Book of Abstracts

8th Biennial Conference of the European Society for Comparative Legal History: Back to the Past and Building the Future

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Faculty of Law and Political Sciences, University of Szeged

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Máté Pétervári – Benedek Varga (eds.)

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Contents

Panel 5. The Role of Legal Transfer in the Development of Law

Panel 6. State, Church and Canon Law

Panel 7. Legal Culture from Antiquity to Nowadays

Panel 8. Aspects of the Development of Hungarian Private Law in the Interwar Period with an European perspective

Panel 9. Entanglements and Overlaps: Legal System and Judicial Practices in the Early Modern Venetian "Terraferma"

Panel 10. Legal Professions and Legal Education

Panel 11. The Codification and Practice of Criminal Law in Europe

Panel 13. Basic Principles of Private Law, Marriage Law and Law of Inheritance

Panel 14. The Functioning of Judicial System: Regulation and Practice

Panel 15. Chapters from the World of Private and Commercial Law

Panel 16. Steps towards the Establishment of Labour and Social Law

Panel 17. Marriage and Divorce in the 19th-Century Western Tradition: France, Spain and Louisiana

Panel 18. Procedural Law Reforms in Europe

Panel 19. The Influence of Economic Development to the Legal System

Panel 24. Substantive Criminal Law from Theoretical and Practical Perspective

Panel 25. Scenes of the Social Welfare System in the Hungarian Kingdom before and after the Bourgeois Transformation in a Comparative Context

Panel 26. Mosaics from the Sphere of Administrative Law

Panel 27. From Law of Nations to Public International Law: Theory and Practice on the Verge of Professionalisation (1700–1870)

Panel 32: Legal Institutions of Law of Obligations

Panel 33. Comparative Perspective on Legal Survivals in the Central European Post-Socialist Legal Space – Session 2.

Panel 34. The Transformative Power of Certain (Constitutional) Provisions

Panel 35. Protecting of Minorities and Ethnic Law

Panel 36. Legal Modernisation, Traditional Belief Systems, and the Formation of Transnational East Asia

Foreword

The Department of Hungarian Legal History at the Faculty of Law and Political Sciences of the University of Szeged organized the *European Society for Comparative Legal History*'s biennial international conference on legal history, entitled *8th Biennial Conference of the European Society for Comparative Legal History: Back to the Past and Building the Future*. The Organizing Committee and Executive Council of the ESCLH gave the Department of Hungarian Legal History the honour of hosting the conference in Szeged, following Valencia (2010), Amsterdam (2012), Macerata (2014), Gdansk (2016), Paris (2018), Lisbon (2022) and Augsburg (2023). The Faculty of Law and Political Sciences in Szeged is hosting the event from July 2 to 4, 2025, at its buildings in Szeged.

The theme of the international conference, Back to the Past and Building the Future, expresses its intention to provide a professional opportunity for comparative legal history scholarship based on primary sources that contributes to the understanding of domestic and international legal developments.

Young researchers and PhD students are also giving welcomed, giving presentations at the conference and engaging with a wide network of scholars. We are particularly proud to get this chance to work with them, and offer as one small measure to ensure the next generation of scholars. The international conference contributes to increasing the social recognition of legal history and to the wide dissemination of research results, for the present and into the future.

The international conference is one of the most important scientific events in its field in domestic and international legal science, with more than 150 legal historians from 27 countries on 4 continents (Austria, Barbados, Belgium, Brazil, Bulgaria, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Latvia, the Netherlands, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Taiwan, the United Kingdom and the United States). The abstracts accepted for the conference are included in the volume in accordance with the conference program, i.e., the abstracts of the individual presentations are arranged according to the panels, with special attention paid to ensuring that specific topics within the fields of private law, criminal law, and public law are placed in the same panel.

We hope that this publication will provide conference participants with a brief overview of the diverse research interests of legal historians and offer those interested an insight into the diversity and innovation of legal history research.

Prof. Dr. Matthew Dyson
President
European Society for Comparative Legal History

Prof. Dr. Norbert Varga
Head of the Organizing Committee in Szeged
8th Biennial Conference of the European Society for Comparative Legal History

Panel 1. Traditions of Roman Law

(Kovács István Classroom, JK201)

Chair: József Benke

(Professor, University of Pécs, Hungary)

Michael Binder
Assistant professor
University of Vienna, Austria

Infitiando lis crescit in duplum

A comparison of Roman law and the Laws of Plato The juristic rule infitiando lis crescit in duplum – also called lis infitiando crescit in duplum or ubi lis infitiando crescit in duplum – was established by Roman jurists. A defendant, who lost the lawsuit, had to pay twice the sum, which he originally owed. Modern legal scholars use the word litiscrescence to describe this phenomenon. Actions with litiscrescence are listed in Gai. 4.9, Gai. 4.171, and PS 1.19.1. Such a procedural penalty turned out to be useful, because it could prevent unnecessary litigation. The defendant had to find out whether the claim of the plaintiff was justified, otherwise he risked paying a penalty. If the claim of the creditor was justified the defendant had – in order to avoid a condemnatio in duplum – to perform a confessio in iure. After such a confession the trial was over, and the defendant had to pay the sum, which the creditor claimed from him. In the Laws of Plato, a similar penalty can be found in leg. 11.915e-916c. If a slave was sold and a defect regarding the quality of the slave occurred, the seller had two possibilities. He could either pay the price back to the buyer or deny his liability and risk a lawsuit. In case the seller lost the lawsuit, he had to pay twice the sum for which the slave was sold. In my presentation, I want to analyse the concept of infitiando lis crescit in duplum in ancient legal systems. Therefore, first it is necessary to discuss actions with litiscrescence in Roman law. After this analysis, it is necessary to compare those actions with litiscrescence in Roman law to similar cases of the Laws of Plato. In this comparison the focus lies on the different procedural systems and on the effectiveness of procedural penalties.

Kata Zsuzsanna Horváth
PhD student
University of Szeged, Hungary

Dowry and Unjustified Enrichment in Roman Law. The Case of Ulp. 3 disp. D. 12,4,6

In developed legal systems it can be observed that the majority of private law claims arise either from contract or tort. There is, however, a group of claims that cannot be derived either from contract or tort, namely claims for unjust enrichment. The topic of my lecture is about this area of law. Specifically, I will analyse the field of condictio causa data causa non secuta.

Condictio causa data causa not secuta's field of application are those cases where someone has served in the hope of a certain counter-performance but the hoped-for goal has not been achieved.

The case of D. 12,4,6 contains an interesting problem of condictio causa data causa non secuta. It deals with the following problem: a sum of money was given to a fiancé („future husband") as dowry by an extraneus and a pactum was made where they agreed that if the marriage is terminated in any way the dowry will be returned to the extraneus. Later, the marriage did not take place. The question is: who is entitled to the amount transferred as a dowry, the extraneus or the fiancée.

In the research my goal is to gain a deeper insight into the field of condictio causa data causa non secuta. During the analysation of D. 12,4,6 I will also turn my attention towards the rules on dowry and on engagement. In the last part I also examine – in a comparative legal analysis – the survival of the condictio causa data causa non secuta in German law.

The research methodology is based on the classical text-exegetical research method and the comparative legal method.

As a result, we will get to know this kind of use of condictio causa data causa non secuta in Roman law. Also, we will have a better insight into the everyday Roman legal life.

Henrik-Riko Held
Associate professor
Faculty of Law University of Zagreb, Croatia

Glagolitic legal documents from the early modern districtus of Šibenik (Sebenicum): ius commune and Croatian Glagolitic culture

Glagolitic script was used in various Croatian parts from the 9th up until the 19th century. From the middle of the 15th century onwards in certain areas there were even public notaries with all the relevant authorisations who published legal documents written in Croatian language and Glagolitic script. Such documents were also issued on a less professional level, e.g. by parish priests who were often the only literate and educated persons in rural regions. Šibenik (Sebenicum) and its surrounding rural area (districtus or territorium) were in the relevant period (15th–18th century) under the rule of Venice. In legal matters, therefore, a strong influence of Venetian law and ius commune existed (of course, with some local peculiarities). Legal documents were thus mainly written in Latin script and Latin or (increasingly in this period) Italian language. However, in more remote areas, especially islands, Glagolitic priests composed many legal documents in Croatian language and Glagolitic script. Certain amount of such documents from 1547 to 1774 was preserved, and they are the main subject matter of this analysis. These documents were studied to a certain degree, but mostly by linguists, ethnologists and historians who were not concentrating on legal matters. The aim of this paper is to analyse these documents exactly from the perspective of legal history. There are altogether 240 documents: testaments, codicils, various contracts, inventories etc. In this paper I will compare their contents and structure to the similar documents from the same time and neighbouring areas and to the forms from the relevant notaries' formularies (so-called artes notariae). Although these documents are written in Croatian and Glagolitic script, even prima facie it may be noticed that they substantively resemble notaries' documents written in Latin or Italian elsewhere. In that sense language and script used were apparently not an obstacle for the transmission of legal elements across cultures. This analysis may help to determine the level of immersion of local legal practice on the peripheries in the mainstream body of ius commune. These matters are also associated with the underlying problem of education of Glagolitic priests and their authorisations to issue legal documents. Overall, this paper aims to contribute to a better understanding of the influence of ius commune on Croatian Glagolitic culture and, conversely, of the level of its openness towards legal trends of the time.

Rodrick Van Der Smissen
PhD student
Vrije Universiteit Brussel, Belgium

Roman law and the formative interpretation of history in the nineteenth-century insolvency law University

Nineteenth-century lawyers in France and Belgium used Roman law as a backdrop to understand contemporary insolvency law or new legislation. These scholars did not strictly distinguish between legal history and the positive law and often relied on historical arguments. However, the scarcity of sources in Roman insolvency law and the different layers of interpretations throughout history made that the concepts in insolvency law are "moving" concepts, which means that the Roman law concepts as such remained but underwent changes in meaning and interpretation over time. For example the Roman 'Cessio bonorum' and the nineteenth-century 'Cession de biens'. Geographically, the research focuses on France and Belgium. This research is a legal historical study of a 'transitory' period. In the nineteenth century, France was an economic superpower and pioneering in economic law. Just think of the Code de Commerce and its huge influence on Western insolvency law. The second half of the nineteenth century however was characterized by many insolvency law reforms and is rather underexplored in the research field. Nevertheless, it is an important period that marks the beginning of the 'modern' insolvency law, where pre insolvency and reorganisation are addressed. The historical interpretation of Roman law in nineteenth-century insolvency law is not thoroughly researched yet. This project assesses how the historical arguments and concepts used referred to policy considerations, ideological views and genuine historical interpretation. A novel approach and an addition to the current field of research is that cultural factors and interpretation are seen as 'drivers' in nineteenth-century insolvency law. For France and Belgium, nineteenth-century legislative documents, commentaries (e.g. Demolombe, Alauzet, Laurent) and doctoral dissertations of nineteenth-century sholars (e.g. Rénouard, Bédarride, Thaller, Namur) will be examined via the contextual and comparative legal history method, and these sources, their authors, the different legal concepts will also be related to each other via network analysis in order to determine if Roman law was formative for the nineteenth-century insolvency law. This research provides building blocks for a better understanding of the second half of the nineteenth century, that marks the transition to the modern insolvency law.

Panel 2. Chapters from the Legal History in the Medieval Europe

(Buza László Classroom, JK203)

Chair: Maciej Mikuła

(Professor, Jagiellonian University, Poland)

Balázs László
Lecturer
University of Pécs, Hungary

The 'crown' in the legal documents of the Árpád Era: from royalty towards the state

Most of the written sources of the Árpád Era are legal documents: decrees, letters of privilege, verdict letters, reporting letters, etc. There are also some literary sources that contain information on the contemporary legal institutions of the monarchy, e.g. the Instructions of Stephen I (the Saint), legends and chronicles.

Some of these documents – mostly ones published in the name on the king – include references to the crown. By looking at these sources, we can recognise and declare, that the meaning of the word 'crown' has changed over the centuries of the Era. In the beginning the crown meant and symbolised not else than the monarch himself and his power, the royalty. Later on, the meaning and the underlying content of the word changed and it became the symbol of the power becoming more or less independent of the person of a particular king, the symbol of the main power that happened to belong to the dynasty of the Árpáds. From the king's crown (corona regis), the royal crown – separated from the person of the monarch – turned into the crown of the kingdom or country (corona regni).

Moreover, in the 13th century, the 'crown' started to symbolise one particular crown that was increasingly called the Holy Crown, and by the end of the Árpád Era it was – in fact mistakenly – identified with the crown of Stephen I (the Saint). Based on the legend of Stephen I (the Saint) written by the bishop called Hartvik, the idea of the sending of the crown by the pope by divine inspiration further increased the legitimising power of the royal crown.

In a comparative approach, the above-mentioned identification made the Hungarian theory of the Holy Crown unique among the contemporary European theories as it become the basis of a public law conception of the state, centuries before the Tripartitum.

The crowning of András III and later that of Károly I (Anjou) showed that the meaning of the Holy Crown become something bigger as it was able to transfer the legitimacy of Stephen I (the Saint) and his dynasty to the newly crowned king and his successors. It means that the Holy Crown carries no more the royal power of a particular dynasty but the power of an entity that can only be taken control of by some kind of lawful means. This entity can be identified as the Hungarian state in the legal sense.

Piotr Owsiak
Junior lawyer
Regional Chamber of Attorneys-at-Law in Cracow, Poland

Between Steppe and Puszta – Comparison of Hungarian Werböczy Code of 1514 and Kazakh Code "Bright Path of Kassim Khan" of 1510

Purpose of paper: Considering the topic of the conference main target of paper is to present comparison between Hungarian Code "Tripartitum" from 1514 and Kassim Khan Code from 1510 and show differences and similarities between two codifications from similar period. The target of paper is to check possible link between legal cultures of Kazakhstan and Hungary and relation to contemporary legal cooperation between mentioned countries.

Method: Research focused on scientific literature in Kazakh, Polish and English, searching e-archives and digital libraries, comparative studying legal texts from 16th century translated into English.

Kaat Cappelle
Postdoctoral researcher
Ghent University, Belgium

Klaas Van Gelder
Assistant professor
Vrije Universiteit Brussel, Belgium

Policing Villagers in Medieval and Early Modern Flanders: A Quantitative Analysis of Rural Police Regulations and a Re-Evaluation of Law-Making at the Local Level

Since the 1980s, medieval and early modern police ordinances have been continuously and often prominently on the research agenda of (legal) historians. This is due to the pioneering research of Marc Raeff (Holy Roman Empire and Russia), Michael Stolleis and Karl Härter (Holy Roman Empire) and Albert Rigaudière (France), and more recently Toomas Kotkas (Sweden) and Donald Fyson (New France/Canada), among others. In each case, however, the emphasis was on police ordinances issued by central governments (the prince and princely institutions) and large cities. Legal historians have paid much less attention to the rules issued by village administrators to regulate everyday life and to maintain order and tranquility. These rules covered subjects ranging from crop protection and stray animals over fire prevention, correct weights and measures, opening hours of inns and maintenance of roads to the protection of sacred places such as the church and cemetery. In this paper, we present the results of a large-scale comparative quantitative analysis of 84 compilations of police rules in villages in the county of Flanders. The oldest compilations in this corpus stem from the mid-thirteenth century, the newest date from the eighteenth century. Since the fifteenth century, these village rules have been frequently referred to as 'police', although this type of regulation had thus existed for at least two centuries by then. Together, these compilations contain over 5,200 individual rules or articles. We tagged these articles according to the taxonomy of police matters developed by the team around Michael Stolleis and Karl Härter. The result is a unique long-term picture of the subjects that medieval and early modern village administrators tried to regulate. The tags allow to detect remarkable shifts over time – shifts that point to the gradual penetration of central legislation into local police regulations, the growing normative activity of intermediary institutions, such as castellanies (kasselrijen) in domains that had long belonged to the remit of village authorities, but equally to domains in which village administrators retained considerable autonomy until the end of the Ancien Régime. This quantitative analysis thus significantly expands our understanding of 'premodern' police by including the

hitherto oft-neglected rural local level. This is all the more relevant given that the majority of the population lived in villages, even in highly urbanized Flanders, and that the medieval and early modern society was both an agricultural and subsistence society.

Panel 3. Methodological Viewpoints in Legal History Research

(Nagy Ferenc Classroom, JK206)

Chair: Michał Gałędek

(Professor, University of Gdańsk, Poland)

Augustín Parise
Associate professor
University of Maastricht, Netherlands

The Louisiana State Law Institute and the Development of Legal Science through Legal History and Legal Translation

This presentation will explore the role of the Louisiana State Law Institute (LSLI) as an instrument for the survival of the civil law during the period 1938–1972. The LSLI was established in 1938, and was envisioned as a research unit modeled on the activities of the American Law Institute. The work of the LSLI–during the period covered in this presentation–centered around the elaboration of the Revised Statutes (1950). In addition, the tasks of the LSLI were not limited to proposing legislative reforms. On the one hand, in the field of legal history, the LSLI collaborated with the elaboration of the Louisiana Legal Archives. This effort consolidated in three volumes a selection of preterit and seminal civil law texts of the State (ia, Digest of 1808, Project of a Civil Code of 1823). On the other hand, in the field of comparative law, the LSLI sponsored translations of doctrinal works from French into English language, including volumes by Charles Aubry, Gabriel Baudry-Lacantinerie, François Gény, and Charles Rau. These texts were useful tools for Louisiana courts when deciding in particular cases.

The presentation will be divided into three parts. Firstly, the presentation will contextualize the establishment of the LSLI. Attention will be devoted to its main actors, its organization, and its initial law reform efforts. Secondly, the presentation will address the legal history endeavors of the LSLI. Attention will be devoted to the actors behind the Louisiana Legal Archives, while also looking at the content and impact of those volumes. Thirdly, the presentation will address the comparative law.

Brian Buchhalter Montero
Postdoctoral researcher
Complutense University of Madrid, Spain

The Retrospective Analysis in Comparative Legal History

This paper investigates the so-called retrospective method applied to the comparative legal history. It studies some works that have used, in order to make history, a different perspective than the common (prospective) one. These works analyzed a source or an institution from the present backwards (retrospective perspective). In this sense, my study distinguishes – following Baldus – between the path (method), the more or less systematic reflection on this path (methodic) and, finally, the joint reflection on method and methodic (methodology). My work is concerned with these three questions in relation to the so-called retrospective method. First, I analyze what the so-called retrospective method is or could be in the abstract; secondly, I pay attention to some reflections on the retrospective method (mainly by Álvaro D'Ors and Aniceto Masferrer); and, finally, my paper contains also a joint analysis of methodology: an assessment of the results and possibilities of the so-called retrospective method. The main conclusion is that, rather than a retrospective method, what can properly exist is a retrospective exposition of knowledge that has already been obtained: the so-called retrospective method presupposes knowledge of the object of study which, as such, contaminates the historian and therefore prevents him from discovering new paths.

Tomáš Havlíček
PhD student
Masaryk University, Czech Republic

Discourse, Power, and Proportionality: A Critical Analysis of Judicial Reasoning in Europe

This paper critically examines the principle of proportionality, a foundational doctrine in human rights protection and constitutional law that ensures state interventions remain balanced and do not disproportionately infringe on individual freedoms. Proportionality has become the dominant method for courts worldwide, particularly in adjudicating fundamental rights. However, while it is widely utilized, there is limited agreement on its ideological neutrality or its consistent application across different legal cultures. This study focuses on the application and interpretation of proportionality in Central and Eastern European legal systems, particularly the Visegrád Group (V4) countries: the Czech Republic, Slovakia, Poland, and Hungary, comparing them with the decision-making processes of the European Court of Justice (ECJ). This examination is set within the broader "culture of justification," where the legitimacy of judicial decisions is scrutinized based on the transparency and reasoning provided.

Research questions investigate the historical evolution of proportionality and its ideological foundations, asking whether it serves as a neutral tool or introduces ideological biases through judicial interpretation. The study also questions if proportionality manifests universally or if it varies according to cultural and socio-political contexts. Specifically, it seeks to determine whether different material conditions have led to distinct interpretations or alternatives to proportionality in various regions. Additional inquiries assess whether proportionality supports certain group or class interests over others, challenging its perceived neutrality. This multi-layered inquiry includes analyzing the language used in the development and application of proportionality, scrutinizing whether it aligns with its theoretical purposes – such as promoting protection, structuring arguments, and enhancing transparency – or diverges in practical contexts.

The methodology integrates critical historiography and critical discourse analysis, emphasizing conceptual transformations, institutional changes, and shifts in social practices over time. By analyzing discourse discontinuities and transitions, the study reveals how legal language and reasoning reflect, reinforce, or challenge underlying power structures and ideologies. Through a detailed review of ECJ case law and national court practices, the paper assesses whether proportionality, in practice, meets its theoretical goals and how it navigates ideological influences within different judicial environments.

This study ultimately argues that proportionality, while theoretically positioned as a neutral tool, is influenced by contextual factors and may favor particular interests depending on its application. The findings aim to contribute to a deeper understanding of proportionality's role within judicial systems and the implications of its ideological underpinnings, offering critical insights for future discourse on the limits and potentials of this legal doctrine.

Adolfo Giuliani
Lawyer
Italian Ministry for Education, Italy

What is so Cool about Legal Traditions? It is about Thinking in Small-scale Models

"Small-scale model", a term introduced by Kenneth Craik, a Scottish mathematician at Cambridge in the 1940s, describes the internal representations people create to understand reality. While foundational to modern artificial intelligence in the 1950s, its popularity is at its peak today as a fundamental mode of cognition. Central to contemporary epistemology and history theory, it also appears in legal scholarship, notably in HP Glenn's idea of legal tradition. Glenn's thesis stands as one of the most brilliant recent contributions to comparative law, though it remains a fragile concept prone to misunderstanding. To grasp its rationale, we must conduct an exercise in historical legal epistemology to trace its background.

Glenn's thesis about legal traditions produced a paradigm shift that overshadowed the conventional comparative tools: transplants, culture, legal families, reception and others. It addressed previous analytical shortcomings by confronting issues of incommensurability, the strictures of the tertium comparationis, the doubtful employment of external standards. In Glenn's hands, legal tradition became a lightweight, contextual concept that opened new and expansive theoretical possibilities. But at its core lies a radical question about tradition itself, which Glenn conceptualised as "information", within the rapidly growing field of the philosophy of information. The primary insight from this approach is that we understand reality through conceptual design, mental images, representations and small-scale models.

A historical analysis reveals the deep roots of this mode of cognition, tracing back to the 16th century. Between 1530 and 1630, the legal profession was captivated by the project of artificial reason (ratio artificialis) derived from some rediscovered Aristotelian texts. Jurists were mesmerised by its epistemic potential, reforming areas such as judicial proof, contracts, interpretation, and contributing to the restructuring of central courts. The core principle was radical: external reality can be immediately known through mental images that provide immediate and gapless contact with the objects of cognition. While the rise of rationalist philosophies (Descartes, Hobbes, Locke, Spinoza) eclipsed the Aristotelian idea, the concept was kept alive in Scotland by Thomas Reid and his school eventually reaching American pragmatists like Charles Peirce and William James.

When Kenneth Craik spoke of mental models in the 1940s, he was resuscitating a powerful idea. Developed today by adjacent disciplines like

epistemology and history theory, which closely border legal-historical research, the idea of knowing through "small-scale models" merits consideration within this field, as it urgently needs a methodological update.

Panel 4. Legal Symbols in European Legal Tradition

(Kemenes Béla Classroom, JK208)

Chair: Annamaria Monti

(Professor, University of Milan, Italy)

Martin Sunnqvist
Professor
University of Lund, Sweden

Symbols of Law and Jurisdiction in the Seals of the Swedish 17th Century Courts of Appeal

In the 17th century, courts of appeal were established in the Swedish realm: 1614 Svea Court of Appeal, 1623 Åbo Court of Appeal, 1630 Dorpat Court of Appeal and 1634 Göta Court of Appeal. Svea and Göta Courts of Appeal are still functioning as courts of appeal in civil and criminal cases in Sweden, and Åbo Court of Appeal is still functioning as court of appeal in civil and criminal cases in Finland. Dorpat Court of Appeal in today's Estonia has not survived. The reform that started in 1614 with the Svea Court of Appeal is now since 400 years the most important judicial reform in Sweden and Finland. This is highly relevant for the theme of the conference – to call attention to the development of legal institutions that are related to and serve as the foundation of modern/contemporary state and law. The establishment of the courts and the reasons for this has been explored in literature, e.g. in relation to the 400 years anniversary of the Svea Court of Appeal. In my research in the archives, primarily in the archives of recipients of the documents from the courts, I have collected images of the seals that the courts used in the 17th century. Thus, I base the comparison of the symbols of law in the seals of the four courts on primary sources. The courts of appeal used Justitia with sword and scales as symbols, or only the sword and scales. The younger courts of appeal used coats of arms representing their areas of jurisdiction. Dorpat Court of Appeal added Pax and Veritas to Justitia. Hence, the seals can be analysed both from the perspective of geographic jurisdiction and of the function of administering justice.

Zoltán Megyeri-Pálffi
Assistant professor
Eötvös Loránd University, Hungary

The Impact of Organisational and Procedural Changes on the Functional Design of Judicial Buildings in Modern Hungary

The aim of the presentation is to shed light on the relationship between the organisational system and procedural law and the judicial building stock. It examines how the codification of procedural law after the Austro–Hungarian Compromise and the creation of the modern court organisation system influenced the development of the court building stock. The topic is thus at the intersection of legal history and architectural history. The presentation will outline the context from the beginning to almost the present day. The study touches on the codification of civil and criminal procedure after 1868, 1896 and 1911, the importance of the principles of verbality, immediacy and publicity, and their architectural impact. In this context, it also highlights the impact of Western European developments on Hungary. It also addresses the changes in attitudes that have affected the functional design of court buildings. Accordingly, it discusses the juvenile regulations of the early 20th century and takes a small look at the changes that have taken place today, including the architectural implications of remote hearing and child hearings. In parallel, the presentation also attempts to outline the relationship between organisational change and the construction of court buildings. The importance of the modernisation of the 19th century is best demonstrated by the fact that today's judiciary is still based on the infrastructure created at that period. A large percentage of today's courts are still housed in the modernised buildings that were constructed during the Austro–Hungarian Monarchy. The novelty of the topic is mainly measured in the multidisciplinary approach. Among the primary sources of the research, the surviving technical and architectural documents of the former Ministry of Justice, as well as archival and archival materials related to the organisation of the courts, play a decisive role.

Kinga Beliznai
Associate professor
Eötvös Loránd University, Hungary

Nice and Smart Fashion is the Fashion of the Judge's Robe

Judges in Medieval Europe adjudicated usually in a knee-length robe or even as long as falling to the ankles, which was fastened with a belt at their waist, and wearing a cap of the same colour as their robe.

In the 14th and 15th centuries judges and lawyers started wearing an attire similar to the long cassock of the clergy. Such simple dress was considered appropriate as secular clothing enabled „too much finery and personal vanity", when „the calm and reserved representative of the immutable law could not be a man of fashion". The judges of the highest judicial forum of France, the Parliament of Paris, were among the first who following the fashion of the royal court started wearing full-size long-sleeved robes with an ermine collar.

The judges of different ranking were distinguished by the fabric, colour, quality and adornment of their respective gowns. From the 15th century the colour of the gown was mainly black, but the judges of the towns having „the privilege of the glaive" wore a scarlet gown whilst adjudicating. In some countries (for instance, Switzerland or Italy) the black gown – in Spanish style – was decorated with a white ruff.

In Hungary judges did not wear an official uniform. The judges heard a case in their national dress, and at the regional courts they only girded their sword, which was more of a sign of their nobility and not as a symbol of adjudication.

In July 1898 a long debate ensued among our renowned lawyers as to what should the official attire look like in the Hungarian courts (gown or „atilla"), and whether it should be compulsory only for the judges or also for the prosecutors and attorneys.

§104 of Act 54 of 1912 on the implementation of the Code of Civil Procedure authorized the Minister of Justice „to order by decree the wearing of specific dress for the judges". The Ministry of Justice announced an application in September 1912 for the design of a judicial cap and gown. The Hungarian Association of Applied Arts was called upon to be in charge of the application; apart from members delegated by the association to the committee assessing the applications two further members were nominated by the Minister of Justice.

In the first decades of the 20th century no single viewpoint developed on the introduction of a uniform judicial dress. The appearance of women judges brought about a new situation as far as dressing is concerned. The elegance expected in the courtroom was dependent on the actual fashion trends in their case. The first bigger shock happened when the mini skirt appeared in the end of the sixties.

In the spring of 1990 the judges of the Constitutional Court appeared in a dark blue gown in public. Nearly a year later the judges of the Supreme Court were dressed in a black gown. The President of the Supreme Court announced in December, 1990 that the justices of the Supreme Court will be wearing a gown henceforth. The National Judicial Council provided for the general introduction and wearing of an official judicial attire in 1999 in its regulation, thus as of 1 June, 2000 wearing a black gown with violet trimmings became mandatory for all judges.

In Austria the ministerial decree issued in August, 1897 rendered the wearing of official attire mandatory. Accordingly, as of 1 January, 1898 every judge and prosecutor, as well as all expert lay judges were obliged to wear the official dress consisting of a black gown and beret at trials.

In 2017, the judges of the New Zealand Supreme Court (Te Kōti Mana Nui) broke with the scarlet robes and wigs worn since the 1940s, following the example of England and Wales. The new uniform is thus made of black silk and wool, with a pattern of cowrie pine cones and leaves.

Although the uniform of judges in Morocco is mostly French, judges of the Court of Cassation (Cour de Cassation) wear special clothes on festive occasions. For the January plenary session, which marks the beginning of the judicial year, and other important occasions, they wear a white djellaba with a red shoulder ribbon.

Panel 5. The Role of Legal Transfer in the Development of Law

(Kovács István Classroom, JK201)

Chair: Ulrike Müssig

(Professor, University of Passau, Germany)

Maciej Mikuła
Professor
Jagiellonian University, Poland

Legal Borrowing in Central and Eastern Europe in the 15th and 16th Centuries

The mobility of society in the late Middle Ages and Renaissance ensured the spread of ideas and solutions, including legal regulations. In Central and Eastern Europe at the turn of the Middle Ages and the Modern Era, the flow of ideas was strengthened not only by migration and the mobility of merchants and craftsmen, but also by formal links between cities located under the so-called German law (Lück). It can be seen that the influence of the recognised centres led to the adoption and it was not uncommon for the authorities of one town to make formal requests to another for the original town statutes. Although these new solutions were sometimes inspired by the *ius commune,* more often this was not the case, leading to a proliferation of original legal thought.

