XXVIIth Annual Forum of Young Legal Historians

"MEETING OF LEGAL CULTURES"

University of Sarajevo – Faculty of Law
September, 21-23, 2023
Book of Abstracts

Sarajevo, 2023

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Judicial Palace in Sarajevo

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Šerijatska sudačka škola u Sarajevu. Originalna slika *Anke Lyuker*.

Sharia Court School in Sarajevo

Carolina Argiroffi
University of Naples "Federico II"

COMPARATIVE METHODS IN THE ITALIAN LEGAL DISCOURSE ON LABOR: NOTES ON THE ORIGINS

The paper aims to discuss convergences and encounters of legal cultures from the viewpoint of the 'comparative methods' employed in nineteenth- and twentieth-century Italian legal discourse on labor. The awareness of new and common 'labor problems', together with the sharing of principles of sociality extraneous to the dogmatic apparatus of classical civil law, enhanced the adoption of comparison in combination with (or as a substitute for) the *auctoritas* of the tradition in conceiving and legitimising legal remedies. Before an autonomous discipline was even consolidated, this uneven set of confrontation practices identified the renewing lemmas of the old worn-out language of Romanistics, hand in hand with the self-representation of the jurist as an agent of cultural unification and a promoter of national identity.

The large comparative component in the works of the *Commissione per lo studio dei contratti agrari e del contratto di lavoro* (1893-1902) will be investigated in its intersections with the scientific and political debate on the possibility of constructing common or parallel juridical paths for the factory worker and the laborer of the land. Not circumscribed to Western legal systems or merely 'legislative' solutions, it proves the effort of shaping new categories and adapting traditional schemes to the renewed dimension of labor and raises interesting questions for the legal historian: circulation of models and adaptation of texts to contexts, pluralism of subjects and normative orders, local dimension and transnational perspective in the formation of a modern lexicon on labor matters and core concepts of the future discipline.

Ahmet Arslan
University of Göttingen

MEETING AND COLLUSION OF DIFFERENT LEGAL CULTURES: THE TOP-DOWN LEGAL DEVELOPMENT IN TÜRKIYE, WITH THE EXPERIENCES OF ERNST EDUARD HIRSCH

In the process of modernization and secularization Türkiye from 1926, the Republic based its new legal system on various Western European codes, and especially Swiss civil law. This radical development was in fact *in toto* rejection of the Islamic law that had been in force in the Ottoman Empire for many centuries.

As was to be expected, because of the clashing of very different legal cultures, the adoption of Western European law by Turkish society was not easy, and some difficulties emerged, especially in the area of family law. But over time these problems were overcome and Turkish society embraced Western European law.

One of the most important contributors to this success was the Jewish-German professors who sought exile in Türkiye from the German National Socialists. They experienced this process of legal modernization as a top-down phenomenon.

Nearly a century after its implementation, this presentation will examine the top-down legal development in Türkiye. The presentation aims to show the motives of the Turkish legislator, the role of the Jewish-German law professors – especially *Ernst Eduard Hirsch* – in the reception, the problems arising from the meeting of different legal cultures and their solutions.

Michael Binder
University of Vienna

THE *EXCEPTIO EX IURE TERTII* IN ROMAN LAW

In Roman law the debtor had the opportunity to counter the creditor's claim only with his own claim. Therefore, an *exceptio ex iure tertii* was (in general) not permitted. An exception can be found in D. 44.4.7.1: *Ego* was granted an *exceptio doli* against the *creditor*, because *ego* had a claim against *tu* and *tu* against the *creditor*. If *ego* would not have been granted an *exceptio doli* three lawsuits would have taken place. The *creditor* would have been forced to sue *ego*, *ego* would have been forced to sue *tu* and *tu* would have been forced to sue the *creditor*. With the *exceptio doli* it was possible to prevent these lawsuits. *Ego* received an *exceptio doli* against the *creditor*, because *tu* had the possibility to counter the *creditor*'s claim. The *exceptio doli* was an *exceptio ex iure tertii*. In my presentation, I want to analyse whether more cases of an *exceptio ex iure tertii* can be found in Roman law. Therefore, it is necessary to discuss cases which share similarities with D. 44.4.7.1.

Marco Castelli
University of Milan

VENICE AS A LEGAL BUBBLE? COMBINING *IUS PROPRIUM* AND *IUS COMUNE* IN THE VENETIAN TERRITORIES

The Republic of Venice has always been characterized by a wide autonomy – the "libertas" – which was expressed at a legal level in the development of an independent legislation that was not based on the *ius commune* as in the rest of Italy and Europe. This legislation encompassed both substantive and procedural aspects of law (the "more Veneto" process, diverging from the Roman-canonical process) and it is considered a characteristic of the "Serenissima".

However, despite this, the territorial expansion of the Venetian domains both overseas and in Italy led the legal system of the Republic of Venice to increasingly come into contact with different legal systems, often predominantly governed by the *ius commune*. An area of particular interest is the northern Italy, a territory in which Venice controlled different cities and where the influence of the *ius commune* was strong and supported by some flourishing Universities. In this area the encounter between traditions found a balance in a system of peripheral autonomy – as demonstrated by the statutes – combined with a centralized system of appeals for the most significant cases.

With my presentation, I would like to offer an interpretative framework and a bibliographic analysis of certain aspects of both substantive and procedural law in these legal transplants of the late Middle Ages, which did not always see the controlled territories conforming to the dominant system but rather resulted in bilateral interactions.

Eugenio Ciliberti
University of Salerno

THE CHINESE CIVIL CODE AS AN EXPRESSION OF THE EUROASIATIC SOLIDARITY

With the new Chinese Civil Code, the parallelism between Roman Law – and the subsequent tradition – and the Chinese Law has become clearer, reflecting the political and legal changes that have characterized contemporary China.

Some scholars identify in this parallelism the seeds of a "eurasiatic solidarity", meaning by Eurasia a single continental area inhabited by very different populations, amounting today to five billion people, many of whom have used and still use the Roman legal and religious system.

The reasons of this turning point in the Chinese legal system must be identified in the ever-increasing demand for the universalism of law, which cannot ignore the close link between the legal provision and the underlying principle. This connection is best achieved in the form of the Code, which is the highest expression of the legal culture, since the system in it represented does not simply constitute a rational organization of institutes that make up a given branch of law, but is also a manifestation of the same plot constituting civil society.

Also, it seems clear how the codification of the common law (and the connected request for the universalism of the law) goes beyond the mere stabilization of the Chinese civil law, becoming a bridge that connects China to the rest of the world, a moment of breach of the isolation of a country that opens itself to the outside, without renouncing the connotations that have always distinguished it.

Ana Carolina Couto Pereira Pinto Barbosa
Harvard University

LEGAL FOUNDATIONS OF CAPITALISM COMPARING DEBT CRISES AND MONETARY SOVEREIGNTY IN BRAZIL AND GREECE

Scholarly research on political economy have discussed the prevailing neoliberal politics since the 1970s, the "strange non-death of neoliberalism" after the economy crashed in 2008-9, and the constant return of "austerity" and "financial liberalization" to solve economic problems. This research focuses on the debt crisis of Brazil in 1982 and Greece in 2009, as well as the neoliberal rescue packages offered by the international community. The aim is to compare the adoption of conditionalities designed by developed countries and international institutions, such as the IMF, the European Council, and the European Central Bank. In recent history, both in Greece and Brazil, liberal technocrats took advantage of many crises to redesign central banks more prone to the liberalization of money flows and austerity in line with the neoliberal project. The research explores the technocracy's initial responses to the crisis, the external conditionalities, and the impact of these policies on monetary sovereignty. Despite the particularities of each case, both reforms are part of a mainstream economics project that eventually pushed Brazil and Greece further into the periphery of the global economy, making the countries still more vulnerable to external financial shocks. This comparison is important to answer the question of what lessons Brazil's crisis in the 1980s and Greece's in the 2000s can give to the periphery of the global economy.

