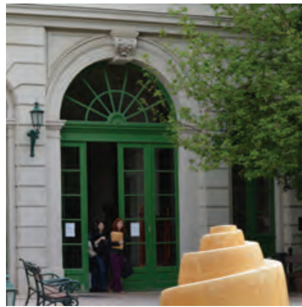
8th Central and Eastern European Forum for Young Legal, Political and Social Theorists

22–23 April, 2016
Budapest



Central and Eastern European socio-political and legal transition revisited – theoretical perspectives

Institute for Legal Studies
Centre for Social Sciences • Hungarian Academy of Sciences
mtatkjti

We would like to welcome each of you to the 8th CEE Forum Conference *in Budapest on Central and Eastern European socio-political transition. It's an exciting time for all of us as we continue to study the region's social, political and legal challenges.*

This conference of the Central and Eastern European Forum for Young Legal, Political and Social Theorists *is hosted this year by the* Hungarian Academy of Sciences, Center for Social Sciences, Institute for Legal Studies.

The Institute, founded in 1949, has certainly been one of the leading research centers in Hungarian legal academia. As it has been integrated into the wider network of the Hungarian Academy of Sciences' institutes with a social science focus (Hungarian Academy of Sciences, Centre for Social Sciences) since 2012, the Institute for Legal Studies offers an ideal venue for such an interdisciplinary event.

Nation-wide, region-wide and global changes remind us of thinking together on interpreting and shaping our social, politicial and legal environment with knowledge, faith and solidarity. Our environment in a constant state of transition is a demanding field to study, and we will continue to meet and bring inspired people together in forums like this, to ensure that CEE Forum remains at the cutting edge.

We would like to give you here an idea of what you can expect and what we hope to achieve over the next two days.

In the most general terms, the agenda of the conference will be focused on the discussion and reassessment of the Central and Eastern European transition that started in 1989 and has not finished yet. Since more than twenty-five years have passed, the historical distance necessary for the formulation of scholarly insights on either the transition process as such or its several dimensions has been reached. Therefore, the time has come for a critical reconsideration of the earlier scholarly findings or commonplaces and the formulation of more nuanced and refined conclusions.

We, therefore, invited contributions from the fields of legal, social or political theory related to this complex issue. Special emphasis will be placed on the following sub-topics:

(1) the impact of "European-integration" upon the legal and political orders of Central and Eastern European countries;
(2) the historical determinacy of the transition process with regard to unique historical, political, social or cultural factors;
(3) the role of law, legal bodies and legal thinking in the process of transition;
(4) theoretical and practical problems of lustration;

(5) the restructuring of Central and Eastern Europe in geopolitical terms, with special regard to the dissolution of some former states (e.g. the Soviet Union, Yugoslavia or Czechoslovakia) and the birth of the new countries; the social, political and cultural impacts of this transformation;

(6) the surviving components of the former official Marxist-Leninist socio-political thinking and the effects of this legacy;

(7) legal and political transplants either from Western Europe or of an intra-regional nature, and the role of foreign assistance in this process.

As in the previous conferences of CEE Forum, the target audience was the community of young researchers either working in Central and Eastern Europe or studying topics with Central and Eastern European dimensions. We also encouraged the participation of young academics affiliated with the universities or research institutes of Western Europe or North-America with Central or Eastern European research interests.

We would like to thank each of you for attending our conference and bringing your expertise to our gathering. You have the vision, the knowledge and the experience to help all of us to understand the past and pave our way into the future. Throughout this conference, we ask you to stay engaged, keep all of us proactive and contribute to theoriseing the transition and its legal, political and social consequences.

Our personal respect and thanks goes out to all of you. Have fruitful discussions and nice days in the beautiful Budapest spring!

Fruzsina Gárdos-Orosz
Research Fellow
Institute for Legal Studies
Centre for Social Sciences HAS

Balázs Fekete
Research Fellow
Institute for Legal Studies
Centre for Social Sciences HAS

Central and Eastern European socio-political and legal transition revisited – theoretical perspectives
Programme

Friday, 22 April, 2016

8.30–9.00 Registration and coffee | Jakobinus Room

9.00–11.00 Opening plenary session | Jakobinus Room

Welcome address by András Jakab *(Director, Hungarian Academy of Sciences, Centre for Social Sciences, Institute for Legal Studies)*

Opening by Iván Szelényi *(Member of the Hungarian Academy of Sciences, Former professor of Yale and NYU)*

Renáta Uitz
Professor, Central European University, Budapest
What does a study of civil society organizations have to offer to constitutional scholarship?

Ferenc Hörcher
Director, Hungarian Academy of Sciences, Research Centre for Humanities, Institute of Philosophy, Budapest
Perspectives of the V4 Cooperation: history of political thought and political philosophy in the service of political analysis

Marie-Elisabeth Baudoin
Maître de conférences, Université D'Auvergne École de Droit, Clermont-Ferrand
Constitutional Law as a mirror of transition to liberal democracy and its backsliding in Eastern Europe

György Gajduschek
Senior Research Fellow, Hungarian Academy of Sciences, Centre for Social Sciences, Institute for Legal Studies, Budapest
"The opposite is true!...as well!" Extremely inconsistent values: empirical evidence from and speculation over Hungarian survey data

11.00–11.30 Coffee break | Jakobinus Room

11.30–13.00 Parallel sessions I.

Minorities and transition | JTI Meeting Room

Chair: Petra Gümplová

Antonija Petričušić
University of Zagreb, Faculty of Law, Zagreb
Europeanisation of minority policy in Croatia: Limited outcomes of the second generation minority conditionality

Magdalena Nazimek
University of Lodz, Faculty of Law and Administration, Lodz
Influence of social and political transition on migration policy in Poland

Augusta Featherston
International Foundation for Electoral Systems, Washington, DC

and Ritika Bhasker
International Foundation for Electoral Systems, Washington, DC
Participation without representation: youth engagement in electoral democracy

Legal concepts in transition | JTI Room 32–33

Chair: Renáta Uitz

Jan Bazyli Klakla
Jagiellonian University, Department of Sociology of Law, Cracow
The rebirth of customary law in the time of transition

Maciej Dybowski
Adam Mickiewicz University, Faculty of Law and Administration, Poznań
Transition and determinacy of legal concepts

Biljana Đorđević
University of Belgrade, Faculty of Political Sciences, Belgrade
Depraved of legitimating discourse: CEE walled states, human rights in transit, and emerging political subjectivities

Institutions in transition | Library Meeting Room

Chair: György Gajduschek

Maciej Juzaszek

Jagiellonian University, Faculty of Law and Administration, Cracow

The crisis over Polish Constitutional Tribunal. What went wrong during 26 years of transition?

Dario Čepo

University of Zagreb, Faculty of Law, Zagreb

Reform catalysts or conservative hindrances: the upper houses of Central and Eastern European legislatures compared

Danilo Vukovic

University of Belgrade, Faculty of Law, Belgrade

The hollowing out of institutions: lawmaking and policymaking in contemporary Serbia

13.00–14.00 Lunch | Jakobinus Room

14.00–15.30 Parallel sessions II.

Political Culture | JTI Meeting Room

Chair: Veronika Czina

Petra Burai

Max Planck Institute for Social Anthropology, Halle/Saale
Eötvös Loránd University Faculty of Law, Budapest

Transitioning boundaries between law and social practice:
Regulating and punishing corruption in Hungary

Bojan Vranic

University of Belgrade, Faculty of Political Sciences, Belgrade

Cultural change and democratic consolidation:
The case of Serbian authoritarian heritage

Konrad Kobyliński

University of Silesia, Faculty, Katowice

Judicial politics and the rule of law

Trajectories of transition | JTI Room 32–33

Chair: Federica Cristani

Mirosław Michał Sadowski
University of Wrocław, Faculty of Law, Wrocław
Collective memory and historical determinacy:
The shaping of the Polish transition

Ketrina Çabiri Mijo
University of Salzburg, Faculty of Cultural and Social Sciences , Salzburg
European University, Faculty of Social Sciences and Education, Tirana
University of Essex, Institute for Social and Economic Research, Essex,

and Adela Danaj
Central European University, Department of Political Science, Budapest
Explaining the trajectories of post-communist democratization:
study case – Albania

Ilija Manasiev
University of Ss. Cyril and Methodius, Faculty of Law Iustinianus Primus, Skopje
Theoretical aspects and geopolitical implications of the dissolution of Yugoslavia and the challenges of the Republic of Macedonia as a sovereign state

Legal culture | Library Meeting Room

Chair: Balázs Fekete

Michał Stambulski
University of Wrocław, Centre for Legal Education and Social Theory, Wrocław
The people vs the law. Populism in Central and Eastern Europe

Jacek Srokosz
Opole University, Law and Administration Faculty, Opole
Can we speak about the Americanisation of law and legal practice in Poland after 1989?

Filip Rakoczy
University of Wrocław, Faculty of Law, Wrocław
The role of the autonomy of legal culture in the polish transition process

15.30–16.00 Coffee break | JTI second floor

16.00–18.00 Parallel sessions III.

Europeanisation | JTI Meeting Room

Chair: Jürgen Busch

Endre Orbán

Constitutional Court of Hungary, Budapest

The EU-Member State relationship as a principal – agent problem

Martin Belov

University of Sofia "St. Kliment Ohridski", Faculty of Law, Sofia

(Re)creating European identity in a multilayered and pluralist institutional and normative context. The effects of European integration and globalization on Bulgarian constitutional identity

Veronika Czina

Hungarian Academy of Sciences Center for Social Sciences Lendület – HPOPs Research Group, Budapest

Legal obligations and conflicting strategic priorities:
An analysis of Hungary's EU policy

Petra Gümplová

Max Weber Kolleg, University of Erfurt, Erfurt

Getting legality right in the EU refugee crisis?

Judicial issues | JTI Room 32–33

Chair: Bojan Spaić

Donatas Murauskas

Vilnius University, Faculty of Law, Vilnius

Extra-legal arguments of constitutional courts: the temporal effects of a judgment

Axelle Reiter

University of Verona, Facultyof Law, Verona

Justice in transition: assessing the ICTY legacy

Eszter Kirs

Miskolc University, Faculty of Law, Miskolc

Has any war criminal been acquitted or any innocent national hero convicted by the ICTY? A map of high-profile cases from the perspective of criminal liability concepts

Vincent Pál
Humboldt-Universität zu Berlin, Faculty of Law, Berlin

and Florian Stefan
Schönherr Rechtsanwälte, Austria, Wien
International arbitral tribunals and legitimacy: A comparative study

Lustration and memory | Library Meeting Room

Chair: Katalin Kelemen

Miklós Könczöl
Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest
Hungarian Academy of Sciences Centre for Social Sciences Institute for Legal Studies, Budapest
Memory laws in transition

Karolina Ristova-Aasterud
University of Ss. Cyril and Methodius, Faculty of Law Iustinianus Primus, Skopje

and Aleksandra Deanoska Trendafilova
University of Ss. Cyril and Methodius, Faculty of Law Iustinianus Primus, Skopje
Too much, too late: The legal, political and theoretical controversies regarding the lustration laws and lustration process in the Republic of Macedonia

Justyna Krupa
Jagiellonian University, Faculty of International and Political Studies, Cracow
Lustration in the Balkans – the specific case of Croatia

Justyna Jezierska
University of Wrocław, Faculty of Law, Wrocław
Lustration - the revenge of the memory

18.30. Reception by the French Embassy in Budapest | Jakobinus Room

Saturday, 23 April, 2016

9.30–10.00 Welcome coffee | JTI second floor

10.00–11.30 Parallel sessions I.

Private law and transition | JTI Meeting Room

Chair: Martin Belov

Tymoteusz Siwiak

University of Wrocław, Faculty of Law, Wrocław

Extralegal values, their role and meaning in civil law of transition country with regard to a discourse about the Polish clause of abuse of law

Rafał Mańko

University of Amsterdam, Centre for the Study of European Contract Law

The 'form' of law and the 'substance' of socio-economic transformation: an inquiry into the role of law in the dynamics of post-Communist transition in Poland

Adam Szot

Maria Curie-Sklodowska University, Lublin, Poland

Transition of public administration and its judicial control – from communist times to multicentrism

Financial issues | JTI Room 32–33

Chair: Vincent Pál

Joanna Ptak

Jagiellonian University, Faculty of Law, Cracow

The problem of European integration in the sphere of tax law from the perspective of CEE region. The case of Poland

Federica Cristani

Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest
Hungarian Academy of Sciences Center for Social Sciences Institute for Legal Studies, Budapest

Economic state-building in Kosovo: reconciling economic sovereignty and conditionality in the international investment protection

Marko Dimitrijević
University of Niš, Faculty of Law, Niš
The impact of European integration on the formation of a new monetary law: the case of Serbia

(Re)privatisation in transition | JTI Director's Room

Chair: Eszter Kirs

Piotr Eckhardt
Jagiellonian University, Faculty of Law and Administration, Cracow
Quarter-century of legal and political battles for reprivatization in post-socialist Poland

Bronislav Totskyi
National academy of sciences of Ukraine, Koretskyi Institute of state and law, Kyiv
The transition of the Ukrainian legal system in Post-Soviet times:
The agricultural land property case

Marcin Wróbel
Jagiellonian University, Faculty of Law, Cracow
Expropriation and (lack of) restoration
Case study of Tatra Mountains National Park

11.30–12.00 Coffee break | JTI second floor

12.00–13.30 Parallel sessions II.

