ABSTRACTS

24TH ANNUAL FORUM OF YOUNG LEGAL HISTORIANS

Norms and Legal Practice:
There and Back Again

14 – 17 JUNE 2018, WARSAW

FRIDAY 15TH JUNE
Morning session I

ANTIQUITY. "Roman law in context" (Room A3)

Sögüt, Ipek Sevda
"Intellectual Context of Roman Law"

It is possible to distinguish at least three different ways of studying Roman law today. A first approach starts with actual legal problems. One can certainly ask about the historical background of these problems, but the actual problems remain in the centre of attention. So Roman law is a kind of auxiliary tool for the understanding of modern private law. There is a second approach to Roman law. In it, the emphasis is also on matters of private law, but there is a far greater sensibility to legal evolution within Roman law itself. This approach began as early as the nineteenth century, when Roman law gradually ceased to be a direct source of current (private) law. Lastly, there is a third approach to Roman law. This approach agrees in many respects with the second, neo-humanistic one, but it has a much wider scope. I propose to call it the contextual approach to Roman law. Scholars adhering to this approach are not only concerned with legal sources, but also consider these sources as a part of intellectual history. They try to understand Roman law not only as a legal phenomenon, but also as a part of the history of ideas in general.

Kulawiak–Cyrankowska, Joanna
"In Seneca we trust? On the utility of Roman declamation in the study of Roman law"

Making a distinction between the "law on the books" and the "law in action" in an action-oriented Roman legal reality might constitute a challenge. There is, however, a certain difference between the role of a jurist and an ancient orator in the Roman legal practice. On the other hand, according to the general view of the Romanists, these two professions seem to delineate the strict boundary between a proper (legal) and an improper (non-legal) attitude towards the knowledge of the Roman law. Without making an attempt to answer the question to what extent the declamations expressed the actual legal regulations, it is worth considering the connections between these two fields. Analysing the passages from the collection of Seneca the Rhetorician and comparing them to the work of Roman jurists, provide an opportunity to notice the similarities between the reasoning and argumentation of the jurists and the orators, their attitude towards the unwritten values and even the language used by them. Such a comparison might be inspiring for both disciplines.

Iacoboni, Anna
"The Legal Value of the *mos maiorum* in Cicero"

Mos maiorum is based on memory and it has an oral nature. The Quiritary Law was primarily based on mores. They regulated the way of living both of *familiae* and patrician *gentes*. Prior to the writing of Twelve Tables, the law was oral and the knowledge as well as the interpretation of the law were the prerogatives of the pontiffs. The oral nature of the tradition makes it possible for the patricians and, then, for the patrician–plebeian nobility to provoke its political manipulation. We will also evoke the importance of the Law of Twelve Tables. We will ask ourselves if the law of Twelve Tables is a political success of the

plebeians or if that is a code of conduct for the patricians. The law and the custom are the foundations of the ruling class.
We will underline the connection and the differences between the *mos*, the *consuetudo* and the *lex* at the end of the Roman Republic. In the *Rethorica ad Herennium*, the *consuetudo* is conceived as a source of law that integrates the *lex*. We also will study the juridical value of the custom in Cicero's works. Cicero believes that the *consuetudo* and the *mos* are sources of law that are based on the agreement of all the citizens. We pay attention on the *mos* and the *lex* conceived as the foundation of the *res publica* in Cicero's political works, in particular in the *De Republica* and in the *De Officiis*. We will highlight that a general agreement of the citizens based on the law is the foundation of the *res publica*.

Tank, Helen
"Living with the rules: agency, coercion, and gender in Herodotus' Histories"

Modern family law necessarily combines "law on the books" with "law in action". For example, when a court has to determine a residence dispute between separating parents, the rule is that "the welfare of the child shall be the court's paramount consideration". In practice, the court has to adjudicate between conflicting claims which are based on social expectations of parents and cultural norms of child welfare, as well as principles of law. My experience as a family lawyer informs my approach to ancient law, which combines legal rules with gender norms based on social, sexual and religious practices. These excluded most women from legal and political institutions and also acted as an informal, but nevertheless powerful, constraint on behaviour. However, in Herodotus' Histories, a 5th century BCE text, women feature prominently as actors, speakers, and figures of authority as well as voiceless victims of male power. In my presentation, I will consider not only the content of gender norms in the Histories, but also how those norms are applied in practice. I will argue that Herodotus destabilises the binary opposition of male and female by showing the disjuncture between the rhetoric of female inferiority and the agency and authority of women in his wider narrative.

LAW AND SOCIETY UNDER TRANSFORMATION (Room A2)

Tomczyk, Justin
"The Legacy of Authority: The Roots of Institutionalised Corruption in the former Soviet Union"

While the Russian Empire and Soviet Union governed their territories through authoritarian rule, certain states have managed to successfully transition to democracy since gaining independence. Others have receded back to authoritarian regimes and in some cases, personality cults. The focus of this paper is the flawed democracies of the Soviet Union – specifically Ukraine, Armenia, Moldova, and Kyrgyzstan. In these four states, corruption and private interests have woven themselves into the fabric of statecraft alongside the democratic process. This paper seeks to uncover which specific legal trends in Imperial and Soviet rule enabled this partial democracy and what effect regional bodies like the European Union and Eurasian Economic Union have on the strength of rule of law and democratisation.

Cyuńczyk, Filip

"Legal formation of the societal collective memories in the Baltic States. A comparison with the other post-communist states from the region"

The Baltic States (Estonia, Latvia and Lithuania) are often presented in the popular discourse as a "one" in three countries. That story is affected both by the historical ideas like Baltic Entente and by contemporary political projects. Also, the way how they became a part of the Soviet Union and their way to independence, in early 90's, are common. So, maybe such an opinion is justified? In many aspects and fields, we can talk about deep similarities between the Baltic States. However, there are also the differences. One of them is the method of dealing with the past after the communism. To be precisive, dealing with the communist and war past in all three the Baltic States is treated as a fact. History is playing an extremely important role for their legitimisation processes, but differences are appearing in case of state practice. Why Estonia, Latvia and Lithuania, the states which since almost 100 years, are loving to use similar methods in their politics, have decided to establish three different models of dealing with their past?

The main goal of the paper will be a presentation of these models and the try to present its societal, political and mainly legal background. The special attention will be allocated to their parliaments' legislative activities which are affecting their society's collective memories. Also, answers to the questions what is the role of law and legal institutions for dealing with the past in those states seems to be necessary. Finally, how specific are the Baltic State's dealing with the past methods in comparison with the other post-communist states from the region?

To sum up, the main goal of the paper is the first presentation of the dealing with the past models which are in use in the Baltic States. The second step is a presentation of the legal methods used for the societal collective memories reconstruction in Estonia, Latvia and Lithuania after the collapse of communism. The third step is devoted for the examination of Baltic States methods in relation to the other post-communist countries. Finally, in the last one, the most important is an answer to the fundamental question – does the choice of different dealing with the past model depends from the political and societal situation in various countries?

Zakroczymski, Stanisław

"How totalitarian experience built democratic norms? The struggle for independent judiciary in Poland. Conclusions from talks with Professor Adam Strzembosz"

My speech is going to be based on the experience of cooperation with Prof. Strzembosz, legend of lawyer's "Solidarity" movement and first Chief Justice of 3rd Republic of Poland as well as on the historical and legal academic research.

1. Obey or not to obey? Dilemmas of judges in communist period.
2. Total reform. Vision of judiciary in program document and practice of "Solidarity" movement. (including vision of institutional changes and discourse concerning law and courts).
3. Between heroism and collaboration. Judges approaches to Martial Law's repressive regulations (examples of various attitudes, strategies of resistance).
4. New Poland, new system. Impact of the experience of "Solidarity" lawyers on the shape of independent judiciary of democratic Poland adopted after the "Round Table" talks.
5. What went wrong? Did the "post-totalitarian trauma" provoked some defects of Polish court system?
6. Are we back there? Current controversies over judiciary reform on the historical ground.

CRIME AND PUNISHMENT (Room 1.2)

Godano, Francesco
"Ippolito Marsili: between the medieval text and modern practice"

Ius commune scholar Ippolito Marsili (Bologna 1450 – Bologna 1530) perfectly represents a stage of continental European legal scholarship which is entering the modern era, thus acquiring a keen focus on legal practice and specialisation – largely beyond the norms of the *Corpora iuris* – albeit maintaining a strong sense of the theoretical principles and tools used by medieval jurists to interpret – and teach – legal texts.
Both his life and work testify this transition point. Marsili was both a teacher and judge in the criminal law domain. As a judge, he mainly worked for the Milan Duchy, but he maintained the role of an independent contractor. At the same time, as a teacher in Bologna's *Studium* he connected his experience "in action" with the instruments of *ius commune* to shape the newborn discipline of "criminal law", and held the first course in history specifically designed for it (1509).
Marsili's chief work (*Practica criminalis*) is one of the first criminal procedure manuals. It is mainly addressed to judges, and describes the practical unfolding of trials; nonetheless, it does not merely report the rules, but uses scholastic dialectics – based on the *quaestio* pattern – to provide the reader with the reasoning and principles behind rules, with an educational purpose. As such, Marsili clearly reflects the unity between theory, norms and practice embodied in *ius commune*.

Bochart, Baptiste
"The evolution of imprisonment as a punishment in French Law: from retention during trial to general sentence"

Currently, in France, the major sentence used to punish a crime is imprisonment, in order to retrieve the condemned from the society for a certain amount of time. In France, the use of prison as a sentence for a crime is, from an historic point of view, very new. Less than two centuries ago, imprisonment was only used to keep the condemned under the control of justice, during trial or before the execution. In the same time, a large amount of sentences was proposed to judges in order to punish criminal behaviour. More than being public, these sentences were often very harsh and dreadful, for two major reasons. Firstly, because the condemned was seen as a sort of "tool" used by justice to show its strength. Secondly, because sentences were only seen as something that should hurt the condemned, in his body or in his soul.
This presentation will focus on the evolution of the sentences in the ancient French law and particularly the evolution of the beliefs around the purposes of the sentence, which lead the French jurists to slowly erase the various public punishments that were used all across the country toward a system where the prison becomes the only way of punishment, in order to "heal", and no more to "hurt" the condemned.

