

Law, language and culture

A survey of an intricate interconnection

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1. Universal versus particular law

In an amendment of 1302 to the Norwegian Code of the Realm of 1274, king Håkon V Magnusson states in the preamble:

Sumt man fylgia lagum kirkunnar oc keisarens, en uera skildi ríkinu til mykils hafka, oc allu folkenu til mykilla unada er Þat byggja. Nu saker Þess at uer iattadom gudi i vigslu vara, at uer skuldum Þau logh halda oc haldazt leta sem hin helgi Olafr konongr hof oc hans retter eftir komandar hafa sidan til sett og samtyct.¹

The Norwegian king between 1299 and 1319 hence claimed in the preamble that Roman and Canon law had been harmful for the realm, and the laws to be observed by the inhabitants were those made by St. Olaf and his descendants to the throne. That the preamble is a piece of political propaganda, ignoring that Roman and Canon law had to a great extent shaped the legal framework of the Norwegian state of King Håkon V, and ignoring that King Olaf II was not formally a saint, is not up for discussion here. The point is instead that the Norwegian King in 1302 preferred what he considered Norwegian law to Roman and Canon law, and that he did so in Old Norse and not Latin.

Historically good law, meaning law enjoying a high esteem and large authority, has in Europe in general not been native, local, regional or national law. Rather, it has been law with universal aspirations. Law with universal aspirations are law that are not confined to just one jurisdiction, but enjoy validity across boundaries of different kinds, and are hence not particular to specific cultures. Such law with universal aspirations has to be transmitted by a language sharing the same aspirations and cultural independence. King Håkon V was hence out of tune with history when it came to both criteria for good law and transmittance language.

Even though this had been a dominating view in most of European legal history, it has not been unchallenged. Rejections of law with universal aspirations, like Roman and Canon law in the Middle Ages, and Natural law in the Early Modern Period, was rarely on the agenda before 1814. But a claim that such law ought to be adjusted to the nature and culture where applied, went at this point in history from being the exception to the rule. And instead of adhering to a language with universal aspirations, the change in expectations to good law was accompanied with a claim that law ought to be transmitted in the language of those subjects to the law. With this backdrop, King Håkon V is suddenly not alone any more.

¹ *Lovgivningen efter Kong Magnus Haakonssøns Død 1280 indtil 1387*. ed. by R. Keyser. Vol. III, *Norges* (Christiania: Chr. Grøndahl) 1949: 45.

This historical competition between universal and particular law will in this article be traced about a thousand years back in time. Still, it is a theme of an everlasting actuality, and is embedded in the case *Lautsi and others v. Italy*.² The essence of the case is if the Italian state rightfully could have a crucifix in every public classroom, all according to royal decrees from 1924 and 1928, or if there exist a duty for European states to provide religion neutral public education. Among other things, the Italian state backed their argument by references to Italian history, tradition and culture. The other party relied on universal human rights.

The case was first treated in November 2009 by a Chamber in the European Court of Human Rights, which ruled on a “duty to respect neutrality in the exercise of public authority, particularly in the field of education.” The Italian state requested the case to be referred to a Grand Chamber, who ruled in March 2011 that

the mere display of a voiceless testimonial of a historical symbol, so emphatically part of the European heritage, in no way amounts to “teaching”, nor does it undermine in any meaningful manner the fundamental right of parents to determine what, if any, religious orientation their children are to follow.

After taking a beating in the Chamber, culture and history hence made a comeback in the Grand Chamber.

Lautsi and Others v. Italy display not only a core conflict in European legal history, but also the very idea of the European Human Rights: They are universal, at least in a European context, and at the same time each state is rendered a margin of appreciation when applying them. The same is the case with the EU-law, which is the other set of norm with universal aspiration in Europe today, where margin of discretion is the term bridging the universal and particular. But the language question is somewhat treated differently with relation to the two – in the EU-law system all languages of the member states are applied in court and in judgements, at the same time as only French is the deliberation language, while within the European Human Rights system only French and English are chosen as universal legal languages.

