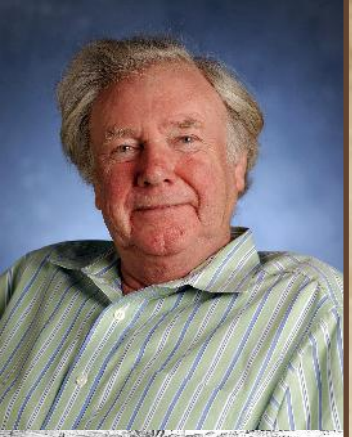







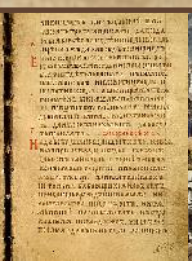

IUSTORIA 2024

Правни трансплanти кроз историју

Legal Transplants throughout History

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Stefan Antić
Pravni fakultet Univerziteta u Beogradu

ZEMLJIŠNOKNJIŽNO PRAVO NOVOVEKOVNE SRBIJE – AUSTRIJSKO I OSMANSKO PRAVNO NASLEĐE

Sa istorijskim, političkim, socijalnim i ratnim dejstvima, te uz njih neizbežno i promenama koje su zadesile novovekovnu Srbiju u prvoj polovini XIX veka, nemoguće je čitavu tu razuzdanu ,,pozornicu" ne posmatrati i kroz svetlost promena koje su se dogodile u oblasti prava – kako dogmatskog, tako i normativnog. Jedno od prvih pitanja koje bi se, čak i laiku, sámo nametnulo u situaciji promene državnih granica, vrhovnih i lokalnih vlasti, bilo bi pitanje statusa njegovih imovinskih pravnih dobara. Naime, još od prvih početaka razvoja prava, pojavljivale su se tendencije da imovinskopravni odnosi budu što čvršće i detaljnije regulisani. Kako je jedna pravna regulativa čist odraz kulturoloških, ekonomskih i socijalnih prilika sredine iz koje zakonodavci potiču, logičan rezultat te okolnosti je materijalna usklađenost pravnih propisa sa jednom društvenom tradicijom sredine na koju će se novonastali pravni poredak odnositi. Novovekovna Srbija zadesila se u središtu sukoba vojnih i političkih interesa dveju velikih evropskih sila – Osmanskog i Austrougarskog carstva. Kao prekaljeni osvajači, a uz to poznati i po doslednim asimilacijama pokorenih naroda, oba carstva znala su da je jedan od efektivnih načina da se pokoreno stanovništvo potčini novoj vrhovnoj vlasti – donošenje novih pravnih propisa. Donošenje novih pravnih propisa nesumnjivo je veliki pravnički poduhvat koji iziskuje veliki utrošak vremena, novca, ali i znanja, te posebno zahteva stručni, obrazovani kadar. Ono što može otežati celu proceduru noveliranja u jednoj sredini je okolnost da se, u momentu otpočinjanja tog procesa, postojeća pravna regulativa pojavljuje kao dijametralno, ili velikim delom drugačija spram nove. U tom pogledu, Srbija toga doba naišla je na najveći problem u oblasti zemljišnoknjižnih propisa. Naime, duga tradicija Osmanskog carstva, sa duboko ukorenjenim, pre svega, tapijskim sistemom, bila je nešto što je na ovim prostorima uzelo toliko maha, da su se i pokoreni narodi uzdali u njihov način regulisanja pitanja ove materije, što je ulivalo pravnu sigurnost. Sa prodorom regulative kakvu je ponudio Austrijski građanski zakonik, ali i relevantni sporedni pravni propisi koji su se direktno odnosili na pitanje zemljišnoknjižnog prava, došlo je do pojave jednog potpuno novog sistema ideja, koji se učinio primamljivim Srbiji, koja je u ovim momentima svoju borbu za oslobođenje od osmanske vlasti uveliko otpočela – što radi lakšeg odvajanja stanovništva od bilo kakvog autoriteta Osmanlija, što zbog svoje, za to doba, izuzetno naglašene praktičnosti, prijemčivosti i razumljivosti. U ovom radu, autor će obraditi pitanje recepcije zemljišnoknjižnih rešenja koja su Srbiji tog, pa i savremenog doba, ponudila oba pomenuta pravna sistema, njihove razlike, ali i to šta je od tih rešenja u Srbiji opstalo, u izvornom ili izmenjenom obliku, do danas.

Ivan Arambašić
Pravni fakultet Univerziteta u Beogradu

RECEPCIJA NACISTIČKIH DISKRIMINATORNIH NORMI U PRAVNOM PORETKU NEZAVISNE DRŽAVE HRVATSKE

Recepcija nacističkih diskriminatornih normi u pravnom poretku Nezavisne Države Hrvatske (NDH) tokom Drugog svetskog rata bitna je tema istorijskih istraživanja. Ovaj rad nastoji da istraži istorijski okvir ovoga procesa, njegove ključne ličnosti, kao i uticaj diskriminatornih normi na stanje u tadašnjoj državi. Dodatno, biće predstavljene ključne ličnosti u ovom procesu i njihov uticaj na isti, kao i sve perspektive ovoga procesa, što će obezbediti potkrepljenu analizu.

Kako bi se raumeo proces recepcije nacističkih diskriminatornih normi u pravnom poretku NDH, bitno je ispitati istorijske okolnosti koje su dovele do uspostavljanja ove „države-marionete". Aprila 1941. godine, nakon napada Sila Osovine, Hrvatska je proglasila otcepljenje od Jugoslavije, pod vođstvom Anta Pavelića i njegovog ustaškog pokreta, koji je težio stvaranju etnički čiste hrvatske države.

Ante Pavelić igrao je važnu ulogu u oblikovanju procesa recepcije nacističkih diskriminatornih normi. Kao vođa ustaškoga režima, preuzeo je anti-semitska i anti-srpska rešenja. Pavelićeva želja za etnički homogenom državom dovela je do stvaranja koncentracionih logora poput Jasenovca, gde je veliki broj Srba, Jevreja, Roma i drugih manjinskih grupa podlegao progonu i genocidu.

Recepcija i ukorenjavanje diskriminatornih normi u pravni poredak NDH imali su veliki uticaj na tadašnju državu. Ove norme, preuzete iz pravnog poretka nacističke Nemačke, odnosile su se na Jevreje, Srbe, Rome i druge manjinske grupe. Nirnberški zakoni, koji su definisali koje se lice smatralo Jeverejinom na osnovu rasnih kriterijuma, bili su prihvaćeni i osnaženi u NDH. Jevreji su bili podvrgnuti sistematskom istrebljenju, eksproprijaciji imovine i masovnom odvođenju u koncentracione logore. Recepcija ovih diskriminatornih normi imala je za posledicu gubitak nebrojenih života i nezaboravljeni strah preživelih i njihovih potomaka.

Dalje, ukorenjavanje diskriminatornih normi dovelo je do rasparčavanja hrvatskoga društva. Zajednice su bile razlomljene, komšije okrenute jedne protiv drugih, a podela je potpirivala nasilje i mržnju. Uticaj ovih normi osetio se i nakon okončanja Drugog svetskog rata, ostavljajući neizbrisiv trag na društvenom sastavu Hrvatske.

Nekoliko uticajnih pojedinaca doprinelo je razumevanju procesa recepcije diskriminatornih normi u pravnom poretku NDH. Jedna takva ličnost bio je Ivo Goldštajn (*Ivo Goldstein*), poznati hrvatski istoričar koji je iscrpno istraživao holokaust i ustaški režim. Njegov rad bacio je svetlo na zamršene procese koji su uticali na recepciju nacističkih diskriminatornih normi, pružajući kritičke poglede na želje i dela onih koji su u taj proces bili uključeni.

Druga važna ličnost je Slavko Goldštajn (*Slavko Goldstein*), preživeli iz koncentracionog logora u Jasenovcu. Putem aktivizma, oslanjajući se na svoja lična iskustva, Goldštajn je upoznavao javnost sa zlodelima učinjenim u ovom periodu, time se suprotstavljajući opšteprihvaćenom shvatanju i zalažući se za izmirenje.

Brojna su gledišta koja se tiču recepcije nacističkih normi u NDH. Postoje mišljenja da su ove norme bile neizbežna posledica političke klime toga doba, kako je Hrvatska težila nezavisnosti i međunarodnom priznanju, a postoje i zaključci da je ustaški režim iskoristio nacističku ideologiju kako bi sproveo etničko pročišćenje i genocid.

Uzimajući ova shvatanja u obzir, izuzetno je bitno analizirati istorijske podatke. Recepcija nacističkih diskriminatornih normi dozvolila je maloj grupi pojedinaca u Hrvatskoj da steknu moć i izvrše nezamisliva nasilnička dela. Norme su služile kao maska mržnji i podelama unutar društva, ostavljajući za sobom posledice koje i danas oblikuju Hrvatsku.

Romana Balatunović,
Predrag Pralica,
Pravni fakultet Univerziteta u Banjoj Luci

RECEPCIJA PRAVA KOD PITANJA POLOŽAJA ŽENA U SRPSKOM GRAĐANSKOM ZAKONIKU

Ovaj istraživački rad posvećen je analizi recepcije prava žena u srpskom građanskom zakoniku, s posebnim osvrtom na pravnu tradiciju i poređenje sa zakonima tog vremena. Cilj je dublje razumjeti kako su zakonici tog doba oblikovali percepciju prava žena u srpskom građanskom zakoniku i na koji način je žena mogla ostvariti pravni subjektivitet. Centralno istraživanje fokusira se na dimenziju recepcije prava kako u samom Zakoniku, tako i u periodu neposredno prije njega.

