European University Institute

ASSOCIATION of YOUNG LEGAL HISTORIANS

XVth European Forum of Young Legal Historians

Inter-, Trans-, Supra-?
Legal Relations and Power Structures in History

Florence (Italy), 1-4 April 2009

Abstract Booklet

Papers and Posters

ADAMS ERIC M.
University of Alberta, Canada

Crossing Borders: American Influences on Canada's Constitutional Rights Revolution

My paper explores the complicated place of American ideas about rights in mid-twentieth-century Canadian constitutional thought. From the earliest Canadian debates about the entrenchment of constitutional rights, American constitutional design served simultaneously as an inspiring ideal and cautionary tale in Canada's constitutional imagination. That the American Bill of Rights figured prominently, if not always explicitly, in the formative period of Canada's rights revolution is hardly surprising. Less expected are the multifarious dimensions of that influence. I argue that a diverse range of Canadian constitutional actors drew inspiration from contrasting strands of American constitutional discourse and practice. While the Canadian Bar Association yearned for *Lochner*-era property rights to curb the growth of the administrative state, Canadian socialists emphasized the need for social and economic rights, and repressed and racialized citizens demanded human rights to protect their civil liberties and equality rights. All the while, the Canadian government warned of the "Americanization" of Canadian constitutional law. In charting these diverse influences, my paper illuminates a transformative moment in Canadian constitutional history, while highlighting the multiplicity of meanings generated by interactions between neighbouring constitutional cultures.

BADEA ANDREEA-BIANCA
University of Münster, Germany

Book Banning as Means for Exclusion. Jean Mabillon on Trial [Bücherverbot als Exklusionsmechanismus. Jean Mabillon vor Gericht]

In 1698, Jean Mabillon published the *Epistola de cultu sactorum ignotorum* under the name of Eusebius Romanus. The famous scholar did not settle on this well-established pseudonym as a literary joke, but it was connected to the work's content. Mabillon wrote his letter as a criticism on the veneration of bones from anonymous saints in Roman catacombs – a deed regarded an affront against the Curia in Rome.

The *Epistola* attracted so much attention that Eusebius Romanus, in 1701, was finally denunciated at the secretary of the Holy Index Congregation. The subsequent trial was initially considered an easy one: The trial proposal followed the charges and the commission ordered an expertise. Yet, this unusually did not lead to a presentation of the expertise's results and a decision for or against the ban. The first sitting meant for the presentation was interrupted due to approaching lunchtime, and, for the second one, the expert did not turn up as he was withdrawn from Rome. Three years and several sittings later, the case of the *Epistola de cultu sactorum ignotorum* was heard for the last time without finally receiving the expected banning.

Although the sittings of the Index Congregation were as secret as their agenda, the case of Eusebius Romanus was widely known. On the one hand, a number of high-ranking dignitaries of the Curia and French incumbents supported the trial's dismissal – a trial that could not be suspended due to relevant personal reasons as it did not concern authors but books. On the other hand, the author himself reported to the Cardinals and demanded offers for revision he would include in the following edition. Moreover, the Congregation itself did not seem to take interest in a fast decision, especially as the verdict had had to be against the *Epistola*. They did not even know if the Pope himself would argue in favor of the monk. Indexing was regarded a moral responsibility according to the Church's self-conception – a responsibility the Congregation followed independently from the respective

regimes. Yet, Mabillon was a highly respected public figure making an assessment of the political implications this book ban might bring about rather difficult.
The Congregation's response to this prominent case reveals a lot about their policies and procedures – in some respects also ex negativo. These policies need to be determined within their legal dimension. The presentation, on the one hand, wants to examine the legal function of this institution; on the other, the focus is set on the societal consequences of indexing provided that the affected author – as in Mabillon's case – is more or less close to or dependent on Rome. It will investigate the book ban's potential to exclude an individual from a system without necessarily dealing with its theological/moral implications. With a last step and against the detailed background, I will discuss the cooperation as well as confrontation of norm obedience and dependence and the inclusion in several power structures.

BATÓ SZILVIA
National Office of Cultural Heritage, Hungary

Kriminelle oder rebellische Untertanen? Die österreichische Regierung und die Kriminalität in Ungarn in der ersten Hälfte des 19. Jahrhunderts

Wegen der speziellen staatsrechtlichen Lage zwischen österreichischen Erbländen und Ungarn ist es sehr interessant, wie die habsburgische Regierung die ungarische Kriminalität behandelte. Seit dem Jahre 1795 (das Jahr der sog. ungarischen Jakobinerverschwörung) war die bestimmende Meinung am habsburgischen Hof, dass die ungarischen Untertanen Rebellen sind, deshalb sei es nötig, sie streng zu beaufsichtigen. Die Innenpolitik der österreichischen Regierung war absolutistisch und konservativ, die zentrale Verwaltung versuchte die ganze ungarische Gesellschaft mit polizeilichen Mitteln zu kontrollieren.

In Ungarn herrschte Gewohnheitsrecht im Strafrecht und Strafgerichtsbarkeit bis zum Jahr 1880, deshalb versuchte der Wiener Hof die „chaotischen" Verhältnisse im 18. Jahrhundert mit direktem Rechtsexport zu lösen. Nach diesen erfolglosen Versuchen drängte die „fremde" Regierung auf die Kodifikation, die auch ergebnislos war, und wahrscheinlich zur Etablierung der modernen liberalen Opposition und teilweise der Entwicklung der modernen „europäischen" Strafrechtswissenschaft beitrug. Die andere Möglichkeit war die Kontrolle über die Gerichtsbarkeit: statistisches Datensammeln seit dem Jahre 1757, Berufungspflicht des Anklägers bei Todesstrafe und anderen schweren Strafen, Maximalisierung der Schläge bei der Züchtigung, sogar der unmittelbare Eingriff in einzelne Prozesse. Diese Bestrebungen brachten zwei wichtige Ergebnisse mit sich. Einerseits wurde die Strafgerichtsbarkeit teilweise modernisiert. Z. B. wurde die Verhängung der Todesstrafe zurückdrängt. Andererseits entstand eine wichtige Datenbank, die bei der historischen Kriminalitätsforschung zu benutzen ist.

Ich möchte die bisherigen ungarischen Forschungsrichtungen der Strafrechtsgeschichte vorführen, die man als Vorläufer der historischen Kriminologie erachten kann. Daneben möchte ich auch die anwendbaren Quellentypen und Methoden durch Strafgerichtspraxis in einem südostungarischen Komitat (1790-1847) näher bringen.

BENITEZ-SCHÄFER FLORENCIA
University of Vienna, Austria

Die kulturelle Aneignung westlichen Rechts im chinesischen Rechtstransferprozess vom Anfang des 20. Jahrhunderts

Im letzten Rechtshistorikertag vom 7. zum 11. September 2008 in Passau wurde zum ersten Mal eine Sektion zu Ostasien eingeführt, in der unter anderem die Einführung deutschen Rechts in China skizziert wurde, insbesondere was die Entwicklung der Gesetze und ihrer Interpretation in den letzten dreißig Jahren anbelangt. Nur angedeutet blieb dabei die Geschichte des Vorläufers dieser Reform, an dem sie anknüpft und die hier genauer betrachtet werden soll.
Der Vortrag beschäftigt sich mit der Ende des 19. und Anfang des 20. Jahrhunderts geführten Rechtsreform, die über den Untergang der chinesischen Monarchie hinaus eine eigene Evolution aufweist. Bei einer solchen Entwicklung handelt es sich aber nicht nur um die Einführung von Gesetzen und Doktrinen. Daher richtet sich die zentrale Fragestellung der Arbeit darauf, wie China diese Erneuerungen in ihre (Rechts-)Kultur einbezogen hat. Wie haben die Vorstellungen der langen chinesischen Tradition die eingeführten Rechtsbegriffe beeinflusst und geändert? Der Rechtstransferprozess wird also vor dem Hintergrund von der Entwicklung der chinesischen Rechtskultur behandelt. Ob und wie die eingeführten Rechtselemente in die chinesische Rechtskultur eingegliedert wurden, wird anhand Beispiele dargestellt, die den praktischen Umgang mit denselben zeigen.
Durch die Hinterfragung des oft vernachlässigten Aspekts der kulturellen Aneignung fremden Rechts entstehen gleichzeitig grundsätzliche Fragen betreffend der wissenschaftlichen Behandlung von Prozessen dieser Art. Ist zum Beispiel die herkömmliche Bezeichnung solcher Entwicklungen als „Rezeption“ angemessen? Darüber hinaus stellt die genauere Betrachtung der chinesischen Rechts- und Rechtsphilosophiegeschichte die bisherige Einteilung in Rechtskulturen, insbesondere die „klare“ Unterscheidung zwischen westlichen und nicht-westlichen Rechtskulturen in Frage. Diese Probleme werden in der Arbeit abschließend dargestellt.