Mirna Dajak
University of Split

HISTORICAL DEVELOPMENT OF GUARDIANSHIP FOR PERSONS WITH MENTAL DISORDERS

Legal capacity is defined as the ability of a person to produce legal effects by his own expression of will, and as a rule it is acquired upon reaching the age of majority. However, due to certain reasons, an adult can be (partially) deprived of legal capacity if the court determines that he cannot independently take care of his rights and obligations or that his behavior endangers others. In order to protect such an individual, after the procedure is completed, he will be assigned a guardian who will take care of the tasks related to the segment in which legal capacity is limited.

Given that the most common reason for the deprivation of legal capacity is the existence of mental disorders, this research examines guardianship for adults with mental disorders through history starting with *cura furiosi*. Analyzing available Roman legal and non-legal sources, this consideration tries to determine who could be named *cura furiosi*, how he was appointed, which were his tasks and how his liability was regulated. Basic principles of Roman law regarding this type of guardianship had a big impact on the Austrian Civil Code (ger. ABGB) and other laws that followed throughout history on the territory of the Republic of Croatia. Considering the basic provisions of those laws and the gradual development of this model of guardianship, we can notice that this institution of guardianship in beginning was intended to protect society from the individual and now the emphasis is on protecting the individual from society.

Athanasios Delios
Democritus University of Thrace

THE EVOLUTION OF WILLS IN ANCIENT ATHENS

During the 6th century B.C., Solon, the Athenian legislator gave the opportunity to every childless Athenian to produce a will through which he was able to adopt a son who was going to be his future heir and the new head of his family. In the 4th century B.C. a new type of will appeared (aside from the original one): the new will did not include an adoption but it was related to different orders and appointments by the testator like the testator's selection of his daughter's future husband, the decoration of his tomb etc. This evolution of wills which took place in ancient Athens within two centuries explicitly shows the dynamic nature of law which reflects the different needs of the Athenian society. The aim of the presentation in the upcoming conference is to shed some light on this evolution and change of wills from the archaic to the classical era in Athens, uncovering the structures of the ancient Athenian succession law.

Enida Dučić
University of Sarajevo

STRIVING FOR LEGAL CONVERGENCE: ASSESSING THE CHALLENGES AND BENEFITS OF *IUS COMMUNE EUROPAEUM* IN BOSNIA AND HERZEGOVINA'S PRIVATE LAW

The integration of Bosnia and Herzegovina into the European Union (EU) has posed significant difficulties for the country, especially concerning the alignment of its legal system with EU requirements. This study concentrates on the potential impact of *Ius Commune Europaeum* (ICE) in addressing these challenges and promoting legal progress in the domain of private law.

Ius Commune Europaeum signifies a shared legal heritage spanning European nations, encompassing mutual principles, concepts, and regulations. Historically, it has served as a basis for legal convergence and harmonization endeavors. This project investigates how incorporating and executing ICE principles within Bosnia and Herzegovina's private law can contribute to the country's legal development. Embracing ICE brings numerous advantages - an opportunity for Bosnia and Herzegovina to synchronize its legal system with the EU *acquis communautaire*, facilitating the fulfillment of its obligations as a candidate country, as well as enhancing legal certainty and predictability by offering a well-established framework that has effectively resolved legal disputes. By adopting ICE, Bosnia and Herzegovina can attract foreign investment due to its familiar and transparent legal environment. Nonetheless, implementing ICE presents certain challenges and risks. The transplantation of legal principles into a distinct legal system necessitates thoughtful consideration of cultural, historical, and institutional factors. The adaptation process must ensure that the principles are compatible with local traditions, preserving the country's intricate legal identity.

This research aims to evaluate the effects of ICE on the legal development of Bosnia and Herzegovina's private law. By examining the challenges and benefits associated with ICE adoption, it seeks to contribute to the ongoing discourse on harmonizing Bosnia and Herzegovina's legal system and its journey towards EU integration. Ultimately, the findings will illuminate the potential of *Ius Commune Europaeum* as a means to enhance the effectiveness and efficiency of the Bosnian legal system in the realm of private law.

Václav Dvorský
Charles University
Catholic University of Leuven

EX ORIENTE INSPIRATIO: GREEK INFLUENCES ON ROMAN BANKING LAW

The objective of this lecture is to explore to what extent Greek law and practice influenced the Roman banking and its legal regulations.

The first bankers appeared in Rome at the end of the 4th century BC which is more than a century later than in ancient Greece. Roman contract law was to a certain degree influenced by the Greek one, so one wonders if it was also the case of the banking law.

Some evidence for such inspiration is found in the comedies of Plautus (e.g., *Curculio*) and Terence. There, the bankers frequently have Greek names, transactions are conducted in Greek currency and even Greek terminology is sometimes used. The same phenomenon can be observed in works of Cicero (*De finibus* III, 59) and law of the Roman Egypt *(παρακαταθήκη)*. Finally, when mentioning bankers or banking transactions, the Code of Justinian and the Digest sometimes (e.g., C 10,66,1 and D 16,3,26,1) contain quotations in Greek, which might mean the banking business was primarily conducted by Greeks and Greek terminology was used.

On the other hand, in our sources, there are many more instances where bankers and their transactions are referred to in Latin and solutions inherent to Roman law are used (e.g., D 16,3,7,2; D 16,3,8 and D 42,5,24,2). Nor does the archive of the Sulpicii bank of Puteoli suggest much of Greek inspiration.

Based on the above stated evidence, we shall try to conclude, the extent of influence of the Greek banking law on its Roman counterpart.

Paweł Dziwiński
Jagiellonian University

BUILDING THE PRINCIPLES OF WESTERN JUSTICE – JUDGEMENT OF CHARLEMAGNE ON THEODULF OF ORLÉANS VS ALCUIN OF YORK, 802 A.D.

In 802, a long-standing scientific and artistic rivalry between Alcuin of York and Theodulf of Orléans finally turned out in a judicial contest: an unknown clergyman broke out from bishopric criminal custody of Theodulf and took cover in popular place of asylum, St. Martin monastery in Tours, run by abbot Alcuin. Theodulf initially attempted to retrieve the fugitive peacefully, yet when his pleas were rejected by Alcuin, he tried to recover the convict with force. Nonetheless, he was violently opposed by the monks, who denied him a search of the monastery thus killing some of his servants. Thereafter the bishop appealed to Charlemagne and started a litigation consisting of five preserved judicial letters (the statement of defence, the verdict, the appellation, two intercession requests). These documents not only depicted a specific cross-cultural encounter (in a way of court proceedings) including a Visigoth (Theodulf), an Anglo-Saxon (Alcuin) and a Frank (Charlemagne), but also unfolded at least two different legal cultures, visions of state and value hierarchies presented by all participants involved. The purpose of the paper is twofold. Firstly, to review the presented argumentation in terms of their cohesion and sources. To what extent did it rely on native legal culture or experience? Secondly, to compare the content of pleas and the verdict to the resolutions promulgated previously in Charlemagne's capitularies. It should allow us to decipher the legal convergence between religious and secular, Germanic and Roman, local and universal which built a foundation for the medieval West.