Judicial issues II. | JTI Meeting Room

Chair: Ágnes Kovács

Arnulfo Daniel Mateos Durán
University of Heidelberg, Faculty of Law, Heidelberg
The "margin of appreciation" as a cohesive tool for the Human Right Protection system in Europe.
A comparison with the Inter-American Human Rights System

G. Szabó Dániel
Central European University, Department of Legal Studies, Budapest
The authority of the European Court of Human Rights
Hungary and the Netherlands compared

Katalin Kelemen

Örebro universitet, School of Law, Psychology and Social Work, Örebro

Judicial dissent and legal certainty

Theoretical problems | JTI Room 32–33

Chair: Miodrag Jovanovic

Szilárd Tattay

Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest / Hungarian Academy of Sciences Centre for Social Sciences Institute for Legal Studies, Budapest

Can norms have truth value?

Izabela Skoczeń

Jagiellonian University, Faculty of Law and Administration, Cracow

Should a theory of legal language take into account psychological data?

Filip Golba

Jagiellonian University, Faculty of Law and Administration, Cracow

Conceptual analysis and methodological pluralism

Bojan Spaić

University of Belgrade, Faculty of Law, Belgrade

Legal interpretation, power and authority

Sociology of law roundtable | JTI Director's Room

13.30–14.30 Lunch | JTI second floor

14.30–15.30 | JTI Meeting room

Annual meeting of the CEE-Forum Coordinators and Advisory Board

Abstracts | Keynote speeches

Marie-Elisabeth Baudoin
Maître de conférences, Université D'Auvergne École de Droit, Clermont-Ferrand

Constitutional Law as a mirror of transition to liberal democracy and its backsliding in Eastern Europe

Eastern European countries were able, during the 1990s, to change their political and legal system, without using any violence, and in a pacific manner, through the adoption of legal rules. Transition to democracy is first and foremost a political phenomenon, but it is also a legal phenomenon. Law and specifically the constitutional law was the instrument by which change was able to happen peacefully.

More than 25 years after the pacific revolutions or the "velvet" revolution as it was called in Czechoslovakia, it is important to have a closer look at these constitutional evolutions in Eastern Europe. Constitutional law is literally a laboratory which allows analyzing the transitional period. It is an indicator of the changes over time: the transformation of the State or the end of the transition period can be observed through the amendments to the Constitution, and also through the application of the newly adopted Constitution. At the same time, Constitutional Law is also an indicator of the changes in values as the Constitution has an axiological dimension and reflects those new values.

Recently, a backsliding of democracy was observed in Hungary or in Poland. In 2011, in Hungary was adopted a new constitution replacing the 1949 amended "socialist" Constitution which was criticized for eliminating checks and balances and guarantees of fundamental rights. In December 2015, the Constitutional Court of Poland was at the heart of a political crisis, and a new law was adopted which was assessed by the Venice Commission of the Council of Europe on March 11, 2016, as hampering the Court's effectiveness and undermining democracy, human rights and the rule of Law. One more time Constitutional Law and Constitutional law issues mirror the political changes. And these recent events raise the question of what is really at stake: is it a backsliding of democracy or a backsliding of liberal democracy? If we look back into the past and the 1980s transition to democracy, the choice was made to adopt a liberal model of democracy, the European model of democracy. More than mirroring a

backsliding of democracy, the recent crises in Eastern Europe mirror an identity crisis and disenchantment with the liberal constitutional democracy…

György Gajduschek

Senior Research Fellow, Hungarian Academy of Sciences Centre for Social Sciences Institute for Legal Studies, Budapest

"The opposite is true!…as well!" Extremely inconsistent values: empirical evidence from and speculation over Hungarian survey data

Surveys of Hungarian legal culture have detected a high level of inconsistency of beliefs and values regarding basic questions (i.e. human rights, dealing with unfair laws) of a modern legal system. To various questions people regularly provide answers that self-evidently contradict one another. One may reasonably ask whether this is a special feature of the Hungarian, post-soviet, East-Central European, or semi-peripheral legal cultures or whether it is a more wide-spread phenomenon. If this is a general phenomenon, we may readily turn to the international literature for better understanding. However, there seems to be no wide-spread discussion of the issue. It seems there is a need to form some hypotheses about the reasons of this attribute of Hungarian legal culture. I propose a few possible, mutually non-exclusive explanations. First, the legal institutions after 1990 were imported and adopted from the West. This happened within a few months, based on the strange – though probably very typical – belief that 'The Law' has the power to change everything (i.e. if the law changes society changes with it). However, culture, unlike civil law, may change only slowly. These legal institutions appeared as legal transplants on basically alien soil, without the historical experience that created them. These legal institutions were established as a reaction to historical challenges, step by step through centuries, followed by gradual change in belief systems accompanied by unconscious memories of the experience that gave life to these solutions. In Hungary, these appeared at once, without the experience that created them. Last but far from least, in the past century the region experienced a sequence of authoritarian or totalitarian regimes, all of which were legitimized by a strong and aggressively spread ideology. All these regimes denied the previous one entirely and that denial became a key part of their ideology. From the average person's perspective this meant that heroes of the previous regime became sinners in the new one and vice versa. One did not have to live long to experi-

ence at least two regime changes. These experiences may alienate people from the law, may confuse their beliefs about the law, what the law requires, etc. As a consequence, several layers of highly contradicting normative systems are present in one person's psyche. Meanwhile people have learnt that in 'official situations' – as an interview situation may easily seem to most – they should give the appropriate, official answer. It may not be their fault that while they did their best the answers became irrational.

Ferenc Hörcher

Director, Hungarian Academy of Sciences Research Centre for Humanities Institute of Philosophy, Budapest

Perspectives of the V4 Cooperation: history of political thought and political philosophy in the service of political analysis

Politics is claimed to be „the art of the possible" (Bismarck). However, a lot depends on what we mean by the term of „the possible"'. It was John Lukacs, the Hungarian American historian of the 20th century, who claimed that political actors can only act within the confines of what they can imagine to do. Therefore, an analysis of the specific confines of the imaginatively possible of a given period, movement or individual actor, as it can be done in the disciplines or discourses of political philosophy and the history of political thought, is always relevant to understand the real political motivations of actors, and through them to make sense of their political actions.

The paper will look at two particular contexts of the history of the V4 cooperation: first, the context when the four countries got together after the transition to democracy, and now that the V4 countries are united in their approach to the migration issue. I claim that if we make sense of the ideological issues of the given period, we shall more easily understand the motivations behind the cooperation, and the chances of its survival. This way, the history of political thought and political philosophy will help political analysis.

Renáta Uitz

Professor, Central European University, Budapest

What Does a Study of Civil Society Organizations Have to Offer to Constitutional Scholarship?

As civil society organizations are not constitutional institutions, constitutional scholarship pays little attention to them. Instead, it usually adopts views and perceptions developed by sister disciplines – often without further reflection. The talk argues that constitutional scholarship benefits from taking a closer look at constitutional actors which are not formalized constitutional institutions (such as the parliament or the constitutional court). Studying the constitutional role of civil society organizations (CSOs) offers both important insight into how constitutions and how constitutional scholarship may be able to make sense of such developments in order to understand its own subject (i.e. constitutions) better.

Transitions to democracy in the 1990s in Central and Eastern Europe contributed considerably to casting CSOs into mighty constitutional actors. According to the emerging common wisdom, CSOs can change regimes and challenge governments to the point where they bring about, or at least trigger, a robustly functioning constitutional democracy built on liberal values. The picture is that of a mighty constitutional force, challenging governmental actors to the point of shaking and shaping constitutional architectures. The myth of CSOs is such that less-than-democratic regimes prefer to establish government-friendly organizations mimicking CSOs of the above description. In contrast, in the recent constitutional conundrums of the CEEu region CSOs appear to have moderate success in challenging constitutional developments. When they are active in domestic constitutional debates, their ideas may be heard, yet their impact on constitutional developments is often marginal. While some CSOs are experienced regional actors in the European constitutional space, their contribution to national developments through European intermediaries is modest. They appear to be a far cry from the mighty constitutional actors often pictured both by their supporters and by their critics.

Using examples from CEEu and elsewhere the talk will explore the role CSOs play in challenging practices and legal rules which violate basic premises of constitutionalism, ie in making a constitution work. Despite calls to this effect, in the long run (i.e. beyond special formative moments) CSOs cannot replace the

opposition (to impose checks on the political branches of power) or the government (in taking over policy-making or large scale redistributive functions). What they appear to be able to accomplish are corrective and narrative functions. They can and do act as watchdogs on government action and also bring insight into policy debates on a wide range of issues (corrective function). They also can and do offer insight into the wisdom or perils of certain constitutional and policy choices (narrative function). These activities are, however, largely contingent on the constitutional and legal infrastructure which enables such contributions to constitutional dynamics. The measures vary and include among others access to formal channels of policy and lawmaking (e.g. public participation in the legislative process), access to court (including constitutional courts), and access to information (through freedom of information). These measures are scattered across the constitutional infrastructure: it is the active involvement of CSOs that brings them together for the purposes of constitutional analysis. The talk will show that through paying closer attention to how CSOs use various pieces of the constitutional architecture in political and constitutional processes, constitutional scholarship can understand as much about the constitutional role of CSOs as about its own weaknesses and opportunities as a discipline devoted to the study of constitutions.

Abstract | Presentations

Martin Belov

University of Sofia St. Kliment Ohridski, Faculty of Law, Sofia

(Re)creating European identity in a multilayered and pluralist institutional and normative context. The effects of European integration and globalization on Bulgarian constitutional identity

Europe as an idea and the European integration as a process of civilization have played an important role in the political, legal and constitutional modernization of Bulgaria during the last 25 years. The EU has been used in the Bulgarian political discourse as a civilization and a political code and as an ultimate criterion for the legitimacy of the legal and constitutional reforms which were accomplished in the transition period from authoritarianism to democracy and the rule of law.

The 1991 the Bulgarian Constitution was born in a situation when globalization has started to gain momentum and the Euro-optimism was on the rise. All subsequent constitutional amendments and reforms of the legislation were baptized in praise of the European legal civilization and in an attempt at the radical and total Europeanization of the Bulgarian constitutional system and constitutional culture.

Thus Europe has served as a cultural code and a hallmark of high civilizatory standards which were automatically and uncritically transplanted into the Bulgarian legal system and legal cultural context. In many cases the transplantation was indeed radical. This was due to the novelty of the borrowing. The transplant was sometimes delivered in the form of a package and the lack of a sufficient effort for the substantial integration of the transplanted institutions in the Bulgarian legal culture, tradition and identity.

The uncritical and massive transplantation of ideas, concepts and institutions led to formal compliance of the Bulgarian institutional design with the criteria for EU integration that has not been sufficiently paralleled by substantial internalization of the legal borrowings in the social and political context and culture. Moreover, while the debate on the implementation of the EU standards and the Europeanisation of the Bulgarian legal system has been pale, formal

and based on clichés there was actually no real discussion on both the Bulgarian constitutional identity and the eventual Bulgarian contribution to the European project.

The one-sidedness of the European constitutional discourse has doomed the harmonization of the Bulgarian legislation and legal system to remain an almost purely elitist process. Moreover it did not allow for the real and profound Europeanisation of the Bulgarian constitutional identity and the constitutional and political culture that can parallel the formal adjustments on normative level. The lack of any definition and delimitation of the Bulgarian constitutional identity might at a first glance seem as an opportunity for easy implementation of the EU standards. In fact, it prevented the genuine integration of the EU civilization code into the Bulgarian constitutional identity and thus into the Bulgarian legal culture.

This paper aims at exploring the way EU integration has influenced the Bulgarian constitutional identity. This will be done not only through the analysis of the EU integration clause or other EU related amendments of the Bulgarian constitution but also via exploring the general effects of the EU as a source of legal reform, modernization and civilization influence on the Bulgarian legal system, legal culture and mentality. Thus, an interdisciplinary analysis will be provided. It will encompass both the Bulgarian Constitution and Bulgarian legislation and the Bulgarian public discourse. The paper is going to problematize the interplay between EU constitutional culture and Bulgarian constitutional identity and tradition.

Petra Burai

Max Planck Institute for Social Anthropology, Halle/Saale
Eötvös Loránd University Faculty of Law, Budapest

Transitioning boundaries between law and social practice: regulating and punishing corruption in Hungary

The modern history of the normative contextualization of corruption in Hungary demonstrates that when social structures and the legal system are in constant flux, turning away from the normative order and focusing on personal values instead is particularly affective. When 'official' norms are changing persistently, individuals are keen to find stability and reliability in their mutually shared norms and personal relations outside the scope of the laws. The transformation

of social structures is a very complex ongoing process causing widespread uncertainty regarding the social, legal and moral perception of which act counts as corruption. Corresponding to the academic literature on the complexity of its definition, historic evidence proves that the legal understanding of corruption and the specific countermeasures have been constantly changing and developing notions. While the most important actor regarding anti-corruption measures has always been the state, the exclusive and discretionary power coming from its monopole position, especially since the socialist era, has turned into a general social demand for the government to take an active lead in such initiatives, while most Hungarian citizens, in a rather passive manner, expect the laws to have a positive impact on their livelihoods.