So far, research has been conducted mainly for municipal legislation within the same state and the spread of German law collections – Magdeburg, Chełmno, Nürnberg, Lübeck. An enduring dependence in the adoption of daughter city solutions from mother cities has been noted. Individual studies have captured both the local impact in terms of guild statutes (Mikuła) and the supra-local impact between towns sometimes hundreds of kilometres apart (Szczygieł). But can similarities in the wording of municipal statutes lying within the borders of different states be noticed? In the period in question, did the national border have any significance at all for the flow and adaptation of legal thought?

The aim of this paper is both to show the ways in which legal regulations, including municipal statutes, spread and to outline the perspective of a comprehensive study of the circulation of law in Central and Eastern Europe in the fifteenth and sixteenth centuries. A tool for such research will be a digital database, which will speed up the process of comparing legal historical sources written in different languages, similar to Corpus Synodalium (https://corpus-synodalium.com); such a tool is planned within the *IURA. Sources of Law from the Past* repository (https://iura.uj.edu.pl/dlibra).

Niels Fieremans
Postdoctoral researcher
Ghent University, Belgium

The Legal Transition of Seigneurial and Princely Courts in the Late Medieval Low Countries

This paper examines the legal transition in the late medieval Low Countries. In the fourteenth century, seigneurial and urban legal systems predominantly governed these regions, but by the sixteenth century, the legal landscape had significantly shifted. Princely courts had established themselves as the primary legal authority, integrating seigneurial and urban courts within a hierarchical framework. This paper posits that the fifteenth century was a crucial period of legal transition, and it seeks to elucidate how and why this transformation occurred. While conventional scholarship typically centres on princely legislative initiatives, this study foregrounds the role of "ordinary" people, particularly the subjects within seigneuries. Traditionally, these inhabitants have been seen as highly subordinate, subjected to the unrestrained judicial authority of their seigneurial lords. These lords held the prerogative of justice and could prosecute criminals in their domains. For example, the lord of Wezemaal was notorious for meting out severe punishments, including live burial or eye-gouging, against subjects who transgressed his hunting privileges. However, in the 1420s, when his subjects brought complaints before the Feudal Court of Brabant, the Lord of Wezemaal was compelled to explain and justify his actions. Despite his belief that princely courts had no authority over his governance, the Feudal Court ruled otherwise.

The central hypothesis of this paper is that the litigations initiated by seigneurial subjects and their choice of one court over another had a tangible impact on the authority and legislative reach of princely courts during the fifteenth century. By examining the numerous proceedings preserved in the records of decisions from the Council of Brabant, the Council of Flanders, and the Court of Holland – the principal regional courts of the Low Countries – this paper explores how subjects took the initiative. Drawing on different legal contexts, I compare the strategies of subjects in these three courts, which were nominally under the Dukes of Burgundy (1369–1482), a cadet branch of the French Valois dynasty. With their centralising tendencies, the Dukes of Burgundy are sometimes regarded as the founding fathers of the Low Countries. However, by examining centralisation "from below," this study traces how subjects, perhaps unknowingly, altered the legal framework of the Low Countries. It demonstrates that it was not only princely legislation that impacted centralisation, but also the way princely courts were used by subjects.

David Schorr
Senior lecturer
Tel Aviv University, Israel

Systemization of Law in the British Empire

The question of what law was to apply in the various territories of the British Empire is often thought of as a tension between two poles – imposition of English law at one end of the scale; and at the other, a dizzying diversity of individual legal systems, typically inherited partly from other empires, but each with its own history and particular mix of norms from different legal origins.

Yet to be studied (at least not together, nor as an empire-wide phenomenon) are efforts to systematise the diverse laws of the Empire in ways other than imposition of English law. This paper will examine two such efforts: creation of regional appellate courts (not always, as might be assumed, in lockstep with political association); and harmonisation of related legal systems, with origins in the Romanist civil-law world or along religious lines, through court decisions and scholarly works.

These two projects sometimes worked in tandem, as in the case of the systemisation of Hindu law on the Indian subcontinent, and sometimes in tension with one another, for example with regard to the harmonisation of Roman–Dutch law across far-flung territories, each also part of a regional grouping of colonies that were being subjected to a regional appellate court.

Based on primary sources, including judicial decisions and court papers; parliamentary debates; and contemporary works of legal scholarship, this research will attempt to trace these movements to systematize law in the British Empire, their motivations, and their views on law.

Juma Noah Omollo
PhD student
Max Planck Institute for Legal History and Legal Theory, Germany

Trajectories in British Colonial Legal Transfer and Jurisdictional Preferences in Legal Construction: A Histolegal Perspective

Trajectories are legal creatures of legal transfer enabling law. A typical example is the early colonial legislative powers granted to colonial officers in the 19th Century by Orders in Council. These provisions often provided the colonial authority with legislative power. The power would be exercised in a wide range of ways most notably including the right to apply the law of colonies which he deemed fit. The Commissioner often exercised this power by issuing an enabling ordinance by which law from one British colony or Britain was applied. The latter represented the typical bilateral notion of legal transfers involving a donor and recipient. On the other hand, situations where the Commissioner applied law from another colony, itself having received law from Britain, posted a peculiar trilateral notion involving a donor and two recipients. One of the recipients in the trilateral trajectory was a 'pitstop' – its role in the transfer process only being to act as a jurisdiction where the law was refined for use in the final recipient.

This paper explores the phenomenon of a trilateral trajectory and shows how it affects the post-colonial legal construction of doctrine during judicial adjudication in the recipient territories. It uses the transfer of legal doctrine from Britain through the Indian Colony to British East Africa as a case study. It is then argued that India as a pitstop manifests as a 'sub-origin'. Therefore, it offers or should offer a primary external basis for the legal construction of transferred doctrine.

In British East Africa, the King gave Orders in Council conferring on the Commissioners (heads of the imperial administration of the empire) legislative power. In its exercise, the Commissioners could either (i) promulgate new law, (ii) apply existing law prevailing in the United Kingdom or (iii) apply law from another colony, including the Indian legislature. Availing themselves of these options, the Commissioners gave ordinances which made doctrine from the Indian legislature applicable to British East Africa. The transferred doctrine which had found initial legal expression in Britain, had arrived earlier in the Indian colony and undergone material literal and contextual changes through the colonial legislative and judicial processes.

The appurtenant provisions (i), (ii) and (iii) of the Orders in Council are viewed as typical legal permissions and manifestations of the spatial movement of doctrine (or law generally) which I call 'trajectories'. British India is viewed as

an intermittent jurisdiction where the doctrine during the legal transfer process was first tested and modified to suit its final destination, which I call a 'pitstop'.

Then, the project's thesis is that the combinations of trajectories and pitstops in the spatial movements of transferred doctrine influence jurisdictional preferences as receiving jurisdictions search for an external basis for the interpretation of their Law. In the specific context of the present case study, the trajectory of law from Britain through the Indian Colony to British East Africa situates India at a higher level of preference as an external basis for the interpretation and application of the transferred doctrine. This project makes use of critical comparative and historical approaches probing primary archival and doctrinal sources in equal measure. It is intended to be as legal as it is historical.

Panel 6. State, Church and Canon Law

(Buza László Classroom, JK203)

Chair: Marju Luts-Sootak

(Professor, University of Tartu, Estonia)

Cs. Eszter Herger
Professor
University of Pécs, Hungary

Universal Norms of European Legal Culture: Contributions to the Interpretation of the Collatio Legum Mosaicarum et Romanarum

The Collatio legum Mosaicarum et Romanarum (Lex Dei) is definitely the first comparative law creation of the European legal culture. The Latin, late antique collection, probably originated from Italy, which author and original title is unknown, compiled the legal acts of the Old Testament and their Roman law parallels. The structure of the opus follows the subdivision of the second stone of the Decalogue, so the author – contrary to the approach of the determinative Romanist scholar of 19th century historical law school, Friedrich Carl von Savigny – did not consider the institutions and principles of the Roman law as a cornerstone, but the provisions of the Testamentum Vetus, which consequently was a starting point for comparison: the quoted Biblical texts derive from the II–V books of the Torah, the Roman law sources give insight to the content of Codex Gregorianus and Codex Hermogenianus, moreover the writings of five other jurists (Papinianus, Paulus, Gaius, Ulpianus and Modestinus). According to Simon Corcoran, the author of the opus must have been a Christian jurist, who tried to show their pagan colleagues, that Christianity is based on such (Jewish) legal traditions that are not only compatible with Roman law but are much more ancient. The unique nature of the Collatio legum Mosaicarum et Romanarum (which second text was edited by Theodor Mommsen) is primarily credited to its author's point of view. In the works of the canonists of the following centuries, the systematization and concepts of Roman law were used for the explanations for the legal institutions of the Old and the New Testament, and many Roman law institutions were borrowed from the former Imperium Romanum. In this overview, I will examine the extent to which the legal institutions and principles listed in the Collatio have become universal norms of European legal culture.

Piotr Alexandrowicz
Assistant professor
Adam Mickiewicz University in Poznań, Poland

Early Modern Canon Law Commentaries: A Comparative Approach

We all know what legal commentary is. But... do we really? This genre of legal writing is undoubtedly one of the most emblematic outputs of scholarly work in law. Yet, the history of legal commentary, the definitional ambiguity surrounding the characteristics of "legal commentary", its current status (is it merely a practical guide, or rather an elevated synthesis of doctrinal insights into the law?) and the contemporary fragmented nature of extensive online commentaries all suggest that this field remains far from well-charted.

The paper contributes to this discourse through a comparative study of early modern canon law commentaries. In the most comprehensive studies on early modern legal genres, Roman law commentary variants are typically classified as central, while commentaries on canon law sources are often addressed only as supplementary, following a similar developmental schema. Canon law historians have also generally devoted limited research to these sources, with some notable exceptions. Departing from the current state of research, this paper offers an overview of the characteristics of early modern canon law commentaries on the Decretals, with particular focus on prominent works by Felino Sandeo, Filippo Decio, Agostino Beró, Marco Mantua Benavidio, Hendrik Zoesius, Emanuel González Téllez, Prospero Fagnani and Agostinho Barbosa. The main features of these commentaries will be juxtaposed against early modern commentary subgenres designed to describe Roman law commentaries (such as late medieval, exegetical, lemmatical and title-based commentary forms).

The investigation into early modern Roman and canon law commentaries aims to demonstrate how a comparative approach can illuminate similarities and distinctions in works derived from different legal systems within a shared legal tradition.

Paolo Astrorri
Assistant professor
University of Copenhagen, Denmark

Ius Gentium in Early Modern Moral Theology: A Comparative Study of Protestant and Roman Catholic Thought

In medieval and early modern Europe, legal pluralism or multi-normativity governed human relations. Social, religious, and political norms were shaped and enforced not only by jurists but also by theologians. Thomas Aquinas employed the concept of ius gentium (the law of nations), seeking to distinguish it from both natural and civil law. He viewed ius gentium as derived from natural law, either as a conclusion drawn from natural principles or as a specification of them. Like Aquinas, early modern scholastics such as Francisco de Vitoria (ca. 1483–1546) and Francisco Suárez (1548–1617) also sought to differentiate ius gentium from both natural and civil law. However, they expanded its scope to address the pressing question of what kind of law would be binding on the indigenous peoples of the Americas. Ius gentium provided an adaptable platform suitable for application across cultures.

Ius gentium was also influential in the Protestant world, notably employed by Hugo Grotius (1583–1645), Alberico Gentili (1552–1608), and Samuel Pufendorf (1632–1694). Lutheran theologians also engaged with this concept; while some did not differentiate between natural law and ius gentium, others made a clear distinction. They applied ius gentium to resolve moral dilemmas, often related to internal social discipline – such as clerical salaries, the admissibility of extrajudicial acts in trials, and illicit marital contracts. In contrast, Reformed (Puritan and Anglican) theologians were more inclined to extend ius gentium to matters of justice between sovereign states and the right to travel across borders – issues that would later be classified under international law. At the heart of these discussions was the question of whether ius gentium had binding force in matters of conscience, a topic of immense significance as it pertained to moral responsibility and salvation.

Recent scholarship has explored the interplay between natural law and ius gentium in the early modern period. However, a focused study of Protestant moral theologians' engagement with ius gentium remains lacking. This paper seeks to address this gap by examining the views of several Protestant theologians, including Philip Melanchthon (1497–1560); Georg Dedekenn (1564–1628); Friedrich Balduin (1575–1627); Robert Sanderson (1587–1663) and Jeremy Taylor (1613–1667). The goal is to compare their perspectives with those of early modern scholastics, thereby providing a more comprehensive view of the adoption

of this crucial concept in moral theological literature. The primary sources for this study include Philip Melanchthon, Loci theologici, Wittenberg, 1521; Friedrich Balduin, Tractatus de casibus conscientiae, Wittenberg, 1628; Georg Dedekenn, Thesaurum consiliorum et decisionum, Jena, 1671; Jeremy Taylor, Doctor dubitantium, London, 1660, and Robert Sanderson, De obligatione conscientiae praelectiones decem, London, 1710.

Rafał Kaczmarczyk
Independent scholar
Jagiellonian University, Poland

Legal position of the Muslim Religious Union in interwar Poland: copying the Russian mode

The legal position of Muslim communities was regulated in Austria and Russia during the partitions of Poland. Therefore, Austrian and Russian norms in that field became a part of the Polish legal system after Poland regained its statehood in 1918. Poland aimed to regulated anew the legal position of the religious communities. It took some time in the case of Muslims, but the act on the relations between the State and the Muslim Religious Union in the Republic of Poland has been enacted in 1936.

The paper analyses the legal sources taken from the Austrian, Russian, and Polish legal orders to show that the regulations introduced into the legal system in interwar Poland are based on the former Russian solutions.

The papers discusses the factors responsible for such a state of affairs. What is more, one of main goals of regulating the matter anew anew in interwar Poland was to break up with discriminatory and antidemocratic institutions that had been in force in the former Russian Epire. Moreover, there were some opinions in the interwar period that the proposed solutions copied the Russian norms. However, they have been passed over. The paper shows why the then critic was not effective.

Knowing the origin of certain legal norms and reasons why they remained within the Polish legal system may be useful in the future, especially during amending or replacing of the act of 1936, what seems to be a necessity of our times.

The paper is based on the primary sources research. It takes under consideration the legals sources from Austrian, Polish, and Russian legal systems as well as archival materials, those related to the administrative and parliamentary work on the act of 1936 in particular. In doing so. Material of state archives in Poland and Lithuania have been examined, i.e. files of Archiwum Akt Nowych in Warsaw and Lietuvos Centrinis Valstybes Archyvas in Vilnius.

Panel 7. Legal Culture from Antiquity to Nowadays

(Nagy Ferenc Classroom, JK206)

Chair: Merike Ristikivi

(Associate professor, University of Tartu, Estonia)

Anna Ceglarska
Assistant professor
Jagiellonian University, Poland

Iwona Barwicka-Tylek
Associate professor
Jagiellonian University, Poland

Parrhesia and isegoria in ancient Athens: Foundations of the democratic institution of free speech

There is no doubt that the roots of European legal culture go back to ancient Athens and its democratic institutions. Many contemporary scholars employ this heritage as a point of reference in addressing contemporary legal and constitutional issues. However, as observed by J. Ober, quite often such references frequently simplify the specific context of the Greek culture, due to "our great chronological distance" combined with "emotional proximity". In effect "much modern scholarship on ancient democracy has been marred by tendency to overstress the similarities" (Ober 1989). An example of this approach can be observed in the discourse on isegoria and parrhesia as precursors of the modern institution of free speech. The interest in these two ancient concepts can be traced back to the middle of the 20th century (A. Momigliano) and was popularised by M. Foucault's interpretation of parrhesia. Furthermore, it has been employed in legal scholarship (Landauer 2012; Rosenthal 2020), where it is utilised to resolve the disputes over free speech and the various models of its legal protection (Bejan 2019; Belavusau 2010). Our objective is to prioritise the preservation of the "chronological distance" by situating isegoria and parrhesia within their original Greek context. We contend that recognising the differences between these concepts and their reception may offer a more nuanced understanding of contemporary legal issues than a simple focus on similarities that are often misleading and anachronistic. Therefore, we would like to discuss isegoria and parrhesia referring to the ancient sources. These include not only legal, philosophical or oratorical works, but also literary ones, which, due to the specificity of the Greek culture, often expressed legal and constitutional ideas, crucial for the functioning of the democratic system, in a more profound manner. We will argue that to make plausible references to the Greek heritage in the context of democracy and democratic institutions, it is necessary to focus not on the superficial analogies and parallels, but on the more fundamental ideas that formed the specific background for Greek political thought.

Marianne Vasara-Aaltonen
University lecturer
University of Helsinki, Finland

The Women's Movement and the History of Legal Aid: The Finnish Experience in a Comparative Perspective

Public legal aid – legal assistance for people of limited means – is a crucial legal institution closely linked to equality, access to justice, and the rule of law. This paper examines the early stages of public legal aid in Finland during the late-nineteenth and early-twentieth centuries. Using previously neglected primary sources, it connects the development of legal aid to the rise of the women's movement in Finland. The Finnish situation will be examined within a comparative context.

The origins of public legal aid in Finland date back to the 1880s when Helsinki appointed an advocate for the poor. Based on archival sources, I will demonstrate how, in 1884, the recently-founded Finnish Women's Association began advocating for the organization of legal aid in Helsinki. They argued that legal aid would especially benefit women. Their efforts culminated in 1886 when the Helsinki town council employed the first poor's advocate. Additionally, I will analyze annual reports from the poor's advocate to illustrate how legal aid was predominantly used by female clients.

The connection between the women's movement and legal aid was not solely a Finnish phenomenon. I will present studies from various European countries and the United States to show how the Finnish example fits within a comparative framework. Late-19th- and early-20th-century women's rights activists and early female lawyers in many countries advocated for women's access to justice and legal aid. Ordinary women, often from working-class backgrounds, needed legal assistance to assert their rights. Finnish women's rights activists were aware of the pursuits and successes of the women's movement elsewhere, and this must have included the question of legal aid, too. The suggestions made by the Finnish Women's Association in 1884 called for an adaptation of public legal aid that would fit into the Finnish legal system and profession.

This topic remains relevant today. For example, UN Women has emphasized the gendered nature of access to justice, particularly in developing countries. Poor and vulnerable women often face significant barriers when seeking justice. Improving their access to justice is a crucial aspect of gender equality. This idea was championed already by the women's rights activists of the nineteenth century.

Bruno Rodrigues de Lima
Postdoctoral researcher
Max Planck Institute for Legal History & Legal Theory, Germany

The Making of a Classic: Luiz Gama's Complete Works

The life and legacy of Luiz Gama, Brazil's only known poet and lawyer who lived under captivity, serve as a profound example of how legal institutions can be wielded as instruments of social change. Gama's "Autobiography," published in 1880, resonated deeply in his time, echoing the narratives of figures like Frederick Douglass, with themes of heroic escape, literacy as empowerment, and the strength of alliances. Born free to an African mother in Salvador, Gama was sold into slavery by his father at the age of ten. At eighteen, he escaped captivity by securing evidence of his legal freedom, marking the beginning of a career that saw him become one of Brazil's most celebrated lawyers. Despite lacking a formal law degree, Gama's legal acumen and dedication allowed him to liberate nearly 500 enslaved individuals, a legacy that remains underappreciated in legal history. The "Complete Works of Luiz Gama" project is a comprehensive scholarly effort to collect, edit, and publish over 1,100 of Gama's texts, 90% of which had previously remained unpublished. This collection not only restores Gama's voice but also repositions him as a central figure in the canon of global legal and abolitionist thought. His writings, spanning civil, criminal, and procedural law, demonstrate how he used legal institutions to challenge Brazil's status quo, turning the law into a weapon for justice in an era defined by inequality and oppression. Gama's legal writings and journalism went beyond advocacy; they formed a tactical use of the press to influence public opinion and pressure judicial decisions. His published volumes, Democracia (1866–1869) and Liberdade (1880–1882), illustrate his commitment to human rights and democracy, using satire and legal analysis to expose corruption and social injustice. By examining these primary sources, this project highlights the socio-political dynamics of 19th-century Brazil, shedding light on the intellectual foundations of abolitionist legal thought. The "Complete Works of Luiz Gama" is thus not merely an archival collection; it resurrects a marginalized voice that critiqued Brazil's judiciary, politicians, and elite, positioning Gama's work as a cornerstone of modern law and abolitionism. This project underscores the importance of primary sources in legal historical research, drawing attention to how Gama's pioneering use of legal activism resonates with contemporary themes of justice and human rights, and invites future generations to engage with his vision of law as a tool for resistance and transformation.

Kamila Staudigl-Ciechowicz
Assistant professor
University of Vienna, Austria

'Frau Professor' – Wives of Legal Scholars between Patriarchy and Emancipation

Very little research has been done to date on the wives of legal scholars, both as a group and as individuals. This paper deals with the lives of the wives of legal scholars from a collective and individual biographical perspective. Two groups will be examined: the under-researched group of professors' wives who were active at the Faculty of Law and Political Science in Vienna from 1918 to 1938, a period of political and ideological upheaval; and the wives of professors in Strasbourg during the imperial era. The two approaches – collective-biographical and individual-biographical – are used to make abstract statements about the professor's wives as a social group, as well as to create case studies of life paths, work and gender roles through the specific individual biographies. A particular challenge for the study is the question of sources and source criticism. On the one hand, different types of archive sources are consulted, and on the other hand, digital sources in particular – such as the materials made available in recent years by newspaper databases, church databases and genealogical web projects – are an important part of the present study. At the same time, the use of digital sources raises different research questions and difficulties than those that arise when working with non-digital materials. The paper is intended not only to present the comparative results of the research on the Viennese and Strasbourg professor's wives, but also to discuss methodological questions.

Panel 8. Aspects of the Development of Hungarian Private Law in the Interwar Period with an European perspective

(Kemenes Béla Classroom, JK208)

Chair: Norbert Varga

(Professor, University of Szeged, Hungary)

Máté Pétervári
Assistant professor
University of Szeged, Hungary

Changes in Insolvency Law in the Shadow of the First World War in the Two Member States of the Austro–Hungarian Monarchy

The determined insolvency procedures were the bankruptcy procedure in the Austro–Hungarian Monarchy in the 19th century. The First World War brought a big change in the Austrian and Hungarian insolvency law, because a new insolvency procedure appeared in the legal practice. It was the compulsory non-bankruptcy settlement (*das Ausgleichsverfahren* in Austria, csődönkívüli kényszeregyezségi eljárás in Hungary) which was established by the Imperial Decree No. 337. on 10th December 1914 in Austria and by the Decree of Prime Minister No. 4070/1915. in Hungary. The Hungarian process was modified by the Decree of Prime Minister No. 1410/1926, which aim was the elimination of problems around this procedure. In my lecture, I would like to compare these regulations through one legal institution because the Hungarian Bankruptcy Act from 1881 followed the Austrian Bankruptcy Code of 1868 in many elements, therefore this Austrian legal rule probably also influenced the Hungarian law-making process. I deal with this type of insolvency procedure because it can give us a model to the reorganisation process for the contemporary legislation movements.

I chose the court administrator from the Hungarian regulation and the reorganisation administrator in the Austrian Code as the object of my comparison, because they were one of the most significant actors in both compulsory non-bankruptcy settlement regulations, since he helped the debtor to establish the agreement with creditors, he examined the assets of debtor and presented debtor's financial situation for the court. He was appointed by the court when the procedure was opened. In my lecture, I would like to compare the Austrian (i. e. Robert Bartsch, Rudolf Pollak) and Hungarian insolvency commentaries (i. e. Artúr Meszlény, Sándor Kornél Túry) in addition to the legal rules.

I also want to use archive material as primary source for the presentation of the Hungarian legal practice because we can examine the legal regulation in action through these judicial documents. Moreover, we can indicate problematic elements of the legal rules with the help of this research methodology, therefore my research project also focuses on the documents of Royal Regional Court of Kalocsa. I chose the archive material of this Hungarian court, because its documents exceptionally survived fully the last century.

Bence Krusóczki
PhD student
University of Szeged, Hungary

Comparison of the Development in Judicial Practice of Hungarian and Austrian Competition Law in Light of the First Hungarian Competition Act

This paper will explore the development of competition law by examining the first substantive Hungarian competition regulation, Act V of 1923, which established provisions against unfair competition, and comparing it to Austrian competition law regulations of the time. Today, unfair competition falls under competition law – a branch of economic law dedicated to protecting economic competition and preventing consumer harm. Article V of 1923 aimed to provide broad safeguards against unfair competition, drawing on several elements from Austrian legal frameworks. This study highlights these influences on Hungarian regulation by focusing specifically on the arbitral tribunals of the Chamber and the practice of the jury, whose roles were crucial in implementing these legal provisions. By examining both the Hungarian and Austrian approaches, the paper sheds light on how Hungarian law adopted certain Austrian legal patterns, as evidenced by research findings.

Benedek Varga
PhD student
University of Szeged, Hungary

Comparison of the Hungarian and German Regulation of Fraudulent and Culpable Bankruptcy

Both the first Hungarian Criminal Code (Act V of 1878) and the German Strafgesetzbuch of 1871 regulated different forms of fradulent and culpable bankruptcy (Insolvenzstraftaten), so those delicts which protected the interest of the creditors against fraudulent conducts of the insolvent debtors. First and foremost in my presentation I am going to compare the German and Hungarian regulatory models, reflecting on the main dogmatic similarities and differences. Closely related to this question, I am going to analyze the legislation process in Hungary, showing which foreign regulations have been taken into account during the criminalization of the delicts mentioned above. In order to understand deeply the legislation process, I reviewed the relevant Diaries of National Assembly from the Hungarian Parliamentary Collection. After the comparison, I am going to analyse the definitional elements of the delicts with teleological interpretation. I used not only the works of outstanding legal scholars, but two types of primary sources: in the first step I examined the leading cases of the Royal Hungarian Curia. After the systematic analysis of the decisions of the Curia, I am going to present the results of my archival research. During this part of the research, I have reviewed the decisions of the Royal Regional Court of Kalocsa and the Royal Regional Court of Appeal of Szeged, which are kept in the Hungarian National Archive. With archival examples I would like to illustrate how the different dogmatic views have appeared in practice. Since the statutory definition of fraudulent and culpable bankruptcy contained definitional elements which basically belonged insolvency law and commercial law (e.g. the legal status of the bankrupt person, opening of the bankruptcy proceedings) I place particular emphasis on answering the question whether courts used the definitions of other fields of law (insolvency law, commercial law) or they created autonomous criminal concepts?

Dénes Legeza
Researcher
Hungarian Intellectual Property Office, Hungary

The Enforcement of Public Performance Right in the Interwar Period

In the field of copyright, the public performance of music is now self-evident: if music is played in a commercial venue, royalty must be paid to the collective management organisation. It has taken a long time and many cases for this rule to be put into practice.

In the early 1900s, a series of lawsuits were brought against restaurants because the musicians were playing mostly copyrighted works. The composers lost a series of lawsuits because, according to the courts, the restaurateur was not responsible for these uses. Decision No. 57 of 1908 clearly stated that in the case of an unauthorized public performance by a gypsy band, the innkeeper defendant could not be punished.

The court reasoned that, although the Copyright Act of 1884 criminalised incitement to copyright infringement ("whoever induces another to infringe copyright..."), in the absence of a pre-established programme, the innkeeper could not induce the musicians to play the protected piece, since he did not know the programme. For years afterwards, the composers had little access to public performance royalties.

The turnaround came when the Royal Curia ruled that "in the case of an unauthorised performance by an orchestra (gypsy orchestra) playing in a café or restaurant without a prearranged programme, the café or restaurant owner may be prosecuted for copyright infringement and awarded damages on the grounds that he has hired the orchestra to play".

During the interwar period subsequent jurisprudence has further extended the liability of users by stating that the orchestra does not have to be pre-hired, the restaurateur is liable even if he has not ordered the orchestra but a guest, and even if a guest starts playing.

In the course of my research, I have analysed dozens of cases from primary sources and I will present them during the conference.

Panel 9. Entanglements and Overlaps: Legal System and Judicial Practices in the Early Modern Venetian "Terraferma"

(Kovács István Classroom, JK201)

Chair: Federica Paletti

(Associate professor, University of Brescia, Italy)

Marco Castelli
Lawyer
Adam Mickiewicz University in Poznań, Poland

The Local Statute Between the Defense of Tradition and an Evolutionary Interpretation: A Reflection of the Clash Between Roman and Venetian Legal Cultures

The complex interaction between legal sources in the Venetian Terraferma is particularly evident with respect to the relationship between central legislation and local statutes. Central legislation followed a pragmatic approach, based on principles that diverged from those of the Romanist tradition, while municipal statutes commonly included references to ius commune and served as an indispensable legal reference in practice. When Venice encountered the statutes and the legal traditions of the Terraferma, it decided not to override or eliminate them. Instead, it led cities through a process of statutory revision that both preserved local traditions and institutionalized Venetian authority, placing local law under the seal of the dominant power. The delicate political-institutional balance that resulted from this was maintained by the requirement that, even in cases appealed before central magistracies, local law – with its systems of external integration – had to be applied.

Thus, references to ius commune remained in these normative texts, serving to resolve cases not explicitly covered by the local or regional regulations. However, from the mid-seventeenth century onward, the balance began to falter, and attempts emerged to resolve the issue interpretatively, proposing that references to ius commune – which, at the time of the norm's promulgation, clearly referred to 'Roman law' – be reinterpreted as Venetian law, by then 'common' to both the Dominante and the local cities

This study will compare various municipal realities within the Venetian "commonwealth" and will examine cases of legal transplant within the same "imperial" space. In particular, a case study – analyzed through the use of the reports sent by the city's rectors to Venice, the statutory books and unpublished manuscript records preserved in the local State archive – will analyse the situation in Verona regarding legislation on a mother's succession to a predeceased son: this scenario, not regulated by local statutory law, revealed a complete divergence between Venetian and Roman legal solutions, and thus required political intervention to balance and ensure the system's adaptability and continuity. In such cases, differing legal opinions were also supported by internal comparative arguments, although these do not seem to have been followed at the central level, probably to prevent respect for local traditions from resulting in a homogeneous legal area that excluded the capital.

Elisabetta Fusar Poli
Professor
University of Brescia, Italy

Legal Layers in the Venetian Terraferma: Navigating Local Law and Justice

Law and justice in the Venetian Terraferma form layers of a dense web, which maintains as undisputed fixed point – deeply rooted in the territorial context – the original nucleus of statutes, customs and privileges that precede the Venetian domination.

The plurality and strength of ius proprium were acknowledged by the Dominante itself, which, indeed, with the pragmatic aim of managing relations with the peripheries by averting conflicts or not exacerbating them, made the preservation of local legal structures a valuable instrument of compromise. The longa manus of Venice operated with a strategically well-calibrated and prudent touch, evident in the deditiones agreements and through the work of the Rettori, who draw on the potestas principis.

On the one hand, Venice astutely safeguarded legal structures that it did not deem efficient to dismantle, instead making effective use of them while respecting their significance for local communities; on the other hand, it did not relinquish control over the multilayered mosaic of local law, particularly through complex judicial mechanisms. This mosaic allows for the development of comparative considerations between the different legislative frameworks, comparisons that were, at times, explicitly raised by political representatives of the time.