Monica Rita Ferrari
University of Milan

A FAMILY ON THE MARGINS OF THE EMPIRE: LAW AND EVERYDAY LIFE IN THE PAPYRI EUPHRATENSES

Through the Euphratensi Papyri, it is possible to reconstruct the life and legal affairs of a community of local notables, firmly anchored to the fundamental nucleus of the family and to its own traditions. If on a cultural level, life in the village communities residing in the Euphrates area seems to be essentially conservative in relation to other cultures, on the level of law, numerous and diverse interactions emerge. Greek is the vehicular language, used to address requests to government authorities, to draw up public and private deeds and also for private communications. Roman law is known and frequently used by Euphrates' notables, from whose documents specific references to *leges* and institutes emerge, suggesting an accurate knowledge of the jurisprudence as well.

By cross-referencing information from various documents of the Middle Euphrates dossier, this presentation will attempt to reconstruct the family and judicial affairs of one of the most frequently mentioned personalities in the archive: Aurelius Abidsautas, son of Abidierdas, *bouleuta* of the senate of Appadana but domiciled in the kèmh of Beth Phouraia. The story of this ordinary person, who lived in a provincial community on the eastern *limes*, may provide useful insights into ethnic identities and the processes of legal and cultural interaction in this region on the margins of the Roman Empire.

Dóra Frey
Andrássy University Budapest

LEGAL TRANSFER AND SETTLEMENT – INFLUENCE OF THE LEGAL CUSTOMS OF THE DANUBE SWABIANS ON THE HUNGARIAN LEGAL CUSTOMS

The aim of the presentation is to show how the customary law of the German population in Southern Transdanubia affected the customary law in Hungary. The German population, settled in the first half of the 18th century brought a varied legal culture with them, as they came from different territories of Germany. The customary law from this pre-modern era changed in the time and was also subject to many influences of the Hungarian (customary) law. But especially in the field of inheritance law, the old customs were kept until the 20th century and differed considerably from the customs of the Hungarian population. This also had an influence on the property relations, on the mentality and on the family structures. This went so far that the different habits in the field of inheritance law also influenced the development of the population, and the "Swabian" customary law, the so called Anerbenrecht that meant no division of landed property also served as an example for the plans of the reform of the Hungarian inheritance law.

Amber Gardeyn
Ghent University

TAKING THE LONG WAY HOME: THE BELGIAN PRACTICE REGARDING NAZI LOOTED ART IN A COMPARATIVE LEGAL-HISTORICAL PERSPECTIVE

The Second World War left Europe and European cultural heritage in shambles. The Nazis were omnipresent on the art market, coerced sale agreements, looted houses and seized as much of the desired artworks as possible. Consequently, a part of the challenge states faced during and mostly after the end of the war, was the cultural reconstruction of Europe. Whereas in the first instance some international agreements were reached on how to tackle these issues, more detailed decisions proved to be too difficult for an international consensus. As a result, the different states went their own way, which inevitably led to diverging strategies to manage looted art. Belgium, France and the Netherlands each drafted new legislation to manage conflicts between original owners and post-war possessors on the one hand. On the other hand the legislation established the procedures and conditions for claiming works from the newly instated specialised organisations. The immediate post-war world is thus characterised by differing national approaches.

Belgium's role in the post-war period has gone largely unstudied. My research strives to shine a light on this particular dearth in academic literature. Consequently, the first part of my presentation will be focused on elucidating Belgium's post-war practice (legislative and political activity) regarding Nazi Looted Art. The second part of my presentation will compare the Belgian practice to the Dutch and French ones since a comparative legal historical analysis offers insights into today's successes as well as failings of each of the studied legal systems. The third and concluding part of the presentation will delve deeper into those insights.

Przemysław Gawron
Cardinal Stefan Wyszyński University in Warsaw

Jan Jerzy Sowa
University of Warsaw

SWEDISH INFLUENCE ON POLISH-LITHUANIAN MILITARY LAW IN SEVENTEENTH CENTURY

The radical growth in number of armed forces and the scale of warfare in the early modern Europe faced the European political elites with the task of regulating behavior of professional soldiers as a distinct social group. The problems with regular pay, adequate supply and deficiency in command and control system were the main causes of desertion, disobedience, soldiers' mutinies, combatants' ravages and other misconducts against civilians. State apparatus and military commanders had attempted to improve the condition of military discipline, e.g. through issuing special military codes (so called articles of war).

The martial prowess of Gustav II Adolf and his successors made Sweden the greatest power in Central and Eastern Europe. Defeated opponents: Viennese Habsburgs, Bavaria or Russia began to copy Scandinavian tactical and organizational solutions. The Polish-Lithuanian Commonwealth found itself in a similar situation, which with variable luck waged a war with its northern neighbour for almost the entire seventeenth century. The failures of the 1620s persuaded Polish and Lithuanian commanders to imitate the Swedes, also in the field of military law. Until the end of the 1620s, it included mostly norms regulating the activities of traditional formations present in the Polish army for several decades: hussars, Cossack cavalry and Polish-Hungarian infantry, with cavalry making up the majority of these forces. In the years 1626-1635, the number of units formed on the German model, mainly infantry and dragoons, increased significantly. In our speech, we intend to analyze the impact of Swedish military law, especially the military articles of 1621, on the legal norms created in the Commonwealth for foreign troops, starting from 1633. We will also try to analyze the practice of military courts in terms of the possible reception of Scandinavian models.

Łukasz Gołaszewski
University of Warsaw

THE "CAUSAE SPIRITUALES" OF THE POLISH NOBILITY IN THE MIRROR OF RECORDS OF THE ECCLESIASTICAL COURT IN JANÓW PODLASKI FROM 18TH CENTURY

Old-Polish law did not cover regulations of some legal institutions such as marriage. It was regulated by religious norms and inhabitants of Polish-Lithuanian Commonwealth brought their matrimonial cases to proper religious courts. Their marital status was not also registered by any state authorities. Catholic Church parish priests kept records of baptisms, marriages and deaths according to the decree of the Council of Trent which were introduced by other Christian denominations in 18th century. Consequently any information about cases connected with these institutions we can find typically in the records of church courts.

Such court located in Janów Podlaski (Podlachia, Latin rite diocese of Lutsk) examined many different cases during the 18 century. In my paper I will concentrate on these which concerned sacraments such as baptism or marriage. First of them were typically connected with errors in baptism certificates when the second were more diverse. Usually spouse demanded a declaration of nullity but in some cases they were initiated by public diocesan prosecutors, typically when marriage was not got before appropriate parish priest or canonical impediment was detected. Finally, former fiancés demanded a refund of their wedding costs.

In my paper I will present the abovementioned cases of this court from southern part of the Bielsk land which was simultaneously north-western part of the diocese of Lutsk. In the forties of the 18th century the matrimonial nullity trial was reformed by Pope Benedict XIV and we can find cases from entire century in the court records from Janów.