BLUM BINYAMIN
Stanford Law School, USA

Traditionalizing Prejudice: The Corroboration Requirement in Mandate Palestine

In 1934, in one of the highest profile cases brought before it, the Supreme Court of Palestine reversed the conviction of Abraham Stavsky for the murder of Haim Arlosoroff, one of Palestine's most prominent political leaders. Chief Justice McDonnell, writing for the Court, noted that had the trial been conducted in England – or in any other British dependency for that matter – Stavsky's death sentence would have been upheld. However, since the law of Palestine required corroboration to support a criminal conviction, the identification made by Arlosoroff's widow – on which the prosecution founded its case – could not suffice.

Why did Palestine differ so drastically from England and other colonies in its evidentiary requirements? Why did Palestinian law stipulate that no judgment be founded, in neither civil nor criminal cases, upon the uncorroborated testimony of a single witness, regardless of the crime or tort committed and irrespective of the witness's identity or credibility? The primary sources gravitate between two highly divergent explanations: the one links the doctrine to Muslim law's two-witness requirement, which was later echoed by Ottoman law, thus justifying the doctrine as the product of British sensitivity and respect for the native population's customs and religion. However, secret correspondences between high ranking Mandate officials, such as the Chief Justice, the High Commissioner and the Attorney General, disclose a drastically different, and far more controversial reasoning: the generally low credibility of the people of Palestine. This low reliability in turn is attributed to lower moral standards, lack of ability to distinguish between fact and fiction, strong familial and tribal loyalties as well as racial tensions, that motivated members of Palestine's two rival communities – Arabs and Jews – to offer false testimony. These correspondences demonstrate the ways in which even seemingly technical procedural requirements are often shaped by prejudice and power.

British colonial suspicions towards native witnesses and preoccupation with perjury were by no means unique or confined to Palestine; legal historians have identified

similar concerns and trends in 19th century India. Nevertheless, the concerns and the solutions pursued in Palestine are distinct and significant in a number of ways, of which I shall consider a few: first, in Palestine we see an interesting attempt to camouflage colonial prejudice as preservation of local customs. Second, in requiring corroboration for all testimony, the colonial government imposed upon itself a considerable obstacle to law enforcement, which should not be overlooked; a higher standard of proof made convictions far more difficult to obtain, thus undermining one of the colonial government's most important goals – restoring and maintaining law and order. One of the key questions I shall try to answer is why, cultural biases notwithstanding, the administration in Palestine would compromise law enforcement in such a fundamental manner and what it may have stood to gain from doing so. Finally, in departing so drastically from English law on this issue – which had far-reaching ramifications for the administration of justice in both criminal and civil cases – the corroboration requirement raises important questions concerning the Anglicization of Palestine's procedural law, a field characterized by most historians as heavily Anglicized since the very beginning of the British Mandate in 1922.

CAHEN RAPHAËL
University of La Rochelle, France/University of Munich, Germany

Gentz and the Creation of Maritime Law

Since Grotius' *Mare Liberum* in 1601 and John Selden's reply *Mare Clausum*, the ideas of the "liberté des mers" has animated many philosophers and diplomats before being replaced by the ideas of neutrality during the time of the armed neutrality. During Napoleon's rise of power and before the war between England and the USA, the ideas of "liberté des mers " was reactivated by the writings of French publicists like Barère, Pierre de la Grave, Du Malouet and Rayneval. The "Freedom of the seas" was now used as a propagandist tool for Napoleon's politics against England's domination on the seas.

Friedrich Gentz, one of the prominent adversaries of Napoleon and one of the biggest advocates of England in Europe, has written three "mémoires" upon "the maritime Peace" and the different measures taken by France and England between 1806 and 1812 on maritime relations.

The first one was written on March 1810 and the two others in 1812. Gentz's thoughts upon maritime law and international trade are very significant for his political thought and his famous lucidity. Those mémoires also prove his interest for law, although some of Gentz's scholars, like Alexander von Hase, assume that Gentz did not have any interest for law.

Like with many other debates of the time, in which Gentz took part, it is after a series of pamphlets from other political thinkers on the subject, that Gentz exposed his ideas. His interest for international law appears mostly during the debate on eternal Peace with Kant, Fichte, Heeren and other writers between 1795 and 1801, and through the debate upon the balance of power, against Hauterive, between 1800 and 1802. His position on the side of England, which was already stressed during the long debate on "the so call" decline of the English finances, made Gentz famous in England and in France. It was also his first intellectual fight against the French publicists. In 1806, Gentz's interest for international relations and international law was more oriented towards maritime questions. During his exile, Gentz had borrowed several books on maritime law and commercial relations in the old library of Dresden.

However, he exposed his synthetic thought on the subject for the first time after the first complaint of the United States of America against the French Decrees of Berlin and Milan and the English Orders of Council in 1810, and just before the United States declared war against England in 1812.
In the light of many unpublished letters which Gentz sent to the British Government, and of the economic, political and juridical context, Gentz seems, just like on the question of the balance of powers, to appeal to a new system leading to the peace Treaty of Paris in 1856, which constitutes the first practical attempt to create an international maritime law.

CONTIGIANI NINFA
University of Macerata, Italy

The Role of "Liberal" Jurists of the Papal States: Bonds and Conflicts between Traditional Ecclesiastical Power Structures and European Legal Culture in the Nineteenth Century

From a legal point of view, the last century of the history of the Papal States is an important example for a renewed reading of the Restoration as an originary period. The years 1846-1849 were particulary marked by strong reformist impetus in the government and in the administration of criminal justice. Absolute protagonists of the attempts of European modernization were, especially, the bearers of the legal culture of the State. In the Universities, the Faculties of Law do not represent any more the glorious past, but very often professors of law are lawyers and judges as well. All these roles, they express a lay culture connected with the European culture and for this reason they are able to face the ecclesiastical power. In those years, the Papal States are a backward country, socially and economically. The clergyman occupied the key position of the State and their privileges atrophy the reformation debate wich was continually influenced by the most reactionary members of the Roman Curia. The jurist, however, take actively part in the legislative reform efforts (both institutional and criminal). The juridical culture introduces ideas of moderate government in the traditional power structures and garantees in the administration of justice. The reformist attempts failed, but they marked the important presence of a different ruling elite that looked towards the future, even if the Risorgimento historiography for a long time made many believe the contrary.

DELBECKE BRAM
Catholic University of Leuven – Campus Kortrijk, Belgium

Strategic Indulgence. New Perspectives on the Impact of Napoleon III on Belgian Press Law (1852-1858)

At the dawn of the French Second Empire, several critics of Napoleon III who were banned from or fled Paris, found a shelter in Brussels. The Belgian capital, with its press friendly atmosphere and its vivid press scene, was the ideal place to publish their critiques on the napoleonic regime, and smuggle them into France. Napoleon III was not amused and by threatening the economic interests and even the independence of Belgium, he urged the Belgian government to take measures. These were the origins of the so-called Faider-law (1852) and the Tesch-law (1858), which outlawed offending foreign sovereigns and heads of state. Historians considered this episode in the classical terms of international power politics, a typical example of a small country obediently dancing to the tune of its powerful neighbour state, in order to safeguard its own interests. However, a different appreciation is possible. By making the right concessions on strategic moments, the Belgian government succeeded to save the jury trial in press trials avoided a formal change of its constitution. After all, giving op the integrity of the constitution would have been regarded as a fundamental mutilation of the Belgian identity itself.