Where does these notions of law as universal and particular origin from? What events have led to the present day situation in Europe where law with universal aspiration are the exception to rule of the national law governing each nation? And what role have language played in the conflict between the two? Let us begin our journey to answer these questions in the Middle Ages.

2. Universal versus particular law in the Middle Ages

A thousand years ago Europa was a legal patchwork of local and regional law. Each realm, each county, each town and village, even each small cluster of houses, would have their own legal norms. The more the applier of norms had participated in making them, or could identify with the makers of them, the more likely it was that they would actually be applied. Hence, laws of a realm would more likely be applied at the king`s castles than in faraway towns and villages.

² European Court of Human Rights, Grand Chamber: *Lautsi and Others v. Italy*

(*Application no. 30814/06*) 18.03.2011.

(<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=lautsi%20%7C%20others&sessionid=94602948&skin=hudoc-en>).

This state of affairs what concerns law in early Medieval Europa was not much different from the state of affairs what concerned politics – it was a patchwork of crossing interests with no real centralized state power to unify them.³ Still, the ideal was unity. This ideal stemmed from the idea that the Roman Empire had been a unity which gave peace and stability to Europe. We are in this case talking about as much a historical truth as when the Norwegian king in 1302 disregarded the importance of Roman and Canon law, and made King Olaf II the origin of Norwegian law. This image of a political and legal unity of the past was, though, a very powerful image. But its powers were first unleashed in the 12th century in the city Bologna in Northern Italy.

Large parts of western Europa entered at the latter part of the early Middle Ages a period of economical progress, with a subsequent growth of cities and public administration.⁴ The legal norms needed to support this growth was by and by found in Roman law. Roman law had never ceased to play a role in the former territory of the Roman Empire. But both in the east and west the competence to apply this complicated and immense body of law had diminished with the western part of the empire in Late Antiquity. In the east the loss of legal competence was met with a rearrangement of the law under emperor Justinian, doing away with most of it and compiling the rest between 529 and 534 in *Institutiones*, an introduction to Roman law, *Codex*, a collection of legislation, and *Digesta*, a collection of examples of appliance of Roman law. After the death of Justinian his own legislation was compiled in *Novellae* in 565. This new collection of Roman law was even introduced in the western empire's provinces in Italy. But the body of law, later known as *Corpus juris civilis*, was to be forgotten till this new growth of the economy, the cities and the public administration in the 11th and 12th century.

Ignorius has been given the honour of rediscovering Roman law. Behind the myths we simply find a lawyer striving to find good arguments to present in court, and who found them in Roman law. His success drew the attention of young, ambitious lawyers who came to study his technic of pulling out arguments from the old sources. The four doctors Bulgarus, Martinus, Jacobus and Hugo was according to the myth his students, and would be the first to establish a university study of law, where Roman law in *Corpus juris civilis* was the main object of the study.⁵ With the structuring and harmonization of Roman law of Accursius in his *Glossa ordinaria* from about 1235, this body of law was made accessible and ready for the unwrapping of law makers and appliers.

Another object of study at the emerging universities was canon law. The body of law developed by the Church was not only the fundament of Church jurisdiction, but also served as a model for vernacular law makers and appliers due to its technical qualities, especially within procedural law. With the restructuring and harmonization of this body of law by Gratian and others in the mid-12th century,⁶ Canon law was ready to sweep over Western Europe.

³ See Paolo Grossi, *A History of European Law* (Chichester: Wiley-Blackwell) 2010: 1-19.

⁴ See Grossi, *A History of European Law*, 19-35.

⁵ Richard Southern, *Scholastic Humanism and the Unification of Europe*, volum I: Foundations (Blackwell, Oxford) 1995: 273-282, and Anders Winroth, «The Teaching of Law in the Twelfth Century», *Law and Learning in the Middle Ages: Proceedings of the Second Carlsberg Academy Conference on Medieval Legal History 2005*, Helle Vogt, Mia Münster-Swendsen (eds.) (Copenhagen: DJØF Publishing) 2006: 41-55.