Kroz sistematičnu analizu pravnih tekovina, prikazuju se kompleksne interakcije između zakonskih normi i društvenih normi tog vremena, što će doprinijeti boljem razumijevanju položaja žena u srpskom društvu tog perioda. Ovo istraživanje takođe ima za cilj sagledavanje evolucije pravnih stavova i normi u vezi sa ženskim pravima, što može pružiti dragocjene uvide za dalja istraživanja u oblasti prava. Takođe kroz ovaj rad ukazaće se na položaj žene u prošlosti, kao i savremenom društvu.

Kroz analizu primjenjenih pravnih normi i njihovog uticaja na život žena u srpskom društvu, ovo istraživanje doprinosi širem razumevanju društvenih, pravnih i kulturnih faktora koji su oblikovali položaj žena u istorijskom kontekstu srpskog zakonodavstva. Na taj način, rad ne samo da će pružiti relevantne uvide u prošlost, već će i poslužiti kao osnova za promišljanje o sadašnjosti i budućnosti, te da li je društvo doseglo nivo zadovoljavajuće ravnopravnosti i priznanja prava i zaštite ženskih prava i sloboda. S obzirom na kompleksnost analiziranih tema, ovaj rad predstavlja korak ka širem razumijevanju pravnih i društvenih procesa koji su oblikovali status žena u srpskom društvu i pruža osnovu za dalja istraživanja i aktivnosti usmjerene ka postizanju ravnopravnosti u savremenom društvu.

Teodora Bjeloš
Pravni fakultet Univerziteta u Beogradu

UTICAJ VILSONOVIH „14 TAČAKA" NA NASTANAK I UREĐENJE KRALJEVINE SHS

Cilj ovog rada jeste da istraži uticaj programa „14 tačaka" Vudroa Vilsona na nastanak i uređenje Kraljevine Srba, Hrvata i Slovenaca. Kroz analizu ideja iznesenih u Vilsonovim tačkama, istražićemo njihov doprinos u formiranju političke atmosfere koja je omogućila stvaranje Kraljevine SHS. Fokus će biti stavljen na ključne aspekte poput nacionalnog jedinstva, demokratskih principa i prava naroda na samoopredeljenje, istražujući kako su ovi principi oblikovali političke tokove na prostoru Balkana nakon Prvog svetskog rata. Ova analiza pokušaće da osvetli proces stvaranja Kraljevine kroz prizmu međunarodnih uticaja i domaće političke dinamike. Kroz prizmu teorijskih okvira poput liberalnog internacionalizma i teorija nacionalizma, istražićemo kako su ovi principi uticali na pripadnike političke elite i balkanske narode, te kako su doprineli stvaranju političke volje za formiranje nove države. Biće analizirani napori da se program „14 tačaka" primeni u posleratnom balkanskom kontekstu, sa posebnim osvrtom na međunarodne faktore poput Versajskog sistema i uloge velikih sila. Kroz komparativnu analizu sa drugim regionima, koji su takođe bili pogođeni programom „14 tačaka", ocenićemo specifičan uticaj Vilsonove vizije na formiranje Kraljevine SHS. Da bismo razumeli uticaj koji je Vilson vršio na stvaranje etnički homogenih država, razmatraćemo primarne izvore (kao što su principi iz programa „14 tačaka") u svetlu diplomatskog pritiska u svetu posle rata, institucionalne podrške i međunarodnog konteksta.

Milan Blagojević
University of Belgrade Faculty of Law

THE INFLUENCE OF THE POSITION OF SERBS AS A MINORITY IN THE AUSTRIAN EMPIRE ON THE CONTENTS AND LANGUAGE OF THE SERBIAN CIVIL CODE

The purpose of the work is to analyse how the position of Serbs in Austrian empire as a minority influenced the language and content of the Serbian Civil Code. Even though the Serbian population in Vojvodina and Croatia of the time had been living under Austrian rule for many generations, they retained a sense of belonging to the Serbian people and especially to the newly formed Serbian state, at the beginning of XIX century. The position of Serbs in the Austrian empire was much better than under Ottoman rule. Serbian communities living under Austrian rule enjoyed more opportunities in terms of education and more freedom, something that was scarce under Ottoman control. However, Serbian communities were still restricted with the mandatory military defense of the border (*Militärgrenze*) against the Turkish invasion. And even after many generations, the connection with Serbs living under Turkish rule was still strong. This is reflected in how the Serbian jurists who lived in Austria and were educated in Austrian universities helped with the establishment of Serbian law. Most notably with Jovan Hadžić, who wrote the Serbian Civil Code. A prominent Serbian academic, Jovan Hadžić received his law education in Vienna and clearly took inspiration from the Austrian Civil Code while retaining an original character. Differing in many points from the Austrian Civil Code, Jovan Hadžić's work was prominently Serbian in terms of language used in its opening chapters.

Many articles speak not of Serbian citizens, but of Serbs in general – for example, the 5. Article, saying that Serbs in and out of Serbia must obey the laws presented in the Code ("*Сваки житељ Српски, био он у Србији или ван Србије, имаће се ових закона држати*").

So we will be analysing how the identity of Serbs in Austrian territories influenced these unique characteristic of the Serbian Civil Code. We will be looking at a number of factors, such as: the history of Serbs in Austria, the influence of the Serbian church, the specific conditions they found themselves in during the writing of the Serbian Civil Code, Jovan Hadžić himself, and the position of Serbia in 1844.

Nikola Cvetković
University of Belgrade Faculty of Law

THE RECEPTION OF EUROPEAN LAWS IN MEIJI JAPAN (1868 – 1912)

During the course of the 19th century, the control of the Asian continent by the great powers of Europe and by the United States was ever increasing. The victory of the British Empire over China in the Opium Wars cemented its dominance in the Far East and hastened the downfall and decadence of the great empires of Asia.

"The Land of the Rising Sun", Japan, wasn't spared this fate. Western pressure, enacted through a series of "unequal treaties" with the U.S., Britain and others, shook the foundations of the secluded Japanese society and led to its forced opening to the world. Japan couldn't resist, given that its 215 year-long isolationist "sakoku" policy further weakened its ability to withstand Western demands, which equaled borderline subjugation.

However, the opening of Japan to the world led not to its destruction, but to its rise and dominance in Asia, modernisation with a "Japanese touch", and to its admittance to the band of leading world powers.

But what led to this outcome? In short, the Japanese realised that in order to drive away the Europeans and Americans from their home, they themselves would have to "become" Europeans and Americans.

In 1868, the overthrow of the conservative Tokugawa regime, which at that moment had ruled over Japan for almost three centuries (1603 – 1868), was the consequence of the Meiji Restoration, the reenactment of emperor Mutsuhito's direct imperial rule in order to strengthen Japan against the threat of being colonised. Thus began the Meiji period of Japanese history (1868 – 1912), the period of "enlightened rule". One of the policies of this period was modernisation in countless fields (e.g. medicine, agriculture, engineering), but most importantly in the field of law. Japanese law was in the process of redefining itself, inspired by the legal systems of European countries, their standards and solutions, assisted by various European experts, such as Gustave Boissonade and others. This legal aspect of Japanese modernisation during the Meiji period will be the main focus of this research.

The approach to the analysis of this subject has been conceptualised as follows: firstly, in order to better understand the Meiji Restoration and its subsequent legal reforms, a brief summary of preceding important historical, social and other processes will be provided in the first chapters. Those chapters will focus on Japanese history and society (especially during the Tokugawa/Edo period (1603 – 1868)); the state of Asia in the 19th century; the first contact between Japan and Europe (mainly between the Japanese and Portuguese), etc. Afterwards, we will analyse the Meiji Restoration and its key ideas.

After this mostly historical introduction, the research will focus on its main topic: the reception of European laws in Meiji Japan. These main chapters will represent a general analysis of the development of a new Japanese legal system through several subtopics, such as the state of Japanese law before the reforms; the process of reception of European legal norms, with an emphasis on how the reception was conducted, which were the European countries whose legal systems inspired Japanese legal innovations, and why they were chosen. Afterwards, the research will focus on two key legal acts among many that were the products of this reception: the Meiji Constitution of 1889 and the Japanese Civil Code of 1896. These acts will be compared with the European legal acts that influenced their writing. During the analysis and comparison of these acts, we will also take note of the European scholars who contributed to their writing and to the process of reception in general.

Lastly, as a conclusion, the research will observe the consequences of Japanese modernisation, in particular the rise of the Japanese Empire as a world power during the Meiji period. Additionally, an interesting notion will be considered, namely that the modernisation of Japan which led to its status as a great power also indirectly led to its downfall in the first half of the 20th century.

Marko Đanić
Pravni fakultet Univerziteta u Novom Sadu

RECEPCIJA BADENSKOG I BAVARSKOG KRIVIČNOG ZAKONODAVSTVA U KRIVIČNOM ZAKONIKU KNEŽEVINE SRBIJE IZ 1860.

U ovom radu se analiziraju srpski, badenski i bavarski krivični zakonici iz 19. veka i uticaj badenskog i bavarskog krivičnog zakonodavstva na srpsko krivično zakonodavstvo 19. veka.

Krivični zakonik Kneževine Srbije donet 1860. bio je jedan od najvažnijih i najdugovečnijih srpskih zakonodavnih akata. Na njemu se, pored Srpskog građanskog zakonika i Ustava, zasnivao pravni poredak kako Kneževine, tako i Kraljevine Srbije.

Sredina 19. veka svakako je period razvoja srpske pravničke svesti, mada ona još uvek nije bila dovoljno razvijena. Srbija nije posedovala dovoljan broj pravnika, niti vreme da sačini samostalan Krivični zakonik. Zakonopisci su morali da se odluče za jedan krivični zakonik koji će biti osnova. Odlučili su se za Pruski, jer je Srbija bila najbliža nemačkom i austrijskom zakonodavstvu, a Austrijski građanski zakonik je uzet za osnovu pri sastavljanju Srpskog građanskog zakonika. Međutim, što se tiče krivičnog zakonodavstva, ipak su se odlučili za Pruski krivični zakonik jer se smatralo da je to najsavremeniji krivični zakonik to doba, budući da je donet 1851. godine.