Picard, Nicolas
"Escaping the guillotine: the gap between crimes punishable by death and effective death sentences (France, 20th century)"

The French Minister of Justice Guyot-Dessaigne decided in 1908 the evaluation, in a statistical report, of the place of death sentences in the judicial system: the result was 41 death sentences for 734 "homicides punishable by death". Such an evaluation had for main

purpose to support the bill of abolition of the death penalty (finally rejected), to show the negligible role of the capital punishment in the penal repression – as if the guillotine had fallen into abeyance. According to the Penal Code of 1810, aggravated murders (premeditated murders, murders accompanied by another crime, murders of a public officer), parricides, poisonings, arsons of houses, as well as complicity and attempt of such crimes, were all punishable by the guillotine. However, a large implementation of the principle of mitigating circumstances permitted to avoid the enforcement of death penalty. The requalification of some crimes into lesser incriminations, and the dropping out of some charges completed this picture. Moreover, two thirds of the people sentenced to death were pardoned, often with the support of the juries. This paper has two purposes: on the one hand, to extend the statistical study of Guyot-Dessaigne on a longer period, until the abolition of 1981, on the other hand, to understand the judicial mechanisms which allowed to avoid the enforcement of the death penalty in such a proportion.

Drócsa, Izabella
"The transformation of the political crimes and its impact on the Hungarian criminal regulation at the period of interwar"

At the end of the I. World War a great economical and social crisis were developed in Europe, open the door for the different anarchical intentions, especially the foundations of the Communist Parties. This tendency was the same in Hungary: the Communist Regime in 1919 executed a political coup, and this short period caused serious damages in the country. For compensation, after the end of the communism, the legislation power created a new act against the anarchical movements for the safety of the society. This was the III. of 1921. on the Effective Protection of the State and Social Order. Next to the political and historical reasons, the creation of this criminal act was also necessary in a legal point of view. The effective Criminal Code was codified in 1878 which regulated the political crimes quite softly: for example the items of confinements were not strict enough to possess a deterrent force on society, but it is important to emphasise too, that preparation activities stayed unpunished, independently of the fact that they were probably dangerous for the society. That is why this new regulation in the Criminal law was right: it contained stricter facts of the crime and penalties, which could complete the existing system. In my article I analysed the sections of the act, and the connected judicial practice to prove this affirmation.

Morning session II

ANTIQUITY. "Managing a state. Managing estate" (Room A3)

Letteney, Mark
"The Codex Theodosianus in its Christian Conceptual Frame"

The organising principle of the *Codex Theodosianus* is "general law". Its compilation began with a constitution of 429, preserved in book one of the Code, that identified eight men and tasked them with a two-step process: first, they were to collect and edit imperial constitutions from the reign of Constantine through their present day that were based on formal edicts, or laws that were generally applicable. Their second task was never completed – they were to compile a *magisterium vitae* which eliminated all legal ambiguities, and to promulgate this corpus under the name of the Emperor.

My paper explores the question of the conceptual history of "general law", the organising principle of the Theodosian Code. I argue that commentators are correct in presuming that the concept of a *lex generalis* is not internal to classical Roman jurisprudence, but that they are incorrect to presume that the concept has no clear intellectual lineage. In fact, throughout the fourth century, elite Christian men discussed and debated precisely the definition and contours of what could be considered a "*lex generalis*" – a category of scholarly concern that ultimately arose out of Jewish biblical commentary of the first century C.E.
My paper uses this case study and a shorter explication of the concept of *magisterium vitae* to suggest ultimately that the Theodosian Code itself is, at base, neither a surprising development in the history of Roman jurisprudence, nor disconnected from the parallel domain of theological scholarship undertaken in and around the court of Theodosius II.

Wyns, Valérie
"Norms and ideology in the Ptolemaic justice system"

The Ptolemaic justice system offers a complex, yet very interesting example of ancient legislation and jurisdiction. Several law traditions existed side by side, and their rulings were equally accepted by the crown. Only the royal courts, consisting of royal judges or *chrematistai*, took precedence over all, sometimes functioning as a court of last appeal. But how did these different courts make their decisions, and what principles guided them? Through the analysis of ancient Egyptian, Greek and contemporary Ptolemaic wisdom and philosophical texts, we gain insight into the ethical norms that influenced decisions of judges in Egypt from different law traditions. Another point of view is provided by petitions or letters of complaint from the inhabitants of Egypt, which convey what kind of behaviour by justice personnel was not acceptable to the subjects of the courts. When combining these elements, we can discern a number of formal and informal rules that governed the decisions and behaviour of the members of the Ptolemaic justice system.

Skalec Aneta
"Norms and legal practice in ancient Egypt – A case study of irrigation system management"

The prosperity of Egyptian civilisation has depended on the efficient use of water deriving from the Nile throughout its recorded history. The ancient Egyptians built large basins for growing crops along the river banks, and utilised simple sluices that diverted water into them. In order to maintain the irrigation system, the state relied on the contributions of the Egyptian population.
Despite the importance of water and irrigation in ancient Egypt, very little is known of its water regulations. The only known legal source related directly to the maintenance of canals that has been preserved is a section of the *Dikaiomata* – the Alexandrian city law dealing with the construction and improvement of irrigation channels in the surrounding countryside. However, being Greek in origin, it does not seem to correspond to the legal practice that has been in use in Egypt since the earliest times. How water regulations looked like in practice can therefore only be observed by means of practice documents, i.e. papyri from Ptolemaic and Roman period. Such papyri recorded the law in action, both in relation to individuals as well as the whole society in the context of water management. These documents and their similarities and differences to the rules contained in *Dikaiomata* will be the subject of my presentation.

Wojtczak, Marzena

"Legal representation of monastic communities in the light of late antique papyri – when norms meet legal practice"

'To the *dikaion* of the holy monastery of Apa Agenios of the *oros* of the nome of Apollonopolis Mikra administered by the most-esteemed *comes* Ammonios of the divine consistory through the venerable Apa Apollos son of Dioskoros son of Psimanobet from the village Aphrodito of the Antaiopolite nome'. Such is the beginning of *PSI* VIII 933, an agreement dating back to the year 538 and addressed to the monastery of Apa Agenios from an archive of a well known poet and lawyer Dioskoros of Aphrodito. What immediately catches the eye of a person acquainted with Roman law is the term *dikaion*, attested also in the normative sources, especially in Justinian's *Novellae*. As shown by the several other papyri belonging to the Egyptian monastic milieu, the *PSI* VIII 933 is no way an isolated example.

The Greek term *dikaion*/*diakonia,* admittedly encountered in somewhat inconsistent manner in both Coptic and Greek documents from Late Antiquity, has caused much confusion among scholars. The context of its usage in the papyri is predominantly economic, the term appearing in various transactions made by the representatives of the monasteries. This opens the floor for a broader discussion on the patterns of legal representation of the monasteries, as well as their independent legal capacity. For a lawyer, these questions are all the more stimulating since there has been an ongoing debate about the existence of the legal persons as such in Roman law and whether we could talk about anything approaching our current understanding of legal personality.

Taking several documents of legal practice dated to the 6th-8th century as my starting point, I would like to revise the current papyrological material and reflect on the more general question how *dikaion* fits into the mosaic of various patterns of legal representation of the monasteries.

STATE OF LAW AND LAW CREATION. "Governance and administration of justice" (Room A2)

Pétervári, Máté

"The Realisation of the First Hungarian Municipal Act Concerning to the Districts"

After the Austro-Hungarian Compromise of 1867 Hungary regained independence and consequently civil reform of the state was started on the basis of the April Acts of 1848. The legislator wanted to create an administrative system which was able to execute the acts and decrees on the lowest, local levels. The majority in the National Assembly achieved this goal by implementing by the Act 42 of 1870. On the basis of this acts the counties and the cities, which denominated municipality comprehensively, was the middle level of Hungarian public administration system This Act regulated the districts (an administration level under the counties) summarily: §61 The district administrator is the first officer of district. The district administrator supervises the communities under his authority, and he exercises the rights and executes his duty, which were delegated by the act or municipal ordinances. This is the legal norm about the districts and district administrators, of which legal practice I would like to present in my lecture. I examine the execution of this act in the counties on the basis of the archive material, which documents of the Royal Hungarian Ministry of Interior from the 19th century stored in the National Archives of Hungary. (References: MNL K150 117. bundle, 118. b.).

Andonović, Stefan
"The 1930 Yugoslavian Law on General Administrative Procedures Deadlines – Are We Faster Today?"

Efficiency should be one of the main drivers of the administrative procedures. In everyday life, citizens expect fast delivery of administrative services, as well as prompt administrative decisions on their requests. The Serbian 2017 Law on Administrative Procedures prescribes different types of deadlines, which should improve the functioning of the administrative bodies in the terms of predictability, effectiveness and speed. In order to find out reasons and sources for such deadlines, we will make step back. Paper examines deadlines under the 1930 Law on General Administrative Procedures of the Kingdom of Yugoslavia. By comparative analysis of nowadays and former deadlines, we will get to the answer on question – Are we faster more than 80 years after? Historical perspective is used as a tool for understanding concept of speed in Serbian administrative law. Author will use the historical and the comparative legal perspective, but also a philosophical approach in connecting time, speed, past and future.

Katančević Andreja
"Tax collectors as legal authorities in Medieval Serbia"

The medieval Serbian state had no developed administration to execute all of the public functions. Tax collecting was one of the competences transferred to the private individuals. The tax collectors leased it from the ruler and collected the taxes from the taxpayers. According to the preserved available sources, the tax collecting was one of the most controversial issues in the legal practice. Numerous court records and private documents from Dubrovnik archives illustrate various kinds of the disputes arises from different practical problems. There were several reasons for that. In the execution of their competences the tax collectors had a limited jurisdiction within the urban communities, which was usually misused. Secondly, it was usual that a tax collector was even a foreign citizen having some granted immunities. Lastly, the legal regime of the tax collecting was not uniform in all the country and it was very usually subjected to the change.
The aim of the paper is to investigate the competences of the tax collectors, especially the judiciary ones. Applied methods are linguistic, systemic and historical interpretation of the preserved sources, as well as the historical method.