⁶ Anders Winroth, *The making of Gratian's Decretum* (Cambridge/New York: Cambridge University Press) 2000: 5-8 and 193-195 (for a brief summary).

The student body and the law they studied was as universal as the Roman Empire had been in Antiquity and the Church was in the Middle Ages. And universal bodies of law have to be in and thought in a universal language. That is, a language that can cross the same borders as the laws and the students transmitting them. The universal language of the Middle Ages was Latin. Still, both the universal character of the bodies of law and the language they were transmitted in would be challenged.

Already in the 12th century at least Canon law would be thought with a margin of appreciation/discretion. It was a recognized principle that it had to be adjusted when applied. Already Isidor of Sevilla, bishop at the Visigothic kingdom at the Iberian Peninsula, stressed in his *Etymologiae* in the Seventh Century, that good laws were those adjusted to specific factors. Factors even being outside the moral principles surrounding law.⁷ This idea would prove most important to the spread of Canon law, because from it followed a fairly pragmatic attitude that enabled rather an appropriation than a reception of law.⁸ It went so far that William of Ockham in the early 14th century protested against the justification of faith – the practical orientation of jurists when making and applying law got in the way of universal truths of Christendom.⁹

Already with the making of the glosses, the explanations to the paragraphs and terms in the Roman law texts, Roman law was read in light of, and hence adjusted, to the present. After the production of *Glossa ordinaria*, the focus in Roman law shifted from the text to the appliance of it, and it was even further adjusted. And hence, Roman law was, as Canon law, more an appropriated than merely received. This way Renaissance Romanists would be occupied with bringing Roman law back to the original texts, and doing away with all the remaking's of the pragmatic transmittance.¹⁰ Francois Rabelais even made this a theme in his famous “Pantagruel” from the first half of the 16th century.¹¹

It is symptomatic that it was not only the laws that in the renaissance were perceived vulgarized through the transmittance, but also the language they were transmitted in. Even worse, in some countries Latin was not used as a legal language at all. This would be typical for the parts of Europe where especially Roman, but also Canon law was more a raw material for local law making and appliance. This of course counts for many a local court, where both knowledge of learned law and Latin was more than scares.¹² But the further away you got from Rome, the less Latin was used in higher courts and in law making as well. England being one example frequently pointed at,¹³ where French was used as a legal language, later known as Law French, while Latin was frequently used when applying Canon law. Norway are in some ways an even more extreme example, since the vast amount of laws produced

⁷ Isidorus Hispalensis, *The Etymologies of Isidor of Sevilla* (Cambridge: Cambridge University Press, 2006) 199 no. xxi.

⁸ See James a. Coriden, “The Canonical Soctrine of Reception”, *The Jurist*, volume 50 1990: 60-62.

⁹ John Scott, “William of Ockham and the Lawyers Revisited”, *Rhetoric and Renewal in the Latin West 1100-1540 – Essays in Honour of John O. Ward*, eds. Constant J. Mews, Cary J. Nederman, Rodney M. Thomson (Brepols: Turnhout) 2003: 169-182.

¹⁰ Grossi, *A History of European Law*, 54-58.

¹¹ Theodore Ziolkowski, *The mirror of justice – Literary reflections of legal crises* (Princeton, N.J.: Princeton University Press) 1997: 134-143.

¹² See Bernd Kannowski. “The Sachsenspiegel and Its Gloss in Context of European Legal History as Exemplified by Criminal Procedure”, *Law and Learning in the Middle Ages: Proceedings of the Second Carlsberg Academy Conference on Medieval Legal History 2005*, Helle Vogt, Mia Münster-Swendsen (eds.) (København: DJØF Publishing) 2006: 193-206.

¹³ Heikki Mattila, *Comparative Legal Linguistics* (London: Ashgate) 2006: 225-228.

were all in old Norse.¹⁴ This counts for the Norwegian Code of the Realm of 1274, the fairly identical Code of the Cities of 1276, the somewhat identical Icelandic Code of 1281, and the Administrative Code of 1277, and the 77 known pieces of different kind of legislation issued after the making of these codes till 1319, when the law making activity would by and by slow down due to a series of factors. Even the Church laws of 1277 were also written in vernacular Norwegian.