FLÜCKIGER DANIEL
University of Bern, Switzerland/University of York, UK

Private property and Infrastructure Policies, 1750-1850

In the 19th century, laws about the compulsory purchase of land for infrastructure constructions were justified as a mean to reconcile the needs of the whole society with the property rights of individual landowners. However, for some of the most liberal countries of the time as England and Switzerland, a closer look reveals that the expropriation practices remained mainly the same as in the 18th century. What was the use of new expropriation laws if they did neither improve the protection of private property nor immediately change the possibilities of action for governments?

In the paper one possible answer is given for the case of the canton of Berne. There, expropriation procedures shaped the possibilities of landowners to represent their interests and their concepts of land. In the course of the procedures, minorities of wayward landowners had to accept that their property was a homogenous and divisible commodity which could be compensated in money. In this way, courts diffused an ideal of market-oriented businessmen – who, on the other hand, were the most important promoters of new infrastructures.

FREY DÓRA
Eötvös Loránd University Budapest, Hungary

History of Double Tax Treaties
[Geschichte der internationalen Doppelbesteuerungsabkommen seit 1869: Selbstbeschränkung der Finanzhoheit]

The tax treaties preventing double taxation are a development of modern times as the first tax treaties were entered in the second half of the 19th century – the very first in 1869 between Saxony and Prussia. The reason is that double taxation itself is a new phenomenon too, a consequence of the modernisation of tax systems and the growing mobility across states.

Rules preventing double taxation first established in federal states and confederations, such as Switzerland, the North German Confederation and Austria-Hungary, but most of them were not a formal treaty. Raising number of treaties in this field were entered in the last two decades of the 19th century. These treaties included advantages not for the states itself but for the citizens and corporations. Double tax treaty limits the financial jurisdiction of a state.

Tax treaties were entered not only between friendly states and overwrote conventional political priorities, e. g. treaties between the successor states of Austria-Hungary.

The development of the methods preventing double taxation was a main topic in the League of Nations based on the work of expert bodies who worked out reports together with the first model treaties preventing double taxation during the Second World War (1943 Model Treaty of Mexico, 1946 the Model Treaty of London).

International tax treaties are good examples of treaties between equal and sovereign states, without or with marginal influence of power structures. International taxation was supported by the international organisation, the League of Nations like no other matter concerning international relations.

The main topic of my talk is the demonstration of the development and the issues of historical tax treaties.

GARNIER ADÈLE
University of Leipzig, Germany/Macquarie University Sydney, Australia

Transformation of Law and Sovereignty Adaptiveness: the Reconfiguration of Asylum Policies in Australia from the 1970s

Legal order is an essential dimension of the concept of sovereignty, while the institution of asylum reflects the tensions between a particularistic, legal and a universalistic, ethical conception of rights. This tension has been exacerbated in the context of an increasing arrival of asylum seekers to Western countries and has led to a reconfiguration of asylum policies both inside and beyond the domestic sphere. My paper assesses to what extent the reconfiguration of Australian asylum policies since the 1970s can be understood as a transformation of sovereignty.

Since the 1970s and its involvement in the Indo-Chinese Comprehensive plan of Action, Australia has been increasingly involved in international cooperation aiming at regulating, and restricting, the arrival of asylum seekers. In the 1980s, attempts of the executive to restrict access to asylum have been constrained by domestic court decisions expanding the definition of a refugee in Australian law, while migration policy in general was in transition from a discretionary mode of decision to compliance to a legal framework. As a result, the Australian executive has been increasingly keen to cooperate with countries of origin and of transit of asylum seekers so as to impede arrivals on Australian shores. Both the politicization of migration issues and the persistence of arrivals in the 1980s and 1990s have reinforced this trend. On domestic level, after having curtailed social entitlements of asylum seekers, portions of the Australian territory and territorial seas were excised in 2001 from the usual Australian jurisdictions so as to bar asylum seekers from applying for asylum in Australia. Persons claiming asylum were sent to processing centres on Pacific islands. Implementation difficulties as well as the unpopularity of the so-called "Pacific Solution" have led to its end by the newly elected federal government in 2007.

Sovereignty, defined as the authority of a political entity over its affairs, appears to be reconfigured and challenged at multiple levels. The executive attempts to maintain what is considered sovereignty over entry control through an international regulatory framework based on power asymmetries between Australia and Pacific

Islands. However, implementation difficulties point at the failure of the Australian executive to ensure its authority over the reconfigured asylum policies. The authority of the executive is challenged both by the judiciary and increasingly by the Australian public questioning the legitimacy of the new asylum policies. Eventually, the reconfiguration of asylum policies leads to a restructuration of power relations on international and domestic level, while no gain of sovereignty seems to have been made in this process.

The paper will be based on document analysis, especially migration law, as well as on interviews with policy-makers, parliamentarians and refugee advocates in Australia and Geneva.

GERSTENMAYER CHRISTINA
University of Trier, Germany

„Ach großer König, laß doch Gnade vor Recht ergehen". Early Modern Punishment and Clemency in Trials against Robber Bands

According to contemporary records banditry is one of the dominant crimes in early modern Germany. The presentation puts its focus on 18th-century Electoral Saxony within its specific legal and political conditions. Like in almost every territory of the Holy Roman Empire authorities here claimed a steadily growing number of violent criminal groups that menaced local residents by nightly housebreaking and travellers with assault. The Saxon rulers of the 18th century aimed a harsh punishment for thieves and their suspected accomplices: In most cases death penalty was required for those who committed theft in gangs, armed with fire guns or threatening their victims. In spite of the merciless postulations those who stood in inquisition had even the chance to be pardoned. In law suits against these felons different institutions like the "Schöppenstühle" and the governmental councils had their own positions and purposes as well as opportunities to intervene. However, it was the Elector who spoke the very last word over life and death.

GIALDRONI STEFANIA
EHESS Paris, France

The Majority Rule in the East India Company: A Transnational Principle in a Multinational Corporation?

From ancient Greece to our contemporary globalised world, from the medieval glossators and canonists to the modern jusnaturalists, the majority principle can certainly be considered a fundamental topic, concerning different people, places, times. One important passage seems to be the elaboration of the rule in 17th century England, not in Parliament or in the courts of justice, but in the assemblies (or courts) of the East India Company (EIC), whose organisation is traditionally described as "democratic", especially if compared to the "oligarchical" organisation of its direct rival: The Dutch *Vereenigde Oostindische Compagnie* (VOC).
Our main aim will be to verify the (supposed) influence of the employment of the majority principle in the East India Company's courts on John Locke's *Second Treatise of Government* (1690) and, consequently, on English Parliament.

HENZE MARTINA
University of Copenhagen, Denmark

The Genesis of a Science in Transnational Context: Criminology in Denmark 1870-1960

Criminology emerged in Denmark as a new, interdisciplinary science from the first professional journal in 1878 to the first university-institute in 1957. The development in a minor and peripheral country as Denmark, which did not belong to the 'criminological big powers', needs to be analysed in a transnational perspective; globally as well as on a more specific Nordic level. The leading question is, to what degree Denmark took over, modified or on its part influenced the transnational criminological discourse.

On the basis of an overview over the different international organisations transporting criminological knowledge, the relation to and intertwinement between the Danish, Nordic, and international development in the field of criminology is analyzed. Special emphasis is laid on structural aspects, i.e. the foundation of Danish organisations and media, but also on a protagonist perspective, focusing on selected Danish key persons.

JÁNOS JANY
Pázmány Péter Catholic University, Hungary

The Social Functions of the Magus: Priest, Legal Scholar or the Agent of Kingly Power in Sasanian Persia?

The Magi (Middle Persian mōbed), a hereditary priestly class in the Sasanian empire (3rd-7th centuries) were one of the closest allies of the Persian kings together with the landowner aristocracy and the military. The magi established a Zoroastrian church based on hierarchy and modelled on the Persian state administration. The magi provided a useful political ideology for the kings, possessed the monopoly of legal exegesis, and administered legal practice as judges. In addition, they were sometimes provincial governors, accomplished delicate diplomatic missions abroad, and served as astrologers and soothsayers at the royal court. All these functions gave them extraordinary power which was to be respected even by the kings themselves. Since, however, they tied their own fortune to that of the Sasanian dynasty, the fall of the later was their own death sentence at the same time.