This system, in addition to ordinary justice – whose ultimate reference point remained Venice even for the sudditi of the Terraferma – transversal and hybrid legal spaces, where the different forms of justice often follow the paths of negotiation and transaction, merging with an overabundance of regulatory provisions that were frequently ineffective. Such sources are preserved in archival collections that are often underappreciated, and this contribution aims to present some documents identified through this archival research. These are spaces in which intermediate subjects and bodies, of a spontaneous nature, find legitimation, especially during the Sixteenth and Seventeenth centuries, further enriching the articulations of power in the Terraferma.

The result is a plural and "relative" legal order within the Venetian State and in its Terraferma, where, without it being possible to establish any hierarchy, one encounters agreements between corpora ratified in the Senate, rules of the Sindici e Inquisitori, terminations, parti, sentences from the central and decentralized judiciaries, provisions, orders from the Rettori, and much more. Attention will be focused on this mass of sources, with a particular regard to the layers of this law-and-justice complex texture.

Alan Sandona
Researcher
University of Bergamo, Italy

Norms and Civil Procedural Practice in the Venetian Terraferma: A Case Study of Sixteenth-Century Rulings by the Praetorian Vicar of Vicenza

Vicenza, "the firstborne", although not of primary importance among the cities of Venetian rule, has hosted several highly competent jurists among its judges, such as Tiberio Deciani, a well-known criminal lawyer whose contributions to civil justice, in the role of podestarial assessor, have been underestimated by historiography.

The study of the judicial process is a crucial point for understanding the reality of Venetian domination. The "judicial" moment is when the legal system takes concrete form, making the "court" the stage that determines the effectiveness of legislative policy.

This presentation, focused on the case study of sixteenth-century sentences by the pretorial vicar of Vicenza and some other city magistrates, preserved in local city archives, aims to show how the study of sentences can provide, on the one hand, valuable support in understanding the complex of the trials and the relational dynamics between (statutory) norms and civil procedural practices on the Venetian Terraferma; on the other hand, it reveals the political dynamics underlying this relationship.

The sentences are concluding acts of complex proceedings, whose full understanding would require access to all procedural documents that form the basis of those outcomes. Nonetheless, the style in which the sentence is written, and particularly the space it dedicates to sections other than what is today called the "dispositive" part, can grant it significant historiographical value.

In early modern Vicenza, all "civil" judgments rendered partibus auditis were drafted in the so-called visis scripturis style; a method of judgment characterized by the scrupulous recording, as a prelude to the condemnatory or absolving decision, of all stages of the process, the acts and documents submitted by the parties, as well as each deadline granted by the judge, each interlocutory judgment, and, more generally, every procedural "incident," including interventions by (or referrals to) the Venetian magistracies. From a comparative perspective, the peculiar regulatory framework allows for highlighting the particularities of the style adopted by the podestarial courts in contrast to the usual Roman-canonical process. This allows for a fairly accurate reconstruction of the complex procedural dynamics that underpinned the cases concluded (or not) by the judgments in question and provides insights into the formal – and, where motivations are provided, substantive – modalities of adjudication.

Panel 10. Legal Professions and Legal Education

(Buza László Classroom, JK203)

Chair: Kamila Staudigl-Ciechowicz

(Assistant professor, University of Vienna, Austria)

Aya Bejermi
PhD student
University of Bordeaux, France

Transformation of Jurists in Egypt: the Emergence of Professional Legal Practice (1856–1955)

The proposal analyzes the emergence of legal professions in Egypt, during the 20th century, through examination of statutes, regulations, archival sources and legal journals like Al Muḥāmā, first published in 1920 by the bar association for lawyers practicing in the native courts. In Egypt, legal practice became inscreasingly specialized as high-level education and training became required for accessing legal professions. The establishment of mixed and native courts, along with state control over legal studies, fostered the development of specialized roles, such as lawyers and judges. The prolonged presence of European judges and lawyers within the mixed courts, and at times in native courts, contributed to the shaping of new professional roles, notably al-muḥāmīn and their respective bar associations, modeled after the European system. This category of legal professionals marked a departure from the pre-existing system, Islamic normativity, familiar with wakāla (mandate). The evolution of these professions also followed the development of procedures in the newly established councils (majālis) in the second half of the 19th century, which shifted from a purely bureaucratic framework to a process akin to civil law trials, supported by judges, lawyers, and judicial officials. As with other professions like medicine, the professional practice of law required state authorization. The professional exercise of law, like medicine, is contingent upon prior governmental authorization, which imposes specific requirements. Positive law, enacted by the state, restricted thus the scope of those who previously administered justice under Islamic norms. This transformation had enduring impacts for lawyers, culminating in the 1955 reform that consolidated all lawyers into a unified professional category. The requirement of a law degree from the Khedivial Law School (established in the late 19th century) represented a crucial step in the rise of a professional class of lawyers in Egypt, laying a foundation for a state-driven legal culture defined as an "ensemble of values, knowledge, and skills that guide, give meaning, and coherence to the activities of legal professionals," all under state oversight.

Marju Luts-Sootak
Professor
University of Tartu, Estonia

Karl Kristofer Alp
Teaching assistant
University of Tartu, Estonia

Right of Defence by the Special Procedure of the Prosecutorial Supervision of Court Rulings in Force

In the Soviet criminal procedure, the prosecution had right to "protest" a verdict that had already entered into force. The aim of the prosecutorial review (прокурорский надзор in Russian) officially intended to prevent miscarriages of justice. Thefore the prosecution was obligated to protest every verdict that did not meet the requirements of the law in their view. Criminal procedure codes of the Soviet republics had determined institutions which were authorised to hear "protests" and cases which were subjected to the review, but did not lay down clear procedural rules for the procedure. Similarly, there were no clear procedural rules in the event of a protest at the All-Union level against a judgement that had entered into force. The paper will address the question of whether and how the right of defence was guaranteed in such criminal cases which were subject to the prosecutorial review.

Alexandra Garifullina
PhD student
University of Lille, France

Shaping the Science of International Law through Legal Education inSoviet Russia: Insights from the Archives of Vladimir Hrabar (1865–1956)

This contribution examines the role of legal education in shaping the science of international law in Soviet Russia during the first half of the 20th century, drawing on the archival documents of Vladimir Hrabar (1865–1956). A distinguished professor of international law at the University of Tartu before the October Revolution and one of the few international law scholars to evade early Soviet prosecution, Hrabar was among the first legal historians to trace international law to pre-Grotian times. His archives at Tartu University Library (collection no. 38) attest to his active involvement in teaching, serving as dean of the Tartu Law Faculty, and contributing to writing and translating of textbooks. Hrabar's work underscores his belief that the science of international law was built through both research and teaching. His approach, which can be described as literary and micro-historic, involved rigorously analyzing every scholar and text linked to international law. Given the fact that Hrabar often expressed views that were not shared by most of the official communist thought and repeated some elements of the dominant legal Soviet doctrine (albeit to a lesser extent), it would be thought-provoking to present his contribution to legal education – and to writing textbooks in particular – in order to discuss how the official communist doctrine interacted with ideas shared by the pre revolutionary lawyers with their Western European colleagues. To contextualize Hrabar's impact, this study also touches upon broader trends in legal education across Western Europe during the early 20th century, highlighting the ideological shifts brought to Russian universities by the October Revolution. Hrabar's personal archive and mentions of him in different Soviet legal journals (e.g., Soviet State and Law) would serve as tools for historical analysis. For example, preliminary review of the archives (notably section 418) reveals that how Soviet scientific planning led to misunderstandings about the roles of various scholars, resulting in restricted interpretations of international law history – evident in the 1941 publication of The History of Diplomacy, which emphasized only Grotius' role. The suggested contribution would also raise questions on the adaptability of legal science, the reinterpretation of pre-existing knowledge within ideological constraints, the relative ideological safety of the field of international law history and the contrast between Hrabar's micro-historic, literary approach and Marxist–Leninist interpretations of international law.

Alicia Haripershad
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Max Planck Institute for Legal History and Legal Theory, Germany

The Stains of Colonial Law? An Exploration of the Educational Framework's Entrenchments in the Cape Colony and Northern Rhodesia c. 1880 to 1930

This paper will demonstrate how colonial law on education contributed to the construction of the categories of race, gender, sexuality and class within the context of two case studies, the Cape Colony and Northern Rhodesia (present day South Africa and Zambia respectively). The traces of these categories can still be seen in the educational framework today. This paper explores the historic layers of colonial law on education through archival sources from these comparative case studies. Colonial education has been labelled in the literature as having certain motivations: evangelising; preparation for the colonial economy or contributing to the underdevelopment of the postcolonial state. The significance and necessity of exploring inter alia the racial and gendered implications of the colonial laws on education reveal further insights into the consequences of colonial law-making. It is important to determine the implications of the law, for the purposes of assessing the law's neutrality and fairness, or lack thereof. Given that this is a historical review, analysing entrenchments in the law help in understanding certain framings in the law today. This paper will be broader in its analysis of these constructs, with the intention to interpret more dynamically and in conversation with the social context within which they operated. Further, these constructs are by no means intended as a closed list of colonial law's consequences. This paper focuses on what selected archive sources and colonial legislation expose regarding these constructs in the colonial setting and the extent to which these categories change over the time period examined. Additionally, in reading the sources within their context, the consequences of the legal frameworks that they created and maintained will also be analysed. The archival sources have been obtained from state and missionary archives. The structure of this paper will first look at the references to race, class, gender and sexuality in the case studies in the context of education. International commissions will also be presented, to the extent that they provided a specific lens on education in the colonies. Finally, the impact of these on colonial law will be outlined. Colonial law on education had far reaching consequences, not only in terms of entry into the colonial economy but ultimately in shaping colonial society, for the benefit of the ruling minority.

Panel 11. The Codification and Practice of Criminal Law in Europe

(Nagy Ferenc Classroom, JK206)

Chair: Massimo Meccarelli

(Professor, University of Macerata, Italy)

András Biczó
Assistant lecturer
University of Debrecen, Hungary

An Examination of the Comments on the Foreign-Origin Praxis Criminalis Made by a Noble County in the Northwest Part of the Hungarian Kingdom in the Late 1720s

In the second decade of the 18th century, after the expulsion of the Turks and the Rákóczi's War of Independence, a real chance to reform the Hungarian legal system and administration of justice was allowed. Charles III and the Hungarian estate decided to send a committee (Systematica commissio) to prepare the necessary drafts in this respect. Regarding improving the legal system, the committee took the text of the Tripartitum, the most respectable collection of native customary law as a basis for making the proposals. As a result of revising Werbőczy's work, the material of the so-called Novum Tripartitum was presented to the diet of 1722–23. It was decided to dictate the full text to the delegates specifically elected to represent the interests of their privileged communities. The writing of this lengthy material took considerable time, which unfortunately did not allow for negotiations.

On May 11, 1726, Charles III issued a royal rescript ordering the Table of Seven, Royal Table, District Tables, noble counties and free royal cities to share their observations on the Novum Tripartitum. In addition to giving their opinions on the Novum Tripartitum, the royal courts, noble counties and free royal cities were also tasked with developing proposals for those questions related to criminal procedure, for which there were hardly any rules in the material prepared by the Systematica commissio and native laws. The royal rescript was sent to all noble counties and free royal cities in an intimation (intimatum) issued by the Royal Hungarian Locotenential (Lieutenancy) Council on May 17, 1726.

The paper focuses on the previously unexamined observations made by Turóc County regarding the criminal procedure. This county, located in the northwest part of the Kingdom, assigned a deputation of five nobles to develop the necessary proposals. The deputation used the text of the so-called Praxis Criminalis as a basis for preparing observations on criminal procedure. The Praxis Criminalis was the Latin translation of the criminal regulations issued by Ferdinand III in 1656 for the Archduchy of Austria below the Enns River. The unique status of the Praxis Criminalis in the Hungarian legal system stems from the fact that, despite certain efforts and various proposals, its formal reception never happened. However, as a form of customary law, it can be regarded as one of the most significant sources of Hungarian criminal law in the 18th century. The deputation of Turóc County provided detailed comments on all 100 articles of Praxis Criminalis, focusing

on the necessary alterations for applying the foreign-origin regulations in the Hungarian criminal practice.

The paper aims to contribute a new piece to the still incomplete puzzle regarding the application of Praxis Criminalis in Hungarian noble counties during the early decades of the 18th century. The research approach is comparative since the observations written in Latin by the deputation and the text of Praxis Criminalis are read together to highlight the similarities and differences. The goal of this textual analysis, which covers on the original Landgerichtsordnung of 1656 and other relevant native legal sources as well, is to make the current image of the Hungarian legal system determined by customary law more nuanced and to improve its understanding.

Szilvia Bató
Independent researcher
Hungary

German and Austrian Influences in the Mid-19th Century on Hungarian Criminal Law Codification: Crimes against Life and Physical Integrity in the 1843 Proposal and the 1869 Revision

The Habsburg Empire never had a uniform legal system. The Kingdom of Hungary consistently followed a separate path, leading to a different legal development compared to Austria. The codification was unsuccessful, so the criminal law remained dominated by customary law. However, Austrian and German law was present in legal literature and in judicial practice.

After the early attempts at systematisation and Joseph II's Criminal Code (1787–1790), an independent codification began. Compared to the Hungarian drafts of 1795 and 1830, the 1843 proposals (criminal law, criminal procedure, and penal system) represented a qualitative leap. The members of the codification committee were well-prepared for the legislation: they participated in study trips and were familiar with the contemporary criminal codes and legal literature. Ferenc Pulszky studied "about 14 codes", specifically mentioning the draft of penal law from Baden (1839), Livingston's draft for Louisiana, the Code Pénal, the Bavarian penal law code of 1813, and the works of Feuerbach and Mittermaier. The proposal discussed in the Diet lacked detailed justification and an open debate, leaving individual provisions unknown. Recent research has shown that for preaterintentional acts (crime with unintended result) the influence of Feuerbach and the Code of Hannover (1840) can be demonstrated.

During the period of neo-absolutism, the Austrian Penal Code was in force (1852–1860). Following the Compromise (1867), it became the responsibility of the Hungarian government to modernize the legal system and create the first criminal code. The Minister of Justice believed the solution lay in revising the 1843 proposal, which had become symbolic for the independent Hungarian legal system. After a committee review, Judge Imre Csatskó of the appellate court was tasked with modernizing the proposal, and he completed the text in November 1869. Csatskó, an active judge and legal writer even under Austrian rule, clarified several points in the 1843 proposal and added justification to the general part. The manuscript contains several references to legal literature. The Ministry ignored the draft and Károly Csemegi prepared a new code (Act V of 1878).

This presentation provides a comparative analysis of offenses against life and physical integrity, illustrating a group of precedents from the 1843 and 1869 proposals. It compares the regulatory systems of the two proposals (basic-

aggravated-, alleviated case) and specific crimes using the German and Austrian codes (e.g. Bavarian 1813), commentaries (e.g. S. Jenull 1837), drafts (e.g. Baden 1839), and legal literature (e.g. Mittermaier 1841–1843) that were available to or referenced by those involved in the codification.

Claudia Passarella
Assistant professor
University of Padua, Italy

A Much Needed and too Often Neglected Perspective: Criminal Trials and Archival Sources in the Late 19th and Early 20th Century

The late nineteenth and early twentieth century was an extremely significant period for the history of crime and criminal justice. From 1850s until the outbreak of the First World War, an important number of legal authors in different European countries proposed relevant changes and reforms in criminal procedure matters. Among many possible examples, we just need to mention the debate on the introduction of the trial by jury, the discussion on the establishment of a court of criminal appeal, and the foundation of forensic police departments. Within a few decades, therefore, the legal institutions responsible for the administration of criminal justice took on a different appearance, thus opening the doors to a new era which serves as a bridge between the past and the present.

The historiography on this subject is extensive, but in most cases the topic has been studied by giving priority to legislative reforms and doctrinal discussions; by contrast, archival sources and judicial records have often been overlooked and in some cases completely ignored. Actually, the study of these primary sources is fundamental to understand the functioning of the new institutions in everyday practice. This is especially true for jury trials, whose much vaunted merits collided with the harsh reality in the courtrooms. Both archival sources and judicial records must be taken into account because they reveal the attitude of the jurors before the most serious criminal offences, as well as their perception of what could be an aggravating or a mitigating circumstance.

The present research aims to fill this gap of historiography by focusing the attention on the archival documentation of a number of selected cases which took place in the north east of Italy between the late nineteenth and early twentieth century (1880–1913). Particular consideration will be given to murder cases for which the documentation turns out to be quite complete and exhaustive. The proposed perspective will help to highlight the strenghts and weaknesses of the Italian system of trial by jury, which will be studied in comparison with the systems adopted in other European countries, with special reference to the French experience and the English model.

Marcin Łysko
Professor
University of Bialystok, Poland

Could the Misdemeanour Law Serve as a Tool of Political Repressions? The Adjudicating on Petty Offences in the People's Poland in the Light of Archives of Institute of National Remembrance

To find the answer to the above asked question I wold like to present the practice of adjudicating on the petty offences in the People's Poland (1944–1989) in the light of the archives of the Polish Institute of National Remembrance. The Institute holds documents of the Ministry of Internal Affairs, which supervised the adjudicating bodies. In my presentation I would like to focus on those directions of adjudication which were the most influenced by political ideology and served to support the realise the currents politics task of communist authorities. I want to analyse the range of penal-administrative repression, penalties most often applied towards peoples regarded as opponents of communist system and also present the examples of the most interesting cases considered by the adjudicating boards. The results of my research are novelty, because I am the first legal historian to reach the archives of the Institute of National Remembrance concerning adjudicating in petty offences.

During the Stalinist period (the first half of the 50s) the political character was adjudicating on petty offences regarding failure to perform compulsory delivery of agriculture products. The communist authorities recognized the administrative and penal repression on large scale as the first step towards to subject farming to the principles of planned economy by its gradual collectivisation.

From the end of fifties new political task of adjudication on petty offences was fight against Catholic church. Local home affairs units were supported by adjudicating boards which applied the severe repression towards the priests and secular Catholics who had infringed the existing laws.

Panel 13. Basic Principles of Private Law, Marriage Law and Law of Inheritance

(Kovács István Classroom, JK201)

Chair: Cs. Eszter Herger

(Professor, University of Pécs, Hungary)

József Benke
Professor
University of Pécs, Hungary

Spirality in the European Continental History of Legal Inference on the Example of the General Prohibition of Inconsistent Behavior

The general prohibition of inconsistent behavior is worldwide known as the principle of "venire contra factum proprium nulli conceditur". The legal proverb traces back to 12th century manuscripts following inductive reasoning based on case law positions extracted mostly from the 6th century Corpus Iuris Civilis. Although the proverb, before the civil law codifications, was transformed into a legal principle applied by deductive inference in litigations between the 14th and 17th century, the legal principle was explicitly not codified in the age of codifications in Europe. The 2013 Civil Code of Hungary codified it as a prohibited violation against the principle of good faith and fair dealing among the introductory provisions, in line with the 12th century proverb. An outcome of the research was that ancient Roman case law (that was used inductively to establish the medieval proverb), and the medieval as well as the 21st century Hungarian case law (that was built up by deductive inference), without any provable direct intellectual contact, show a parallel profile, that was formed with no regard of the codification that represents also a special way of inductive method of legal reasoning. The analogies drew a historical circularity of inductive inference using and deductive reasoning resulting in homogeneous case law. This exhibited a spiral rather than a cyclical pattern along the time axis of history presenting a changing social context of law where resemblance between observed and unobserved regularities are therefore less debatable than in natural sciences, in the history of which the Uniformity Principle was proven to have failed centuries ago.

Jan Halberda
Associate professor
Jagiellonian University, Poland

Principles of Community Life as the Safety Valve of Polish Private Law in the 20th and 21st c.

The paper deals with the concept of "principles of community life" that is applicable in Polish private law since after the Second World War when it was introduced by communist regime. Polish law has drawn its basic assumptions from two leading legal cultures of continental Europe – the German and the French. It was influenced by Soviet ideology during the second half of the 20th century. Now for more than three decades it has been changed by the law of the European communities.

Principles of community life have significant importance throughout Polish private law. They are regarded as a functional counterpart of the duty of good faith recognized in civil law tradition. They inform the statutory doctrine of abuse of right, which, inter alia, neutralizes attempts of a party to exercise its right where this would lead to unfair or unconscionable consequences unacceptable for the legal system.

While the application of principles could lead to arbitrariness, contemporary courts refer to these with great caution. These are deemed to be the doctrine of last resort. Still, over a period of 80 years, courts were to pursue a variety of goals by means of these: from class struggle in the 1950s to the implementation of business integrity at the turn of the 20th century. The meaning conveyed by the principles varied as political system changed dramatically: the communist authoritarian rule gave way to liberal democracy.

The presentation of principles of community life in Polish law is intended to be juxtaposed with the discussion on the status of the duty of good faith under English law. Polish and English are seemingly incomparable legal systems, but the said principles perform in Poland similar goals as piecemeal solutions (substitute of good faith) in English law do.

The main argument against the recognition of good faith in England is the fear of arbitrariness which would affect legal certainty and predictability of judicial decisions. This is a matter of concern also in Poland. Still, its recent history shows that impartial judiciary in a stable political system is capable of developing consistent case law even on the basis of such general concepts as principles of community life and thus reduce the risk of arbitrariness. Since it has worked this way in Poland, one can expect that it would also work in much more stable English system that would finally acknowledge role of duty of good faith.

Péter Nagy
Assistant professor
Károli Gáspár University of the Reformed Church, Hungary

The Problems of Hungarian Marriage Law at the End of the 19th Century

The Austro–Hungarian Monarchy did not have a unified legal system. Different laws often applied in different areas of the monarchy, which could cause collisions between the legal systems. One of the most complicated areas was marriage law. The different regulations for mixed marriages and divorces, often with radically different approaches and theological and dogmatic foundations, led to an extremely complex system, which in many cases also offered the possibility of problems.

In Hungary, ten different marriage law systems were in force by the end of the 19th century. Act XXXI of 1894 on Marriage Law abolished the system of confessional marriage courts in Hungary and introduced general rules that were binding for everyone. It standardised Hungarian marriage law and placed it on a new footing. The law removed the conclusion and dissolution of marriages from the supervision of the various denominations, introduced compulsory civil marriage and generally recognised the possibility of divorce. This made Hungarian marriage law one of the most liberal in Europe.

The fundamental problems have not changed in matrimonial matters in the Austro–Hungarian Monarchy because the new Hungarian marriage law was one of the most liberal in Europe, but Austrian matrimonial law has remained unchanged, and these major differences have not been overcome. As a result, many people from different parts of the monarchy still moved to Hungary, temporarily or permanently, to divorce their marriages under Hungarian law.

Mateusz Ulanowicz
PhD student
University of Bialystok, Poland

Testate Succession in the Napoleonic Code and the Third Statute of Lithuania – a Comparative Law Analysis

The aim of presentation will be to outline the similarities and differences between the testate succession in the Napoleonic Code and the Third Statute of Lithuania. The comparison of inheritance law, regulated by two legal acts, was due to the fact that the French Civil Code, known in Poland as the Napoleonic Code, and the Third Statute of Lithuania were in force simultaneously in the lands that comprised the former Polish–Lithuanian Commonwealth. The Napoleonic Code was in force on Polish soil from 1808 to 1946. It was the result of the reception of French civil law on the territory of the Duchy of Warsaw and the then Kingdom of Poland. On the other hand, the Third Statute of Lithuania was in force in parts of the lands of the former Grand Duchy of Lithuania from 1588 to 1840. It follows that between 1808 to 1840, two legal acts were in force in parallel in neighbouring territories that were socially and economically interlinked. The result was that people, living on the territory of the former Polish – Lithuanian Commonwealth in the 19th century, often participated in conduct of civil law transactions in parallel two, different legal systems.

The methodology to be used in preparing the speech will be to analyse the regulations of the Napoleonic Code and the Third Statute of Lithuania. It will be supported by the literature. The presentation will conclude with a conclusion on, among other things, which legal act:

- guaranteed greater testamentary capacity and capacity to inherit;
- was more formalistic regarding the drawing up of wills;
- was more protective of the property interests of the testator's family members.

Panel 14. The Functioning of Judicial System: Regulation and Practice

(Buza László Classroom, JK203)

Chair: Martin Sunnqvist

(Professor, University of Lund, Sweden)

Łukasz Gołaszewski
Assistant professor
University of Warsaw, Poland

How Do We Get to the Truth? Or Just Settle a Dispute? Evidentiary Proceedings in the Noble and Ecclesiastical Courts of the Polish–Lithuanian Commonwealth in the Light of 16th–18th Century Practice

In the course of court proceedings, each party usually claims to be right, and is always convinced that it is they who should win the case. It is therefore not surprising that court procedures stipulate how the parties are to substantiate their claims and what circumstances the court is to pay attention to. Solutions have, of course, evolved over the centuries, and to this day – it seems – we still wonder what evidence can be considered sufficient to ensure a just verdict. Or to put it another way – what should the evidence process look like so that it usually ensures a just verdict?

The nobility of the Polish–Lithuanian Commonwealth, when litigating in the ecclesiastical courts and in their own courts for representatives of their state, could face different evidentiary procedures. Ecclesiastical courts operating under canon law expected each party to present evidence in support of their claims and, in passing a final judgment, referred in their justifications to the evidence of both parties. In noble courts, on the other hand, the prevailing rule was for the parties to apply for the court to grant themselves the right to take evidence, which was referred to as proximity in evidence. Proof was therefore not a duty of the parties, but a privilege granted to one of them. If the prevailing party failed to take evidence properly, the other party won the case without proving its case. The oath of a party, often accompanied by third parties, also played an important role in this system. Only in some cases did the law provide for the presentation of witness statements from both sides, and court field hearings to examine a case on the spot began to become common in the 18th century.

Based on the records of ecclesiastical and noble courts from the Bielsk land that I have studied, I intend to compare the two evidentiary procedures in order to establish what their advantages and disadvantages were in practice. In addition, I want to draw attention to the most peculiar or surprising positions of the parties or judgments of the courts.

David Irazábal
PhD student
Pompeu Fabra University, Spain

Iudex non tenetur exprimere causam in sententia? Early Modern European Judicial Reasoning in a Comparative Perspective

In this paper I will discuss the legal reasoning or motivation of judicial decisions in early modern Catalonia, set in a comparative perspective that includes European high courts. Thus, I will look back to the past to study the development of the legal institution of judicial reasoning – a foundational element of every contemporary state's legal system based on the rule of law. Moreover, I will present a novel and diverse topic, as few studies to date have been devoted to judicial reasoning in a relatively small early modern polity from a European perspective. My research focuses on the study of judicial reasoning in the Reial Audiència de Catalunya. This was the high court of the Principality of Catalonia, which was part of the Crown of Aragon and, more broadly, of the composite Spanish Monarchy. I rely on primary archival sources related to the judicial practice of the Reial Audiència, namely conclusiones, i. e. registers of reasoned majority and dissenting votes of judges in specific cases; and sententias, i. e. final judgements issued by the viceroy that included the majority reasoning. Further, unpublished parliamentary materials provide unknown information about the decision of the Catalan Corts to enact, in 1510, that royal judgements had to be reasoned. 1 This proposal reflects, in abstract form, part of my ongoing predoctoral research (2023–2027) at Universitat Pompeu Fabra, Barcelona, under the guidance of Prof. Dr. Josep Capdeferro (director) and Prof. em. Dr. Tomàs de Montagut (co-director). My research is incorporated in the research project "Respuestas jurídicas hábiles a conflictos sociales complejos (siglos XII–XX)" (PID2023-152772NB-I00), co-led by Prof. Dr. Josep Capdeferro (Universitat Pompeu Fabra) and Prof. Dr. Rafael Ramis (Universitat de les Illes Balears-IEHM), and funded through a highly competitive FI-SDUR Scholarship. 1 Early modern judicial reasoning must be analysed within the comparative framework of European high courts. Canon law, which also shaped the procedural law of secular courts, discouraged the expression of reasons or causae in the sentence. This was extended European practice. For instance, the high courts of Castile, the Reichskammergericht, and the Senate of Milan kept their motives secret. However, high courts in the Crown of Aragon and in Portugal adopted a different approach, publishing the reasons for their judgements in the final sentence. Additionally, the Rota romana and other Italian Rotae favoured the disclosure of reasons through the decisio, a document distinct from the sententia. This paper will show that three main

models of early modern European judicial reasoning emerged: (1) discouragement of the expressio causae in sententia; (2) practice, later rendered compulsory through law, of the expressio causae in sententia; (3) practice of disclosure of judicial reasons in the decisio.

Thomas Mohr
Associate professor
University College Dublin, Ireland

Hungarian Influence and the Arbitration Courts of Revolutionary Ireland, 1917–1920

The Easter rising of 1916 radicalised Irish nationalism and was followed by the rapid expansion of an Irish revolutionary movement that advocated the complete secession of Ireland from the United Kingdom as a fully sovereign republic. In the years that followed the Irish revolutionary movement established its own parliament, government, civil service and other institutions, including systems of courts. The lifetime of these revolutionary courts can be divided into two phases. The arbitration courts (1917–1920) were courts of non-compulsory jurisdiction while their successors, generally known as the "Dáil courts", (1920–1922) were courts of compulsory jurisdiction. These courts attempted to rival the "Crown courts" maintained by British authorities.

This paper will focus on the arbitration courts and the external influences on their establishment. These included similar systems of arbitration courts in other parts of the British Empire that were designed to rival British Crown courts. However, the most important source of inspiration for the use of arbitration courts as a tool of political resistance came from mid-nineteenth century Hungary. A major theme of Arthur Griffith's *Resurrection of Hungary,* a book published in 1904, focussed on Hungarian demands to restore their former Constitution in the years between 1849 and 1867. Resistance to Austrian domination also included the establishment of voluntary arbitration courts as alternatives to those associated with Austrian rule. In 1904 Griffith recommended that Ireland follow the Hungarian example and lived to see this recommendation put into practice after 1916.

This paper will outline these, and other, influences on the Irish revolutionary arbitration courts. It will make use of under-utilised primary sources to assess the importance of external influences from Europe and the wider world as part of a wider assessment of the history of the Irish arbitration courts. These include contemporary British intelligence files that have not been used by existing scholarship.