As a rule of thumb, the less latinification of the legal language, the less the Roman and Canon law influence was. If we again look at Norwegian legal history, the Roman law influence are noticeable, but still fairly vague due to Roman Law being a raw material for reworking and the passing and applying of local law. From the early Middle Ages, when the country recently had been Christianised and the Church was still weak as an institution, Canon law did not apply in Norway. Instead, we see that parts of canon law was adopted at one of the four regional public assemblies as Christian law,¹⁵ and served as a supplement to the vernacular laws of the respective region. Even though Canon law would more and more be applied the stronger the Church would become as an institution, it should be noticed that the Church in 1277 issued yet another set of Christian law as an adoption of selected parts of Canon law. This time, though, we most assumed that the role of the public assemblies was just a formal one, as was the case with the royal codes of 1274 till 1281, and subsequent vernacular law making.

In Norwegian legal history in the Middle Ages we find local law making in a local language. When King Håkon V in the preamble in 1302 claimed in Old Norse that Roman and Canon law had been harmful for the realm, and the laws to be observed by the inhabitants were those made by St. Olaf and his descendants to the throne, it was political propaganda, since Roman and canon law had influenced Norwegian law. But these sources of law had been much transformed what both content and language concerned. The idea of prescription was adopted,¹⁶ but without the idea of *bona fides*.¹⁷ But not only was Old Norse the legal language, but legal concepts like “*decisio*” was translated into “*orskurð*”,¹⁸ and “*judex*” to “*rettari*”. Through this kind of transformation law with universal aspiration was made culturally particular in Norway, as to various degrees everywhere in Europe, in the Middle Ages.

3. Law with universal aspirations in the Early Modern Period

The Reformation marks the end of the Middle Ages and the beginning of the Early Modern Period. With the Reformation the relationship between man and God became more personal and less institutional, and the universal truths of Christendom were taught in different languages in the reformed areas of Europa. Similar changes would take place within law.

First of all Roman and Canon law would become less influential. Canon law much due to the fact that it no longer applied universally within the western Christendom. Roman law much

¹⁴ Mattila, *Comparative Legal Linguistics*, 131, with further reference.

¹⁵ These public assemblies was Gulating in western Norway, Frostating in the middle and north of Norway, Eidsivating in the interior east of Norway, and Borgarting in the coastal eastern Norway.

¹⁶ Jørn Øyrehagen Sunde, “Innovative reception – Reception and Innovation Concerning Fix time Periods as a Criterion for the Acquisition and Loss of Rights in the Gulating Compilation”, *Liber amicorum Ditlev Tamm – Law, history and culture*, eds. Per Andersen, Pia Letto-Vanamo, Kjell Åke Modéer, Helle Vogt (København: DJØF Publishing) 2011: 217-229.

¹⁷ See e.g. The Norwegian Code of the Realm VIII-6.

¹⁸ Knut Robberstad, *Retts saga*, volume I (Oslo: Universitetsforlaget) 1976: 147.

due to the fact that the admiration for things antique was giving way for admiration for all things new, due to new discoveries and progress in so many fields. This was in itself not the end of law with universal aspirations. Natural law, which had since the Middle Ages been one of the many parts of law, moved forward to take their place. Being the law of mankind at all places at all times, it was as universal as could be. And the ground breaking treaty in natural law of 1625, “De jure belli ac pacis” by Hugo Grotius, was of course written in Latin – still the universal language. But if the word of God in general should ideally be transmitted in the languages of the particular states, then, should the laws of that state not also be transmitted in the languages of the legal subjects it applied to? As the German lawyer Herman Conrig would state in the early 17th century: “Si lingua utaris aliena aut solis doctis nota, injurius es in populum “– you do harm to the people by using a foreign language or a language only known to the learned.