KARABOWICZ ANNA
Jagiellonian University Cracow, Poland

Jointly or Separately? The First Years of Functioning of Polish-Lithuanian Parliamentary Union 1569-1586. A Step Towards a Common Legal Culture

It was in 1569 that in Lublin at the joint Diet for the Kingdom of Poland and Grand Duchy of Lithuania, there were agreed the terms of Union between the two states. The Commonwealth was characterized by having one common parliament (in Polish: *Sejm*). The Act of the Union of 1569 provided that both Poland and Lithuania would preserve their own legal and judicial systems.

The beginning of Stephen Bathory's reign in 1576 was a crucial point in the history of the tie between the two states. During whole his reign *Sejm* Sejm faced the problem of adopting the common or separate legislation vis-à-vis the two nations It was therefore only after the death of King Stephen, in 1588, that the decision was taken to provide the two parts of the Commonwealth with the identical position at the Sejm lawmaking process.

We may say that, due to the joint *Sejms*, uniform legislation as well as judicial practice there followed, practically after 1588, a slow process of standardization of Polish-Lithuanian legal culture.

KROLL STEFAN
MPI for European Legal History Frankfurt/M., Germany

The appropriation of International Law in China: Coercion, Learning or Imitation? [China und die Rezeption des europäischen Völkerrechts im 19. Jahrhundert: Zwang, Lernen oder Imitation?]

The appropriation of international law in China commenced from 1839, the first opium war, to 1911, the end of the Qing Dynasty – the last of the Chinese Dynasties. During this period China lost five wars, experienced a phase of economic decline, and was the place of one of the most severe rebellions in the history of mankind. All this was evidence of Chinas inferiority towards western powers - the wars, as China lost it against western countries, and the rebellion, as it could not be controlled without western support. The asymmetric distribution of power resulted in a semi-colonial system, leading researchers *inter alia* to the conclusion that the diffusion of international law into China was in the first instance a result of coercion and colonialism. The presentation partly refutes or rather differentiates this hypothesis. Although the intercultural transfer of international law was initiated and accompanied by colonialism the presentation shows that it was not only a process of coercion, but also the consequence of indigenous learning and imitation efforts. Embedded in an indigenous restoration movement the appropriation of international law could be characterised rather as an active selfdeterminedstrategic action than as a passive other-directed process.

KUBBEN RAYMOND
Tilburg University, Netherlands

Sister Republics: Power and Law in Revolutionary Europe

During the Revolutionary Wars, the French Republic managed to bring the second and third rank powers of western Europe within its sphere of influence by turning them into 'sister republics'. By analysing relations between France and its sister republics, this paper sets out to dwell upon the relation between power and law in an international context of clear preponderance by one state. Did law function as a check on French power? Did law function as an instrument to exercise power? Was the asymmetric power ratio translated into the legal order, i.e. was French preponderance caught in legal forms, special rights, formal subjection etc. that modified the states-system into one of legally sanctified hegemony? The analysis will show that the relation between power and law was actually quite ambiguous. While making use of legal forms and concepts to exercise and justify French dominance, abandoning the image of a states-system consisting of sovereign and independent states was just one bridge too far. Instead, the French made use of political divisions within states and cross-border alignments between factions to establish control without fundamentally questioning sovereign equality and independence.

KUISZ JAROSŁAW
University of Warsaw, Poland

Dissidents Attitude Towards Law – a Symptom of Change in Authority Structures in the Communist Bloc Countries in the Seventies of the XX century

Constitutions in the Communist bloc countries usually guaranteed basic freedoms to the citizens, however with no meaning in practice. As they served as a façade, societies treated the whole system of law with distrust. Nevertheless, in the seventies of the XX century there appeared limited, but important transformation of the legal consciousness of the representatives of the oppositional circles. Among other ways of struggle with the communist authorities they purposefully started to refer to legal regulations in order to defend civil rights and freedoms. Several dissident organizations of a new type were founded at that time [for example: "Charter 77" in Czechoslovakia, "KOR" ("Workers Defence Committee") and "ROPCiO" ("Movement for the Defence of Human and Civil Rights") in the Polish People's Republic]. Postulates of political and economical reforms were formulated by these groups side by side with the demands of the authentic rule of law.

The peculiar "play with law" between the authorities and dissidents began and it was partially justified by the fact that dissidents wanted to convince the politically inactive part of the society and, as far as it was possible, the international community, which side really supports freedom, truth and law. Today one shall underline that the sole possibility of appealing to the acts of law reveals that there were serious changes in the structure of power at least in some of the Communist Bloc countries. It is possible to interpret these events, inter alia, in the context of theories of a strict bound between power and knowledge – here on the background of law.

This changes were particularly striking on the international level. The moment of conclusion of the final act of the Conference on Security and Co-operation in Europe held in Helsinki, Finland, in 1975 turned out to be a step forward for the whole Eastern Bloc. There were regulations concerning the sovereign equality of countries and the abstain from the threat or use of force, as well as regulations

concerning the respect for human rights and fundamental freedoms. The Final Act of Helsinki was, from the formal point of view, a kind of a multi-sided declaration of moral and political commitments only. Different countries insisted on different aspects of the Act, however the part devoted to human rights gained an unexpected and surprising significance. For from this moment on it was possible to argue (both in the communist countries and outside them) that the USSR and other the Communist Bloc countries violate provisions of the international document, which they had just signed of their own free will.

Therefore this document gained a great significance in some of the Communist bloc countries. Not surprisingly, at the same time dissidents referred to the national legal order and insisted on applying provisions of the constitutions, concerning rights and civil liberties.

From the 30-year-perspective we shall state that the sole possibility of appealing to civil rights by a group of dissidents disclose changes in the structure of power in the Communist Bloc. This paper aims to explain this problem, taking into consideration examples from different communist countries, mainly Poland, with regard not only to legal, but also to some sociological, historical and philosophical sources.

LASERRA MARIA TERESA
University of Salento, Italy

The State Intervention in the Economic Field during the First World War: a Matter of Necessity?

The legislation of European Countries during the Great War, especially in the economic field, is a privileged point of view to observe the transformations of the rule of law. The state intervention in all areas of civil life shows a change of the governmental technology and a detachment from the traditional patterns of classical liberalism. The social activity of the State was not completely unknown to the liberal tradition; however we can say that only the rhetoric of the war allowed such change without oppositions. Moreover the transition from liberalism to dirigism, the reversal of the relationship between public law and private law and between politics and economy, was made possible by the state of exception which was found since the outbreak of the conflict. Necessity acted as an effective device for the deactivation of dissent, rather than for the activation of consent and perhaps the means for the transition to a different rationality of government, which was already in progress, were given by the same theory of the rule of law.

LOVRIĆ KRISTINA
MPI for European Legal History Frankfurt/M., Germany

"Morale international" and "humanité" in late 19th Century International Law

Though International Law in the 19th century is usually characterized as being positivistic and "delivered" from natural law concepts, recurrently the terms *morale internationale* and *humanité* are being referred to in the academic discourse and several multilateral treaties. They appear in different forms and contexts: with phenomena like the African Slave Trade, the "White Slavery", Humanitarian Intervention and Humanitarian International Law. But a more precise look reveals that the range of the term's possible functions may vary from a set phrase to a new principle of "humanitarian responsibility" adopted by the international community.

By analyzing the term's functions and implications as implicated in selected treaties, protocols and documents of the phenomena referred to, the inquiry aims at a reconstruction of a possible moralization of 19th century international law. Therefore it has to take into consideration both the dominance of state practice in the formation of legal rules and eurocentric-racist concepts.

As a theoretic access to the presentation of the problem will serve a short typology of the term's use in the academic discourse of the 19th century.

MADDALOZZO PIVATTO PRISCILA
University of São Paulo, Brazil

Building the Republic: Discourses in Brazilian Constitutional Law Books' Prefaces (1892-1925)

In 1891 the first republican constitution was enacted in Brazil. With this new text and the new political reality the legal debates were renewed and different subjects were included in the agenda. Some of these discussions were recorded in the constitutional law books published in the first years after the event, which were a space for the intellectuals to express their analysis and interpretations about the new constitution. Reading and comparing the prefaces of these books it is possible to notice that almost everyone expresses the importance of constitutional studies and the relevance for the country that a large number of people could get in touch with the new principles that were established after the Republic proclamation. The authors seem to share the intention of translate the constitution in a way that everybody could understand it, transforming abstract and complex institutes in something comprehensive for all the people. As the country had a new constitution and a new government form, these authors were worried about consolidate them in Brazilians' minds and hearts. It was important for the new regime's success that ordinary people got involved and committed to the Constitution, giving thus their support.

