„Decoloniality – A Challenge for Comparative Law“

Ralf Michaels
Max Planck Institute

The discipline of comparative law, as it exists today, is structured and dominated by the Global North.[1] That is, conventional (or mainstream) comparative law is produced mainly by scholars from, or educated in, the North, focuses on European law or uses such law as the benchmark, and relies upon European methods of comparison, particularly those developed during the nineteenth century.[2] Despite decades of expansion, law in the Global South still remains, more often than not, marginal to the discipline. As for methods, debates between doctrinal, functionalist, culturalist, critical, and postcolonial comparatists continue to proliferate.[3] These debates often propose alternative ways of comparing laws in or from Europe, rather than confront the methodological challenges of comparative law in or within the Global South. Although mainstream comparative law methods have been criticized for several decades now,[4] a convincing alternative has not emerged.

Our proposal to challenge mainstream comparative law's coloniality lies in the idea of decolonial comparative law: a re-articulation of comparative law on the basis of decolonial theory. This is not a manifesto for such a discipline – not only because it would be too early to formulate one, but also because such an imposition would run against the impulses of decolonial comparative law. At this stage, our (preliminary) ideas are intended to serve as a basis for discussions and collaborative engagement.[5] In this brief concept paper, we provide an overview of the mainstream in the discipline of comparative law. We also delineate what we mean by decolonial comparative law, why decolonial comparative law is necessary, and how to do decolonial comparative law.