Still, this universal truth was transmitted in a universal language and not one applied by the people in the first centuries after the Reformation.¹⁹ So even though e.g. German legal literature was written in German in the 17th century, Latin still dominated.²⁰ But by writing literature in German, aimed at an expanding student body including members of the lower bourgeoisie not mastering Latin, scholars like Christian Thomasius would pave the way for a new trend.²¹ It is symptomatic that Christian Wolff would write his pieces first in Latin, and later publish them in German, a strategic move securing his popularity as scholar and his personal wealth.

But this new trend would also have a philosophical aspect to it. In this context it is more Wolff on the one hand would transmit his universal truths in a universal language, which had been done since the Middle Ages. On the other hand he would transmit them in the specific language of a specific part of those possessing the universal reason making a reception of the universal truths he was teaching possible. Wolff hence embodies the paradox of universality that emerges with the Enlightenment – reason is universal by being a part of each individual, and must be awoked through theaching the individual, which must be done in a language the individual understands. Hence, suddenly a universal language was in the way of the universality of law.

In the Danish-Norwegian kingdom laws were still made and applied in Danish, as had been the tradition since the Middle Ages. But learned law was thought in Latin at the University of Copenhagen from 1479. The consequence was that learned law had less impact on the law of the realm than local customs. This would come to an end when the law study was restructured in 1736 with inspiration from Prussia, where the architech behind the restructuring, Andreas Højer, had studied under Thomasius during his stay in Halle between 1707 and 1710.²²

From 1736 on all who would take office as judge, prosecutor or advocate would have to first take a law exam. These exams were of four kinds when it came to content and language. The three highest degrees had to be taken in Latin, and required knowledge in Roman law to pass. The lowest degree was nicknamed the “Danish exam”, since it could be taken in Danish and with Danish and Norwegian law as its main focus. But the students were also tested in natural

¹⁹ Mattilla, *Comparative Legal Linguistics*, 166

²⁰ Op. cit.

²¹ See Jørn Øyrehagen Sunde, “Praecognita juris – eit danningsprogram i dansknorsk rettsvitenskapelig litteratur på 1700-talet”, *Retfærd*, no. 2/121 2008: 105-107.

²² Op. cit.: 105-106.

law.²³ But being a kind of law that did not only apply to the learned but to everyone, a handbook in natural law had been available in Danish since 1715.²⁴ The problem was rather that there was no literature on Danish-Norwegian law. Hence, students had to attend lectures, which were only held in Latin. The solution was that students with knowledge in the language would sit in at lectures, take notes, and translate them to Danish and finance their study that way. The first lectures translated into Danish were published in 1742.²⁵ So was also reknown foreign literature like the *Logica* by Christian Wolf and *De officio hominis et civis* by Samuel Pufendorf.²⁶ It became obvious that there was a marked for legal literature in Danish, and from the 1750 and onwards such literature emerged together with even more translations. At the end of the 18th century lectures was even held in Danish, and only dissertations was still in Latin till the 1840s.

Latin was only the legal language of the university in Norwegian legal history from it emerged in 1479, but even here its importance would decline from the 1750s. As we have seen this was partly due to the emergence of a marked for legal litteratur in Danish.²⁷ But there were another event at this time that would change how law was perceived for centuries to come: the publication of *The Spirit of the Laws* by Charles Montesquieu in 1748. Montesquieu`s work is much like Montaigne's *Essays*, but just all the essays at the same time in one big mix. But already in the beginning, before the reader gets entangled in the abundance of loose treads, we read:

Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another.

[...]

They [laws] should be related to the physical aspect of the country; to the climate, be it freezing, torrid, or temperate; to the properties of the terrain, its location and extent; to the way of life of the peoples, be they plowmen, hunters, or herdsmen; they should relate to the degree of liberty that the constitution can sustain, to the religion of the inhabitants, their inclinations, their wealth, their number, their commerce, their mores and their manners; finally, the laws are related to one another, to their origin, to the purpose of the legislator, and to the order of things on which they are established.²⁸

Montesquieu adhered to the idea of natural law. But he found that this universal law was only the entrence to civil society, where natural law was only the raw material for particular law making.²⁹ That law hence was made and applied differently at different places at different times without this making the law less good. Rather the contrary, it made it better, because it meant that law was adjusted to the natural environment and particular culture.