MANGOLD ANNA KATHARINA
University of Freiburg/Breisgau, Germany

"Costa./.ENEL" (1964) – On the Importance of Contemporary Legal History

The decision „Costa./.ENEL" of the ECJ from 1964 made history. The ECJ decided that community law had supremacy over national law. This judicature lays the foundations for the importance of Community law in all member-states of the EU until today. Without this decision Community law would have remained plain international law. Not until the doctrine of supremacy, Community law became truly 'supranational'.

Yet up to now not much attention has been paid to the historical-political relevance of the decision. It is about time to question the supremacy, the ECJ established by the decision „Costa./.ENEL" taking into account its historical circumstances. Was the Court appointed to push integration against all political constraints? Was it not actually business of politics to decide on 'weal and woe' of the EEC? Has the approach of the ECJ in that situation made itself independent, and became the ECJ thus the actual 'regent' of Europe? Did this pathway of 'legal integration' consequentially lead to a 'path dependency'?

MCGRATH COLM
Corpus Christi College, Cambridge, UK

Law and Medicine in C20th Europe: Regulation, Reproach, Reassessment

Medicine represents one of the most deeply embedded power structures within the modern developed world. The contested fault line between medicine and law, abundantly clear to the modern lawyer, presents for the legal historian an excellent opportunity for study. A comparative element to this line of enquiry has taken on much greater necessity in recent times with the rights of patients to cross border care within the European Union swiftly advancing itself as a coming battleground.
My aim will be to focus on select areas in a number of European states to help better understand the manner and form of how law manages to both comprehend and enclose a medical discourse within its own structures. The main focus will be on the legal regulation of the 'right' to practice medicine in a state, demonstrating the effect that legal structures can have upon medicine. Secondly I will focus on questions of medical malpractice and the manner in which they require engagement active between the two disciplines. In doing so, it is hoped that the coming modern debate can take a closer account of national patterns of development in their fullest context.

MEYER ULRIKE
MPI for European Legal History Frankfurt/M., Germany

The Rule of Law – the Copernican Turn in the Relation between Law and Politics. A Suggestion for a Different Perspective on the Rule of Law Theory in 19th and 20th Century
[Der Rechtsstaat als kopernikanische Wende im Verhältnis von Recht und Politik. Zu den Entwicklungsetappen von Rechtsstaatsbegriff und Rechtsstaatspraxis im 19. und 20. Jahrhundert]

The Rule of Law is regarded to be the epitome of guarantee for peace, security and freedom – on the national as well as on the international level. By the way, great significance and special position must be attended to meet Rule of Law commitments for the inter-, trans- and supranational relations. From this analysis the question should be raised: What's the normative core which renders the Rule of law to a general principle to legitimate state action and explains its triumphal march?

The contribution aims at substantiating a changed view on the Rule of Law and its normative basis which comes off of the traditional categories of liberal vs. conservative and formal vs. substantive theory. But instead, the relation between law and politics should become the centre of interest.

Therefore three subjects will be deal with: (I) Reveal the theoretical deficits of the traditional categories. (II) Replace them with the focus on the relation between law and politics as a new standard of interpretation. To show (III) that the fault lines of the traditional categories were essentially a result of overestimated details of the specific scientific and/or political discourses in 19th or rather 20th century, and that the normative core lies in a new balance of legal and political requirements.

MILOTIĆ IVAN
University of Zagreb, Croatia

Life Unions of Roman Soldiers as Specific Intercultural Legal Realities

Social and political circumstances in Roman State affected the enactment of legal ban of marriage as recruitment policy. By introducing the ban through *mandata* emperors intended to strengthen military discipline and to improve mobility of troops by breaking tight family connections. Marriage ban had deep social and legal consequences because soldiers could not formally legalize relations with their brides. These relations could now only exist as *de facto* unions. Due to the ban, soldiers could not enter legitimate Roman marriage, and if they were married before the recruitment, the marriage would cease to exist during the military service. Due to this, Roman soldiers were not attractive bridegrooms for Roman women because they could not enter the legitimate marriage with them during a long military service (16-25 years), as well as because the recruitment would annul previously existing legal family relation. These circumstances (social, political and legal) resulted with appearance of numerous specific long-term, monogamous and *de facto* relationships of soldiers with foreign women of non-Roman origin in which a marriage was not intended nor legally allowed.

Soldiers often lived in *de facto* unions with women coming from surrounding areas of military camps. The women were members of pre-Roman communities, had no Roman citizenship or legal capacity under Roman law, nor did they belong to Roman legal culture. Still, soldier's woman will often be referred to as the soldier's wife (*uxor* not just *mulier*) without implying any particular legal status. Soldier's treated them as if they were their legitimate wives and viewed themselves as married. They could even enter a marital union with them following the traditional rules of woman's native community. Roman State respected such actual relations of Roman soldiers having in mind that these *de facto* unions were the only means for soldiers to live in community with their brides. Even the Roman sources refer to them as to soldier's wives (*uxores*). Such unions should not be perceived as pure concubinages because soldiers themselves and provincial administration treated them as family entities *sui generis*.

Specific problem was to define legal status of a child born out of father who was Roman citizen (soldier) and "wife" who was a member of tribal community. Roman law did not consider such a child as Roman citizen because the child always followed the unfavorable status. This rule was enacted in late Republican *lex Minicia* (around 90 BC), which ordered that a child born of parents of a different *status civitatis* receives the lower status. Further problem arose if soldier had successive relations with different women and had children with them.

Actual coexistence of Roman and peregrine element resulted with specific life unions existing in specific social context. Under Roman law they were treated as cohabitations, under rules of peregrine communities they were considered as legitimate marriages, and in reality they were regarded just as marriages. In administrative procedures Roman provincial bureaucracy had severe difficulties with defining their legal status. The emperors sometimes recognized their specific position and converted them into legally recognized unions under Roman law by issuing military diplomas. These unions contain a deep mark of intercultural legal transfer between Roman world and peregrine pre-Roman tribal societies, especially if emperors would grant privilege of Roman citizenship to soldier's "wife" and children. Then they would abandon peregrine legal culture and enter the developed system of Roman law. Otherwise they were considered as actually romanized life unions, which practiced the Roman way of life, without getting legal recognition under Roman law.

MOHR THOMAS
University College Dublin, Ireland

A British Empire Court – The Judicial Committee of the Privy Council

The British Empire in the late nineteenth and early twentieth centuries was vast. The Union Jack flew over one fifth of the land area of the globe and embraced over a quarter of its population. A single court in London held supreme jurisdiction over almost the entire expanse of this global empire. This court was called the Judicial Committee of the Privy Council.

Yet the sheer size of the jurisdiction of the Privy Council also presented serious problems. Colonial lawyers sometimes expressed disappointment at the brevity of the judgments and asserted that the Privy Council did not always deal with the full complexity of the issues raised by the appeals. The growth of nationalism in the twentieth century also presented serious challenges. Even lawyers in the colonies of white settlement began to complain that the decisions of a court that was mostly comprised of English judges did not always reflect the values of the colonial population. By the early twentieth century a growing assertion of a distinct sense of volksgeist in the colonies was often used to attack the decisions of the Privy Council.

This paper will examine the challenges faced by the Judicial Committee of the Privy Council throughout the twentieth century. It will assess the role of this court as the protector of minority communities. It will also examine the use of the concept of volksgeist in attacking its decisions. This paper will also challenge existing historical accounts that cast doubt on the judicial independence of this court. It should be noted that the jurisdiction of the Privy Council survived the move for colonial independence in the mid-twentieth century. Nevertheless, recent constitutional reforms in the United Kingdom have been seen as heralding the end of the Privy Council as a court of law. This provides an opportune moment to reassess the history of this extraordinary court of law.

