Reconsidering Democracy:
(New) Theories, Policies and Social Practices

Programme of the 4th Central and Eastern European Forum of Young Legal, Political and Social Theorists

23-24 March 2012
Celje · Slovenia

CEE Forum of Young Legal, Political & Social Theorists

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CEE Forum 2012: Reconsidering Democracy:
(New) Theories, Policies and Social Practices
Programme of the 4th Central and Eastern European Forum of Young Legal, Political and Social Theorists; 23-24 March 2012, Celje, Slovenia

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Conference Aims

In 2012 the CEE Forum for Young Legal, Political and Social Theorists is moving to Slovenia! It will be held from Friday, 23 March to Saturday, 24 March at the International School for Social and Business Studies in Celje.

The CEE Forum is a platform for young legal, political and social theorists who come from, currently study or work in Central and Eastern Europe or have a research interest in the region. The regional boundaries are understood widely. The target audiences of the conference are young researchers: doctoral students or post-docs, but there is no specific age limit.

The fourth CEE Forum will put its special emphasis on recent critiques of contemporary democracy and the rule of law. Current discourses in social sciences as well as in civil society almost daily produce new ideas, suggestions and demands on how to significantly alter the political and legal reality of our societies. The exceptional importance of these questions for our common future has long and clearly surpassed national borders and produced an international discourse. Many distinguished authors like Immanuel Wallerstein, Noam Chomsky, Jürgen Habermas, Stéphane Hessel or Antonio Negri have spoken publicly on these pressing issues. They propose the increase of elements of direct democracy in the political process and significant political empowerment of the civil society and each individual.

It thus seems appropriate to discuss these and related problems within the Fourth Central and Eastern European Forum. We are expecting contributions to the following two major general panels: (1) Reconsidering Democracy: (New) Theories, Policies and Social Practices, and (2) Towards the Rule of Law - Regresses and Necessities. Even though these two general themes are broad enough to meet diverse interests of the Forum's participants, the organizers will also convene an (3) Open panel for papers that target other interesting topics from the vast area of legal, political and social theory.

Dr. Andraž Teršek, Conference Chair

with co-organisers

Central and Eastern European Forum of Young Legal, Political and Social Theorists
International School for Social and Business Studies
Management of Development, Quality and Strategies in Education

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Conference Programme

Friday, 23 March 2012	
9.00-9.30	Registration · 2nd floor lobby
9.30-10.00	Conference opening · Room A *Dean's welcoming address (dr. Srečko Natek), conference chair (dr. Andraž Teršek)*
10.00-11.30	Concurrent panels *(see panel timetable)*
11.30-12.00	Coffee break · 2nd floor lobby
12.00-13.00	Concurrent panels *(see panel timetable)*
13.00-14.30	Lunch · Hotel Štorman
14.30-16.00	Concurrent panels *(see panel timetable)*
16.00-16.30	Coffee break · 2nd floor lobby
16.30-18.00	Concurrent panels *(see panel timetable)*
20.00	Dinner · Hotel Štorman

Saturday, 24 March 2012	
10.00-11.30	Concurrent panels *(see panel timetable)*
11.30-12.00	Coffee break · 2nd floor lobby
12.00-13.00	Concurrent panels *(see panel timetable)*
13.00-13.30	Closing of the conference · Room A
13.30-15.00	Lunch · Hotel Štorman
15.00-	Optional: Guided tour of Celje Meeting point at the ground floor lobby of the ISSBS.

Panel Timetable

Panel 1: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Panel 2: Towards the Rule of Law – Regresses and Necessities
Panel 3: Open panel

		Room B	Room C	Room E
23 March	10.00-11.30	1A	2A	1B
	12.00-13.00	1C	2B	3A
	14.30-16.00	1D	2C	3B
	16.30-18.00	1E	2D	3C
24 March	10.00-11.30	1F	2E	3D
	12.00-13.00	1G		

Paper presentations should take 20 minutes + 10 minutes for discussion. If there is panel time left after the paper presentations it should be used for group discussion and summary of presented papers.

Panel 1A: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Friday, 23 March 2012 · 10.00-11.30 · Room B

Legal Perspectives regarding the Juvenile Justice in Romania
Ramona Acsinte, "Petre Andrei" University, Faculty of Law, Iasi, Romania

The Right to Collective Bargaining in the New Romanian Labor Legislation
Lucian Arnautu, "Petre Andrei" University, Faculty of Law, Iasi, Romania

Western Balkans' Post-communist Transformation
Iuliia Artiukh, I.I. Mechnikov Odessa National University, Odessa, Ukraine

Panel 1B: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Friday, 23 March 2012 · 10.00-11.30 · Room E

Democracy and Modern Technology: a Way of Correcting Majoritarian Democracy
Matyas Bencze, University of Debrecen, Debrecen, Hungary

Democracy and Justice
Jakov Bojovic, University of Belgrade, Faculty of Political Sciences, Belgrade, Serbia

New Theories of Post-Communist Democratization: East European Example
Dr. Olga Brusylovska, Odessa National University, Institute of Social Sciences, Odessa, Ukraine

Death or Birth of Democracy?
Dr. Andraž Teršek, University of Primorska, Koper, Slovenia

Panel 1C: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Friday, 23 March 2012 · 12.00-13.00 · Room B

Deliberation, Decision and Provisionality: Gutmann and Thompson's Account of Deliberative Democracy
Miroslav Imbrisevic, Heythrop College/University of London, Southend-on-Sea/Essex, UK

Is the Concept of Representation Essentially Contested? Hobbes and the Meaning of Representation
Dr. Marko Simendic, Bojan Vranic, University of Belgrade, Faculty of Political Sciences, Belgrade, Serbia

Panel 1D: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Friday, 23 March 2012 · 14.30-16.00 · Room B

Democracy and Sovereignty in Turbulent Times. Reconsidering the Post-National and Post-Liberal Link
Igor Jovanoski, BIGSSS Uni-Bremen/South Eastern European University, Tetovo, Macedonia

Arguments of Human Hubris in Discussion about Legal and Moral Permissibility of Non-Medical Genetic Enhancement
Maciej Juzaszek, Jagiellonian University, Miechów, Poland

Reflexivity of Constitutional Justice and Democratic Legitimacy
Dr. Krzysztof Kaleta, University of Warsaw, Faculty of Law and Administration, Warsaw, Poland

Panel 1E: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Friday, 23 March 2012 · 16.30-18.00 · Room B

How to Represent the Future?
Miklós Könczöl, Durham University, Department of Classics and Ancient History, Durham, UK

Reconsidering democratic legitimacy under the Treaty of Lisbon
Dr. Andreas Orator, WU University of Economics and Business, Vienna, Austria

National Minorities Protection in the E.U. System
Roxana Alina Petraru, "Petre Andrei" University, Faculty of Law, Iasi, Romania

Panel 1F: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Saturday, 24 March 2012 · 10.00-11.30 · Room B

Politics in Criminal Justice
Mojca M. Plesnicar, University of Ljubljana, Faculty of Law, Institute of Criminology, Ljubljana, Slovenia

Rights and Temporality. Human Rights between Universality and Particolarism
Dr. Daniele Ruggiu, CIGA University of Padova, Padova, Italy

Illusion of Democracy? The Analysis of the Character of Dominant Political, Economical and Social Global System
Katarzyna Sadrak, Jagiellonian University*, Ostrowiec Świętokrzyski, Poland*

Panel 1G: Reconsidering Democracy: (New) Theories, Policies and Social Practices
Saturday, 24 March 2012 · 12.00-13.00 · Room B

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Paulina Szymańska, Jagiellonian University, Krakow, Poland

Spanish Customary Law Courts as a Model of Preventing and Solving Water Conflicts
Marcin Wróbel, Jagiellonian University, Krakow, Poland

Panel 2A: Towards the Rule of Law – Regresses and Necessities
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The Metalegal Doctrine of the Rule of Law
Piotr Brzostek, Jagiellonian University/University of London, Warsaw, Poland

Judicial Reasoning, Judicial Policymaking, and the Rule of Law
Dr. Péter Cserne, Pázmány Péter Catholic University, Faculty of Law, Budapest, Hungary

Controversy about the Individualization of Sanctions in Criminal Law
Dan Florin Drugă, "Petre Andrei" University, Iasi, Romania

Panel 2B: Towards the Rule of Law – Regresses and Necessities
Friday, 23 March 2012 · 12.00-13.00 · Room C

Legitimate Interference of Public Authorities in Exercise of the Right to Privacy and Family
Dana Larisa Drugă, "Petre Andrei" University, Iasi, Romania

Post-Socialist Legal Pluralism and Rule-of-Law. Comments on András Sajó's concept
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The Influance of the EU Legal Order on the Rule of Law in CEE Countries – the Law & Economics Approach
Katarzyna Guziak, Jagiellonian University, Krakow, Poland

Debating Moral Issues - Before Courts or Legislatures? - Some Remarks on Waldron's Theory of Democracy
Agnes Kovacs, University of Debrecen, Faculty of Law, Debrecen, Hungary

Compulsory Adjudication in Kelsen and Lauterpacht Theories
Mario Krešić, University of Zagreb, Faculty of Law, Zagreb, Croatia and European Faculty of Law in Nova Gorica, Nova Gorica, Slovenia

Panel 2D: Towards the Rule of Law – Regresses and Necessities
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Stabilitas Iuris as Part of the Rule-of-Law State
Dr. Marko Novak, European Faculty of Law in Nova Gorica, Nova Gorica, Slovenia

Towards the Rule of Law or the Rule of the Boots? - A Liberal Perspective on Democracy and Human Rights
Dr. Axelle Reiter, European University Institute, San Domenico di Fiesole, Firenze, Italy

International Legal Coercion and Considerations of Global Justice
Verena Risse, Goethe University Frankfurt, Frankfurt/Main, Germany

Panel 2E: Towards the Rule of Law – Regresses and Necessities
Saturday, 24 March 2012 · 10.00-11.30 · Room C

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Bojan Spaić, University of Belgrade, Faculty of Law, Belgrade, Serbia

Within Democracy's Reach? - Revisiting Some Objections to Judge-Made Law
Dr. Tilen Štajnpihler, University of Ljubljana, Faculty of Law, Ljubljana, Slovenia

Introduction of Criminal Law Powers in Other Legal Procedures - Do Widespread Powers also Mean Wider Safeguards?
Dr. Sabina Zgaga, Faculty of Criminal Justice and Security, Ljubljana, Slovenia

Panel 3A: Open panel
Friday, 23 March 2012 · 12.00-13.00 · Room E

Economic Crisis as a Threat to Security? - Identifying the Determinants of Property Crime in Slovenia
Dr. Meta Ahtik, University of Ljubljana, Faculty of Law, Ljubljana, Slovenia

Matrimonial Regime Legal under the Provisions of the New Romanian Civil Code
Dr. Nadia Cerasela Aniței, "Petre Andrei" University, Faculty of Law, Iasi, Romania

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Friday, 23 March 2012 · 14.30-16.00 · Room E

Is "Naturalised" Methodology in Legal Theory Helpful?
Dr. Luka Burazin, University of Zagreb, Faculty of Law, Zagreb, Croatia

The Subject of Jurisprudence
Dr. Goran Dajović, University of Belgrade, Faculty of Law, Belgrade, Serbia

Changing Roles: Jewish and Muslim Religious Courts in Israel as Ethnical Identity Protector or Freedom of Conscious Oppressors
Olga Horain, Jagiellonian University, Krakow, Poland

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Friday, 23 March 2012 · 16.30-18.00 · Room E

Is Legal Positivism Tenable beyond Moral Non-Cognitivism?
Dr. Miodrag Jovanović, University of Belgrade, Faculty of Law, Belgrade, Serbia

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Tomasz Pietrzykowski, University of Silesia, Katowice, Poland

Constitution of Subjectivity through Legal and Commodity Form
Anej Korsika, University of Ljubljana, Faculty of Arts, Ljubljana, Slovenia

Panel 3D: Open panel
Saturday, 24 March 2012 · 10.00-11.30 · Room E

The Concept of Objectivity from the European Comparative Perspective
Dr. Lidia Rodak, University of Palermo, Palermo, Italy

The Legal Language - A Useful Tool or a Hurdle?
Izabela Skoczeń, Jagiellonian University, Krakow, Poland

The Relationship of Natural Law and Natural Rights
Dr. Szilárd Tattay, Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest, Hungary

Focal Defining from Aristotle to Finnis
Milos Zdravkovic, University of Belgrade, Faculty of Law, Belgrade, Serbia

Paper Abstracts

PANEL 1: Reconsidering Democracy: (New) Theories, Policies and Social Practices

Legal Perspectives regarding the Juvenile Justice in Romania

Ramona Acsinte, "Petre Andrei" University, Faculty of Law, Iasi, Romania

The issue of criminal liability of the juveniles' offenders and, also, the juvenile delinquency prevention and control is subject to one of the most difficult and dramatic fields of the criminal Romanian law policy.