Dario Čepo

University of Zagreb, Faculty of Law, Zagreb

Reform catalysts or conservative hindrances: the upper houses of Central and Eastern European legislatures compared

this paper aims to review the reasons of the establishment as well as the necessity of maintaining upper houses in Central and Eastern European countries, and to investigate whether upper houses should be abolished or reformed in order to cope with new challenges. It looks into prevailing ideas behind the establishment or strengthening (or weakening) of a given upper house and whether those institutions fulfilled the role they were intended to have. In the end, the paper will show the raison d'etre of upper houses in some countries, but also to point to the ways upper houses that are in a legitimacy crisis can reform and take on new activities dealing with new challenges in an ever-changing world (by, for example, focusing on scrutinizing the decision-making process of the supranational level of the European Union). With the exception of the role of the US Senate, and sporadically the British House of Lords and the German Bundesrat, research on second chambers has not raised the interest of a large number of political scientists. That is particularly true for the upper houses in Central and Eastern European countries. Therefore, in-depth work is needed to account for the existence of upper houses in mostly unitary states of Central and Eastern Europe, as well as to account for future roles that would legitimize their continued existence.

Federica Cristani
Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest
Hungarian Academy of Sciences Center for Social Sciences Institute for Legal Studies

Economic state-building in Kosovo: Reconciling economic sovereignty and conditionality in the international investment protection

Kosovo is one of the most outstanding examples of contemporary State-building. In particular, it is framing its own domestic legal system with the support – and strict supervision – of the European Union (EU).

As regards the economic sector of Kosovo, the EU is currently playing the role of "state-builder", i.e. by influencing – or rather conditioning – in a structural way the economic changes of the country. In this respect, we talk about "external" conditionality by the EU. Here, a problem arises as to whether and to what extent such conditionality plays a role in the possible re-definition, in juridical terms, of the concept of economic sovereignty both at the national and international level. As a matter of fact, in the context of the processes of State-building, a high degree of legal uncertainty surrounds the activity of institutional actors in "conditioning" the economic reconstruction of States. In particular, the following juridical aspects seem to be still unanswered: who, and on which legal basis, decides conditionalities in the affected country? Who, and according to which legal instruments, may claim the (ab)use of such conditionalities? Finally, is it possible to reconcile the exercise of economic sovereignty and external conditionalities in a sustainable way?

The process of economic State-building is of particular interest with respect to the regulation of foreign direct investment (FDI). Though it is well recognized that FDI can play a substantial role in promoting economic growth in States whose economy is under reconstruction, international legal literature has paid little attention so far to the analysis of FDI laws and policies in post-conflict economic reconstruction processes; rather, there is a case-by-case assessment of the investment regulation.

The present paper aims at defining the concept of economic sovereignty in the framework of processes of State-building, with particular regard to the regulation of FDI in Kosovo. Firstly, it addresses the definition of the concept of 'economic sovereignty' and its development, with particular regard to countries facing processes of economic reconstructions, like Kosovo. In this respect, at-

tention will be devoted to the concept of "conditionality", as first developed by the International Monetary Fund (IMF) within its supporting programs and then used by the European Union (EU) for its enlargement policy.

The analysis will focus on the Western Balkans and in particular to Kosovo: the Kosovo case study sums up various aspects of external influences on a country's governance. Taking into account the role of EU conditionality in the exercise of the economic sovereignty of Kosovo, the main question to be answered is whether there is an "erosion" of economic sovereignty or simply a reconfiguration of the relationship between national economic policies and EU policies, with particular regard to the definition of a domestic legal framework for investment protection.

Veronika Czina

Hungarian Academy of Sciences, Center for Social Sciences,
Lendület HPOPs Research Group, Budapest

Legal obligations and conflicting strategic priorities: an analysis of Hungary's EU policy

In the past few years, Hungary has been frequently mentioned as the "black sheep" among the Member States of the European Union, due to the country's particularist policy towards EU membership. Particularism in this sense refers to the autonomous, conflict-seeking behavior of Hungary towards Brussels, which has usually been considered as something new and connected to the government change of 2010. However, the question might arise: is this strategy completely new and entirely different from what we have seen from Hungary since it started to seek EU membership, or can some of its elements be discovered in the Member State's earlier behavior towards the Union?

This paper analyses the process of Hungary's European integration, more precisely the ways Hungary changed its strategic priorities towards Europe and the progress of the country's adaption to becoming a Member State of the European Union, since the rapprochement between the country and the European Communities have started. The analysis is based on the thorough examination of the main legal obligations Hungary had to take up in the pre-accession period, the ways Hungarian strategic priorities appeared and changed over time, and how the EU reacted to them during this legal harmonization process. The attitude of the Hungarian public towards the EU and the accession process it-

self will also be analyzed, as well as some parts of the post-accession period, focusing on the alterations in the government strategies towards the EU, and the Hungarian Council Presidency as a symptom of the Hungarian attitude towards EU membership.

The aim of the current study is to demonstrate that although there has been a considerable change – or a so-called realist turn – in the Hungarian behavior applied in relation to the EU, this realist strategical element is not completely new, but some parts of it can be traced back to the pre-accession period as well. The paper argues that the pursuit of national interest and sovereignty have always been essential parts of Hungary's strategy towards the EU since the beginning and although Hungary's willingness to join the European Union was the driving force of its EU integration process, some elements of a realist, sovereignty-oriented, rent-seeking political strategy can already be discovered before 2010.

Marko Dimitrijević
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The impact of European integration on the formation of a new monetary law: the case of Serbia

The subject of analysis in this paper is the identification and analysis of the impact of European integration on the structure andthecharacteristics of the modern monetary law with special emphasis on the characteristics of the monetary system of Serbia. During the beginning of EMU member states have delegated their monetary sovereignty to the European Central Bank, which means that the monetary law of the EU is directly applicable and does not exist in parallel with national monetary legislation of the Member States. The processoflegal sources of monetary EU law are present in the communitarian legislation and enjoy an absolute supermaty in implementation. A particular problem with the analysis of monetary sovereignty are its external effects, which are reflected in the EMU attempt to expand its authority over the territory of the Member States (which is particularly evident in the case of the candidate countries which must harmonize its financial legislation with the acquis commnunaitrre) in the absence of norms of international public law that prevent it. By transferring the responsibilities for the conduct of monetary rights from the national to the communitarian level of government, this issue has been given a complex dimension because the member

states faced with the consequences of the costs and benefits of the existence of the monetary union. The costs are reflected in the loss of independence of the central bank, while the benefits of are reflected in the reduction of economic costs and better integration of the market. In this sense, the research emphasis on issues related to the effects of adopting primary and secondary community acts to the implementation of basic monetary law principles- lex monetae and lex contractus, limiting the degree of monetary sovereignty of the state, status and legal nature of the decisions of the European Central Bank and the lack coordination of different monetary interests ofthe member states. The subject of special interest are the advantages and disadvantagesinimplemention oflegal and economic convergence criteria established by the Maastricht Treaty and elaborate by provisions of the reform Stability and Growth Pact. In light of the global economic and financial crisis, monetary-law undergoesthe significant modifications, which reflect in adoption ofthe various international agreements that are oftencontradictory with primary European law. The derogations are especially noticable in the sphere of powers of the European Central Bank and the formation of future banking union, which implies the involvement of the European Court of Justice in order to protect the monetary system in an optimal way. Because monetary policy is fully centralized at the European Union level, Serbian lawmakers must make the necessary derogations of monetary standards to facilitate future accession to EMU (primarily the provisions Law of Central bank, Law on Public Debt Management and the Foreign Exchange Act). It requires a change of normative regulation of the applicable exchange rate regime from a managed flexible exchange rate because it has transformed into a regime of euroisation. Operationalization of such a goal may be associated with a number of difficulties which are reflected in the fact that by introduction of the euro as the official currency, the central bank loses the ability to use instruments of foreign policy in limiting and annulling the consequences of financial crisis. On the other hand, domestic economic law could achieve the benefits that are reflected in a deeper market integration and reducing transaction costs after joining the EMU. The realization of these conditions opens dilemmas that were present during the accession of all Member States the single currency area, where a decision on the election has determined the establishment of a specific trade(off). By taking into account the possibility of accession to the single market and all the advantages it brings, domestic subjects of monetary law should respect the experiences of other member countries and track their path of monetary integration. By applying logical, comparative and axiological methods in this paper, we want to point out the major challenges at this sphere of law and offer potential guidance to the Serbian lawmaker de lege ferenda.

Biljana Đorđević
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Depraved of legitimating discourse: CEE walled states, human rights in transit, and emerging political subjectivities

The period between the disappearance of the Iron Curtain and razor wire fence building in Central Europe is also known as the period of transition from authoritarian communist regimes to, as it turned out, EU member states of questionable liberal democratic credentials. There is, of course, a huge contradiction in the fact that border walls were rapidly emerging around the world precisely with the celebration of universalism and globalization after 1989. As Wendy Brown (2010) argued, these walls are a symptom of the decline and erosion of sovereign states in a globalized world, with role to project "power and efficaciousness that they do not and cannot actually exercise" thus legitimizing the state and consolidating the subjects of the state. The question of boundaries has become interesting for political theorists in the last few decades, and they have debated about bounded and unbounded demos, for and against open and closed borders, questioning both liberal and democratic resources of justification for one or another position. But actually given justifications by states often unskillfully argue for fence building by referring to each other for legitimacy (Brown suggested that this is what the United States and Israel are doing).

The EU has criticized the Hungarian wall while it has participated in the construction of the wall built around Spanish enclaves on Morocco's Mediterranean coast at Ceuta and Melilla. More importantly, the EU has been fortifying its eastern and southern borders in treating the EU candidates as its buffer zone and this has been repeated during each process of the EU negotiations with candidate countries. Walls/boundaries operate to define an external "they" and an internal "we" since they usually fail at any other proclaimed aim. It is then of little surprise that the short road from the conceptualization of the EU border as Fortress Europe to the production of myriad of fortresses of EU member states, referring to each other for legitimacy, is crossed. The EU response to the current refugee and migration crisis has focused more on securing Schengen borders than on finding solutions for burden sharing and protection of the rights of refugees and migrants.

In this paper I want to compare the theoretical justifications of boundaries and the rare justifications of border walls with discourses on boundaries and

walls by Central and Eastern European political actors in dealing with the current refugee and migration crisis. I wish to question the plausibility of Brown's argument that the states with waning sovereignty display symbols of force in building border walls aimed at defending fragile egos built around national and religious identities. More importantly, I want to elucidate what type of political subjectivity border fencing is being produced within and around CEE "walled" states.

Arnulfo Daniel Mateos Durán

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The "margin of appreciation" as a cohesive tool for the Human Right Protection system in Europe. A comparison with the Inter-American Human Rights System

Product of the jurisdictional activity of the Court of Human Rights in Strasbourg (ECtHR), the "margin of appreciation" test represents a useful tool used by the Court to regulate the application of the Human Rights in Europe. Respecting the constitutional framework of each member State, the ECtHR modulates the effects of the Convention in each legal order by applying a test that takes in consideration the role of the local courts as first guarantee of the effectiveness of the Convention. The "margin appreciation" is based on the idea that local courts are in a better position to secure the protection of the international responsibilities derived from the Convention, and in this way the Court allows the State some freedom to decide upon the protection of the convention rights in the national legal framework.

Even though the "margin of appreciation" could represent a weakness of the effectiveness of the Convention among the State members, it proves to have a contrary effect. Since the use of the "margin of appreciation" the ECtHR has set a minimum standard of protection among the member states. This means that when the Court sees the evolution of a protection standard in a certain number of member States, it establishes minimum criteria for the others that haven't yet configured their legal framework to those criteria. Thus this minimum standard Convention could act as, like the doctrine sometimes called it, a real European constitutional catalogue of Human Rights (ius commune europaeum).

In the Inter-American jurisdiction the use of the "margin of appreciation" is less perceptible than in the European jurisdiction. Even though the Inter-Amer-

ican Court has given some degree of free configuration to the member States, its test has not been so well developed and systematized as its European counterpart. One of the reasons of this lies in the strong effect of the Inter-American Convention among the States members. This effect comes from the connection of Art. 1 and 2 from the American Convention. These two articles regulated the obligations of each State member in regard with the Human Rights contained in the Convention, both articles contained typical international responsibilities for the State members. Regardless of this, the Inter-American Court has interpreted both articles in a very wide length, thus having as a result that the sentences of the Inter-American Court have a very incisive effect in the national legal framework of the State members. In some cases these sentences order member States not only to modify parliamentary norms, but also to modify constitutional articles. As a result the "margin for appreciation" of state members is reduced to zero. This resulted in some cases in the withdrawal of some member states of the Inter-American jurisdiction (Trinidad & Tobago and Venezuela).

The objective of this work is to compare both systems under the premise that the use of the "margin of appreciation" not only proves to be a form of dialog between the national and international Courts, but also a tool of cohesion in the protection of human rights.