NASH JONATHAN
University at Albany – SUNY, USA

"A Motley Assembly of Characters": The Transnational Context of Incarceration in the Early United States

This paper places the construction and development of state prisons in the early United States within a transnational context. The "founding fathers" of the nation's first state prisons participated in a transatlantic culture of reform. Early-nineteenth-century U.S. reformers read the writings of European reformers and philosophers, and regularly corresponded with European reformers. State legislatures authorized the construction of prisons because of the agitation of men influenced by a transatlantic culture of reform. Prisoners confined within the newly constructed state prisons formed bonds that transcended national differences. The vibrant, transnational culture of opposition that prisoners formed within the congregate cells of the nation's first state prisons, forced reformers to implement a regimen of solitary confinement in second-generation state prisons. By focusing on the transnational bonds that reformers and prisoners formed, this paper elucidates the transnational context of incarceration in the early United States. By illustrating the transnational birth of the prison in the early United States, this paper revises a historiography that portrays the early years of U.S. state prisons within mostly state and national contexts.

NYHOLM KALLESTRUP LOUISE
University of Southern Denmark – Odense, Denmark

Lay and Inquisitorial Witchcraft Persecution in Denmark and Italy in the 16th and 17th Centuries

This paper compares the legal framework of the Roman Inquisition with the Danish lay system in the 16th and 17th Centuries. It focuses on the procedures of witchcraft and hence on the consequences of prosecuting witchcraft in an accusatorial system as the Danish lay courts, compared to witchcraft trials in an inquisitorial system. Italian witchcraft trials, despite their high number, very rarely resulted in the death sentence. Instead, the Roman Inquisitors preferred less harsh punishments such as imprisonment, fines, or simply salutary penances. Actually, very few people were convicted of "pure witchcraft".

Witchcraft scholars have usually found the restrictive procedures of the Danish laws to be the main reason for Denmark's lack of a massive witch-hunt, as it has been seen in areas of Central Europe. The protestant reformation and the king's scepticism towards theological argumentation have been emphasized here. Until the beginning of the 17th Century, the Danish authorities had no actual definition of witchcraft in its legal framework. However, in 1617, the theological key definition of witchcraft (the diabolical pact) was introduced, and it is possible to detect a significant increase in the number of witchcraft trials in the years after. Still, one must bear in mind, how the people convicted of witchcraft in Denmark were, with very few exceptions, sent to the stake.

The significant difference in the number of death sentences and convictions for witchcraft in the Italian inquisitorial system and the Danish lay system is interesting. This paper argues that a principal explanation for this significant difference is the accusers' different interpretations of the offenders and the crimes they committed. As the inquisitor acted as investigator, accuser, as well as judge in inquisitorial procedure, his legal and theological framework was crucial to the outcome of the trials. In the accusatorial legal system, the church's role was limited to that of being an advisor. The verdicts were in the hands of the lay judges alone.

PARFITT ROSE SYDNEY
School of Oriental and African Studies London, UK

Crossed Wires: Issues of Sovereignty, Community and Civilisation during Ethiopia's Accession to the League of Nations

The "Abyssinian Empire", now better known as Ethiopia, acceded to the League of Nations in 1923, becoming one of only three black member states (along with Liberia and Haiti). A special League sub-committee assessed Ethiopia's eligibility to join against traditional criteria for statehood. On the basis of this assessment, the Ethiopian Government was required to sign a "Special Declaration" in which it promised to abolish slavery (an institution deeply embedded in the culture of the Ethiopian nobility) and to restrict its importation and distribution of arms. Twelve years later, in 1935, Italy invaded Ethiopia and declared it part of *Africa Orientale Italiana*.

Is it correct to explain this victory of Fascism and failure of the "collective security" principle in terms of the triumph of power politics over law, as standard textbooks on history and law insist? Or would this disaster for international justice be better understood as a legal failure, the product of international law's loaded vocabulary of superficially universal terms?

Using both European and Ethiopian sources, this paper will compare what statehood ("sovereignty"), League membership ("community") and the link between them ("civilisation") meant in Geneva and in Addis Ababa in 1923. It will argue that these terms described completely different concepts depending on the cultural context and language (French, English, Italian, Amharic…) in which they were used. As an understanding of the "crossed wires" involved in this famous episode makes clear, Ethiopia's sovereignty was doomed, paradoxically, at moment it received its legal guarantee – not when Italy invaded but when accession to the League was granted.

PASTOVIĆ DUNJA
University of Zagreb, Croatia

Die Geschworenengerichtsbarkeit in den österreichischen Provinzen Istrien und Dalmatien (1873-1918)

Die Gebiete Istriens und Dalmatiens wurden nach dem Fall Venedigs 1797 und den kurzen Regierungszeiten von Österreich (1799-1805) und Frankreich (1805-13) zu den österreichischen Provinzen (1813-1918), die im Jahre 1861 ein eigenes Landesparlament bekamen. Man soll betonen, dass zu der österreichischen Provinz, die den Namen Königreich Dalmatien erhielt, auch das Gebiet der ehemaligen Dubrovniker Republik gehörte, deren Existenz während die französische Regierung 1808 formell abgeschafften wurde. Die binnenländische Grafschaft Istrien war als Folge des von den Habsburgern mit der dort herrschenden Linie der Görzer Grafen geschlossenen Erbvertrages nach deren Aussterben bereits 1374 unter habsburgische Herrschaft gekommen.
In Österreich wurden im revolutionären Jahre 1848 zum ersten Mal die Geschworenengerichte (allerdings nur für die durch den Inhalt von den Druckschriften begangenen strafbaren Handlungen) eingeführt. Vorbild für die nunmehrige Reform des Strafprozesses war der französische Code d'instruction criminelle von 1808, in den die Errungenschaften der Französische Revolution von 1789 eingegangen waren. Die von Josef Würth provisorische Strafprozessordnung 1850 hat die Wirksamkeit der Geschworenengerichte auf alle schweren Verbrechern und die meisten politischen Delikte ausgedehnt. Zu Beginn des Neoabsolutismus, der die liberalen und demokratischen Errungenschaften beseitigen sollte, wurde bereits im Jahre 1852 die Schwurgerichtsbarkeit abgeschafft.
Zur bedeutenden Änderung kam es, als die Habsburger Monarchie zum Konstitutionalismus zurückkehrte. Die Dezemberverfassung 1867 verankerte in ihrem Staatsgrundgesetz über die richterliche Gewalt auch die Schwurgerichte bei noch zu bestimmenden Verbrechern sowie bei den politischen und den Pressdelikten (Art. 11). Die Schwurgerichtsbarkeit wurde schon 1869 nur für Pressdelikte wieder eingeführt. Durch die Strafprozessordnung 1873 wurde sie auf die mit schweren Strafen bedrohten Verbrechen und auf die politischen Delikte

ausgedehnt. Im Jahre 1914 wurde die Geschwornengerichtsbarkeit wegen des Kriegs eingestellt.

In den Gerichtssprengeln Istriens und Dalmatiens wurden insgesamt fünf Schwurgerichte organisiert: bei dem Bezirksgericht in Rovigno (Istrien), bei dem Landesgericht in Zara und bei den Bezirksgerichten in Spalato, Dubrovnik und Cattaro (Dalmatien). Jedes Schwurgericht bestand mit dem Vorsitzenden aus drei Richtern und zwölf Geschworenen. Die Feststellung der Tatsachen, die Frage der Schuld bzw. Unschuld gehörte in die Kompetenz der Geschworenen, über die Verhängung der Strafe aber entschied das Richter-Kollegium.

MARQUES TIAGO
ENS Paris I, France/Portuguese Catholic University, Portugal

Making the Norms of Penal Norms: The Concept of the "Universality of Repression" and the International Penal Organizations of Interwar Europe

This paper aims at clarifying the concept of "universality of repression", which mobilized many European and American penologists in the 1920s and the 1930s. First, focusing on its institutional and intellectual roots, I build on the argument that this concept resulted from the intersection of transformations at three distinct planes: the changing features of criminality and their representations; the increasingly administrative nature of sanctions; and the impact of the models of private law on penal law, with far-reaching consequences in the processes of codification. In a second moment, I analyze the ways in which jurists and politicians attempted to turn this concept into an institutional reality. At his point, the focus will be placed on the international structures that were developed, during the 1920s and the 1930s, in the domain of penal law and penitentiary science.

