

Editorial

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EDITORIAL

In April 2011 Maastricht University's Law Faculty hosted the 17th edition of the annual conference of the Association of Young Legal Historians (www.aylh.org) under the theme *European Traditions: Integration or Disintegration?* The papers and posters presented sought to provide insight into the foundations and influence of European legal systems, an insight which contributes to our knowledge and understanding of the interaction between legal systems as such. Hosting the XVIIth Annual Forum of Young Legal Historians stands in line with the Maastricht tradition of critically and fundamentally reflecting on European legal developments, not only within the Department of Methods and Foundations of Law, but also within various research institutes, notably the Maastricht European Private Law Institute (M-EPLI) and the Ius Commune Research School. The theme of the XVIIth Annual Forum fits perfectly in this research tradition.

The conference papers presented under this theme reflected on the old legal pluralism in Europe, its old unity, and the strong elements of diversity, which have always been there. Therefore we feel privileged that the editorial board of the *Maastricht Journal of European and Comparative Law* gave us the opportunity to dedicate a special issue to the XVIIth Annual Forum of Young Legal Historians. We are particularly grateful as the *Maastricht Journal* has developed into a leading forum in which reflection and dialogue can take place, primarily on the new legal pluralism in Europe, its new unity, and the strong elements of diversity which remain. We selected, out of almost 50 conference papers, particularly those that reflect on the historical interaction between law and (European) society, and whether this interaction brought together peoples or societies, or whether it resulted in disintegration.

In the first contribution, *Second-rate citizens: Junian Latins and the Constitutio Antoniniana*, Egbert Koops analyses the consequences of the famous *Constitutio Antoniniana* – in which citizenship was granted to all free people in the Roman Empire – for Roman society, in particular for a specific class of free people, namely former slaves. Though eventually this grant probably resulted in the further integration of Roman society, it appears that this grant was careful not to interfere with the existing rights of the former owners of these freedmen. Koops draws a parallel with the creation of European citizenship in the Treaty on European Union (1992), which five years later appeared to be only complementary to national citizenship, as explained in the Treaty of Amsterdam (1997). An ancient lesson was taken to heart.

In the second contribution, *The 'Booke of Orders of Assurances', a Civil Law Code in 16th Century London*, Guido Rossi shows how economic needs can prompt legal changes,

such as that the changing English insurance customs in the 16th century made codification necessary. This example illustrates that codification is not a purely continental, 19th century affair, but that it depends on certain social and economic conditions, which were – temporarily – met in 16th century London. As the right conditions were met, there even appeared to be ample room for continental, in particular Dutch, influences on the Anglo-Saxon legal system.

Similar social and political circumstances – the unification of politically and socially divided countries, of Italy in 1866 and of Germany in 1871 – provided a fertile soil for Pandectist scholarship among Italian legal scholars, as Federica Furfano explains in *The Revival of Romanistic Scholarship between the 19th and 20th Centuries as a ‘Centralizing Force’ in European Legal History*. She analyses connections between 19th century German and Italian scholars, by examining Italian translations of German Pandectist literature. Also due to this German Pandectist influence, Italian legal doctrine escaped a long period of rigorous, literal exegesis of the new civil code, contrary to for instance French and Dutch legal doctrine.

In her contribution *New Imperialism (1870–1914) and the European Legal Traditions: A (Dis)Integrative Episode*, Mieke van der Linden shows how the ‘Scramble for Africa’ has shaped our perception of international law. Particularly our concept of legal sovereignty has been determined by 19th century social and economic conditions. She argues that New Imperialism was simultaneously integrative in its motivation but disintegrative in its effect.

Exactly this 19th century perspective on legal sovereignty appears to be fundamental to the analysis of Sandra Fabijanić Gagro and Budislav Vukas Jr in *The Path of the Former Yugoslav Countries to the European Union: From Integration to Disintegration and Back*. The former Yugoslav countries, which failed to integrate for almost a century, now (want to) enter the European Union, into which they again will have to integrate, also with each other. However, the current integration in the European Union takes place under completely different conditions than the one under the Habsburg monarchy or in the former Yugoslavia: now the former Yugoslav countries operate as sovereign legal entities.

In his article *The Enigma of Civil Justice in Imperial China: A Legal Historical Enquiry*, Peter Chan questions the dominant European classifications of legal systems. His analysis of the legal system in Imperial China shows that this system escapes the classical Weberian distinction between rational and irrational legal systems. He also explains that the contemporary Chinese legal system is rooted in this Imperial legal tradition.

This special issue shows how comparative legal history can be used as a tool to analyse similarities and differences between legal systems. It aims to provide a deeper understanding of common strands in law shared by European countries, such as the concept of legal sovereignty and the method of legal interpretation. But above all, these contributions, which vary considerably in subject, time and method, all reflect a

historical perspective on the fascinating, diverse European legal tradition. We wish you a pleasant read.

Maastricht, May 2012

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