Maciej Dybowski

Adam Mickiewicz University, Faculty of Law and Administration, Poznań

Transition and determinacy of legal concept

The content of legal concepts as applied by legal professionals is highly debatable as far their determinacy is concerned. It requires particular attention if additional circumstances occur in a given discursive practice, i.e. the practice of using concepts. Political, economic and cultural change, all of which have to do with transition, have an impact on any discursive practice. Assuming that legal discursive practice forms a part of universal discursive practice, the subjects of analysis are some of those legal concepts which have remained in the legal practice (in Poland) throughout the political transformation. The analysis is built on the model of responsibility for the content inherited from the past users, and responsibility before future users, based on Robert Brandom's inferential semantics. Moreover, it will be argued that in determining the content of legal concepts, a non-legal concept of the common good could be useful.

Piotr Eckardt
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Quarter-century of legal and political battles for reprivatization in post-socialist Poland.

All post-socialist countries faced the issue of reprivatization. This is the restoration, to its former owners, of the properties seized by a government after the Second World War. Poland is one of the last countries in Central Europe, which have not solved that problem. Nevertheless, some attempts took place already in 1990.

The dispute on reprivatization takes place on two main levels. The first level is political and deeply rooted in ideology. Since 1989 there have been two main lines of argument in favor of reprivatization. First, the right-wing conservative argument. It is based on historical justice and the need to repair the historical wrongs of Stalinism. The name historical positive reasoning seems appropriate.

The second argument used by liberal political parties (which are in favor of all forms of privatization) is based on a greater economic efficiency of property allocated in private hands. This will be called positive economic reasoning.

Additionaly, opponents of reprivatization use arguments from economy and history. The social liberals argue that the return of property to private owners results in very high social costs and hampers the implementation of objectives of the welfare state (economic negative reasoning).

The post-socialists argue that nationalization was justified as the last stage of the abolition of serfdom and hierarchical society in Poland (historical negative reasoning). The situation in Polish politics is even more complicated because various political forces arbitrarily combine different methods of argumentation.

The second level of battles for reprivatization is the law. After 1989 communist decrees on nationalization were subject to constitutional review. The lack of a comprehensive solution to the problem of reprivatization resulted in many attempts to recover estates under the general provisions of civil and administrative law. Some claimants succeeded, but most of them failed. However, what is most important is that such a large number of court cases resulted in many rulings of the Polish Supreme Court and Supreme Administrative court. Courts mentioned in their justifications not only legal but also political matters.

The aim of my presentation is to analyze which arguments had the most significant influence on the current state of reprivatization. At the political level it will be a matter of the most influential ideology. The power of positive and negative, economic and historical arguments should be determined. At the legal level it is also important to analyze the legislation and the court rulings to determine the balance of reasoning rooted in political ideology and in legal theory and philosophy.

G. Szabó Dániel

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The authority of the European Court of Human Rights Hungary and the Netherlands compared

In my presentation I will assess the Hungarian Constitutional Court's practice on the possible supremacy of the European Court of Human Rights. I compare the Hungarian practice to that of the Netherlands and show a way to circumvent the limited review rights of Constitutional Courts in Central and Eastern Europe.

In Hungary, the supremacy of international law is quite well established, however the Hungarian Constitutional Court (HCC) is reluctant to directly enforce the European Convention on Human Rights (ECHR) and is following the practice of the European Court of Human Rights (ECtHR) only in cases where the ECtHR's decision expressly ruled on a Hungarian matter. The recent practice of the HCC however shows a slight move towards the greater acceptance of ECtHR decisions. The importance of the question is shown by the fact that the Minister of Justice asked for an abstract interpretation on the matter from the HCC (the decision is awaited in 2016).

To better understand the HCC's practice, I will compare it to the practice of the Netherlands' in the '50s-'70s. The Dutch Constitution prohibits judicial review based on the Constitution, but allows it vis-á-vis international law. Regardless that the Netherlands was one of the founding states of the Council of Europe, the courts were reluctant to directly apply the ECHR for nearly thirty years after signature, but now it is the 'Bill of Rights' for the Netherlands. During this time, the courts of the Netherlands either denied the ECHR's self-executing nature, or tried to find a comparable right in Dutch law – exactly what the HCC is arguing today.

Traditionally the HCC referred to ECtHR cases only as illustrations and several HCC judges called them highly persuasive, but not authoritative. The HCC often tried to find bases for judicial review in Hungarian law. From the 2000s, however, the HCC was aligned with the ECtHR and in some cases the ECtHR was cited in a quasi-authoritative manner, it was called the "basis" of interpretation of the ECHR and the HCC ruled that an ECtHR decision may be a reason to defer from its own previous practice. In 2013 the HCC decided that it "must refrain from" such an interpretation of a law which would cause violation-finding decisions by the ECtHR. Regardless of these decisions, the issue is not yet well-settled.

Another similarity is the limited review rights of the HCC in economic legislation: the HCC may not oversee these laws based on the Hungarian Fundamental Law, but my do so based on international law. This situation resembles to the Dutch one. The HCC did not yet go down the Dutch road, but it is certainly worth assessgi the possibilities of it.

In light of the recent years' emerging practice of limiting the review rights of Constitutional Courts in Central and Eastern Europe (first in Hungary then recently in Poland), it is interesting and important to evaluate the possible remedies possesses by the Constitutional Court.

Filip Golba

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Conceptual analysis and methodological pluralism

This paper elaborates on the group of interrelated threads of methodological debate within the philosophy of law concerning conceptual analysis and the possibility of specifying the concept of law in a manner prescribed by methodological legal positivism, i.e. in a morally neutral way. It will be assumed that discussions around conceptual analysis' fruitfulness or lack thereof often suffer from misunderstandings as to what conceptual analysis actually consists in and what role it fulfils in legal theorists' endeavours. Clarifications of these misunderstandings will be sought by recourse to a distinction between types of conceptual analysis, which may be performed when semantics of social kinds is at stake, proposed by Sally Haslanger. The distinction, subsequently adjusted by Natalie Stoljar to methodological debates in legal theory distinguishes between three projects of conceptual analysis.

The first is an a priori task of revealing and elucidation of actual usage of a concept. The second project, labelled as descriptive one, is an undertaking presupposing semantic externalism applied to social kinds (inspired by Putnam and Burge), which aims at picking the paradigmatic referents of the concept and tracking the remaining extension by empirical or quasi-empirical methods. The third project, the ameliorative project, consists in stipulating a new meaning for the concept or regulating vague, existing one.

The second and the third projects' plausibility in positivistic legal theory is to be examined. The descriptive project will be assessed in light of the semantical considerations of Coleman and Simchen, which are helpful in the assessment of plausibility of Putnam-like semantics in the legal domain. The third project faces different doubts. The ameliorative conceptual analysis seems to be a tool associated with opponents of methodological positivism such as Liam Murphy or Ronald Dworkin. Therefore it has to be established whether it may nevertheless be employed within a positivist framework. The answer to this question will involve examination of such attempted applications, especially one proposed by Schauer.

Petra Gümplová

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Getting legality right in EU refugee crisis?

The paper critically analyzes the EU's discourse and policies concerning refugees and immigration from the point of view of international refugee law and human rights. The paper analyzes the changing conditions of asylum seeking, traces the process of the erosion of refugee status, and looks at greater detail at EU's policies regarding immigration. It criticizes the EU's failure to accept the changing conditions of asylum seeking, the predominance security and economic concerns, the elimination of access to asylum procedure, the militarization of border zones and humanitarian operations at sea, and failure to fulfil international law obligations. The paper suggests substantial changes in legal theory and practice which are necessary to adapt to contemporary conditions.

Justyna Jezierska
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Lustration – the revenge of the memory

Lustration as a(n) (il)legal and (a)political instrument of dealing with past is also a way of forgetting. When law usually uses history to tell **us** who we **are** (the best known function of collective memory), lustration is used to tell **everybody** who we **were**.

In the resolution on measures to dismantle the heritage of former communist totalitarian systems (made by The Council of Europe) we can read, that there is "the right to be heard, and it must apply them even to those people who, when they were in power, did not apply them themselves". Comparing this right to Polish acts that lustration in 1997 was judging the statement about the past, lustration in 2007 (which was declared unconstitutional) was judging the past without statement or testimony, rather by historians than lawyers.

In this paper I would like to weigh lustration as an institutional way of building a narrative/narration about the past against lustration as a legal instrument.

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The crisis over Polish Constitutional Tribunal
What went wrong during 26 years of transition?

The Constitutional Tribunal (CT) was established in the Polish People's Republic in 1982 to resolve disputes on the constitutionality of the activities of state institutions. Its first judicial decision, made in 1986, was one of the milestones in the collapse of the socialist political system and the beginning of democratic transition. The CT has been maintained in the present Constitution of the Republic of Poland, which was adopted in 1997. Its main aim is to limit the legislative power by supervising the compliance of statutory law with the constitution. The parliament chooses 15 judges to sit on the CT for 9 years. In 2015 three judges were supposed to be chosen before the parliamentiary elections and two after. However, the majority in the former parliament, led by the Civic Platform party, passed the Statute on the CT and chose all five judges in September. The elections, organized in October 2015, were won by populist

national-conservative party Law and Justice. Its politicians claim that the Civic Platform passed the unconstitutional statute to fill the positions in the CT with the opponents of Law and Justice. For this reason Law and Justice changed the Statute of the CT to “fix” what the Civil Platform destroyed. What is more, the five judges chosen by the Civic Platform were not sworn in by President Andrzej Duda, coming from the Law and Justice, and five new judges were chosen by the new majority. But on 3 and 9 December the CT delivered two judgments in which it settled that the Civic Platorm was allowed to choose three judges but the choice of two was unconstitutonal. Moreover, the CT decided that a few of Law and Justice’s amendments to the Statute on the CT were unconstitutional. The Polish constitution states that the decisions of the CT are ultimate, however the Law and Justice and President Duda still do not want to accept the consequences of the judgments, i.e. that the five people chosen by Law and Justice are nor legitimate judges. On 22 December, the Law and Justice changed the statute on the CT for the second time. The adopted amendments de facto destroy the CT which will not be able to make any decisions (at least according to the new version of the statute). However, in the begining of January the CT will review the new amendments adopted by Law and Justice.

The paper will be an analysis of the above-mentioned crisis from the point of view of political and legal philosophy. The author delivers a hypothesis that the genesis of the contemporary crisis over the CT is a matter of mistakes commited by ruling parties and governements during the last 26 years of transition. What is more, the author claims that the crisis over the CT shows a very big tension between the notions of democracy and the rule of law. Eventually, the legal analysis of the conflict will be provided.

Katalin Kelemen

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Judicial dissent and legal certainty

As John Merryman explains in his famous handbook on the civil law tradition, in continental Europe the standard attitude is that the law is certain and should appear so, and that this certainty would be impaired by noting dissents and by publishing separate opinions. It seems that the common law tradition, where judges write separately on a rather regular basis, is less obsessed with legal certainty, and considers other values, such as justice, transparency and

legitimacy as equally, if not more, important. The paper aims at examining the paradoxical and counter-intuitive relationship between legal certainty and the possibility of publishing separate opinions. There is a paradox, because even if an apparently unanimous decision seems to enhance legal certainty, as the court speaks with one voice and gives only one answer to each legal question at hand, at the same time it endangers the predictability of the law, as future changes in case-law are more difficult to foresee. Thus, non-unanimous judgments demonstrate that there is a contrast between the two basic elements of legal certainty: consistency and predictability. This account of the relationship between legal certainty and dissenting opinions, however, reveals a positivist approach which sees the law as a set of rules. A non-positivist understanding of legal certainty, regarding deliberative reasoning as a defining element of law, focuses on the certainty of argumentative practices as something distinctively different from the certainty of normative elements. In this argumentation-based perspective, elaborated by Stefano Bertea, the object of legal certainty is an argumentative activity and so procedural law. In Habermas's view procedural certainty consists in non-arbitrariness, i.e. that in procedures issuing judicial decisions only relevant reasons are decisive. Legal certainty, thus, incorporates a procedural and a rational component. The paper will attempt to shed new light on the different paradigms of legal certainty by discussing the phenomenon of judicial dissent from a theoretical and comparative perspective.

Eszter Kirs

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Has any war criminal been acquitted or any innocent national hero convicted by the ICTY? A map of high-profile cases from the perspective of criminal liability concepts

The paper will focus on a specific aspect of the impact of the United Nation's International Criminal Tribunal for the former Yugoslavia on the transition in the region following the dissolution of Yugoslavia (potentially falling under Theme (5) of the Call). The author will present the outcome of a mapping exercise on selected cases. The criteria of selection will direct the focus on cases of (1) high-level military and political leaders from Bosnia and Herzegovina, Croatia, Kosovo and Serbia (2) where the criminal proceeding was not terminated due to death and a judgement on the merits of the case was delivered by the ICTY.

The selected cases will be analyzed from the perspective of the potential impact of the judgements on historical dialogue. The author intends to address the issue of whether the judgements facilitate or hinder a regional, common understanding of past events and the responsibility of iconic figures (the most responsible war criminals/the greatest national heroes) of the armed conflicts. The paper will demonstrate the parallel and sometimes controversial nature of the two faces of the ICTY judgements: (1) the simplicity of the message transmitted to the public sphere in the affected countries through an acquittal or a conviction and (2) the vulnerability of the labyrinth of legal reasoning leading to those aquittals or convictions.