Pri pisanju Krivičnog zakonika Kneževine Srbije korišćeni su i badenski i bavarski krivični zakonici. Krivični zakonik za Kraljevinu Bavarsku donet je 1813. godine, neposredno pred pad Napoleona. Samim tim, donet je u duhu prosvećenog liberalizma i za osnovu je uzet Francuski krivični zakonik iz 1810. godine. Većim delom je bio napisan od strane Paula Johana Anselma Fojerbaha. Zakonik je za cilj imao da obezbedi pravnu i institucionalnu integraciju nedavno proširene Bavarske. Ukinuo je mnoga krivična dela starog režima za koja je propisivana smrtna kazna, kao i samu smrtnu kaznu, zamenjujući je zatvorskim kaznama koje su se podjednako odnosile na sve građane (sa nekim izuzecima za više slojeve). Zakonik je uveo novine u regulisanju nedoličnog ponašanja javnih službenika, ali je izbegavao uvođenje javnih i usmenih suđenja pred građanskim porotama, korak koji su preduzeli francuski revolucionari i njihovi predstavnici u okupiranoj Rajni i nemačkoj satelitskoj kraljevini Vestfaliji. Krivični zakon za Veliko vojvodstvo Baden iz 1845. godine vezan je za istorijske i političke događaje nakon raspada Svetog rimskog carstva 1806. Vlada jedne od najliberalnijih partikularnih država u Nemačkoj nastojala je da se oslobodi nametnutog Napoleonovog prava stvaranjem sopstvenog zakonodavstva. Međutim, ovaj projekat nije prošao glatko zbog intriga konzervativnih ministara fon Rajcenštajna i fon Blitersdorfa. Do donošenja samog zakonika 1851. doveli su nacrti iz 1836. i 1839. godine.

Ideja o samom pisanju zakonika javlja se 1855. godine, a prva Komisija sastavljena je 1856. godine. Članovi prve komisije su bili Stefan Magazinović, Filip Hristić, Rajko Lešjanin, Jevrem Grujić i Đorđe Cenić. Treba napomenuti da su, osim Magazinovića, svi članovi bili pravnici školovani u inostranstvu – Hristić se školovao u Beču i Parizu, Lešjanin i Grujić u Parizu i Hajdelbergu, Cenić u Haleu, Hajdelbergu i Berlinu. Komisija sačinjava Projekt krivičnog zakonika 1857, ali kako nije bilo pogodnog trenutka za bavljenje njime, sačinjava se druga Komisija kako bi taj Projekt pregledala. Članovi druge komisije bili su Lazar Arsenijević Batalaka, Aleksandar J. Nenadović, Filip Hristić, Sava Šilić i Jovan Filipović. Iako su se svi članovi bavili pravom, članovi ove Komisije nisu bili školovani na nivou članova prve Komisije.

Ovaj rad se bavi analizom baš tih zakonika i utvrđivanjem koje su to odredbe recipirane iz zakonodavstava tih zemalja i zašto, kao i razloga zbog kog se zakonopisci nisu odlučili za recepciju kompletnog Pruskog krivičnog zakonika.

Katarina Delja
University of Belgrade Faculty of Law

LEX RHODIA DE IACTU

In the ancient period, many civilisations were at their zenith. The ancient period for many civilisations represents the peak of their development, they expand territorially and progress economically. Overseas trade arises as a result of technological development, but even more so from the human need for trade that exceeds the local level. Some people produce more than they need, while others find that they need products that they cannot create themselves due to climate, geography and many other factors. Thus, overseas trade becomes one of the most important activities of ancient life. *Lex Rhodia de iactu* is an example of the legal reception of Greek law in Roman law. When talking about legal institutions, it is a well known fact that the ancient Romans were turned towards practice, and the Greeks towards theory.

In legal history, we have many examples of legal institutions that are a part of Greek law and originate from Roman law, and this Rhodesian law is an exception. The reception of this legal institution is centuries old. The Rhodian Law was created by the Phoenicians, as a powerful civilization that ruled the sea. The *Lex Rhodia de iactu* dictates that in the event of a general shipwreck, certain cargo may be thrown out to save the rest of the cargo and crew. According to this law, it is proposed that if goods are thrown into the sea to lighten the ship, then the individual whose goods were thrown out, which represents his loss for the sake of the welfare of all, will be compensated by all crew members whose goods “survived”. This law and other customs of maritime trade were taken over by the Greeks and codified. The Phoenicians, thriving on maritime trade, created this law out of necessity, but they did not get to codify their maritime customs because they were often conquered by other peoples.

The former colony of Phoenicia, the Greek island of Rhodes, had the honor of codifying various maritime principles due to its excellent geographical location and Greek theoreticians who also incorporated their love of the sea into the law. Maritime law was widely cited throughout the Mediterranean through trade links and thus the Rhodian Law was adopted by the Romans with Augustus at the helm and incorporated into their legal system with the *locatio conductio* consensual contracts of the Roman Empire. Rome became a maritime power after the Punic Wars and needed rules for overseas transactions. The Romans were allies of Rhodes and borrowed the principles of the Rhodesian Law.

The reception does not end in antiquity; this law was further adopted in Byzantium through Justinian's codification, under the name “Nomos (Rhodion) Nautikos”. Parts of the law are still cited and used in modern law today. This paper follows only the development of the ancient reception of this legal institution, all the factors and modifications that influenced the appearance of the law in three different civilisations. The paper also deals with historical events and evokes the spirit of the Phoenicians, Greeks and Romans. The paper considers the position of the island of Rhodes, which can be said to be the birthplace of maritime jurisprudence. The author's choice of topic arose during the study of comparative legal tradition and Roman private law during the first semester of the first year of academic studies at the University of Belgrade Faculty of Law, but also from her high school love for history and curiosity. The aim of this work is to show the reception of an ancient legal institution. The course of history and the survival of this legal institution indicate the timelessness of overseas trade and the fact that some things do not change despite the advanced, modern age and the inventions that come with it.

Janko Dubljanin
Pravni fakultet Univerziteta u Beogradu

NEMAČKI MODELI USTAVA IZ 1869. GODINE

Uticaj ustavnog zakonodavstva nemačkih država 19. veka na Ustavni akt Kneževine Srbije iz 1869. godine, poznat kao „Namesnički ustav", predstavlja kompleksnu temu koja zahteva analizu kako pravnih transplanata i rešenja, tako i istorijskih okolnosti koje su prethodile samom donošenju ustava.

Akcenat je stavljen na analizu ustava Saksonije, Bavarske, Badena i dr., budući da su ovi ustavi predstavljali važne uzore i izvore inspiracije tokom procesa izrade Ustavnog akta Kneževine Srbije. Pravni transplanti, odnosno preuzimanje određenih pravnih rešenja i institucija iz nemačkih ustava, igrali su ključnu ulogu u formiranju Namesničkog ustava, konkretno, odredbe vezane za ministarsku odgovornost, institut uredbi od nužde kao i odredbe o zakonodavnoj nadležnosti predstavničkog tela.

Posebno se istražuje doprinos Radivoja Milojkovića, srpskog pravnika i ministra unutrašnjih dela, koji je bio ključna figura u izradi nacrta ustava, kao i način na koji je koristio principe i institucije pronađene u ustavima nemačkih država kao osnovu za srpski ustavni tekst.

Rad će se takođe baviti izmenama prvobitnih nacrta ustavnog akta, pre svega pitanja dvodomnosti parlamenta kao jednog od najkontroverznijih, koje su preduzeli Milivoje Petrović Blaznavac i Jovan Ristić, tadašnji namesnici za vreme maloletstva kneza Milana Obrenovića.

Pored pravnih transplanata, u radu se takođe obraća pažnja na istorijske okolnosti koje su prethodile donošenju ustava. To uključuje sukobe između liberalne i konzervativne struje na unutrašnjem planu Srbije, kao i spoljnopolitičke aspekte donošenja ustava, pre svega odnose Namesništva sa Portom, ali i sukob Austrije i Rusije koji se prelio i na pitanje srpske ustavnosti. Ovo istraživanje pomaže u razumevanju političkog konteksta u kojem je Namesnički ustav Srbije nastao i uticaja nemačkih ustava na oblikovanje njegovog sadržaja.

Kroz analizu pravnih transplanata i istorijskih okolnosti, ovaj rad pruža dublje razumevanje uticaja ustavnog zakonodavstva nemačkih država na proces formiranja i sadržaj Namesničkog ustava Srbije iz 1869. godine.

Franciszek Ignacy Fortuna
University of Warsaw, College of Interdisciplinary Individual Studies in Humanities and Social Sciences

FUNCTION OF LEGAL TRANSPLANTS ON THE EXAMPLE OF THE IMPLEMENTATION OF SELECTED INSTITUTIONS OF GERMAN CRIMINAL LAW INTO THE POLISH CODE OF MAKAREWICZ

As a result of the partitions, traditionally Polish lands were ruled by three neighbouring powers from the late 18th century onwards: Russia, Austria and Prussia. Different laws were applied on the territory of each of them. Therefore, after Poland regained its independence in 1918, one of the main challenges that the state authorities faced was to unify the legal system of the new state. This also related to criminal law. Given the plans to work on national codification, the district division was temporarily maintained at the beginning. On the territory of each of the districts, i.e. areas previously under the control of the individual partitioning powers, the codes that were previously in force were maintained.