The actuality and the significance of this issue are maintained by the reality and the worrying intensity of the criminal phenomenon among youth, adolescents. The drama of this situation is determined by the nature of juvenile crime, which is an effect of the lack of capacity of understanding the full penalty, and the obvious danger of the antisocial conduct minor.

The improvement of the juvenile criminal legislation is a requirement that addresses not only to the legislators but also to the whole society. The prevention of juvenile delinquency and the juveniles' recovery through its age-appropriate ways are one of the fundamental concerns of a modern society. Such a society has the overriding duty to deal systematically by all means and all its structures in order to prevent failures in education and training the young generation. These solutions must reflect a new way of addressing this issue in accordance with the complexity of human personality in general, and the stage of juveniles' training, in particular.

The basic feature of recent years is the field of juvenile justice is subject to a variety of practices and possible solutions. Therefore, today we cannot speak of a general single model or justice, either in terms of its endpoint (the children protection or their punishment), nor in terms of specific mechanisms by which this goal must be transposed into practice.

The Romanian system of juvenile justice, as a particular case, can be classified and analyzed in this broader context and put in relation with developments and changes globally developed in this field.

Created to meet changes in the dynamics and forms of manifestation of juvenile delinquency, the Romanian new legislation represents a new vision for juvenile justice and a tendency to suit the practices that proved positive effects in other states. The focus of juvenile justice reform concerns the goal to achieve a whole reintegration of the young criminals, by enforcing the following principles: to avoid of children liberty deprivation, to waive penalties in behalf to educational measures, the active involvement of the probation service.

The Right to Collective Bargaining in the New Romanian Labor Legislation

Lucian Arnautu, "Petre Andrei" University, Faculty of Law, Iasi, Romania

The interests of employers and employees can be harmonized, only by performing an effective collective bargaining, starting at the unit level and going preferable up to a national level, through various forms of social dialogue.

The Labor Law is primarily a negotiated legislation having its dynamic and specific source: the collective agreements.

The right to collective bargaining is recognized and protected by several ILO Conventions and Recommendations, in particular Convention no. 98 and the Collective Bargaining Convention, 1981.

As a principle, the Romanian fundamental Law guarantees the right to engage in collective bargaining. Nevertheless, in the economical crisis context, the Romanian legislator profoundly modified the optics in achieving an effective collective bargaining, by adopting the new Labour Code and the Law no. 62/2011 on social dialogue.

The new adopted provisions no more regulate the existence of the National Collective Agreement, renouncing to several important different means of consultation and dialogue between the social partners. This conduct comes after the moment that the Government decided to denounce the former National Collective Agreement.

The reconfiguration of the measures meant to ensure social dialogue puts the Romanian government in front of a big challenge: to maintain economic progress meanwhile encouraging the social rights of employees. This is because ensuring a stabile and social peaceful climate and wage protection is one of the key conditions for achieving the economic performance of employers and the public financial stability too.

Western Balkans' Post-communist Transformation

Iuliia Artiukh, I.I. Mechnikov Odessa National University, Odessa, Ukraine

The purpose of this study is a comparative analysis of the post-communist countries' transformation, and the factors that prevented them to achieve greater results. The study analyzes the process of systematic transformation of Western Balkans' post-communist countries (Albania, Bosnia-Hercegovina, Croatia, Macedonia, Montenegro). For this purpose, it researches first of all historical, political, economic, mental peculiarities of the region and external factors, which affected the transformation process, and caused countries' retardment from other post-communist states, which have got better results (European Union state-members). It also investigates the differences between the states of the region.

Democracy and Modern Technology: a Way of Correcting Majoritarian Democracy

Matyas Bencze, University of Debrecen, Debrecen, Hungary

The main purpose of democracy is, beyond any doubt, to legitimize political authority by providing the best possible decision-making process in the public sphere. However, there are many examples in the field of politics which clearly show us the serious problems of the majoritarian model of democracy. Populism, emotional politics and ignorance can easily influence the decisions of the voters at the election; while corruption, personal interest and threat can result in a kind of parliamentarian legislation which does not serve the 'common weal'. In my opinion, the root of the problems is that modern democracy allows non-competent members of the political community to participate in politics.

However, it goes without saying that it would be unjustifiable to exclude certain groups of citizens from the political decision-making process. Besides the moral reasons we cannot even identify the exact criteria of being a competent citizen. Thus, the only thing we can do is to build some correctional mechanisms into the system. One traditional institutional solution of correction is the judicial review of laws by constitutional courts. Nonetheless, defence of important political values by constitutional courts did not prove to be effective in many cases. That occurs because constitutional reasoning is limited by number of reasons. Besides, nothing can guarantee that judges are able to take into consideration all reasons which hold relevance in the decision-making process of a given case.

I would like to argue in favour of the opinion which claims that these problems can be solved by relying on recent developments of information technology. My starting point is that 'collective brain' of human species works much better than even the mind of the wisest individual or a small group of individuals. Thus, the revision of a challenged law would be more efficient and the resolution would be more convincing if judges could take all relevant reasons into account. The question is: how can we make this 'collective brain' work? What type of institutional solution fits best this idea?

First, we have to expand the space of public discussion in order to make new thoughts useful and applicable. The higher number of participants is involved in a discussion the bigger the chance is for an optimal result - since the same problem can be examined from different aspects. Forums on the Internet are ideal places for this kind of deliberation.

Secondly, if the legislator were legally obliged to give an answer on the merits concerning every reasonable objection emerging from the on-line debate, constitutional courts could easily examine whether the legislator fulfils its duty or not. In other words, we should create a sui generis constitutional criterion of legislated law: if the legislator ignored to take important objections to the challenged law seriously, this silence would automatically violate the constitution.
From a political-philosophical aspect this would be an attempt to reconcile the majoritarian and deliberative model of democracy. In my presentation, I would like to talk about the details of this effort as well as the practical difficulties of introducing this specific decision-making process.

Democracy and Justice

Jakov Bojovic, University of Belgrade, Faculty of Political Sciences, Belgrade, Serbia

“Men are not corrupted by the exercise of power, or debased by the habit of obedience; but by the exercise of a power which they believe to be illegitimate, and by obedience to a rule which they consider to be usurped and oppressive". This is a quote from the original Alexis de Toqueville's introduction to his famous “Democracy in America", a book which is believed to be the best book written about American democracy by a foreign author, at least. We believe that it is a good starting point for our work, since it emphasizes democratic legitimacy in a brilliant manner, it connects the notion of democracy with the perception of justice that a society has. The interconnections between the notions of democracy and social justice are the main thesis of this paper. Two books were published recently that, we believe, are closely related to both notions. The academic community is indifferent whether authors of these two books argument a theory of democracy or a theory of justice. We believe that they do not distinct between the two notions. The two books are Amartya Sen's "Idea of Justice" (2009) and Corey Brettschneider’s "Democratic Rights" (2008). This paper will not only critically examine their and other authors points of views on interconnections between democracy and justice, but also offer a distinct one.

Since the subject of the conference before us are the critics of democracy, these theories and our re-examination can be perceived as an answer to the critics from extremes: the recent libertarian anti-democratic criticisms which view democracy as regressive, non-modern form of oppression, and from the Marxist critics who also question legitimacy of the liberal model of democracy. Furthermore, there are liberal authors who saw democracy as a notion that is opposed to a notion of rights and therefore, they believe, rights begin where democracy stops. This is true if we adopt a purely procedural definition of democracy. Democracy as a normative concept has certain rights of citizens embodied in it. Political rights, for instance, are used to choose and control representatives, to legitimize coercion. But, what makes the choices that representatives make "democratic" or consistent with the notion of justice? Is it always the case or just if certain procedural and/or substantial conditions are met?

New Theories of Post-Communist Democratization: East European Example

Dr. Olga Brusylovska, Odessa National University, Institute of Social Sciences, Odessa, Ukraine

Building a theoretical framework for the study of post-communist transformation requires identification papers, focused on identifying key factors that affect the process of political transition of countries from a totalitarian past to democracy. Analysis of current theories showed that the classical scientific schools have evolved in late XX - early XXI century.

The problem of formation of liberal democracy in post-communist Eastern Europe were among the first has been investigated by American political scientists Gabriel Almond and Sidney Verba, who criticized those researchers who consider democracy as the criteria for one or other political institutions.

The focus of transitological school is the problem of defining the nature and factors of democratization. One of the best analytical determinations, why transitional societies of Eastern Europe have not approached the presidential form of republic, is Valerie Bunce. She found three scenarios of Eastern Europe after 1989 for the first time - when the authorities came to the liberal opposition - economic reform and democratization support and complement each other (Poland, Slovenia, Czech Republic). In the second - the communists kept power - authoritarian politics and a socialist economy remained without significant changes (Belarus, Uzbekistan). In the third - "connection between political and economic reforms were broken and very few positive results, although there is still hope (Croatia, Slovakia, Bulgaria, Russia, Ukraine)". The focus of the University of Waterloo professor Dezhan Huzina is not only the definition of "democratization," but also the associated "consolidation" and "transition". Juan J. Linz and Alfred Stepan in work "Towards Consolidated Democracies" singled out three minimum conditions that give grounds to speak of democratic consolidation. Among the authors of papers that make methodological foundation of any democratic transition research should, above all, call Larry Diamond. In the article "Identification and Promotion of Democracy", he argued that electoral democracy does not necessarily mean freedom, today we are witnessing that intellectuals interested in liberal autocracies like better, safer and more stable form of governance for transitional societies. In his work "What Makes Democracies Endure?" Adam Przeworski, Michael M. Alvarez, Jose Antonio Cheibub, Fernando Papaterra Limongi Neto using mathematical methods highlighted some of the most important factors of influence: economic performance, international conditions, and institutional design. In their view, they contribute to the preservation of democracy for some time, and afterward its fate becomes more stable, because all adapt to democracy.

If the study of political dimensions of the transformation of Eastern European societies from totalitarianism to democracy has serious methodological grounds, its ideological dimension is the biggest challenge for the modern scientist. Most scholarly discussions revolved around three main versions of the classical school of liberalism, realism and Marxism (F. Fukuyama, S. Huntington, I. Wallerstein). Perhaps the paradigm of civilization theory of neo-realism becomes dominant in explaining world politics.

Thus, studies of post-communist transformation of Eastern Europe could best build on the intersection of two schools - transitology and neo-realism, which complement each other, to detect specific Eastern European democratization stages of its development, its components and factors.

Deliberation, Decision and Provisionality: Gutmann and Thompson's Account of Deliberative Democracy

Miroslav Imbrisevic, Heythrop College/University of London, Southend-on-Sea/Essex, UK

In this paper I will evaluate the issue of 'provisionality' in Gutmann and Thompson's account of Deliberative Democracy. They point out that most proponents of Deliberative Democracy neglect that the results of the decision-making processes are 'provisional'. This reflects two facts about human nature. First, the decision-making processes and our understanding (of right reason), on which they rely, are often imperfect. Second, even in deliberative politics most decisions are not consensual. There are two aspects to Gutmann and Thompson's account of provisionality. The insight that we may get it wrong, in spite of extensive deliberation, requires that the deliberation may continue after the decision has been taken. And secondly, accepting the provisionality of decisions in Deliberative Democracy makes it more likely that dissenters would support the present decision, if they can continue to debate and possibly reverse the decision in the future.

For Gutmann and Thompson, the primary aim appears to be coming to a decision, even one which may turn out to be wrong. Thus, a decisions is partly justified by the preceding deliberation and partly by the possibility of discovering and reversing the decision in the future. The latter also legitimises the curtailment of the deliberative process (usually due to time-constraints - be they genuine or only alleged) and, in addition, it legitimises relying on voting as the group-decision-making-procedure. The problem here is that curtailing deliberation weakens the epistemic argument for Deliberative Democracy. Furthermore, regardless of whether deliberation was curtailed or not, it is hoped that voting after (extensive) deliberation is the best way to come to a right decision. But recall that deliberation will often not be extensive but, rather, will be curtailed. Secondly, voting does not necessarily translate the force of the better argument into a decision. And if we are faced with reasonable disagreement after deliberation, then, voting cannot translate the force of the better argument - it can only count heads.