The paper will provide an insight into the case-law of the ICTY through the presentation of criminal liability concepts (e.g. command responsibility, joint criminal enterprise or aiding and abetting) applied in the case of those defendants who led and directed military operations in the wars of the former Yugoslavia (e.g. Chiefs of Staff of the BiH Army, military and political leaders of the Republic of Herzeg-Bosnia and Republika Srpska or the heads of the Kosovo Liberation Army). The audience will have the possibility to look at the map of judgements delivered in cases where the defendants, having played a central role in the armed conflicts, influence the current historical and political discourse in the region of the former Yugoslavia, through active participation in the political sphere after release or through their central profile in the national historical storytelling. These cases will be assessed from the perspective of judicial reasoning on criminal liability concepts, and light will be shed on those where harsh criticism can be articulated from this point of view.

Jan Bazyli Klakla

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The rebirth of customary law in the time of transition

Since 1989 Central and Eastern Europe has experienced sudden and profound social changes which have had an impact on almost every aspect of social life. The foundations of social order based on the socialist ideology have collapsed and the new ones are slowly emerging. This presentation will address the issue of customary law and its role in maintaining a social order in the times of transition.

In the beginning, such a transition generates the lack of legal certainty, it may often undermine the reliance on state institutions and it may sometimes result in some sort of social anomy (which was described by Emile Durkheim), i.e. the lack of norms which may be applied by an individual in specific social situations. The previous social order is already gone and the future one is not fully developed yet. This normative gap needs to be filled. In certain circumstances (e.g. with underlying historical conditions) the customary law which was a normative base for the society before the socialist period can take the same place again, providing clear, simple and deeply-rooted rules for people looking for safety, certainty and predictability. The customary law becomes an important historical and cultural factor affecting the process of change and providing a stable and internally consistent normative guidance for the members of society who have been marginalized by the transition process.

In Europe, the model example of such a process is Albania in 1990s and later Kosovo. The rapid disintegration of the socialist order in Albania in 1991 and the lack of a functioning new administration led to the breakdown of state authority. During this time, the majority of the people in the north once again began to practise the ancient customary law called Kanun. They adopted the rules coming from the middle-ages to a post-socialist context and turned them into the foundation of a social order.

This presentation covers the causes of the renaissance of the customary law in Albania, Kosovo and countries in a moment of transition in general. Both classic (e.g. Emile Durkheim's) and contemporary (e.g. Niklas Luhmann's or Marshall Sahlins's) sociological and anthropological theories will be used to provide the most holistic answer possible. The most visible manifestations of the customary law in society will be pointed out. The emphasis will be placed on the institution of blood feud (gjakmarrja), the position of women in society (gender equality) as well as the clan relations in modern society.

The examples of Albania and Kosovo will be confronted with similar ones coming from non-European countries, such as South Africa, Guatemala or some countries in North Caucasus. In conclusion, some possible scenarios of including the customary law in a state transition and legal reform will be proposed.

Konrad Kobyliński
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Judicial politics and the rule of law

The term judicial behaviour refers to what judges do as judges. Judicial decision making is the most evident form of judicial behaviour. There are two points of view about judicial decision making: the legal perspective, in which the behaviour of judges is explained by law and formal procedure and the attitudinal perspective, in which personal values and social factors play a crucial role in decision making. In political science, the Attitudinal Model suggests that judicial outcomes are driven by judges' sincere policy preferences – judges bring their ideological inclinations to the decision making process and their case outcome choices largely reflect these policy preferences. It is quite obvious that most judges see their own behaviour in terms of legal behaviour. In this model judges only want to find the correct interpretation of law. In the attitudinal perspective, law is a rationalization for judicial decision making, because it is too general and imprecise to determine the decision. The law does not constrain judicial decision in any meaningful way. I will argue that the proper framework for judicial behaviour research is goal-based analyses, and that the content of legal policy and legal accuracy are the most important goals that judges are trying to achieve.

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Memory laws in transition

It is hardly more than a commonplace to say that laws are shaped by the past but at the same time they also contribute to its construction. By what means and for what goals this happens is, however, a question always worth raising. This paper seeks to summarise the lessons that can be learnt from democratic transitions in Central and Eastern Europe, examining examples of legislation dealing with the past from the perspective of political philosophy. Memory laws can be assessed from at least two perspectives, an objective-historical and a subjective-political one. Given that laws are meant to shape social reality, it is the latter that is adopted here. It is argued that quite apart from the ques-

tion of historical truth, memory laws can be considered useful insofar as they help to establish and strengthen the respective political community. This may be achieved in two ways: firstly by constructing a consistent narrative at the national level, and secondly by making it attractive or at least acceptable for the members of the community in order that they can regard it as their own narrative at the personal level. The problem seems to lie in the fact that in certain cases the two ways cannot be followed at the same time, for there may not be a consistent narrative that is also universally acceptable. This seems to be the case in Hungary as well as in other post-communist countries in Central and Eastern Europe. This notwithstanding, memory laws can still play a role in bringing about an increase in political cohesion. Yet in order to achieve that, legislators should focus on facilitating public discussion rather than seeking to offer a ready-made national narrative.

Justyna Krupa

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Lustration in the Balkans – the specific case of Croatia

The process of coming to terms with the past is very important for the Balkan countries as well as to others. However, in many of them the process of lustration was conducted in the way that was far from ideal. Theoretically, a properly conducted lustration process can lead to truth and reconciliation. Some people believe that it can even lead to a kind of 'catharsis' for the society. However, in the majority of the countries of the Balkan region reconciliation with the communist past was incomplete and chaotic.

According to researchers of the Konrad Adenauer Foundation the lustration process in nearly every country of the Balkan region was hampered by political factors. In my paper, I would like to analyse the particular and very specific case of Croatia in this context. I also would like to show the Croatian case in the wider context of lustration process in the Balkans.

Žarko Puhovski, a Croatian professor and political analyst, stresses that the Croatian case is specific considering the fact that between 1950 and 1990 noone in Croatia was assassinated on political grounds. He describes this period as soft totalitarianism, comparing Josip Broz Tito's way of governing with the regimes of Poland, Hungary, Czechoslovakia or Romania. "It was not a happy, democratic, rich state, but [in Croatia] no one was assassinated for political rea-

sons" – Puhovski underlines in the publication Disclosing hidden history: Lustration in the Western Balkans. Obviously, in that situation, social pressure to ***settle*** *accounts* with the communist past could have been less strong. In the 90s, the authorities neither demonstrated the readiness to legally confront the past, nor to exclude from the public life – in any transparent way – those responsible for violating human rights.

In my research on the subject, it is indispensable to provide answers to a number of important questions. First of all, why was the Croatian process of reconciliation with the communist past far from perfect and complete? Why was lustration in Croatia in some way replaced by a "disqualification process" – as Puhovski calls it – and why was it frequently aimed against Serbs? What legal remedies related in some way with lustration process were ordered in Croatia? And what were the social consequences of the chaotic "lustration" that took place in that country?

And finally, an answer to one more question is needed: is there anything that has yet to be done in the matter of lustration in Croatia or is lustration a closed chapter in Croatian history?

Undoubtedly, in Croatia, people identified to some extent the former communist elites simply with Serbs, regarding the dominant positions of Serbs in the former system. Due to that fact, it is indispensable to indicate how the process of "settling accounts" with communist past was in Croatia related to ethnic tensions.

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Theoretical aspects and geopolitical implications of the dissolution of Yugoslavia and the challenges of the Republic of Macedonia as a sovereign state

The aim of this paper and its topic is to contribute toward the overall concept of the conference, enabling an interdisciplinary approach in legal theory and geopolitics.

Dissolution of one state is one of the phenomena that is interdisciplinary and often deals with various aspects of Legal theory and geopolitics. However, the dissolution of The Socialist Federative Republic of Yugoslavia was interesting

not only from the standpoint of legal theory, but it was also a significant historical and political event in Central Europe. It made a new shift in international relations on the Balkan states and the states in Central Europe.

Its devolution led to several civil wars, as well as wars between the new republics that emerged as separate and sovereign states. One part of this paper deals with the international awareness of the conflict prevention and deployment of United Nations troupes in the former Yugoslav Republics. Special emphasis is given to their legal status and mission.

The Republic of Macedonia emerged as one of the states that did not have a civil war on its territory. This paper is in part dedicated to this problem and deals with the challenges that the country had to face. Some of these aspects addressed in this paper are: transformation of the state capital to private capital of the citizens, the shift to pluralism in political parties, as well as to the new legal order which is supposed to be harmonized with the one of the European Union, since Macedonia is in the status of a candidate state towards a membership of the European Union.

The process of the membership to the European Union of the states of the Former Yugoslavia is given in this paper in a comparative manner.

These significant changes were accompanied by several international and bilateral challenges as the open issues concerning the name Macedonia with the Republic of Greece, the border line problem with Albania, and the issue of the Macedonian language and the negation from the Republic of Bulgaria. Analysis of the various documents concerning these topics is part of the critical approach of this paper.

Rafał Mańko

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The 'form' of law and the 'substance' of socio-economic transformation: an inquiry into the role of law in the dynamics of post-Communist transition in Poland

It is sometimes said that the political and socio-economic transition from communism ("real socialism") towards market capitalism and democracy took the Polish legal elites by surprise. Indeed, despite the participation of certain

lawyers in the anti-communist opposition movement (especially among advocates), the legal community en masse participated in the everyday workings of the regime as judges, prosecutors, legal advisors or university professors. The transformation came from outside the world of law, originating rather in the worlds of politics and the economy. However, does this necessarily imply that law was merely a 'form' which recorded (more or less faithfully) the changes in the socio-economic and political 'substance' (or, as Marxists would say, was the law merely a "superstructure" which reflected changes in the "base")? Or perhaps was it the other way around, i.e. that the transforming impulses originated in the law itself?

In order to anwer this theoretical question, the paper intends to have a closer empirical look at the interstices of law and transformation in Poland at the turn of the 1980s and 1990s. Particular attention will be given to the dynamics of the interaction between law and economics with regard to the privatisation of state property (including the legal aspects of the so-called 'nomenklatura privatisation' of the 1980s), the introduction of economic freedom, the dismantlement of central economic planning, the transformation of the cooperative sector. The examples analysed in the paper will, furthermore, extend beyond economic life, and analyse also the interaction between law and the socio-political sphere, in particular the legal aspects of the political transformation following the Round Table Agreements (April 1989) and the first partly democratic elections (June 1989), followed by the official introduction of the 'democratic rule of law' principle as part of a profound constitutional amendment (December 1989). Finally, the role of law in the initial processes of lustration (of prosecutors, of secret service officers) will also be examined.

The empirical data (gathered through sociological and historical desk research) will allow the verification of existing theories regarding the interaction between the world of law and other worlds of social reality (social systems). In particular, the paper will enquire whether the law is merely a "form" (Pashukanis) which cloaks the socio-legal "substance", or is it an autonomous player within the dynamics of socio-economic and political transformation.

A closer examination will reveal that despite the aspirations of the legal community, at least in the Polish case of post-communist transformation, the law was nothing but a form, always one step behind the dynamics of socio-economic and political changes. As Carl Schmitt once famously remarked, the law is the "shelter of society". The paradox of a dynamically changing society at a time of radical post-commmunist transformation was that society escaped its "shelter"

(of communist law) in order to embark upon a new “concrete order” of social existence. The legal order and the legal community upholding it were not at the forefront of transformation, but rather were faced by the challenge of reinventing the form of law to create a new ‘shelter’ for a new, post-communist “concrete order”. Pashukanis’s old thesis that law is but a form could not receive a more persuasive support.

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Explaining the trajectories of post-Communist democratization: Study case – Albania

After overthrowing the communist regime, countries of Eastern Europe opened their gates to a new democratic system. Democratization process started to take place in every country of the region, although unequal steps were undertaken by each country to start democratization from the scratch. This research is trying to find out what explain democratization process after the fall of communism. In order to provide an answer to what explain democratization process, the paper will examine the democratization trajectories in Albania, given that it embraced a specific communist regime.

Exploring the literature the author finds out that there is a lack of a model that explains how communist legacies impact democratization process. Considering communist repression as one of the most important characteristics of the regime, the author used the empirical case to provide a theoretical model that explains how does the legacy of communist repression impact the democratization process.

The model starts from the communist repression as the independent variable, responsible for the lack of political culture and opponents to the regime during the communist period. The lack of these components is reflected in the new leaders mentality, thus in the institutional choices they do. The analysis of this process will show how democratization is a dependent factor of the com-

munist repression. Theorizing how the legacy of communist repression explain democratization process right after communism collapsed, makes an effort to add what lacks in the academic literature of communist and post-communist studies.

Donatas Murauskas

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Extra-legal arguments of constitutional courts: the temporal effects of a judgment

One of the prevailing approaches towards the judiciary in Central and Eastern European countries is the presumption of a communist-heritage-related inertia as regards formalism in the argumentation of national courts. The discussion on judicial strategies in countries of Central and Eastern Europe is frequently limited to rather generalised evaluations linked to the comprehensive analyses of relatively superior cases in Western democracies. However, the attitude seems to be realistic only from the ideological standpoint and clearly lacks more rigorous analysis.