In the case of the German partition, the Pan-German Code of 1871 was applied, some of whose provisions were amended in 1923, while the rest of the code remained in force. For example, the famous par. 175, prohibiting any homosexual sexual relations, remained in force until the introduction of the Polish penal code of 1932. Eventually, a new criminal regulation was introduced in Poland, a code called the 'Makarewicz Code' after its main author. However, after the new source of criminal law came into force on the territory of the Republic of Poland, some elements of the old system were still preserved. Indeed, many concepts and solutions taken from the German criminal law system were implemented in the new Code.

The above issue should be analysed from the perspective of the concept of legal transplants. Some elements of a foreign legal system were undoubtedly applied in the process of creating the system of the newly formed Polish state. In the case of the criminal law of the Second Republic of Poland, the phenomenon of legal transplantation had two forms. On the one hand, legal transplantation had the form of direct application of a foreign code on the territory of the Republic before the Makarewicz Code was created. On the other hand, the new Polish Code also incorporated many solutions from German criminal law, which should also be regarded as a legal transplant.

A deeper study of the discussed issues may contribute to a better understanding of the processes taking place in the emerging Polish state and, above all, show how German norms influenced the final shape of the Makarewicz Code. Therefore, it is necessary to verify how the discussions on the implementation of German solutions into the Polish legal system took place and how they were adapted to Polish conditions.

A comparative analysis of the German and Polish codifications of this period enables one to argue that one of the functions of legal transplantation is to stabilise the legal system. German law had been influencing Polish law to a considerable extent for centuries, and had been directly applied in parts of Polish lands for almost 150 years. When Poland began to build its new state after regaining independence, it was impossible not to make use of the previous achievements of German legal thought. In addition, the implementation of the achievements of enemy states, which nevertheless had a strong influence on the shape of local communities and the way citizens perceived the law, allowed a relatively smooth transition from the old legal system to the new Polish one. Thus, in the present case, the phenomenon of “legal irritation”, which Gunther Teubner wrote about in his 1998 article, did not occur. “Rather than smoothly integrating into domestic legal systems, a foreign rule disrupts established norms and societal arrangements.” In the case of the implementation of German criminal law norms into the Polish legal system in the 1920s and 1930s, no such phenomenon occurred. The Code of Makarewicz was praised and effectively applied in the Second Republic of Poland. Jurists praised it for, among other things, the effective and prudent application of relevant regulations and concepts from German law.

The above considerations seem to present an interesting perspective on the study of legal transplants. Due to the peculiarities of the implementation of German criminal law into the Polish legal

system, the very function of legal transplants is also the subject of study. The Polish legislators of the interwar period effectively and with the support of society implemented elements of the legal system of a state definitely hostile to Poland. By presenting this issue, the author also hopes to contribute to broader research on the influence of German legal culture on Polish legislation of the interwar period.

Julia Głębocka
University of Warsaw Faculty of Law, College of Interdisciplinary Individual Studies
in Humanities and Social Sciences

A MATTER OF AGREEMENT, OR THE ITALIAN INFLUENCE ON POLISH RELIGIOUS LAW AS EXEMPLIFIED BY ARTICLE 25(5) OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

Poland, despite being a fundamentally Catholic country, has a long tradition of legal protection for religious minorities. The first manifestation of the attention with which the Polish legislator approached this issue throughout history was the Warsaw Confederation, signed in 1573, which guaranteed perpetual peace between religions. The assumptions of the Warsaw Confederation were confirmed in the Constitution of 3 May, even though it recognised Catholicism as the ruling religion. The more modern March Constitution of 1921 guaranteed freedom of conscience and religion, as well as equal rights for religious associations. The Constitution of the People's Republic of Poland placed religious associations, including the Catholic Church, in a difficult position. In the 1990s, when the shape of the new regime was being considered, a solution was sought that would reconcile the secularity of the state with the need to protect religious associations.

At the end of the 1940s, there was a debate in southern European countries, particularly in Spain and Italy, concerning bilaterality in state-church relations. The proponents of this concept believed that shaping government relations with religious associations in the form of a bilateral agreement was a natural consequence of a Christian tradition dating all the way back to the Middle Ages and expressed in the maxim: “Render to the emperor what is emperor's and to God what is God's”. In the 1947 Constitution of the Italian Republic, the principle of bilateralism won out. It was expressed in Article 8(3) of the document. This decision by the Italian legislature was a consequence of it rejecting both the extreme separatist ideas and the idea of a religious state. The provisions of the Constitution of the Republic of Italy distinguish the Concordat from bilateral agreements, giving it a special position. At the same time, the doctrine derives the bilateral solution regarding other religious associations precisely from the concordat tradition.

In 1997, the Polish legislator decided to adopt Italian solutions. They find their place in Article 25(5) of the Constitution of the Republic of Poland, which states: “Relations between the Republic of Poland and other churches and religious associations shall be defined by laws adopted on the basis of agreements concluded by the Council of Ministers with their respective representatives”. Since then, the doctrine has questioned whether this solution actually provides sufficient protection for the rights of religious minorities. Defenders of the provision point out that it ensures a level of respect for the religious and philosophical pluralism of contemporary society and the subjectivity of various social groups, i.e. Churches and other religious associations, a higher degree of stability in the relationship between the state and the Church than that provided by unilateral regulations, and that it contributes to the maintenance of peace in society. Opponents of this solution emphasise that granting special protection to religious minorities is inappropriate because the scope of the guaranteed rights would only concern one sphere – religion and faith. By contrast, the range of rights to be enjoyed by national, ethnic and linguistic minorities is both broader and more diverse. Despite doubts, this solution has been functioning in the Polish legal reality for almost 30 years. Can it be called a success?

In my paper, I will present the history of the decision on the reception of Italian solutions in the Polish Constitution and reflect on its consequences. I will also try to show what problems we are facing when it comes to applying these solutions in practice.

Đorđe Gojković
University of Belgrade Faculty of Law

COMPARISON OF INTEREST REGULATION IN AUSTRIAN AND SERBIAN CIVIL CODE

The Serbian Civil Code (1844), one of the earliest civil codes enacted in Europe, was strongly influenced by the Austrian Civil Code (1811). Legal historians' perspectives on the extent of this influence vary, ranging from considering the Austrian Civil Code as one of the sources to describing the Serbian Code as a condensed version of its Austrian counterpart. Nevertheless, substantial similarities exist between the two, and it is undeniable that many norms were literally transplanted. The originality of the Serbian Civil Code is primarily observed in family and inheritance law, reflecting a distinct social context. This paper aims to highlight another significant difference in contract law – the regulation of interest rates.

During the medieval period in Serbia, interest rates were governed by legal sources heavily influenced by the Byzantine Empire and the Orthodox Church. The attitude towards interest rates was rather conservative, with charging interest being prohibited at one point. When permitted, the interest rate could not exceed 12% annually. The first mention of interest in the renewed Serbian state was in a ruler's decree in 1837. Criticizing those who “charge huge interest rates”, Miloš Obrenović capped the interest rate at 12%. Seven years later, the Serbian Civil Code set the contractual interest rates at the same limit while establishing the statutory interest rate at 6%, maintaining continuity from the earliest medieval era.

On the contrary, the Austrian Civil Code capped the contractual interest rate at 6%, with the statutory rate set at 4%. The circumstances surrounding the emergence of the Austrian Civil Code differ significantly from those in Serbia. Distinct social contexts, legal traditions, cultures, and religions could have influenced the decision of the Serbian lawmaker to make an exception in adopting Austrian contract law rules. There is room for proving that the Serbian lawmaker was highly aware of this while codifying the civil law. This paper's goal is to highlight these differences and examine them critically, emphasising the importance of the judicious adoption of foreign legal rules.

Anett Győri
University of Szeged, Faculty of Law and Political Sciences

REVIVAL OF HUNGARIAN PROCEDURAL TRADITIONS: THE DIVIDED STRUCTURE OF LITIGATION A HUNDRED YEARS AGO AND NOW

The main subject of my research is the Hungarian litigation structure, especially the current divided trial structure, and in this context the legal-dogmatic analysis of the dynamics of the basic principles of first instance proceedings, with special regard to the litigation traditions and codification history.

A characteristic feature of the 20th century in the history of Hungarian law was the lack of legitimacy for the creation of legal rules. Our present constitution, for example, states that "the beginning of the constitutional order of Hungary, lost on the nineteenth of March 1944 (...) is considered to be the second of May 1990".

As a consequence of this, in the codification processes of the present day, many have turned to historical traditions to eliminate the previous half century. Today, we are witnessing the continuation of the collection and codification of the rules of the period. In this respect, a problematic issue has already been raised in the past, which is rooted in the fact that research into the sources of the civil period does not necessarily yield objectively valuable lessons. The debates and topicality of the day – now that so many changes have been made to civil, criminal and administrative legislation – would in fact require a review going back centuries.

The present framework merely allows me to discuss the traditions of civil procedural law typical to the present day. The task is therefore to review the tradition of law which gave rise to the more or less clear-cut procedural law of the civil era in the period of confusion and then to draw conclusions for today.

Since the current litigation is heavily based on legal traditions, it is necessary to be aware of the history of proceedings.

It is also necessary to see the history of litigation in a continuum, because as the political, social and economic situation has changed over the ages, the role of the judge and the parties in the litigation has changed as well; there have been times when the role of the judge was more pronounced, and in some periods the other extreme emerged: the parties dominated the proceedings. This is one of the key issues in civil litigation: the relationship of the parties and the court with the subject matter of the case, the procedural powers of the parties and the judicial power of the judge.

It is assumed that the roots of the current innovations in procedural law can be found in the regulation of the uniform structure of the sommat procedure.

With respect to the Hungarian conditions, it would be a mistake to take the procedural systems under a single type of consideration, especially because, for example, separate legal-dogmatic analyses can be paired with the divided procedural system with respect to the *perszak*, but on essential points there is agreement between the uniform *sommás* procedure regulated in 1893 and the divided procedure of 1911 by Plósz, which is one of the subjects of my analysis; the Plósz procedure was used as a model for the current system of divided trials.