He Hao
Soochow University

THE CORE ESSENCE OF THE CULTURAL CONSTITUTION AND THE PATH TO IMPLEMENTATION

The provisions of the Constitution dealing with "cultural" matters can be regarded as a "cultural constitution". In practice, the ideological and cultural provisions of the Cultural Constitution and the provisions on the promotion of cultural undertakings have been effectively implemented, but there is still room for further implementation in the negative aspects of civil cultural rights. This requires standardizing the relationship between policy provisions and cultural rights clauses in cultural constitutions. The investigation of constitutional history shows that the cultural provisions in the constitution have different constitutional backgrounds, and their Chinese policy provisions are deeply influenced by the "Seventh Five-Year Constitution", reflecting more obvious regulatory characteristics. With the great changes in the actual order in the cultural field, the original methods of regulation can no longer adapt to the new social changes. The position of normative constitutions indicates that cultural rights should be the core norm in the construction and interpretation of cultural constitutions. On this basis, this needs to be achieved by defining the core content and limitations of cultural rights; Cultural policy provisions are mainly implemented through legislation, policy formulation and as auxiliary basis in constitutional review.

Eva Heffernan
University of Cambridge

SPIRITUAL SOCIETIES: COMPARING THE USE OF CULTURAL AND RELIGIOUS SYMBOLISM IN ANCIENT LEGAL SYSTEMS

This paper will examine ancient legal systems across the globe, evaluating how and why symbolism is used in legal codes. This may include the use of special numbers, symmetry, religious symbols, animals, location, and more. I will examine how symbolism may be used to structure the law, as well as how it may affect the content of the law. I will also examine the reasons behind the use of symbolism. I will ask why lawmakers may have been motivated to use symbolism on one hand, and on the other hand, how the use of symbolism affected how a legal system was received by subjects of the law. Finally, I will compare different legal systems' utilization of such symbolism.

Tahir Herenda
University of Sarajevo

PATH DEPENDENCY OF POWER SHARING - BOSNIA AND HERZEGOVINA'S, CYPRUS' AND LEBANON'S FIRST EXPERIENCES WITH POPULAR REPRESENTATION

Bosnia and Herzegovina, Cyprus and Lebanon are polities whose political institutions are defined by ethnic/religious divisions. While Cyprus remains physically divided along these lines, Bosnia and Lebanon have constitutional systems that mirror their deep divisions. To grasp the pervasiveness of these identity markers in their institutional structures, we must consider their historical trajectories.

Having been former Ottoman provinces, Bosnia, Cyprus, and Lebanon inherited the millet system mentality, which influences their social and political dynamics. Moreover, they experienced European colonization, exposing them to modernity and institutional design that included representative systems.

The presentation retraces the shared history of these three polities, paying particular attention to the institutional treatment of religious differences and their impact on their early experiences with representation. By thoroughly examining their approaches to representational democracy, we gain crucial insights into the complexities of these societies and their interactions with identity markers.

Through this historical analysis, we aim to illuminate the intricate relationship between identity markers and representational democracy in polities defined by ethnic and religious divisions. Understanding the historical context is essential for comprehending the depth of their divisions and their unique approaches to democratic representation.

Wang Jing
University of Ningxia

CANTON EXPORT PAINTINGS AND THE "EASTWARD SPREAD OF WESTERN ICONOGRAPHY" IN A LEGAL HISTORY PERSPECTIVE

As one of the most relevant aspects in Sino-Western cultural communication history, "the eastward spread of Western iconography" started in the second half of the 16th century and was attributed primarily to the Jesuit missions, which introduced European visual art to the imperial court. In recent years, art history studies in China further distinguish the Canton export painting trade as a second but no less significant route that contributes to the communication of Sino-Western iconographical art. The unique painting trade arose when the imperial decree of 1685 ordered the opening of several coastline port cities, including Canton, to foreign trade and designated Canton Hongs (Factories) the monopoly agency, including exporting paintings.

The production of Canton export paintings was large. Created specifically for sale to Europe, responding to the large-scale visual needs of the Western audience during the "Chinoiserie" period, it depicts folk figures and scenes in social life in the late Empire, with the Hongs functioning as the patron and distribution intermediaries of the painters.

The prosperity of the export painting finished after 1843 when China and Britain signed the "Treaty of Nanking" which arranged Shanghai's new commercial port and lifted the ban upon foreign trade without authorized intermediation. Canton, as the once foreign trade center of the Empire, gradually declined, and so did its export painting.

Gaining enlightenment from the changing interactions emerging in a specific historical era, the study explores how legal elements and economic, political, and cultural elements reflected in the rise and fall of Canton export paintings and interprets the connotation between Sino-Western cultures.

Rafał Kaczmarczyk
University of Warsaw

ELEMENTS OF ISLAMIC LAW WITHIN THE POLISH LEGAL SYSTEM

The paper discusses elements of Islamic law present within the Polish legal system during its modern history, from regaining its statehood by Poland in 1918 in particular. This phenomenon is a result of the century-old presence of the Muslim minority within Polish territories. The local law and Islamic law were already having some influence on each other in the period of the Polish-Lithuanian Commonwealth. However, the norms originating from the Polish-Lithuanian Commonwealth did not affect the subject matter considerably because of the partitions of Poland.

The legal situation of Muslims was regulated during the partitions in Austria and Russia. In spite of the fact that the Polish legislation is the most important for the subject matter, the former (in particular) Russian norms are also taken under consideration because they were significant for the discussed matter, especially in the interwar period. Thus, the paper does not concern the interaction between Islamic law and Polish law only, but also between them and other regional legal systems.

The state law was recognizing Islamic law as proper law in certain fields. Some Islamic law institutions were adopted by Polish law. The State also affected several norms of religious law in the Muslim community internal matters. The paper analyses these phenomena, focusing on the issues of marriage and divorce as well as *waqf*s. It aims to specify the main factors shaping them, searching in the past for solutions applicable in the future.

Tomislav Karlović
University of Zagreb

ROMAN LEGAL TRADITION IN SOUTH EASTERN EUROPE – EVOLUTION THROUGH THE MEETING OF LEGAL CULTURES

Speaking of the meeting of legal cultures and traditions, especially in the terms of West meets East, and from the European perspective, one usually understands under the term West the Roman legal tradition. Notwithstanding the existence and distinctiveness of (Anglo-Saxon system of) *common law*, Roman legal tradition, or the system of civil law, is considered as one of the tenets of European identity, but even further, one of the foundations and integrative elements of the Western Civilization. However, this is a rather narrow outlook on the essence and the role of the Roman law and Roman legal tradition in historical perspective. Essentially, Roman law developed in close contact with other (legal) cultures, and the big innovations, additions rather than revolutions, in its history, are based on the encounters with foreigners, especially from the East. Furthermore, the renaissance of Roman law in the Middle Ages is closely connected with the rapidly developing trade between the merchants of Italian Maritime Republics and the Arab rulers and traders, and the ensuing growth of urban centres and the city bourgeoisie. Finally, in the context of contemporary history, the reception of Roman legal tradition is a global phenomenon based on the meeting of cultures. In this presentation it will be focused on the survival and reception of Roman legal tradition in the South Eastern Europe. The embeddedness of Roman law in these territories can be followed from the Early Middle Ages, as it was preserved by the Byzantine Empire and through its legacy on the Eastern Adriatic coast and in the hinterland. Nevertheless, as it was a quite heterogenous area, marked by continuous border wars until the 18th Century and rebellions after that, there was no wide reception of the learned Roman law during the High and Late Middle ages and during the 16-17th Century as elsewhere in Europe. The Roman law concepts and knowledge seeped through, especially with the nobility educated at the Italian universities, but this was rather limited. Legal renewal, in the full sense of the word, began only during the 19th Century, mostly by the import of the Austrian ABGB, one of the great codifications of civil law based on the natural law refinement of Roman law precepts. Quite paradigmatically for the nature of Roman legal tradition, this also shows how the great civil codes, as building blocks of a

legal culture, have been used in different surroundings, changing the local societal structures, while being at the same time changed under the influence of specific cultural conditions.