Gutmann and Thompson believe that the element of provisionality makes their account of deliberative democracy superior to others. I will argue that it masks a fundamental problem for democracy: the moral gap between deliberation and decision. Even in the face of (considerable) opposition, a decision must be taken, and taking that decision, it is claimed, is morally justified. Apart from the provisionality of Deliberative Democracy, Gutmann and Thompson also rely on the self-critical power of the deliberative process in order to eliminate gradually any deliberative bias or even a bias regarding the principles of Deliberative Democracy. I will argue that such optimism is out of place.

Democracy or Plutocracy? How the Economic Crisis Questions Contemporary Democratic Values

Dominika Jędrzejczyk, University of Warsaw, Warsaw, Poland

The economic crisis put modern democracy under thorough scrutiny. The deliberative method of consensus building, though sounding as a universal method of problem solving, seems to be idealistic and unachievable.The ongoing economic crisis revealed that in many countries, such as Greece or Italy (but also in the US, which has already been signaled by American political media and independent analytics), the governments are transformed into uncontrollable corporations, allocating money on the basis of their own and individual will. We all know that methods of public control over authorities, such as referenda or public polls, are costly and, therefore, can effectively function only in smaller and richer countries, Switzerland as a good point being. In my presentation, I am going to address the issue of plutocracy and whether we can talk of plutocracy functioning in Europe. May it be that the flourishing of this mode of power execution influenced the onset of the economic crisis? How can we make sure that future governments will be controllable and effective in executing their authoritative functions? Which governments are better - the technocratic ones the construction of which we are facing now, or the older - "political" ones? I hope my presentation will challenge these questions with the use of political theory.

Democracy and Sovereignty In Turbulent Times. Reconsidering the Post-National and Post-Liberal Link

Igor Jovanoski, BIGSSS Uni-Bremen/South Eastern European University, Tetovo, Macedonia

The recurrent crises of global capitalism have rendered sovereignty and democracy even more formal. Surrendered to the market they fall prey to the destructive dynamics of financial utilitarianism and are blatantly circumvented by the political elites. Today it is clear that the decision brought by the EU leaders, the ECB and the IMF (so-called Frankfurt group) in european terms, or the G7, G8, or G20 globally, are utterly unaccountable to the national constituencies. Their rule and lack of democratic legitimacy thereof sadly conforms to the reality of the so-called 'corporatocracy' (Walf 2011)

Paradoxically, Europe, wherein the notions of both post-national sovereignty and democracy were being born out and heralded as the future of political governance (Habermas 1999, Zuern 1999), is at the core of the current crisis. It is clear now that post-national settings of shared sovereignty and representative democracy are even more vulnerable to the excesses of market liberalism. Regardless the levels of regulation it gives financial and political elites unrestrained power for 'continent-wide' manipulations of peoples will. Given the inability of the latter to control the behaviour of the former the so-called 'democratic deficit' thesis, both in EU and in national frameworks, gets a tragic verification.

This constellation, however, problematises the normative viability of these two concepts and questions the model of liberal democracy itself. A further deepening of the Union, as suggested nowadays by Germany and France, can make representation even less accountable and controllable by the people (Habermas 2011). On the other hand, a reverse effect may result in 'bringing the state back in' and perhaps, as Offe (1995) once argued, rolling sovereignty and democracy back to national levels. Yet, it doesn't guarantee that people's sovereignty and rule will be re-established again. In other words, both alternatives offer prospects for change but neither challenge the liberal-democratic concept of representative democracy nor offer ideas for rejuvenating people's rule. It seems they are here to stay and no viable alternative to them exist.

Against this 'end of history' mantra I argue that possible alternatives do exist. Drawing on Macpherson (1965) concept of post-liberal democracy and Mouffe's (1993, 1995, 2005) extensive work in this field 1) I analyse the link between sovereignty and democracy in liberal contexts, 2) reconsider their failure to offer a viable option in post-national settings, and 3) argue that unless a post-liberal alternative is being provided for a) a genuine 're-democratisation' of the political discourses and processes leading to b) forms of stronger autonomy and control of the people at the expense of the markets in both national and European terms we will 3) face a continual formalisation of people's authority and rule and its further enslavement to the dictates of market corporatism.

Arguments of Human Hubris in Discussion about Legal and Moral Permissibility of Non-Medical Genetic Enhancement

Maciej Juzaszek, Jagiellonian University, Miechów, Poland

Development of genetics, bioengineering and other medical sciences makes doctors, lawyers, bioethicists, politicians, priests and the general public face problems that were never subjects of public discussion. One of them is certainly the possibility of genetic enhancement, for medical or non-medical purposes. The second one is usually mutually connected with discussion about liberal eugenics, ideology which advocates leaving choice of using reproductive and genetic technologies to the individual preferences of parents acting on free market of such services. We know more and more about human genome, nowadays it is possible to genetically enhance, for example, muscles of athletes. In the future, capabilities of genetics in enhancing human body and mind can be enormous. That is why dispute of the permission for this has to start now and in this deliberation various arguments will be taken: legal, moral, economic, pragmatic etc.

I would like to analyze one type of arguments, that referring to human pride, particularly in the context of randomness and luck present in human life. Already in ancient Greece philosophers, poets, playwrights and political thinkers lively discussed issue of relation between tyche and hubris. Hubris indicated a loss of contact with reality and an overestimation of one's own competence, especially of the person in a position of power. Human being was hubristic when she acted and felt like god. Tyche was a symbol of luck and factors outside a person's control. The ethical problem that appeared then and is up-to-date is a problem of moral luck and constraints of human agency in context of luck and events beyond human control. What I call argument of hubris is argument proclaiming that human activity which exceeds the limits of natural human control and intervenes in this bit of luck which constitute identity of humanity can be, under certain conditions, ethically unacceptable.

In my presentation I will defend thesis that argument of hubris is one of the most powerful arguments in discussion about non medical genetic enhancement. Firstly, I will present different arguments of hubris that were raised by Jurgen Habermas, Robert May and Micheal Sandel, antagonists of non-medical genetic enhancement.. Secondly, I will refer to counterarguments raised by John Harris, strong adherent of liberal eugenics. Finally, I will try to refute counterarguments against argument of hubris and, what is more, try to contend that it follows equally from many different axiological backgrounds and world views which makes it universal and strengthen its power of persuasion.

Reflexivity of Constitutional Justice and Democratic Legitimacy

Dr. Krzysztof Kaleta, University of Warsaw, Faculty of Law and Administration, Warsaw, Poland

The paper deals with changes of the understanding of democracy that have occurred under influence of dynamic development of constitutional justice. For years theory of democracy has been searching for such formula that justifies judges' power to strike down legislation not only on the ground of constitutional principles, but also in respect of intrinsic democratic values, referring to terms such as sovereignty or general will.
The core issue concerns fundamental tension between constraints imposed by principles of constitutionalism and the nature of democratic government. The main idea behind it, is to find the best normative justification for the institution of constitutional review on the ground of democratic requirements. It is possible to distinguish at least three leading theories of democracy: procedural theory understood as majoritarian view of democracy, substantial approach considering democracy as a set of moral values and deliberative democracy which emphasizes the role of discourse in a democracy.

Under the majoritarian view, democracy is the government by majority will, performed in accordance with the will of the prevailing number of people, that have been expressed in elections with universal suffrage (J. Waldron). According to the rival substantial view of democracy, democracy means that people govern themselves as a full partners in collective political enterprise so that a majority's decision is democratic only when certain conditions are achieved and certain values are fulfilled (R. Dworkin). In deliberative democracy citizens share a commitment to the resolution of problems of collective choice through public bargaining, and regard their basic institutions as legitimate in so far as they establish the framework for such free public deliberation (J. Habermas).

Basing on those three conceptions I would like to examine the role and significance of the judicial control of constitutionality in contemporary democracy. I try to consider the problem in what respect may the argumentative paradigms of adjudication and theory of deliberative democracy influence the current understanding of role of constitutional court in democracy.

I would like to defend a thesis that contemporary constitutionalism and democracy do not exclude but mutually presuppose one another. Constitutional review - under condition of appropriate institutional design – might be the most important factor enhancing both constitutionalism and democratic character of current political process. Constitutional values have not exclusively juridical (external to political practice) nature. Contemporary political systems owe to synergy of values carried by constitutionalism and democracy. Essential term required to understand contemporary democracies is therefore reflexivity (P. Rosanvallon) as a source of democratic legitimacy for unaccountable institutions.

How to Represent the Future?

Miklós Könczöl, Durham University, Department of Classics and Ancient History, Durham, UK

While much scholarly work has been devoted to problems related to the rights of, and justice to, future generations, questions of representing future generations in present deliberation and decision-making have received less attention. This paper deals with possible ways of taking future-related problems into account within the framework of a democratic political discourse. In the first part of the paper, different theoretical and practical solutions are reviewed from the perspective of democracy, i.e. whether and how they can be justified with reference to principles generally regarded as democratic. In the second part, it is argued that considering the problem of future from a present perspective and conceiving of present persons' rights with respect to their posterity (rather than rights of future people) allows for a more adequate discussion of future-related issues in terms of democracy.

Reconsidering democratic legitimacy under the Treaty of Lisbon

Dr. Andreas Orator, WU University of Economics and Business, Vienna, Austria

The paper addresses theoretical and dogmatic issues concerning the provisions on the democratic principle (9-12 Treaty on European Union, TEU) which were introduced by the Treaty of Lisbon. While Art 10 TEU seems to rather reflect the traditional approaches of democratic principles in EU Member States, Art 11 codifies deliberative, participatory, associative approaches to EU democracy which have evolved since the Commission's White Paper on EU Governance. The exact relationship of the traditional "input" oriented democratic mechanisms of Art 11 on the one hand and alternative, mostly "output" oriented democratic approaches are largely unknown, as are the consequences of the codification of the dual mode of legitimacy.

With the wide body of literature on democratic theory and the ECJ's and national courts' case-law on EU democracy in mind, this paper aims at outlining possible interpretations of the new provisions of Art 9-12: Does Art 10 stipulate a general principle of representative democracy and what role is there left to play for deliberative and participatory approaches? The possible complementary or even compensatory function of such alternative approaches to parliamentary democracy in the EU shall be discussed. Moreover, how may the role of national parliaments, which are to safeguard the second strain of representative democracy pursuant to Art 12, be envisaged? And could the ECJ play a more active role?

National Minorities Protection in the E.U. System

Roxana Alina Petraru, "Petre Andrei" University, Faculty of Law, Iasi, Romania

In light of recent conflicts related to the issue of national minorities and to the European regulations, the problem of the protection of the national minorities' rights appears to be more and more important in a world of multiculturalism, which should be a world of dialogue and respect of human rights as well.

The problem of defining the concept of "national minority" is still open and represents a challenge both for theoreticians, as well as for the legislative apparatus.

Minority rights protection system was developed as a reaction to the persecution of this group throughout history and is revealed as an ensemble of elements in interdependence and constantly evolving. In other words, "creating the international system of protection of minority rights is an expression of the will to shield trends of persecution or repression of national minorities". Thus, national minorities are a special group requiring particular protection measures which have been taken in the activity of international organizations. International organizations have demonstrated their important role in the system of international relations especially in the economic, social, and the protection of human rights field. They are not only instruments of cooperation between states, but also tools used to raise awareness on the realities of a globalizing world. International organizations have an internal legal personality, but also an international one, and their role as subjects of public international law is recognized both by the doctrine and by international treaties.
In this article we analize the principles of the national minorities protection in the E.U. system.

Politics in Criminal Justice

Mojca M. Plesnicar, University of Ljubljana, Faculty of Law, Institute of Criminology, Ljubljana, Slovenia

Shielding criminal justice policy-making from politics is a move that has been suggested by several criminologists and other commentators of recent developments in the field of criminal justice. Such propositions commonly stem from the underlying assumption that the state in which criminal justice policy-making currently stands is intolerable, mainly due to often intolerable levels of politicisation, that has produced excessive policies and practices in the field of criminal justice. The shielding of the field usually means the return to a state, found in most systems some decades ago, when criminal justice politicies were created in a narrow, professional environment, with little influence from the outside world – an era of "platonic guardians" of the criminal justice system.

For now I lay aside the question of whether such a return is feasible, that is, if after decades of evergrowing public and political interference in the field of criminal justice, a return to a secluded area of professional handling with criminal justice issues is at all possible. Instead I will focus on the question whether such a change in the field is something we should wish for. The proponents of the "insulation model" seem to portray it as a highly desirable development, at times going even further and seeing it as the only way of curbing the excessive punitiveness of modern neo-liberal societies. While strongly agreeing that modern levels of punitiveness do need to be dealt with and possibly significantly lowered, some important considerations need to be made about whether insulations really is the solution to such a problem.