In the course of my research, I drew parallels between the various procedural codes (Code of Civil Procedure, 1868: LIV Code, 1911: Code I and 2016: Act CXXX) and their amendments (1868: amendment of Code LIV, e.g. 1893: Code XVIII, 1911: amendment of Code I, e.g. 1930: Code XXXIV). The codification processes of Hungarian civil procedure reflect the direction of European legal development, therefore my research also included an analysis of European trends. My aim is to gain a better understanding of the processes and dynamics of litigation by comparing the new and the former civil law practice.

My research also involved empirical research, performed by attending trials. It covers a comparison of the split procedural structure in the current and the “old” (hereinafter: RPP) system, as well as a comparison of the principles of the liberal litigation model, with a focus on the history of codification.

The most striking differences between the RPP and our current procedural law are (1) the procedure, (2) the principles, (3) the content of the statement of claim and (4) in the way the trial is conducted.

Ivona Ilić
Pravni fakultet Univerziteta u Beogradu

ROMEJSKI UTICAJI NA SMRTNU KAZNU I TELESNE KAZNE U DUŠANOVOM ZAKONIKU

Dugotrajna prisutnost romejskih kulturnih uticaja u srednjovekovnoj srpskoj državi odrazila se na različite društvene sfere i, u skladu sa time, na pravni sistem. Centralno pitanje rada bavi se uticajima koji su izgradili krivičnopravni sistem Srpskog carstva, sa posebnim osvrtom na grčko-rimske elemente. Vizantijske teritorije koje su podlegle osvajanjima dinastije Nemanjića doprinele su tom procesu, i već od vremena Stefana Nemanje uočava se primena propisa romejskog krivičnog prava. Postepeni razvitak srpske države proširivao je implementaciju vizantijskih ideja. U vremenu kralja Milutina, taj uticaj je bio ispoljen u mnogim granama prava, premda u nešto manjoj meri u oblasti sudstva i krivičnog prava. Kada je reč o smrtnoj kazni, poznati podaci o pokušajima njenog uvođenja za vreme vladavine kralja Milutina svedoče da su takve ideje ustuknule pred ulogom običaja. Intenzivno prodiranje vizantijskih uticaja je zabeleženo u periodu zakonodavne delatnosti cara Dušana, koji je učvrstio primenu rešenja preuzetih iz vizantijskog prava. Običajno pravo, čija je dotadašnja uloga u krivičnom pravu srpske srednjovekovne države bila dominantna, u tom periodu postepeno je zamenjeno novim rešenjima. Mnogobrojni argumenti idu u prilog tome da se najznačajniji odraz uticaja vizantijskog sistema nalazi u novinama na polju krivičnog prava. Dušanov zakonik, kao najznačajniji pravni akt srednjovekovne Srbije, predstavljao je vrhunac tendencija ka izgradnji pravnog sistema u skladu sa veličinom države kao što je bilo Srpsko carstvo. Taj period je stvorio uslove da se ustanove i dosledno primene obrasci funkcionisanja Vizantije, koja je ukupnošću svojih propisa predstavljala idejno stremljenje ka čvrstom državnom ustrojstvu.

Velika pažnja u Dušanovom zakoniku bila je posvećena kako sudskom postupku, tako i samom izvršenju presuda. Međuzavisnost tih pitanja zahtevala je da njihovo pravno regulisanje bude usaglašeno, izuzimajući pritom pojave poput samovolje i pristrasnosti, te negujući pravičnost u postupanju i delovanje u skladu sa zakonskim propisima. Za izvršenje presude predviđen je čitav niz zakonskih rešenja, koji se u pogledu smrtne i telesnih kazni umnogome oslanjaju na vizantijski sistem. Suština preuzimanja striktnih i surovih kazni kakve su postojale u romejskom pravu bio je da se sačuvaju opšti red i bezbednost na nivou celokupne srpske države, uznapredovale teritorijalnim proširenjima koja su prethodila zakonodavnom poduhvatu. Smrtna kazna je bila predviđena za krivična dela koja su predstavljala problem naročite vrste, poput razbojništva, u čemu nalazimo tipičan primer preuzetog romejskog rešenja.

Neke specifične norme u pogledu telesnih kazni, na primer osakaćivanje ili odsecanje ekstremiteta, bile su okarakterisane takvom formom sa istim ciljem koji je imala smrtna kazna, tj. bile su okrenute ka preventivnom delovanju. Pored svega navedenog, postoje i mišljenja da je krivičnopravni sistem iz perioda Dušanovog zakonodavstva zadržao i mnoge specifičnosti, koje se dovode u vezu sa običajima i normama karakterističnim za pravne sisteme ostalih slovenskih naroda.

U radu se razmatra domet primene smrtne kazne u državi cara Dušana, motivi, uzroci i načini njenog sprovođenja, uz analizu razloga preuzimanja i prilagođavanja rešenja rimsko-vizantijskog prava u Dušanovom zakoniku. Autor uporedno analizira i krivična dela koja je ovaj sistem preuzeo a koja su utemeljena na karakterističnim romejskim i ostalim navedenim uticajima, ali praćena drugim kaznenim rešenjima.

Relja Jarkovački
Milan Radivojević
University of Belgrade Faculty of Law

COMPARATIVE ANALYSIS OF TERITORRIAL AUTONOMY - EXAMPLES IN SERBIA AND ITALY (VOJVODINA, SOUTH TIROL)

The paper analyses the similarities and differences between two types of territorial autonomy in two countries with different organizational structures. Both Vojvodina and South Tirol are autonomous territories with some similarities in their respective histories, up until The Second World War. After the war, both autonomous territories were created in their modern forms, and their further history, up until this day, is very different. Both of them have a high percentage of ethnic minorities, both have a similar number of inhabitants, both of them have rich potential for financial growth.

The Italian Republic is famous for their regional system, which is constructed with 20 regions; fifteen of them are “ordinary” and five are “special”. Special regions are unique for their statutes. Every statute is made as an agreement between Italian central government and regional government, and it has the legal strength of a constitutional act. The modern region of South Tyrol was first constructed by the De Gasperi-Gruber agreement, in 1946. South Tyrol is made up of two provinces, Trento and Bolzano.

In Serbia, the territorial organisation is very different. Serbia is a unitarian state, with two autonomous provinces. In this paper we analyse the Autonomous Province of Vojvodina. Vojvodina is a highly diverse province, with 8 formally recognized ethnic groups. Vojvodina, in today’s form, can be identified as a heritage of Socialist Yugoslavia.

The aim of the paper is to analyse three specific questions:

-What are the similarities and differences in the creation and justification for the existence of these two territorial autonomies?

-How are territorial autonomies defined in relation to the respective constitutions of Italy and Serbia?

-What are the competencies of the autonomous territory and how its organization stands in relation to the respective statute?

Dr. László Ádám Joó
University of Debrecen Faculty of Law
Géza Marton
Doctoral School of Legal Studies

THE CIRCUMSTANCES OF A UNIFICATION PROCESS – THE HUNGARIAN PRIVATE LAW IN THE RETURNED EASTERN AND TRANSYLVANIAN PARTS OF THE COUNTRY

Until the middle of the 20th century, Hungary did not have a civil code in force, and several areas of private law were founded on judicial practice. However, this judicial practice was being increasingly solidified by writing, mainly through the decisions of the Royal Curia. Since the turn of the century, a number of excellent legal scholars worked on creating drafts; three of these were submitted to the Parliament, but none of them were accepted and brought into force. In 1928 it seemed that the first private law code of Hungary could be adopted at last; however, it never reached a discussion.

Ten years after the submission of the Proposal, Hungary began to reannex the territories it had previously held from the countries in the neighbourhood, where a significant part of the population was of Hungarian origin. The Parliament empowered the government to take all measures considered necessary in order to reconnect the system of private law of the reannexed territories to the legal system in force in the rest of the country. On this ground, the government adopted several decrees in order to extend the scope of Hungarian private law to those territories. Following the First World War, the majority of the rules of private law remained in force there, and they were still in force at the time of the reannexations. Therefore, the unification process did not require great efforts; this statement does not stand true for all the territories, though: in Transylvania, several rules of the Austrian Civil Code had still been in use.

Following the suppression of the War of Independence, in 1853 Francis Joseph I brought into force the Austrian Civil Code in Hungary and Transylvania. Although in 1861 it was almost completely repealed in most parts of Hungary by the Conference of the Justice of the Realm, in Transylvania it remained in force, but later acts replaced it to a certain extent. It should be noted that the Austrian private law was still a compulsory subject for law students in Hungary until the end of the Second World War. After the First World War, Transylvania and the eastern parts of Hungary were annexed to Romania, but the civil law was mostly untouched. On 30 August 1940, Northern Transylvania and other regions (at that time parts of Romania) were reunited with the Kingdom of Hungary, through the Second Vienna Award.

At the end of 1940, the problem of the unification arose again, but in a different way, because of the ABGB. Respectable legal scholars recommended to bring into force the Proposal in the whole country within a few years, after its reconsideration. The government preferred the full integration as soon as possible, therefore it adopted several decrees in order to extend the scope of Hungarian private law to these regions, as in the previous cases. It should be mentioned that Károly Szladits, one of the most respectable private law professors in Hungary, supported this solution from the beginning. He correctly foresaw that the Proposal would become acceptable after several years; however, the unification was urgent. It should be noted that the authorisation of the government did not extend to bring into force those rules which were not in force in Hungary.