Masahiro Kitatani
Hitotsubashi University
Heidelberg University

THE RECEPTION OF ROMAN LAW IN THE FIELD OF MILITARY. LEONHARDT FRONSBERGER AND THE TRANSLATION OF D. 49. 16. *(DE RE MILITARI)* IN HIS "KRIEGßBUCH" (1573)

Recently Diethelm Klippel showed the significance of the military law (Militärrecht), contemporary word, "Kriegsrecht", in jurisprudence of early modern Germany. Of course, military law was important not only for jurists or jurisprudence but also military persons. A german soldier and military author, Leonhardt Fronsperger (?-1575) wrote many books on military affairs, especially military organisation and discipline in the latter half of the 16th century. He translated "de re militari" of Digesta Justiniani (D. 49. 16) from Latin into German in one of his books, 3rd book of "Kriegsbuch" (3 books 1573). Interestingly, his translation is apparently affected by a translation of a German jurist, Justin Gobler (1503-1569, book title: "Rechtenspiegel" (1550)). Gobler translated "de re militari" of Codex Justiniani (C. 12. 35.) as well as Digesta but Fronsperger translated only that of Digesta and put the translation in the part of ancient Roman authors in his book. This means a reception of Roman law in the military field as an ancient model of military organisation under the effect of contemporary jurist. We may be able to call this "reception of Roman law by non-legal experts, military person". In this way, a new perspective on the reception of Roman law can be gained.

Ahmet Muaz Kömür
Tekirdag Namik Kemal University

THE TURBULENT YEARS OF THE TURKISH COUNCIL OF STATE

This paper aims to uncover a debate on the legal system of Turkey that took place in the early years of the Turkish Republic. The central figure was the prominent Jewish lawyer, Gad Franko, and his journal *Hukuki Bilgiler Mucmuası,* which started publishing in 1926. In its first issue, Gad Franko stated the two main goals of the journal: to advocate for the constitutional compliance mechanism and the abolishment of the Council of State with the reception of a monist legal structure in Turkey. Franko defended his position throughout the years and tried to kindle a discussion on these issues. The debate he started continued in several different journals and included many important names in the field.

The debate's significance might only be appreciated when put in its historical context. When Franko started to write on the matter, the Republic's first constitution (1924) stated that there shall be a Council of State. However, the Council wasn't established until 1927. The memory of the fierce debates in the National Assembly years prior over the necessity of the Council was still fresh. Franko, writing a couple of years later, made the existence of the Council a legal problem instead of a political one. For a moment in history, it might have seemed that modern Turkey could leave the dual system behind, but that did not happen. However, examining the debates on the issue might give us a better understanding of Turkey's legal system's evolution.

Tomasz Królasik
University of Warsaw

ENFORCING FRENCH MODERN LEGAL CODES IN THE DUCHY OF WARSAW AS AN EXEMPLIFICATION OF THE NAPOLEONIC MODEL OF HARMONIZATION OF LAW IN EUROPE

In 1795 Poland lost independence due to the event known as a third partition of Poland accomplished by Russia, Prussia and Austria. Polish traditional legislation in the period before the third partition went through the process of accelerated changes of the native legal system, yet still it had almost no long-lasting effect and did not prevent the imminent collapse of the State. The idea that the old law is ineffective and social and civil changes are inevitable was not abandoned.

As soon as in 1807 the Duchy of Warsaw was created as a result of Napoleonic victory over the Kingdom of Prussia. With its creation the French civil code (Napoleonic code) of 1804 was enforced in the territory of the Duchy (in 1808) along with French code of civil procedure of 1806 and French commercial code of 1807 (in 1809). The revolutionary French legislation that endorsed a principle of legal and civil equality of citizens as well as a society without state divisions had to be harmonized with Polish society that was politically enthusiastic toward Napoleon, however, ideologically, socially and economically Poles were rather conservative and backward-looking. Least to mentioned that serfdom and almost total lack of personal freedoms of peasants were the most important elements of legal and socio-economic Polish reality.

In my paper I will highlight the practical and ideological aspects of Napoleonic harmonization of law in Europe provided with the example of the Duchy of Warsaw. In spite of the fact that multiple French institutions enforced in Poland had to be altered and reshaped in the administrative way by the Government and the Duke Frederick Augustus (who was a monarch of the Kingdom of Saxony) in a spirit openly contradictory to their original intentions, it should be noted that the French legislation gave an incredible momentum for further legal and social modernization in Poland during the Kingdom of Poland and later in the 19th Century.

Enzo Rocha Magri
University of São Paulo

THE PROTECTION OF SEXUAL INTEGRITY OF CHILDREN IN ROMAN LAW

The proposed presentation aims to analyze the main legal institutions of Roman Law regarding the body of legal values pertaining to a minor's «sexual integrity», be them referred to a merely physical protection, or the preservation of one's psychological and reputational capital. In this sense, «legal institutions» is to be considered as those that prescribe a «negative duty» regarding a minor's physical and moral sexual integrity, and the consequent punition for the offender of these legal values. In respect to the aforementioned values, with the disclaimer of the traditional understanding of a «roman aversion to any systematization of an individual's subjective rights in its legal fonts», the proposed research aims also to shed a light on the question of the reasonable existence of an innate set of prerogatives and rights of a minor in this sense, as found in the legal fonts.

These two distinct, but profoundly connected ends, are intended to be achieved through a collection and exegesis of the roman legal fragments regarding the issue, with the examination concerning mainly (but not limited to) the civil delict of *iniuria* and its species the *adtemptata pudicitia*. Moreover, key terms and concepts such as *pudicitia, castitas* and *modestia* will also be analyzed to further provide context to the legal sources that have them as central elements.

Nathaly Mancilla-Órdenes
University of Helsinki

A NETWORK OF PAPERS IN AN INFORMATIONAL EMPIRE: THE RELEVANCE OF THE OFFICIAL CORRESPONDENCE IN THE NORMATIVE PRODUCTION OF THE PORTUGUESE ADMINISTRATION ON THE DIAMOND DISTRICT (1771-1808)

This article seeks to show the relevance of official correspondence in normative production during the *Ancien Regime* through an analysis of the case of the Royal Diamond Extraction, established by the Portuguese Crown to administer the diamond demarcation in Minas Gerais, Brazil (1771-1808). To this end, the letters contained in Book 4089 of the Tribunal de Contas de Portugal, related to the Royal Extraction, will be analyzed. In addition to these, three other books of the Royal Extraction located in the Torre do Tombo National Archive will also be utilized.