LEGAL THOUGHT: WHEN IDEOLOGY MEETS LAW (Room 1.2)

Rigó, Balázs
"The Norms of Patriarchalism in James II's Political Writings and their Practice in His Reign"

James II succeeded the throne of his elder brother Charles only because there was not any male heir. Even the Parliament wanted to exclude him from succession, that was the exclusion crisis of 1679 – 1681. The Tory propaganda issued Sir Robert Filmer's Patriarch to argue the primogeniture i.e. James's title to the throne. That work introduced patriarchalism that is the overlapping of the concept of family and society with the authority of a father and the monarch. Therefore, the monarch as the father of the nation ruled over the society that was considered to be a great family. So the monarch demanded unconditional obedience from the society just as the father of the members of the family.

Since Sir Robert Filmer's name was connected to James's legitimation for the throne and to the conservative royalist tory propaganda, my incentive is to examine whether James himself applied patriarchalism and Filmer's concepts in his political writings. This is the law (norms) in books if we apply the terms of the law in effect to the past. However, I aim to compare these norms with the practice found in the declarations and proclamations, and in the deeds of James. The result of this comparison would be the law in action.
Thus, my comparison is to reveal patriarchalism in James's writings and after that to examine whether any characteristics of that may be found in his deeds and decrees of administration.
His deeds meant especially three fields, his coronation, the cure of the King's evil (scrofula) and the practice of giving mercy to victims. His decrees meant particularly the decrees of putting out the revolts against his reign. In the first two he was successful, however, against William of Orange he lost his throne and was expelled from it.

Hernández Fradejas, Fernando
"The economic and legal debate of poverty in the School of Salamanca"

The topic of my paper will discuss the famous debate about poverty among the members of the School of Salamanca. In particular, some members of the Spanish Golden age (Juan Luis Vives, Domingo de Soto, Juan de Robles, Martín de Azpilcueta, Miguel de Giginta, Pedro de Valencia, Francisco de Osuna, Melchor Cano, Cristóbal Pérez de Herrera, Fray Luis de Granada, among others) discussed and theorised about the roots and causes of poverty. This problem was continuously dealt with by the legislation of the Middle Ages in an attempt to combat the undesirable consequences of alms, which were not generally distributed to the neediest but to the most audacious in their pleadings and implorations. At the end, the main question was to try to differentiate the real poor from the false ones, but it was not often achieved. Moreover, my proposal will also study the diverse and famous "poor laws" in Spain prior to the seventeenth century, especially from the controversy over the prohibition of begging that Domingo de Soto and Juan de Robles originated in 1545. The ultimate goal of my paper is to present a gap in the field of legal history since it seems that there is not any English, unified and up-to-date paper on this topic. It might be a different and interesting contribution to the conference.

Schmidt, Katharina Isabel
"German Jurists and the Search for "Life" in Modern Legal Science, 1900 – 1939"

For my dissertation I am trying to write an intellectual history of National Socialist law and legal thought. What I am particularly interested in are possible continuities in early twentieth century jurisprudential debates about method.
How could it be the case that the ideas of Carl Schmitt, later "crown jurist" of the Third Reich, resembled those of the Jewish free lawyer Hermann Kantorowicz, who was removed from his position as a professor in 1933 and died in exile? What accounts for the prevalence of "life" – discourse in law from around 1900 all the way into the Nazi period?
I propose to answer these questions by way of an exploration of four sets of debates: law's nature as an intellectual discipline, specifically the question whether it was a natural, a cultural, or a norm science; its status vis-à-vis the empirical social sciences, with a particular emphasis on sociology, economics, and psychology; the personality of the judge and its influence on the judicial decision-making process; and the relationship between the rules of the legal system and the lived reality of the German people.

Vandenbogaerde, Sebastiaan
"On the crossroad of norms and legal practice: legal periodicals during the nazi-era"

Humanities embraced periodicals as inspiring and rewarding objects of study, enabling scholars to reconstruct networks and cultures. Amongst those periodicals are legal journals which I considered as vectors of law. Vector need to be interpret in its most essential meaning, i.e. a carrier of something, in this case legal information. Moreover, the vector metaphor entails the editorial policy on what is published or not. Those law reviews find themselves on the crossroads of norms and legal practices, as they publish norms (legislation, doctrine and case-law) and as a mediator shape legal practice.
How did the rise of the Nazi-party in Germany influence legal practice in Belgium and The Netherlands? When Hitler came to power in Germany (1933), each aspect in society, hence also law, had to be orientated towards the Nazi-ideology. Lawyers in neighbouring countries such as Belgium and The Netherlands looked with mixed feelings to these evolutions. This paper scrutinises the attitude of legal scholars in titles such as the Journals des Tribunaux, Rechtskundig Weekblad and Nederlands Juristenblad. Which topics were discussed and how did scholars assess them? Who wrote about it and what does that say about political convictions and the attitude of legal professionals in those days?

Afternoon session I

ANTIQUITY. "Contract making – norms and legal practice" (Room A3)

Sukačić, Marko
"Roman sale on approval in practice"

Sale on approval is a variation of a sale contract, where a buyer takes a thing under the condition to test it and confirm it suits his wishes. Such an agreement grants the buyer a trial period, where he could reject the object of sale. In Roman legal tradition, sale on approval could be concluded as additional clause to contract of sale, called *pactum displicentiae*.
However, this is not the only Roman version of trial sale. In legal and literal sources, we find evidences of usage of emptio ad gustum, additional clause to the sale that allowed buyer the degustation of wine prior to the conclusion of the contract, as well as *datio ad experiendum* and *pactum redhibendi*, which will be discussed in the presentation.
Even though modern legal doctrine refers to sale on approval as pactum displicentiae, the practice in ancient Rome demonstrates that there were other institutes, which granted the trial period to the buyer. This presentation aims to show that the concept of *pactum displicentiae*, comprehended from modern point of view, was not applicable to all potential situations where contracting parties wanted to include trial period. Therefore, legal practice had to create new institutes and/or to modify existing ones. Law in action gave buyers and sellers more choices, and the purpose of this presentation is to show how this freedom affected preferences of contractual parties.

Nemes, Szilvia
"Sale contracts under the cover of a loan. Provincial practice vs. codified Roman Law"

As regards the credit contracts of the Graeco-Roman Antiquity, we can usually speak, with special regard to papyrological sources, about sale contracts including alternatively two major contractual arrangements, viz. (i) the purchase agreements with crediting the price on the one hand (as referred to in German terminology: *Kreditkauf*) and (ii) the delivery contracts on the other hand (in German: *Lieferungskauf*). In the Egyptian provincial practice, which was based upon Greek (Hellenistic) law, we can observe a peculiar practice called "fictitious loan agreements". In these cases, the parties "disguised" the sale contract as a loan. The Justinianic Roman law did not recognise such constructions but these contracts had been preserved in the provincial practice. According to the solution of Roman law, otherwise than the provincial practice, the seller, in so far as he has explicitly credited the price, tried to secure certain "provisions on the maintenance of ownership" in order to ensure the payment of the price. This presentation examines this deviation comparing the Egyptian practice with the codified sources of Roman law.

Grebieniow, Aleksander
"Inheritance Contracts and Roman Law"

The use of inheritance contracts is one of the most controversial issues about the Roman Law. It is not unanimous to whether the Romans knew them, and if so, whether they have practiced disposing of one's assets in the event of death by means of an agreement. It appears that the question can't be solved without asking, how should we understand the notion of "inheritance contracts". Are the modern concepts compatible with Roman legal experience? There are though certain proofs of "a contract-oriented way of thinking" of the Roman jurists. The present paper is meant as a reconsideration of this topic, with particular focus on the justifiability of the research questions which have been asked until now.

STATE OF LAW AND LAW CREATION.
"State and constitutional order" (Room A2)

Biró, Zsófia
"The foundational documents of the Hungarian „Historical Constitution""

The thesis examines the evolution of the Hungarian Public and Constitutional Law from 1301 until the Austro-Hungarian compromise in 1867.
The topic is highly relevant, because in 2017 was the 330th anniversary of the 1st and 2nd Act of 1687, contains that the Habsburgs are the only and true heirs of the Hungarian throne; and it was the 150th anniversary of the Austro-Hungarian compromise. Furthermore the current Fundamental Law says that "We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation".
The main chain of thoughts of the thesis presents the crown-ideology and the Doctrine of the Holy Crown, the Orders at the Field of Rákos, the Pragmatica Sanctio (1723), the 10th and 12th Acts of 1790, the Statutes of April 1848, and finally the essential documents, that led to the Austro-Hungarian compromise.
The thesis presents the fundamental documents of the Hungarian Historical Constitution between the given period. Through their formation and historical background can we truly

understand the Hungarian customary law and the legal traditions, which are still honoured by our present Fundamental Law.

Michalski, Dawid
"The Constitutional Norms of the Constitution of Finland"

It should be stated in the presentation that constitutional norms have evolved through the ages. They are based on the Enlightenment and its ideals. The Constitution of Finland has emerged after gaining the Independence in 1917. This Basic Law consisted of four constitutional acts.
There were: the Form of Government, the Parliament Act, The Act on the High Court of Impeachment and The Act on the Right of Parliament to Inspect the Lawfulness of the Official Acts of the Members of the Council of State, the Chancellor of Justice and the Parliamentary Ombudsman. It shows that the norms were diffused in some acts. This manner of creating the Basic Law is not very common because there are not many countries that have chosen this method of creating their political system.
The aim of the speech is to present constitutional acts of Finland and to analyse its norms. There are some norms connected with a political system and rights of man and of the citizen. They are going to be critically evaluated. Their evolution is also going to be presented. It shall help to show how the political system of Finland was functioning through the years and where the constitutional system of Finland is nowadays.