At first, the scope of the law of real estate was extended, followed by the law of persons, matrimonial law and the law of obligations, all of them in 1941. In the next year, before the matrimonial property law and the inheritance law were brought into force, the Bar Association of Marosvásárhely had written an open letter to the Minister of Justice, in which the lawyers stated their objections against this measure. The government did not accept the arguments of the Bar Association, and decided in favour of the full unification of the law, with the consequence of repealing the ABGB. The unification process was completed in the next year, by the extension of the norms regarding matrimonial property law and inheritance law. Thus, the

system of private law rules of Hungary generalised, the ABGB was definitively repealed from the sources of private law, after almost 90 years of being in force. This solution did not seem to be the most appropriate one for the unification, but it was the only one possible, considering the circumstances.

What were the sources of this normative complex? Numerous rules of the Proposal of 1928 became part of it, due to judicial practice. An even greater role, however, was given to the decisions of the Royal Curia. The supreme court of Hungary was empowered to create the so-called decisions in principle, decisions of legal unity and decisions of full session since 1913. The latter two had the power of obligation on all courts, while the first one only bound the councils of the Royal Curia, significantly affecting the judicial practice of the lower courts, hence the customary law. They also referred to the non-priority judgments of the highest court, as well as the academic literature, especially the six-volume Hungarian Private Law (edited by Professor Szladits), which was completed in 1942. Furthermore, excellent summary works were published in journals, and the professors of the Francis Joseph University of Kolozsvár gave lectures on the extended laws, publishing them later on in a single volume. In consequence, there were not only written sources; all of them, however, were well-known and applied equally throughout the mother country, and recognisable in the returned territories.

Certainly, it would have been more appropriate to bring into force a Hungarian Private Law Code, but it was not possible because of the Second World War.

I strongly affirm, that in spite of the initial fears, legal professionals – especially judges – could confidently apply Hungarian legal sources. They often referred to the decisions of the Royal Curia, but there were also several citations to the rules of the Proposal, and the other sources of written customary law. Among other reasons, behind this success is the fact that many judges from the mother country were appointed to Transylvanian courts, thus being able to provide assistance to their colleagues.

In the autumn of 1944, the Soviet and Romanian armies occupied the eastern and Transylvanian parts of the country, and the Romanian legislator extended the scope of the Romanian Civil Code, which was based on the French Code Civil. Despite the brevity of this episode, it is a topic worth researching, because the experiences of this unification process could be valuable when there is a need to implement a new rule (or a complex of rules), while maintaining legal security.

Natalia Nieróbca
University of Warsaw Faculty of Law and Administration

HISTORICAL AND COMPARATIVE SOURCES OF THE MODEL OF DUE CARE IN POLISH CIVIL AND MEDICAL LAW

With regard to the content and purpose of the debtor's performance, Polish legal doctrine, following the French model, distinguishes between obligations of due care and obligations of result (*obligations de moyens* and *obligations de résultat*). However, the general principle set out in Article 355 of the Polish Civil Code is that the debtor is obliged to the care commonly required in relations of a given type (i.e. due care). To find the rationale for the use of the above term by the authors of the code, it is essential to address the evolution of the institution of due care from a comparative legal perspective, reaching back to the normative texts and juridical theories that influenced the current understanding of its objective and subjective components. Indeed, only a historical reconstruction such as this allows for an in-depth, functional analysis when attributing the civil liability regarding *obligations de moyens*. A constant point of reference for the examination of Polish law in this respect are the provisions of the German Civil Code and the Swiss Law on Obligations (according to the lead author of the Polish Code on Obligations, Roman Longchamps de Bériera, perfectly harmonising the institutions of French and German law). In turn, regarding the due care in medical law, the body of Austrian jurisprudence and case-law also holds some significance.

During the presentation, following a brief introduction of the uniform, objectivised and depersonalised model of due care in the Civil Code of 1964, I intend to portray the evolution of this legal institution in the past and present Polish civil law regulations, recognising within it both the result of historical processes and the individual decisions of legislators. In particular, the paper addresses how borrowing and reception of German, Swiss and French legal arrangements influenced its present form, referring primarily to the reports on the preparatory work on the Civil Code of 1964 and the Code on Obligations of 1933, and the comparative legal analysis of M. Sośniak. It then expands the aforementioned considerations by discussing the practical consequences of its adoption in the systemic context of Polish civil law and – in this view – assessing the choice of a hybrid model, drawing from a variety of European legal regimes. Finally, I will focus on how the legal transplants, which took place in the 20th century, respond to the challenges related to the unrestrained development in many areas of human activities, resulting in emerging difficulties in assessment of the objective component of due care for the purposes of civil litigation.

Within the scope of the paper are also considerations on the due care by medical professionals in the context of civil liability for damages arising in connection with treatment. For this purpose, I will discuss the considerable influence of the body of Austrian and German jurisprudence and legal literature on the way the due care thresholds are interpreted, addressing the issue of reception of foreign law not only through the statutes, but also the judiciary.

Boginja Nikolić Vukajlović
Pravni fakultet Univerziteta u Beogradu

SRETENJSKI USTAV KAO PRAVNI TRANSPLANT

Borba za autonomiju i konačno oslobođenje srpske države bila je uslovljena donošenjem ustava, koji je neminovno nastao kao plod kako unutrašnjih tako i spoljašnjih društveno-političkih činilaca i istorijskih okolnosti. Tako je ustav postao simbol suverene i moderne srpske države i značajan preduslov za konačno nacionalno osamostaljenje. On je bio važan instrument za uspostavljanje srpske države i njenih institucija, uz ograničavanje vrhovne vlasti. Iako je srpski ustavni razvitak tekao kao recepcija stranih političkih ustanova i bio podložan spoljnim uticajima, tvorci srpskih ustava nisu slepo presađivali tvorevine tuđih pravnih sistema, već su ih pažljivo prilagođavali političkim prilikama, društvenoj svesti i celokupnom dotadašnjem razvitku srpske države. Autor pokušava da, analizirajući tadašnje političke prilike, ideje i principe, ustanovi kako se i pod kojim uslovima formirala programska opredeljenost tvoraca Sretenjskog ustava. Potpun kritički pristup svakako ne bi bio moguć bez analize Votsonove teorije o pravnim transplantima, ali i razmatranja uticaja koji je ostavila poseta francuskog diplomate Boa-le-Konta. Dalje, autor ispituje i razloge suspendovanja prvog srpskog ustava nakon svega šest nedelja važenja. Na kraju, ovaj rad ima za cilj i da utvrdi koje su bile posledice donošenja prvog srpskog ustava i kako su one uticale na formiranje srpske nacionalne svesti i dalji ustavni razvoj koji će uslediti.

Marina Pantić
Pravni fakultet Univerziteta u Beogradu

NAMESNIČKI USTAV KAO UZOR USTAVA CRNE GORE IZ 1905. GODINE

Ovaj rad analizira dva ustava u balkanskoj istoriji – Namesnički ustav Srbije (1869) i Ustav Crne Gore, poznat kao Nikoljdanski ustav (1905). Namesnički ustav je bio prvi moderni ustav u Srbiji, proglašen bez saglasnosti sultana, sa značajnim uplivom evropskih i političkih ideja.

Nikoljdanski ustav Crne Gore, usvojen nekoliko decenija kasnije, predstavlja bitan korak u ustavnom razvoju ove balkanske zemlje. Tri osnovna politička prava koja je propisivao Ustav iz 1905. godine su biračko pravo, sloboda izbora i udruživanja, i sloboda štampe. Aktivno biračko pravo je bilo opšte i jednako za pripadnike muškog pola. Ustavom je predviđen sistem podele vlasti. Narodna skupština je prvi put postala zakonodavni organ u pravom smislu reči, uz mnogo značajnih ograničenja.

Ova analiza pruža uvid u sličnosti i razlike dva ustava, ističući njihove specifičnosti u političkom, društvenom i istorijskom smislu. Namesnički ustav Srbije bio je prekretnica u ustavnosti Srbije, dok je Nikoljdanski ustav Crne Gore označio početak ustavnih promena u toj zemlji. Oba ustava su odigrala važnu ulogu u oblikovanju modernih ustavnih principa i doprinela demokratizaciji političkih prilika na Balkanu tokom 19. i 20. veka.

Glorija Paunković
Pravni fakultet Univerziteta u Beogradu

SKRAĆENI TRANSPLANT: ŠTA JE IZOSTAVLJENO IZ SKRAĆENE SINTAGME I ZAŠTO?

Neposredno pre krunisanja Stefana Dušana za kralja 1331. godine, politička situacija na prostoru Balkana je već bila veoma kompleksna. Naime, moćno Vizantijsko carstvo je počelo da propada i dosta oslabilo, te je Dušan sebi za cilj postavio da ga zameni drugim carstvom, svojim srpsko-grčkim. Do te ideje je verovatno došao jer je poznavao i moć i slabosti Vizantijskog carstva zahvaljujući svom boravku u Carigradu kada je bio prognan (1314-1321). Tom prilikom je naučio da čita i govori grčki. Odmah po dolasku na presto, Dušan počinje da širi svoju teritoriju; ubrzo se srpska država prostirala od Dunava do Korintskog zaliva i od Jadranskog do Egejskog mora. Posledica osvajanja te velike teritorije bila je da se Srbija našla pod jako velikim uticajem Vizantijskog carstva (očiglednog, npr., u činjenici da je grčki postao službeni jezik zajedno sa srpskim). Stefan Dušan je 1346. godine krunisan za cara – cara Srba i Grka, iz čega vidimo njegovu težnju da zameni i Kantakuzina i Paleologa i da sebe predstavi kao najboljeg kandidata za carigradski presto, pokazujući tako da pretenduje na legitimno vladanje podanicima Vizantijskog carstva. Tako su se i vizantijski zakoni i kanoni vizantijske crkve našli ugrađeni u temelje celog sistema srpskog srednjovekovnog prava. Ono što bi bila potvrda njegovog prava na krunu kao i potvrda moći države je kodifikatorski rad – još od Rimske imperije jedna od najvećih carskih dužnosti bila je zakonodavna. Taj rad se, međutim, pružao u nekoliko pravaca: ka izdavanju mnogobrojnih povelja, ka prevođenju i sistematizaciji vizantijskih zakona, i ka kodifikaciji novih zakonskih odredaba kojih nema u vizantijskim zbirkama. Dušanov zakonik je donet 1349. godine na Saboru u Skoplju, a 1354. dopunjen je novim odredbama. Uz Dušanov zakonik idu (tj. prethode mu) i Skraćena Sintagma i Zakon cara Justinijana; svi zajedno čine *Codex tripartitus*.