Paweł Kaźmierski
PhD student
Jagiellonian University, Poland

Between Provisioning and Improvisation: the Difficult Beginning of (Re)building the Common Judiciary in the Polish "Recovered Territories" and in the Soviet Occupation Zone of Germany after WWII

Geopolitical changes resulting from the decisions of the Big Three conferences expanded the Soviet sphere of influence in Central Europe and shifted the Polish–German border to the West. The Polish administration took over the actual administration of the former German lands, which communist propaganda called the Polish "Recovered Territories" (Ziemie Odzyskane). In the new Polish territories, building a Polish state administration from scratch, including a common judiciary was necessary. This was a very difficult task, due to the dramatic supply conditions in these areas in the first months after the end of the war. Judges and other court employees who arrived in the "Recovered Territories" faced the lack of basic work tools, such as texts of legal acts, court registers, or even office paper. In the first weeks after taking office, the only "remuneration" for judges was often food. In the case of some locations (Szczecin, Świnoujście), even the city's continued affiliation to Poland was uncertain, which additionally complicated the already difficult task of building a Polish judiciary in these areas. At the same time, in the Soviet Occupation Zone of Germany, the reconstruction of the common judiciary had to face the problem of denazification of the justice system employees. Most of the justice system staff could not return to their positions due to their affiliation with the NSDAP or other Nazi organizations. As a result of decisions by the Soviet commando of individual cities, judicial positions were held by the so-called "Judges in Immediate Action" (Richter im Soforteinsatz), who often did not even have a legal education. The structure of the judiciary being rebuilt in the Soviet Occupation Zone of Germany was very diverse in the first months after the war. There were numerous cases of the establishment of courts whose existence was not foreseen by the regulations of the common court system at that time. Local case law was based in some courts on provisions that had been derogated several years earlier, and sometimes local courts even "created" their legal provisions based on which they ruled. Despite local differences, the (re)construction of the common courts in the Polish Recovered Territories and the Soviet occupation zone of Germany was similar. Supply shortages, staff shortages, and uncertainty about the legislation applied in these areas were "common" problems that were characteristic in the first months after WWII.

Panel 15. Chapters from the World of Private and Commercial Law

(Nagy Ferenc Classroom, JK206)

Chair: Dave De ruysscher

(Professor, University of Tilburg, Netherlands;
Vrije Universiteit Brussel, Belgium)

Ana Belem Fernandez Castro
Postdoctoral fellow
Scuola Superiore Meridionale, Italy

Forum Shopping: Why Was It Crucial in the Legal Support of Long-Distance Trade? The case of Sixteenth-Century Valencia

An intense debate has developed in economic history to explain how medieval and modern merchants managed to overcome the risks inherent to long-distance trade, maintaining long-lasting and stable economic relations despite the political and military violence of the period and the lack of technology that ensured commercial transactions. Economic analysis has focused on the role of institutions to support trade, both in its formal version (expressed in any administrative and jurisdictional instrument provided by the political power to govern trade) or informal (the social resources deployed by merchants themselves to conduct their businesses, such as kinship or social networks). Legal historiography has also participated in this debate focusing on ius mercatorum, a customary-based law created by merchants themselves, speedy and low costs that turned out to be fundamental for the restoration of commerce. Such law was created in specialized jurisdictions such as guilds, hansas and, in the Hispanic case, consulates, where merchants could access to expedited litigation out of the formalities of ordinary justice, considered arbitrary, long and costly. This article is based on the analysis of the court records of the Royal Audience of Valencia preserved in the Archive of the Kingdom, specifically the civil lawsuits that took place in this jurisdiction as appeal court. The objective is to challenge the historiographic assumptions about ius mercatorum, suggesting an interdisciplinary and original study on commercial litigation in Sixteenth century Valencia in the context of forum shopping, a common practice among early modern merchants consisting in the concomitant use or of multiple institutions for conflict management. The preliminary results of this research are promising. On the one hand, lawsuits show how ius mercatotum was a law enormously influenced by ius commune, created by jurists in civil courts and not only in consulates. The active participation of civil tribunals in commercial conflict management challenges the historiographic belief about the poor performance of ordinary justice, demanding a reexamination of the role played by ordinary justice in mercantile affairs. On the other hand, forum shopping reveals a very different shot of the mercantile culture portrayed in historiography: in complex disputes involving huge amounts of capital, merchants preferred legal certainty over quick or cheap solutions, often activating different jurisdictional mechanisms to get the best possible solution. This behavior also functioned as a pressure mechanism, since resorting to all the procedural resources

available, or changing and combining jurisdiction to handle the dispute could result in better agreements for the parties instead of the sanctions imposed by courts.

Sarah Limao Papa
PhD student
Goethe University Frankfurt, Germany

Immemorial Possession: Conflicts over Commons in 18th Century Portuguese America

The Iberian Imperial Expansion and the rise of the Atlantic maritime route increased the circulation of people and things, connecting Africa, Asia, Europe, and the Americas. These connections – now identified as early modern colonialism – brought great changes to nations and local communities across the globe, transforming them politically, economically, and culturally. Regarding the law, this set up the framework in which various actors were able to contribute to the concomitant application of a multitude of norms, influenced by all sorts of traditions. Despite this normative diversity, early modern colonialism was based on the exploitation of people and nature, resulting in widespread violence and dispossession. This transformed the perceptions on how to own or use land, which, by the end of the XIX century, led to the consolidation of an idea of property in land as an absolute and individual right. Before that, the relationships between people and land encompassed diverse arrangements, including rights established through common and immemorial use. Considering this scenario, this paper will explore the legal history of common rights over land and natural resources in colonial Brazil, examining how local customs interacted with the existing legal framework of the ius commune tradition and colonial policies. One illustrative case involves the conflict over the Andiroba trees in the Amazon region, where local communities relied on the fruit of these trees to produce oil essential for both public and domestic purposes. Despite this established communal right acquired through immemorial possession, a landowner who received a land grant from the Crown disregarded these rights by cutting down the Andiroba trees to plant sugarcane. This conflict, centered not on land ownership but on usus, highlights not only the intersection between local and colonial normativity but also places these practices within the broader context of early modern European ownership regimes. Through an analysis of petitions to the Crown, council records, and colonial proceedings, this study focuses on how local communities claimed their rights to communal use of nature and land in the face of expanding land grants to major landowners. By tracing the development of these legal traditions from the colonial period, the research may offer insights into contemporary legal challenges in ensuring equitable and sustainable access to land and nature.

Janwillem Oosterhuis
Associate professor
University of Maastricht, Netherlands

The Free Market in 19th Century Dutch Commercial Law

This paper focuses on the interplay between economic developments and private and commercial law in the 19th century. The rise of global trade, coupled with the growth of the nation state, led to similar regulations in many European countries in the course of the 18th and 19th centuries. Not only is there a multitude of similar regulations in 19th-century private law, the underlying liberal paradigms are also very similar in many European countries. Nowadays there is critical thinking about the neoliberal approach to private law. Yet contractual freedom and therefore bondage as such is hardly, if at all, up for discussion when practicing Dutch law, for example.

The paper will explore the role that free market thinking played in the motivation – or lack thereof – of legislation and judicial decisions in 19th century commercial and business law. I will pay explicit attention to the interaction between these rulings and local legal literature. How did judges, legislators and legal scholars in the 19th century account for free market thinking, the drastic consequences of which we are experiencing today?

In this paper, I will map out, principally for 19th-century Dutch commercial and corporate law, at what level any discussions about a free market mainly took place – legislation, doctrine, case law – and who the key figures were. In this way, I would like to highlight the possible role of free market thinking in commercial and corporate law. And above all: where is this concretely demonstrable in the sources?

Ionut Vida-Simiti
Lecturer
Iuliu Hetieganu University of Medicine and Pharmacy from Cluj-Napoca, Romania

Medical Liability in Transylvania: Transition from the Austrian and Hungarian Legal Framework to the Romanian Legislation

The Great National Assembly of December 1, 1918 in Alba Iulia, which decided the Union of Transylvania, Banat and Maramureș with the Kingdom of Romania, established, by Point IX of the Resolution of Union, a Great National Council with the role of provisional Parliament, which in turn appointed on December 2 the Governing Council with the role of Government. The Governing Council adopted Decree No. XXI on the regulation of the sanitary service. This Decree regulates only the administrative and disciplinary liability of the physician and consequently, the other forms of legal liability, civil and criminal, follow the common law rules of the Austrian Civil Code and the Hungarian Criminal Code respectively. The present study aims at a comparative analysis of this legislation applicable in Transylvania with the provisions of the Romanian Civil Code of 1864, of French inspiration, by presenting the legal framework of the relationship between the patient and the medical staff, the legal nature, the conditions of liability, the situations of exoneration and the procedure for the legal liability of the doctor. To this end, legal texts from the 19th century, their interpretation by theorists and their practical application by the courts will be analysed.

João de Oliveira Geraldes
Professor
University of Lisbon, Portugal

The Acceptance of Unilateral Promises as Sources of Obligations and the Preparatory Works of the Portuguese Civil Code of 1966

As a researcher affiliated with a specialized academic group with access to the preparatory notes of the drafters of the Portuguese Civil Code of 1966, I have the privilege of examining primary sources pertinent to the debate and intricate legal evolution surrounding unilateral promises as a source of obligations in Portuguese law. The Franco–Italian Draft for a Common Code of Obligations (1927) serves as a pivotal reference, encapsulating the reciprocal influences between French and Italian legal doctrines, both of which were significantly shaped by the German Civil Code (BGB 1900) and enriched by German legal scholarship. The Draft for a Common Code of Obligations (1927) vigorously advocated for the recognition of unilateral promises as a fundamental and general source of obligations, a position that is crystallized in the language of Article 60. Given the doctrinal and practical significance of Article 60, I propose to deliver a comprehensive presentation tracing the legal and historical trajectory of this provision. The presentation will specifically highlight the contributions of the Italian delegation in shaping this principle and will analyze its subsequent incorporation into the Italian Civil Code of 1942. Following this introduction, I will examine the more nuanced adoption of this principle into the Portuguese Civil Code of 1966. Utilizing my access to the preparatory works, or "Trabalhos preparatórios," of the Portuguese Civil Code of 1966, I aim to present a detailed analysis of the treatment of unilateral promises within this legislative framework, focusing specifically on Articles 457, 458, and 459 of the Portuguese Civil Code of 1966. The drafters' notes will be analyzed alongside the various versions of the 1966 Civil Code draft. This task is essential not only for the study of the history of Portuguese civil law but also because the historical element is a relevant aspect of the hermeneutic process and the task of clarifying normativity.

Panel 16. Steps towards the Establishment of Labour and Social Law

(Kemenes Béla Classroom, JK208)

Chair: Frederik Dhondt

(Associate professor, Vrije Universiteit Brussel, Belgium)

Pieterjan Schepens
PhD student
Ghent University, Belgium

Did Guilds Lie at the Origin of Modern Social Security? The Case of Belgium

When Belgium took its first tentative steps towards social insurance legislation at the end of the nineteenth century, some reformers looked towards the past for an example of a warmer society than the one in which they were currently living. The guilds, they enthused, had protected their members in a cocoon of solidarity that had been abolished by the French and Industrial Revolutions. While Belgian historiography has been relatively uninterested in the deeper origins of the country's social security system, historians abroad, in Germany especially, have long stressed the long-term continuity between the guilds and Bismarckian social security. Contrary to Germany, Belgium's guilds were definitively abolished during the French Revolution. Their reestablishment remained illegal. Research has nonetheless shown that some trades did maintain guild structures in practice, and mutual aid societies, which were perfectly legal, often simply copied statutes of guild funds. In the important mining sector, the statutes of provident funds wouldn't have looked out of place in a guild. While the impossibility of setting up de jure guilds shouldn't be overlooked, certain practices clearly percolated into the nineteenth century. Could the guilds in the Southern Netherlands in fact have inspired Belgium's social security legislation? Romantic rhetoric and some legislative proposals notwithstanding, the actual text of Belgium's earliest social insurance legislation almost reads like a manifesto against guilds. In the last decades of the nineteenth century, Belgian social reformers had become obsessed with the idea that certainty was what was lacking in any existing system of social protection. In guild funds as in social support systems organized by local governments, benefits could be lowered when resources were insufficient; beneficiaries could likewise be deprived of the allocations if certain conditions were not met, like duration of contribution requirements or the upholding of moral standards. This certainty, they believed, could only be achieved through the application of rigorous insurance techniques to individual accounts. While this outlook was as intensely moralizing as that of the guilds had been, the value it tried to promote was the value of individual effort, supported by the community, rather than sacrifices for the sake of the group. Certain characteristics associated with guilds did appear in Belgium's later social security system. This was partially an importation of certain elements of the Bismarckian system. More importantly, it was also an almost unconscious process, in which certain elements like the importance of the group, a work-based locus, and associated moralizing resurfaced into a system that for while had been built in direct opposition to these.

Luca Salvadori
PhD graduate
Magna Græcia University, Italy

Mutualism in 19th Century: a European Comparison

The proposal focuses on mutual aid during nineteenth century in Europe. Modern friendly societies, originated in England at the end of the eighteenth century, developed throughout Europe in the nineteenth century, and especially in France and Italy, they played a central role in worker welfare before the advent of a public social protection system. They represented a key stage in the transition from the charity and benevolence typical of the eighteenth century to a reality characterized by self help, marking the first step toward modern welfare state systems. The presentation will focus on the various models on which friendly societies were based, starting with national legislation such as English law "The Act for the Encouragement and Relief of Friendly Societies" in 1793, French laws of 1850 during the Second Republic and 1852 under Napoleon III, as well as the Italian law no. 3818 of 1886 on the recognition of mutual aid societies. In addition to state laws, another source that will be described and analysed are the statutes of the mutual aid societies. Social statutes, along with regulations, represent an original primary source for understanding the structure and objectives of mutual aid societies, as well as the spirit of these associations. What were the purposes of mutual aid societies? In every nation where these societies developed, their main aim was to provide subsidies to enrolled workers in case of need. Indeed, following illnesses or accidents, workers, being unable to work and not receiving wages, would have faced significant difficulties, but thanks to friendly societies, they could receive subsidies to get through these periods, with benefits that could also be granted for permanent disabilities or pensions. The societies also provided other types of assistance, such as medicines and medical care, and the families of members could receive health and financial assistance in case of the member's death. Another interesting point is the provision of education within the societies, as well as the presence of minors and women. The presentation will therefore aim to illustrate the complexity of one of the most interesting welfare experiences of the nineteenth century in Europe.

Laila Maia Galvão
Professor
Federal Institute of Paraná, Brazil

Cross-Border Influences on Social Control in Rio de Janeiro and Buenos Aires (1906–1919): The Establishment of Police Schools and the Repression of the Workers' Movement

Ramón Lorenzo Falcón was a pivotal figure in early 20th-century Argentine history. With a background in the military, he was appointed Chief of Police in Buenos Aires in 1906. During his tenure, Falcón established Argentina's first Police School and led a brutal crackdown on a Labor Day demonstration in 1909, resulting in several deaths. This repression made him a target, and he was eventually assassinated by an anarchist who placed a bomb in his car. A few years later, in 1914, jurist Aurelino Leal assumed a similar role as Chief of Police in Rio de Janeiro, then the capital of Brazil. The influence of Falcón's methods in Argentina resonated in Rio, shaping the direction of Brazilian policing during this period. The professionalization and "scientificization" of police work became central in both Buenos Aires and Rio de Janeiro. Argentina's Police School, founded by Falcón, set a lasting precedent for systematic police training and inspired Brazil to establish its own Police School in 1912. Although Leal closed the school in 1915, it reopened in 1917 amid debates over competing models of policing. Both Falcón and Leal enforced strict social control measures, which made their way into popular culture. Falcón, for instance, was criticized in the tango "Cuidado con los 50" for his fifty-peso fines on public flirtation, while Leal's crackdown on illegal gambling was mocked in Rio's first recorded samba. The repressive tactics pioneered in Argentina also influenced events in Brazil. Both Aurelino Leal and Brazilian workers were aware of Falcón's violent legacy in Buenos Aires. In Rio, Leal feared a similar backlash as workers and anarchists grew increasingly radicalized, invoking Falcón as a symbol of resistance. This reference proved decisive in shaping Leal's approach to the General Strike of 1917.

Jasper Van de Woestijne
PhD student
Ghent University, Belgium

The Meetings of European Labour Court Judges (1984-present): Hubs of Cross-Fertilization with regard to Access to Labour Justice

Comparative legal-historical research into the history of labour law across Europe is gradually becoming well-established. However, what has largely been overlooked to date is the study of the inter- or supranational stage. Yet, in recent decades, numerous international developments have occurred at this level, both in the area of substantive labour law and in the handling of labour disputes. The latter aspect, holistically referred to here as 'access to labour justice', is the central focus of the proposed contribution. The most prominent international actors in this field are, of course, the bureaucrats within the International Labour Organization (ILO). Another highly important, but far less-known known group is that of judges meeting colleagues from abroad. Since the 1980s, labour court judges from all over Europe have been gathering every two year to interchange their vision on multiple themes in labour law, at not the least on the functioning of their own courts. A remarkable coincidence is that the first meeting took place in Szeged (1984), as does the ESCLH Conference. I came across this network of European labour court judges during my PhD research on the history of labour court in France, Belgium, Germany, and the Netherlands and realized it could be regarded as an epistemic community. This notion from social sciences can be defined as "networks of professionals that exercise an authoritative claim to policy-relevant knowledge because of their expertise and competence within a particular domain", with the 'particular domain' being in this case the settlement of individual labour disputes and access to labour justice. In the proposed contribution, I aim to map the history of this network of judges, highlight the key actors, and argue that the biennial meetings have led to international cross-fertilization regarding access to labour justice. To this end, the primary sources will be the reports published after each meeting. This research fits well within the theme of the conference, 'Back to the Past and Building the Future', as the history of these international initiatives can illustrate the extent to which they have, over the years, 'paved the way' towards establishing international standards in access to labour justice. After all, despite the fact that were experiencing a globalized labour market, explicit international or global norms are lacking to this day.

Panel 17. Marriage and Divorce in the 19th-Century Western Tradition: France, Spain and Louisiana

(Kovács István Classroom, JK201)

Chair: Joshua C. Tate

(Professor, Southern Methodist University, USA)

Aniceto Masferrer
Professor
University of Valencia, Spain

The Role of Nature, Natural Law and Natural Reason in the Making of Marriage in the Western Legal Tradition

In the Western – as the first paper showed –, marriage was regulated by both canon law and secular law. The Church played a pivotal role in the making of marriage as a legal institution. In this vein, twelfth-century canon law introduced three main reforms and fought for their transplant into secular laws: marital consent, indissolubility, and the prohibition of incestuous marriages. The implementation of these reforms in secular laws could somehow be called as the "sacralization" or "Christianization" of marriage in the Western legal tradition. The church defended, first of all, the free will of the spouses, so theologians and canonists insisted, with the support of Roman law, that consent is what makes marriage. In addition, and connected to the free consent and to the sacramental dimension of the marriage, that would be formally declared at the Council of Lyon, 1274, canon law stressed the indissolubility of marriage. That was in contrast to the feudal belief that it accepted dissolution based on the idea that, as a contract, marriage could be undone. Classical Roman law also asserted that when marital affection disappeared, marriage could be dissolved. The church, on the contrary, relying on the classical doctrine rooted in the Gospel ("Quod ergo Deus coniunxit, homo non separet", Matthew, XIX, 6), defended the indissolubility of marriage, a principle that would provoke many clashes between kings and popes from the twelfth and the thirteenth centuries onwards. Thus, there is no doubt that canon law emphasised three aspects of marriage: marital consent, indissolubility, and the prohibition of incestuous marriages.

However, in doing so, Christian philosophy and morality, by delving deeper into this reality of marriage and the family, pointed out something that pre-Christian philosophy had already taught, namely the natural character of marriage and the family. In other words, it was not the Christian religion or the Church that conferred an institutional character on marriage and the family, but simply surrounded them with a sacred form. Thus, their institutional character came already from classical philosophy, linked to the concept of oikía (Aristotle, Politics, 1252 b 10), as a response to the two most basic natural needs: generation (union of male and female), perpetuation (parents and children) and preservation (lords and servants). For Aristotle, the anthropological origin of the polis and that of the family within it, is the same: "natural necessity". In short, for classical philosophy and Judeo-Christian thought, marriage and family were not merely arbitrary, culturally or religiously imposed conventions, but the

most rational and coherent way of socially articulating the individual instinct of reproduction and perpetuation of the species. Being this the most widespread conception of marriage and family throughout the West, divorce was not legally permitted because civil and canon lawyers argued that, according to natural law, that indissoluble bond was considered to be an essential feature of marriage as a natural institution.

This paper will explore, first, to which extent the notions of 'nature', 'natural law' and 'natural reason' appeared in the sources and were used by lawyers to defend a natural, secular – rather than a religious or denominational – understanding of law; and second, how divorce was justified considering the supposed natural, indissoluble bound of marriage that had been accepted and adopted by secular law.

Marta Cantín-Larumbe
PhD student
University of Valencia, Spain

One Matrimonial System and Two Jurisdictions: Marriage in the Spanish Nineteenth-Century Legal System. An Approach up to Promulgating the Civil Marriage Law of 1870

The marriage system was valid in Spain until the Civil Marriage Law of 1870 was celebrated according to the provisions of the Council of Trent. Until the 16th century, in addition to marriages in facie ecclesiae, celebrated publicly, clandestine marriages in which the contracting parties expressed their consent without publicity were valid.

The Council of Trent played a pivotal role in shaping the Catholic doctrine on marriage. It was here that the prohibition of clandestine marriages was established, and the requirement for marriages to be presided over by a parish priest and two witnesses was introduced. This council also reinstated the importance of paternal consent, a concept rooted in Roman law. Philip II, by means of a Royal Decree issued on 12 June 1564, incorporated into national legislation the guidelines of the Tametsi Decree, approved on 11 November 1563 at the 24th session of the Council of Trent. Until the promulgation of a single body of law – the Civil Code of 1889 – the law applicable in Spanish territory was that contained in the Novísima Recopilación de las leyes de España (1805), which included different medieval ordinances: the Ordenamiento de Alcalá (1348), the Ordenamiento de Montalvo (1484), Las leyes de Toro (1505) and the Nueva Recopilación de las Leyes de Castilla, with their respective amendments, the Ley de Toro (1505) and the Nueva Recopilación de las Leyes de Castilla, with their respective amendments.

With the drafting of the various Civil Code projects (1821, 1836, 1851 and 1889), despite the fact that the only valid marriage system was the one celebrated according to the Catholic rite, the civil legislator began to regulate the requirements for contracting marriage. For the marriage to be understood to be contracted civilly, in addition to the canonical provisions, the different drafts of the civil code included the following requirements:

- the capacity of the persons
- consent, expressed with the formalities established by law
- solemn celebration before the parish priest and witnesses.

As for the causes of divorce and annulment, while the civil legislator regulated the separation lawsuits, the ecclesiastical courts were in charge of the annulment processes. This paper aims to study the regulation of marriage during the Spanish codification (1821–1889), paying particular attention to the interaction between civil and ecclesiastical jurisdiction.

Julie Rocheton
Researcher
Max Planck Institute for Legal History and Legal Theory, Germany

From Partial to Total Dissolution: Divorce in 19th Century Louisiana

Marriage has long been regarded as a lifelong commitment. Initially, it could only be dissolved by the death of a spouse, but over time, it became increasingly subject to dissolution through the legal construct of divorce, shaped by evolving social and legal expectations.

In 19th-century Louisiana, divorce underwent a profound transformation. The legal institution of marital separation found its roots in colonial-era traditions, where *séparation de corps* (separation from bed and board) was the only legal remedy available for troubled marriages. With separation from bed and board, the spouses could live separately and have their property separated, but the marital bond was not dissolved and still existed. The introduction of the 1825 Civil Code marked a significant shift by allowing for legal divorce on the grounds of fault, resulting in the complete dissolution of the marital bond.

This research focuses not only on the evolution of the law but also on the evolving jurisprudence of the Louisiana Supreme Court, established in 1813, and its critical role in shaping divorce law throughout the 19th century. It looks not only at divorce cases but also at cases of separation from bed and board. Through an analysis of cases and legal changes, this study aims to highlight critical legal debates on the grounds for divorce, the influence of religion and public morality, and the role of women in seeking marital dissolution. By examining these legal records, the study provides new insights into the evolution of separation as a legal institution and its role as a precursor to no-fault modern divorce.

By tracing these legal developments, this research illuminates how Louisiana's unique civil law tradition interacted with broader societal shifts, including changing views on marriage, individual rights, and the evolving role of the state in regulating family matters. This research emphasizes the importance of archival legal sources in reconstructing the lived experiences of marital discord and separation, contributing to broader discussions on the development of family law in colonial and post-colonial.

Patricia Plana de Juan
PhD student
University of Valencia, Spain

Morality and Marriage Agreements in the 19th Century Civil Codes of France, Spain and Louisiana

This paper aims to compare the references to morality contained in the 19th-century civil codes of France, Spain and Louisiana regarding marriage agreements.

As for the French Civil Code of 1804, the article 1387 states the freedom of the spouses to stipulate their own agreements, provided these are not "contraires aux bonnes mœurs". In a similar way, the Digest of Civil Laws in the territory of Orleans of 1808 (Title V, art. 1), the Civil Code of the State of Louisiana of 1825 (art. 2305) and the Civil Code of Louisiana of 1870 (art. 2325) all establish that marriage agreements can be regulated as the parties please as long as are not "contrary to good morals".

Regarding the Spanish texts, in the Draft Civil Code of 1851 (art. 1239) and the Civil Code of 1889 (art. 1316) the limit to this freedom is "las buenas costumbres". In addition, it has to be taken into account that all legal texts cited above expressly mentioned "good morals", "bonnes mœurs", "buenas costumbres" or "la moral" as a limit to contractual freedom beyond marriage.

This study will address the similarities and differences that the codes of each country presented in the texts and in the case law, as well as the interrelation or influence that may exist between them.

Panel 18. Procedural Law Reforms in Europe

(Buza László Classroom, JK203)

Chair: Tomáš Gábriš

(Professor, University of Trnava, Slovakia)

Kacper Górski
Assistant professor
Jagiellonian University, Poland

Habeas Corpus or the Right to Due Legal Process? The Neminem Captivabimus privilege (1430–1433) in Theory and Practice in Early Modern Poland

In the royal privileges issued in 1430 and 1433, the Polish King Ladislaus II (Jogaila) guaranteed the nobility that "no one shall be deprived of liberty without judicial sentence" (*neminem captivabimus nisi iure victum*). This act is widely recognized as a foundational for the emancipation of the noble estate and the dominance of the nobility in the political system of the Polish–Lithuanian Commonwealth in following centuries. This privilege is often compared to the English *Magna Carta Libertatum* of 1215, as it restricted the power to detain a nobleman without a court ruling. Of course, both privileges differed in detail.

In the first part of my paper, I will examine the meaning of the *neminem captivabimus* privilege (including later amendments and revisions) and explore its original intent: was it solely a guarantee of personal inviolability for the nobility (*habeas corpus*), or did it encompass broader protections? In the second part, I will analyze *neminem captivabimus* from a procedural point of view. This analysis will involve two categories of primary sources. First, I will consult Polish legal writings (16th to 18th centuries) to determine whether, and if so, how Polish jurists commented on the legal issues pertaining to this privilege. Second, I will examine the court books of Kraków castrensial courts (*iudicium castrense* and *officium castrense*), so as to find examples of legal arguments regarding the application of *neminem captivabimus*.

The purpose of my speech will be to address the following questions:

1. What was the actual nature of the *neminem captivabimus* privilege, what role did it play in the court proceedings in pre-1795 Poland, and can it genuinely be considered a Polish counterpart of the English *habeas corpus,* or does it represent a different legal institution?
2. What issues related to the *neminem captivabimus* privilege sparked debate, controversy, or doubt in legal writing and judicial practice in early modern Poland?

The *neminem captivabimus* privilege was an essential guarantee of the rights of the Polish nobility – citizens of the Kingdom of Poland. Much like the English *Magna Carta Libertatum,* it forms a significant part of European legal heritage.

José Franco-Chasán
Professor
University Rey Juan Carlos, Spain

A Plea for the De-romanticisation of Duel: Outlawing Honour Fighting or Common Brawling?

Law is not a pre-existing reality. It encompasses society's values, morals, and ways of acting. Those unwritten values given within a certain community can explain why the legal orders of so many countries enormously differ amongst them. Particularly, Spain and Hispanic American countries outstand out for the role that honour plays within their borders. The rather wide value of 'honour' leads us to a manifold outcome. We decided to dive into the manner in which offences against honour were regulated. From very early on, there is evidence of regulation on this universal institution. Alfonso X, for instance, legislated on this issue in the Siete Partidas. Through time, it was proven that such a thing as prohibiting fights to defend such value was virtually useless: either way citizens would end up ignoring the law.

The current study focuses of primary sources: case-law judgements of the Spanish Supreme Court between the years 1870 and 1978. A total number of 91 judgments have been found (mainly in CENDOJ, but also in the main compilations of Spanish case-law). Case-law played a very important role due to the main contradiction that characterised the duel: a de iure condemnation (through Criminal Codes), and a de facto promotion (through the Code of Honour and social conceptions). Far from acting in a very dogmatic manner, the judges understood the reality of the moment and knew how to read between the lines of what was happening. The sentences were neither strict nor disproportionate but played a role tending to harmonise the two realities, and to unify the two extremes. There was also a parallelism between duel and infamous punishments, since both began to completely unroot from the strictly cultural notion and the State began to try to control these phenomena through regulation. However, as pointed out in the Criminal Code of 1932, both the duel and infamous punishments were losing social relevance.

Likewise, case-law helped to solve specific antinomies and apparent contradictions, difficult to understand – if not impossible – only by applying the Criminal Code. I have noticed that the judiciary played a moderate role, but always tended to put an end to the institution of duelling. Judicial discretion played a more relevant role than has traditionally been attributed, although less than in other crimes, since the number of judgements to work on was surprisingly low.

Izabela Wasik
PhD student
Jagiellonian University, Poland

When the Justice System is too Rapid – Ad hoc Courts in the Habsburg Monarchy Using the Example of the Kingdom of Galicia and Lodomeria in the 19th and 20th Centuries

The values of legal certainty and efficient and quick justice are undoubtedly significant from the perspective of citizens, and the building of trust in the state and its institutions is contingent upon the upholding of these principles. The above-mentioned values are fundamental to the protection of citizens' rights. However, it can become problematic if it functions too quickly and citizens are not sure what they can actually be punished for, or if the way in which proceedings are conducted does not meet the required standards of reliability and truthfulness.

The activities of the Ad hoc Courts can be an interesting example for reflecting on legal certainty and quick justice. These were not permanently standing courts, although their status, powers and scope of activity were regulated by a code of criminal procedure. The main task of these courts was to restore calm and peace in the society in cases where the local authorities and the judiciary were unable to react regularly, e.g. in cases of murder, robbery or arson. The announcement was made, for example, by beating drums or trumpets and, if necessary, announced from the church pulpit. Such announcements were also posted on poles. Proceedings before the ad hoc courts were oral and public and were mainly held on the basis of witness testimony.