With this scope, I take as a departing point the decentralized perspective of the normative production during the Old Regime in the context of legal pluralism. In this sense, law can be conceptualized as a communicative sphere in which the various media available are intertwined in the production of the normative objectives of the authority.

The premise is that the official letters were instrumentalized to achieve enforcement of the new regulations of the diamond administration, and even of the very concept of law that the Portuguese crown sought to implement. The main hypothesis is that the correspondence between Lisbon and the various officials of the Royal Extraction can be properly read as a source of law. As such, it not only had the function of guaranteeing observance of the royal legislation abroad, but also served to weave a network of normative expectations articulated in different situations by the various historical agents. The secondary hypotheses are: 1) the letters had sufficient normative force to control an area of economic interest for the Portuguese crown and 2) through them, a specific concept of law was conveyed, increasingly related to utility, gradually leaving behind the centrality of justice.

Ivana Marušić
University of Mostar

ANCIENT MIDDLE EAST AND THE ROMAN WORLD: THE QUESTION OF BANKING ACTIVITY IN BABYLON AND BANKING IN THE ROMAN WORLD

Since ancient times, banking and banking activities have represented a significant segment of economic activity in a state and one of the main pillars of trade and economic development. Just like in the Roman world, Mesopotamian society, including Babylon itself, was very wealthy and sophisticated, primarily based on agriculture but with a highly developed trade system. The aim of this paper is to compare and analyze, based on relevant scientific methodology, various literature sources, and legal sources ranging from legal texts to inscriptions that testify to financial activity, the significance, activities, credit system, and role that banking had in Babylon, in comparison to its development and role in the Roman world. Each of these systems possessed its own specificities, but what they have in common is that they laid the foundation for the banking system itself, the development of which would follow in later periods of historical development.

Ehlimana Memišević
University of Sarajevo

ISLAMIC LEGAL CULTURE IN TRANSITION

Islamic law has been present and applied in Bosnia and Herzegovina since the Ottoman conquest in the 15th century. Contrary to the usual assumptions about the static nature of Islamic law and legal culture, it is a dynamic system that has developed and transformed over time. That is most evident in the way the interpretation and application of Islamic law in Bosnia and Herzegovina changed over the course of more than five centuries due to the political and legal transformations in Bosnia and Herzegovina. However, two characteristics remained: it has been applied in the context of legal and cultural pluralisms and continuously transformed in attempts to respond to the challenges of the time.

This paper studies the fundamental concepts of Islamic law from a historical and comparative perspective, as well as the characteristics, development, and transformation of Islamic legal culture in general and in Bosnia and Herzegovina in particular. It will focus on the process of the transformation of law, starting with the technocratisation of law, through desacralization of law – transition from "jurists' law" to "statutory law" and finally from law to ethics, i.e., from legal to ethical and religious code in the 20 and the 21st centuries in Bosnia and Herzegovina.

Valerio Massimo Minale
University of Naples

DUSHAN'S ZAKONIK AND EDICTUM THEODERICI: A CONFRONTATION

The most important legal monument of Serbian history, the Zakonik issued by Stefan Dushan, full of Byzantine law, could be analyzed also through a confrontation with the Edictum Theoderici, which in turn was so devoted to Roman law: this kind of confrontation could be useful in order to understand the ideology of both the collection, mainly concerning the use of the customary law as (residual) source.

Magdalena Ossowska-Tutaj
University of Warsaw

MEETING AT THE SAME POINT? CIVIL LAW AND COMMON LAW REFLECTIONS ON THE NOTION OF ABANDONMENT OF A THING

The concept of *derelictio* (i.e. right to abandon a thing) has been developed in antiquity by Roman jurists. The general effect of such a legal act is the abolishment of ownership – the abandoned thing becomes ownerless (*res nullius*) and can be acquired by anyone. For this result to be achieved, two elements must be present together: the actual disposal of possession, and – much more difficult to assess – the intention to abandon such a thing (*animus dereliquendi*). Despite being quite intuitive, the legal concept of abandonment of a thing must be understood differently in the two greatest legal families in the world – civil law and common law. These traditions (which have an unparalleled influence on forming of legal systems – not only in the West but also in the East) present different approaches to property law in general. However, they share the same intuitions as to the consequences of *derelictio*.

In my paper, I will characterize the notion of abandonment of the thing in civil law and common law in the light of the Roman law sources. Some examples from modern case law will also be discussed. It will lead me to the conclusion that despite the underlying differences as regards property law, both traditions under examination significantly limit (or even exclude) the main effect of *derelictio* which is creating *res nullius*.

Piotr Owsiak
Jagiellonian University

LUXEMBOURG – PLACE OF MEETING OF NAPOLEONIC AND GERMANIC LEGAL CULTURE

In my paper I would like to present most important aspects of state and legal history of Duchy of Luxembourg – one of the smallest countries in Europe. Through the centuries Luxembourg was part of French legal system which is part of Napoleonic Legal Culture and also a part of German legal system which is part of Germanic legal tradition. On the basis of Luxembourgish Legal History. With Luxembourg as example I will show how European small states legal systems were shaped and how strong were influence of neighboring countries legal systems. In my speech I will show what are the effects of such mixture of legal culture in practice and how unique legal solutions of Luxembourgish legal systems and compare which of two mentioned legal systems prevail in different branches of Luxembourgish law.

Giulia Aurora Radice
University of Milano
Soochow University

THE EARLY-STAGE RECEPTION OF ROMAN LAW IN JAPAN AND CHINA

In the mid-19th century, Western powers knocked on the doors of the Far East and landed on the shores of China and Japan. The reaction of the two countries was diametrically different; Japan opened up, guided by the Meiji Restoration, China at first closed in, driven by Sinocentric thinking. The changes brought about by historical events also involved law: indeed, a crucial meeting of legal cultures happened. Firstly, Japan approached the legal systems developed in Europe and then, decades later, China, through the Japanese mediation, embarked on a path of legal restructuring which, as far as civil law is concerned, has reached its formal milestone in 2020 with the Chinese Civil Code. Having defined the context, the paper addresses the specific topic of the reception of Roman Law in Japan and China, considering three elements: the delegations of Japanese and Chinese scholars which went abroad for legal education, the Roman law teaching courses in the newly established universities and the published books on Roman law. Besides the analysis of related literature and of the legal lexicon introduced by Japanese and Chinese translations and by critical reflections on new concepts, the research will attempt to access to historical documents (e.g., reports written by the delegations). The aim of the paper is to provide a systematic overview of the early reception of Roman law in Japan and China, arguing that Roman Law, and *latu sensu* the Roman Law Tradition, contributed to set the conceptual foundations of Civil law in both countries.

Julie Rocheton
Max Planck Institute for Legal History and Legal Theory

AN ENDEAVOR TO IMPROVE THE LEGAL REALITY: THE 19th CENTURY AMERICAN CIVIL CODES

Many countries have considered the question of codification of their private law at some point in their history, whether due to inherent issues in the law or from a drive to enter the age and vision of rationalization. The answers differed from one place to another, one tradition to another, one state to another. In the United States, that question was asked during the American codification movement and answered state-wise in Louisiana; Georgia; California, Dakota Territory, North Dakota, Montana, and in South Dakota during the 19th century.