Nešto pre nego što je Dušan doneo zakonik, svetogorski monah i kanonista, Matija Vlastar, napisao je 1335. godine na grčkom jeziku zbornik vizantijskog prava, ,,Sintagmu". Materija ovog zbornika poređana je po alfabetnom redosledu i grupisana u 24 sastava. Zbornik je sadržao najvažnije crkvene propise iz nomokanona, kao i najvažnije odredbe iz svetovnih zbornika Prohirona i Vasilika. Osnove zbornika čine tumačenja Jovana Zonare i Teodora Valsamona. Zbornik je stekao veliku popularnost na čitavom pravoslavnom Istoku – npr., Sintagma je prevođena na srpski jezik i u potpunom obliku (oko 20 rukopisa) i u skraćenoj srpskoj verziji (oko 16 rukopisa) i u kasnijoj preradi stopljenoj sa Zakonikom Justinijana (oko 10 rukopisa).

Kada 1347. pobedi isihazam u Carigradu, u isto vreme se i Dušan na Svetoj Gori opredeljuje za isihaste, strogo ,,pravoslavlje". Negde u to vreme počinje i prevod Vlastareve Sintagme, jer je Matija Vlastar bio jedan od istaknutijih isihasta.

Pošto se Sintagma direktno suprotstavljala interesima Srpskog carstva, ona u izvornom obliku ne ulazi u sam Dušanov zakonik; umesto toga, zakonik koristi njen skraćeni oblik, tj. originalnu srpsku redakciju, poznatu pod nazivom „Skraćena Sintagma". Skraćena Sintagma je nastala verovatno između 1348. i 1349, i od 303 predmeta koja se nalaze u originalu, sadrži svega 94 (uglavnom bez crkvenih propisa). Kada su izlagani predmeti prvo su bili navođeni kanoni, zakoni i na kraju tumačenja. Pored toga što je postala deo Dušanove kodifikacije, i ušla u sve zbornike Dušanovog zakonodavstva, primenjivali su je i Rusi, Rumuni, Jermeni i Bugari. Cela Sintagma nije prihvaćena jer Vlastar u njoj ističe ideju svemoćnosti vizantijskog vladara, tj. njegovog dominijuma pa se tako potire pravo bilo kog naroda da uzdigne svoju državu na rang carstva (posebno su problematični komentari Teodora Valsemona). Time se suprotstavlja interesima srpske crkve (ne priznaje autokefalnost, carigradskom patrijarhu daje prvenstvo) i države. Pored odredaba koje se tiču crkvenog pravila, revizijom su izostavljene i sve odredbe koje nemaju zakonsku sankciju. Nastavili su da važe npr. zakoni vizantijskih careva, koji su u Srbiji bili poznati preko Nomokanona Svetog Save, a koji su u grčkim zemljama već dugo važili kao zakon, kao i odredbe krivičnog i građanskog prava (stvarnog, obligacionog, naslednog i porodičnog), te odredbe sudskog postupka.

Dimitrije Radovanović
Pravni fakultet Univerziteta u Beogradu

EKSTREMIZAM I TERORIZAM U MEĐURATNOM PERIODU: PRAVNA I STVARNA BORBA

Od ujedinjenja 1918. pa sve do kapitulacije 1941. godine, Kraljevinu Jugoslaviju su iznutra slabile rastuće težnje raznih grupacija ka otcepljenju i jačanje revolucionarnih političkih pokreta. Monarhija Karađorđevića nije bila dovoljno čvrsta za toliku unutrašnju i spoljašnju nestabilnost, koja je na kraju dovela do globalnog oružanog sukoba, što je za nas kulminiralo genocidom nad srpskim narodom, krvavim građanskim ratom u toku okupacije od strane Nemačke i njenih saveznika i, naposletku, urušavanjem same monarhije i dolaskom komunista na vlast. U ovom radu ćemo posvetiti pažnju tome kako je Kraljevina pokušala da suzbije ekstremističke grupacije i njihove činove terorizma putem pravnih regulacija, i koliko je država bila dosledna pravnim normama koje su regulisale ove probleme. Kada ih je poštovala, kada nije radila svoj posao, a kada je prekoračila svoja ovlašćenja...

Piotr Romaniuk
University of Warsaw Faculty of law
KU Leuven, Belgium

EVOLUTION OF AMERICAN COMPETITION LAW AND ITS IMPACT ON EUROPEAN JURISPRUDENCE - A HISTORICAL ANALYSIS FROM JUDGE BRANDEIS TO THE CHICAGO SCHOOL

This paper explores the transformative journey of American competition law and its profound influence on the development of European competition law during the latter half of the 20th century. A comprehensive examination of this evolution necessitates an in-depth exploration of pivotal figures, such as Judge Louis Brandeis, the establishment of the Harvard competition law school, and the subsequent rise of the Chicago School.

The analysis is contextualised within the historical, political, and economic landscapes of both American and European jurisdictions. The narrative commences with the legacy of Judge Louis Brandeis, whose groundbreaking jurisprudence laid the foundation for a more interventionist approach to antitrust regulation. Brandeis's emphasis on curbing monopolistic power and promoting economic democracy had a lasting impact, shaping the trajectory of American competition law. The Harvard competition law school emerged as a focal point for these ideas, fostering an intellectual environment that championed a more regulatory stance, especially during the mid-twentieth century.

The subsequent paradigm shift in American competition law is marked by the ascendancy of the Chicago School during the latter half of the 20th century. Led by scholars such as Robert Bork and Richard Posner, this school of thought advocated for a more economic-centric approach, emphasising efficiency and consumer welfare over structural considerations. The influence of the Chicago School permeated legislative and judicial circles, prompting a reevaluation of antitrust enforcement, and reshaping the American antitrust landscape.

As the United States underwent this transformative journey, its influence extended across the Atlantic, impacting the trajectory of European competition law. The historical, political, and economic context in Europe played a crucial role in determining how these American ideas were received and incorporated into the European legal framework. While European jurisdictions had traditionally adopted a more interventionist approach to preserve its distinct socio-economic objectives, the American shift towards the Chicago School ideology sparked debates and discussions on both sides of the Atlantic. The paper scrutinises landmark cases and legislative changes in both Europe and United States that reflect this process.

In examining the influence of American competition law on Europe, it is imperative to consider the divergent historical trajectories of the two continents. The post-World War II period witnessed the reconstruction of Europe and the establishment of supranational entities such as the European Economic Community (EEC), which later evolved into the European Union. The evolving dynamics of transatlantic relations and the globalisation of markets further shaped the interplay between American and European competition law.

This paper delves into the intricacies of this transatlantic dialogue, exploring how the convergence and divergence of American and European approaches to competition law shaped the global economic landscape. By considering the intellectual contributions of figures like Judge Brandeis, the contrasting perspectives of the Harvard and Chicago Schools, and the broader historical, political, and economic contexts, this analysis offers a nuanced understanding of the evolving nature of competition law on both sides of the Atlantic. The examination of these historical developments contributes to a comprehensive understanding of the global dynamics that shaped competition law in the second half of the 20th century.

Wiktoria Saracyn
University of Warsaw Faculty of Law and Administration

ACTIO DE PAUPERIE IN THE MODERN POLISH CIVIL CODE. A LEGAL TRANSPLANT OR A LOOSE INSPIRATION?

The subject of this paper is a comparative analysis of the contemporary Polish institution of liability for damage caused by animals regulated in Article 431 of the Civil Code and its Roman counterpart, i.e. *actio de pauperie*, originating from the Law of the Twelve Tables. The latter, by means of transmission via a commentary to the edict by Ulpian, a Roman jurist of the classical period, was subsequently incorporated into the text of Book IX of Justinian's Digest. The analysis also touches upon the evolution of the institution in question in Polish law of obligations, and aims to show certain analogies between the contemporary Polish solution and the Roman institution. This approach will consequently make it possible to determine the extent to which the Polish legislator was inspired by historical and legal arguments when developing the contemporary model of liability for damage caused by animals.

First the specific liability regime which characterises *actio de pauperie* will be discussed, with emphasis on its peculiarities such as the absence of iniuria (D. 9. 1. 1. 3. *Nec nim potest animal iniuria fecisse quod sensu caret*), the absence of normative causal relationship (D. 9. 1. 1. 1. *Noxa autem est ipsum delictum*), the acting of the animal *contra naturam* (D. 9. 1. 1. 7.) and the impossibility of asserting a claim in the event of even the slightest contribution to the occurrence of the damage that would be *de facto* a provocation of the damaging behaviour. Subsequently, the nature of liability for the damage done by animals under Article 431 of the Civil Code will be discussed, and in particular, the principle of presumption of fault in the supervision of the animal.

Finally, a comparison will be made of the most significant features of the two institutions under analysis, leading to the unambiguous conclusion that the principle of the presumption of fault in the modern Civil Code, apart from not being chosen accidentally, is at the same time the most appropriate solution, justifiable not only by historical premises, but also on grounds of equity. At the same time, it is important to note that such a solution cannot be regarded as a reception of the Roman model, as liability under *actio de pauperie* has very little to do with the principle of presumption of fault in supervision. On the contrary, it is characterised by a complete lack of culpability and unlawfulness of the damaging action.