Bathó, Gábor
"Government in action on itself"

Act XI of 1917 gave the opportunity to the Hungarian government to increase the number of the government members with four ministers without portfolio. This was meant to be a temporary opportunity almost at the end of World War I. The act declared that four ministers without portfolio may be appointed "for the time of the war and the transition to peace". The determination of the temporal effect seems to be inaccurate and loose. Especially this characteristic gave the base of my paper.
In my paper I am going to the show the expressed reasons of such a regulation, and also the original interpretation of the act and the practice based on it. According to the Hungarian constitutional tradition, act was the only tool to change the ministerial structure of the government, changing ministries and competencies could only be done by acts. Later the practice changed, which meant the contemporaneous change in the interpretation of act XI of 1917 as well. These mutual effects lead to a situation in which it was totally acceptable to appoint a minister without portfolio in 1944 legally based on an act that was meant to solve the extraordinary questions of World War I.

LEGAL THOUGHT: WHEN RELIGION MEETS LAW (Room 1.2)

Possemiers, Joost
"Theologians studying Contract Law. A comparative introduction to both Matthew of Kraków's and Konrad Summenhart's *De Contractibus*"

In the rapidly changing setting of Late Medieval and Early Modern Europe, common people and learned men alike were confronted with the rise of new markets and the introduction of highly innovative financial constructions. Theologians in particular worried that this new economic reality might entice people into usurious practices and thus

endanger the spiritual welfare of all who participated. This led them to analyse these new financial constructions from a Christian and moral perspective, requiring them to study contract law and to carefully define legal terms like property, right, loans, etc. One of the earliest scholars to undertake this analysis in a truly systematic way was the Polish-German theologian Matthew of Craców (c. 1335 – 1410) in his *De contractibus*. Also famous for his far more extensive work on contract law was Konrad Summenhart (c. 1458 – 1502). In our paper, we want to give a comparative introduction to the thinking of both theologians by discussing their views on a number of legal topics. Why did both theologians care so deeply about contract law? Which subjects did they discuss? Can we speak of any direct influences? To what extent were they familiar with contemporary legal practices in the *forum internum* and *externum*?

Dziwiński, Paweł
"The papal practice of anathema and excommunication to protect ecclesiastical interests in thirteen century Poland. Case of Prince Henry the Bearded"

Tandem pius princeps cum beatissima coniuge sua Hedvige fere XXX annis amore castitatis simul continenter viventes, abstinuerunt utrobique a thoro coniugii (...) et inde deductus ad monasterium Trebnicense (...) est sepultus. As we can see above, this Henry the Bearded is usually described as a righteous husband to his holy wife Hedwig whose piety and wisdom should be an example to other princes. How it was possible to die excommunicated from Christianity and the same time be widely praised? Such incoherence might prompt questions about ecclesiastical penal practices.

All in all, the excommunication of Prince Henry the Bearded give us many details how ecclesiastical punishments worked, what was its utter purpose and finally how effective they worked. For this reason, this paper will reconstruct the history of conflict between Henry the Bearded and ecclesiastical authorities and reinterpret the events with the assistance of common and particular canon law rules.

Such research could prove essential to determine if popular opinions about political abuse of excommunication are right and what reasons stood for this sort of practices.

Additionally, it will be a relevant basis to discuss papal attempts to build a system of international rules binding Christian states of Europe and its success on the peripheries.

Alexandrowicz, Piotr
"Application of Law in Early Modern Casuistry: the Example of Paolo Comitoli"

The early modern moral theologians covered in their treatises numerous legal issues as they influenced moral evaluation of human acts. The application of legal rules in the court of conscience was of major concern for them. One can fruitfully examine any of hundreds of moral treatises from this period to see how the application of law in selected cases was carried out and how this affected the law itself. To make the presentation more concise only one example of this practice has been selected to show this phenomenon, namely *Responsa moralia* written by an Italian Jesuit, Paolo Comitoli (1544 – 1626). The third book of *Responsa* was dedicated entirely to the contracts which were a strictly legal matter. The examination of the casuistry introduced by Comitoli may show how the early modern theology applied law to judge moral cases. What makes Comitoli's treatise even more interesting is that he used some cases from his own surroundings. Moreover, his contract doctrine may be well elaborated by his legal book on contracts (*Doctrina de contractu*), and finally he is one of many early modern writers to whom little attention has been paid so far.

Kaczmarczyk, Rafał

"Islamic law and practice – legal norms under the pressure of diverse impact factors"

Some scholars and representatives of the legal doctrine used to think that because of its divine origin Islamic law is a stable and invariable system of norms. However, religious texts may never be precise enough to create a complete system of applicable regulations. In accordance with that point of view, it were the representatives of the doctrine who developed and established most of the Islamic law norms. Closing of the gate of *ijtihad* petrified the whole system for a few centuries, but even then the interpretation continued to be important when applying the law. In recent centuries Islamic law experiences its revival and there are representatives of the doctrine who create new norms of Islamic law due to *ijtihad* or just assess compatibility of some new kinds of relations or agreements with Islamic law. For example, there are certain imams or imams' councils by Muslim banks that decide if certain financial instrument is compatible with rules of Islamic law or not. Obviously, sometimes there may appear also other (not religious or strictly legal) factors that may affect such a decision. Those factors may be as well economic or political. The paper discusses chosen aspects of that subjects on the example of some factors that are important for modern Islamic law interpretation.

Afternoon session II

ANTIQUITY. "Criminal coercion" (Room A3)

Baudoin, Diane

"Norms and Legal Practice: the *adulterium* in Roman Empire"

Adultery, in Roman law, constituted any extramarital sexual intercourse committed by a married woman with a man other than her husband. If in the archaic period the *adultera* was liable to be condemned to death by her husband as part of a private justice, at the beginning of the Empire, this offence is now subjected to the *Lex Iulia de adulteriis*, adopted on the initiative of the emperor Augustus.

Thus, from the end of the 1st century BC, adultery, a sexual crime heaping *opprobrium* on the descendants of the Roman family, become a public crime. Despite a clear and severe law, evolutions on penalties – sometimes more severe, sometimes softer – and a constant reminder of the abject character of this crime, it seems that convictions for adultery have not been numerous throughout of the Roman Empire. The study of the practical application of the *Lex Iulia de adulteriis* shows us a reality different from that desired by the emperors. The accusations of adultery mainly concern high-ranked Roman women, often in the entourage of the emperor, and aim to sully the husband or family.

The purpose of this contribution is therefore to show that the crime of adultery in the Roman Empire does not escape the classic dichotomy "Norms and legal practice", where the practice differs from the theory, but also to raise that the accusation of adultery is above all a political weapon.

Minale, Valerio Massimo

"D. 29.5.14 (Volusius Maecianus' *De iudiciis publicis libri XIV*): An Intervention of the Jurisprudence concerning the *Senatusconsultum Silanianum*"

The fragment taken from the work about the *iudicia publica* by Maecianus and preserved in D. 29.5.14 represents a good example of an intervention of the jurisprudence on a law. The *Senatusconsultum Silanianum*, which was issued to order the use of the torture (*quaestio*) and the capital punishment (*supplicium*) for the *servi* of the house in case of violent death of their *dominus*, had a complex development characterised by the necessity to define the early cruelty of the prevision, as proved by Tacitus in *Annales* 14.45.1: concerning the exemption of the *impuberes* (subjects minor of fourteen years) at any rate from the torture – the rule is remembered by Arcadius Carisius in D. 48.18.10pr. – our jurist tries to answer to the question presented by Ulpian in D. 29.5.1.33 through the principle of the concrete possibility to understand the fact for the age (*nec multum a puberi aetate aberat*) and to intervene in help for the proximity (*et ad pedes domini cubuerat*). So, as often in the *Digesta*, a single text shows us the relation across the time between written norms and legal practice.

Loska, Elżbieta

"On prosecutor's offences in Roman criminal trial"

There are many ways of perverting the course of justice. It might be connected with every person taking active part in it. The prosecutor might be vindictive and incompetent, the judge might be corrupted, the witnesses could be unreliable, the jury might have their own secret agenda in pronouncing the verdict... Lots of more or less probable scenarios can be imagined.

It seems that in ancient Rome the unreliability of person accusing someone in the Roman criminal trial was seen as the most treacherous kind of crime that can be committed during the process. In the ancient sources three types prosecutor's offences are preserved: *calumnia* (false accusation), *tergiversatio* (abandonment of the charge) and *praevaricatio* (collusion).

In this paper I would like to discuss in particular the outlines of the crime of *praevaricatio* and penalty provided by law for committing it.

STATE OF LAW AND LAW CREATION. "State and constitutional order" (Room A2)

Declercq, Linde

"The advisers of the King in Belgium and their impact on constitutional law (1909 – 1951)"

After almost 200 years, the constitutional articles about the monarchy in Belgium have hardly changed. According to the letter of the law, the King still has the right to coin, the prerogative of mercy, he directs foreign affairs, is the commander-in-chief of the army and so on. Legal practice, however, has a completely different outlook today (the flag doesn't cover the cargo). Clearly, "the law in the books" has been greatly influenced by "the law in action" in this legal field.

How did this happen? A case-study will analyse the law in action from the perspective of two important advisers of the Belgian Head of State, A. De Staercke (secretary of regent prince Charles) and L. Wodon (head of staff of king Albert). How did they personally interpret the prerogatives of the King in the written constitution? Was this in line with the

constitutional state of the art? Did they also contribute to the constitutional literature of their days? How did all this affect the law in the books?
The analysis will lead to remarkable findings on our constitutional thinking. On the basis of the case-study, the paper will illuminate the legal concept of "constitutional custom".

Jarrige, Martin
"Dauphin of Viennois: the juridical and political sovereignty on the Dauphiné by the heirs apparents of France (1349 – 1500)"

Since 1350 and the death of Philippe VI, the eldest son of the king of France have been titled dauphin of Viennois, the dauphin Humbert II having transferred his principality to the crown of France in 1349, the title being worn by Charles, eldest grandson of the king. We must distinguish the dignity of dauphin – always worn by the heir apparent since birth – and the exercise of sovereignty in the Dauphiné, which is actually directly ruled by the king of France, called « King-Dauphin » in his official acts. The major exception is the rule of the dauphin Louis II (the future king Louis XI) during his banishment from the royal court (1446 – 1456). Other particular cases are the personal rules of the dauphins Charles I (Charles V) and Charles V (Charles VII), who were simultaneously regents in France.
After the transfer, the Dauphiné doesn't juridically belong to the kingdom of France, but to the Holy Roman Empire. Nevertheless, time and practice made a French province of it, despite the juridical principle.