²³ Jørn Øyrehagen Sunde, "Fornuft og erfaring" – *Framveksten av metodisk medvit i dansknorsk rett på 1700-talet* (Det juridiske fakultet: Bergen) 2007: 139-140.

²⁴ Ludvig Holberg, *Moralske Kierne, eller Introduction til Naturen og Folke-Rettens Kundskab, Uddragen af de fornemste Juristers, besynderlig Grotii, Pufendorfs og Thomasii Skrifter, Illustreret med Exempler af de Nordiske Historier, og confereret med vore Danske og Norske Love, Recesse og Forordninger* (Kjøbenhavn: Johan Kruse) 1715.

²⁵ Andreas Højer, *Juridisk Collegium over Processen saaledes som den bruges i Dannemark og Norge, samlet og til Trykken befordret af Hans Hagerup* (Kjøbenhavn) 1742.

²⁶ Christian Wolff, *Fornuftige Tanker, om den menneskelige Forstands Kræfter, og dens rigtige Brug i at kiende Sandhed, Sandheds Elskere meddelte* (Kjøbenhavn: Johan Jørgen Høpffner) 1742, and Samuel Pufendorf, *Et menneskes og en Borgers Pligter efter Naturens Lov* (Det Kongel. Waysenhusets Bogtrykkerie) 1742.

²⁷ See Sunde, "Fornuft og erfaring", 144-147.

²⁸ Charles Montesquieu, *The Spirit of the Laws* (Cambridge University Press: Cambridge) 1990: 8-9.

²⁹ Montesquieu, *The Spirit of the Laws*, 6-7.

Montesquieu`s idea of good law being particular law hit Europe in the mid-18th century hard. It was not because it was a totally new idea – as we have seen this idea was present in *Etymologiae* by Isidor of Sevilla, and it was influential on how Canon law was transmitted in the High Middle Ages. Rather the effect of the writing of Montesquieu was due to a long term change beginning with Conring, Thomasius and Wolff, and where the loss of a universal language of law was much the preparatory step towards the loss of law with universal aspirations. That is why the ideas of Motesquieu at this time became the decisive nail in the coffin of natural law.

4. Particular law in the Modern Period

If it is the adjustment to the particular that made law good, you can just as well do without the universal all together. The final move in this direction was made by Carl Friedrich von Savigny with his *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* of 1814. For Savigny good law was particular law that had to be organically developed in a symbiosis with the people governed by it:

Aber dieser organische Zusammenhang des Rechts mit dem Wesen und Character des Volkes bewährt sich auch im Fortgang der Zeiten, und auch hierin ist es der Sprache zu vergleichen. So wie für diese, giebt es auch für das Recht keinen Augenblick eines absoluten Stillstandes, es ist derselben Bewegung und Entwicklung unterworfen, wie jede andere Richtung des Volkes, und auch diese Entwicklung steht unter demselben Gesetz innerer Nothwendigkeit, wie jene früheste Erscheinung. Das Recht wächst also mit dem Volke fort, bildet sich aus mit diesem, und stirbt endlich ab, so wie das Volk seine Eigenthümlichkeit verliert.³⁰

In Norway both Montesquieu and Savigny were particularly influential due to the strong tradition of adjustment of law since the Middle Ages, but also to political circumstances. Since the reformation Norway was tightly knit to the Danish kingdom, and Norwegian law was produced in Copenhagen, being the capital of the Danish-Norwegian kingdom. Often Danish law was just made Norwegian law. But Danish and Norwegian natural and cultural particularities were far from always the same, and Montesquieu gave Norwegian lawyers a legitimate reason for doing what they had long done – adjust Danish law to Norwegian conditions. From 1814 on Norway had a joint king with Sweden instead of Denmark, but with the important difference that Norwegian law was now made by a Norwegian parliament. Savigny gave this parliament a legitimate reason to fight for its supremacy as law maker and to resist the initiatives by the king, seated in Stockholm, to reduce its powers.