The analysis of formalism of particular courts is a challenging task. Numerous scholars and practitioners contributed their views and analyses as regards judicial strategies. Therefore, the issue of formalism needs to be discussed within a clear framework. One such might be the usage of extra-legal arguments in the legal environment in which decisions are made.

However, the dimension chosen does not presuppose relevant analysis, which still needs to be depicted in a way enabling the empirical research. Thus, one of the specific issues, which might also be analysed empirically and compared among jurisdictions, is the way courts deal with temporal effects of their judgments. The present discussion on temporal regimes of courts judgments is either focused on the social impact of the US Supreme Court or on rather legal argumentation of courts from other jurisdictions. However, the comparison of different jurisdictions might present a variety of interesting temporality settings indicating more pro-active or, on the contrary, formalistic approach of national courts.

The empirical insights of the paper are based on the analysis of the jurisprudence of the Constitutional Court of Lithuania, which is a Kelsenian type of constitutional safeguard established after the re-establishment of indepen-

dence in 1990. The analysis of the arguments of this court does not merely enable evaluating the dynamics of argumentation style of the court as regards temporal effects of judgments during more than 20 years; it also contributes to the emerging literature in the field and offers comparative insights in the area susceptible for the thorough analysis of judicial strategies in different courts of the Central and Eastern European countries.

The paper primarily provides general insights on the judicial tactics of national courts in the Central and Eastern European Countries, focusing on the constitutional courts. It then analyses the temporal effects of judgments as a special case, which enables identification of the scope courts tend to deal with extra-legal arguments while deviating from the conventional temporal regime. Finally, the paper offers insights on the jurisprudence of the Constitutional Court of Lithuania and its argumentation as regards temporality by highlighting four different ways the court tends to employ while dealing with temporality related issues and contextualising it within the historic development of the state and its constitutional tradition after the re-establishment.

Magdalena Nazimek

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Influence of social and political transition on migration policy in Poland

In the face of migration crisis it is important to understand the processes of creating regulations of migration policy in post-communist countries, together with the specific circumstances of the society regarding this issue. Due to the geopolitical position and historical conditions of Poland, we can notice how system changes affected the regulation of migration policy.

In the period of communism in Poland, the problem of migration practically didn't exist and neither did legal regulations related to this issue. This changed in the 1990s, when there was an inflow of citizens from the former Soviet Union, Vietnam and Romania. At this time there was also a significant influx of refugees, mostly citizens of the former Soviet Union, which experienced a period of disintegration, seeking refuge from the effects of a growing number of conflicts based on ethnicity and nationality. Finally, we have to realize that, due to its geopolitical position, Poland has become an important transit zone for illegal migrants and other people trying to get through to Western Europe.

It should be emphasized that Poland, undergoing system changes, was un-

prepared for the problem of migration on such a huge scale and policy had to respond to the dynamic changes that have occurred. The new political situation indisputably influenced the change in social attitude and created a public opinion about the problem, which occurred for the first time.

After all difficulties, due to the number and size of the new problems that the young Polish democracy society had to face, accession negotiations with European Union started in 1998 together with the process of the harmonization of Polish legislation with EU standards, which directly concerned migration policy and the status of a foreigner and refugee in Poland. Joining the European Union is an indirect consequence of system changes and it clearly influences migration policy, especially in the current crisis. However, specific conditions of Polish society should be noticed, which distinguish polish society from Western Europe. Therefore, it is important to analyze this problem from the social and political perspective.

My paper will focus on the impact of cultural and systematic changes that took place in Poland, on the current migration policy of the country, as well as on the social approach to the issue. Due to the migration crisis currently unfolding in Europe, this subject is extremely important. It touches on the very sensitive situation of refugees and involves countries that are facing enormous challenge. This complex situation requires the analysis of the historical and social conditions, because the period of political and social transition of the country had a significant impact on the perception of solving the problematic issues that we face today.

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The EU-Member State relationship as a principal – agent problem

Since the birth of the European Union many theories have described and analysed EU integration and this paper tries to offer another possible explanation. The basic question is whether the EU should be seen as a pure agent of the Member States or the situation is much more complex as the EU (or at least the European Commission) seems to behave many times as the principal of the Member States. The reason for this phenomenon is – partly – quite 'trivial': there is no common European bureaucracy regarding many competences conferred on the EU.

The paper is going to detect three types of agency relationships within the EU and it presents the legal and political solutions offered by the founding treaties having the role to handle the principle – agent problems.

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Europeanisation of minority policy in Croatia: Limited outcomes of the second generation minority conditionality

The European Union's (EU) pre-accession condition that requires respect for and protection of minorities was severely scrutinized in the European Union accession of Croatia, stretching well beyond a normative-institutional requirement that was applied in the Central and Eastern Europe (CEE) accession process. The Croatian authorities were in addition to manifestation of respect for and protection of minorities, requested to demonstrate cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) and to show a good record of war crime prosecution in domestic trials. In addition, the accession process made reference to a slow and unsuccessful return process of the Serb refugees, requiring more intense commitment of the authorities in this matter. Finally, the accession process required initiatives promoting greater integration, reconciliation and tolerance in the country that experienced the war in which Croatian authorities fought the renegade Serb minority in early 1990s. This expanded second generation conditionality, that was tailor-made for a post-conflict country, indeed resulted in a number of improvements in Croatian minority policy, and proved particularly beneficial for the minority political elites who were in a position to decide the formation of two consecutive governments in 2003 and 2007.

This paper therefore assesses the very limited, if at all successful impact of the European-integration upon the legal and political system of the newest Member State. The aim is to assess the outcomes of the Europeanisation of the minority policy of a country that bares a legacy of inter-ethnic conflict. Croatia, being the first of the Western Balkans countries to join the Union, sets an example for other countries of the region to go on with their reform initiatives, those concerning a management of ethnic diversity being just one of many to be undertaken. The article will therefore try to answer following questions: What are the objectives and outcomes of the Europeanization of the minority policy

of one of the Western Balkan's candidate countries? Does the effectiveness of EU conditionality deteriorate necessarily after accession? Are the domestic changes vis-a-vis minority protection generated by pre-accession conditionality conducive of sustainable compliance of the minority policy after accession?

Joanna Ptak

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The problem of European integration in the sphere of tax law from the perspective of CEE region. The case of Poland

Integration in the frames of European Union has influenced various fields of legal system of EU countries, including those from the CEE region. Harmonization of law in such areas as civil or tax law requires the compatibility of national legal rules with the general category of European law. One of the goals of this presentation is to discuss the impact of the European integration of law on the basic rules of national legal system.

My research is based primarily on the lines of interpretation of one of the concepts included in Polish statute of VAT – "acts that can not be a subject of legally enforceable contract". Such acts are excluded from the range of both – income (PIT and CIT) and value added taxation. Initially, in the 90s, the majority of the doctrine assumed that this term refers to penal law and the general category of crime. The original meaning of this concept in VAT had to be changed, as the exclusions from the scope of VAT Directive have to be interpreted strictly and compatibly with ECJ jurisdiction.

In its verdicts ECJ stated that the rule of the neutrality and commonness of taxation lead to the conclusion that what matters especially is an economic aspect of transactions. In consequence, the influence of various normative systems, not only law, on the scope of taxation in the sphere of VAT should be minimalized. If so, what was previously obvious – the invalid taxation of immoral or not ethical acts – has been questioned. However, what shall be highlighted is the fact that according to Polish Civil Code (that had been enforced in 1964) acts that are inconsistent with nature, law or "rules of social coexistence" are invalid regardless of the circumstances and as such, fit into the designatum of the most favored definition of discussed category of exclusion from taxation.

The first problem is that the term "rules of social coexistence" is a relic of communism and as such is unknown in the countries of Western Europe that

have the greatest impact on the shape of European law. What is more, it is defined variously, but the general line of interpretation links it with morality or ethics. In consequence, regardless the ECJ verdicts, Polish state tax organs and other decisive entities in their jurisdiction refer to such normative systems as morality and ethics. What is problematic is the fact that on the base of case study it may be proven that decisive entities do not present any definition of morality or ethics, assuming wrongly that the meaning of those terms is certain, or, which is even worse, use such definition that in a concrete case fits and justifies the verdict. Additionally, as the same exclusion in included in the income taxes, the issue of various definitions of term with the same wording, dependently on a tax act arises. As a conclusion, it will be discussed that when it is about countries with the history of transition, because of the complexity of lthe egal system and existence of relicts of the past, the simple application of European law is problematic.

Filip Rakoczy

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The role of the autonomy of legal culture in the Polish transition process

the subject of this study is the autonomy of legal culture in Poland and its impact on the socio-economic transition that occurred in central-eastern Europe after 1989. First of all, in my presentation, I shall briefly define the term “legal culture” and its use in modern Polish legal theory, with a special place for Artur Kozak’s juriscenrtism concept, which was somehow inspired by Richard Rorty’s neopragmatism, and his ethnocentrism, which in turn entitles us to use the term “culture” to describe law and its surroundings. By those surroundings I understand both the academic theory of law and legal practice, especially common jurisdiction, which are the two key components of proffesional legal discourse.

After defining the term “legal culture” I would like to focus on its function and significance in modern democratic states, and its autonomy from (independence of) politics and, in some cases, even the process of transition. This autonomy can be understood in two senses, on the one hand, as the independence of courts from the legistlative and executive authorities and, on the other hand, as general independence from current mainstream ideology. Both of those defi-

nitions are important to my argument, and strongly intertwined with one another. If completely autonomus from conteporary politics and the transformation, legal institutions could become bastions of former communistic regimes, especially if they were not the subject of lustration or, as some say, they could make a positive difference and protect the population from the effects of untamed capitalism. On the other hand, complete autonomy of legal culture would mean that there are no ideological grounds or reasons for a newly founded legal order, with which Polish legal theorists and philosophers seem to be struggling nowadays, and to which juriscentrism could be an answer. All this makes the autonomy of proffesional legal culture also an important variable, when analyzing the process of system transition in Central-Eastern European countries. To describe this phenomenon I also intend to use some of L. M. Friedman's tools of analysis of popular legal culture.

This narrative, I would like to propose, can not only be used to describe certain elements of the past transition, but, in my opinion, it could be useful as a depiction of the conteporary Polish political system in which the autonomy of legal culture is becoming a controversial axis of political dispute.

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Justice in transition: Assessing the ICTY legacy

The proposed paper assesses the role that international criminal law plays in the transition process, focusing on the penalisation of violence in the Socialist Federal Republic of Yugoslavia (SFRY) in front of the International Criminal Tribunal for the former Yugoslavia (ICTY). International law is relying on criminal avenues to deal with wartime violence and human rights abuses in post-conflict societies. The appropriateness of this approach is presumed, rather than grounded on any actual assessment of its benefits, and alternative means of conflict management are sidelined as a result. The need to test this uncritical assumption calls for an examination of the effectiveness of international criminal justice in meeting the aspirations of the international community and generating the outcomes it is meant to bring about. Criminal law aims at determining the individual accountability of the accused for past offences. It is punitive and retributive. Beside retribution, the ICTY purports to fulfil various functions, some of which are associated with transitional justice mechanisms and human rights

law. The methods it has adopted in order to achieve these largely irreconcilable goals have resulted in violations of the rights of the accused and denial of victims' claims, as well as in undermining reconciliation in the region. These consequences can be traced back to the hybrid nature of international criminal justice and a lack of insights into the causes of wartime criminality. Whereas penal law traditionally rejects collective responsibility, criminological studies demonstrate that international crimes are group offences and manifestations of systemic violence.

The proposed contribution analyses the causes of wartime criminality, the specificities of this form of violence, the adverse consequences of the penalisation of violence in the SFRY in front of the ICTY, and the social reaction to international trials in the successor countries. It is divided in four sections. The first clarifies the ambitions of the ICTY and how they can be realistically circumscribed. It argues that the mandate and functions of the ICTY may be cut down to the fulfilment of three main purposes: conventional deontic justice, redress for the victims and the restoration and maintenance of peace in the region. The second examines the roots and distinctiveness of wartime criminality, the challenges posed by the penalisation of acts of systemic violence and the inadequacy of ordinary criminal law mechanisms to establish responsibility for mass atrocities. The remaining sections gauge the ICTY's effectiveness in delivering its three core aims and investigate the reasons of its failure to attain any of these objectives. It is maintained that the ICTY seriously violates fundamental human rights of all parties to its proceedings, denies redress to the victims of wartime violence and destabilises the process of peace and reconciliation. These critical conclusions find an echo in the local population's scepticism towards the institution. Finally, the paper scrutinises alternative options open to circumvent the difficulty of attributing individual responsibility for offences that essentially constitute acts of states and advocates a switch of emphasis from penal responses to transitional justice mechanisms like truth commissions and compensatory solutions.