The cases were heard in collegial assemblies consisting of several judges. The duration of such a trial was also unique. At the beginning of the 19th century, no more than 24 hours were allowed to elapse between the indictment and the judgement, whereas the Code of Criminal Procedure of 1873, for example, set a time limit of three days. In principle, the possible punishment was either acquittal or the death penalty. For very young offenders, the possibility of commuting the death penalty to a long prison sentence was granted. Over time, certain groups of people, such as pregnant women or the seriously ill, were excluded from criminal liability by summary courts.

Ad hoc courts were not only occurred in the Habsburg Monarchy. Evidence of their activities can also be found in countries such as Germany, Spain, Italy, France and, in the 20th century, during the Second World War in the Polish territories occupied by the Third Reich (Generalgouvernement).

Panel 19. The Influence of Economic Development to the Legal System

(Nagy Ferenc Classroom, JK206)

Chair: Jan Halberda

(Associate professor, Jagiellonian University, Poland)

Dariusz Piotrowski
PhD student
Jagiellonian University, Poland

Kompania Manufaktur Wełnianych (1766) – the Basis of Polish Joint-Stock Company Regulation or a 'sui generis' Entity Detached from Modern Times?

The history of the regulatory framework of Polish commercial law is still an undiscovered area of legal research. This state of affairs, which is, among other things, a consequence of the loss of more than 90% of the holdings of the Central Archives of Historical Records in the course of World War II (including almost all of the files of the Crown Treasury Commission), does not allow for an exhaustive characterisation of the individual subjects, institutions and private-law relations of previous centuries. This is particularly evident when analysing the history of commercial law companies established as early as Polish–Lithuanian Commonwealth (and thus up to 1795). On the basis of few documents and a few surviving statutes, it is impossible to determine their exact number (there were at least a dozen of them), the general nature of the shareholding rights ('akcyi') granted under them, and the practice of their operation. It should also be noted that, despite the changes introduced to the generally applicable economic legislation (e.g. the monetary reforms of 1766 and 1786), the Sejm's constitutions did not cover the issue of 'kompanyi', whose activities required a prior royal act.

The first Polish joint-stock company was the 'Kompania z 120 akcyi złożona na założenie w kraju fabryk wełnianych', called 'Kompania Manufaktur Wełnianych'. Despite its short existence (the company was established in April 1766 and dissolved in June 1770), a relatively large number of documents remain, including the reprinted Articles of Association. As a kind of 'constitution of the company', it allows for a basic characterisation of this entity, including its structure, operating principles and corporate relations.

The purpose of this presentation is an attempt to analyse the Articles of Association of 'Kompania Manufaktur Wełnianych' from the perspective of comparing the solutions adopted therein to the contemporary provisions of the Polish Commercial Companies Code of 2000. It should be pointed out that despite the tenuous regulation, contained in 13 points, many of the mechanisms included therein are verba legis included in the law in force today.

A linguistic, systemic and functional analysis of the Articles of Association document should make it possible to answer the question of whether the 'Kompania Manufaktur Wełnianych' can be regarded as a corporation that is the basis of modern joint-stock company regulation or whether it is so distant from it structurally that it must be qualified as an entity 'sui generis', being only a forerunner of modern corporate entities.

Balázs Pálvölgyi
Associate professor
University of Győr, Hungary

Immigrant Banking and the Limits of State Regulation: the Case of the United States and Hungary (1903–1917)

Immigrant banks (i.e. an operator with immigrant background providing financial services, whether part of the banking system or not) have played an indispensable but precarious role in the movement of money between the United States and Europe. For Washington, the integration of new immigrants became an issue of stability for the banking system, while for Budapest it was a question of preserving the identity and loyalty of its citizens. The evolving US banking system, the financial services industry, moves towards tightening immigration rules and the increasingly active emigration policy of the Hungarian government provided the framework for measures designed to address emigrants' savings.

The prospects of immigrant banks have been influenced by the gradual assimilation of immigrants, since, as far as banking services are concerned, a greater knowledge of the wider American environment in English has in itself contributed to the use of regulated banks. On the other hand, US banks recognised the potential customer base of immigrants and made efforts to attract them. The impact of the regulatory side, on the other hand, is mixed. The attempts at regulation only really came to fruition after the period under study, after the outbreak of the First World War, which led to a spectacular decline in immigrant banks by the 1920s.

The motivation for Budapest's moves was also complex. While it is true that economic issues were regularly raised in the debates on emigration, action on emigrants' remittances was not taken until the first Emigration Act (1903). What can be seen as parallel, complex, and sometimes conflicting goals and common interests can be traced closely in the complex ambitions of Washington and Budapest, which intersected in the years before the First World War with immigrant banks and references to Europe.

What steps were taken by the US and Hungary to ensure the security of transatlantic remittances, what motivations and options were used by the two governments, and finally, what legal instruments were used to solve the problems that arose. These questions will be presented by analysing US print sources (government reports, statistics, press materials), Hungarian archival sources, parliamentary documents and press materials, legal sources from both countries, and relevant literature.

Emmanuel von Dongen
Associate professor
Utrecht University, Netherlands

The German Hyperinflation and the impact on Dutch law

Just over a century ago, Germany suffered devastating hyperinflation. The economic and social upheaval was unprecedented. The Netherlands was largely spared the direct consequences. In economic and legal terms, the Netherlands felt the effects of hyperinflation indirectly. For example, in the form of disputes between creditors with claims for money denominated in German marks and the debtors of these claims. One such case resulted in the well-known *Mark = Mark* judgment (1931) of the Dutch Supreme Court. Our presentation presents the background to this case and examines the hyperinflation problem in its contemporary legal context. First, this article places the common reading of the judgment in the legal context of the time by means of detailed legal-historical comments. This common reading is that the judgment focuses on the principle of nominalism and rejects the doctrine of the limiting effect of what we now call reasonableness and equity, good faith. Second, we show that this judgment was not groundbreaking but, on the contrary, literally preserved the boundaries between the German and Dutch legal systems: the judgment corresponded to the views on international monetary relations that were dominant at the time but have since come under increasing pressure. Third, we use the economic context to show that the *Mark = Mark* ruling was primarily a decision by Dutch judges who felt safe behind the 'dikes' of the Dutch gold standard. Looking at the economic context in Germany after the 'Great War', it becomes clear how complex the underlying currency devaluation problem in Germany actually was, and how much the Netherlands and its Supreme Court distanced themselves from this problem.

Jakub Pokoj
Assistant professor
Jagiellonian University, Poland

Interwar Polish Regulations on Shortages of Basic Goods from the Archival Perspective

The main aim of this paper is to analyze the phenomena of speculation and wartime usury in the Second Polish Republic (1918–1939) from the perspective of archival sources. The revival of Polish state inherited a mosaic of legal orders, including also regulations in the field of counteracting speculation and usury. The legal regulations concerning speculation and wartime usury in Poland on the brink of independence need to be discussed, specifically in the light of results of archival research on combating speculation and wartime usury. Furthermore, in order to describe the usefulness of archival sources from the interwar period, the condition, quality and quantity of archival sources will be discussed.

The reborn Polish state inherited a mosaic of various legal regulations. The general deficiencies of the legal system of the reborn Polish state were also related to the regulations in the field of counteracting speculation and wartime usury. Depending on the part of Poland there could be at least three different regulations in the field of counteracting speculation and wartime usury. This state of uncertainty intensified the necessity of adapting a complex of regulations, including those aimed to mitigate the consequences of shortages of numerous commodities caused by the war, including also a scarcity of goods of first necessity. As in the formerly Austrian and German parts of Poland the previously introduced regulations were in force, the need to adopt new regulations was particularly distinct in these parts of Poland which had belonged to Russia. Because of the state of legal uncertainty, it is captivating to depict the struggle of court and administrative authorities against speculation and wartime usury from the archival perspective.

The importance of anti-usurious regulations in the first years of Polish independence were clearly explained in the preamble of the decree on Defense of the Nation against Wartime Usury. It stated that: "For more efficient defense of the people from wartime usury, which hinders it to gather the necessary amounts of food and heat, and housing, I decided to strengthen and broaden imposing of punishments for any crimes that can be defined as usury". The result of the legal historical research on regulations on shortages of basic goods can be useful in the contemporary legislative process, as the Covid-19 pandemic revealed how easy shortages of basic goods may occur also nowadays.

Panel 20. Expanding Constitutional Time. On the Complexity of Constitution-Making Processes in Brazil and Italy after World War II.

(Kemenes Béla Classroom, JK208)

Chair: Elisabetta Fusar Poli

(Professor, University of Brescia, Italy)

Massimo Meccarelli
Professor
University of Macerate, Italy

Before the Constituent Assembly: After-Effects of the Past and the Issue of Future in the Making of Democratic Constitution in Italy (1943–1948)

The paper focuses on the relevance of the years of transition after the fall of Fascism and the end of World War II with respect to the making of the Constitution and the implementation of the project for Democracy.

To this end, it will focus on the paradigmatic issue of the accountability of Fascism. The legislative and doctrinal sources and case law produced in dealing with the issue, before the proper moment of drafting the Constitution, will be examined. This is a field of legal production that is strongly bound to the contingency of the socio-political situation, rapidly changing, but at the same time questioned by the need of a project for the future.

The aim will be to assess the twofold impact that this moment of legal impermanence may have had on the making of the constitution: by considering the weight that the past has continued to exercise on the path to establishing a democracy; by assessing whether the legal debate on this situational law may have constituted an incubator of ideas, categories and instruments that were reflected in the constitutional design.

Starting from this case study, the aim will be to assess, in a methodological perspective, the possibility of updating the analytical categories, with which to approach a study of the constitution making process.

In particular, as possible keys to understand the meaning perspective of the constitutional experience in the second half of the 20th century, the following will be examined: the idea of constitutive dynamics (i.e. those dynamics that do not originate from a real constituent ambition, but affect the shaping of the constitution); the idea of attributive time (i.e. the force that the condition of time exerts on law by determining its contents); the concept of the experience of time (i.e. the ways of combining the relationship between the past present and future in the construction of social cohesion).

Raphael Peixoto de Paula Marques
Professor
Ufersa University, Brazil

Ambiguities of Authority: Disputes Over Constituent Power in Brazil's Transition from Authoritarianism to Democracy (1945–1946)

This paper examines the 1945–1946 Brazilian constitutional process, foregrounding the parliamentary struggle for constituent authority during the country's political transition. The period, defined by social upheaval, political rupture and contested legitimacy, witnessed critical events such as the Brazilian Superior Electoral Court's decision to grant constituent powers to the parliament and the debates within the newly formed Constituent Assembly over the extent of these powers. Through an analysis of diverse sources – including the constitutional reform enacted by President Getúlio Vargas in February 1945, legal opinions written by university professors, the Electoral Court's ruling, and the assembly's records – this research aims to explore the complex interplay of social and political forces shaping Brazil's new constitutional order.

Methodologically, this article combines archival research with historical-legal analysis, examining the constituent process of 1945–1946 through official government documents (such as constitutional reform projects), judicial decisions, legal opinions, and constituent assembly records. The study highlights the ambiguity surrounding the Superior Electoral Court's role, particularly in its extension of constituent powers to parliament – raising questions about the judicial branch's constitutional limits and the legitimacy of such judicial authority. Additionally, this work investigates the Constituent Assembly's internal debates on its competence, probing whether it possessed the jurisdiction to override the authoritarian 1937 Constitution by establishing a provisional constitution. These discussions underscore the uncertainties of Brazil's constitutional transition, revealing the dynamic and contested nature of constitutional authority during the period, as well as identifying the arguments and theories mobilized in the dispute over who has the legitimacy to create a constitution and what legal limits apply to this authority.

This research not only enriches historical understandings of the 1945–1946 transition and 1946 Constitution but also contributes to comparative constitutional scholarship by examining how institutions – judicial bodies, executive decrees, and parliamentary actions – and social forces collectively shaped Brazil's constitutional transformation. By emphasizing the disputed nature of the constituent process, this paper sheds light on the temporal and institutional complexity of constitutional change within transitional contexts, arguing for a nuanced interpretation of constituent authority that resists simplified legal categorizations and advocates an expanded observation of constituent time.

Ana Carolina Couto
Postdoctoral researcher
University of Macerata, Italy

Beyond the Assembly: the Socio-Economic Rights vs Market-Oriented Forces on Brazil's 1980s Constitution-Making Process

This paper examines Brazil's constitution-making process in the 1980s, emphasizing that the range of sources to its comprehension extends beyond both the conventional constituent archives and the official duration of the Brazilian Constituent Assembly (1987–88). The 1988 Brazilian Constitution reflects a dynamic period marked by progressive socio-political pressures, economic crisis, and foreign debt negotiations. While primary archives such as parliamentary debates, assembly records, and article drafts capture official discussions, analyzing complementary sources offers a richer understanding of the intersection of interests, mainly the tensions between social/economic rights and a market-oriented view of the public budget.

According to Cristiano Paixão, as the authoritarian regime (1964–1985) began to weaken, various social and political movements started advocating for democratic reforms. This period saw the gradual re-emergence of the idea of constituent power, as these movements started progressively calling for a new constitution that would reflect the will of the people and restore democratic governance. In that context, the aim was not merely to safeguard civil and political rights but also to ensure social and economic rights – inherently costly due to their reliance on substantial financial resources. Subtle political forces opposing the guarantee of such rights acted strategically within the structure of public budget, aiming to curtail the fiscal space available for policies that supported social rights. In other words, attempts to erode social rights were pursued indirectly, through budgetary constraints rather than explicit attacks on the rights themselves. All these underscores the necessity of consulting sources beyond the formal time and space of the Constituent Assembly.

My research, conducted largely through my Ph.D., employed diverse sources, including records from the Ministry of Finance, Central Bank documents, intelligence reports, and Brazilian and international newspapers, interviews and memoirs from political actors of that time. This approach revealed the influences – particularly the International Monetary Fund (IMF), foreign banks, and the Brazilian bureaucrats – that had a part in shaping Brazil's constituent debates on economic issues, especially those surrounding the redesign of the financial system since 1982. The documents provided information omitted in traditional constituent records, what can enrich our understanding of the intersection of

a market-oriented agenda and the struggles for a social constitution in that constitution-making process. The paper will discuss the uses of such multisourced material in analyzing constitution-making processes.

Panel 21. (Re)building Legal Institutions: The Evolution of the Notariat in Estonia, Latvia, Czechoslovakia, and Hungary between the Two World Wars

(Kovács István Classroom, JK201)

Chair: Valdis Blūzma

(Professor, Turiba University, Latvia)

Merike Ristikivi
Associate professor
University of Tartu, Estonia

The Development of the Notariat in Interwar Estonia

The establishment of the Republic of Estonia in 1918 brought significant changes to its legal institutions, including the Notariat. The presentation examines the development of the notary system in Estonia during the interwar years, focusing on the requirements and structural changes faced by notaries from 1918 through World War II. Like Latvia, Estonia had been part of the Russian Tsarist Empire since the 18th century, and initially, the Russian legal framework remained in effect in both countries. In 1919, the Estonian Provisional Government adopted the Provisional Notarial Act, which amended the former Tsarist regulations, establishing notaries as independent practitioners under the Ministry of Justice. Although classified as state officials, Estonian notaries operated primarily under the Latin notary model, with personal liability for their professional activities.

The economic crisis of the 1930s presented unique challenges for the profession. While other state officials faced salary reductions and employment instability, notaries maintained financial stability, benefiting from the increased demand for legal services during the downturn. This growth spurred the establishment of new notarial positions, expanding the profession's role in public legal services. The founding of the Estonian Notaries Association in 1933 marked an important step in professional organization, as it promoted reforms and established ethical standards within the profession.

World War II and the subsequent occupations profoundly affected the notarial system. Under Soviet occupation in 1940, notaries were reclassified as salaried civil servants, and the independent structure of the profession was dissolved. The Nazi occupation in 1941 temporarily restored the pre-Soviet framework, allowing notaries to resume their prior roles. However, the Soviet reoccupation in 1944 permanently transformed the profession, aligning it with Soviet regulations and effectively eliminating independent notarial practice.

Following Estonia's re-independence in 1991, extensive legal reforms led to the reinstatement of the Latin notary system. The 1993 Notary Act reestablished the independent notarial profession, emphasizing professional impartiality, independence, and legal expertise.

Jan Kober
Researcher
Charles University, Czech Republic

The Notaries in Czechoslovakia during the Interwar Period

In my presentation, I deal with the development of notaries in the territory of Czechoslovakia, one of the successor states that emerged after the collapse of the Habsburg Monarchy in 1918. In the new territory of Czechoslovakia, there were two notary organizational structures and two different legal regulations of the notary profession and, in general, two different legal systems, including a different inheritance and property law and a different law of civil procedure. In the Czech lands, Cisleithanian (Austrian) law applied, whereas in Slovakia and Subcarpathian Ruthenia, the Transleithanian (Hungarian) law applied. The unification of law became one of the important tasks of the new republic, but in political practice it turned out to be a too demanding task. Only partial sections of law were actually unified. The preparation of new, unified codes was delayed or made impossible by multiple political controversies. Notaries participated in the preparatory works for the revision of the Civil Code. Fundamental unification of law in Czechoslovakia only occurred at the turn of the 1940s and 1950s.

In the early days of Czechoslovakia, notaries faced criticism of their existence, it was proposed that the activities of notaries be divided between courts and advocates. However, this did not happen. The professional association of notaries, on the other hand, founded its own magazine, which it used both to defend professional interests and to inform notaries of issues of common interest. The interwar notarial profession corresponded to the national structure of the state. In the Czech lands, the original tensions between Czech and German notaries were gradually overcome by their common goals and by collegial attitude. The situation was complicated in Slovakia, where, due to the national oppression of the Hungarian state against the Slovaks, the overwhelming majority of notaries were Hungarians. Some of them moved to the new Hungary. The restoration of this structure and its addition of new Slovak members was not easy, because the lack of legally educated Slovaks (or Hungarians with a satisfactory command of Slovak language) also prevailed in other professions and in the state administration. A similar problem also existed in Subcarpathian Ruthenia.

A long-discussed issue was the creation of a unified notary code and a unified notary structure for the entire state. Its form was to correspond to notaries in the Czech lands, with its regional notary chambers with quite different extent. A numerus clausus of members was set by the Ministry of Justice. The notaries resided in the towns with district courts. Similar to other legal reforms in Czechoslovakia, the unification of notaries was ultimately prevented by the

political development of 1938–1939. The unification but also a profound change of the notarial profession only took place on a new socialist basis in 1949. In 1990, the legal regulation of notaries was newly reformed according to the interwar model.

Valéria Kiss
Assistant professor
Eötvös Loránd University, Hungary

The Hungarian Notariat Between the Two World Wars

In the first part of my presentation, I will describe the development and traditions of bourgeois notariat in Hungary, and, in line with the theme of the panel, I will discuss the common roots that link these Hungarian traditions with other successor states of the Austro–Hungarian Monarchy, such as the Czech Republic and Estonia and Lativa as Baltic States.

I will then discuss the political turning points during and after the dissolution of the Monarchy and their impact on notarial practice, emphasising the main theoretical thesis of the presentation, namely that the regulation and practice of Hungarian notariat has followed (and continues to follow) the changes in political regimes like litmus paper. The years following the First World War were extremely turbulent from a political point of view: first there was a democratic turnaround in Hungary, followed by a brief period of communist rule, displaced by a royalist resurgence, and the period was also burdened by the pressure of dealing with the practical and symbolic consequences of the Trianon treaty. In my presentation, I will discuss how this turbulent political and ideological environment affected the notariat. The search for a way forward in the years after the First World War also offers interesting points of comparison between the four states (Estonia, Latvia, the Czech Republic and Hungary).

In my presentation, I will also deal with the facts and statistics that describe the situation of the Hungarian notariat between the two world wars and its development until the Second World War. The decisive process of the first years was that, with the Treaty of Trianon, 190 notaries' offices (out of 329), formerly belonging to Hungary, were transferred to the successor states. These notaries could have kept their posts if they had taken an oath to the new state, which a significant number of them did not do and were repatriated. In addition, the notarial profession was affected by both the democratic and communist turnaround, both at the level of regulation and in the way that the practitioners had to take a personal stand on these political issues. And in the years before the Second World War, the profession was defined by the measures taken against notaries of Jewish origin (*numerus clausus*) and the effects of war involvement.

To conclude the presentation, I will briefly describe the elements and influences that have been preserved or returned from the last decades of the Hungarian royal notariat after the socialist era in the present-day regulation and professional identity of the Hungarian notaries.

Sanita Osipova
Professor
University of Latvia, Latvia

Notarial System in Latvia 1918–1940

Until 1918, the territory of Latvia was part of the Russian Empire. After the establishment of the Republic of Latvia in 1918, the laws of the Russian Empire remained in force, including the laws regulating the notary profession. The 1866 Notariate Law, which introduced the French or Latin-type of notarial system into the Russian Empire, was based on the Notariate laws of France (1803), Austria (1854) and Bavaria (1861). In 1889, the laws on the judicial system of the Russian Empire came into force in the Baltic provinces, and the Latin-type notary system was introduced on the territory of Latvia.

Under system established by the 1866 Notariate Law, including the territorial organization principle, a third of the available notary posts had remained unfilled, and in 1871 the Ministry of Justice issued a circular inviting the heads of the regional courts to comment on the existing system and present proposals for reform. Discussion on the new draft law commenced in 1904. It did not succeed, because in 1905 there were a revolution.

The Notarial Law of the Russian Empire of 1866 was in force in Latvia until 1937. In 1937, the Notaries Law was brought into force as accompanying law of the 1937 Civil Law of President Ulmanis. The 1937 Notaries law was drafted by a commission formed by the Minister of Justice. The commission had been given an ambitious political assignment by the state: to create a "completely new and national legal framework for the Latvian notarial system" Such a task fully corresponded to the policy of the authoritarian Latvian state at that time, which was aimed at strengthening national values.

When studying the 1937 Notaries Law, it can be concluded that it was developed based on the previous regulation of the notarial system, considering Russian lawyers' critiques of the 1866 Notariate Law and the draft law developed in 1904. Drafters concluded that 1904 draft law was "relatively modern draft of notarial regulation."

With the restoration of Latvia's independence in 1990/1991, the Constitution of the Republic of Latvia of 1922 and several laws passed in the interwar period were renewed, including the Notarial Law of 1937 (renewed in 1993).

Panel 22. The Agency and Sovereignty of Commercial Cities in Western Europe (c. 1400–c. 1700)

(Buza László Classroom, JK203)

Chair: Aniceto Masferrer

(Professor, University of Valencia, Spain)

Dave De ruysscher
Professor
University of Tilburg, Netherlands; Vrije Universiteit Brussel, Belgium

Sovereignty and Agency of Cities of Trade: Gaps and Promises

Since Bodin sovereignty has been defined as the ultimate and exclusive level of authority, which is a strong attribute of states. The ERC-funded project CaPANES explores the period that precedes the Westphalian era, that is, the period of 1400–1620, focusing on the autonomy and agency of cities of trade. In France, the Low Countries, England and the German territories, the agency of cities, not being city-states, was more important than the traditional narrative of the historical development of sovereignty allows to suspect. Doctrinal views on entities such as organizations and communities underpinned municipal discourses of sovereignty and actionability. Within the project, it is examined to what extent commercial cities' international trading networks mattered in terms of their constitutions and what this can tell us about state formation in the fifteenth and sixteenth centuries. The focus is both on local administrative practice and the behavior of cities in the international arena.

Femke Gordijn
PhD student
University of Tilburg, Netherlands

Urban Networks, Governance and Commercial Law: the Case of Southampton (c. 1420–1510)

Whilst situated within the centralized realm of England, the city of Southampton, as a major port, still possessed a relatively high degree of autonomy to (legally) organize its own commercial affairs in the late medieval period. Although the past decades have witnessed renewed historiographical attention for urban commercial law, most studies have not paid extensive attention to the diversity of the officials in charge of the institutions that organized mercantile affairs. This is remarkable, as it is well established that factions, coalitions and networks played a major role within late medieval urban politics. Moreover, it is increasingly acknowledged that urban magistrates, and this was especially the case for Southampton, acted as traders alongside their political and legal functions and were actors operating in broader mercantile networks which held their own interests.

In the fifteenth century, burgesses of Southampton were, for example, divided into pro- and anti-Italian groups. The first group was deeply involved in trade networks with the Genuese, Venetians and Florentines, and thus promoted their presence within the city; the second group opposed Italian presence. Representatives of these groups alternately dominated the city magistrate and by consequence the municipal legal institutions. Concomittant changes in the composition of the magistrate influenced the way law was applied. Under the mayoralty of Walter Fetplace in 1426, for example, Italians could count on a favorable treatment in the urban courts, whilst John Payne in 1462 grew infamous for his harsh treatment of foreigners seeking justice.

This paper argues that the mercantile networks and interests of members of Southampton's magistrate went hand-in-hand with varying ideas and practices related to commercial law. As such, urban mercantile law was dynamic not just within the city but also in Southampton's relation to the central government. Some members of the magistrate, for example, seem to have leaned heavily on central common law courts whereas others were relatively absent from these legal institutions. As such, this paper connects legal historical debates on merchants' legal behavior in the jurisdictional divided late medieval world to recent insights in the field of urban history.

Erik Andriws Gonzalez Barrera
PhD student
University of Tilburg, Netherlands

Sovereignty and the City: Power Dynamics between the Municipal Government and the Parliament of Toulouse during the Early Sixteenth Century

In the *Annales* of Toulouse, the city is introduced and portrayed as a 'municipal republic' led by freely elected consuls (*capitouls*). The chronicles often imply the city's autonomy and its privileged status within the French Kingdom. The references to the 'municipal republic' ceased after 1562, coinciding with the outbreak of the Wars of Religion and the decline of the lucrativevpastel trade in the region. It is worth focusing on the period leading to the decline of Toulouse as a commercial hub, as it illuminates the city's perception of autonomy and sovereignty. During the early sixteenth century, there was a rise in royal centralization and the influence of the parliament of Toulouse in the city matters. However, the municipal government managed to maintain and in some instances even expand its authority. The preservation of municipal authority by the *capitouls* was not without struggle. One of their primary privileges, that of electing the municipal government, faced constant threats from meddling by external royal institutions. The peak of this struggle occurred during a series of parliamentary interventions between 1547 and 1562, which resulted in either sacking a few members or fully replacing the governing *capitouls*.

Examining the parliamentary interventions between 1547 until 1562 offers a valuable opportunity to assess the municipal sovereignty of the city. This paper seeks to analyze the reason behind the parliamentary interventions and evaluate whether they fell within their judicial boundaries. Furthermore, it aims to investigate whether these interventions contributed to a broader trend of institutional centralization or if the Toulouse parliament acted as an independent entity within the complex hierarchies of the French Kingdom. By exploring the evolving relationships between the monarchy, parliament, and the municipal authorities, this study provides insights into the historical development of sovereignty and governance systems during the early sixteenth century.

Daniel Bökenkamp
PhD student
University of Tilburg, Netherlands

Treaties of Cities and States – Sixteenth-Century Rouen as a Diplomatic Actor

This contribution seeks to describe the process of co-ratification by sixteenth-century French cities. Often treaties have been considered a monopoly of states and historiography tends to paint France as a strong and centralized state. However, an investigation into the records of the municipal council and the *parlement* of Rouen reveals that this preconception should be nuanced. The example of French–English and French–Spanish treaties throughout the sixteenth-century demonstrates that French cities were actively involved in the negotiation and corroboration of treaties. Based on the '*délibérations*' of the City Council of Rouen, a local perspective on international diplomacy is revealed. A striking example is the correspondence of the regent of France, Louise of Savoy, and the Council of Rouen surrounding Treaty of the More (1525) between France and England and the co-ratification thereof. Other examples include the Treaty of Noyon (1516) and the Treaty of Cateau-Cambresis (1559). Notwithstanding the centralizing tendencies of the French state in this period, local actors such as cities, *parlements* and provincial estates continued to play a crucial legitimizing role in external relations. These actors were able to leverage their position, if only by withholding their express consent. In spite of the fact that these French cities lacked the formal powers of their Italian or German contemporaries, they were not completely without agency in matters of international diplomacy. Ultimately, this paper provides an insight into the nuanced relationship between centralized authority and local autonomy in early modern France, challenging traditional narratives of state power and highlighting the role of cities in diplomatic relations.

Panel 23. Ubiquitous Emergencies: Revisiting the theory and praxis of emergency from a legal historical perspective

(Nagy Ferenc Classroom, JK206)

Chair: Luisa Brunori

(Professor, École Normale Supérieure, France)

Cosmin Cercel
Professor
Ghent University, Belgium

Translating the Siege: Civilian and Military Authority during the Interwar Era

The proposed paper examines the circulation of legal models of emergency legislation and constitutional practices between the centre and periphery during the interwar era and the Second World War. It does so by considering the case of France and Romania, with a focus on the historical origins of the practice of the state of siege, its doctrinal theorisation, and the conceptual mutations raised by this praxis in the crisis context of the interwar years, with a view to capture phenomenologically the lived legal history of this institution.

The use of the state of siege raises important questions over the conceptual and practical articulation between law and sovereign power, as well as between 'civilian' authorities and 'military' ones. A central feature of the legal institution of the state of siege – a politico-legal transplant with origins in revolutionary France – is that under conditions of a state danger order maintaining, police and specific jurisdictional attributions were transferred from civilian authorities to military ones. The core of this paper considers the exercise of the jurisdictional attributions over crimes against the state and constitutional order. Under the transfer operated by the 'siege', military courts gained jurisdiction over civilians, placing this practice under tension with constitutional provisions (of the constitution of 1866, 1923 in the case of Romania and the Constitutional laws of 1875 in the case of France) and with basic principles of legal certainty.

Building on academic commentary of the time, legal theory and drawing on archival legal sources, I aim to reconstruct the internal perspective of lawyers and military personnel with regards to protecting the legal order under the operation of the state of siege. I shall scrutinise three moments: the earlier uses of this jurisdictional powers in the years following the Great War, the limitations brought by the civilian courts to this exercise, the normalisation of this practice in Romanian context and its abrupt return in 1939 France. Taking cue from this analysis I intend to highlight the consequence of blurring the traditional politico-legal distinction between civilian and military that these specific jurisdictional powers have brought.

A. James Hannaford
PhD student
Ghent University, Belgium

Mihai-Claudiu Dragomirescu
PhD studen
Ghent University, Belgium

Understanding Emergency through the Lens of International Human Rights Law: A Historical Investigation

Emergency as a legal and political concept, and in particular the usage of emergency powers, is characterised in part by restrictions on various human rights by the State apparatus. This was incorporated in the drafting of many international instruments protecting civil and political rights; which through the concept of derogations, enabled State parties to take such measures as are strictly required by the exigencies of the situation. Despite the profound impact that emergencies can have for economic, social and cultural rights, no such equivalent exists. The ability to derogate from international human rights obligations provides an often used rhetoric to extricate the resolution of emergency, even if only partially, from the grasp of human rights obligations. In doing so, it posits that upholding human rights somehow inhibits the resolution of the crisis.