Several issues need to be addressed in this respect, i.e., is it really the public involvement that causes excessive punitiveness? Is resorting to a professional, undemocratic body something that would necessarily curb such punitive policies? Would the outcome be necessarily desirable?

Rights and Temporality. Human Rights between Universality and Particolarism

Dr. Daniele Ruggiu, CIGA University of Padova, Padova, Italy

Usually human rights are regarded as indeterminate. This also implies, from the legal point of view that they are set forth by legal norms having conditions of application too vague inview of permiting to have a legal character recognized. Within societies characterized by irreducible moral pluralism this fact exposes human rights to a strong debate which involves not only their meaning but also their universality. There is not only the lack of an agreement on what they mean, but also on their universal character. Thus, there is the alternating of several different conceptions of their universality based on their objective, logical or procedural nature. All these theories of Universalism have a feature in common: their argument in favour of universality of human rights is founded on a strong model of rationality and considers as unproblematic both the issue of their semantic content (their meaning) and the issue of the compilation of their catalogue. On the contrary, according to theorists Particularism it is to revalue the historical condition which contextualises the individual in his/her own 'group of belonging to', stresses differences and unties the bonds between different communities leading us towards a irreducibly conflicting reality. By recalling the Time and narrative trilogy of Paul Ricoeur, thanks to its recovery of temporality of interpretation, this paper intends to show the tight link between the question of rationality and the question of both the semantic content and the universality of human rights.

Illusion of Democracy? The Analysis of the Character of Dominant Political, Economical and Social Global System

Katarzyna Sadrak, Jagiellonian University, Ostrowiec Świętokrzyski, Poland

Increasing gap between vision of democracy and real praxis, riots in London, movements in Latin America, Occupy Wall Street groups, can be an evidence for our urgent need of analyzing and reformulating political doctrines. The aim of the research is to investigate these issues and to answer the question how mechanisms of global powers function. Consequently, the Author constructs a profile of new global order with use of official statistics, press events, declarations, law acts and other text sources.

The Author follows the cycle of capitalistic production that is supported by neoliberal ideology. The research considers the fact that nowadays capital dominates and we are reaching the theoretical limits of maximal use of production factors. Framework for this process is created by multinational corporations managing and consuming energy from diversified human resources. This global range of influence contributes to mix First and Third World, becomes to be resistant to depressions, and aims to monopolize the market, regardless of any implicated exploitation.

As far as political arena is concerned, the study is focused on the decision process and discovering the hierarchy among concerns, international organizations, dominant and nation states. The Author states the hypothesis of multipolarity and global confinement to the net of decentralized power structure, which derives from the production function. Democracy is becoming just a social mask, because main decisions are resolved beyond constitutional order. The system maintains thanks to the idea of „public safety" and „balanced budget". Furthermore, the media control function and its role in opinion-making process are analyzed. The emphasis is laid on media saturating society with political and economical system from the inside.

In the study work, the Author tries to demonstrate the accuracy of elite theory. Intensifying bipolarity and disproportions among society, has lead to elites' formation. The research makes a comparison between elites and common people, taking into account the factors of control, responsibility, awareness, interests and decision possibilities. Moreover, the article encloses the issue of bioproduction and its impact on collective thinking horizontally irradiated with the new culture.

The research leads to conclusions that current reality is a continuously renewable structure of communicating institutions, enclosing the whole world space. Some kind of inertial circulation is being created and diffusion of public and private sphere proceeds, which makes the non-inertial frame of reference impossible. Democracy in this system is hardly available and reality tends to be more imperial and total. This theory implies the fact, that ruining this construction is possible only in internal way, by the revolution against 'ourselves'- from the inside sphere, not against 'others'- from the outside sphere and building so an abstract and virtual vision as the one against which the revolution is conducted.

Summing up, this research can be the starting point for some overlooked by mainstream doctrine problems, it enlarges the trend of criticism of actual neoliberal and 'democratic' system. Therefore it can be a source of advice for alternative theories and movements.

Is the Concept of Representation Essentially Contested? Hobbes and the Meaning of Representation

Dr. Marko Simendic, Bojan Vranic, University of Belgrade, Faculty of Political Sciences, Belgrade, Serbia

This paper seeks to explore weather the concept of representation is essentially contested, by analyzing the Hobbes's concept of representation. The authors argue that Hobbes's concept of representation can be interpreted as an essentially contested one, as a cluster of conceptions within a fully shared system of concepts.

William Connolly has defined essentially contested concepts as open-structured, which in a fully shared system of concepts allows the introduction of clusters of various conceptions. Connolly's idea was that these clusters prevent us from defining a concept essentially. The authors believe that this idea, in respect to Connolly's theory, can be used to explain the emergence of new and modifications of dominant concepts in political theory. The authors argue that this is the case for Hobbes's concept of representation. The paper will offer argumentation for presumption that Hobbes's concept of representation is a cluster that consists of (a) the conception of the idea of representation that stems from covenant theology, (b) the conception of Cicero's concept of persona civitatis, and (c) the conception of representation as it is found within the (corporate) legal theory of Hobbes's time.

Hobbes's account questions the very foundations of the arguments made against absolute and indivisible authority by the parliamentary writers of his day. He reaches deep into the traditions in which these arguments are saturated, dismembers their main chains of ideas and (re)interprets them in a way that could serve his own argument. Hobbes is famous for (re)defining words. He does this to a number of key theoretical concepts (natural law, justice, state, covenant, freedom, etc.) and the idea of representation is no exception to this. But this catch-all charge against various opposing theories does not exhaust the limits of Hobbes's project. For these additions, remodelled and organised into a coherent whole, reinforce Hobbes's main argument. Hobbes set intellectual sources ranging from the classical moral and theatrical notion of representation (Cicero's persona) to the theological concept of a representative (Christ as a "public person") against the backdrop of the legal tradition founded upon the legal concept of a represented corporate person. The result is an account that, though doubtless controversial, supports the idea of absolute authority and equips all those who might have shared Hobbes's political agenda with a powerful argument. And that includes subjects and their rulers alike.

Psychopaths – Citizens as Any Other?

Paulina Szymańska, Jagiellonian University, Krakow, Poland

After Second World War the movements for formalization of human rights were one of the top importance. The way people treated people during the war made governments realize, how vital it is to keep high standards of actions towards not only their own citizens, but every people as well. The ratifications of several pacts for human rights, such as European Convention on Human Rights and Fundamental Freedoms, The International Covenant on Civil and Political Rights or International Pact on Economic, Social and Cultural Rights, as well as introducing several important human rights into European constitutions creates a general impression of existence of some standards, in which country can act towards people. Standards which have been said to be absolute, unbreakable, natural. But today we are witnesses of bending this democratic laws in order to protect citizens of democratic countries. After 50 years some of the standards mentioned before starts to be discussed, in other words, it became necessary at given situations to introduce exceptions to the most, as we could envisage, basic legal rules or legal principles, such as nullum crimen, nulla poena sine lege or a right to choose the lifestyle independently form the country.

In my presentation I would like to introduce few of the ideas that have been introduced in the last decades in order to solve some specific problems caused by psychopaths, such as register parenting, more sever punishments or segregation. Psychopathy is probably one of the most troublesome problem for contemporary criminal law, hence the estimated number of prisoners reveal characters of psychopaths. Because of their specific characteristics the regular law of democratic roofs, with the institutions to protect person against the authorities do not, or maybe should not pertain to them. The main issue I would like to present is how democratic standards might not be suitable at some legal cases involving psychopath, and that following whose standards explicitly could entail a great amount of pain and abeyance to whose we can call “normal citizens”. What I see here is a severe conflict between at least two values: the standards of the state under the rule of law, with equality on the top of it, and attempts undertaken by the governments to protect the society. My aim is to show the main arguments for both viewpoints and start a discussion over the topic.

Death or Birth of Democracy?

Dr. Andraž Teršek, University of Primorska, Koper, Slovenia

The idea of establishing a more "people's democracy" is definitely worth listening to. Also to the proposals of establishing a system with more direct democracy in its political system. Nonetheless even the proposed extradition of democracy to the people. Agreeing with this idea in itself does not mean that we therefore have to understand direct democracy literally: an overall referendum democracy. Agreeing with this idea does not promote the view that voters should directly make legally binding decisions instead of political representatives in the parliament from now on. Appeals for greater immediacy and hence a more people's democracy should be seen as justified (legitimate) demands for urgent increase in the rate with which politicians and public government and parliament officials are actually caring for the rights, interests, concerns and needs of the people. These appeals should be construed as a commitment to increase the direct participation of voters in the political process. These appeals arise primarily from the legitimate belief that there should finally be ensured an effective and viable power sharing between political representatives and voters. Any modifications of the social system should target this objective.

Democracy is fragile and brittle. Democracy is even easily destructible. Democracy can be destroyed only by the "panic of elites" (John Keane). This happened for example in the Weimar Republic. On the other hand, the "extension of the agony of elites to all, but not their privileges" is the cruel fate of modern democracy (Pascal Bruckner). The same elites are circulating all the time and they only change their positions. For them it is righty said that they are far from the people (Hillary Weinwright). These elites do not assume social responsibility for their own status and actions. They do not share their power with the people.

Political parties are far from being just a form of political organization. They have become primarily a way of creating, maintaining and abusing a monopoly of power at all levels of social life. Political parties are the starting point and the mechanism of recruitment and promotion of elites. According to the organization Freedom House there has never been so little democracy and so little freedom since 1995. The authoritarianism of elites is growing. People with political privileges and monopolies naturally resist change. Even by force if necessary. The contemporary representative democracy has made a reality of all those mistakes and fears that once were used as arguments against the excessive influence of people in political decision-making process: from irrational motives in decision-making to selfishness and short-term individual interest, all the way to the ignorance of the law and disregard of fundamental constitutional rules and principles. Representative democracy has emerged as a pragmatic variable, emotionally short-sighted and naively submissive to the will of a narrow circle of people with the greatest political influence.

Representative democracy needs to be changed. It needs to be faced with the alternative. Greater immediacy of decision-making and greater influence of people in democratic decision-making needs to be assured. Among the conditions which need to be fulfilled in order to achieve this is certainly to change as much of the political elite as possible. It is therefore necessary to support the defenders of the idea that new people who would be representatives of labour, knowledge and ethical stance need to be found and connected together. These people should be organized and among them new decision makers should be found. The organization of these people, the new decision makers, should not be organized in the form of hierarchical, unprincipled, blindly obedient and "personalized" political parties.

Democracy itself produces a lot of problems. A lot of these problems cannot be solved within democratic framework. Many negative arguments about democracy are arising. Democracy as a process of public control of power has never been and probably cannot be developed to perfection. Yet, it is to believe that this process should not be given up. Problems of democracy should be approached with more democracy (John Dewy). This process should not mean the death of democracy, but a new birth of its more genuine self.

Improving the working environment in key sectors of the Coastal and the Karst region (IDO PRIMORSKE): New Working Environment as a Necessity for a New and Genuine Democracy

Dr. Andraž Teršek, Dr. Aleksander Zadel, University of Primorska, Koper, Slovenia

"Izboljševanje delovnega okolja na Primorskem (IDO Primorske)" is a research project conducted at the Andrej Marušič Institute, Koper, Slovenia, in the period between April 2010 and December 2012. It is funded by the European Social Fund and the Slovenian Ministry of Labour, Family and Social Affairs.

Research project pursues two main objectives. On the one hand it aims to provide policy-makers with in-depth understanding, new ideas and specific recommendations for improving the existing legal regulation in the fields of working environment and workplace health and safety. On the other hand it wants to transfer the acquired knowledge and findings into practice in order to assist human resources (HR) managers in improving their company's HR strategies and to give their employees specific knowledge and tools to tackle everyday work-related problems and to help them advance their careers.

Research activities are focused on five areas that are of the utmost importance for the quality of the work processes and determine the quality of working conditions: workplace stress, absenteeism, fluctuation, burnout and work–life balance.

Those issues have an important connection with the general legal and political issues of the contemporarily society. Improving of the quality of working environment is strongly related to the issue of general quality of the lives of individuals (their well-being).

This issue is certainly one of the most important factors for the necessary change and revitalization of the democratic political process in our society. Among other things, it is also a question of our common social ability (also skills) for effective and quality decision-making. Overall deterioration of the mental health of the active population will have long term implications for both efficiency and quality of the democratic process and for the personal quality of life of individuals living in a democratic society as well. It is a highly important and possibly even fatal challenge.