PROVVIDENTE SEBASTIÁN
SUM, Italy/EHESS Paris, France

Ordo iudiciarius and inquisition: Heresy trials at the Council of Constance (1414-1418)

In this paper our interest will focus on the study of the logics of power involved in the inquisitorial process. The aim will be to explain what makes a potentially heterodox doctrine to be defined as heretical. Judicial practices and particularly the gradual adoption of the procedural form of the *inquisitio* have been studied in terms of the consolidation of different instances of power (communal, papal and monarchical). In the case of the inquisitorial processes led by the Council of Constance (1414-1418) a close association can be ascertained between inquisitorial practices and the consolidation of conciliar authority within the ecclesiastical *ordo iudicarius* and that this subject is worthy of study and remains to be explained in detail The study of judicial practices in terms of ecclesiological debates offers a twofold advantage. On the one hand, it provides certain clues to attempt an explanation of the violent and ardent conciliar response in the *causa fidei,* while on the other hand it also provides some discursive traces that would allow us to discern how the Council of Constance fathers understood conciliar authority.

SASHALMI ENDRE
University of Pécs, Hungary

The Role of Law and the Rule of Law – The Importance of Political Ideas and Political Structures: A Comparison of Swedish Absolutism and Russian Autocracy from the 1680s to 1730

Autocracy is often defined, though erroneously, as an extreme form of absolute monarchy. Absolute power, however, *does not mean legally unlimited power*. Therefore, rule of law and absolute monarchy were not mutually exclusive notions. They must be considered complementary, as it will be demonstrated through the case of Sweden.

By *autocracy* I mean an authority and a political system in which the God- appointed ruler's authority is *not restricted* either *by corporate bodies or laws* (positive laws, fundamental laws, natural law). The case of Muscovite Russia was special in Europe because Muscovite ideology lacked not only the idea of the rule of law but also the language of law – both crucial to absolutist ideology. Legal concepts of absolutism came to Russia as a result of westernisation, mainly after 1700, but the notion of the rule of law was not adopted. A short comparison of political structures from a historical perspective will also contribute to the understanding of Russia's different historical path.

SCHILLING ANDREAS
University of Freiburg/Breisgau, Germany

Interplay between Imperial Power and Law – The Adultery Trials under the Julio-Claudian Emperors

Several adultery trials against members and friends of the imperial family are recorded from the time of the Julio-Claudian emperors (27 B.C. until 68 A.D.). The emperors took the cases away from the exercising courts and decided by themselves or left the decision to the Senate which was under their influence. Adultery, though, was only used as a pretext: The real purpose was the elimination of political opponents. Of course, the emperors did not want to eliminate their opponents despotically, but by seemingly applicating the law. The trials are examples for the interplay between imperial power and law during the beginning of the Principate. On the one hand they were held in extraordinary courts and the legal penalty was made more severe: The emperors invented a new penalty and banished the accused to islands in order to get them under control, whereas law provided only expulsion from Rome and Italy. On the other hand, remarkably enough, the republican form was maintained by holding a trial instead of solving 'the problem' by imperial despotism. Moreover, the legal penalty had at least a limiting effect: The emperors left it at banishment, although death penalties would have carried out the plan to eliminate opponents most effectively.

VON SCHMÄDEL JUDITH
STAUDIGL-CIECHOWICZ KAMILA
University of Vienna, Austria

Peace Through Law – Kelsen's (and his School's) Struggle for World Peace Before and After WW II

The time of the crisis of the League of Nations in the forefront of WW II marks a time of increased scholarly debate on new structures in international law appropriate to overcome the insufficient system in place. Kelsen devoted a great deal of his work around WW II to this question, being established as a professor at the seat of the League of Nations in Geneva 1933-1940. This work can show that there is more about Kelsen and his say on the role of legal structures as means to the end of (world) peace than the prejudice of the "emptiness" of his legal theory would suggest. It also shows elements later implemented in regional organisations like the EU, although Kelsen himself never explicitly addressed legal questions of European Integration. His concepts of reform of the international legal order meant to establish new structures of securing the maintenance of peace and to legally domesticate factual political power for the enforcement of peace will be compared to other, sometimes conflicting examples within and outside the Kelsen-School: Verdross, Campagnolo, Hold-Ferneck. Like this, the possibilities of the use and abuse of international law for international power politics can be made explicit.

STEINER SILKE
University of Vienna, Austria

The Holy Roman Empire and the EU in Comparison: Intra-, Trans- and Supra-Legal Relations and Power Structures in European History

The Holy Roman Empire has generally been seen as a rather weak confederation of a large amount of entities, most of the time more concerned with internal problems and conflicts. Divergent interests and internal rivalries made it often impossible to act externally as one single entity. Similarly, also the external performance and credibility of the EU is often perceived as being diminished by difficulties to find a common position and by the lack of a common voice due to divergent national interests.

Medieval Europe was a patchwork of various quasi-sovereign entities of different legal nature and of overlapping hierarchies – and also the EU is often described as being characterised by different forms of government and legal structures as well as by overlapping hierarchies and quasi-sovereignties. Particularly after the "big" Eastern enlargement, Europe has become much more diversified. But there are also significant features distinguishing the EU from the Holy Roman Empire – e.g. the law of the European Union has developed a unique character, incomparable to the instruments of law of the Holy Roman Empire.

In the course of its history, many crises have finally turned out to be chances for the EU. And finally it is thanks to the creation of the EU that "Europe has never been so prosperous, so secure no so free".

STUS MAREK
Jagiellonian University Cracow, Poland

Concerning an Idea of Law. Various Faces of the Acculturation in the Arabo-Islamic Legal Space of the 19th and 20th Century.

Acculturation is definitely one of the key concepts present in the legal, sociological, anthropological and historical studies, which is used in the description of the changes in the legal systems resulting from the cross-cultural relations. Generally speaking, this phenomenon results in a complete transformation of a legal order under the influence of another one, thus it shall be distinguished from the sheer reception, which applies to only adapting a legal institution from a different system of law.

In the Muslim culture the idea of acculturation is strongly linked to the experience of the colonial era. Since it came to exist as the response to the vision of the superior and politically dominant European culture, it has been applied only to the description of the influence of the western legal systems upon Islamic law. It is self-evident that this aspect of acculturation shall not be omitted. However, this phenomenon is not limited only to the interactions between the two legal cultures mentioned. In fact, the process is much more complex and diverse in its form. Although the mechanism triggering 'the effect of acculturation' is always similar, as it results from more or less intense cross-cultural relations; the course of the process can be much more diverse. Under the influence of the experience of the decolonization era acculturation has become a much more dynamic phenomenon and has been used by the new political elites to achieve goals of their own. The leaders of the Islamic countries have been utilising certain ideologies, such as socialism or nationalism, using them as a base for reforming the legal system. Therefore, in such cases, acculturation is not the result of the political inferiority, nor the assimilation of two different legal systems; but the result of reinterpreting specific socio-cultural traditions.

The historical and interdisciplinary analysis of the process allows to show the co-existence of various form of legal acculturation in the Arabo-Islamic culture, which have their origins in two different historical periods: colonial in the Middle East and the North Africa and more recent, postcolonial. Having analysed numerous

cases (e.g. the adoption of the French legal system in Egypt under the British protectorate, plans of building a modern state in Tunisia based on the European model or the process of reislamisation of the law in Mauretania and Sudan) it is evident that Islamic law and legal thought require wider and transnational studies more than any other legal system.

Acculturation seen from this perspective seems to be a determining factor in the evolution of the idea of law. The Arabo-Islamic field of law functions as an ideal observatory.

VAN DAEL BRAM
University of Ghent, Belgium

Policy and the Belgian Justice Department: Uneasy Bedfellows?

Everybody is always talking about the gap between politics and the people. In this contribution, an attempt is made to develop a method to measure the effect of politicians on policy in a certain field, *in casu* the influence of the minister of justice on the civil policy. A perfect tool for this kind of research is the social network analysis.