In the US context, the lack of a single, unified code along the lines of France's Napoleonic Code has made it impossible to see the centrality of codification to state-building projects. If, in the French context, codification came to be synonymous with legal rationality and even with the revolutionary overhaul of existing legal institutions, in the United States, codification proceeded at a less dramatic pace and in a more piecemeal fashion. The 19th century US states civil codes are the result of translation, acculturation, and circulation of the understanding of civil code in a new tradition.

I aim to present the origin story of those shadowed civil codes. What were the official impulses and the legislative intent? Which are the external societal and cultural elements driving them? What was their understanding of the concept of civil code? The 19th century US states civil codes are the perfect example of intent versus reality, but most of all, they are a man-made legal tool.

Pieterjan Schepens
Ghent University

MUTUALISM AND INSURANCE: THE EARLIEST BELGIAN LEGISLATION ON PRIVATE SECTOR PENSIONS

The earliest Belgian pensions in the private sector arose from two distinct cultures: the culture of 'insurance thinking' in matters of social legislation and the culture of the mutualist movement. Both had been connected to each other by the very earliest legislation on both matters in the 1850s, precisely in the area of pensions formation. At the same time, both ways of thinking stood in stark opposition to the culture of welfare, which both dismissed as an appropriate answer to the social question.

The precise interaction between these three ways of thinking was highly specific to Belgium. By contrasting Belgium's approach to that of other countries, I will situate Belgium's first private sector pensions legislation within the context of its neighbours, and show how Belgium in the late 19th and early 20th century consistently tried to foster both social insurance and mutualism at the same time. In this way, the birth of Belgian state-financed social security was not a straight path towards an all-powerful bureaucratic state, but rather tried to use state power to grow a civil society.

Elizaveta Stetsenko
University of Cambridge

WHEN THE EAST MEETS THE WEST

At first sight, Western and Eastern legal cultures may seem very different, both reflecting thousands of years of different historical, cultural and social traditions. For comparative analysis of Western and Eastern legal cultures, this paper will focus on Public Law, and Constitutional Law in particular. Written and unwritten constitutions, codified powers of the executive and existence of constitutional conventions, clear separation of powers and fusion between them - are only some of the differences that immediately come to mind and will be examined on this paper.

But what if, for various reasons, our shared past, present and future is greater than we may think? This paper compares Western and Eastern legal systems using the examples of the UK, the US, Russia/Ukraine and China. The solutions to typical legal problems reached by each of these legal systems will be examined through historical, political, socioeconomic and doctrinal lenses.

The paper reaches the conclusion that although there are notable differences reflecting different ways of life around the world, our history, society and cultures are more intertwined than they may appear, giving rise to some very interesting legal solutions to common problems.

Amila Svraka-Imamović
University of Sarajevo

ISLAM IN EUROPE: THE CASE OF BOSNIA AND HERZEGOVINA

The acceptance of Islam by the largest part of the Bosnian population represents the most significant phenomenon in the modern history of Bosnia and Herzegovina. In the Ottoman period, Islam in BiH, as in other parts of that country, was the ruling view of the world. After the Austro-Hungarian occupation of BiH in 1878 BiH was fully included in the state-legal framework of that Catholic monarchy. The question of institutionalizing Islam in a new framework arose.

The socialist regime established in Bosnia and Herzegovina after the Second World War was based, in relation to religion, on the principles of separation of religious communities and the state, secularization of rights and understanding of religion as a private matter of citizens. Freedom of religion is guaranteed within the framework of the law. The legal framework for religious expression was far narrower than the relevant international standards.

In post-war Bosnia, the increased presence of religion in the public arena is evident. Some welcome the religious revival as a healthy assertion of identity after the decades long de-Islamisation process during the Communist period, while others see it as a rising threat to the secular and politically fragile state.

Dawid Szulc
Adam Mickiewicz University in Poznan

THE LEGAL SYSTEM OF THE OTTOMAN EMPIRE AS A MEETING PLACE OF LEGAL CULTURES AND THEIR INCORPORATION

The purpose of my speech is to present the problem of the multiplicity of legal cultures in the Ottoman Empire in the modern era and attempts to partially overcome them in the 19th century. In particular, I would like to analyze the institution of Ottoman millets, which were characterized by a kind of legal autonomy in the Ottoman legal system, and the impact of local solutions that were incorporated into the legal system of the Ottoman state, affecting its system and organization (in terms of taxes or jurisdiction of the judiciary). The above issue is related to the problems of public administration and the state system of the Ottoman Empire, which will be discussed during the speech. In addition, selected legal acts of the Tanzimat era will be analyzed, which influenced not only the attempt to unify the law, but also the formation of a unified legal system, resulting from the multiplicity of legal cultures, which the reformers of the 19th century intended to be reconciled in a unified doctrine of Ottomanism. In addition, for the purposes of the speech I will analyze Crimean court books, which are one of the Polish areas of research into the legal history of the Central and Eastern European area. Therefore, it follows that the subject of the speech should be set on the borderline of the study of the history of the state system, the history of law and political-legal doctrines.

Alec Thompson
University of Cambridge

LAWYERS AND LIBRARIANS: A CLASH OF CULTURES

In many ways, the role of the lawyer and the librarian are very similar: they organise profuse and complex information in a way which makes it easy to access for members of the public. All is well when the librarian and lawyer collaborate together: what happens, however, when they disagree? This short paper will explore several examples of how legal experts interact and collaborate with librarians, booksellers, and legal archives across English and American legal history. I observe how similar techniques for processing information have developed the science of both law and library organisation together. These techniques range from the technological, such as new information media, to the conceptual, such as substantive legal reasoning and new ways of sorting, storing, and retrieving files. A central theme of my research is the role of the law-librarian in the legal reasoning process, tracing their development from law clerks to the formal law-librarian, and now as the 'legal data-management' expert. How does the law-library, and its library staff, shape the way lawyers work? Does it alter the form of law, and what impact does this have on the accessibility, power, and authority of legal information? Further, to what extent can a law-librarian carry out the role of a lawyer, and what does this say about the nature of legal knowledge and expertise? Few of these questions have been pursued despite the deep interconnection between the lawyer and the library. I hope my paper can offer a brief historical glimpse into the fascinating and neglected relationship between these two cultures.

Davide Luigi Totaro
University of Milano

FROM INDIVIDUAL RISK TO RISK POOLING AND RETURN: A COMPARATIVE AND HISTORICAL ANALYSIS ON THE INSURANCE TREND OF *TAILORIZATION*

Insurance, a contract whereby, in return for the payment of a premium, one party undertakes to compensate another one for the damage caused to it by an accident, or to pay a capital sum upon the occurrence of an event pertaining to human life, is a universally applied instrument of private protection against risk Civil Law and Common Law legal traditions alike. This instrument, which traces its roots back to the earliest times and is the result of the human desire to overcome the fear of the unknown, the future and the uncertain, has over time become inextricably linked to the notion of risk mutualization and risk pooling. More recently, however, new business models and technological advancements have brought insurance contracts to an ever-increasing degree of customization and individualization far beyond the traditional mechanisms of statistical fragmentation and categorization of the insured risk. Therefore, some claim the occurrence of a complete revolution in the traditional insurance paradigm and the possible crisis of the industry arising from the excessive granularization of risk categories and contractual relationships. In light of the above, this contribution, through its historical and comparative analysis of the insurance phenomenon, aims to address the relationship between insurance, risk-taking, and mutualization. Namely, through the study of the insurance experience in Italy during late-middle-age, and in modern era Spain and in England it will attempt to argue that the present transformation instead of being a new and disruptive development could be seen as a return of insurance to its origins.