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Too much, too late: The legal, political and theoretical controversies regarding the lustration laws and lustration process in the Republic of Macedonia

Our contribution will focus on analyzing Macedonia's lustration laws and their implementation, the legal, political and theoretical controversies with respect to their timing, context, scope and goals, in particular. The first lustration law was adopted in 2008, 18 years after Macedonia's gaining independent statehood and adoption of its liberal democratic constitution in 1991. This fact makes Macedonia a specific case of a CEE country that went into the lustration process rather late and deep into its transition to a democratic political system. We will explore the theoretical and practical aspects of the dilemma whether the late initiation of a lustration process went against the main purpose and meaning of the overall concept of lustration, as elaborated in the Council of Europe's Resolution 1096 of 1996 and the adjunct Guidelines to ensure that lustration laws and similar administrative measures comply with the requirements of a state based on the rule of law. The other specificity concerns the fact that Macedonia had adopted not one, but two lustration laws, one in 2008, and another one in 2012, each accompanied by challenges before the Constitutional Court and its subsequent opinions on their constitutionality (in 2010 , 2012 and 2014). We will analyze the most problematic aspects of both versions of the law: a) scope and stated goals of the lustration, especially in conjunction with the shifting timeframes of the applicability of the law and the shifting categories of persons and officials covered by the lustration ; b) procedural guarantees for the respect of the human rights of those involved, and the fairness of the lustration process; and, c.) types of (legal) responsibility and legal remedies available in the lustration process, and in connection thereof. We will elaborate all these problematic points in terms of the legal content of the lustration laws and the Constitutional Court's decisions, as well as through an analysis of their practical implementation by presenting case studies of lustration decisions. Additionally, we will address the on-going dynamics and the effects that the lustration process has on the political landscape of the country, especially on the relations

between the ruling political parties and the political opposition. In conclusion, we will argue that the case of Macedonia's lustration process is a case of "too much, too late". The indications so far are that it did not and does not serve the purpose of protecting and helping the consolidation of the newly established democracy from human rights abusers gaining and performing public offices. It has deeply undermined the trust in the newly established democratic institutions, and primarily is aimed at political witch hunt for the benefit of the current ruling political parties, as well as for naming and shaming of ideological and political opposition, thus undermining the development of democratic political elites. Another problem of legal, political and moral consequence is that the lustration process has not been conceptualized to be accompanied by measures of transitional justice aimed at the victims of past human rights abuses, especially in terms of adequate legal redress. Consequently, it hardly serves the purpose of preventing future human rights violations. On the contrary, it creates new victims, ultimately compromising the very word and the concept of lustration.

Mirosław Michał Sadowski

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Collective memory and historical determinacy: the shaping of the Polish transition

in the introductory part of this essay, the author defines the notions of collective memory and historical determinacy, explaining why he uses them to research the subject of post-1989 transition in Poland. As historical determinacy conceives of the past as a complex and unstable network of causalities, and collective memory observes that our memories are not only shaped individually, but also largely influenced by the society, they may both be, in the author's opinion, extremely useful tools for examining the process of the Polish transition, which, according to some historians, is still taking place, while others argue it ended only in 2015.

The first part of the essay discusses the historical factors which shaped the Polish transformation. The author first briefly remarks on the most important events which transpired during the transition, then shows which moments in Poland's history had, in the author's opinion, the largest influence on its shape. In this chapter, M. M. Sadowski also investigates how said historical events con-

tinue to live on in the Polish collective memory and responds to arguments, raised by some historians — that the 19th or 20th centuries have not yet ended in Poland — which, if true, may also have had a considerable influence on the course of the transition.

In the second part of the essay, M. M. Sadowski focuses on the political factors which shaped the Polish transition, observing how the new political scene was created after 1989, remarking on the places occupied by the former communist elites and the people of the Solidarity movement. The author also ponders on the recurrent question of lustration and looks into the collective memories of the time of the Polish People's Republic, which, 26 years after its downfall, seem more divergent than ever.

Some thinkers go as far as to say that history and collective memory have determined the current shape of Polish society and culture, thus also influencing the transition process. In this part of the essay, M. M. Sadowski tries to find out how true these observations are, noting, inter alia, that, on the one hand, the Polish society has been a monolith since the end of the Second World War, and that, on the other, some of its most important cultural monuments, which in some cases still are a matter of fierce debate, and collective memories are deeply immersed in Poland's multi-cultural past.

In the last part of the essay, the author offers a summary of his observations and ventures a suggestion as to why, looking back on different factors which determined its shape (in particular, historical determinacy and collective memory), the Polish transition took such a peculiar form, and whether or not a different scenario could have played out after 1989.

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Extralegal values, their role and meaning in civil law of transition country with regard to a discourse about the Polish clause of abuse of law

I aim to describe in my presentation the different views that were expressed during the transition period in Poland, regarding the matter of values civil law should respect. It was not only the discussion about values, their role and their system, but it also concerned whether some branches of law should refer to

extralegal values.

State law before the transition referred to extralegal values, which were connected with socialism in a Marxist-Leninist interpretation. After the beginning of the transition many acts related to extralegal values were still in force. In spite of this legal status many legal theorists were of the opinion that these extralegal values should be re-defined. These values should be reconsiled with market economy and liberal democracy. Before the transition in Poland the discussion on market economy was strictly limited and determined by official state ideology. Also as a result of the membership in the eastern bloc the contact with modern Western values and ideas were limited as well. On the other hand, Poland has had earlier codification experiences of private law in times of market economies in the XIXth century and before World War II as well.

These circumstances had a big impact on the doctrine of law and on the jurisdiction as well after the transition. The challenge of the re-definition of some legal terms with regard to modern social reality and general legal changes raised the question of the role of extralegal values in private law. This will be the topic of my contribution.

Izabela Skoczeń

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Should a theory of legal language take into account psychological data?

The last decade has brought an overflow of research in the domain of experimental, cognitive psychology and neuroscience. The conclusions stemming from this empirical research are being slowly incorporated into the enterprise we call jurisprudence (see for instance (Goodenough and Zeki, 2006), (Freeman and Goodenough, 2009), (Brożek, 2013), (Pietrzykowski, 2012), (Załuski, 2009)). Nevertheless, there remains a meta-theoretical question concerning the explanatory usefulness of data gathered by those fields. My main doubts concern the enterprise of building a theory of legal language, specifically, legal argumentation and legal interpretation. Robyn Carston claims that it is possible to explain legal interpretation through psychologically oriented theories such as Sperber and Wilson's Relevance Theory (RT). (Carston, 2013) My claim is that the usefulness of such theories is limited. They may explain why some understanding of a statute is the 'first that comes into mind'. They may account for the unconscious

element of language processing that every human being is subject to. Nevertheless, many judicial decisions appear to the public as counter-intuitive. Yet, after a more thorough consideration of the pros and cons, the judicial arguments can seem well founded. To account for this phenomenon a psychologically oriented theory will not be sufficient. The task of a theory of legal argumentation is more ambitious. It is to create a theory of a conscious, reflective reasoning over the best justification of a decision. Judges and all other kinds of participants in the legal enterprise (barristers, prosecutors etc.) will use all kinds of arguments (not only linguistic-psychological of the kind proposed by RT) to achieve their goals. Moreover, this is a claim not only about the pragmatics, but also about the semantics of the legal language. Both the processes leading to the construction of statutory meaning (semantics) as well as the process of inference based on contextual factors rather than syntactic-lexical ones (pragmatics) do not have to reflect the empirical data. The legal language theorist has the luxury of avoiding the duty to adjust her theory to the way the human brain processes linguistic data. By contrast, the natural language theorist must face counter-arguments concerning the inadequacy of her semantics or pragmatics toward the empirical findings. (Borg, 2012)

However, I do not want to claim that analyzing unconscious processes and the way our mind functions in legal situations is completely uninteresting for a legal theorist. This can be useful for instance when analyzing the psychology of the speakers in a courtroom. Second, it is useful when unconscious processes are employed, for instance a witness is being cross-examined, and it is the time of reaction that matters. In other words, someone is supposed to answer as quickly as possible and the answers may heavily rely on unconscious processing. Third, it is interesting to analyze the cognitive traps of the unconscious that influence directly the conscious processes. We are curious what potential differences may be between the functioning of the human brain in natural language processing and legal language. A purely psychological approach can also be used in the interpretation of acts of private autonomy (contracts, wills).

To sum up, the aim of the present paper is to spell out the insufficiency of psychological theories for constructing a plain theory of the legal language. Moreover, it is to describe precisely where and why such arguments could play a significant role.

Bojan Spaić
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Legal interpretation, power and authority

The relations between institutional power, authority and legal interpretation have been widely neglected in contemporary legal theory. In this paper I'll lay out the grounds for the discussion of the sociological and philosophical conceptions of power (Steven Lukes) and authority (Joseph Raz) in order to assess their relevance for the theory of legal interpretation. The main hypothesis in the paper is that the problems of the practice of legal interpretations not contemporary legal systems are by and large solved not by resorting to philosophies of language, nor by doctrines of legal interpretation, but by the institutional control of interpretation. In order to explain the concept of institutional control of interpretation the concepts of power and authority will be analyzed in relation to legal interpretation.

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Can we speak about the Americanisation of law and legal practice in Poland after 1989?

The term "Americanisation" is well-known and very often used in the social sciences and humanities. It denotes the influence which American culture has on the culture of other countries, especially on the sphere of popular culture, common customs, media, way of life, business practice or political technique. In the field of social science many researchers claim that in Poland after the transformation of 1989 the process of the Sovietisation of social life has been replaced by the process of Americanisation.

In legal sciences the problem of Americanisation has not been a subject of broader discussion. The term had been mentioned sporadically in the context of the "Americanisation of Polish law", when some legal solutions originated in the law of the US were implemented into the Polish legal system (e.g. reform of Polish Criminal Procedure in 2015). The aim of the presentation is to explore whether we can verify the existence of the significant influence of the American way of thinking about law on the polish legal system and legal practice. The

analysis will focus not only on legal solutions in Polish law influenced by the American law, but also on the impact of American thinking about law, on legal education, visions of the social role of lawyers or the ethics of legal professions in Poland.

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The people vs the law. Populism in Central and Eastern Europe

Observed nowadays the battle for the Constitutional Court in Poland is often described in terms of “assassination of democracy”, “totalitarianism” or “revolution”. These terms, perhaps rhetorically appealing, the point of the observed conflict. Situation in Poland follows the trajectory established by the Hungarian experience. In fact, in CEE Europe we see the clash of two visions of politics. One has hitherto been dominant, we can call the “liberal” and the other, emerging before our eyes, “populist”. These terms are already involved in valuation: the liberal-good populist-bad. Realizing that without evaluation is impossible, but I’m interested in mapping the different logics of these visions, rather than defending one against the other. The liberal vision is based on the idea of representation. Democratic elections are only choosing politicians who are the representation of the people. There is more space between the politician and the people, so that policies has its subjectivity and is not bound by the dictates of variables and emotions of the people. An appeal to the will of the people takes place only once every few years through the institution of voting. In his daily business policies is limited by the constitution, which also has democratic legitimacy. It was, after all adopted in the relevant procedure or referendum. So this law is against policy. If politics is a game, this law is the rule. Populism comes at a time challenging the rules of the game. Therefore, for an example of populist liberals “village fool” who is not able to master the rules of the game and that is why spoil all the fun by asking stupid questions and undermining the whole game.

This paper tries to describe mentions above political logics. It is based upon this on the assumption that the rise of populism is the result of the failure of liberal policies in recent 25 years, and thus is the direct consequence of democratic transition. One of the most important tasks of political and legal theory coming years will be to investigate whether populism contains the emancipa-

tion potential or it is always a threat and should be rejected by definition. This paper by looking at the Polish and Hungarian experiences tries to address this issue.

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Judicial review of public administration within European multicentic legal order – scope, criteria and conditions

General objective of public administration in modern democratic states is to satisfy both collective and respective needs of individuals. This goal as well as the methods and forms of its implementation have been permanently changing since the communist era, through the period of development of democracy until the post-Soviet state accession to the European Union. Analysis of changes that occurred in the structure of the administration itself and the way decisions are being made in law making and law application processes reveals a number of interesting features. The transition from the communist system to democracy within the framework of transnational structures and organizations inevitably forced many changes in public administration practices and the way its controlled by the judiciary. These changes results from the need to adapt to international standards and European Union law but are also a consequence of social changes, which occur constantly in democratic countries.

The first visible change was a change in the structures of the territorial divisions of the state or structure of public administration as a consequence of the creation of local government and transfer of the responsibility for the implementation of some of the tasks of the state in the hands of citizens.

The collapse of the communist regime and integration processes within the Europe caused the change of social values and values of systems of law in different states. This influenced the attitude of public admiration to the tasks given by the lawmaker or political forces. In practice it primarily results with the lack of overriding interest of the state or the public interest over interest of individuals and goes toward the balance of interests and balance of their protection.

Another change is a strong development of deliberative democracy and public participation in decision-making (towards responsive administration). This involves the participation of citizens democratically elected in supervision or control of public administration and political responsibility of public adminis-

tration bodies elected by the citizens. In some countries of Central and Eastern Europe one might observe a discernible increase of various forms of direct democracy like referendums or so-called citizen budget (the possibility to decide about a part of the budget of local government).