The first part of this contribution will be a methodological one. It will explain how this sociological research tool, the social network analysis, can be used to study and reveal the structure behind social actors. In this case, we need to look at two different kinds of social actors. First, there are the Belgian ministers of justice. Second, we need to study the policy itself, the legal texts. In a final methodological phase, we will have a look at the actual network analysis, where a network of legal texts is created in function of the ministers of justice who were involved in the creation of that particular text. After this rather theoretical exposé, a casus will be presented to clarify this theoretical model. It will be tested for the evolution of Belgian commercial law in the nineteenth century.

WILSON ADELYN
University of Edinburgh, UK

The Reaction of the Scottish Bar to the Imposition of English law on Legal Practise by Oliver Cromwell in the Seventeenth Century

In 1651 the leader of the English Republic, Oliver Cromwell, successfully conquered Scotland. Thereafter he instigated a long process of Anglicisation of Scotland's political and legal infrastructure. His endeavours were resented by the majority of the Scottish people but perhaps the most vehement resistance was shown by the practitioners of law.

This paper will start by re-evaluating Cromwell's three principal changes to the Scottish legal system. First, he supplanted Scotland's highest civil court, the Court of Session, with a new Commission and replaced the Bench with seven Commissioners for Justice, most of whom were Englishmen. The procedure of the new Commision was to be that of England rather than Scotland; clerks were employed from below the border to ensure its effective administration. Secondly, Cromwell desired loyalty from the Scots left practising at the Bar. He introduced his Tender, a declaration of allegiance to the Commonwealth and to its Lord Protector, namely Cromwell himself. Subscription of the Tender became a requirement of every person holding public office, including advocates. Thirdly, Cromwell instigated plans to assimilate the laws of England and Scotland. As the Scottish legal community feared, this assimilation quickly became a substitution of Scots law with that of English law.

The Scottish legal community reacted to these impositions with outrage. Some advocates quietly withdrew from practise while others publicly denouced the changes. There was however a contingent of advocates who were more subversive; they sought to undermine the new system and thereby ensure its demise. This paper will take a fresh look at their efforts and will examine the success of the Scottish legal community in preventing Cromwell's reforms taking permanent effect. In doing so it will look particularly at the actions of one of Scotland's leading statesmen who was appointed as a Commissioner for Justice. It will also examine the struggle of the Scottish advocates who travelled to England to directly campaign against the replacement of Scots law.

Finally, this paper will look at the period after the death of Cromwell and Scotland's return to an independent state. It will examine the possibility that the earliest Scottish institutional works were written in reaction to Cromwell's reforms, to ensure that such an attempt on the autonomy of Scots law could never again be made. It will also explore the influence that this motivation may have had upon the content of these works. This is a fundamentally important question to understanding the beginnings of Scots law and Scottish legal writings.

This paper is partly a examination of the effect which the political and social environment had upon the Scottish legal system and those who practised it in the mid-seventeenth century. Yet, it is also in broader terms an exploration of the reaction of the legal community of a country whose law and legal system was being threatened by a foreign invader.

WISCHMEYER JOHANNES
Institute of European History Mainz, Germany

Organizing Religion in the Early Modern Territory – European Discussions regarding the Division of Power between Clergy and Political Administration (ca. 1560-1620)

The European Reformations of the 16th century were followed by legal conflicts between church and state authorities. The paper presents a research project on the discussions between European theologians and lawyers on how religious affairs should be administered best in the early modern territorial state. Debates were sparked to a good deal by the Augsburg settlement of 1555 which left religious jurisdiction (ius episcopale) in the Holy Roman Empire to political authorities. In due course, this right was actively exercised not only by Lutheran princes (where it fitted relatively well with the theological doctrine on church) but also in Reformed and Roman-Catholic territories (where theologians were forced either to take a stance against this development or to adjust their ecclesiologies). The paper shows first how the ancient episcopal law was transformed in line with current theories on the division of power, and thereby integrated into the realm of early modern constitutional laws. Second, attention is drawn to the political institutions where it was exercised. Here, in the so-called consistories, theologians and lawyers had to cooperate in order to take decisions in a various number of affairs. Examples are taken primarily from Lutheranism to which not enough attention has been paid so far.

ARHEIDT SABINE
LANDERER HELMUT
LANGE CHRISTIAN
MPI for European Legal History Frankfurt/M., Germany

Life Course and Law
(Poster)

The independent junior research group "Life course and law" is set up at the Max Planck Institute for European Legal History in Frankfurt. Our aim is to examine the impact of law on the formation of rigid age norms and the division of the human life course into different stages. The so-called institutional life course, which divides life in the three phases of education, professional life and retirement, has emerged since the end of the 18th century. We analyse the influence of law, jurisdiction and administration on the formation of age-specific norms according the life course. Currently, three more doctoral theses are created within that joint theme.

BUSCH JÜRGEN
STAUDIGL-CIECHOWICZ KAMILA
STASTNY KATHARINA
University of Vienna, Austria

Master Minds of Legality and Legitimacy? – The Self-Understanding of the Staatsrechtslehrer in Interwar Vienna (Poster)

Professors of State Law (*Staatsrechtslehrer*) traditionally saw themselves as a sort of master minds of legality and legitimacy of structures of state power and the legal framework thereof (constitutions). This was particularly the case in periods of constitutional transition. Taking the example of the transition periods of Austria in the interwar period (1918, 1920, 1929, 1934, 1938), shifting from monarchy to republicanism, from there to authoritarianism and totalitarianism, the research projects presented deal with the role of professors of constitutional law and theory of state at the Law School of the University of Vienna in this processes. Their attempts to defend and/or to gain the position of high priests of legitimate use and control of power within constitutional structures and the scientific justification thereof is offered as a key for the understanding of different methodological positions, scientific disputes and personal rivalry of and between the actors. Hans Kelsen and the Vienna School of Legal Theory is presented as emerging as a critical counter-position to the confusion of legal science and (power) politics at the law school of that time.

KARLOVIĆ TOMISLAV
University of Zagreb, Croatia

"Roman Settlements in the Territory of Croatia – Legal and Sociopolitical Aspects" (Poster)

The poster will refer to the development of urban settlements in the territory of Croatia during Roman rule with explanation of underlying sociopolitical circumstances that influenced their foundation. Also, in the same light, legal forms of the incorporation will be analysed with regard to the municipal bodies and overall process of Romanization.

KOSNICA IVAN
University of Zagreb, Croatia

Domiciliary Status in Croatia in the 19th Century (Poster)

Domiciliary status was one of the most important public law institutes in Croatia in the second half of 19th and in the beginning of the 20th century. Its importance has risen primarily from the fact that it was the essential condition for acquisition of a whole spectrum of political, social and other rights. After reaching the Austro-Hungarian and Croat-Hungarian agreements it became a central public institute in Croatia. The reason for that was the fact that in these agreements citizenship was arranged in the way that put the existence of Croatian citizenship in question. Indeed, we could say that Croatian citizenship, according to these agreements, didn't exist. On the other hand, Croatian domiciliary status was different from the Hungarian and Austrian one. It was specially regulated by Croatian Parliament in 1880. Legal theoreticians saw a substitution for citizenship in special Croatian domiciliary status. That argument was used to show that Croatia has special status in the Austro-Hungarian community and that it has some elements of sovereignty.

RISTIKIVI MERIKE
University of Tartu, Estonia

Latin Terms in Estonian Legal Journalism in 1920-1940: Rhetoric of Power Structures or Jurisprudence? (Poster)

The presentation examines the Latin legal terms detected in the Estonian-language juridical periodical *Õigus* ('Law') published in 1920-1940. This period is of special significance in the history of law in Estonia: for the first time the country enjoyed sovereignty, a parliamentary democracy was established, and Estonian language began to be used for law studies, legislation and practice of law in general. The worldwide economic recession in 1929-1933, the Great Depression, also had an impact on the political system in Estonia, bringing about the non-violent military coup d'état in 1934. Following the example of the most powerful states in Europe, Estonia adopted an authoritarian regime based on the ideas of etatism, nationalism, corporatism and centralisation of economy. The presentation focuses on the questions: are the changes in the political power mirrored in the usage of Latin terminology in the articles by lawyers, and if yes, then how? What are the terminological means of and outlets for the rhetoric of the new power?