From the perspective of citizens this challenge should be primarily addressed as a question of mental and physical ability to competently participate in political decision making. From the perspective of decision-makers it is particularly a question of their competence to manage the democratic process at the highest institutional level. Therefore, these issues must also be placed in the center of public debate. Human, economic and social costs associated with deterioration of mental health are considered to be one of the most important factors of global social (economic and political) crisis. There will be no quality and revitalization of democracy with no quality and effective protection of mental health.

Spanish Customary Law Courts as a Model of Preventing and Solving Water Conflicts

Marcin Wróbel, Jagiellonian University, Krakow, Poland

Spanish customary law courts *El Consejho de Hombres Buenos de la Huerta de Murcia* and *El Tribunal de las Aguas de la Vega de Valencia* with their Muslim roots and more then one thousand years are said to be the oldest legal institutions in Europe.

Both courts have power to judge in cases connected with the irrigation channels near Murcia and Valencia. They are also responsible for current water administration in these regions, however they are subordinated to superior organs. As courts *El Tribunal* and *El Consejo* are the last (and first) instance, and their judgments are final.

Litigations between irrigators in Murcia and Valencia are concerned with the prohibited influence on flow of water, such as raising structures blocking flow of water.

Customary law courts in Spain are some of the possible ways of carrying out judicial power by citizens. Although they are based on customary law they have their role strengthen by Article 125 of the Constitution of Kingdom of Spain, as well as the Organic Laws of *Communidad* Murcia and Valencia and Spanish Law on Judicial Power. Judges with no legal education are elected democratically within the irrigators community.

Nowadays, and probably in the nearest future, number of water conflicts will increase. Although Spain is considered as a rich country there are also serious seasonal shortages of water, especially in the South – Eastern territories. There is also a possibility of taking the advantage of Spanish water courts in areas where the permanent water shortage occurs.

Both customary law courts are part of the UNESCO *Representative List of the Intangible Cultural Heritage of Humanity* and, as well, important part of the local culture and self – governance. Moreover, as institutions with Muslim roots they are great examples of long lasting model of sharing water supplies – the model called Syrian model of water distribution is occurring in Asia, Africa, Europe and both South and North America. According to the UNESCO World Report *Investing in cultural diversity and Intercultural dialogue El Consejo* and *El Tribunal* are one of the very best examples of traditional mechanism that is useful in the current democratic self – governance and preventing conflicts.

PANEL 2: Towards the Rule of Law – Regresses and Necessities

The Metalegal Doctrine of the Rule of Law

Piotr Brzostek, Jagiellonian University // University of London, Warsaw, Poland

In my paper I analyse the view on the rule of law of one of the greatest minds of our times - F. A. von Hayek. I would like not only to report Hayek's statements, but also show my intelectual effort towards presenting accuracy of thesis of the Nobel Prize laureate.My main aim is to present the rule of law principle as a metalegal doctrine, which points out how the law should or ought to be; how to value it; which laws are good or bad; which actions are right or wrong. Law guaranteeing freedom holds the status of the guarantor as long as the society is attached to the rule of law principle. Law is able to fulfill its functions if it consists of general, equal and certain rules. It is not an instrumental tool of achieving particular interests, so Hayek opposes intrumental treating of law and calls such instrumenal treating 'the rule of people via law'. Freedom cannot exist without a specific guarantor which assumes the shape of general and abstract rules.

The law does not serve any particular interest but to maintain abstract order. Such law constitutes certain frames within which individuals are able to pursue their goals. The rule of law as a political ideal is essential to preserve freedom, but it also shows that our freedom cannot be guaranteed by written laws without apropriate social traditions. Laws are the expression of social development and they unfold along with the society - that is why making law from the very basis and rejecting old ones is a false constructivism. Society is not the organization that could be formed arbitrarily, regardless of its internal development. To some extent - I believe - Hayek's views are similar to Stefan Voigt's fine distinction between internal and external institutions. Internal institutions are shaped and forced by society, whereas external institutions are shaped and forced by state. Internal institutions are social norms, rules of behavior or even some specific ways of political behavior. External institution is for example a constitution. A distinction between those institutions explains why for example countries from Latin America - even though they applied solutions similar to American ones - had not produced civil societies and why their governments act in a different way than the government of the United States.

What is characteristic about Hayek's theory of law is the considerably limited role of the judges. This conception is based on the simple assumption that a judge is not able to possess enough knowledge to 'maximize' social benefits. Secondly the aim of law is strictly to maintain abstract, spontaneous order, not to interfere with social phenomena. The role of judges is to confirm just parties' anticipations, not to conduct any legal politics - neither ecological, social, economical nor any other.

My beliefs are a result of a deep reflection on Hayek's thesis. Therefore I believe I have a right to express my approval for discussed matters and give up polemics. I consider it as a justified research approach.

Judicial Reasoning, Judicial Policymaking, and the Rule of Law

Dr. Péter Cserne, Pázmány Péter Catholic University, Faculty of Law, Budapest, Hungary

Courts, especially higher or constitutional courts often take decisions which have large-scale social consequences. This does not mean that judges are necessarily aware of these consequences or that if they are, their decisions are motivated by what they expect to result from their decisions. Still, in public discourse court decisions are typically evaluated, welcomed or criticised in terms of their alleged consequences. For instance, constitutional courts are sometimes criticised for extending the justiciability of economic and social rights "irresponsibly", i.e. by neglecting the financial burdens on the state budget arising from interpreting such rights as justiciable. In other cases they are accused of being "irresponsive" to social and political needs and hiding behind legal formalism. Such public scrutiny sometimes amounts to pressure that judges should be made accountable for the consequences of their decisions.

In this paper I discuss how judges or collegiate courts account for the consequences of legal decisions in explicit reasoning they provide for justifying their rulings. My approach is partly descriptive and partly normative. The first concerns various canons of arguments and doctrinal techniques that allow judges to account for consequences. The second is related to the alleged tension between judicial policymaking and the rule of law. I shall argue that to a large extent this tension can be reconciled: in other words, judicial policymaking as such does not endanger the rule of law.

Controversy about the Individualization of Sanctions in Criminal Law

Dan Florin Drugă, "Petre Andrei" University, Iasi, Romania

Finding and establishing criminal liability for committing any offense under the criminal law requires submission offender to attract criminal sanctions to bear incidents.

For a punishment to achieve its purpose, it must be chosen and wrapping so that, through each of its functions to achieve maximum effect.

Operation by which the punishment is tailored to the needs of social protection to ensure fulfillment of its functions and purposes of preventing and combating crime is called individualization of punishment.

Any punishment can fulfill these functions effectively, influencing the conduct of the prisoner, and not only his, if appropriate, adapted to a particular case. This means that, in establishing the genre, its amount and manner of execution must take into account a set of data, circumstances and situations, which, if subjected to trial, characterized the actual content of the offense, provided that the act was and the offender committed person

Individualization of punishment is a fundamental principle of criminal law, while being one of the instruments for implementing the criminal policy.

Thus, the legislature determined in the abstract - – defense needs taking into account social and considering the extent possible, the variety of assumptions which may arise - the social danger of each particular type of crime and criminal liability to train her having done so , the judge has the obligation to set in concrete - in relation to particular criminal offense and a determined real gravity and danger of the first particular of the second, joining in the general appreciation of the legislature;

In conclusion, the criminal doctrine distinguishes between individualization that is done during the development of law and punishment provisions limit the application of the penalty phase and during the execution of the sentence.

The complexity of the institution of individualization of sentences in criminal law doctrine resulted in criminal existence of controversial issues, questionable, some of which will be presented below.

Legitimate Interference of Public Authorities in Exercise of the Right to Privacy and Family

Dana Larisa Drugă, "Petre Andrei" University, Iasi, Romania

European Convention on Human Rights protects, in the Art. 8 - the first of a series of four texts - rights which means respect for social due to the individual. He has thus powers which enable it to demand respect for his private and family life, his right at home and correspondence.

The Convention system, the essential characteristic of all these rights and freedoms is that it covers every text that contains a paragraph proclaiming them close to an absolute way, because in the second paragraph of that text, to be provided certain conditions in which the exercise of rights and freedom may be subject to certain restrictions.

Although there are similar international regulations, protection of the right to privacy and family is still more effective European Convention system. This is why, in what follows, we will examine two cases submitted to the Court, trying to highlight its mission bodies to determine the scope of the rights and freedoms guaranteed by the Convention and therefore to specify the content requirements exercise of these rights may know the limitations imposed by their texts are based material.
We also tried to capture how the bodies of the Convention have interpreted these provisions and have managed to adapt this reading needs mores and social development.

In order to achieve its goals, we will examine two cases from the Court.
With regard to the rights protected by the Convention, it is known that some, such as the right to life and not be subjected to torture, inhuman or degrading treatment, are considered intangible, because it involves no derogation, while others, such the right to privacy, family, home and correspondence, freedom of association, information and expression, of thought, conscience and religion are called conditional, given the fact that knowing the limitations. These limitations have their origins in the Universal Declaration of Human Rights, adopted by UN.

Rights governed by art. 8 of the Convention are included in the conditional rights, because, according to the second paragraph of that text, the interference by a public authority is permitted to the extent that such interference is prescribed by law and is a measure, in a society democratic, it is necessary for national security, public safety, economic welfare of the country of disorder (public) and prevention of crime, protection of health or morals (public) or protect the rights and interests of others.
So, to be consistent with the Convention, the interference of state authorities in the exercise of rights protected by Art. 8 must be prescribed by law, pursue a legitimate aim and to appear as necessary in a democratic society.

Even if it is national security, the concept of legality and rule of law in a democratic society require that measures affecting fundamental human rights can form the subject of adversarial type, before a competent authority to verify the reasons for the decision and relevant evidence, to require compliance with procedures relating to intelligence.

Post-Socialist Legal Pluralism and Rule-of-Law. Comments on András Sajó's concept

Dr. Balázs Fekete, Pázmány Péter Catholic University, Budapest, Hungary

In his article entitled Pluralism in Post-Communist Law András Sajó openly addressed the question of whether the former Socialist legal systems could be studied by applying the theory of legal pluralism. Upon discussing the Hungarian situation as a typical case-study, he reached the conclusions that the recent post-Socialist legal landscape is determined by parallel normative orders. He identified various factors of this legal pluralism, ie. elements of internal pluralism exerting influence within the state legal order and competing outside legal orders as for instance the law of criminal organizations. Sajó's main conclusion is that this pluralistic situation of normative orders weakens the centrality of state law, therefore it may fail to promote traditional values of modern law, such as equality, certainty and trust.

This presentation will be devoted to a detailed discussion of this position. The foremost question is whether the situation as drafted by Sajó is really a unique one only existing in East-Central Europe. If it so, is there any difference between the Western legal systems and East-Central European ones from this aspect? One of the possible answers is that state law, that is, the official legal system based on constitutionalism plays a prominent role in Western societies while it has a different one in the former Socialist countries. Secondly, this pluralism of legal orders should also be examined from the aspect of rule-of-law. May the other competing legal orders be responsible for the shortcomings of the rule-of-law in East-Central Europe? Is legal pluralism a proper tool to explain some of the problems related to deficiencies of the functioning of our legal systems?

The Influance of the EU Legal Order on the Rule of Law in CEE Countries – the Law & Economics Approach

Katarzyna Guziak, Jagiellonian University, Krakow, Poland

"Th Influance of the EU Legal Order on the Rule of Law in CEE Countries – the Law & Economics Approach".

The main goal of this paper is to indicate the role of Constitution as the main determinant of the process of transformation. It shows how Constitution influences the results of transformation in particular post-communistic countries and highlights the strength of non-economical institutions' impact over the success of the economical reforms. In the whole process, the vital role is played by the "external anchors": Council of Europe, European Union, OECD, OSCE and International Monetary Fund. It seems that the most important is the European Union, its legal order, the role of the Court of Justice of European Union and the level of identification of post-socialist countries' citizens with the values of the European Union. These dimensions altogether create the "European Constitutional Identity" that shapes the constitutional order in CEE countries.

The paper indicates factors that are responsible for today's outcome of transformation and shape of constitutional institutions. On the other hand, it tries to assess the level of constitutionality of the law issued by the Court of Justice of European Union (that becomes a new area of influence over the transformation). In unison, it explains why Central and Eastern Europe decided to choose the Western European model of concentrated judicial review and how the attitude of constitutional courts in CEE countries influenced the European dimension of transformation process in this part of the world.