Gołaszewski, Łukasz
"Charges of Defamation of Marshal Piłsudski: political trials in interwar Poland"

In 1938 Polish parliament passed the Protection of Marshal Józef Piłsudski's Good Name Act. According to the Polish literature, this new regulation had been applied only twice.
My research has brought a few dozen of cases that criminal complaints of defamation of Piłsudski were lodged, even though they were not brought to courts by the public prosecutor's offices. Moreover, they were not strictly bound with that Act, as they happened before 1938 – some of them even during the Piłsudski's life.
Surprisingly, preserved dossiers inform us that almost all cases ended without filing charges. What is more, the official correspondence indicates that higher prosecutors issued verbal and confidential guidelines for dealing with that cases. This regulations ordered the prosecutors to inform their superiors about such cases and to proceed with caution.
Undoubtedly the authorities did not want any newspaper articles and consequently publicity. Many of these cases concerned a vulgar statements about Piłsudski. Another accusations were patently suspicious, for example one of them was made by wife against her husband. The act from 1938 was rather a mishap and did not affected the prosecutors' activity.
Consequently it can be an interesting example of actions with political cases in authoritarian or semi-authoritarian states.

SATURDAY, 16TH JUNE
Morning session I

ANTIQUITY. "Greece and beyond" (Room A3)

Dularidze, Tea
"Information interchange and relations between Ahhiyawa and the Hittite Empire"

The majority of scholars identify the long-disputed term Ahhiyawa found in the Hittite texts as Achaea of the Homeric epics. According to the Hittite texts, Ahhiyawa and Hittite relations can be dated from the Middle Kingdom period. The term was first used in the records of Suppiluliuma I (1380 – 1346). Documents discussed (the records of Mursili II and Muwatalli II) that Ahhiyawa was a powerful country. Its influence extended to Millawanda, which it evidently reached by the sea. Especially interesting is the Tawagalawa letter dated to the 13th century BC, in which the Hittite king makes excuses for his blunder committed at an early age. The Hittite king takes a diplomatic step towards conflict resolution and starts negotiations with a party (Ahhiyawa) that could act as a mediator. We can infer from the letter that Ahhiyawa had its representatives in Millawanda, while its relations with the Land of the Hatti were managed through envoys. The powerful positions of Ahhiyawa are also evident from Tudhaliya IV's letter to the ruler of Amurru, where he refers to the kings of Egypt, Babylon, Assyria and Ahhiyawa as to his equals.

Thus, Ahhiyawa of the Hittite texts fully corresponds to Homeric Achaea. The invaders have three appellations in the Iliad: the Achaeans, Danaans and Argives. Achaeans can be found in Hittite documents, while Danaans is mentioned in Egyptian sources.

Ahhiyawa is the land of the Achaeans, which laid the foundation for the development of the Hellenic civilisation in the Aegean. It can be argued that the Greeks were actively involved in the foreign policy of the ancient Near East. The information conveyed by the Greek tradition is supported by archeological finds confirming the rise of the Hellenes in the continental Greece from the 14th century BC. According to the tradition, the Mycenaeans went far beyond the Near East, reaching Colchis (The Argonaut legend).

Trierweiler, Sophie
"The codification of Greek laws and its application in the emerging cities (mid-7th–6th cent. BC)"

A century after the adoption of the alphabet in the ancient Greek world, writing comes into the public sphere with the appearance of the first legal inscriptions. This paper will analyse the gradual process of setting the laws that takes place between the mid-7th century and the end of the 6th century BC, in the cities of continental Greece and *Magna Graecia*. The codification does not refer to a large-scale establishment of a comprehensive code of legal rules, but rather to a one-time setting of a rule in a specific context, aiming to provide social agreement and to strengthen the political organisation of the emerging cities. The main sentences set precedent to guide judges in their decisions. Materialised with writing and monumental display in the public space, the legal norm earns stability and permanence. Many cities enforce an extremely rigorous amendment procedure to preserve laws from any modification and ensure its immutability. Application and compliance of written laws are guaranteed by a double protection of the law and its support: *atimia* and divine curse. However, I will underline how, in still low-literate societies, the dissemination of the law

and its preservation widely depend on public readings and the virtues of song and poetry as primary media for the transmission and memorisation of legal rules.

Grochowski, Jacek
"How Greeks were buying. Remarks to comment of Gaius considering purchase contract. (Gai. 3.141)"

The article tackles problem of ancient trade contract naming. Have Greeks perceived it only as barter exchange or purchase already? Maybe the difference was insignificant or irrelevant? For solving this mystery author follows the footpath of Gaius's reasoning dated back to ancient roman and greek times. Although Homer can't be considered as jurist, his texts have provided Gaius with valuable input. This enabled ancient Jurist to make well-grounded point in one of the most renown Juridical discussion of ancient times. The one between Sabinians and Proculians. Author analysed text of Gaius and extracted original meaning of Homer's poetry to rediscover the true nature of original trade transaction in ancient Greece.

Delios, Athanasios
"The protection of families (*oikoi*) under extinction by the Eponymus Archon in ancient Athens: The law and its application"

The interrelationship between the content of the law on one hand and the application of the law on the other hand is illustrated through a very interesting example in the field of ancient Greek law. Eponymus Archon was a public official in ancient Athens who was legally obliged to take care of orphans, heiresses and families (*oikoi*) that were becoming extinct. There used to be a certain law and a legal procedure that should have been followed every time that the rights of the above people were violated (Demosthenes 43.75). This paper is divided in two directions: The first one will reveal the great protection which was offered by the Eponymus Archon for the *oikoi* (families) under extinction through the speeches of the orators, while the second one will present few cases, in which the role of the Eponymus Archon seemed more passive toward his obligations, despite the orders of the law. These examples from the forensic speeches will brightly present the interaction between the law itself and its application in the field of ancient Greek law.

STATE OF LAW AND LAW CREATION. "Negotiating the strategies for law creation" (Room A2)

Wienert Jenny
"The act of publication. The moment "law on the books" turns into being "law in action"?"

Roughly at the turn from the Middle Ages to the Early Modern Period many territorial lords in the Old Reich changed the way how laws were published. Based on the example of two ordinances of the margrave Christoph I. of Baden, which were enacted in 1495 and in 1511, two types of publications were compared. The law of 1495 has to be read to the people by local officials. The law of 1511 has to be printed. The comparison will focus on the questions: 1) Does the way how laws are published have an impact on the chance of a law to be the "law in action"? and 2) Which act of publication makes it more likely for a law?

Aloni Omer

"Conflicting Norms and Games of Honour: Reflections of Orientalist Perspectives in Early Israeli Law"

The legal text, written by the court, is a significant part of the judicial product; its importance may even surpass that of both the court's ruling and its verdict. My research demonstrates how socio-cultural processes operate reciprocally with the law, thereby impacting and shaping the legal text, the legal outcomes, and the legal norms.
I focus on the role played by certain social sectors in early Israeli society, particularly the new Jewish immigrants from North-Africa and Middle Eastern countries, and the indigenous Arabs who had become subjected of the new Israeli legal system too since 1948. I suggest a new historical-legal approach with which to interpret the court's representations of both Jewish and Arab with Eastern ethnic background and "their" norms – as they were reflected in and by the court. While conducting my research, I also tackle with the relevance of Saidian theories to these discussions, and point out the interpretations in which these theories match the legal text, and also the places in which they do not.
The paper suggests a new revision of different verdicts that attributed certain pack of psycho-sociological qualities, norms and characteristic to Eastern persons (Arabs and Jews alike) such as fury, emotionality, irrationality, provocations, and blood passion; as I look closely into the place and relevance the court ascribes to the virtue of honour in cases which involve Eastern accused, and them alone.

Baï, Sonia

"The colonial norm in Algeria or the adaptation of the metropolitan model"

Colonial justice in Algeria in the nineteenth century was the most prominent symbol of the colonial system. We are interested in the period from the July Monarchy in 1830 to the beginnings of the Third Republic around 1885. This period, which was marked by political instability, was characterised by a relentless domination of the French government over the judiciary. In this period, the shortage of judicial personnel, the large colonial territories and the unusual make-up of the population (since this was a settlement that was therefore composed of settlers, Europeans, Israelites, and those who were called "natives") are all elements that characterise a justice system that is both original and ambitious.
Original in the sense those colonial legislators wanted to avoid the disadvantages of metropolitan law in many areas, particularly through justice. Indeed, they thought that in a country where a new society was coming into existence, where the uncertainty of ownership, the speed and multiplicity of transactions were commonplace, it was important to facilitate access to the courts, and to put in place an expeditious and prompt justice system. To this end, they simplified the rules of procedure as much as possible, reduced the number of formalities, and shortened deadlines by distancing themselves little by little from the metropolitan model. Moreover, this adaptation of the norm in the colonies has considerably influenced metropolitan law.

Wouter Druwé

"Learned Law in Practice. *Consilia* in the Low Countries (ca. 1500 – ca. 1680)"

Consilia take a special place in the early modern range of legal literature: asked for by defendants, plaintiffs, or judges, law professors and other learned lawyers gave their opinions on concrete problems of legal practice. The university-schooled counsellors translated the learned theories of the ius commune into a properly local context, taking into account the particular law of the realm, the region and/or the local town. In the sixteenth

and seventeenth centuries, several volumes of *consilia* have been published in the Low Countries. They are evidence of the transregional and multilayered character of early modern normativity. In their turn, the published volumes of *consilia* became learned authorities themselves within the framework of the ius commune. This paper will give an introduction into these promising sources which have long been neglected by legal historians. That overview will be illustrated with reference to a few consilia on questions of financial law.

COURTS OF LAW (Room 1.2)

Hernandez, Juan
"People's Perception of Justice Administration Through Procedural Claims in Third Order's *Cahiers de Doléances* (France, 1614 and 1789)"

Royal legislation on the second half of the 16th Century modestly reflected the claims made by the Three Orders of the French society on the assembly of Estates General. Through this procedure, the king introduces new forms and institutions on the basis of the reformation (the "return to the ancient order") demanded by the Three Orders, and justice administration was one of the main issues in every royal ordinance. However, in the two last centuries of the French monarchy, the Estates General fall out of use, letting the Third Orders without the traditional procedure to express their claims against the royal administration.
This presentation assesses the evolution of people's perception of justice by comparing the last two Estates General Third's Order *cahiers de doléances* from 1614 and 1789. In procedural claims against justice administration, even if some of them continued to be the "return to the ancient order", changes can be clearly noticed: *primo*, through the movement on the theoretical foundations of justice (I); *secundo*, through the underlying political implications in the said claims.

