

Multiculturalism, Autonomy and the Law: Forced Marriage and Exclusion from Marriage as Contested Legal Fields in the UK, Austria and Turkey

Outline

One of the research project's main foci is the issue of how law enables or infringes autonomy. On the one hand, it is law's task to restrain those who impinge the autonomy of others by way of force or manipulation (the freedom from such interference is the first condition of autonomy); on the other hand, law is supposed to provide a range of options, consisting, among others, of institutions which are equally accessible to all citizens (the availability of an adequate range of options is the second condition of autonomy).

Forcing somebody into a marriage and excluding a class of people from marriage are thus regarded as two ways of infringing people's autonomy. The workshop is set up to have a close look at the role of legal discourse in regard of these two issues. The central question concerns the conceptualization and application of law in these spheres, which is supposed to advance the autonomy of all.

Several issues will have to be kept in mind: First, we are looking for a formulation of a concept of autonomy that can be accepted not only in liberal but also in feminist and multiculturalist theorizing. Second, trying to safeguard the autonomy of some by restraining the opportunities of others may well have unwanted effects. Third, especially when it comes to marriage, some fundamental issues have to be tackled, such as the legally institutionalized gender binarism underlying the concept of marriage. Will the deconstruction of this binarism have any consequence for our thinking about forced marriage? Based on these considerations, the lectures will cover the following subjects.

Panel on Forced Marriage

A marriage is forced if consent is not freely given. Great Britain has witnessed the development of a complex and context-sensitive judicature concerning the lack of consent. **Anne Phillips** is going to analyse the development of British jurisprudence in the field of the annulment of forced marriages. Her deliberations will be embedded in an outline of the concept of autonomy. Proceeding from such a principle she will also deal with the issue whether criminal law should be invoked to specifically deter potential offenders from forcing young people into marriage – and whether using the criminal law would be the right way of tackling with the problem. As yet, the UK has decided against such a provision. Finally, Anne Phillips is also going to touch on the transnational dimension of forced marriage and question whether measures such as raising the age of

a spouse in the context of family (re)unification is an adequate way of preventing forced marriages.

Austria differs from the UK in several respects. First, there is no judicature available concerning the annulment of forced marriages. Accordingly, the issue of consent in this field remains underexposed. However, the political debate in Austria has resulted in a revision of the penal code by inserting a new provision against forced marriage, which is now defined as a case of severe coercion. **Katharina Beclin** is going to deal with the chances and limits of this provision, focusing on the legal meaning of “coercion”, comparing it with the meaning of “duress” as conceptualized by British courts. She will also pose the question whether the criminal law is an adequate legal means of dealing with the issue of forced marriage and what other measures can be and have been introduced in Austria.

Recent reforms of family law and penal law in Turkey have introduced important improvements of the situation of women. Turkish feminists were among the first to debate forced marriage and honour crimes and introduce these issues to international debates on women’s human rights. **Canan Arin** is going to analyse the legal framework and discourses in regard to the issue of forced marriage in Turkey and contextualize the issue within the broader political context, especially considering Turkey’s aspirations to become a member of the European Union.

Panel on Exclusion from Marriage

As recently as 2004 Great Britain introduced a Civil Partnership Act that makes it possible for same sex couples to legalize their relationship. As many other countries, the UK has not opened marriage but created an own institution. **Andrew Sharpe** is going to outline and analyse the differences between the concepts of marriage and civil partnership and inquire into the underlying reasons for this “separate and unequal” tactic. He will substantiate in how far the institutionalization of civil partnerships is an attempt to strengthen the traditional binary gender order and to insulate marriage from homosexuality.

Austria, by contrast, has so far not even introduced the institution of civil partnerships for same sex couples. Referring to the long history of criminalization of same sex behaviour in Austria, **Nikolaus Benke** is going to provide an overview of the debate, present an sketch of the legal situation of same sex couples and try to explain why respective attempts at institutionalization have remained so fruitless by now. This account will include reflections concerning Austrian law’s image of (the proper functions of) marriage as distillable from diverse legal and political sources.

The Turkish debate concerning homosexuality has so far basically focused on decriminalization, the right to free speech and assembly as well as anti-discrimination law. **Yasemin Öz** is going to provide us with an overview of the legal situation of gays, lesbians and transgenders in Turkey and show in how far the institutionalization of same sex marriages has as yet become a topic of political and legal discourse at all.