One is forced to reflect on how the conceptulisation of derogations has affected the understanding of emergencies within national legal orders. This can only be done by considering the history of such a mechanism, the development of it and in particular the exclusion of a parallel mechanism in regard to economic, social and cultural rights obligations. It is through this examination that one can begin to conceive of the implications that derogations have for our contemporary understanding of human rights during emergencies.

Through this paper we would reflect on the history and use of derogations in times of public emergencies, as well as their modern relevance. This assessment would be grounded in an examination of national and international primary sources, that related to the initial drafting of the ICCPR, ICESCR and other international human rights instruments, as well as to their utilisation within national contexts. This in particular would be enumerated through reflections on the use of derogations by the United Kingdom in relation to the conflict in Northern Ireland (who filed notice of their first derogations alongside their ratification of the ICCPR). The British example is particularly interesting because of the duration of the derogations but also because of the asymmetry between the derogations it made under the ICCPR and the ECHR. For its part, the case of socialist Romania is marked by a neglect of the ICCPR while emergency measures were in place.

Louis Marius Bremond
PhD student
Ghent University, Belgium

Elias Roberto Dessantis
PhD student
Ghent University, Belgium

When the Legitimacy Becomes the Threat: Exceptional Regimes of Emergency and Coups d'état

Emergencies, crises, can sometimes originate from internal factors and actors. While external threats – foreign powers, terrorist organisations or disasters – are sources of turmoil and require special actions from the state, peril can come from the inside. The legitimacy granted to the forces of the state, the army or the police, then becomes a double-edged sword, as these powers, initially established to maintain order, can be turned against the very order they are meant to serve.

This paper examines how exceptional emergency powers were activated in response to or by attempted coups. This doctrine empowers the sovereign to suspend the legal order – partially or completely – through exceptional measures, framed as an exceptional regime of emergency, to maintain order. A coup d'état poses a fundamental challenge to the legal order. It departs from what Walter Benjamin calls "law-preserving" violence and transforms into 'law-making' violence, as it seeks to overturn the legal and political structure that birthed it.

Focusing on the cases of France and Belgium during the XXth century, this study compares the application of emergency powers during attempted coups in both countries. Periods such as the Belgian interwar or in the French 1950–60s will be observed through the perceptions of the times (analysed by using primary sources, mainly governmental entities' meetings minutes, police or military internal notes and parliamentary debates. Law, regulations and declarations will also be analysed). It reflects on how these periods affected the legal institution of emergency laws in both countries, highlighting their role in shaping modern state security and legal frameworks. By doing so, the study seeks to reveal how these laws, while intended as temporary measures, influenced the development of these regimes.

In Belgium for example, these measures included one of the most severe responses by law enforcement in its history, realised through police ordinances that breached constitutional protections. In France, one of the key uses of the state of emergency was done following the failed putsch that took place in the 60s. The exceptional regimes of emergency were used by both the putschists and by the legitimate government, regardless of their legality. Therefore, the analysis

of these responses to and by the attempted coups can offer a valuable contribution to the study of the development of emergency powers. These situations are part of the reasoning behind the creation of such legal institutions and impacted the way they were conceived and implemented.

Panel 24. Substantive Criminal Law from Theoretical and Practical Perspective

(Kemenes Béla Classroom, JK208)

Chair: Matthew Dyson

(Professor, University of Oxford, UK)

Pál Szabó
Assistant professor
University of Szeged, Hungary

'in caput domini servi torquentur' – The Rule of Torture of Servants on Suspicion of High Treason in the German Golden Bull (1356) and its Roman Legal Parallel

A legal-historical-philological study of all the articles of the German Golden Bull has not been possible in Hungarian academic research so far. In 2022, as a research fellow at the Faculty of Law of the University of Szeged, I translated the entire Latin text, thus enabling a more precise analysis of the legislative knowledge and intentions in the articles.

Of all the articles of the German Golden Bull, Article 24 is the most remarkable example of the German medieval reception of Roman law. This article on high treason allowed for the interrogation of the suspected electoral prince's servants in cases of high treason, even against their lord. The phrase '*in caput domini servi torquentur*' can refer to either the incriminating interrogation of a servant against his master or to the interrogation of the master's head. This lecture will interpret the more precise meaning of this provision by presenting a Roman legal parallel, which was preserved in the Iustinian codification, the *Codex* (*Ad legem Iuliam maiestatis*).

Mattia Rizza
PhD student
University of Milan, Italy

"Falliti sunt infames". The Criminal Implication of the Merchant's Bankruptcy in Early Modern Italy (16th–17th Centuries)

The paper is part of my PhD research project and aims to reconstruct the evolution of legal science during the modern age regarding the criminal implication of merchant bankruptcy, particularly focusing on the significance of the subjective element.

Starting from the essential preliminary observations on of decoction in Roman Law, the study will devote itself to the recovery and analysis of the main contributions offered by classical Ius commune, in particular by Baldus de Ubaldis, which laid the doctrinal and theoretical groundwork for commercial practices in the modern era.

The core of the project will reconstruct the initial autonomous delineation of the crime of willful bankruptcy' as articulated by legal scholars at the dawn of the modern age.

The attention given to the relevance of the subjective element for the integration of the crime of bankruptcy represents not only the method of investigation chosen for the paper, but at the same time identifies its innovative character. The relevance of the subjective element is the perspective within which the institution will be reconstructed through the direct study of both doctrinal sources and courts decisions.

In this context, the introduction of the subjective element necessitates a thorough evaluation, becoming a critical aspect of the scholarly discourse surrounding bankruptcy law. Following the establishment of this legal framework, the study will focus on the significant contributions made by classical commercialism during the 16th and 17th centuries.

A key figure in this discourse is Benvenuto Stracca, whose work De mercatura sive de mercatore addresses bankruptcy within a broader framework. He dedicates a specific section, De conturbatoribus sive decoctoribus, to this subject.

The paper is considered to be fully in keeping with the theme of the conference, as it is intended to clarify and understand the legacies that still exist today in the regulation of the crime of bankruptcy, especially on the elements that make up the crime and the severe treatment of penalties through a historical study.

Mlle Samantha Pratali
Associate professor
Catholic University of Lille, France

Regulating Prostitution in France from 1791 to 1946: An Example for the Future

The removal of prostitution from the criminal sphere during the French Revolution marks a paradigm shift. This transition from a prohibitionist policy, where prostitution is banned and repressed, to a policy where prostitution is tolerated, results in the delegation of authority to the municipal government, which is now responsible for addressing the problems associated with prostitution, particularly health issues, by organizing, regulating, and overseeing prostitutional activity. Prostitution, and therefore prostitutes, are placed under administration through a complex framework of laws and regulations that structure the practice of this trade. Prostitution is thus tolerated in a defined space, brothels, by regulatory means. The concentration of vices in a closed space to protect the population does not lead to the relegation of debauched spaces outside the city; on the contrary, they are located in the heart of the town, confronting residents with prostitutes. While the regulatory system reintroduces prostitutes into the social body through the normative recognition of their activity within the city, the way this reintegration is carried out is stigmatizing, notably through the process of labeling.

However, this paper aims to provide an overview of prostitution regulations, carefully analyzing the articles that infringe upon individual freedoms on the one hand, and those that are protective measures in the practice of the activity, protecting both clients and those who engage in prostitution. The archives used to trace the evolution of these regulations are those related to the Bouches-du-Rhône department, as this department regulated this activity in a unique way. For example, in the early 20th century, the prefect of Bouches-du-Rhône authorized new places of prostitution, such as rendezvous houses.

Today, in Germany, Austria, Greece, Latvia, the Netherlands, and Switzerland, the profession of prostitution is recognized by law, allowing those who practice it to access social protection.

In view of the scourge of human trafficking, it is the duty of legal historians to remind us that legal regimes and even public policies related to prostitution are not fixed over time, and that paradigm shifts, with the goal of preserving human dignity, are possible.

Panel 25. Scenes of the Social Welfare System in the Hungarian Kingdom before and after the Bourgeois Transformation in a Comparative Context

(Kovács István Classroom, JK201)

Chair: Laila Maia Galvão

(Professor, Federal Institute of Paraná, Brazil)

Balázs Rigó
Assistant professor
Eötvös Loránd University, Hungary

Elements of Social Care in Early Modern Corporative Societies – Guilds and Urban Statutes

The lecture aims to uncover some aspects of social care in the level of localities, urban societies before 1848/72, when the corporative structures were responsible for the wellbeing of their members. The guilds serves for that purpose of a great example as the guild itself regulated the care for its members and even the masters were usually members of the town-councils. Therefore, above the family and private level but below the level of the state, there were a layer of social care, even if usually the guild served not just symbolically as the family of the members. A specific Hungarian phenomena is that the journey-man and the widow of the master contracted marriage so that the care and the right to a guild shall be united in the hands of the new couple. As before the state-run social care, the corporations fulfilled the task of social care, this practice served the purpose as the guilds gave work for their members until the very end of their existence in 1848/72. Officially the guilds ran until 1848 when they were legally terminated, though until 1872 nothing happened as the neo-absolutism had other problems to solve, when finally the right to handcraft and industry became free. In my lecture I intend to extend my examination not just to the Hungarian guilds of the 17–18th century, as being the epoch when the renewal of the latter patents of the guilds had great significance, of which I consult regulations and books of guilds as primary sources, but some examples of foreign guilds and town-statutes as well (like Strasbourg, Hamburg). This comparison however needs a larger timeframe as the guilds were more popular and common in earlier centuries in the West.

Zsuzsanna Peres
Associate professor
Ludovika University of Public Service, Hungary

The Role of the Nobility in the Social Welfare System in the Early Modern Hungary and Austria

It is well known that only a modern state based on the rule of law assumes central responsibility for the social welfare of its citizens and includes social welfare among its mandatory tasks. In Hungary, too, the state's obligation to provide social welfare was a relatively late development. Although there were certain measures of social nature in the bourgeois Hungarian state, the introduction of comprehensive social measures were adopted only out of necessity, in the wake of the economic and social crisis caused by the First World War, when it became essential for the state to provide for those in need. Under the feudal state, however, social services were provided by the communities, the landlords and the Church, which had an explicit duty to care for the needy. The aim of this presentation is to illustrate the different social spheres, in particular the care provided by the landlords and the Church. In particular, we will study the rules of the manorial orders, the customary law in force and the rules of ecclesiastical law, which show the care of the subjects of the family and the manor (familiars and serfs) and the charitable activity of the Church. In feudal Hungary, the landlords and the Church worked closely together in caring for the poor and needy, because this was the duty of every good Christian, whether Catholic or Protestant. Moreover, it was the basic teaching of noble education that "he who has more by the grace of God is obliged to give back from the wealth he has received to the needy of society". The legal form of assistance among the Hungarian nobility was either a "*fundatio*" in the event of death or a legacy to the church in the form of a pious legacy (*pia legata*) to help the needy. The presentation will focus on primary archival sources on the subject and will describe the forms of social provision, with particular reference to the institutional arrangements provided for by the laws in force. In order to provide a comparative aspect to the presentation, similar legal provisions of the Austrian aristocracy are also examined, showing the common features of the European-style aristocracy in both countries.

Enikő Kovács-Szépvölgyi
Assistant professor
Széchenyi István University, Hungary

Administrative Child Protection in Hungary During the Period of the Austro–Hungarian Monarchy

The presentation focuses on the establishment and development of Hungarian administrative child protection from the compromise that created the Austro–Hungarian Monarchy (1867) until the outbreak of World War I. Administrative child protection emerged during the examined period as the narrower sense of state child protection, with the state taking on the responsibility for the upbringing and care of children declared materially (and, within limited frameworks, morally) abandoned, emerging from the realm of poverty legislation and methods. During the establishment of the system of administrative child protection, the state considered foreign models, in this regard, the lecture aims to provide a comparative perspective on foreign regulations and international conferences that had a significant impact on the legislation in this period. Approaching from the perspective of the legal subjects, namely the children, the declaration of abandonment by the court of wards generated the entitlement to care realized within state-run children's shelters. For this reason, the lecture examines the practice concerning the procedures for declaring abandonment through archival sources, investigating how the regulatory solutions served the interests of the child in practice. We will examine, for example, the separation of procedures for declaring abandonment from those for establishing municipal residence, the thorough investigation of the circumstances of the persons responsible for the care of the abandoned child, and the practical implementation of the provisions ensuring the reunification of the child declared abandoned with his or her family.

Panel 26. Mosaics from the Sphere of Administrative Law

(Buza László Classroom, JK203)

Chair: Máté Pétervári

(Assistant professor, University of Szeged, Hungary)

Zoltán Liktor
Lecturer
Pázmány Péter Catholic University, Hungary

To Govern an Empire from the Distance – The Council of the Indies and the Viceroys of New Spain and Peru in the 16th and 17th Centuries

The Spanish Empire is not the subject of legal history studies in Hungary, thus in Hungarian Academic discussions there is no remarkable argument about the Spanish legal heritage in America for example. In recent years researches I focused on the Habsburg–Hungarian relations, the Spanish Habsburgs, and the Spanish Empire as well. In the Americas – the so called 'Indies' –, the Spaniards transplanted their own Iberian legal culture from the very beginning, developing a system of government or justice modelled on Spain. The Spanish monarchs considered the Indies no colonies, but full part of the Crown of Castile. Although the Habsburg rulers (1517–1700) of the Spanish Empire never visited the Indies – as they rarely (or never) visited some of their European provinces like Portugal, Italy or the Low Countries –, they reorganised the former Junta of the Indies (1511) and created the Council of the Indies (1524) to govern the Kingdoms of the Indies (New Spain and Peru) with the help of the most experienced people returned from there. The majority of the councillors and officials had served in the Indies before they became members of the Council of the Indies, two presidents (Pedro Moya de Contreras and Luis de Velasco y Castilla) had served as Viceroys of New Spain and Peru before they occupied the chair. The most important Laws were prepared and proposed by the Council of the Indies like the Laws of Burgos (1512) or the New Laws (1542). The period of conquest was followed by a period of consolidation with Emperor Charles V creating the dignities of Viceroy of New Spain in Central America (1535) and the Viceroy of Peru in South America (1542). The most important primary sources are available online in digital format. This year a short but an informative article of mine about the Spanish Habsburg legal heritage in America was published in the Journal Kommentár. This time I analyse the legal regulation of these institutions (Council of the Indies, the Viceroys) and compare theory with practice.

Livia Solana
PhD student
University of Parána, Brazil

The Construction of Transnational Spaces for the Circulation and Translation of Knowledge and an Example in the History of Administrative Law

The classic history of law tends to analyze law from a national perspective, looking at what comes from the State. But another perspective can be welcomed, the possibility of analyzing the production of norms in spaces that go beyond national borders, seeking to understand the circulations and conceptual translations among the actors of a given community, as a communicative system. It is possible to use this tool to take a new look at the history of administrative law. This paper seeks to verify the existence of relations between administrativists from Spain, Argentina, Chile and Mexico, between 1840 and 1930, based on the analysis of three primary sources: the structure of references in the works of each author (administrative law doctrine published during that period in each country); the presence of their works in the catalogs of the main libraries of the time (analysis of the library catalogs of the National Archives and the main universities in each country); and their news in newspaper clippings (digital newspaper library). From the data already collected, it was possible to confirm an important transit of ideas and discourses between administrative scholars, a flow of exchanges that was not unidirectional but circular. Although Spanish authors used few quotations from American works in their books, the presence of numerous newspaper reports in which Chilean personalities appeared, for example, shows that there were intellectual exchanges between these centers, and that the authors were known in the Iberian world both for their political and academic careers, linked to administrative law. On the other hand, the Spanish influence in the references of American authors was widely recognized, as well as the presence of their books in library catalogs and news in periodicals. Considering that an epistemic community is a group of people who share a common episteme, who have fundamental ideas about the world and ways of thinking and acting in it, whose activities are somehow related to a shared field of action, it can be said that the authors shared this communicative system beyond national borders.

Michał Gałędek
Professor
University of Gdańsk, Poland

Paulina Kamińska
Assistant professor
Jagiellonian University, Poland

What Did Administrative Rights, Administrative Code, Administrative Execution and Administrative Jurisdiction Mean in the Kingdom of Poland at the Beginning of 19th Century?

At the beginning of the 19th century, there was no scientific literature in Poland that explored the meaning of the administrative law terms used at the time. Despite this, such terms as administrative law, administrative code, administrative jurisdiction or administrative execution remained in circulation. They were used in the texts of legal acts and became the subject of discussion in government offices preparing them. Officials tried to assign specific meanings to these terms relatively precise meaning.

The main goal of this article is to establish, based on archival sources, such as minutes of government meetings and official reports, the way in which the terms used at that time were understood. This research problem as well as the source basis of the work were not the subject in legal history.

The beginning of 19th century was the period of creation of the first modern states on Polish lands, in the form of the Napoleonic Duchy of Warsaw and then the Congress Kingdom of Poland. The research may bring us closer to answering the question whether at this time we can already speak of the birth of modern administrative law. When analyzing these issues, it is important to determine what role the Warsaw School of Law (1808) and School of Administration (1810), established for the first time in Poland, played in the processes of shaping the terminology of modern administrative law. What were the contents of the lectures? And also what was the degree of penetration of the German *Polizeiwissenschaft* as the best known in Poland at that time and a natural source of inspiration?

Ivan Kosnica
Associate professor
University of Zagreb, Croatia

Iva Lopižić
Associate professor
University of Zagreb, Croatia

Croatian Legal Tradition, Centralisation and the Great Prefect of the Zagreb Region (1922–1929)

The paper analyzes the position of the great prefect of the Zagreb region in the Kingdom of Serbs, Croats and Slovenes in the period from the establishment of the new administrative organization in 1922 until the transition to a new model in 1929. The starting point of the research is the assumption that the authorities of the Kingdom of Serbs, Croats and Slovenes used the new administrative organization as a tool for strenghtening of centralism and abolishment of normative and legal cultural differences formed before 1918. The key figure in this new administrative system had to be the great prefect, a person appointed by the central authorities and in charge of implementing state interests at the local level. However, with the introduction of this new administrative model, normative and legal cultural differences did not disappear. Therefore, the question arrises, how the great prefect acted in that complex normative and legal-cultural system that contained the new regulations, but also old regulations from the period before 1918. The question is rather complex and possibly differs on a case-by-case basis. That is why, the analysis is conceived as a case study of the position of the great prefect of the Zagreb region, a state official who acted in the area which followed the Croatian legal tradition. More broadly, the study includes a legal comparative dimension since it presumes a comparison of the earlier administrative organisation, that was influenced by Austrian model, with the new one, that in principle followed French ideas about administrative organization. The study is largely based on the research of primary archival sources, primarily the archival fund of the great prefect of the Zagreb region (1922–1929) available in the Croatian State Archives in Zagreb.

Panel 27. From Law of Nations to Public International Law: Theory and Practice on the Verge of Professionalisation (1700–1870)

(Nagy Ferenc Classroom, JK206)

Chair: Cosmin Cercel

(Professor, University of Ghent, Belgium)

Stefano Cattelan
Postdoctoral researcher
Vrije Universiteit Brussel, Belgium

Venetian and Nordic Neutralities at the Turn of the 18th Century: Comparative Perspectives

Nordic neutrality (i.e. Dano–Norwegian and Swedish) is often considered a success story of the long 18th century. During an era of recurrent maritime conflicts between great naval powers – notably Britain and France – the volume and geographical scope of Nordic navigation profitably expanded across the world oceans. Both the governments in Copenhagen and Stockholm repeatedly defended their subjects' rights as neutral merchants and carriers in the face of belligerent privateers and naval captains' assertiveness. Instead, the Republic of Venice is traditionally considered as a declining and increasingly peripherical polity already by the late 17th century. Its consistent policy of neutrality – on land and at sea – amid the conflicts of the age is viewed as mostly motivated by its military weakness more than a strong ideological commitment.

Building on the close and distant reading of primary sources from different archives, e.g. the State Archive in Venice and the Diplomatic Archives in Paris, this paper aims to provide a contextual and comparative analysis of the different legal practices and perceptions of small- power neutrality that emerged and developed in the long-18th century. It will do so by comparing a Mediterranean perspective (Venice) and a Northern European one (Sweden and Denmark–Norway).

The focus will rest on the use of legal arguments based on neutrality and freedom of navigation (encompassing both natural law and treaty law) to boost the agency, geoeconomics and natural right to self-preservation of smaller international players faced with superior military might. With relation to archival sources, the focus will rest on documents dating from the wars of the end of Louis XIV of France (Nine Years' War, 1688–1697; War of the Spanish Succession, 1701–1714), a juncture during which the opposing sides (France vs Britain, Dutch Republic, the Emperor and others) exercised unprecedented pressure over smaller neutral polities.

Such a study has a direct relevance in today's world, where smaller powers' legal-political posturing is yet again confronted with the choice of either align or stay aloof in the context of a renewed rivalry between great powers, either geoeconomic or military.

This presentation is part of the FWO Junior Fundamental Research Project G016122N, "In the Shadow of the Great Powers: Freedom of the Sea and Neutrality in the Long Eighteenth Century" (2024–2026) (Vrije Universiteit Brussel).

Frederik Dhondt
Associate professor
Vrije Universiteit Brussel, Belgium

Containing and Instrumentalising State Violence in Early Enlightement Europe (1718–1726)

Legal historian Lauren Benton recently produced a sweeping and incisive bottom-up synthesis of the use of force between polities, amalgamating sovereignty, ius ad bellum and ius in bello. By taking a step back from European doctrinal categories, the author constructs metaconcepts and invents a new vocabulary to describe the chain of precarious truces, rather dan treaties of peace, and relations of domination, submission and overlordship. In doing so, she demonstrates that the generic building blocks of contemporary international law can be traced back across space and time. The classical European canon is not written out of the story, but the singularity or uniqueness of many landmark theories is relativised.

Comparative legal history helps to better understand the premises and argumentation of our own legal culture. This is certainly useful for a crucial element of the early modern and contemporary state system: neutrality, or a polity's choice not to take part in a conflict between two others, entailing the duties of abstention and impartiality. Rather than perceiving the neutral party as in need of protection, as in the work of the French lawyer Gaspard Réal de Curban, this strategy can also conflict with pre-existing obligations resulting from an alliance.

The copious memoirs of French top civil servant Nicolas-Louis Le Dran discuss the dilemmas of neutrality and the ius ad bellum faced by the Dutch Republic and France during the (formal) War of the Quadruple Alliance (1718–1720) and the (informal) Anglo–Hispanic conflict of 1726–1727. Both conflicts involved the crucial European trade with Spanish America. In the former case, Dutch free riding behaviour was perceived as ungrateful and selfish by Britain and France. In the latter case, Britain implored its French ally to declare war in due form, blaming Spanish assistance to an Imperial breach of the law of nations (which Britain intended to repress erga omnes) as a casus foederis (inter partes). Doing so would allow for the issuing of letters of marque for privateers.

As Benton demonstrates, a discourse that we link to relations between nations or states and that should proclaim peace as the general rule, rather than the exception, could and still can serve private interests. Early modern conflicts never ended, just as many small wars or conflicts by proxy today. The participants' legal imagination could exploit this cycle to achieve private ends... by public means.

This presentation is part of the FWO Junior Fundamental Research Project G016122N, "In theShadow of the Great Powers: Freedom of the Sea and Neutrality in the Long Eighteenth Century" (2024–2026) (Vrije Universiteit Brussel).

Raphaël Cahen
Senior researcher
Justus-Liebig University Gießen, Germany
Vrije Universiteit Brussel, Belgium

Legal advisers in foreign affairs and the birth of the legal profession around 1860: the case of Japan and the Ottoman Empire

International law is the fruit of the legal imagination of jurists and scholars throughout the ages. Yet, in order to grasp the construction of the discipline even before it was formally born, a new historiographical trend consist in analysing the interconnexion between theory and professional practices by looking at the identity of the jurists, their training, as well as their professional practices.

In addition, numerous studies have been carried out on the international legal profession and on professions related to the interplay of practice and theory of international law and diplomacy.

The mutual influence of international relations and law (broader than just international law, encompassing equally the comparison of legal systems and cultures) has also recently been studied, as has the notion of experts and expertise.

The figure of the international law expert, already emerging in the 16th century and consolidated in the 18th, was to be personified by the profession of legal adviser around 1860.

As part of the modernization process, a number of centuries-old non-European empires created positions for legal advisers, and even wholesale foreign ministries e.g. Japan and the Ottoman Empire. These offices were initially filled by foreigners.

Based on unpublished Japanese and Ottoman sources, this paper proposes a comparative study of the legal adviser institution.

Panel 28. The Codification and Practice of Legal Institutions from the Field of Property Law

(Kemenes Béla Classroom, JK208)

Chair: Agustín Parise

(Associate professor, University of Maastricht, Netherlands)

Anna Novitskaya
Postdoctoral researcher
University of Vienna, Austria

"Personal" and "Real" Property Rights: The Influence of Roman Law, Natural Law, and the ABGB on the Broad Understanding of Property Rights in the Civil Code (Svod Zakonov Graždanskich) of the Russian Empire in the 19th Century

The distinction between *res corporales* and *res incorporales,* which shapes modern civil law dogmatics, undoubtedly originates from Roman law. It is documented in the works of Gaius (Gai 2.12–14), the Digest (Gai. 2 inst. D. 1.8.1.1), Justinian's Institutes (I.2.2.2), and other Roman legal sources. This distinction further influenced the scholarly systematizations of civil law shaped by natural law and found its way into the European civil law codifications of the 19th century. Especially, in the Austrian ABGB, the concept of "thing" (*res*) is broadly defined (§ 291 ABGB), and property rights are subsequently divided into personal and real property rights (§ 307 ABGB) in accordance with the Roman law distinction between *res corporales* and *res incorporales.*

This Roman-based distinction also underlies the 19th-century Russian civil law codification, the so called *Svod Zakonov Graždanskich* (SZG) from 1832. The drafting of SZG was led by the Hungarian-born legal scholar Mihály Balugyánszky and the Russian jurist Mikhail Speranski.

The structure of the SZG, which is the focus of this presentation, follows the institutional system (*personae-res-actiones*). In particular, property law is conceptualized in line with natural law and distinction between *res corporales* and *res incorporales.* This is especially reflected in the distinction between existing property (*naličnoje imušestvo*) and debt property (*dolgovoe imušestvo*) (see 416–419 SZG). Subsequently, property rights in the SZG are divided into real property rights (*prava na imušestvo*) and personal rights (*prava po objasateľstvam*). A similar structure is found in the ABGB, where the distinction between personal and real property rights is made in § 307.

In my presentation, I will explore the classification of property in the SZG and, in particular, highlight its similarity to the ABGB. The aim is to examine the often unsubstantiated assumptions in the research about the influence of foreign law on 19th-century Russian civil law through a concrete comparison between the *Svod Zakonov Graždanskich* and the ABGB.

I hypothesize that the influence of the ABGB on the SZG can be attributed to the involvement of the Hungarian-born jurist Mihály Balugyánszky, who was educated as a lawyer in Austria at the University of Vienna. In my presentation, I intend to shed new light on the significant role of this legal scholar in the codification efforts of the Russian Empire in the 19th century.

Asya Ostroukh
Senior lecturer
University of the West Indies, Barbados

Materials of Codification Commissions in Francophone Switzerland, Louisiana and Quebec as an Important Source for Understanding Modern Property Law

This paper analyses the role which working materials of codification commissions in Francophone Switzerland, Louisiana, and Quebec have played in our understanding of the property law institutions in this jurisdictions' civil codes of the 19th century that were different from their primary model – the Code Napoleon of 1804. The analysed materials are the minutes of the sessions of the legislative commissions in the canton of Fribourg (archival source, 1834–1849), Bulletin of the Discussion of the Code civil of the Republic and Canton of Neuchâtel (1853–55), Preliminary Report of the Code Commissioners in Louisiana (1823), and the Reports of the Commissioners for the Codification of the Laws of Lower Canada Relating to Civil Matters in Quebec (1865). These materials contain information about discussions surrounding the distinction between real and personal servitudes not recognised by the French Code (all jurisdictions), possible recognition of possession as a standalone real right (Fribourg and Neuchâtel), preservation of real rights inherited from the customary law period that were excluded from or limited in the French Code (emphyteusis in Quebec, the rent of land (*rente foncière*) in Louisiana, and numerous specific real rights of the *Ancien Régime* in Fribourg and Neuchâtel), provisions on neighbour law concerning distances between plants and structures on neighbouring plots of land (all jurisdictions), and usufruct (Louisiana, Quebec, and Neuchâtel). Analysis of these codification commissions working materials takes us to the conclusion that in all the jurisdictions in question the reception of the book on property of the French Civil Code was a creative, well-thought-out enterprise that took into account local particularities and interests, as well as historical sources of local law. The law that was received was customised in order to fit the needs of the respective societies and to comply with the already existing legal systems. Given that in Quebec and Louisiana the reports of the codifiers have become an important doctrinal source of law, while in Switzerland even after the national codification in 1912 some provisions of cantonal civil codes concerning property law remain in force, codification commission materials can also be considered as important texts of great assistance in understanding modern property law in the jurisdictions in question.

Piotr Pomianowski
Professor
Univesity of Warsaw, Poland

Divided Ownership in Rural Relations of the Duchy of Warsaw and the Congress Kingdom in the Light of the Primary Sources

Since 2019, I have been implementing a project aimed at analyzing relations between the nobility and the peasantry on the central Polish lands: from the abolition of serfdom (1807) to the emancipation (1864) in light of legal practice records. As part of the project, I conducted extensive archival research covering notarial deeds and mortgage registers. Based on the analysis of these sources, I would like to present the phenomenon of divided ownership in the Duchy of Warsaw and the Congress Kingdom of Poland.

Divided ownership involves the division of the attributes of ownership between the superior owner (e.g. an heir to a landed estate) and the subordinate owner (e.g. a peasant cultivating an allotment of land). The legal status of a subordinate owner is distinguished from a tenant's one because of the real nature of his rights.

The Napoleonic Code introduced to the Duchy of Warsaw and maintained in the Congress Kingdom did not recognize divided ownership, but only full capitalist ownership. Its reception did not, however, mean any liquidation of existing property rights – even if they were not known to the Code. Nevertheless, my research has shown that in the period of the Congress Kingdom, divided ownership was maintained not only where it had existed since the times preceding the introduction of the Napoleonic Code, but it was also created in new real estates on a large scale (the purchasers obtained only subordinate ownership – despite the fact that there was no legal basis for creating property rights unknown to the Code).

The research questionnaire included such elements as property description, method of acquisition of ownership, transfer of possession, entry of rights in the mortgage books, eviction, description of benefits for the superior owner (mainly rents and labour), price (it was also indicated in life tenancy contracts), *laudemium* and propination. The analysis confirmed that divided property, unknown to the civil code, played a significant role in rural realities. At the same time, a general description of this institution is very difficult due to the enormous variety of provisions contained in individual contracts.