Vasara-Aaltonen, Marianne
"The Legal Reality at Finnish Nineteenth-Century Town Courts in Light of Their Cases"

The Finnish judiciary of the nineteenth century still had a strong lay element on the local level. At the district courts the judge adjudicated together with a jury. At smaller town courts the judges were to a large extent burghers – merchants and craftsmen – elected to represent town burghers instead of being learned lawyers. Thus, while the courts of appeal and the Judicial Department of the Senate were staffed with university-trained lawyers, at the local level professionalisation, and on the whole also legal modernisation, were still underway. The complexity of legal cases and the level of sophistication only began to rise during the nineteenth century. This paper examines the cases dealt with at two Finnish town courts during the nineteenth century: What kind of cases appeared, and how frequently was the law actually cited in these cases? A special emphasis will be on lay advocates appearing at these courts, and the way in which they used the law. Thus, the viewpoint of law in books / law in action will be used to evaluate, how the legal reality presented itself at these Finnish courts with a strong lay element. The paper addresses the question of applying the law, but more generally also questions of legal professionalisation and modernisation.

Visnapuu, Karin
"The role of the Supreme Court in carrying out of the Estonian Land Reform"

In the beginning of the 20th century, there were still remains of feudalism in the agrarian structure in Eastern and in some of the Central-European countries. Land distribution was dominated by large estates (manors) owned by landlords. Since it was a relic from the past period of serfdom and wasn't modern at all, then land reforms were carried out in these countries after the World War I.
Estonian land reform was evaluated as being one of the most radical in this wave of land reforms. On the 10th of October 1919 the Land Law act was adopted in Estonia. Although it was supposed to be the basis of radical land reform, the act itself had many drawbacks which weren't resolved even with implementation acts. Because of that, it was the main task of Estonian Courts to interpret the legal norms and to form the substance of Estonian Land reform with their practice.
The purpose of this paper is to show which were the main problems with the legislation of Estonian land reform and how Estonian Supreme Court solved thus problems.

Passarella, Claudia
"The reform of the assize courts in Italy put to the test of real life: the difficult cohabitation between professional judges and laymen assessors"

In 1931, under the Fascist regime, a new order of the Assize Courts came into force: the penal jury was abolished and replaced by a bench composed by two professional judges and five laymen assessors. The magistrates assured the necessary legal knowledge, the assessors voiced the popular opinion. This system was based on cooperation: the judges and the assessors, together, had to establish the facts and choose the appropriate punishment. The final decision – adopted by majority vote – was usually written by one of the professional judges. In everyday reality this forced collaboration could generate conflict, especially when the assessors voted in favour of the suspect, while the magistrates considered him or her guilty. In these situations the judge had to deliver an acquittal sentence, regardless of personal opinion: in such circumstances the sentence would sometimes include deliberate contradictions, so that it might be declared the result of a mistrial and bring about a new process. This practice inevitably had heavy consequences on people's lives and freedom. The phenomenon of the "suicide sentences" can be exemplified by the famous Mulas' case. These episodes demonstrate how widely the "law on the books" and the "law in action" can sometimes actually diverge.

Morning session II

COMMERCE, LABOUR AND INSURANCES I (Room A2)

In 't Veld, Cornelis
"Norms and legal practice among merchants in Lyon (1700 – 1730)"

This paper is about mercantile customary law in Lyon during the early eighteenth century (1700 – 1730). The central question is: What did merchants in Lyon themselves think about mercantile customs? To answer this question, I will investigate the remaining case files (containing pleadings, documents of evidence and judgments) of the court of Lyon. Until today, the case of Lyon is hardly studied. That's strange because Lyon was still a flourishing merchant city with many commercial relations with other cities in the early

eighteenth century. Merchants were also involved in the judiciary: since 1655 three of the judgesere active merchants. It is precisely in commercial case law that merchants, jurists, judicial staff, trade practices, mercantile norms and procedural rules come together.
This research aims to contribute to (at least) two important discussions in contemporary academic literature that are closely related to the theme of the conference. On the one hand there is the discussion among legal historians about the nature of customary law. On the other hand, there is, especially in the history of economics, a lot to do about the importance of customary law for the mercantile practice.

Kotlyar, Ilya
"Bankruptcy and the "Praetorian Pledge": the Law of the Books and the Law in Action in the Early Modern Netherlands"

The present paper aims to show the peculiar interaction between the procedural practice in the 16th – 17th century Low Countries and the procedural concepts of the Roman Civil law and the Medieval *Ius Commune*. In the actual Dutch practice, the execution against a defaulting debtor was primarily an individual business of every creditor, performing separate seizures of the debtor's property. The Civilian concept of the "praetorian pledge" as a collective right of all creditors was alien to the Dutch practice. On the other hand, the learned lawyers of the Roman-Dutch "Elegant School" addressed the issues of bankruptcy and execution from the Civilian perspective. Local practice was reluctant to provide definite solutions of many practical matters. For this reason, the learned lawyers debated and solved practical questions mostly through reference to the Civilian concepts (such as *missio in possessionem*, *curator bonis datum*, "praetorian" and "judicial" pledge, etc.) and their divergent interpretations, rather than through reference to the local precedent. The "law of the book", essentially, provided the protection of the collective rights of the creditors, which the "law in action" failed to provide on its own.

Moerman, Manon/Naaktgeboren, Patrick
"Private partnerships in early modern Amsterdam and Antwerp"

Our projects focus on private partnerships in the Low Countries in the seventeenth and eighteenth centuries. Whereas historians have paid much attention to the rise and corporate structure of Dutch chartered companies, the origins and early development of private partnerships remain understudied. In the twentieth century, French historians put forward a model consisting of several categories of private partnerships, in which the extent of the partners' external liability was one of the main distinctive features. However, preliminary studies have demonstrated that entrepreneurs did not think in terms of liability to third parties; instead, they were more concerned with partnership-internal relationships. Our goal is to investigate how entrepreneurs conducted trade in practice ("law in practice") and how this differed from contemporaneous legislation ("law in books"). In this respect, Amsterdam and Antwerp prove to be excellent case studies because the bylaw ledgers contain many articles related to commercial practices and because of the large number of notarial ledgers that have been preserved in the city archives. By studying these bylaws and notarised private partnership agreements, we strive to broaden our knowledge about early modern corporate structures, while at the same time aiming to establish the extent to which entrepreneurs complied with statutory legislation.

Pokoj, Jakub

"Between law on the books and law in action. Counteracting speculation and usury in Poland (1918 – 1920)"

The main aim of this paper is to analyse the phenomena of speculation and usury in the first years after rebirth of Poland (1918 – 1920). The revival of Polish state inherited a mosaic of legal orders, including also regulations in the field of counteracting speculation and usury.
Speculation is especially dangerous in case of young economies, deprived of solid foundation. This kind of socio-economic situation occurred in Poland after the end of WW I and the revival of Poland. During the parliamentary debate on the Bill of 2nd July, 1920 on combating war usury it was a common view that speculation was one of the greatest threats of economy, which could render impossible unification of the reborn Republic.
Thus the aim of this paper is to discuss the issue of regulations against speculation and usury in Poland between 1918 and 1920. In this especially critical economic period Polish administration and judiciary system was forced to apply law passed by the invader states. The particularly interesting issue is the relation between the law in force and the court and administrative practice while the threat of life necessities shortages was one of the most important matters in public discourse.

STATE OF LAW AND LAW CREATION. "Negotiating the strategies for law creation" (Room A2)

De Rycke, Wouter

"Juridical discourse during the Congresses of the Friends of Peace, 1843 – 1867"

Most general histories of the discipline trace the "rise" of modern international law from the 1870s onwards and treat its subsequent evolution rather genealogically (Koskenniemi 2002; Neff 2014; Gaurrier 2014). Such an approach ignores to an extent the impact anterior juridical cultural traditions had on the normative contents of international law (see also Dhondt 2016). The Congresses of the Friends of Peace held between 1843 and 1867 in several European cities provide an illustration of such a tradition (Van der Linden 1987). This research aims to uncover the ways in which legal concepts were employed by congress participants, many of whom shared a background in the legal professions, to discuss tenuous concepts such as "peace" and "war", as well as their legal concretisations such as the promotion of international adjudication or the desirability of a principle of (non-) intervention in international public law (Simms & Trim 2011). The study takes into account the differing national constitutional backgrounds of participants. Research methods will initially focus on archival newspaper sources and printed copies of the proceedings, such as Belgicapress, which has fully digitised all Belgian newspaper sources covering the Brussels congress, before delving deeper into extant personal correspondence of key movement figures.

Nho, Hyoung-Jin

"Korea as a Double-periphery in International Law (1876 – 1895): The Discrepancy between Treaties and State Practice"

Since the historical encounter between European and Confucian international legal orders in the mid-19th century, dynastic Korea faced a new era in its international relations. The imposition of European international law mainly by the Japanese Meiji government blurred

the legal status of Korea which, however, still remained as the prime tributary in relationship with Qing China. From 1876 onwards, the Korean rulers and their retainers faced the twenty-year crisis of legal identity sparked off by the country's double-peripheral status: a tributary within the Confucian legal order in East Asian and a semi-sovereign state in European but universalising international law. Before long, the concern of Korea became realised when it concluded European-style treaties with Japan and Western powers. The suspicious sovereignty of Korea triggered political and legal debates among treaty negotiators, and soon it revealed the legal discrepancy between the treaties and state practice in the second half of 19th century. This paper explores the gap between treaties and state practice in the course of the expansion of European international law into East Asia with a special attention to the statehood of dynastic Joseon Korea from 1876 to 1895.