In contrast to the usual top-down analytical pattern, the paper (following the philosophy of Hans Kelsen) reverses the paradigm by looking at constitutional developments and dynamics from the bottom-up, studying how domestic constitutional evolution contributes to transformation and European integration. The exploration of Europeanization effects in recent Member States substantiates and demonstrates how enlargement has been an important driving-force for the effective export of EU legal rules in this region through the EU law, judiciary system and its jurisprudence.

I

The first part of the presentation is based on Law & Economics (both qualitative and quantitative) analysis of the transformation. It is a background for further review of the influence of European Union over the constitutional dimensions of transformation in Central and European Countries. The main argument here is that the Constitution had the leading role in shaping the process of transformation and bringing concrete economical results. It is based on the comparative law approach to the constitutional law reforms in the post-communistic countries. Immediately, after the collapse of the communistic regime, these countries tried to make use of co-called "window of opportunity" (Balcerowicz 1998) and from the same beginning have been building a new political order based on new constitutions (1990-1996). Only two countries: Hungary and Latvia decided to come up with a different solution. Finally, from 1990 to 2003 all post-socialist countries had new constitutions.

The analysis takes into account such factors like e.g. the character and quality of check-and-balances doctrine, the relations between three main powers (the legislative, the executive, the

judiciary), the level of centralization of power, the quality of bill of rights and finally very important analysis of model of independent centralized judiciary. Moreover, the research evaluates the impact of „capitalism by design" doctrine over the choice of institutional structure and the trajectory of "path dependency". It also shows how this whole context influenced the "institutional emptiness" in the civil society through creating concrete constitutional solutions as a reaction against such post-communistic phenomena like: rent-seeking, state-capture or corruption. Finally, it depicts how the outcomes of transformation were determined by the impact of so-called "external anchors": European Union, NATO, United Nations, Council of Europe, International Monetary Fund, World Trade Organization etc.

II

The second part of the paper shows the correlation between particular countries' constitutional orders and EU law. The most relevant here is the analysis of the impact of the Court of Justice of European Union jurisprudence and the European Commission rulings over the domestic constitutional orders in Central and Eastern Europe. The paper addresses the issue of the legal status and quality of EU law that recently, especially after the adoption of Lisbon Treaty, raises a lot of controversy. It is very essential in the recent discussion about the need for changes in many constitutions of post-communistic countries.

Therefore, this part of the paper distinctly shows the impact of the so-called "external anchors" over the transformation by analyzing the influence of EU legislation. The most important field of this analysis concentrates on the Court of Justice of European Union decisions (e.g. Costa/ENEL), the networks and platforms of cooperation in EU (e.g. COSAC) and the constitutional dimensions of process of harmonization of EU law. This analysis is predominantly based on the preemption doctrine. This approach seems to be especially justified after the adoption of the Lisbon Treaty and after the feedback to the Lisbon Treaty particular provisions and institutions (e.g. the role of second chamber of parliament, Declaration no. 17, the Charter of Rights in the Treaty of Lisbon) that has been given by some constitutional tribunals in CEE (e.g. Polish, German, Hungarian and Czech).

The results of many sociological researches also show the importance of the EU law and its values among the citizens of post-communistic countries and visualize the approaches to "European Constitutional Identity". How does European constitutional order relate to the specific constitutional identities of post-communistic nation-states? What is the relationship between the discourse about political integration within the EU and the existence of "European Constitutional Identity", as separate from, and paramount to, identities of these countries? The subjective "European Constitutional Identity" in post-socialistic countries turns out to be a driver for many constitutional choices that influenced the condition of institutions and resulted in differentiation of the transformation process in Central and Eastern Europe. This controversy often concentrates on the constitutionality of the jurisprudence, its impact on the institutional system and the question why Central and Eastern Europe adopted the European model of concentrated judicial review. It seems there are at least three explanations for implementing such a model rather than e.g. the US model of diffuse review but, again, the most important explanation here is the influence of the so-called "external anchor": European Union. Such an answer to this question, we can find in the legislative process under the new constitutions of post-socialistic countries - e.g. the adoption and functioning of Article 90 of Polish Constitution and the stages of the evaluation of draft legislation in CEE countries.

III

This paper presents the interdisciplinary methodological approach that is specific for a Law & Economics and the Economy of Constitution. This includes the theories form such disciplines like: sociology, economy and law – especially: Law & Economics, new institutional economy, public choice theory, sociology of law, comparative legal analysis, etc.

The whole research is based on the definition of Constitution presented by James Buchanan and on the theory of the Social Insurance Contracts.
The changes of the constitutional systems are depicted with the use of qualitative and quantitative data of European Bank for Reconstruction and Development (EBRD) published every year in the "Progress in Transition" reports (1994-2006) . The analysis also contains data published by International Monetary Fund, World Bank, the Venice Committee of the Council of Europe and other research institutes (e.g. Center for Social and Economic Research in Warsaw).

The thesis presented in the paper are based on such approaches like: Bargaining Model, the Game Theory, "Economical Analysis of Delegation" and the supply-demand analysis measuring the quality of legislation and jurisprudence (especially issued by the Court of Justice of European Union). The strong correlation between the constitutions, the outcomes of introduced reforms and the law issued by the European Union is measured by the Granger Test of Causality, the Herfindahl–Hirschmann Index of Concentration, the Freedom House Index and the MIMIC method.

Debating Moral Issues - Before Courts or Legislatures? - Some Remarks on Waldron's Theory of Democracy

Agnes Kovacs, University of Debrecen, Faculty of Law, Debrecen, Hungary

This paper aims to discuss why we should entrust judges with authority to settle moral issues of great importance rather than assigning this task to legislators. I am not interested here in the procedure and methodology that should be used to settle constitutional disputes, but in the type of the forum that can best solve basic moral dilemmas. The approach I present here implies that judges rely legitimately on moral principles in their reasoning, and constitutional cases cannot be decided without the moral reading of the constitution.

Jeremy Waldron argues that judicial reasoning differs from genuine moral reasoning. He claims, while legislators engage in pure moral reasoning and discuss issues without any institutional restrictions directly on the merit and taking into account all the opinions related to the matter, judicial reasoning is tied by the text of the law, and also constrained by legal doctrines and precedents.

In this paper I try to rebut Waldron's theory which says that legislators are better at moral reasoning than judges, and in consequence I indicate how political authority between judiciary and legislature should be allocated. The debate on the role of judiciary in constitutional cases may also shed light on the fundamental issue of the institutional design in democracies.

I do not claim that democracies with judicial review perform necessarily better at protecting human rights than those that lack the institutional form of constitutional control over legislature. I only argue that despite some negative experience with constitutional courts, we should still support judicial review, and judges have the justified right to have the final say on constitutional issues directly concerning fundamental rights.

Judiciary and legislature are both obliged to provide rational argumentation when imposing legal duties on individuals. But the justification is considerably more important in judicial decisions than in legislative actions. Legislators do not need to adhere so strictly to reasons that are coherent with the fundamental principles of political morality since they can mask the violation of the values stipulated in fundamental laws by referring to the majority argument. For that reason, I stand for the claim that courts must be vested with political authority to decide significant constitutional cases, because it is the judges who can ultimately define what reasons can be in a constitutional democracy legitimately given when justifying legal obligation.

The theoretical objective of this paper is to clarify the nature of moral reasoning that courts shall perform and to highlight the main arguments underpinning the existence of constitutional court as the final authority over moral issues.

Compulsory Adjudication in Kelsen and Lauterpacht Theories

Mario Krešić, University of Zagreb, Faculty of Law, Zagreb, Croatia and European Faculty of Law in Nova Gorica, Nova Gorica, Slovenia

According to the current international law, submission of disputes to international adjudication is essentially voluntary in its nature. The rule of non-mandatory adjudication has its background in the doctrine on distinction between legal systems based on coordination and those systems based on subordination. This differentiation is in accordance with doctrine on justiciable and non-justiciable disputes. Kelsen and his student Lauterpacht, through criticism of both doctrines have developed theory on inherent need for compulsory adjudication in international law. Their contribution to the discussion on the concept of compulsory adjudication is of particular relevance for the legal theory and it is closely connected with questions on the nature of judicial function and relations between law and politics.

Stabilitas Iuris as Part of the Rule-of-Law State

Dr. Marko Novak, European Faculty of Law in Nova Gorica, Nova Gorica, Slovenia

Modern Western civilisation has witnessed a massive growth of legislation and other legal acts. This stems from the fact that our everyday life is very fast, maybe too fast, and such are also changes to legal acts. Sometimes it seems that we seek legal changes only for the sake of them. It means that the dynamic content of law is flourishing. The situation in Slovenia is even more striking. For this reason, it seems that legal certainty including legal predictability is jeopardised. However, law should also include a static component. The static component of law has ever been part of it, either in the form of stabilitas legis or stabilitas iuris. My claim is that it should be recognized again, as part of the rule-of-law principle.

Towards the Rule of Law or the Rule of the Boots? - A Liberal Perspective on Democracy and Human Rights

Dr. Axelle Reiter, European University Institute, San Domenico di Fiesole, Firenze, Italy

The legal position of human rights has been endangered since the beginning of the 'war' on terror, providing to governments the ideal excuse for a reactionary backlash under the flag of the necessity to protect democracy against its enemies. The current exploitation of the human rights discourse and the democratic paradigm for opposite ends makes it difficult to counter this tendency without a theoretical reconstruction of the notions and their implications. In this light, the proposed paper reformulates the concepts of rights and democracy, respectively as the rule of law and spheres of individual sovereignty. It also puts forward that both concepts are interdependent and mutually supportive notions. Namely, human rights norms advance a conception of democracy that meets its full potential by guaranteeing the rule of law and liberty.

The main idea at the core of the rule of law is that state officials need to be 'ruled' by the law, subjected to or under it, rather than above it. It implies the submission of the state to the law. The rule of law has two main facets. The first consists in a set of formal requirements, designed to ensure the predictability of the law and to entrench the legitimate expectations of all members of society. Besides, the rule of law serves as a protection of the ruled against abuses by their rulers. This second aspect of the rule of law has for double function to tame the political power and guarantee to individuals a sphere of personal liberty. The law is thereby internalising issues of legitimacy and transforming them into issues of legality. The question of the legitimacy of the law appears both at the level of its sources and at that of its material content and it underlies the relation between human rights and liberal democracy.

Conceiving democracy as the unmitigated rule of the majority disconnects it from individual liberty and the rule of law. Conversely, if democracy is understood as the rule of law, self-government and liberty, it cannot be conjured up as a rationalising argument for setting these values aside. In addition, international law tightly links democracy to the respect of the rule of law and adheres to a liberal, pluralistic and right-based conception of democracy. On the other hand, international human rights monitoring bodies interpret international treaties through the prism of liberal democracy precisely because they consider that it is the only system capable of guarantying freedom to all. Liberal democracy leaves to each individual a private sphere of action, shielded from majoritarian interests, and consecrates a principle of equal liberty. The definite content of norms is provided by each individual and social cohesion is reached by relying on common rules dividing power into various spheres of sovereignty.

In this view, human rights determine the limits of law's legitimacy and the democratic character of the polity: a legitimate state and democratic institutions are respectful and protective of basic rights. Only this conception of democracy is sufficiently committed to the intrinsic worth of each individual to evade state-promoted abuses. Alternative roads lead into a transformation of the rule of law into the rule of the boots.

International Legal Coercion and Considerations of Global Justice

Verena Risse, Goethe University Frankfurt, Iserlohn, Germany

This article targets the observation that although coercion generally plays a dominant role in the ongoing discussion on global justice, it is largely ignored in its appearance as legal coercion. It is, therefore, the aim of this paper not only to try to make sense of the notion of legal coercion in an international context, but also to consider its consequences in the light of the broader debate on considerations of justice outside the nation state.

Indeed, statists like Blake and Nagel refer to state coercion to justify particularly strong duties of distributive justice among co-nationals and to argue that similarly strong duties do not hold vis-à-vis foreigners. Yet, their understanding of coercion tends to be too moralised to grasp the specificities that legal philosophers tend to attribute to it. Cosmopolitanists like Pogge or Caney, by contrast, identify various cases of coercion at the international level and claim that those trigger duties of justice among the concerned. The referenced cases, however, range from systemic over institutional to economic coercion. This has the effect that the concept of coercion itself risks to lose its proper standing and to collide into neighbouring notions such as domination or exploitation.