At the time of accession to international structures and the European Union a catalog of potential sources of law has changed which means that public authorities acting within multicentric legal order must respect in its actions not only state law but also international and European law and standards. At the same time in order to make completion of given tasks state lawmaker grants public administration bodies with wider and wider range of discretionary power.

This in turn connects to the necessity of the existence, in the rule of law stat, effective mechanisms of verification of legality of public administration activities, especially exercised by independent courts. The coexistence of those courts within the framework of European Union causes the interpenetration of control paradigms and concepts based on which control is conducted. At the same time one can formulate thesis about the influence of the judiciary on the activities of the public administration, which means that the courts in its role as guardian of the law and the legality of the activity of public administration determine the standards which the administration must meet.

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Can norms have truth value?

The issue of the logical status of norms obviously exerts a fundamental influence on the problem of the applicability of logic to legal norms, and, in case of a positive answer, on the question as to which logical system(s) can prove to be relevant for law.

In point of fact, the overwhelming majority of logicians and legal philosophers consider as an analytic truth the thesis according to which it does not make sense to attribute truth value to norms; it is only possible to ascribe validity or invalidity to them. Accordingly, it became a well-established commonplace in both logical and legal thinking that a normative judgement cannot be true or false, but only valid or invalid.

However, there is at least one prominent exception to this majoritarian view:

Georges Kalinowski, who, throughout his whole oeuvre covering the areas of both legal philosophy and deontic logic, consistently persisted in his theoretical conviction that norms can and do have truth value. Kalinowski also expounded this view quite thoroughly in his more general works, most particularly in Introduction à la logique juridique, but his most profound, complex and extensive treatment of the problem is to be found in his Le problème de la vérité en morale et en droit, especially devoted to this topic.

In my paper I will endeavour to reconstruct his argumentation presented in favour of this standpoint, and to give a critical evaluation of it, in comparison with some contemporary insights in the fields of legal logic and semiotics.

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The transition of the Ukrainian legal system in Post-Soviet times: The agricultural land property case

USSR disintegration is connected to a strong change in the social and legal systems of ex-Soviet countries. Nation-building was changing permanently. This process is still extremely active in some countries, e.g. in Ukraine. Ukraine is a bright example of 72-years of Soviet system domination. Some political theorists say that the modern Ukrainian war is a result of non-solution of the decommunization problem. The situation with a legal regulation of agricultural land property for the last 25 years in Ukraine is a classic case of development vector absence.

The main problem today is that permissions for the agricultural land property ownership cannot be executed. The last edition of the Land Code was adopted in 2002. Modifications of law concerning how landlords can transfer their agricultural land were made for more than 5 times since ethen. Nowadays property-owners of the agricultural lands still cannot execute their rights fully.

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International arbitral tribunals and legitimacy: a comparative study

The relationship between state regulation and private interests in a transnational context gains center stage in a debate that transcends national borders. The legitimacy of international tribunals to adjudicate over a state's police powers is put into question by lawmakers and the public alike. At issue is the ability of states and foreign private actors to take legal action against another state – and in some cases its national legislation – for the violation of bilateral or multilateral agreements. Generally, these disputes incorporate constitutional and public interest dimensions in the states involved.

Anti-smoking legislation and Feed-in-Tariffs (FiTs) are prominent examples. Particularly plain packaging measures adopted by states are challenged before international arbitral tribunals. Just recently, claim against Australia failed on a procedural issue. The ruling did not address the legality of Australia's legislation. In addition, the World Trade Organization and other courts are assessing tobacco packaging legislation. Similarly, the reduction of guaranteed feed-in tariffs for renewable energy sources led to the initiation of arbitral proceedings. Private investors filed claims before arbitral tribunals against several countries, specifically against the Czech Republic, Romania, Bulgaria, Spain, and Italy. In the aftermath of the financial crisis a number of countries have changed their energy policy and reduced FiTs. Having invested in renewable energy plants the claimants argue that the reduction of guaranteed FiTs constitutes a violation of the protections offered by international treaties such as the Energy Charter Treaty (ECT).

Domestic policy debates culminating in the adoption of legislation face being scrutinized in independent international fora. State regulation already examined in a constitutional review process increasingly runs the risk of further inspection by international tribunals. More and more governments fear deprivation of their right to regulate in the public interest. However, in international arbitration the parties' consent carries legitimacy. In this connection, it is remarkable that new private actors, e.g. the Anti-Tobacco Trade Litigation Fund, enter the stage and

support governments in defending their legislation, thus adding another dimension to an already tense playing field.

Over time, international tribunals have developed standards of both legality and protection of and against domestic regulatory measures. But do these standards realize the level of legitimacy constitutional democracies require? In particular, does a rational-legal legitimacy suffice to allow international tribunals to review public policies? Our paper aims to approach this question from a legal-theoretical point of view as well as from a sociological standpoint, taking into account Weber's characterization of the three types of political legitimacy. In that respect, we also seek to put international investment law and arbitration as an arguably "western construct" in context of the Central and Eastern Europe transition. We will close with a perspective on further developments and research.

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Cultural change and democratic consolidation: the case of Serbian authoritarian heritage

The process of democratic transition and consolidation in post-communist Europe has revived scientific interest in the concept of political culture. Numerous authors have argued that political culture is essential in the processes of the consolidation of democratic institutions and democratization of societies. The crux of their arguments is related to the thesis of value change: attained norms, values and patterns of behaviour of citizens in post-communist societies determine the outcome of democratic consolidation. This type of argument usually defies the socio-economic thesis that democratic consolidation is determined by the success of economic and structural reforms of the market and state apparatus. As Inglehart (1988) pointed out, the long-term outcome of democratic consolidation is more determined by values and the feeling of personal satisfaction with the processes of democratization than by the current welfare of the citizens.

The thesis of cultural change relies on gradualism. Lipset and Lakin (2004) argue that the democratic consolidation process is a gradual one, and that it cannot be explained solely by means of market change and electoral reforms of a political system. When it comes to post-communist states, this implies that

political scientists need to consider the democratic and authoritarian heritage of the civic societies of Central and Eastern Europe, as well as the impact of communist socialization in the second half of the XX century. As Goldfarb (2012) argues, the first orientation that changes in post-communist societies is the ideological one, that change usually being congruent with the previously attained Marxists norms of fear and coercion.

This presentation aims to explain the slow pace of Serbia's democratic consolidation. Serbian society has been consolidating for the past 25 years, shifting its value system between authoritarian and democratic norms. The European Value Study has recently shown that this value shifting is strongly present in Serbian society. Although support for democracy is higher than in the rest of the post-communist states and closer to the average score of the civic cultures of Western Europe, authoritarian elements are still present. One can see this in a high support of the authoritarian type of regimes, especially leader based regimes (Besic 2014). Relevant Serbian literature (Kecmanovic 2008; Pantic 1995; Podunavac 1998; Vasovic 1998) shows that these cultural and ideological inconsistencies come from the authoritarian heritage of Serbian political culture (nationalistic ideologies) which is congruent with authoritarian socialization. The dominant value system consists of ideological patterns related to collectivism and etatism grounded in cultural patterns such as apathy and authoritarian personality. The specific problem of Serbian political culture is that resocialization often manifests itself as "retraditionalization" (Vasovic 1998). The democratic transition and the democratic consolidation have reactivated the patterns of "traditional patriarchal society" (Golubovic 2005) that dominated Serbian political life in the 19th and the first half of the 20th century, thus fairly easily replacing the dominant leftist ideology with nationalism at the turn of the 20th century.

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The hollowing out of institutions: Lawmaking and policymaking in contemporary Serbia

In this article I analyze the changes of lawmaking and policymaking institutions in contemporary Serbia that are taking place in the context and as a direct consequence of processes of post-socialist transformation and globalization. I

use the examples of lawmaking and policymaking in the fields of labor, social protection, education, and rural development (relying on the empirical data that I obtained in my empirical researches of lawmaking and policymaking processes) and the institutions in charge of these processes: line ministries and the National Assembly of the Republic of Serbia. My main argument is that a process of "the hollowing out" of institutions is taking place whereby these institutions were devoid of some of their internal content and social functions. The processes of post-socialist transformation and globalization have influenced institutions at two levels: one that I call general, and the second one, which is country or society specific. In the most general terms, the post-socialist transformation (1) has led to the dissolution of old institutions of controlled economy and political system accompanied by the gradual creation of new ones. However, many of these institutions found themselves in an institutional vacuum that has increased the power of informal institutions, networks and actors. (2) Pervasive negative social effects of post-socialist transformation (economic decline, growing poverty and rising inequalities) further contributed to the institutional decline, as the state was unable to sustain funding and control the functioning of various institutions over a prolonged period of delayed and later rather slow and ineffective post-socialist transformation. (3) Political instabilities that have marked the last three decades have played a part in strengthening the informal actors against the formal institutions. Two political factors played a major role: the "unfinished" state (starting from the dissolution of former Yugoslavia, through the union of Serbia and Montenegro to the Kosovo issue) and the emergence of domestic and international "predatory" elites. On the other hand, the processes of globalization and Europeanization have further contributed through the strengthening of transnational institutions and the consequent weakening of the national ones. This has happened as a direct consequence of the transfer of authorities but also in the Serbian context through (4) various informal pressures imposed by the processes of globalization (such as the intensive EU lawmaking agenda put on the line ministries and the National Assembly) and (5) the ideological and discursive hegemony of international actors over the policymaking and lawmaking process (in the cases I analyze these were international development actors, such as the World Bank, various UN agencies, international NGOs etc.). This has led to (6) a growth of informal norms and networks that has happed against the rich historical background of informalities. As a consequence, the lawmaking and policymaking institutions in Serbia are being hollowed out of their main institutional content, weakening their pro-creative function (designing law and policies autonomously or actively leading the process) and strengthening their

transmission function (receiving input from domestic or international formal or informal actors and transposing them into laws and policies) in the lawmaking and policymaking arena.

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Expropriation and (lack of) restoration
Case study of Tatra Mountains National Park

During the sixties and seventies communist authorities of Poland conducted massive expropriations in Tatra Mountains (the highest mountain range of the Carpathians) in the southernmost region of Poland, on the terrain of a National Park. Expropriation was carried out only in half of National Park. Due to unclear reasons, the land owned by one land cooperative was not expropriated at all. It still owns large part of Tatra National Park, and conducts forest management in those territories.

Official motives of expropriation decisions were: necessity of protection of natural environment and exigency of elimination of traditional shepherding from National Park which was stressed in the 1960 resolution of the Cabinet (resolution 415/60 which was the starting point and foundation for the whole expropriation process).

The first expropriation decisions were issued five years after the resolution mentioned above. The whole expropriation process lasted over a dozen years. As the land in southern Poland is extremely fragmented it was necessary to conduct toilsome preparation – the smallest lots had surface below five square meters(!).

Justification of expropriation decisions seems to plays a role of facade. First of all, the protection of natural environment was carried out successfully on private ground before the sixties (and still is in some parts of the National Park). Secondly, elimination of traditional shepherding turned out to be harmful to grasslands, and was restored in 1986 (although ownership was not).

After the collapse of the communist regime expropriated owners and co-owners of land in Tatra Mountains seeked possibilities to regain lost property, but with no success. They decided to form an association that acted actively and was able to trumpet this issue. Although it concerns only a small group of indi-

viduals, Tatra Mountains is one of the most well-known regions of Poland (as it is popular destinations for tourists, one of the most valuable environments and a place that played an important role in Polish culture and history).

As there was no legislation concerning reprivatization in Poland the same steps were taken by owners expropriated on the basis of number of different legal acts – sometimes with success. In this particular example it will be especially difficult, as the land is still use with the purpose of protection of environment and expropriation was conducted carefully and lege artis.

The impact on law and its major branches of the fall of communism in Poland was not immediate but it was great. Surprisingly, it was very different in PNE. Although a new statue on PNE was introduced in 1991 the changes in law was mainly technical. More changes were results of accession to EU. The transformation did not lead to a change in the protection of the natural environment. In the nineties it was a pure continuation, major changes were caused only by accession to the EU. What is more, there was no serious discussion concerning interwar ideas of "culturenature" protection or the social organization of protection.

What is also worth mentioning is that expropriation was carried out in the region inhabited by Polish highlanders – an ethnographic group that had a strong sense of belonging and connection with the ownership of land as since the seventeenth century it was not only important in their tradition but was also constituted their community. Expropriation in Tatra Mountains National Park could possibly have a much stronger impact on local culture as it was specifically connected with owning land and with traditional shepherding and forestry.

Expropriation was not justified properly and the presented reasons are examples of the axiological neutralization of law – a situation when values that were the real reason of a decision are not presented and replaced by untrue justification. It is also important to strongly criticize the lack of legal regulations on reprivatization in Poland after the fall of communism as it causes inequalities in the group of expropriated owners. Inequality appears as regaining property is possible only in a situation when legal regulations established in communist times were violated by communist authorities. People in whose cases such mistakes happen appear to be privileged in comparison to those expropriated in accordance with the applicable law. With this mechanism the point that this kind of legal regulations were violating peoples' rights is completely missing.

The presented case study reveals number of theoretical problems, such as neutralization of values in law, law as a source of conflicts (and a conflicting normative system), lack of omnipotence of the law.

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