Michał Tutaj
University of Warsaw

ROOTS OF THE CONTRACT OF MANDATE (AND SERVICE PROVISION) REGULATION IN THE POLISH CIVIL CODE

Polish private law is sometimes described as a 'hybrid system' that is placed between the Romanic and the Germanic legal families. That is not surprising given that during the era of codification, Poland was partitioned between Russia, Germany and Austria-Hungary (with a short period of Napoleonic protectorate). Consequently, after regaining the independence after the I World War, the foreign legal systems were the framework of reference for the Polish legal elite working on the codification of the Polish Code of Obligations (the only codified branch of civil law in the inter-war period – i.e. in 1933).

Nevertheless, the Polish legal elite decided not to transplant any foreign civil code and, instead, to draft the thoroughly discussed Polish code. That is why, the Polish Code of Obligations followed by the Civil Code of 1964 contained multiple provisions that were, on the one hand, the result of development of Polish legal concepts, but on the other hand, deeply rooted in other continental legal systems.

The contract of mandate as well as its neighboring contract of service provision has indeed Roman law roots. However, it came a long way to become the contract in the shape we know nowadays. In my paper, I would like to present how the current solution regarding the mandate in the Polish Civil Code was affected by foreign legal systems.

Apart from depicting Polish legal history, I hope my research will enable to cast a light on the way the legal models tend to circulate between East and West.

Afra Uysal
Ibn Haldun University

TWO DIMENSIONAL CULTURAL CHARACTER OF OTTOMAN LAW: SHARIA AND CUSTOMARY STATE LAW

There may be seen a generally accepted perspective on Ottoman law that it holds pure religious character in intellectual teachings. However we should look beyond this loose summary of Ottoman legal culture which consists of basicly two main sources besides the traces of many other regional or religious legal cultures. We may name these two main source of Ottoman law as "sharia law" and "customary state law". Sharia law is as generally known means Islamic law which is comprise of Muslim jurists' intellectual works upon the basis of legal rules prescribed by the Holy Quran and the Sunnah of Prophet Mohammad (pbuh). This religious law explicated and enhanced intellectually was in a side of Ottoman law spectrum. At the other side of that spectrum, we may see the Ottoman state law which was conducted by sultan's orders he could gave in the frame drawn by sharia law. This customary state law of Ottoman was based upon pre-Islamic Turkish governmental law or customs. So it can be said that Ottoman law is consist by the convergence of those two substancial sources and their basis as pre-Islamic Turkish legal culture and Islamic legal culture. This paper aims to clarify those two dimensional cultural character of Ottoman law and their historical background in pre-Islamic Turkish legal culture and Islamic legal culture.

Sebastiaan Vandenbogaerde
Antwerp University

MEETING LEGAL CULTURES: BELGIAN LAWYERS TRAVELLING TO OVERSEAS TERRITORIES

In 1896, the renowned Belgian lawyer Edmond Picard set sail for the Congo Free State. He proclaimed himself the first tourist in the at that time personal realm of King Leopold II. He published his adventures in a book *En Congolie* and discussed how the Congolese population organized its society and customary legal system. Picard is unavoidable in Belgium's legal history. He founded the *Journal des Tribunaux*, today's leading law review in the francophone part of the country. Further, he was an attorney at the Cassation Court and a progressive politician. However, he was not the only Belgian lawyer travelling to see the Congo with their own eyes. After World War II, two other lawyers were commissioned to travel across the Belgian Congo, visiting magistrates and other legal practitioners, in order to report on the judiciary over there.

This contribution will focus on the lawyers who went to the Congo. They will be retraced through different legal titles which published their adventures. Intended these lawyers just to inform their peers at home, or served the publication of their travel stories a higher purpose? The main source for this paper will be the *Journal des Tribunaux* and its spin-offs, since its editorial board found itself at the centre of the colonial world in Belgium. Hence, this law review controlled the legal debate on the colonial endeavour, which makes it to a "vector of colonial law".

Yuvan Vasanthakumaran
University of Cambridge

THE ROLE OF RELIGIOUS LAW IN SHAPING ROMAN LEGAL CULTURE AND BEYOND

Roman society, much like that of its contemporaries, was influenced largely by the enforcement and development of its religious law. Such an area is left relatively underexplored in the course of Civil studies in favour of the more secular areas such as study of the Corpus Iuris Civilis. This paper is meant to partially rectify that. This paper will examine the nature and role of religious law in the Roman world. There will first be an exploration on how religious law shaped Roman society at large, looking at its impacts on societal and political developments. This will have a particular focus on society in the age of the Roman Republic. Next will be an assessment on how it influenced secular areas of the law. I will look at select areas of secular law influenced by religious law including in slavery and in issues in family law. Finally this will be contrasted to other legal systems, both to other ancient civilisations and to the development of areas in English law, to determine how particular the influence of religious law was to Roman legal culture. In analysing the subject in this way, this paper will grant a greater appreciation for the role of religious law in Rome and beyond.

Ana Paula Zappellini Sassi
University of Milan

LEGAL TRANSPLANTS AND GENDER DISCRIMINATION IN THE CRIME OF RAPE (BRAZIL, 1822-1890): AN INITIAL APPROACH

When Brazil established its independence from Portugal, in 1822, a compiled of Portuguese norms called "Ordenações e Leis do Reino" continued to be applied in the new-born Empire. Concerning criminal law, the collective of rules remained valid until 1830, when the first Brazilian Criminal Code was promulgated. By the second half of the 19th century, a diversity of social movements flourished in the territory. The slavery regime was extinguished, the Republic was proclaimed and the religious freedom declared. In that context, the creation of a new criminal codification became urgent: laws should be modernised, accompanying the "civilising" effort (SONTAG, 2014). The republican "Código Penal" was promulgated in 1890, stipulating the Rape crime, now distinguished from deflowering and rapt. This analysis aims to understand the legal transplantation of the category "mulher honesta" to the Rape crime, questioning, as a research problem, the influence of catholic moral norms in that stipulation. Using the the history of categories (HESPANHA, 2018) and legal transplants (GALINDO, 2014) methodologies, the work is conducted via bibliographical-documentary research technique, and the sources - doctrines and legal provisions – are investigated through gender lenses.

Xuewei Zhang
Sapienza University of Rome

HISTORICAL EVOLUTION OF THE CONCEPT OF *FURTUM* IN ROMAN LAW: A PERSPECTIVE FROM LEGALLY INTEREST

Compared to other concepts in private law, theft (furtum) in Roman law is generally regarded as an underdeveloped concept. Unlike modern understandings of theft, which are predominantly classified under criminal law, theft in Roman law undergoes a gradual transformation from a delictum to a public crime while maintaining its distinct characteristics within the legal framework of private law. From a chronological perspective, the development of this concept can be divided into three stages: early republic, middle and late republic, and the imperial period. During these periods, the connotation of theft undergoes changes, and the litigation model for theft evolves from the *actio furti* created by the judge to a publicly initiated lawsuit created by the monarch. This article interprets this transformation from the perspective of "legally interests".