For these reasons, this paper focuses on the concept of legal coercion which is meant to refer to coercion that is legally sanctioned and authorised in contrast to coercion that is merely exercised on legal grounds. After defining and exploring this understanding in more depth, it shall be questioned whether one can also make sense of legal coercion at the international level despite the lack of a global enforcement authority. To this aim, several examples, in particular those of intra-state punishment (D'Armato) and international administrative law (Kingsbury, Krisch), shall be considered and it will be argued that one can, indeed, find cases of what might be called international legal coercion.

With this in mind, one may once again turn to the question of global justice while pursuing what is called the practice-dependent method, i.e. by 'taking existing social and institutional practices to be constitutive of principles of justice' (Ronzoni). On these grounds, it seems to follow that considerations of international justice do have to take into account the structures of legal coercion that have so far emerged. It is, however, less obvious that these give rise to full-blown accounts of distributive justice. Rather, one might start by developing material principles of an international rule of law and in so doing not also enrich the legal, but also the political philosophical debate on global normative demands.

Textual Fidelity and The Rule of Law

Bojan Spaić, University of Belgrade, Faculty of Law, Belgrade, Serbia

Contemporary debates in legal philosophy in the anglo-american world in non-positivist circles have put focus on legal interpretation. In the disputes between originalism and non-originalism one of the main issues that emerged were the questions of fidelity to the text of law.

On the view taken in this paper, in spite of the prominence and range of recent debates two decisive elements are being overlooked. The first concerns the failure to take into consideration continental jurisprudence throught the XX century that extensively discused problems of fidelity to legal text. This is one of the reasons that Francis Mootz called recent theories of interpretation "ugly american hermeneutics". The second failure is the inability to link legal interpretation to wider concerns about law, especially with the rule of law.

In the papper I shall try to cover two broad and interconected subjects:

1) In the first part I shall try to elucidate the relation between continental and anglo-american legal thinkers on the subject of textual fidelity on the level of concepts and ideas.

2) An examintation will be undertaken if clasical conceptions of the rule of law are conceptualy incompatible with both the extreme interpretativism and extreme determinism in legal interpretation.

Within Democracy's Reach? - Revisiting Some Objections to Judge-Made Law

Dr. Tilen Štajnpihler, University of Ljubljana, Faculty of Law, Ljubljana, Slovenia

There is hardly any doubt that contemporary legal systems within the civil law tradition acknowledge the value and importance of case law, particularly for judicial decision-making (judicial reasoning) and the proper functioning of the legal system as a whole. Numerous examples from courts and academia demonstrate the need to maintain a relatively stable and coherent judicial practise and emphasise a considerable justifying force of arguments derived from previous court decisions. But even consistent and longstanding judicial interpretations of statute law or constitutional provisions are only to be understood as having de facto or persuasive authority in subsequent decision-making and cannot constitute »law« as such. Even though the foundation for this theoretical position can mainly be explained with regard to certain features of the historical development of the continental legal tradition, it is also supported by some compelling political and/or constitutional considerations. Among these objections, the most frequently mentioned one is the objection regarding the principle of the separation of powers in connection with the democratic form of government under the constitution. »In every society there is a division between rulers and ruled«, argued for example Lord Devlin in 1976, and the »first mark of a free and orderly society is that the boundaries between the two should be guarded... The keepers of these boundaries cannot also be among the outriders. The judges are the keepers of the law and the qualities they need for that task are not those of the creative lawmaker«. His words, however, do not revolve solely around questions of efficiency and suitability of judicial law-making or the value of a functioning system of checks and balances, but also concern the problem of the democratic legitimation of judge-made law. Reconsidering these issues is the central focus of this contribution: how can these fundamental concepts and doctrines of our constitutional and political order be interpreted to also accommodate the notion that certain court decisions have a general legal effect that extends beyond the scope of the individual case?

Introduction of Criminal Law Powers in Other Legal Procedures - Do Widespread Powers also Mean Wider Safeguards?

Dr. Sabina Zgaga, Faculty of Criminal Justice and Security, Ljubljana, Slovenia

Numerous types of legal procedure, other than criminal, have been introduced to supress and punish certain illegal acts in Slovenian legal system. For example, Agency of Republic of Slovenia for Competition Protection has numerous powers, which resemble the powers of investigative judge, state prosecutor and police in criminal procedure, such as the search of business premises and investigation of correspondence. Similar powers can be also found in the misdemeanour procedure, run by the Slovenian Security Market Agency. On the other hand, the Slovenian police executes same powers (for example bodily search, search of vehicle) in criminal procedure and in procedure according to the State Border Control Act, however the limitations according to the latter are much lesser then the limitations according to the Criminal Procedure Act (for example regarding standard of proof). This of course enables the police to bypass the stricter regulation of Criminal Procedure Act by executing relevant powers at state border. Also the Slovenian Constitutional Court once allowed the use evidence, seized at the state border according to lesser limitations in criminal procedure, where higher standards usually apply. These are only few examples, when powers, typical for criminal procedure are used in other procedures, which can be followed by grave, but formally non-criminal sanctions for the physical or legal person in question. The question however is, whether such powers and their regulation are in accordance with Slovenian Constitution. Spreading of such powers and grave sentences should also be followed by spreading of constitutional safeguards, but it is not done so in every case. Consequently, the regulation is in certain cases unconstitutional.

PANEL 3: Open panel

Economic Crisis as a Threat to Security? - Identifying the Determinants of Property Crime in Slovenia

Dr. Meta Ahtik, University of Ljubljana, Faculty of Law, Ljubljana, Slovenia

The first longitudinal study of this type in Slovenia addresses economic and social causes of crime and tries to determinate their significance in criminal behaviour through development of an empirical model that analyzes criminal behaviour in Slovenia by using time series data for period of 1963 till 2010. Theoretical framework implies that besides institutional environment and social structure economic situation importantly determines the level of crime in society. Econometric analysis uses variables that represent determinants of crime: economic conditions, probability of conviction and, additionally to the basic model, share of young males in the population and dummy variable that represents some of the peculiarities in the transition period in Slovenia. Empirical findings are mainly in accordance with the theoretical framework. Due to deteriorating economic situation it is possible to expect increase in the level of crime unless certain preventive measures directed into increasing the cohesion of the society are taken.

Matrimonial Regime Legal under the Provisions of the New Romanian Civil Code

Dr. Nadia Cerasela Aniței, "Petre Andrei" University, Faculty of Law, Iasi, Romania

By Law no. 287 of July 17, 2009 on the Civil Code republished through Law no. 71/2011, the new Civil Code is subject to the tendency of the modern legislations to create a triple economic balance in relations between spouses matters by means of the matrimonial regimes established:

1. between spouses: the emergence of marital agreements, which led to the adoption of more flexible legal rules, that allow spouses a certain freedom to choose the regime of patrimonial relations between them;
2. within the family: to protect the interests of the family, they resorted to mandatory rules that provided for limitations and prohibitions (Art. 321-322 on family home - new concept in the Romanian law, art. 316 regarding the acts seriously threatening family interests);
3. between family and society-third parties: through the establishment of certain substantive requirements of legal acts, including of the marital agreements concluded by affidavit, with the obligation to be made public.

We believe that in the new Civil Code, Chapter VI of Book II - The family is called Patrimonial rights and obligations of spouses devotes Section 1 Common provisions, paragraphs 1-3, art. 312-328 to the primary regime.

The primary regime governed by art. 312-328 of the new Civil Code is defined as all legal norms governing the relations established between spouses, or between one or both spouses on the one hand, and third parties, on the other hand, relations having as object existing assets at the time of marriage, acquired during it, as well as contracted obligations in connection with such goods or the carrying out of the obligations of marriage that apply to all marriages, regardless of the matrimonial regime to which the spouses are subjected.The provisions of art. 312 of the Civil Code establish: a legal system that is the community property regime and two conventional regimes: separation of property regime and the regime of conventional community (the latter includes conventional exemptions from the community property regime).

The legal matrimonial regime includes property acquired by both spouses during marriage, except for the goods provided by law, which are each spouse's own assets. The legal community regime will apply in all situations in which prospective spouses do not opt for the separation of property regime or for the conventional community regime.

Separation of property regime is characterized in that each of the spouses is the exclusive owner of their property and of that they acquire by themselves after the marriage, at the adoption of this regime spouses are required to draw up an inventory of movable property belonging to each one at the date of the contracting of marriage.
The Conventional community regime is applicable when by matrimonial agreement, they derogate from the provisions on the legal community regime, and the matrimonial convention concluded in this case may narrow or widen the community of goods.

Is "Naturalised" Methodology in Legal Theory Helpful?

Dr. Luka Burazin, University of Zagreb, Faculty of Law, Zagreb, Croatia

With regard to the methodology of determining the subject-matter of legal theory, there are two strands of thought. According to the first and the predominant one, the subject-matter of legal theory is primarily determined on the basis of an a priori conceptual analysis and the intuitions of a theorist expounding his theory of law. In doing so, the legal theorist uses introspection and leans on his own intuitions about the possible instantiations of law, taking them as the grounds for determining the essential features of law. The second strand is B. Leiter's proposal for the so-called "naturalised" legal theory. Following Quine's understanding of epistemology, Leiter subjects to criticisms the method of the a priori conceptual analysis and the role of intuitions in legal theory, holding the view that legal theory should be grounded in empirical research, which then enables an a posteriori conceptual analysis of the concept of law. In view of the fact that law is a concept "people use to understand themselves", Leiter suggests that introspections of legal theorists and their intuitions should be replaced with empirical research on the views of those subject to law, i.e. with the ordinary people's views about law. Such "folk" view would represent the so-called internal point of view in its widest sense – the point of view of all the addressees of legal norms in a legal system who acknowledge these norms as reasons for their actions. This "naturalised" methodological approach to legal theory raises a question on whether empirical research can be practically useful in constructing a theory of law.

The Subject of Jurisprudence

Dr. Goran Dajović, University of Belgrade, Faculty of Law, Belgrade, Serbia

Every legal discipline is determined by two elements. First one is the subject and second is the method of the discipline. For example, sociology of law is usually characterized by the method of empirical observation and its subject is mainly the relation between the law and the society or criminal law as its subject has positively valid norms about criminal offenses and punishments and appropriate method for such a subject, namely the method of dogmatic analysis.

Legal philosophers generally and explicitly claim that the subject of jurisprudence is the nature of law (or studying the essence of law). However, this claim is laden with ambiguity and it raises several important questions. Roughly speaking, first set of the questions is concerned with the „law“ and the second with the „nature“. For instance, range of phenomena („the law“) chosen to be explained and from which authors bring forward its general claims about the nature of law can be very different: state law, natural law, international law, customary law, etc. Furthermore, the law is social and the institutional fact, which is closely knit with the other social phenomena. This put forward the question about relation between the law and the society and whether the general jurisprudence can/must be constructed as jurisprudence not only of law but also of law and society.

On the other hand, when legal theorists seek for “the nature” of law, this ambition constantly meets with the problem of necessity. The problem is whether necessary features of all possible legal systems exist at all and what the necessity means in jurisprudence because parochialism of every legal order does not favor generality and necessity of jurisprudential theses.

Finally, these questions and problems become far more important if we bear in mind tight connection between the subject and the method and that the subject determines the method of its investigation.

After all, it is clear that the identity of jurisprudence as a legal discipline itself depends on resolving of such a kind of questions, and therefore few of them are analyzed in the report.

Changing Roles: Jewish and Muslim Religious Courts in Israel as Ethnical Identity Protector or Freedom of Conscious Oppressors

Olga Horain, Jagiellonian University, Krakow, Poland

Topic, which I would like to present is the problem with contemporary israeli's religious courts and their role in modern israeli society. They were raised to protect multiculturalism in Ottoman's Empire and then in British Mandatory. These days they still work, mostly on the same rules as at the beginnig. My argument is that what was the key for democracy, equality and freedom of human beings more than fifty years ago now is an instrument to control society by group of rabbis.

I would like to base on system of rabbinical courts in Israel, because they are the most powerful and meanigful in this country. Also would like to describe shortly muslim sharia courts and their agenda. Religious courts in Israel have an exclusiveness to rule about jewish marriage and divorce cases. Of course they also are dealt with religious things like kosher certificates, solving halakhical problems etc.

But we have to consider what does it mean 'jewish' in Israel. It means 'connected with judaism', but people who are 'connected' like this cannot decide by themselves if they would like to participate in any religious community. Until year 2011 israeli secular courts didn't adjudicate in any case, that a person, who would like not to be a 'religious Jew' officially has right to this and be excluded from jurisdiction of religious courts in the same way.

This is the main thesis which I would like to start from. Then I will show how the minority of orthodox Jews in Israel can manage the whole marriage law system by their own will, using the democracy.