Savigny spoke of the organic development of law and people. And his teaching was used in a Norwegian context to resist the influence of a king experienced as Swedish on the powers of parliament. It sounds like the autocratic law with universal aspirations had had to give way to the particular and democratically founded law. It is not quite so. Savigny, as Norwegian lawyers in the 19th century, would use customs as a source of law. But they would separate customs for customary law, the latter being customs that lawyers would find suitable as a source of law. Law, like language, music, fairy tales, etc. as used by the people was at best a raw material for jurists to polish, at worse misconduct to be abandoned. Hence, the practice of the people would only have the force of law if lawyers would not reshape or sensor it all together.

³⁰ Carl Friedrich von, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (Heidelberg: Mohr & Zimmer 1814: 11.)

Still, at least Norwegian became the language of the law. Also not quite so. Because what was actually the Norwegian language? Danish had been so since Old Norse was no longer comprehensible to all but a very small elite from the 16th century on. The Norwegian language was hence in 1814 Danish. But this was not the tongue spoken among the people. With *nynorsk*, a language based on the spoken dialects, a Norwegian language was constructed to compete with *bokmål*, the language found in books and only spoken by the elite. In 1885, after the political takeover by the political party Venstre, with a sound rural base, *nynorsk* was made an official Norwegian language together with *bokmål*. In 1894 the first draft of a law in *nynorsk* was voted on in the Norwegian parliament. The law was on only two paragraphs, aimed at introducing Greenwich Mean Time in Norway, and its content was not controversial at all. But the language was. Among other things, it was claimed that *nynorsk* was a very suitable language to discuss agricultural affairs and fishery, but not stately affairs like laws. The law just got a majority, and another 27 years would pass before a new law in *nynorsk* was voted on. By that time the first professor in law using *nynorsk* got his chair in 1906, but he wrote *bokmål* up till then. The first student took his exam using *nynorsk* in 1909, but he barely passed, even though the exam would have been good if it had been written in a human language, as the examiner put it. The student became in the 1930s the first judge at the first instance to write *nynorsk*. About thirty years later this was done for the first time in an appeal court, and in the Supreme Court the first vota in *nynorsk* were written in 1999.³¹

5. A universal truth about law?

There has been a conflict in European legal history the last a thousand years between law with universal aspirations accompanied with a universal language, and particular law accompanied with particular languages. It is hence tempting to make the two fit into a dichotomy of national and international. This was done already in the preamble of the statute of 1302. Today what is universal and what is particular might even more easily be trapped in this dichotomy because of the notion of the nation state as the normal state of affairs. And this is especially the case using Norway as an example, or other present day nations that have a long history of being one, fairly unified territory since the Middle Ages.

But the strife between *nynorsk* and *bokmål* as legal languages in Norway since the midst of the 19th century reminds us that this dichotomy is not a question of national versus international, even if it might be so. Rather it is an immanent feature of law that we strive to include as many legal subjects and as much territory as possible in jurisdictions, because shared law enables interaction. On the other hand we strive to make law as closely linked to the persons and the affairs governed by law, because the purpose of law is to solve conflicts, and the most lasting conflict resolutions are those that the legal subjects can best understand by being specific and not general. This immanens is unleashed in the strife between law with universal aspirations and particular law. It is hence not a question of law as good or bad, but of both factors having to be weighed against each other to strike a balance.

In this continuous evaluation process we find a creative force within law. The difference between the decisions in Chamber and Grand Chamber in *Lautsi and Others v. Italy* are hence not a proof of the European Court of Justice not working well, but that it takes part in this creative process law has profited from the last thousand years.

³¹ Jørn Øyrehagen Sunde, "Til kamp! Nynorsk som rettspråk før, no og i tida som kjem", *Mål og rett – Juristmållaget 75 år*, Gunnar O. Hæreid, Kåre Lilleholt, Ingvild Risnes Skeie, Merete Tollefsen (eds) (Institutt for Privatrett: Oslo) 2009: 147-158.

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