Verfaillie, Amélie
"Beyond "law in the books": Amnesty International's diplomacy at the United Nations (1961 – present)"

Since its founding in 1961, Amnesty has interacted with the UN, with a view to influencing decision-making and norm-creation processes, as well as ensuring enforcement of international human rights law.
First, the distinction between "law in the books" and "law in action" manifests itself in the procedural Amnesty-UN relation. On the one hand, Amnesty's consultative status provides it with formal procedural resources, regulated by the UN Charter and resolutions ("law in the books"). These enable it to circulate reports, file complaints, ... in the UN. On the other hand, Amnesty regularly acts upon a wider interpretation of these regulations, doing more than is strictly possible or allowed by the law ("law in action"). Studying Amnesty's archives uncovers this hitherto ignored informal dimension of the Amnesty-UN interaction.
Second, the distinction is also visible when studying Amnesty's UN advocacy from a more substantive perspective. Especially in the sixties, when specific human rights treaties were lacking, Amnesty interpreted existing, but more general, legal instruments broadly, to cover new human rights violations.
In a next phase, it would lobby for specific legal instruments, to adapt the law to this broader interpretation.

Bajon, Philip
"The Decision-Taking Culture of the European Communities 1966 – 1993"

The Luxembourg Compromise of 1966 introduced an informal veto right in the decision-making of the European Communities (EC) when "very important national interests" were concerned. Member-states invoked the Compromise in order to prevent the EC Council from voting. The resulting "veto culture" paralysed the European Communities and is thus seen as the origin of the so-called "Eurosclerosis" of the 1970s. The Luxembourg Compromise thus perfectly demonstrates the divergences between the "norms" of the European treaties (prescribing the majority voting procedure) and the "law in action" of the EC Council's decision-taking.
It was only during the Single European Act negotiations of the mid-1980s that the veto-culture faded and lost its original legitimacy. This paper presents an ongoing postdoctoral research project on the history of the Luxembourg Arrangement. It does not only focus on the legitimacy and practice of voting, vetoing and consensus-building, but it also examines how governments instrumentalised the arrangement in order to control the process of European Union. Furthermore, the paper discusses the benefits of a "new EU legal

history", which questions the established concept of "constitutionalisation" and takes into account the member-state resistance against the ECJ's "constitutional practice".

MARRIAGE, FAMILY AND SUCCESSION (Room 1.2)

Bańczyk, Alicja

"Law in books vs. law in a book. Literary image of French divorce law after 1884 in practice on example of *Bel Ami* by *Guy de Maupassant*"

The aim of the intended speech is to present how the institution of divorce functioned in practice in France after its legal reestablishment in 1884. The analysis will be based on the example of *Guy de Maupassant's* novel entitled Bel Ami, published in 1885, namely only one year after the reintroduction of the right to divorce.
The speech will present how this institution was supposed to function on the example of the book's step by step presentation of requirements which must be met to obtain divorce. *Guy de Maupassant*, thus, describes in every detail what Jacques du Roy did to divorce his wife. It is worth noting that all protagonist's actions presented in the book are of legal importance which proves that the author was conscious of the new law. For example, regardless of his true motives, du Roy wanted desperately to prove his wife's adultery which was one of few situations when divorce based on spouse's fault which was possible. Moreover, it would allow him to benefit financially from divorce.
The intended speech aims to analyse how the book presentation of the procedure was possibly interpreted as the instruction how the new law could (or should not) be used in practice.

Coutinho, Luisa Stella

"Bigamists in colonial Paraíba and the Inquisition: cultural practices and legal norms during the colonisation of Brazil"

The Portuguese Inquisition never had a tribunal in the Brazilian colony, despite the several attempts to build one in the overseas territory. However, the Inquisitorial jurisdiction never stop exercising its power through the visitações, familiars do Santo Ofício or with the help of the ecclesiastical jurisdiction. One of the crimes persecuted by them was the bigamy, or the intention to disrespect the sacrament of the marriage by marrying a second time. In the captaincy of Paraíba, in the northeast Brazil, one of the oldest conquests of the Portuguese Empire, some bigamists were prosecuted by the Inquisition for marrying a second time, although the secular jurisdiction also condemned the practice in the *Ordenações Filipinas* by death, making this attitude a *mixti fori* crime. These processes, meanwhile, reveal precious details of people daily life in the colony, showing cultural practices and different conceptions and interpretations of the Law, including the praxis of marriage. In this study we will discuss six cases of bigamies related to this captaincy, identify the couples and its reasons to marry a second time and more general practices about the colonial legal regime.

Frey, Dóra

"The influence of the rules of succession on the structure of Hungarian and German Families of Southern Transdanubia in the early 20th century"

The topic of my presentation is the influence of the rules and customs of succession on the family structures and life strategies in Southern Transdanubia. At the beginning of the 20th

century, scientists and the local administration observed significant differences between the demographical structures of the Hungarian and German inhabitants in both Tolna and Baranya counties. While a significant part of the Hungarian rural population followed the "single-child-policy" ("*egyke*" in Hungarian), German families in the same area did not have this concept. It was observed, that the villages with families following the single-child-policy kept losing population and were endangered by a demographical collapse. Seeking the reasons behind the single-child-policy, the rules of succession were identified as the main difference between the Hungarian and German population. Since the codification of civil law was absent in Hungary until 1959, succession was regulated by common law, which differed among the Hungarian and German people. The German population practiced the so-called primogeniture` (Anerbenrecht), probably brought along from the early 18th century Southern Germany, meaning that one single successor inherits the entire land asset of the family. In contrast, the custom of the Hungarian population was a proportional succession. As all heirs inherited part of the land asset, it fragmented from generation to generation. To avoid this, the rural population developed the single-child-policy, which, on one hand, was very effective at preventing the fragmentation of family assets and became an unwritten law in several villages, but on the other hand it caused radical demographical changes with lasting effects to present days.

Kiirend-Pruuli, Katrin
"Constitution, reality and changes in family law in Estonia between 1918 – 1940"

Estonia became an independent country in 1918. For family law and private law in general the pre-modern and casuistic Baltic Private Law Act (BPLA) from 1865 remained in force. The BPLA was very conservative especially in family law, e.g. it stated that husband is the legal guardian of his wife. First Constitution of Estonia, which was established in 1920, stated that men and women have equal rights. As the social and economic situation had changed after WW I, the new idea of equal rights was widely accepted amongst different active women's organisations. According to their opinion there was a huge contradiction between existing family law on the one hand and constitution and real life from the other hand. Many well-known lawyers did not share their ideas and considered equality bit dangerous.
Soon Estonian lawyers and politicians started to develop the new Civil Code. In the presentation, the role of women's organisations in bringing the idea of equal rights from the constitution into new family law will be discussed. There arises also the question, whether their activity influenced future drafts of family law in the draft of Civil Code.

Afternoon session

COMMERCE, LABOUR AND INSURANCES II (Room A3)

Plasschaert, Stephanie Annie
"From competing corporations towards communal standard contract terms: marine insurance in France and Belgium (1815 – 1860)"

In 19th century Belgium and France, competing marine insurance corporations jointly drew up forms containing standard terms that were applied by all companies within one city or port. This happened without the intervention of governments and regulatory agencies, and without the authority of associations of professionals imposing standards. Eventually, these standard contracts of ports could become national policies. This development is unique to

marine insurance: of all areas subject to standardisation in the nineteenth century, marine insurance is the only one in which standard terms grew through actions undertaken by corporations.
In this project, we will find out what the motives were of corporations adapting their terms and setting up communal policies. The novelty of the project lies in its actor-orientated approach and in its empirical focus on competition as underpinning legal convergence. For the port city Antwerp, twenty-two marine insurance companies and other maritime institutions will be investigated and compared, to determine the influence of the underlying corporate structures on the standardisation of contract terms. During the presentation, we will focus on these results.

Ogis, Sinem

"Comparison of Marine, Life and Fire Insurance Under the Concept of Indemnification from the Sixteenth Century Onwards"

My presentation will analyse the influence of marine insurance on life and fire insurance. The main question under review is to what extent the rules differ in three branches of insurance. For this purpose, I will focus especially on the development of the principle of insurable interest. Indeed, my aim is to reveal the understanding and the development of the principle of insurable interest especially in its connection to the principle of indemnity.
In the sixteenth and seventeenth centuries, the practice of making insurance contracts led to an increase wagering and consequently the legislature attempted to prohibit insurance contracts. In fact, in England, wagering contracts were enforceable until the passage of the Marine Insurance Act 1745 and Life Assurance Act 1774. Thus, within these Acts, the requirement of the insurable interest became the decisive element to distinguish insurance from wagering.
According to some authors, insurance in some cases is seemingly wagers. However, if there is an interest in the subject insured which is dependent upon the occurrence of the risk, then there is no wager. The authorities are divided on the question what relationship between the insured and the subject of insurance will produce an insurable interest.

Karmann, Silvia Kristin

"The influence of the practice of marine insurance concerning the risks on the first insurance contract legislation in France"

According to the literature, the insurance contract legislation evolved from the practice of insurances. Unfortunately, for this statement, there is only superficial evidence given. Corresponding to the title, my presentation will explain how the practice of marine insurance regarding the risks affected the first legislation about insurance contracts in France. First, I will give a definition of the term risk in connection with the perils of the sea implicating the understanding of the former literature about insurance. Then, the regulation of the *Ordonnance de la marine* in 1681 will be pointed out, which contains the risks the insurer has to take on principle. Based on the regulation some conditions formulated in the insurance contracts beginning at the end of the 15th century, will be presented. Furthermore, I am going to consider the customary law relating to the perils of the sea. By comparing the same or similar wordings in consideration of the understanding of a risk at that time, the influence on the *Ordonnance de la marine* shall be shown. Finally, there will be a comparison of the *Ordonnance de la marine* and the *Code du commerce* in 1807 pointing out the differences and presenting the probable reasons for it.

Rodrigue, Merlot

"The application of the 1898 French law on labor accidents to Belgian frontiers workers"

Franco-Belgian work rapports are old and date back to the creation of the kingdom of Belgium in eighteen-thirty. Since the mid nineteenth century a significant number of Belgians have come to settle in France, specially in Lille, looking for work in textile factories and in the metallurgical industry, as well as in agriculture and in several cooperatives. Some cities were at the heart of the migratory flows and specially Roubaix, which population in eighteen-eighty was over fifty-percent Belgian. Certain companies had majoritarly Belgian employees, such as the textile industries Paul Le Blan and Son, and Wallaert-Dessaix located in Lille or the Motte-Bossut industry and the La Paix cooperative, located in Roubaix.