In this particular case I would like to show how democracy could change the aim of some institution for a society. For a little part of it rabbinical courts are important factor in protecting their jewish, traditional values. For another one it is an oppressive institution which prohibits them to be men which they chose themselves.

Is Legal Positivism Tenable beyond Moral Non-Cognitivism?

Dr. Miodrag Jovanović, University of Belgrade, Faculty of Law, Belgrade, Serbia

This paper investigates the sustainability of a particular version of legal positivism, which is not grounded in the meta-ethical standpoint of moral non-cognitivism. In doing so, it proceeds from the core thesis of legal positivism, which is, despite other disagreements, common for all authors covered by this theoretical label. According to Gardner, this is the following thesis: "In any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits." In the central part of the paper, I distinguish between the two versions of legal positivism, which provide different arguments in favor of the aforementioned thesis. First version can be associated with Kelsen's Pure Theory of Law, whose ultimate justification lies with the epistemological stance of moral non-cognitivism. According to this view, since moral facts do not exist and, hence, are not discernable, the only way to study law scientifically, i.e. to provide true statements about law, is to expel metaphysics from legal theory. This, eventually, leads Kelsen to endorse the 'sources thesis', as well as to argue that description and analysis of valid legal norms is the method of jurisprudence.

In contrast, the most prominent proponents of legal positivism in Anglo-American jurisprudence (from Bentham and Austin to Raz) openly state that certain moral truths can be discerned. Consequently, they tend to stick to the 'sources thesis' for reasons other than those resulting from moral non-cognitivism. My intention is to demonstrate that under such conditions, legal positivism does not seem to be a tenable theoretical position. Every theory has to engage in the business of sorting out data that it focuses on, in a way consistent with general theoretical virtues, such as coherency, clarity, comprehensiveness (Dickson). If there are universal moral truths of any sort related to law, and they are discernable, the question is why legal theory would not incorporate this data in its study of law, particularly if it acknowledges, as legal positivists largely do, that there are "necessary connections between law and morality" (Raz), and that "law is morally fallible" (Green). In other words, if legal positivists concede to the thesis that "it necessarily makes sense to ask whether law is just", what would, then, be the justification for their refusal to integrate knowledge on verifiable instances of too iniquitous law in their conclusion about the nature of law and legal validity? I argue that no such justification exists. Accordingly, not only legal positivism of the second kind loses much of its internal consistency and clarity, but it also tends to obfuscate, instead to clarify the subject of its study. To state all this, however, does imply neither that I take Kelsen's Pure Theory of Law to be sustainable in its own right, nor that I endorse the meta-ethical stance of moral non-cognitivism. Conclusions of this sort would quite obviously require separate investigations.

Constitution of Subjectivity through Legal and Commodity Form

Anej Korsika, University of Ljubljana, Faculty of Arts, Ljubljana, Slovenia

Critique of political economy, as developed in Marx's Capital, is conventionally described as a theoretical synthesis that combines three intellectual currents. English tradition of classical political economy especially Adam Smith and David Ricardo, that has influenced Marx in his development and critique of labour theory of value. Utopian socialism, mainly associated with french writers such as Fourier and Saint-Simon that gave Marx's writing its distinctive revolutionary quality. Third tradition is the philosophy of German idealism that became expressed in a most sophisticated manner through the thought of Hegel. Although Marx was very critical of Hegel, especially the idealistic character of his dialectics, he nonetheless remained a constant source of inspiration. In the foreword to Capital he even declared himself a pupil of Hegel.

It is this conceptual framework that provides the basis for a Marxist critique of the theory of law. We can actually identify two currents that have developed in the history of Marxism with the relation to the critical analysis of legal system. On the one hand we can talk about critiques that are inspired by Marx's theory of ideology (latter on further developed by Althusser). This approach perceives law as an instrument of the ruling class. An instrument of coercion and domination that, although normatively prescribes equality, in practice functions as the generator of social inequality and injustice. Perhaps this view is even predominant in the Marxist analysis of the law. However it is not the only one, and it most certainly does not exhaust the potential of marxist theory. Quite the contrary, from the perspective of late Marx this theory is rather simplistic and lacking the true critical potential.

An alternative approach is the commodity form theory of law. One most systematically developed in the work by Evgeny Pashukanis especially in his General Theory of Law and Marxism. Instead of external ideological coercion, Pashukanis argues law should be viewed as internally bound and analogous to the logic of commodity form. That is way Pashukanis speaks of legal form as the logical structural supplement of the commodity form. On these grounds the whole project of critical analysis gains a profoundly different character. Ideological critique is insufficient insomuch as it obscures the fact that critique of human representatives (lawyers, judges etc.) of the logic of law cannot substitute for the critique of the legal form, which these very representatives must respect irrelevant to their subjective ethical aspirations. In my talk I wish to address exactly this, the subjectivity that originates from the analogy between legal and commodity form, especially from the perspective of its limitations and their possible overcoming.

Jurisprudence, Legal Theory and the Contemporary Science

Tomasz Pietrzykowski, University of Silesia, Katowice, Poland

THe paper explores the influence of the emerging paradigm of contemporary interdisciplinary science of the human mind on the legal research. It claims that it this development may lead to a major change in the way we understand and examine legal order. Cognitive neuroscience aims to regard all kinds of human behavior as products of mental capacities, skills or predispositions resulting from the evolutionary shape of the neural structures in the human brain. Therefore, legal orders need examination as cultural developments of such biologically hard-wired predispositions that make people prone to social cooperative behavior, reciprocity and other moral reactions as well as their cognitive transformation into sets of abstract rules governing behavior. In this respect legal science becomes a part of universal interdisciplinary enterprise to provide comprehensive scientific explaination of the relations between evolved biological shape of human brain, its psychological mechanisms and their socio-cultural products (such as law, morality, religion, art, society etc.). Thus, it becomes more and more distant from traditional jurisprudence and legal theory regarded as part of internal analysis and systematization of existining legal orderds.

The Concept of Objectivity from the European Comparative Perspective

Dr. Lidia Rodak, University of Palermo, Palermo, Italy

The paper proposes a theoretical and comparative analysis of conception of objectivity in legal reasoning and judicial decision in European legal systems. The main scope of examination is the concept of objectivity that is applied in jurisprudence of the courts, its deconstruction and its implication for the legal system.

The data used for the analysis come from the research project that have been carried out in few European legal systems including EU ruling itself (The research project: Objectivity in Legal discourse. The Comparative perspective. 2010-2012).

What is possible to observe on the gathered data is that the most common concept of objectivity that is applied in EU legal systems share the dualistic conception that objectivity, based on realistic approach, so called "strong objectivity". According to it, subjectivity is treated as the opposite of objectivity. The general characterization based on juxtaposing the following notions: on the one hand, objectivity is connected to the object and with regards to the object, whilst subjectivity is connected to subject and with regard to the subject.

This very radical position and philosophical stand is commonly applied in legal practice is at the same time incoherent with the discursive (non formal from logical point of view) character of legal argumentation. This gap is possible to observe in many examples of practical legal argumentation. When one examines the role of the argument from objectivity and its argumentative strengthens one can observe that in fact the soft conception of objectivity is applied, instead the strong one.

Answering the following questions reveals above mentioned tension:

(1) why the argument from objectivity is used
(2) where the argument is placed in the structure of legal argumentation
(3) what is his factual role
(4) what is his factual argumentative strengthens in compare with the results it is supposed to lead (does non- objective premises lead to the objective conclusion?)

The argument from objectivity is applied as if it comes to the conclusion, but the lack of its factual strengthens is based on two possibilities: the assumed (1) rhetoric power of the argument from objectivity or (2)realists concept of objectivity.

What follows from this on the theoretical level is that the (1)and (2) are incoherent with the vision of transparent legal system.

The Legal Language - A Useful Tool or a Hurdle?

Izabela Skoczeń, Jagiellonian University, Krakow, Poland

This paper aims at formulating a description of the basic characteristics of legal language, as well as depicting the differences between legal and natural language. It also intends to take account of the issues caused by the imperfections of legal language, mainly vagueness and indeterminacy of legal norms or statutes.

The descriptive analysis part will focus on the differences of defining subjectivity in legal language, in the lack of gradational relations, differences in the classification of objects, time relativity and most importantly the performative function of speech acts within the legal context.

The comparative analysis part will aim at showing the possible relations between law and language. Three possible hypothesis will be considered: the language of legal texts as a functional type of the natural language, the legislator's language an d the language of legal norms.

Legal language is obviously a very popular subject of interpretation. This is the result of indeterminacy, which is an inherent feature of the legal parlance. Three main sources of indeterminacy claimed by legal theorists will be considered. Firstly the situation where two norms of an opposite content are applicable to the same situation. Secondly the so-called semantic indeterminacies: ambiguity and vagueness and thirdly the content of an utterance, that is the pragmatic factor.

The author would like to take a critical approach toward considering ambiguity and pragmatic features of communication as utterly detached sources of indeterminacy. In the author's view both those issues are very similar and can be solved in an identical way with the use of context. It is just the scale of indeterminacy that differs. Ambiguity is situated at the level of words and pragmatic features are situated at a sentence level.

Finally a critical assessment of two philosophical attempts to solve the indeterminacy problem will be presented: Hans Kelsen's understanding of the norm as a frame (for interpretation) and law as a complete system with no gaps and Ronald Dworkin's Right Answer thesis.

The Relationship of Natural Law and Natural Rights

Dr. Szilárd Tattay, Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Budapest, Hungary

The natural law origins of the idea of natural rights is a well-known commonplace of the history of ideas. Notwithstanding, the relationship of natural law and natural rights is by no means unproblematic. The two most fundamental and complicated (to a great extent interrelated) questions to answer are whether

(1) the encounter of the idea of natural law with that of natural rights in a determinate period of Western political and legal thought was in a certain sense necessary, or on the contrary, merely accidental; and whether

(2) the relation between the concepts of natural law and natural rights is organic, contingent or mutually contradictory.

In my paper I intend to give a sketchy answer to the above questions.

Focal Defining from Aristotle to Finnis

Milos Zdravkovic, University of Belgrade, Faculty of Law, Belgrade, Serbia

Following Plato's theorizing, Aristotle was first who introduced and widely used way of defining the focal concepts (pros hen or aph henos homonymy). In "Politics", Aristotle in several places using focal defining to distinguish between the true meaning of the general term from its secondary or conditional meanings. Also Cicero, continuing the Greek tradition, makes a distinction between laws that are in accordance with reason, who provide an honorable and blissful life, and the laws that are only called so. According to St Thomas Aquinas, the focal meaning of the term "law" indicates the balance of positive rules and principles of natural law, while the peripheral sense of the term means certain, more or less, discord.

Finnis has based his theory on the long term of natural law tradition. In that tradition from Greek period to nowadays, focal defining was one of the main method - by exploiting the systematic multi-significance of one's theoretical terms, one can differentiate the mature from the undeveloped in human affairs, the sophisticated from primitive, the flourishing from the corrupt, the fine specimen from the deviant case, but all without ignoring or banishing to another discipline the undeveloped, corrupt, primitive, etc. instances of subject-matter. For example, there are central cases of law system, and there are peripheral cases (such as Stalin's Russia), but that not means that laws in Stalin's Russia are not laws. Finnis claims that the main task of natural law theory is to identify focal meaning of the term "law", but not to assert that unjust laws are not laws. In that way, Finnis was set soft version of natural law theory, and that version can describe and evaluate law phenomenon much more precisely than hard version of natural law.

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The Central and Eastern European Forum of Young Legal, Political and Social Theorists (CEE Forum) was initiated by a group of young researchers working in those fields at the University of Silesia in Katowice, Poland. It was the aim of the initiators to change the currently dominant practice of following the paths created mainly in other parts of the world and to try to establish a community able to provide a competitive environment for original investigations in the field of legal, political and social theory.

The motivating ideas behind the Forum are twofold. Primarily, the annual conferences are academic events which provide the opportunity for junior legal scholars, political and social scientists to present their research. Second, the Forum contributes to establishing and maintaining ties and networks for future common projects. With an increased academic mobility within Europe, young researchers from Central and Eastern Europe follow different strategies. Some are working at universities in their home country, others study or seek jobs at academic institutions in Western Europe and beyond, still others combine these strategies. The Forum shall contribute to establishing a genuine community of young legal, social and political theorists in Europe.

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International School
for Social and Business Studies
Celje · Slovenija

International School for Social and Business Studies
Mariborska cesta 7, 3000 Celje, Slovenia
Tel.: +386 3 425 82 40 · fax.: +386 3 425 82 22
e-mail: international@issbs.si · www.issbs.si