Joshua C. Tate
Professor
Southern Methodist University, USA

From Land to Liberty: Immigration and Property Rights in the U.S. Declaration of Independence

For much of European legal history, the foreigner or stranger was treated as a marginal person and deprived of some part of his or her identity. By contrast, freedom of movement and of residence is regarded by many today as an important fundamental right. The articulation of such a right in the seventh charge against King George III in the U.S. Declaration of Independence (1776) is certainly worthy of note. Scholarship on the Declaration, however, has not focused on the migration aspect of the seventh charge, but rather on what Herbert Friedenwald, a leading historian of the Continental Congress at the turn of the twentieth century, called "the little known affairs of land grants and naturalization." According to this view, the grievance in the seventh charge had two royal decisions primarily in mind: a royal proclamation from 1763 restricting the boundaries of the colonies, and a Privy Council order from 1773 and subsequent instructions from 1774 restricting grants of land in the colonies and requiring the payment of quitrents to the king. The connection between these relatively obscure royal decisions and the seventh charge of the Declaration is based in part on an earlier document written by the Declaration's author, Thomas Jefferson, and entitled A Summary View of the Rights of British America (1774). In that earlier work, Jefferson had complained about the additional burdens imposed on landholders in the king's recent decisions, criticizing them as reflecting a misunderstanding of the nature of landholdings in America.

Although the seventh charge of the Declaration of Independence was doubtless inspired in part by the king's proclamations from a few years earlier relating to colonial landholdings, this paper will argue that the charge nonetheless reflected a broader commitment to the principle of freedom of movement and the rights of immigrants. Even in 1774, Jefferson had spoken of freedom of movement as a fundamental right of all men. In any case, the views that Jefferson expressed in 1774 when he still thought of himself and his fellow colonists as the loyal subjects of King George, were not necessarily at the forefront of his thought by the revolutionary summer of 1776.

Panel 29. Comparative Perspective on Legal Survivals in the Central European Post-Socialist Legal Space – Session 1

(Kovács István Classroom, JK201)

Chair: Piotr Eckhardt

(Postdoctoral researcher, Ignatianum University in Cracow, Poland)

Rafał Mańko
Research affiliate
Central European University Democracy Institute, Hungary

Circulation of Legal Forms in Time and Space: Survivals and Revivals

The aim of this paper will be discuss the growing scientific consciousness of the phenomenon of circulation of legal forms in time and space, which will be thematised through the concepts of 'legal survivals' (denoting legal forms which emerged in the past and have been used later on, with a changed social function) and 'legal revivals' (denoting legal forms which existed in the past, disappeared, but were later on, often many centuries later, reused). Concerning legal survivals, the paper will recall the concept of Scheingeschäfte introduced by Rudolf von Jhering to denote the formal legal acts of archaic Roman law (such as mancipatio or in iure cessio) which, over the centuries, completely changed their significance and function. Von Jhering's approach will be confroned with Ernst Rabel's theory of nachgeformte Geschäfte, which is still used in modern Romanist scholarship. Following these roots, the paper will look at the emergence of a more comprehensive theory of legal survivals, noting the use of the term 'survival' by Oliver Wendell Holmes, and the sociological theory of legal form which changes its social function advanced by Karl Renner. Against the background of legal survivals, the paper will introduce the concept of legal revivals, referring to Theo Mayer-Maly's concept of Wiederkehr von Rechtsfiguren and Tomasz Giaro's notion of Resurrektion, both used in the context of legal forms which were revided many cenrturies later in profoundly different circumstances. The paper will analyse the utility and viability of those concepts against concrete examples of legal survivals and revivals both in Roman law and in the Civilian Tradition, with particular focus on the socialist legal survivals in Central and Eastern Europe. In particular, it will compare the structural features of legal survivals analysed by Romanists as nachgeformte Geschäfte with the socialist legal survivals analysed in the Central European context (e.g. the right in rem to an apartment in a housing cooperative, the right of perpetual usufruct, or the prosecutor's right of standing in civil proceedings). The goal of the paper will be to argue for a common research framework on legal survivals, which can be applied in various times and places, given the similarity of the phenomenon and its common formal structure.

Dorota Miler
Associate professor
University of Gdańsk, Poland
University of Augsburg, Germany

Intestate Rights for Individuals Living in a Common Household as a Legal Survival of Soviet Law

In Albania, Belarus, Czechia, Slovakia, the Russian Federation, and Ukraine, persons living in a common household can inherit from each other if their estates are not fully distributed under valid testamentary dispositions. Namely, intestate rights are provided for individuals who lived with the deceased in a common household for a certain period directly before his or her death and were dependent on the deceased for maintenance, or (in Czechia and Slovakia) cared for the common household. Depending on the jurisdiction, these individuals inherit in the second (Albania, Czechia, Slovakia) or the fifth order of succession (Ukraine) or alongside statutory heirs called to inherit (Belarus, Russian Federation).

This unique legal institution was clearly inspired by article 418 of the Soviet Code of 1922. Albania and Czechoslovakia adopted it in the 1950s. As Belarus, Russian Federation and Ukraine belonged to Soviet Union, this legal institution applied on the territories of these countries since it was introduced in Soviet law.

Despite their Soviet origins, intestate rights for individuals who lived with the deceased in a common household – as a legal survivor – were retained as part of the contemporary law of the listed jurisdictions. In Ukraine and Czechia, they remain in force even after revisions of the civil law during the drafting of new civil-law codes of 2003 and 2012, respectively.

This paper discusses the history of the adoption of intestate rights for members of a common household in Soviet law and in countries belonging to the Eastern bloc. It briefly compares the relevant national provisions and their application. The focal point lies in exploring the reasons for retaining intestate rights for members of a common household in Czech law under the Civil Code of 2012. The research is based on parliamentary materials, codification commission materials, and legal publications.

The findings of this paper (content of the legal provisions, practical experience in their application, and, most importantly, reasons for their adoption and retention) are relevant for jurisdictions considering adopting norms granting intestate rights to members of blended families or unmarried partnerships. Thus, they can inform the development of law in the contemporary period in other European jurisdictions.

Peter Čuroš
Assistant professor
Institute of Political Studies, Polish Academy of Sciences, Poland

One to Rule Them All–the Slovak Public Prosecution Service

This paper will delve into the public prosecution office in Slovakia, tracing its origins from the pre-war era in Czechoslovakia to the post-1948 transition to the Soviet type of prosecutionservice. Through this historical analysis, the paper will evaluate the conditions in which the prosecution service finds itself today. Furthermore, the paper will compare the main prosecutorial models in Europe, with a focus on the post-1989 developments in neighboring countries.

Based on the interviews with the Slovak prosecutors and thanks to the inputs gathered from meetings organized with prosecutors and legal experts in Slovakia, the paper will present the main theses for the planned reform of the prosecution service in Slovakia.

The Slovak prosecution service in the current form is a survival from the state socialism with several amendments adopted after 1989. The institution is characterized by centralization, strict hierarchy, and minimal autonomy of the prosecutors. It is a relatively ineffective and expensive state institution resilient to changes and reforms. The paper will present the reasons for this resilience and track their origins in the past.

In practice, all the power is concentrated in the hands of the prosecutor general. This individual has the authority to order, open, or close any case, at any level, in any prosecutor's office in the country. Such a concentration of power makes the prosecutor general a crucial figure, akin to Sauron with his ring, and their decisions can have far-reaching implications.

Panel 30. Building the Public Law Based on the Past

(Buza László Classroom, JK203)

Chair: Manuel Gutan

(Professor, University of Sibiu, Romania)

László Komáromi
Associate professor
Pázmány Péter Catholic University, Hungary

Possible Precursors of the Direct Democratic Institutions of the Girondin Draft Constitution of 1793 and Their Impact on Later Constitutional Development

The Girondins' constitutional plan, drawn up after the dethronement of Louis XVI and the abolition of the kingdom, never entered into force, but it is an important document in modern constitutional history. Authored by Nicolas de Condorcet, it was he who presented the draft to the National Convention in February 1793. What makes the project special is its provisions on democracy, and in particular on direct democratic institutions: it is the first modern European constitutional document to lay down detailed rules on the direct exercise of power by the people. Condorcet considered that the most important guarantee of fundamental rights was the right of the people to have a direct say in the affairs of state.

The institutions relating to the direct exercise of power by the people were divided into two categories. The "droit de censure" was intended to control the Legislature by the citizens. It allowed the people, assembled in primary assemblies, to propose the repeal of constitutional, legislative or general administrative act adopted by the Legislative Body, to amend existing laws or to adopt new ones. If the required number of primary assemblies supported such a proposal, the Legislative Body was obliged to discuss it, otherwise it risked being dissolved by the primary assemblies. In such a case, members who did not support the popular proposal were not eligible for re-election.

Another set of direct democratic institutions was related to the constitutional amendment process. Constitutional amendments could be initiated by the people themselves, assembled in primary assemblies, by means of a general proposal setting out the substance of the amendments they considered necessary. The detailed draft had to be drawn up by a constitutional convention and finally adopted by the people. The Girondins' draft constitution also provided for a review of the constitution every 20 years, even if neither the primary assemblies nor the Legislative Assembly had taken the initiative.

This presentation will focus on the possible sources of direct democratic institutions in the Girondins' constitutional plan and the subsequent impact of the constitutional plan through the method of comparative constitutional history. The possible antecedents of the rules of constitutional amendment can be traced in certain American colonial and state constitutions. In America, the role of the constitutional convention and the people in constitutional amendment

is discussed not only in the constitutional texts but also in the official journals of the conventions (e.g. Journal of the Convention for framing a constitution of government for the state of Massachusetts Bay...) or the collections of the historic documents of the colony (e.g. Documents and records relating to towns in New Hampshire...), e.g. in case of the Massachusetts constitution of 1780 and the New Hampshire constitution of 1783. A possible forerunner of the periodic mandatory revision of the constitution is also found in the New Hampshire constitution. The earliest form of popular initiative for constitutional amendment is found in the Constitution of Georgia of 1777.

The later influence of the Girondins' constitutional plan – and the Jacobin constitution of 1793, which was also partly inspired by it – can be seen mainly in certain Swiss cantons which introduced the popular veto, first in Sankt Gallen in 1831. The popular veto allowed citizens to protest against a law passed by the people's representation in municipal assemblies and to prevent its entry into force. The provisions on popular constitutional initiative in the Swiss Federal Constitution of 1848 also contain elements similar to those in the Gironde constitutional plan. The presentation will also point out these parallels by comparing these constitutions.

Dávid Surjányi
PhD student
University of Pécs, Hungary

From Napoleon to the Muslim Brotherhood – How Western Legal Impact Led to Egypt's Partial Secularization, as well as Its Sharia-Based Antithesis: Islamism

The Egyptian society first encountered a Western legal system upon Napoleon's invasion of the North African country. There is considerable debate in the postcolonial context whether this pivotal event heralded the modern era in the Middle East or not. This dispute is relevant to us in the present research inasmuch as it gives us insight into legal and political developments towards a more Westernized and more secular society in Egypt, as well as the religious and societal reactions thereto. Our focus in this paper is on the public legal formation of secular institutions that started to emerge from the 19th century. Especially the period from Muhammad Ali (who founded the 'majlis al-musavara', the consultative assembly which is arguably the first Arab experiment with Western democracy) and later the developments under British influence (1882–1956) will be examined. Our aim in this historical analysis is to show that this process not only granted a certain level of secularization in Egypt, but also led to a two-way antithesis in the Egyptian society. On the one hand, it triggered the rise of a 'political antithesis': the nationalist movement. On the other hand, in peculiar fashion these two combined also produced a very strong common 'religious antithesis': Islamic fundamentalism. We will relate to this latter element: Islamic fundamentalism (and all that branched out therefrom, such as Islamism etc.) will be analysed as it seeks to revert the secular process. Some groups to this very day vie for the 'retraditionalization' of society to early Islamic norms and religious law (sharia), providing us a convenient ground for comparative analysis of these opposing legal systems.

Josep Capdeferro
Associate professor
Pompeu Fabra University, Spain

Avoiding Partiality in Major Disputes. Three Inspiring Experiences from Early Modern Catalonia

What is commonly known as the modern state building process had its particularities in each European territory. In Catalonia, as in other lands of the Crown of Aragon, until the mid-1710s, there persisted alongside the monarchy, with varying quotas of jurisdiction, other powers closer to the political community – embodied in the clergy, the nobility and the oligarchies of towns and villages.

Understandably, there were both concordant and discordant interests among so many political actors and, within the framework of a rich and intense parliamentary tradition, suggestive mechanisms were developed to resolve disagreements. Some of these deserve close attention not only to understand the past, but above all to inspire solutions for the present and future, where states visibly have to deal with alternative powers, sometimes willing to cooperate, sometimes only to compete.

The three historical experiences proposed by way of inspiration were uncommon and are known from diverse primary sources that have been uncovered between 2014 and 2024 – they are still virtually unknown at the international level. Presenting them publicly will perhaps allow them to be contrasted with relatively similar cases in other countries.

They have four elements in common: 1st) In a more general or particular way, they were embedded in historical constitutionalism and contributed to its development; 2nd) the obsession to seek a non-partial solution, as neutral as possible, to conflicts of high jurisdictional or political complexity; 3rd) the interaction between two spheres of power that were considered similarly relevant, at least in dignity – whatever the formal primacy of one over the other –; 4th) they contributed objectively to avoid abuses of power, that is, they limited the overreaching of public and private officials in the exercise of their acts.

One of the experiences, formally in the form of a third arbitrator or umpire who would intervene to break deadlocks between ecclesiastical and royal jurisdictions, functioned successfully on a regular basis over three centuries and established valuable jurisprudence. The other two had a stronger political accent and were activated on a more occasional basis, during periods of manifest exceptionality – both had been long claimed and would hardly have been granted in a context of normality. This said, it is often on the occasion of gigantic challenges that major institutional changes are addressed.

Konrad Rokicki
PhD student
University of Warsaw, Poland

State and Party Control over the Judiciary during the Stalinist Period: A Comparative Analysis of Similarities and Differences in Poland and the Lithuanian Soviet Socialist Republic

The main objective of this presentation will be to provide a brief overview of the methods of State and Party control over the judiciary during the Stalinist period (1944–1956), based on archival documents, made in Poland and Lithuanian SSR.

It is undeniable that the communists, who gained power in Central and Eastern European countries with Soviet support, pursued extensive sovietization efforts in these states. That process involved total control over political and social life, the complete elimination of all opponents of the communist regime etc. The Stalinist "reform" extended not only to the Party system, economy, and press but also to science, law, and the judiciary. The judiciary, crucial for the authorities (particularly as the communist law enforcement was expected to align with the prevailing Marxist–Leninist ideology), was also subject of this communist policy. Formally, ministries of justice exercised certain forms of oversight over the judiciary. However, the organs of the communist party played there a particularly significant role.

Was this control forms and methods similar across different countries in the region, and to what level it varied, perhaps influenced by each country's legal traditions? I believe the answer to this question lies primarily in research based on archival sources, including internal documents from ministries of justice and communist parties. From this diverse collection of materials (including meeting protocols, executive documents, inspection reports, etc.), it is possible to create a list of similarities and differences. These findings could serve as a beginning of further research on the functioning of state institutions not only in the communist countries of Central and Eastern Europe in the latter half of the 20th century but also in contemporary non-democratic states.

The choice of Poland and Lithuania provides an excellent starting point for this research, given the countries' different historical, political, and legal experiences before 1944, and, conversely, the identical political goal of total sovietization of the judiciary in both Poland and Lithuania. The fact that Lithuania was part of the Soviet Union is not an impediment; on the contrary, it allows for a comparison between the "Soviet model" and the "Polish model," highlighting Soviet influence on Poland's judicial system.

The presentation will be based on archival materials from the Ministry of Justice of Poland and the Lithuanian SSR, as well as documents from the PPR/PZPR and LKP(b) parties. The archival materials are held at the Archives in Warsaw (AAN) and Vilnius (LCVA, LYA).

Panel 31. The Effect of War on Law

(Nagy Ferenc Classroom, JK206)

Chair: Luisa Brunori

(Professor, École Normale Supérieure, France)

Przemysław Gawron
Lecturer
University of Warsaw, Poland

Jan Jerzy Sowa
Assistant professor
University of Warsaw, Poland

The Standing Army Debate in the Polish–Lithuanian Commonwealth in the 17th Century

Permanently maintained armed forces are now recognised as one of the key attributes of sovereign states. This was not always the case. It was only as a result of the so-called military revolution in the early modern period that European countries began to maintain their armies also during peacetime, rather than disbanding them immediately after a conclusion armed conflict. However, this change did not take place without resistance from societies forced to bear a greater financial burden because of it.

The subject of our paper is the discussion that took place on the maintenance of a standing army in the Polish–Lithuanian Commonwealth in the 17th century. Admittedly, the Polish Crown had maintained a small standing force since the turn of the fifteenth and sixteenth centuries to protect the south-eastern borderlands of the country, but the challenges of international rivalry in the seventeenth century required the retention of a much larger army. On the basis of diaries of the Sejm sessions (a main legislative organ of the Polish–Lithuanian Commonwealth), as well as documents issued by local assemblies of nobility (the sejmiks), we will analyse the arguments that the Polish–Lithuanian nobility put forward in the debate on maintaining a standing army. We will also show how the attitude of the nobility influenced the shaping of specific military law solutions.

We will demonstrate how the issue of maintaining a standing army was entangled in the broader political debate in the Polish–Lithuanian Commonwealth. Noble society feared that the army could become a tool in the hands of monarchs seeking to strengthen their power. Finally, we will compare the debate taking place in the Commonwealth with the better known one – that taking place in England at the turn of seventeenth and eighteenth centuries.

Tania Atilano Camacho
Posdoctoral researcher
University of Zürich, Switzerland

The Practice of the Laws of War During the Independence War in Mexico

Little is known about the practice of the laws of war during the nineteenth century in Latin America, even though the wars of independence offer a wide array of materials on the subject. In the following, I will illustrate my claim with two documents that can be found in the National Archives in Mexico (*Archivo General de la Nación*). The first one is a manifesto from 1812 written by Mexican insurgent belligerent José María Cos, entitled *Plan de Paz y Guerra* (Plan of peace and war). The document was addressed to the Spanish Army, and in this document, the insurgent leader appeals to humanity among warring parties as both parties had violated "natural and positive law". In this manifesto José María Cos draws a plan to conduct hostilities, in which he invokes the "law of nations and the laws of war" as applicable. He appeals to compassion between states parties and urges to inflict "the less possible harm", by treating well prisoners of war, not making them subjects of cruel treatments or execution and not injuring belligerents out of combat. Equally, according to José María Cos, exchange of prisoners should be arranged, and belligerents should abstain from attacking civilians, civilian property and villages. The second set of documents are the letters between the Mexican insurgent Santa Ana and the Viceroy Juan de Odonojú from 1821. In these letters, the insurgent Santa Ana negotiated the treatment of prisoners of war and arranged a plan to exchange prisoners before signing the peace treaty between the Kingdom of Spain, and the newly established state of Mexico. As we can see, the latter documents evidence the development of institutions such as the laws of war beyond Europe. They also show that the concern for limiting suffering during wartime did not emerge exclusively from Geneva but mirrored parallel developments across the Atlantic world. Such examples invite reflection on the historiography of subfields within international law such as International Humanitarian Law and underscore the potential insights gained by recognizing non-European contributions.

Sebastiaan Vandenbogaerde
Professor
Ghent University, Belgium

A Comparison of Belgian and French Tribunals of War Damages After World War I

The First World War (1914–1918) profoundly reshaped the global order, precipitating the fall of longstanding empires and the emergence of new power dynamics. Nations such as Belgium and the northern regions of France were severely impacted by occupation, enduring widespread destruction and profound societal disruption. Ypres and Verdun emerged as emblematic sites of what contemporaries termed "Teutonic barbarism," symbolizing the devastating toll inflicted on civilian lives and infrastructures.

Recognizing the immense challenges of both material and moral recovery, political leaders – even during the conflict – contemplated comprehensive strategies to address post-war reparative needs. The French and Belgian governments, actively willing to re-build the future for their citizens, introduced a "new right" (droit nouveau), assuring full compensation for wartime damages. Judicial intervention was deemed the most appropriate way to adjudicate these claims, leading to the establishment of specialized Tribunals for War Damages (tribunaux des dommages de guerre). These tribunals were vested with the authority to evaluate and grant reparations for civilian losses, encompassing both physical and material harm inflicted by the war.

Despite their well-intentioned establishment, these tribunals ultimately fell short in effectively overseeing the complex reconstruction efforts following the Great War. Critiques from legal scholars and the press highlighted several deficiencies: the legislative framework underpinning these courts was excessively convoluted, procedural formalities hindered efficiency, and staffing in some jurisdictions proved inadequate. The unparalleled devastation of the war meant that no legal professionals within these tribunals possessed prior relevant experience to guide their actions. Compounding these issues, the tribunals faced insufficient material support from local and national governments, who viewed the escalating costs with growing concern.

This contribution aims to elucidate contrasts between the French and Belgian Tribunals for War Damages. Juxtaposing the operationality of these courts, this contribution will be grounded in archival research. This archival examination will further be enriched with parliamentary debates, legislative records, and contemporary literature, offering a unique perspective on both the tribunals' operational frameworks and the social stratification that emerged in the post-war period. It shows an image of how countries rebuild their future.

Amber Gardeyn
PhD student
Ghent University, Belgium

Reshaping Europe: Post-War Institutions for Restitution in Belgium, France and the Netherlands

8 May 1945, Victory Day, the end of the Second World War and the dawn of a new era for Europe. The Second World War left its mark on the overrun European states, that now had to rebuild themselves. For Belgium, France and the Netherlands the wartime era was inextricably linked to the methodical deprivation of property rights of the targeted people by Nazi-Germany (spoliation). Striving to right the wrongs of the preceding time, states installed restitution institutions to restore the rights of the deprived by returning spoliated goods.

The lecture will delve into the history of the restitution institutions of three formerly occupied European states: Belgium, France and the Netherlands. It will more specifically focus on the restoration of property rights regarding cultural property as a case study. Each of the selected countries enacted an institution that had the recuperation and restitution of spoliated goods as their primary objective. For Belgium that task was taken up by the Service of Economic Recuperation, for France by the Commission for Artistic Recuperation and for the Netherlands by the Netherlands Art Property Foundation and the Council of Restoration of Rights.

Archival research into the different institutions shows that although the different national institutions had the same purpose, their methods of operation diverged, which lead to different results at the conclusion of the first post-war restitution round in 1960. Drawing upon the studied primary sources, the lecture will give a comparative overview of the history of the preselected institutions. Drawing from the comparison, the lecture will show that the choices made and the roads taken during this first round of restitution have been instrumental to the subsequent development of restitution policies and institutions. More specifically, since the 1990s and up until today, each of the three aforementioned states has been shaping and reshaping their restitution policy. This period is now widely accepted as the second round of postwar restitution initiatives. As a conclusion, the lecture will on the one hand show how the historical national choices have influenced the way in which restitution is approached now, and it will on the other hand offer explanations as to why the three countries still go their own way.

Panel 32: Legal Institutions of Law of Obligations

(Kemenes Béla Classroom, JK208)

Chair: Stefan Vogenauer

(Professor, Director of Max Planck Institute for Legal History and Legal Theory, Germany)

David Magalhães
Assistant professor
University of Coimbra, Portugal

The Lessor's Liability for Defective Objects. From Roman Law to the Draft Common Frame of Reference

The modern framework of the lessor's liability for defective objects can't be fully understood lacking previous research into its historical background. In fact, the present legal solutions about this subject are developments of different interpretations of Roman texts and can't be explained without their careful study. This task allows not only a de iure constituto approach but also a de iure constituendo one, as the development of law in the contemporary period can benefit from the results of past experiences.

Concerning material defects arisen after the leased object's delivery, it seems pretty clear that the lessor would be liable only if they were due to his fault (culpa), which meant he knew, or at least he should have known, the defect. This stems, v.g., from D.19,2,30 pr. (Alfenus libro tertio a Paulo epitomarum): if the building was demolished only to rebuild it better and to allow the landlord to make bigger profits, he had to pay the tenant what he had lost as a result of the subtenants leaving the insula; if the demolition was necessary given the poor state of the building, there was place only for the restitution of rents that had already been paid.

But what if the defects already existed when the goods were delivered? According to D.19,2,19,1 (Ulpianus libro 32 ad edictum), a distinction was made between the lease of jars to store wine and the lease of pastures. If jars were defective and the wine leaked, the lessor would be liable even if he was unaware of the defect, since his ignorance was not excusable. But if pastures had poisonous weeds that killed or harmed the grazed cattle, the landlord was only liable if he knew about the weed's toxicity; if he was unaware of it, there was place only for rent remission.

There is no consensus on Ulpianus' passage and, from the Glossators to the 19th century Pandectists, several interpretations emerged, the most important of which are the following:

1. The text reflected a fault liability rule; the ignorance of jars' defects was inexcusable, but the ignorance of pastures' defects would be understandable (v.g., Odofredus, Accursius, Baldus, Pacioni, Wesenbeck, the core of the usus modernus' doctrine, Holzschuher, Arndts, Jhering, Brinz).
2. The standard of liability was dolus (fraud) and this would have been mirrored by the solution presented for toxic pastures; therefore, the rule

for defective jars was exceptional (Bartolus, Paulus Castrensis, Cujacius, Wege, Friedrich Mommsen, Pernice, Salkowski).

3. There was an implied guarantee of soundness for leased jars and a resulting rule of strict liability; the pioneer of this interpretation was Donellus, according to whom a "jar" had to be understood as a non-defective jar, in parallel with the rules on sale contracts; in the 19th century, some German authors, namely Windscheid, extended the solution to initial defects of any object.

The first interpretation was received, e.g., by the Italian, Spanish and Portuguese legal systems, according to which the lessor's liability depends on his fault.

The third interpretation, in its broad 19th century version, was followed by the German BGB (now §536a), under the influence of Windscheid: no-fault liability for initial defects; fault liability if defects arise during the lease period.

In Scotland, Buchanan against Stark (1776) decided there was an "[implied] obligation, incumbent upon him, to put the houses in repair at the tenant's entry", which was an approach similar to the one based on Donellus and developed in Germany. Not surprising, although: the Scots Law was part of the ius commune and a comparable evolution of the interpretatio of D.19,2,19,1 is one of many proofs of that. Bell, Hunter and Rankine have followed Buchanan but, just like that decision, they never advocated for strict liability grounded on such a guarantee. However, concerning the landlord's failure to deliver premises without defects, the Todd v. Clapperton decision (2009) built a strict liability rule, on the assumption that a guarantee implies liability without fault.

That has certainly overstretched what the "earlier authorities" had written, as pointed out by McAllister's Scottish Law of Leases, but once again a result similar to that of German law was reached.

Regarding French Law, there is a strict liability rule for all defects, even those emerged after delivery (art. 1721 Code civil). The travaux préparatoires show this solution's roots, with no precents in the ancienne jurisprudence, lie in the project of the "Commission du Gouvernment, présenté le 24 thermidor an VIII" and its obvious justification was an analogy between sale and lease (D.19,2,2, Gaius libro secundo rerum cottidianarum sive aureorum), as noted by Jacques de Maleville, although Gaius' text doesn't allow such far-fetched result.

The Draft Common Frame of Reference contains a rule similar to the French one, applicable to the lease of movable goods. Is this a reasonable solution, especially concerning defects arisen after the object was delivered? I believe it is unfeasible to burden the lessor with a duty of permanent vigilance. In effect, a comparative historical methodology, based on the study of primary sources, helps us to understand why all no-fault liability constructions had unsound foundations: there's no reason for Ulpianus' text to contain a guarantee only for jars; by the same reasoning, a defective pasture wouldn't be a pasture either. Moreover, unlike sale – the purpose of which is property transfer – an implied guarantee is alien to contracts based on a permanent obligational scheme, such as lease.

Krzysztof Bokwa
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Jagiellonian University, Poland

Money for Pain? Non-Pecuniary Damage in Austrian law

The paper concerns the issue of regulation of non-pecuniary damage and its compensation in Austrian law until 1918 – i.e. until the end of the Habsburg era. This is an interesting issue, because in the 19th century it was Austrian law that became the arena of struggle between the Roman and Germanic traditions as to the permissibility of compensating suffering with money.

For that purpose the introductory part of the paper will be devoted to analyse the regulation of that issue in the contemporary Austrian legislation, especially in the Civil Code of 1811 (ABGB). The historical, philosophical and political background of the regulation will be examined in a comparative context; also the views, opinions and discussion of the contemporary Austrian lawyers will be reconstructed, regarding to the original literature. Furthermore, the regulations applied in the 19th century in Germany and France will be mentioned and compared to create a wide background for further deliberations. Also, the author will mention some particularly interesting cases judged by the Supreme Court in Vienna.

Furthermore, the paper will depict two main ideas on the regulation of non-pecuniary damage and its compensation, presented in European legislation in 19th–20th centuries – a narrow one, present in Austrian ABGB (monetary compensation of non-pecuniary damage treated as an exception, possible in certain situations), and a wide one, present i.a. in the Polish Civil Code of 1964, setting a universal and general legal basis for claims for compensation of non-pecuniary damage. Struggle of those two visions is visible especially in the history of Austrian jurisprudence and case-law in 19th century, but remains topical and controversial until today, e.g. in discussions on personal rights and the scope of their protection in the present-day Europe.

Hence, the following questions will be considered and answered:

- What was the teleological and historical background of the narrow regulation of possibility of compensation for the non-pecuniary damage in ABGB in 1811?
- What opinions about the existing regulation emerged in Austrian jurisprudence and case law (esp. of the Supreme Court in Vienna)?
- How the above-mentioned factors influenced Austrian legal thought and legislation in the lat 19th and beginning of the 20th century, esp. in the course of the amending of ABGB in 1914–16?
- Are the controversions and discussions over the topic of non-pecuniary damage, held in Austria before 1918, still relevant for the present issues of this area of law?

László Ádám Jóó
PhD student
University of Debrecen, Hungary

Relationships between Laesio Enormis and the Special Damage Mitigation Lawsuits following the Second Vienna Award

In my presentation I would like to introduce the main relationships between the legal institution of laesio enormis and the special damage mitigation lawsuits, which could be initiated in the so-called eastern and Transylvanian parts of the country.

Through the Second Vienna Award, Northern Transylvania and other regions (at that time parts of Romania) were reunited with the Kingdom of Hungary in 1940. Following the general authorisation of the Parliament, Government Decree No. 1440/1941 extended the scope of Hungarian real estate law to all the returned territories. However, this source of law contained provisions, which connected practically to the law of obligations. Section 7 allowed for the initiation of civil proceedings in cases, where between 1918 and 1940, the ownership of real estate had been transferred, and the former owner suffered a serious damage because of the enormous fluctuation of market prices.