The Nord Pas de Calais appears in the middle of the nineteenth century as a region marked by immigration. This is an important component in the mutations that took place in the period of the Industrial Revolution within the region. A new political vision is born in the Nord Pas de Calais as a result of Belgian immigration. Indeed, amid these Belgian workers were the men who founded the Socialist movement in Northern France. And so it happened that many Belgians migrated to France to establish socialist cooperatives modelled on the Vooruit in Ghent. At the same time, a link is formed between the French Labor Party and the Belgian socialists.

There is nowadays a significant presence of Belgian populations in France. At the end of the nineteenth century however, the flux of Belgian workers settling in French territory evolved as public transport developed. With the development of the rail, the number of Belgian workers established in France decreased in favour of commuters. Gradually, more and more Belgians crossed the border daily to work in the industries in Northern France and consequently, cross-border work rapports took on a new form. The number of commuters increased from twenty five thousand in 1906 to over a hundred thousand in 1929.

The importance of the Belgian population in the country gradually led the French and Belgian authorities to legislate on this societal fact. So, from the end of the nineteenth century, various laws were passed to regulate the situation of border workers. Difficulties appeared concerning the application of the 1898 French law on labor accidents to Belgian workers. Unlike the Belgian Law of December 23rd 1903 which covered both royal subjects as well as foreigners, this French law excluded many workers from its legal protection, particularly those who weren't French residents.

The aim of my presentation is to study the situation of Belgian victims of workplace accidents in Northern France in the time between the law of 1898 and the Franco-Belgian Convention of 1906.

This period is marked by the inequity between national and frontier workers. Before the 1898 law, all workers who suffered an accident at work were compensated, on the basis of the Civil Code. Starting in 1898, Belgian employees victims of workplace accidents were entitled to have their invalidity pension converted into a capital amounting to thrice the value of the yearly pension. This situation came to an end with the 1906 Franco-Belgian Convention. This agreement allowed for equal treatment of all workers and those depending on them, whether French residents or otherwise.

Because of the peculiarity of the social models in each country, it is appropriate to examine the agreements signed between both nations, including the February 21st 1906 Franco-Belgian agreement,

in order to overcome the issues springing from workplace accident insurance. This agreement too covers all workers, Belgian or French.

I will therefore demonstrate the unfairness of the 1989 Act, which application caused a situation of inequity lasting until the 1906 Convention.

STATE OF LAW AND LAW CREATION. "Negotiating the strategies for law creation" (Room A2)

Képessy, Imre
"The Consolidation of Hungarian Legal Practice with the Austrian Norms in 1861"

A few months before the suppression of the Hungarian Revolution in August 1849, Emperor Franz Joseph issued the Constitution of Olmütz, which suspended the Hungarian constitutional order. After 1850, the Viennese Government aimed to unify the legal system in the whole empire, and as part of the process, many Austrian legal norms were imposed by royal decrees upon the Hungarian territories. This led to fundamental changes in the country's legal system (the customary law as "law in action" took precedence up until 1848), even though it happened unconstitutionally.
The worsening state of affairs and the defeat in the Austro-Sardinian War led the Emperor to promulgate a new constitution which became known as the October Diploma in 1860. Accordingly, Hungary regained its former constitutional status, but Franz Joseph ordered the newly reinstated chief justice to assemble a council that should debate over the most pressing issues regarding the administration of justice. There, the most influential lawyers proposed that the Hungarian laws shall be restored – albeit with several compromises. Most members agreed that an absolute and immediate repeal of every Austrian legal norm would certainly violate the rights of the citizens. Therefore, even though this committee did not accept the validity of these laws, the majority of its members argued that some of them must remain in effect until the Parliament will reconvene.
Consequently, the Austrian legal norms as "law in books" deeply influenced the "law in action" in Hungary for the years to come.

Gałędek, Michał
"The beginning of the Polish debate on the codification of civil law following the regaining of independence in 1918"

The paper will focus on issues connected with the development of the Polish civil law following regaining independence in 1918. Creation of a uniform legal system constituted the fundamental task aiming at the integration of the Polish society, which had been divided under the rule of various states and their legal orders for over a century. Until the completion of national codification works, four different legal systems functioned in the Polish territories – codes of the three partitioning states: Germany (*inter alia* BGB), Austria (*inter alia* ABGB) and Russia, as well as an original mixed legal system, in force in the so-called Kingdom of Poland, which was heavily influenced by the French Law (*inter alia* by French civil code).
The problem was indeed complex. Varied customs and habits had formed in the individual districts; the attitude toward the law and the imposing authorities was also different. In the course of my considerations, I will attempt to answer the questions of what codification strategies were pursued by the representatives of Polish legal and political elite in order to build a new unified legal system from this veritable mosaic of particular laws, and to effectively implement it into a society that had been raised in different conditions. In other words, what strategy was to lead to the creation of a new "national codification" that could

satisfy the criteria of both a modern law and one that could be easily assimilated into the Polish society and adjusted to the socioeconomic conditions of Central Eastern Europe.

Klimaszewska, Anna
"Searching for national components in building own legal culture – the debate on the legal situation of women in interwar Poland"

Broad legislative works conducted in interwar Poland and concerning various branches of law focused, on the one hand, on the uniformisation and reform of particular district systems inherited from the annexing powers, and on the other hand on the idea of building a national codification. In that context the programme for modernisation of socio-economic relationships and the elements derived from foreign legal systems, rooted in the previous century, were balanced with the values, customs and specific features, regarded as native and constituting components of national identity of the Poles. Against this backdrop, a debate on the legal situation of women was taking place, of key importance from the perspective of legislative changes on the late 19th and early 20th century in other legal systems around the world.
Therefore, the fundamental objective of this paper is to analyse its course from the angle of components of Polish national identity, tradition and legal culture, defined in broadly understood public debate (*inter alia* during the undertaken legislative works and in publications which were appearing simultaneously). What was the shape of this debate, held also in many other countries of the world, in the specifically Polish circumstances? How was its course influenced by the individual pressure groups, such as conservative-clerical and liberal-progressive circles?

Łysko, Marcin
"Women's participation in public life of the Second Republic of Poland (1918 – 1939) – norms and legal practice"

The Second Polish Republic, which came into being in November 1918, adopted the legislation of the partitioning states which deprived women of the right to participate in public life. Alongside with regaining independence, women obtained full election rights and had their representatives in all parliaments of inter-war Poland. The principle of gender equality was raised to the constitutional level by the Basic Law (Constitution) passed in 1921. In the following years of the inter-war period, women obtained the possibility to be employed as civil servants, barristers, judges and prosecutors. In spite of the formal equality, public authorities avoided appointing women to more important posts and tolerated practices which were in breach of the Constitution and aimed at limiting the participation of women in public life. The lack of an organ appointed to inspect the compatibility of bills with the constitution and weakness of women's communities was obviously conducive to this process. The full realisation of the gender equality principle, both in the field of legislation and the practice of everyday life, would take place after the Second World War.

PROPRIETARY RIGHTS (Room 1.2)

Bańczyk, Wojciech
"Entailed estate in Polish law from 16th to 20th century – preterlegal development of the institution challenging general rule of equality"

Polish 16th century law was based on equality of nobility. Noble families were supposedly equal among one another, and e.g. equally authorised to voting rights, but the same applied to their particular male members and their e.g. civil law rights. This rule was, however, dubious with regard to the post-mortal succession of the greatest estates. Their partition, as demanded by the customary inheritance law, was, thus, highly ineffective for the organised economical units.
Therefore, based on specific privilege, granted by the parliament, the estate of especially influential, richest noble families were exempted from general law and given (by founder) its own management and post-mortal succession rules (i.e. "*ordynacja*", similar to family *fideicommissum*) based mostly on primogeniture. Such estate could not have been disposed differently by members of subsequent generations. Exception as above long served economic effectiveness of the estate and, therefore, sustained financial family basis and also developed its autonomy. To some extent it could have also served public aims, due to founders' commitment.
However, throughout centuries equality, women rights were more demanded, economic situation changed, and initial rules regarding estate lost justification. 20th century eventually brought dissolution of entailed estates, but the idea of separated estate is still vivid.

Rosati, Simone
"Community (Custom) Versus State (Law) The defence of the popular customs further to the affirmation of proprietary individualism in the Papal State. (XVIII – XIX centuries)"

During the 18th century, an increasingly strong individualistic attitude in the way of understanding the relationship between man and tangible world spreaded throughout Europe. The legal institution which, more than any other, suffered from the effects of this reductionism was the Property as victim of incredible compression in comparison to medieval world.
The exclusive model that the new Enlightenment and bourgeois mentality wanted to admit was the individual Property, to the detriment of all those forms of possession documented in the Middle Ages.
The present study intends to investigate, in the geographical context of the Papal State, the great juridical dispute between the individualistic model – endorsed by Sacred Legislator – and that of collectivistic nature defended by Community.

Legeza, Denes
"Mechanical (Reproduction) Right of Musical Works in the *Belle Époque*"

After Guttenberg, we had to wait for centuries for inventions that could bring significant novelty in the reproduction and distribution of literary and artistic works. The Swiss watchmakers' music boxes were like codices, unique specimens, and they were available to the rich. Thomas Edison's invention of 1877, the phonograph, has opened new perspectives for recording and replaying sound. Inventions related to literary and artistic works

typically have an impact on copyright, however, the legal recognition of the effect of innovation is the result of a long process.
This presentation deals with the appearance and international recognition of mechanical (reproduction) right of musical works in the *Belle Époque*, between 1870 and 1914. The first part of the presentation analyses the judicial practice of mechanical right in the United States, in Great Britain, in Hungary and in Austria. On one side, the authors and publishers fought for recognition of their new exclusive right, on the other hand, producers of sound recordings argued for staying in the public domain.
The second part of the presentation examines the mechanical right in multilateral and in bilateral relations.

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