctorate in anthropology, largely inspired by those observations and focusing on North African families living in Belgium and

Contested ritual: In the Muslim and Jewish worlds, boys are circumcised to symbolize their belonging to the religion – a cause for great celebration in their families. In Germany, however, circumcision is met with resistance. In June, a judge at the Cologne regional court ruled that the circumcision of a four-year-old Muslim boy was an infringement of the boy's basic right to physical integrity. Consequently, legal experts have called for a bill to legalize circumcisions performed under proper medical conditions. One attentive listener to the debate in the Bundestag was Israeli Chief Rabbi Yona Metzger, who, at a federal press conference in August, proposed a compromise that those performing circumcisions in Germany should receive basic medical training.

Photos: AP (left), ddp (right, 2)



the Belgian legal system. “As an anthropologist, I was especially interested in how members of minority communities behave in pluralistic settings when the legal concepts of their culture of origin aren’t recognized by the official legal system of their new home, but they still want to seek just solutions in personal disputes.”

Foblets discovered a parallel universe of strategies and mechanisms of conflict management in that society and learned a great deal about the experiences of minorities with the European legal system. “Now, 20 years later, we know much more thanks to many research projects – not only anthropological ones, but also sociological and psychological.”

PLURALISM WAS IGNORED FOR FAR TOO LONG

She continues to speak in clear, well-formulated sentences, but now at a remarkable pace, and even the gestures she uses to emphasize her words are livelier. She has come to the topic she really wants to talk about: why the

knowledge garnered through legal anthropology is so important for modern society. “Because pluralism, in all its complexity, has arrived in our society and this reality has been ignored for far too long by the formal legal system.” And: “Unfortunately, it must also be said that the lawyers and legal experts who are educated in European universities aren’t properly equipped to deal adequately with the new situation.”

However, this ignorance carries the seeds of social unrest, as seen recently in the example of a ruling by the Cologne regional court. A judge there deemed the circumcision of a four-year-old Muslim boy to be an infringement of his basic right to physical integrity, setting off an enormous wave of protest among Muslims and Jews. “They see the verdict as discrimination against their religion,” says Foblets, explaining that, in this case, two world views came into conflict, each of them having their own set of rules.

Strictly speaking, both were concerned with the well-being of the child, because for many people, bringing a child up in one’s own religion serves

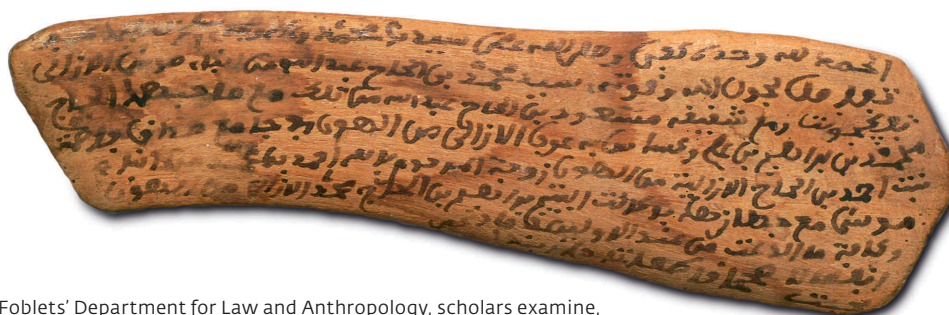
precisely this purpose. The basic right to physical integrity clashes here with the social tradition of the two other cultures, in which a boy becomes a member of the religious community when he is circumcised. This raises the question of which is more important: the child’s basic right to physical integrity, or his identity?

RULING STRIKES AT THE CORE OF MUSLIM IDENTITY

“We developed the concept that physical integrity is an important value in legal terms, and that it is in a child’s interest,” says Foblets. “However, this clashes with other world views in which a person’s identity is largely defined by his or her religion. Without this, they have no identity.” If one considers physical integrity from a global perspective, it turns out that an astonishing number of societies around the world use physical markings to symbolize identification with their culture.

If a judge in Cologne decides to approach this type of case from a Western perspective, conflicts with other seg-





Black on brown: In Marie-Claire Foblets' Department for Law and Anthropology, scholars examine, among other things, Moroccan family contracts that were written on pieces of wood. These *alwah* or tablets allow them to analyze the impact of Islamic jurisprudence (*fiqh*) on everyday life.

ments of a multicultural migration society are assured. "Forbidding people to raise their children according to part of their culture is bound to strike at the heart of their identity," says Marie-Claire Foblets, explaining the outrage among Muslims and Jews in Germany.

With her department in Halle, the new Max Planck Director aims to help reveal the potential of such legal disputes for social conflict, thereby contributing to the peaceful coexistence of different communities. It is a question of finding appropriate solutions that do not lead to division in society. "My professional responsibility doesn't consist in rising above the position of the judge or taking a position in favor of one of the cultures. Rather, I want to show that anthropologists have a wealth of valuable knowledge that judges know little about, or to which they have had no access to date, but that may be helpful."

Judges and legal experts are one target group, but so are decision makers from politics and education. Foblets hopes to network them with anthropologists and researchers from other disciplines and other Max Planck institutes. Her wish list includes regular workshops to share experiences and thoughts on specific current issues. Another of her goals is to create a comprehensive international database containing fundamental decisions on conflicts

between constitutional law and religious norms, such as the Cologne ruling and other relevant cases in which cultural diversity is the object or a part of the conflict.

JUDGES AVOID CULTURAL CONFLICT

"It's a matter of providing information on how judges dealt with the issues and how people reacted to their rulings," Foblets says of the idea. Had such a database already existed, the judge in the Cologne circumcision case could have drawn on recorded experience. "There was a similar case 25 years ago in Belgium," observes Foblets. Following a divorce from his Belgian wife, a Muslim father wanted to have their son circumcised, although the child had been brought up as a Catholic until that time.

In this case, the judges avoided cultural conflict in that they didn't even raise the issue of physical integrity versus religious freedom. Instead, they ruled that continuity of upbringing was in the child's interest, and in this case the boy had had a Catholic upbringing until the time of his parents' divorce. "This meant that the decision about which religion the child should ultimately belong to was postponed until he came of age, and the court was off the hook," says the scholar. There was no scandal.

In recent years, social anthropology and its concepts have attracted growing attention from international decision-makers. In our complex, increasingly networked world, reliable information about different cultures truly has become indispensable. In order to make this information available to international legal practice, Foblets' new department will start by working in three main areas: the contribution of anthropology to the cross-cultural comparison of legal systems; the integration of anthropological research and specific legal practice; and anthropological perspectives on legal pluralism.

Marie-Claire Foblets clearly has a lot on her plate in the coming months, so it's surprising that she could take time out for the interview and is now relaxed and enjoying the coffee that the waitress has brought. "If we can manage to do it all as we've envisaged, Halle will be home to a legal anthropology knowledge center that is unique in Europe," she says.

That goal makes it worth leaving the cozy conviviality of the small Belgian university city. "I'm very happy in Germany, too," she says. "I got to know it a little during my semester in Münster and felt very comfortable there." It may well be true that she'll miss the fine Belgian coffee while in Halle. But of course she would never say so. ◀