Before the summer of 1941, in the whole Transylvania (not only the returned northern part) the provisions of the ABGB referring to the law of obligations had been still in force since 1853, among others, also its rules in relation to laesio enormis (paragraphs 934–935). At that time, Hungary did not accept this legal institution, as well as it was not applied in the returned eastern part of the country, where the Hungarian private law remained in force following the Peace Treaty of Trianon. Nevertheless, analysing the archival sources (judgements, articles) and comparing these two sources of law, the adoption of the aforementioned provision in 1941 was definitely justified, concerning all the returned territories.

In fact, on the basis of paragraph 934, the vendor could rescind the contract if the sale price was less the half the market price, but the buyer had the option of paying the difference, in order to maintain the transaction. However, this provision could not be applied in case of several sales, where the price was approximately equal to the market price, but the latter one significantly diverged from the 'real (or intrinsic) value' of the real estate. From the end of 1918 the market prices of real estate had started to decrease, due to the considerable emigration, caused by the Romanian occupation, and the following years not always brought positive changes. Although the term 'real value' was not initially clear, the courts enforced the provision of the Decree, and equitably mitigated the damages of several vendors.

Nowadays, as a result of various crises the market prices may also fluctuate, therefore similar provisions can be valuable.

Panel 33. Comparative Perspective on Legal Survivals in the Central European Post-Socialist Legal Space – Session 2.

(Kovács István Classroom, JK201)

Chair: Rafał Mańko

(Research affiliate, Central European University Democracy Institute, Hungary)

Piotr Eckhardt
Postdoctoral researcher
Ignatianum University in Cracow, Poland

Central European Allotment Garden Management Institutions as Legal Survival of State Socialism

The idea of allotment gardening was born in Western Europe, but it was in the countries of state socialism that such gardens became particularly popular. In Poland, the first allotment gardens were established in the interwar period. After 1945, the communist authorities liquidated independent allotment organizations and granted a legal monopoly over the management of allotment gardens to state-controlled trade unions. During the political thaw between the rise of Solidarity in 1980 and the imposition of martial law in 1981, allotment owners won the transfer of this monopoly to the grassroots and independently created Polish Allotment Association (Polski Związek Działkowców, PZD). The PZD's monopoly granted by the socialist authorities through legal regulations existed for almost a quarter of a century after the collapse of state socialism. To this day, PZD is incomparably larger than any other organization of its kind in Poland.

It is worth to compare the legal regulation of allotment gardens in Poland with other cases from Central Europe. In Czechoslovakia, for example, the socialist government established the Czechoslovak Union of Gardeners and Fruit Growers (Československý zahrádkářský a ovocnářský svaz, CZDS), which had the actual monopoly on the establishment and management of allotment gardens, but this was due to relations of power in state socialism, not laws. After 1989, other organizations were formed, but CZDS still has a key position. In the German Democratic Republic, the socialist government established the Association of Gardeners and Small Growers (Verband der Kleingärtner, Siedler und Kleintierzüchter, VKSK). The law granted it a monopoly on the establishment and management of allotment gardens. After 1989, the VKSK was dissolved and allotment users established a number of independent organizations.

Based on a comparison of these cases, it can be concluded that the management of allotment gardens through a monopolistic organization was a standard model in the socialist countries of Central Europe. The durability and position of such an organization after 1989 depended on two factors: the political circumstances of its creation and the legal guarantees of its monopoly.

Societies were negatively inclined towards organizations created top-down by the authorities, and the desire to remove the legal monopoly could be the reason for the liquidation of such an organization.

Ivan Tot
Associate professor
University of Zagreb, Croatia

The Influence of Socialist Legal Systems on the Yugoslav Law on Obligations and Socialist Legal Survivals in Modern Croatian Law of Obligations

In the former Socialist Federal Republic of Yugoslavia (SFRY), the law of obligations was primarily governed by the Law on Obligations (*Zakon o obveznim odnosima,* ZOO), a federal statute enacted in 1978. A distinctive feature of the ZOO was its incorporation of numerous legal transplants from diverse jurisdictions, predominantly from the Western civil law tradition, while also drawing from socialist legal systems. Pinpointing the precise sources of the ZOO's provisions is challenging, as details of the foreign influences considered during drafting were never made public, and Yugoslav legal scholarship largely overlooked tracing these origins.

However, identifying the legal sources from which the ZOO borrowed is important for understanding the legal institutions embedded in the modern laws on obligations of the former Yugoslav states. Despite the violent dissolution of the SFRY, the federal ZOO remarkably endured – initially adopted into the national legislation of each successor state and later serving as a foundation for reforms in their laws of obligations. In Croatia, the ZOO was first adopted as a national legislative act in 1991, and later replaced by the Law on Obligations in 2005 (ZOO/HR), which retained most of the original text, albeit with restructuring and minor amendments. Consequently, many legal institutions in today's ZOO/HR are legal survivals originating from the Yugoslav ZOO, which itself borrowed from various foreign jurisdictions.

This paper focuses on legal transfers from socialist systems to the Yugoslav ZOO and examines socialist legal survivals in contemporary Croatian law of obligations. First, it identifies the legal institutions transferred to the Yugoslav ZOO from socialist legislation, scholarship, or case law, relying on materials produced during the codification of the Yugoslav law of obligations (1963–1978), including unpublished *travaux préparatoires* of the SFRY Parliament and other archival sources. Second, it identifies socialist legal survivals in modern Croatian law of obligations. While provisions of the ZOO visibly shaped by socialist ideology were formally removed in 1991, remnants of the socialist legal tradition appear to persist in certain legal institutions of the current ZOO/HR. The evaluation of these legal survivals and their application in legal practice reveals that some have adapted to the socio-economic changes, evolving in function and content, while others have generated unique legal challenges, continuing to "haunt" contemporary Croatian law of obligations as remnants from the past.

Tomáš Gábriš
Professor
University of Trnava, Slovakia

The Survival of the 'separate ownership of buildings' (aedificium solo non cedit) in the Slovak Republic

The paper will introduce a legal survival from the period of the Communist-ruled Czechoslovakia, allowing for the possibility to separate ownership of building from the ownership of land on which the building was constructed. This means the abolishment of the traditional "superficies solo cedit" rule (or more precisely: aedificium solo cedit). It was introduced in Czechoslovakia allegedly due to the fact that much of the land where the communal and cooperative farming buildings were planned to be built was still in private or personal property of the citizens. In order to prevent the effects of the eadificium solo cedit there, the principle was abolished in the 1950 Civil Code, allowing for the actual separation of ownership, with the focus on separate ownership of buildings. The ownership of land was planned to be gradually abandoned anyway, as the means of production and the source oppression according to Marxism–Leninism. The separate ownership of buildings was thereby held in force also by the 1964 Civil Code.

Surprisingly, in Slovakia the aedificium solo cedit was never reintroduced even after the fall of communism in 1989. Hence, it is still perfectly possible to own a building without owning the land underneath. Nowadays it still happens that private and public buildings may occupy the land belonging to different private owners. The owner of the building may have the right to use the land while paying to the owners of the land for its use. However, usually, in the land registry contains long-deceased owners whose heirs are unknown or multiple co-owners who are not able or willing to negotiate among themselves nor with the owner of the building.

In contrast, separation of buildings from the land was abolished in the Czech Republic in their new Civil Code from 2012. Slovakia was at that time also working on its new Civil Code but so far has not finished the works. The current committee working on the draft Civil Code openly admits it does not intend to re-introduce the "aedificium solo cedit" principle, claiming that would cause disruption in the existing economic and societal relations. However, another likely reason could be the changed relationship to ownership of land and its importance in the 21st century, in comparison with the 1950s rural population of Slovakia. This could explain the will to stick to the quieta non movere and thus to retain the separate ownership of buildings and land in force.

Valdis Blūzma
Professor
Turiba University, Latvia

Returning to Europe: The Constitutional Designs on the Restoration of Independence of the Baltic States – Common and Different Features

This paper is devoted to an important issue of legal history of 20th century – comparative analysis of the constitutional designs on the restoration of the independence of Estonia, Latvia and Lithuania in the early 1990s.

After fifty years of occupation the Baltic states obtained the chance to restore their independence when the Soviet Union survived the crisis of the socialist system, and its leadership took steps to liberalize the political system to prevent the tendencies of stagnation and decay. In all three republics, at the end of the 1980s, mass national-democratic movements were formed, which initially raised demands for the democratisation of public life, but later set as a goal the restoration of national independence.

In all the Baltic Soviet republics, the national-democratic forces won an overwhelming majority in the 1990 Supreme Soviets elections. They adopted declarations of independence, declaring either the immediate restoration of full independence (in Lithuania), or establishing a transitional period until restoring the independent state (in Estonia and Latvia).

The leadership of the USSR did not recognise the declarations of independence of the Baltic states, but the unsuccessful coup in August 1991 changed the balance of political powers. Estonia and Latvia on 20th and 21st of August respectively declared the end of transitional period. The Baltic states received recognition of their independence both from the Soviet Union (on 6th September of 1991) and from world states.

Research methodology of this paper includes comparative, historical, teleological and system analysis methods. The application of the comparative method makes it possible to analyse both the common features in the efforts of the national democratic forces of the Baltic states to achieve the *de facto* restoration of the independence, as well as the peculiarities determined by internal factors in each of the republics, such as the demographic situation, the balance of opposing political forces, etc. The application of the historical method allowed to understand the peculiarities of the constitutional evolution in Baltic states in the interwar period, which, for example, gave a chance to renew the force of the democratic Constitution of the Republic of Latvia of 1922. The application of the teleological method was useful in assessing the compliance of the political

demands of the national democratic forces of Baltic states with the set goals, for example, in ensuring the principle of state continuity in their constitutional law. The findings of this study are given by author in conclusions.

Panel 34. The Transformative Power of Certain (Constitutional) Provisions

(Buza László Classroom, JK203)

Chair: Kinga Beliznai

(Associate professor, Eötvös Loránd University, Hungary)

Judit Beke-Martos
Assistant professor
Ruhr University Bochum, Germany

An Executive for These United States – Creating the Office of the U.S. President

The United States is an experiment without precedent. The thirteen colonies declared their independence from the British crown (1776) and joined forces in a confederation (1781). The confederation, a "firm league of friendship" as Article III of the Articles of Confederation, the founding document and first constitution termed it, was a weak attempt at joining forces while not really submitting any state rights to a higher level. The reluctance at signing off rights that the newly independent states fought for was understandable, but the confederate construction stood on too few feet. One missing pillar was an executive. The Confederation foresaw a unicameral legislation, potential for joining military forces for the common defense – admittedly the most imminent danger for the fresh new states –, provided for certain judicial procedures and required financial participation from all states. Yet it did not create an office or branch of the executive. This was perhaps one of the most prominent lacunae of this constitution that the Constitutional Convention aimed to rectify.

The 1787 Convention in Philadelphia created a new constitution for the federal Union instead of amending the Articles of Confederation. Article II of the Constitution deals with the executive; it creates a strong office that joins the head of state and head of government functions. It provides for an election to the office, a term, a salary, certain criteria for the office holder, a vice president, an oath to be taken upon taking office, individual and shared rights, and a control mechanism over the executive in form of an impeachment procedure.

It is a very important framework, but perhaps not more than that, a framework. What became of the presidential office was very strongly shaped by those, who took it, first and foremost George Washington. The proposed paper examines the regulatory process that led from the missing executive office in the Confederation to the created office in the Union. It focuses on the correspondence of the founding fathers and other statesmen discussing an executive office and the discussions on the same during the Constitutional Conventions. Ultimately it looks to what the originally envisaged office has become by the first quarter of the 21st Century.

Gábor Bathó
Assistant professor
Ludovika University of Public Service, Hungary

Dangerous Cumulation of Powers – Members of Government in the Legislation

Act No. III of 1848 was arguably one of the most important acts in the struggle for the modernisation of Hungary. It established, for the first time, the independent and responsible Hungarian government. Based on this act a modern constitutional monarchy was created and the act itself was decisive in all the constitutional challenges that followed. This act regulated among others the possibility for the government members to be members of the legislature. The text read: "§ 31 Ministers shall have a vote in parliament only if they are members of the upper house by law or elected as representatives to the lower house."

It is a common and constant question whether to let the members of governments be members of the legislation simultaneously. It is open to doubt whether having this double membership contravenes the principle of the separation of powers. According to the protocols of the sessions and the daily newspapers in March 1848 this very debate was present at the Hungarian Diet, where the statement appeared: "it is a dangerous cumulation of powers." Representatives cited foreign models during the debate, especially the English and the French models were mentioned as models worth following. Later scholarly research showed that mainly the French constitutions of 1814 and 1830 were used as models (Les ministres peuvent être membres de la Chambre des Pairs ou de la Chambre des Députés), which were also followed by the 1831 Belgiam constitution (Les ministres n'ont voix délibérative dans l'une ou l'autre chambre que quand ils en sont membres).

The proposed paper examines the real models that may have served as an example for act No. III of 1848 when regulating the simultaneous membership in government and in legislation. The research focuses on the preparatory documents of the legislation, the protocols of the Diet and the personal memoires of all the concerned politicians.

Imre Képessy
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Eötvös Loránd University, Hungary

A Misinterpreted Instruction? – The Genuine Aim Behind Convening the Conference of the Justice of the Realm of 1861

On 20 October 1860, Emperor Franz Joseph issued several "*Ah. Handschreiben*" parallel to the promulgation of the so-called October Diploma. Three of them contained provisions on the reorganisation of the Hungarian judiciary, and one had a profound, yet (probably) unintended effect on the future of the Hungarian legal system. According to most sources, Franz Joseph tasked the *judex curiae* (Justice of the Realm) to invite the judges of the *Tabula Septemviralis* together with other highly qualified lawyers to discuss the reorganisation of the Hungarian administration of justice. On 4 March 1861, said conference concluded its negations, and finalised the so-called Provisional Judicial Rules. These provisions aimed to reinstate the Hungarian laws and customs wherever it was possible, which was in stark contrast with the will of the emperor, who explicitly stated on 20 October 1860 that all the "Austrian" laws shall remain in effect in Hungary.

György Ráth, the secretary of said conference, who published the protocols in 1861, stated in the foreword of his book that the aim was "*to bring Hungarian substantive and procedural law into harmony with the spirit of the times, (...) with the new legal (...) relations that had arisen in the course of the past twelve years, and to repeal the great number of decrees that had been unilaterally enacted [in the 1850s]...*" This sentiment was echoed by many at that time. Likewise, most legal scholars of the 20th Century argued that the Conference was assembled primarily to discuss the possibility of the (partial) restoration of the Hungarian legal order as it existed before 1849 and to draft a bill that would be discussed by the Parliament. Hence the question remains to what extent did the emperor intend what later on happened in his initial call for a meeting of the legal scholars.

The proposed paper aims to resolve this discrepancy by analysing all the available archival sources, the protocols of the Austrian Government and the personal memoires of the concerned statesmen. The ultimate purpose of the research is to determine the origin of this interpretation, and to assess how well founded it was.

Mátyás Szabó
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Ludovika University of Public Service, Hungary

The Interpretations of Hans Kelsen and István Tisza on the Legal Nature of the „Austro–Hungarian Compromise" in 1867

The dual system of the Austro–Hungarian Monarchy was a unique and exceptional legal phenomenon in the long 19th century Europe. In the constitutional system of dualism established in 1867, Austria saw the survival of the former Austrian Empire, the imperial (Reichs-) and Gesammtstaat-ideal, while the Hungarian side saw the association of two independent states for the conduct of common affairs. Although the two states had separate constitutions, legislatures, governments, citizenships and legal systems, the dualistic system maintained the semblance of a unified empire by projecting it onto the sphere of the common affairs (foreign affairs, military affairs and their common finance).

In the era of the Austro–Hungarian Monarchy the Austrian and Hungarian legal scientific scenes held different views on the relationship between Austria and Hungary and the nature of the state connection. Austrian public legal scholars took efforts with their tendentious theories (sovereignty of the monarch, sui generis empire, delegations as an imperial parliament, etc.) tried to restrict the Hungarian statehood to the sphere of interior administrative acts and to define the public legal character of the Empire (Reich). The Hungarian public law literature was not consent on this matter either, since the mainstream literature mostly sought to defend Hungarian statehood against Austrian views by invoking the relationship between king and nation, the historical constitution and legal continuity, and by a forced examination of the nature of monarchical unions.

One of the most fundamental and recurring dilemmas about the legal nature of dualism was the question of how the laws of the „Compromise" could be repealed or amended. Hence the need for the Austrian and Hungarian governments and legal scholars to take a stand on the question of whether Article XII of Act No. 1867 constituted an international treaty.

As to the nature of the Act, the Hungarian government formulated the so called „theory of independent creation", while the legal scholars formulated the „theory of treaty". Interestingly, in the constitutional legal debate of the 1910s, the Hungarian Prime Minister István Tisza and Hans Kelsen took the same position. In this contribution, I aim to present and compare the legal opinions and interpretative frameworks of Tisza and Kelsen based on archival sources and estates (Nachlässe).

Panel 35. Protecting of Minorities and Ethnic Law

(Nagy Ferenc Classroom, JK206)

Chair: Ivan Kosnica

(Associate professor, University of Zagreb, Croatia)

Stephen Hewer
Researcher
Ghent University, Belgium

Small Boats from Calais: Low Countries Immigrants to Medieval England, Medieval (Scalar?) Identities, Xenophobic Chroniclers and Legal Status

For historians of medieval migration to Britain, there are a few well known instances when chroniclers declared that all Flemings were deported from England: c.1108 Henry I forced 'all' Flemings in England to move to Rhos in Wales and Henry II in 1154 and 1174 deported 'all' Flemings in England back to Flanders. Aside from the fact that known Flemings, e.g. Willem van Ieper/William de Ypres, remained in England before and after the supposed date of expulsion, there are also confused references to peoples such as William of Brabant as being 'Flemish'. There are additionally numerous references to various peoples coming to Britain (England, Scotland and Wales) from the Low Countries as immigrants, merchants and mercenaries. The new arrivals were mislabelled by medieval chroniclers and modern historians as simultaneously 'Normans' and 'Flemings' while many were neither. This paper will, as the title suggests, dive into the origins of the modern rhetoric against peoples coming from the Low Countries (including the north of France), misidentification of these peoples and attempts to affect law through xenophobic rhetoric by utilising the law-in-action and grounded theory methods, i.e. returning to the primary sources.

For modern lawyers, legal identity is usually a simple process with state documents and the concept of citizenship. But for medieval scholars, taxonomising medieval peoples is a hazardous affair with many confusing medieval language, homage, religion or culture with modern variations and then using one or more of these as proof of a medieval person's identity – additionally some have used a surname, such as 'le Flemyng', to declare that certain medieval English and Scottish people were actually another identity. To combat the subsequent critiques of this methodology, some have employed the modern sociological concept of scalar identity. This paper will test the application of scalar identity for medieval Low Countries immigrants to Britain, especially in regard to legal classifications.

Hsu Yincheng
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The Legal History of Mexico and Taiwan in the Postcolonial Era: The Legal Advocacy and Resistance of Indigenous Communities

This article seeks to explore the legal history of Mexico and Taiwan in the postcolonial era, particularly regarding their approaches to legal system selection. Both countries share a fundamental characteristic: the desire to cast off the colonial legacy of their former metropoles, seen as lacking in modernity, in favor of adopting institutional frameworks from nations that more clearly represented modern ideals. In the case of Mexico, during the decolonization process, political elites resisted the Spanish Empire, striving to dismantle the premodern power structures between the Spanish Empire and Indigenous populations. In legal reforms, Mexico drew heavily from U.S. liberal legal principles, which were enshrined in the nation's 1857 Constitution. Article 27 of this constitution explicitly denied the legal status of "collective entities," aiming to eradicate intermediary groups. This had two major consequences: first, Indigenous communities as collective entities lacked the capacity to litigate; second, subsequent land reform policies prevented Indigenous groups from holding communal land ownership, which in turn led to ongoing social conflicts and ethnic divisions. Taiwan, meanwhile, also underwent a decolonization process from both Japanese and Qing rule. Taiwan similarly emphasized modernity, rejecting colonial-era systems and embracing legal structures from Germany and the United States. However, a significant divergence between Mexico and Taiwan lies in the adaptive response of Indigenous groups. Following the adoption of U.S. law in Mexico, Indigenous communities were dismantled as collective entities. While some Indigenous groups chose armed resistance outside of the legal framework, many others, holding to a tradition from the colonial period of appealing to the Spanish Empire for "amparo," sought rights remedies within the legal system despite their disadvantaged position of having lost legal standing as subjects or entities. These groups aimed to secure community cohesion, reinforce group identity, and protect land rights through judicial appeals. In contrast, Taiwan's Indigenous populations did not employ rights remedies to assert their claims, likely because Japan and the Qing Empire, unlike the Spanish Empire, did not historically permit Indigenous groups to seek legal protection. This difference in legal history between the two nations, though similar in terms of institutional choice, has led to markedly different levels of Indigenous adaptation. This article will explore and comparatively analyze these issues in further detail.

Patrícia Dominika Niklai
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University of Pécs, Hungary

Organisations of the German Youth in Hungary during the Second World War in South Transdanubia

The subject of the research is the operation of youth organisations related to state propaganda in the South Transdanubian region, based primarily on archival sources. The topic focuses on the German youth living in Hungary, namely the so-called ethnic Germans (Volksdeutsche) with Hungarian citizenship. The main research direction is based on the fact that during the Second World War German youth had to participate in the work of two major youth organisations, Levente and Deutsche Jugend (German Youth). The two organizations competed with each other, the Hungarian government tried to restrict the German Youth and its umbrella organization, the Volksbund (Volksbund der Deutschen in Ungarn, Association of Germans in Hungary) during the Second World War, while the Volksbund leader, Ferenc Basch, declared a campaign to involve German youth, which was supported by the German imperial government. Through the parallel Levente and Deutsche Jugend, the involved youths were provided with both religious-national education on the Hungarian side and were told to deny loyalty to the Hungarian state, while adopting a national socialist worldview on the German side. In the case of the latter, the religious education also faded in importance, which was also a factor of conflict.

The legal framework of the Deutsche Jugend was primarily based on the 1940 Hungarian–German Minority Agreement and the 1941 Prime Ministerial Decree on the care and education of German-speaking youth outside school. As a result of the Volksbund's efforts, from 1941 other associations than the Levente were allowed to provide education for the German youth – within strict legal limits – and thus German youth who were obliged to join the Levente could become members of the Deutsche Jugend as well. There are several archival examples of the recruitment, education and training of youth, and of conflicts among the local population. From 1943, the Ministry of Education and Religion appointed educational experts to monitor the organisation. In the case of the counties of Baranya, Somogy, Tolna and Fejér, this position was assigned to Ferenc Balázs from Pécs, who had already been working for 5 years as a rapporteur of minority education in the Ministry. The research also explores the documents of Ferenc Balázs on the inspection of the Deutsche Jugend in South Transdanubia, using the records of the National Archives of Hungary Baranya County Archives as primary sources.

Dóra Frey
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Refugees and Displaced Persons – Legal Regulation of the Consequences of Forced Migration after the Second World War in Hungary in International Comparison

The first half of the twentieth century (together with the last decades of the nineteenth century) is known as the era of forced migration. In my presentation I would like to focus on one aspect of these processes: the legal regulation of the consequences of forced migration after the Second World War in Hungary. After the end of the Second World War, about 16 million people were forced to flee or were displaced in the eastern part of Europe. Hungary participated in this process in two ways: in 1946–148, about 150,000 Hungarian Germans were displaced, others fled already at the end of the war. However, the country was not only the starting point of flight and expulsion, but also the destination of refugees of Hungarian ethnic affiliation from neighbouring countries and took in Hungarian expellees from Czechoslovakia (within the framework of the population exchange agreement and beyond).

The regulation of refugees and displaced persons at the end of the Second World War in Hungary, as in most other states in the region, was very fragmented, and there was no regulation at all under international law. As a result, there was a lack of standardised terms and definitions, which complicates the legal-historical analysis. In my research, I therefore consider all victims of forced migration who had to leave their homes in Hungary's neighbouring countries in connection with the end of the war, Hungary's loss of territory as a result of the Armistice Agreement of 20 January 1945 and the establishment of the new power structures there, regardless of whether there was a legal basis (such as the population exchange agreement with Czechoslovakia) or an administrative act (evacuation order from the Hungarian authorities or expulsion by foreign authorities).

I analyse in my research the legal norms enacted, mostly government ordinances or ministerial decrees, but pseudo norms can also be found. There was no regulation by acts, neither immediately after the war nor later – there was no Hungarian equivalent of the Federal Expellee Act (Bundesvertriebenengesetz).

The second goal is to analyse the application of the regulation by the administration At this stage of my research, I have been able to analyse the concrete application of legal acts and the actions of the administration in the Hungarian county of Tolna by examining files in the archives, but these also reveal fundamental tendencies: The administrative tasks relating to the refugees were

also fragmented; in some cases, these were the responsibility of the general local and territorial administrative bodies, in others special bodies were set up – but their organisation and responsibilities often changed.

Panel 36. Legal Modernisation, Traditional Belief Systems, and the Formation of Transnational East Asia

(Kemenes Béla Classroom, JK208)

Chair: Fernanda Pirie

(Professor, University of Oxford, UK)

Kentaro Matsubara
Professor
University of Tokyo, Japan

The Creation of Modern Property Regimes in China and Japan: Local Social Structuring, Religious Community-Building, and the Idea of Government

This paper is primarily concerned with the creation of modern property regimes in Japan and China, from the late 19th to early 20th centuries. In doing so, it delves into the complex – and mutually very different social structures in traditional society, i.e. Tokugawa Japan (1603 – 1868) and Qing China (1644 – 1911). In particular, it looks into relationships between the protection of land rights, state government, and local communities in these premodern societies. A preliminary finding on these societies is that while Chinese landholding under the Qing relied much more heavily on local communities, which were brought together through ancestral worship and popular religion, in Japan state governments were much more hands-on, and capable of directly protecting land rights. The Chinese situation also gave rise to particular forms of land transaction, where multiple claims to one plot of land could co-exist, underpinning the local power-balance, which in turn allowed these local communities to maintain secure landholding. The paper then evaluates how these differences affected legal modernization. The processes of creating modern property rights in these countries were closely connected with each other, in that the understanding of traditional Asian societies in Japan was formed through custom surveys in China, and Chinese legal institutions tried to directly learn from the Japanese example. This paper traces this complex story of mutual influence, while using that as a window to understand traditional institutions and their modern implications.

Bryan Tiojanco
Associate professor
University of Tokyo, Japan

Constitutionalism, Global Modernity, and the Separation of Church and State in the turn-of-the-Twentieth-Century Philippine Revolution

This essay challenges the standard account of Philippine constitutional history, which begins with American colonial documents. Instead it traces the origins of Philippine constitutionalism, specifically the principle of separation of church and state, in the 1899 Malolos Constitution Filipinos enacted during their anticolonial revolution first against Spain and then the United States. The Malolos Constitution was the first in Asia, preceding even Europe, to constitutionalize the 'Jeffersonian wall' separating church and state.

The Jeffersonian wall went against Filipino practice and sensibilities and threatened to fragment the revolution. Nonetheless constitutionalizing was considered a transnational necessity. The Philippine Revolution declared Philippine independence as a modern, secular nation-state decades before national self-determination would displace the standard of civilization as the framework of world order. Under international law at that time only the civilized were fully sovereign; the barbaric or semi-civilized had only a partial claim to sovereignty, and the savage or uncivilized had none. Hence the West claimed civilization as a project justifying their maritime empires while the rest claimed it as an achievement that should keep menacing gunboats at bay. In this age of empires constitution-making became an act of defensive modernization: a means to signal that a given polity was modern and civilized and therefore entitled to a modicum of respectful distance from foreign powers.

The Philippine revolutionaries' political vision and anti-colonial argumentation for national sovereignty sought to showcase Filipino civilizational capacity and political modernity by adopting a republican constitution acceptable to the United States of America, under whose purported protection they had declared independence. In this, the Filipino thinkers also drew from the example of Japan's successful Asian modernization and the Meiji Revolution of 1868. Securing freedom for American Christian missionaries to proselytize in Japan was a diplomatic priority for the United States, the first Western power to side with the Asian state in its endeavor to revise its unequal treaties with the West. A crucial part of this endeavor was the introduction of religious freedom – traditionally considered an essential American freedom – in the 1889 Meiji Constitution as a badge of modern civilization.

The Jeffersonian wall, however, was at odds with the customary union of church and state in the thinking of most Catholic Filipinos and the three-century-long history of the Spanish colony. Moreover, many of the revolution's charismatic leaders were priests who threatened to withdraw their support to the cause if the Jeffersonian wall was adopted. The revolutionaries resolved this quandary in the 1899 Malolos Constitution by enacting the principle of church-state separation while at the same time suspending its execution. This established in the country both a dangerous tradition of suspending constitutional norms as a political expedient and the persistent participation of priests in constitutional politics.

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Comparative History and Constitution-Making: The Role of Comparisons between Chinese and Japanese History for Constitution-Making in Late Imperial China

The role of Japan as the main, albeit not exclusive model for legal reforms in the late Qing Empire (ca. 1898–1912) is well-known, as are the divergent outcomes of reforms in the two countries. Rather than offering a comparison between the two cases, the paper will take a step back and examine how the historical actors involved in devising the late Qing constitutional order themselves discussed and compared Chinese and Japanese history.

In order to reconstruct the concerns of the historical actors, I will not only examine the results of the reform process, but mainly take a look at a particular set of sources which reflects the deliberation processes that led to the preparation of a constitutional outline for the Qing Empire in 1908. In 1907, the Qing government established a constitutional commission in Tokyo with the aim of collecting information about the Japanese constitutional system. Dashou and Li Jiaju, the two officials who, consecutively, occupied the post of constitutional commissioners, took lessons with some of the most Japanese scholars of constitutional law of the time. The total of 60 lectures were fully recorded, including Q&A sessions, but have only received scant attention so far.

I argue that comparisons between Japanese and Chinese history played a major role in the debates abut constitution-making in late Qing China. In particular, this was the case for the historical role of the emperor in the two countries, and his status as the sacralized centre of the state. The analysis will show that, while Japanese constitutionalists and observers of the Chinese constitutional process tended to stressed the differences between the two contexts and consequently advised for a cautious implementation of Japanese models in China, Chinese constitution-makers tended to stress the similarities between the two cases. As a result, such comparisons ended up exacerbating the existing political tensions in the last years of the Qing empire.Ehenditi oriaectota comniet et odi nobis et voluptatur accullupid quo od quis veliquibusa sustincte quunt fugiata tquossi velloribusti sam ra nones ad mintistiosa verovid emporestius eos vel moluptius, is et et voluptam fugit, samendant fugitem volut am reiur? Volorumquis aut aut fuga. Nienihilitat odi delestia verum nost, et ma elitaecate sam fugitia quasperfera apiet lignamus simolup taquament.

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