Jana Simić
Pravni fakultet Univerziteta u Beogradu

ODNOS VALTAZARA BOGIŠIĆA PREMA PRAVNIM TRANSPLANTIMA

Valtazar Bogišić, jedan od najistaknutijih pravnih mislilaca svog vremena, ostavio je neizbrisiv trag u pravnoj teoriji i praksi. Cilj ovog rada je istraživanje i bolje razumevanje njegovog odnosa prema pravnim transplatima. Analizirajući različite aspekte, poput Votsonove teorije o nemogućnosti potpunog objašnjenja razvoja prava putem Savinijevih tvrdnji o narodnom duhu (*Volksgeist*) i pravnoj evoluciji, rad istražuje kako Bogišić usklađuje ili sukobljava svoje stavove u vezi sa pravnim transplantacijama sa svojim širem, filozofskim shvatanjem prava. Naglasak je stavljen i na Opšti imovinski zakonik kao kapitalni deo Bogišićeve baštine, način na koji je ova sinteza njegovih naučnih pogleda uticala na razumevanje pravnih instituta u okviru njegove pravne vizije, i postala trajan spomenik naše pravne kulture.

Kako bi se na jedan sveobuhvatan način obradila ova tema, neizbežno je razmotriti životni put i akademski rad Bogišića. Njegov doprinos pravnoj teoriji i praksi ne može se razumeti izolovano; on je duboko ukorenjen u njegovim životnim iskustvima i jedinstvenom istorijsko-političkom kontekstu u kojem je delovao. Rad će istražiti opseg uticaja različitih pravnih škola, mentorskih figura i kontrastnih teorija koje su oblikovale ovakav jedinstven pravni pristup. U skladu sa tim, produbljuje se uvid u filozofska uverenja i pravna razmišljanja koja su prožela njegovo nasleđe, postavljajući ga u širi kontekst pravne teorije. Ovaj pristup doprinosi potpunijem razumevanju bogatstva i značaja Bogišićevog doprinosa širem pravnom diskursu, koji se ogleda i u savremenoj relevantnosti njegove pravne misli, kao i načina na koji se ta misao održala u današnjem kontekstu, naglašavajući trajnu vrednost njegovih ideja.

Mirjana Slović
Pravni fakultet Univerziteta u Beogradu

UGOVORI SA DUBROVNIKOM I POLOŽAJ TRGOVACA U DUŠANOVOM ZAKONIKU

Ovaj rad istražuje pravne odredbe o ugovorima sa Dubrovnikom i položaju trgovaca u Dušanovom zakoniku, s ciljem pružanja dubljeg uvida u pravnu i ekonomsku situaciju srednjovekovne Srbije i Dubrovnika. Analiza se temelji na proučavanju položaja trgovaca u srednjovekovnoj Srbiji, njihovim garancijama – privilegijama i obavezama, odnosno regulisanju ugovora sa Dubrovnikom u okviru Dušanovog zakonika, sa osvrtom na ugovore koje su srpski vladari sklapali sa Dubrovnikom i njihove oblike. Ugovori sa Dubrovnikom predstavljali su važan deo spoljne politike svih srpskih vladara, posebno tokom srednjeg veka. Dubrovnik je bio ključan u trgovinskom napretku srednjovekovne Srbije, omogućavajući razmenu robe i ideja između ova dva regiona. Različiti srpski vladari, uključujući velikog župana Stefana Nemanju i cara Dušana, sklapali su različite ugovore sa Dubrovnikom, regulišući trgovinske odnose. Ovi ugovori ne samo da su doprineli ekonomskom razvoju obe strane, već su i jačali njihove političke veze i kulturnu razmenu.

Rad istražuje istorijski kontekst u kojem su nastali Dušanov zakonik i ugovori sa Dubrovnikom, naglašavajući njihov značaj u pravnom sistemu toga doba. Zatim, fokus je na odredbama Dušanovog zakonika koje se tiču trgovaca, uz analizu privilegija i obaveza koje su im pružene zakonom. Posebna pažnja posvećuje se definiciji trgovca, pravima trgovaca, postupcima za rešavanje sporova koji su proistekli iz trgovačkih transakcija i njihovom doprinosu srednjovekovnoj Srbiji.

Nadalje, detaljno se proučavaju odredbe Dušanovog zakonika koje regulišu ugovore sa Dubrovnikom. Ovo uključuje analizu uslova pod kojima su takvi ugovori sklapani, njihove karakteristike i pravne implikacije za obe strane ugovora. Kroz analizu, otkrivamo koliko su ovi pravni dokumenti bili napredni za svoje vreme i kako su doprineli razvoju trgovačkih odnosa i pravnih normi u srednjovekovnoj Srbiji. Pored toga, istražuje se uticaj ove pravne regulative na ekonomski razvoj Dubrovnika i Srbije, kao i na međunarodne trgovačke odnose.

Pored njihovog uticaja na ekonomiju, ugovori sa Dubrovnikom takođe su igrali ključnu ulogu u jačanju društvenih veza između Dubrovnika i Srbije. Trgovina nije bila puko ekonomsko pitanje, već je predstavljala osnovu za kulturnu razmenu i dijalog između ova dva regiona. Kroz trgovinske ugovore, Dubrovčani su donosili svoje običaje, znanje i tehnologiju u Srbiju, dok su Srbi imali priliku da upoznaju nove proizvode i ideje iz Dubrovnika. Ova kulturna razmena nije samo obogaćivala svakodnevni život građana, već je i doprinosila jačanju međusobnog poštovanja i razumevanja među različitim zajednicama. Stoga se može zaključiti da su ugovori sa Dubrovnikom imali dubok i širi uticaj na društvene, kulturne i ekonomske aspekte srednjovekovnog života u Dubrovniku i Srbiji.

Osim što su imali neposredan uticaj na srednjovekovno društvo, Dušanov zakonik i ugovori sa Dubrovnikom ostavili su dubok trag u pravnoj istoriji ovih regiona. Njihova preciznost u regulisanju trgovačkih odnosa i ugovora postavila je temelje za kasnije pravne sisteme. Mnoge odredbe ovih dokumenata preživele su i kasnije reforme i transformacije, ostavljajući svoj pečat na pravnu praksu Balkana. Stoga, njihovo proučavanje ne samo što omogućava bolje razumevanje srednjovekovnog pravnog sistema, već takođe otkriva kontinuitet pravnog nasleđa i njegov uticaj na modernu pravnu misao na ovim prostorima.

Agata Starkowska
University of Warsaw Faculty of Law and Administration

EVOLUTION OF THE TERM "LEGAL TRANSPLANT" BASED ON THE ISSUE OF CULTURALLY MOTIVATED CRIME

The aim of the paper is to attempt to present the issue of legal transplants from a relatively new perspective, i.e. by approaching the topic from the side of the implementation of various types of norms, values underlying the non-national legal system. The analysis is to refer primarily not to the aspect of lawmaking, but to the process of subsumption, where the authority applying the law takes into account elements beyond the binding legal system, in addition to the legal regulations in force. The subject-matter discussion will refer to criminal law and, more specifically, to the type of crimes referred to as culturally motivated crimes. In a simplified form, the author intends to focus on how national courts, taking Poland as an example, adjudicate when a crime is committed by a person whose actions are based on values related to the social or religious environment he or she comes from. In view of this, it is worth considering whether taking into account the motivation of the offender in each case, drawing on norms characteristic of their legal culture, can be treated as a kind of "legal transplant". Such a "legal transplant" would be characterised first and foremost by the fact that it would refer to the stage of application of the law, and would not be a simple introduction of norms derived from other regulations into the legal system; moreover, such a "transplant" would in its nature refer to the concept of law set in the perspective of social norms, and not to positivist theories of law understood through the prism of established regulations.

The motivation to research the above-mentioned topic from this perspective was provided by reading a text by a representative of Polish legal sciences, Jagoda Szpak, who in her deliberations suggested an evolution of the notion of "legal transplant". Initially understood narrowly, by e.g. Alan Watson, as "the moving of a rule or a system of law from one country to another, or from one people to another", today it seems to have a different, much broader meaning. Historically speaking, a concept that used to describe the implementation of rules or even entire legal systems in a rather technical sense, now seems to have the potential, from the perspective of legal theorists, to describe also the processes of exchange of elements of various legal cultures or norms of legal and non-legal origin. This paper is therefore intended to present a new approach to legal transplantation, so far suggested only by representatives of contemporary legal doctrine. This perspective intends to show that legal institutions have become separated from their original meaning over the years.

The starting point for the considerations to be carried out will be the genesis of the term "legal transplants", together with a brief presentation of the classification of legal transplants. However, the presented typology (J. Miller's), dividing transplants into: "the cost-saving transplant", "the externally-dictated transplant", "the entrepreneurial transplant" and "the legitimacy-generating transplant", seems to be already anachronistic.

Further on, the author intends to address the aspect of the aforementioned culturally motivated crimes. This should include a definition, description and examples of facts relating to the indicated group of crimes. This part of the discussion will draw mainly on the body of Polish jurisprudence and legal doctrine, due to the author's provenance. The still evident need for regulation in the criminal law system in the context of culturally motivated crime raises some questions: firstly, about the legitimacy of taking into consideration norms determining the offender's behaviour in the process of subsumption made by the court, and secondly, about the potential adoption of solutions from other legal systems in these instances. These two problems will constitute the main axis of consideration.

Finally, the analysis is intended to lead to general conclusions as to the need and manner of redefining the concept of legal transplants. The conclusions will be based on the above-mentioned reflections in relation to a group of crimes, i.e. culturally motivated crimes, which clearly show the mechanism of using, transposing norms that go beyond the existing legal system. The discussion is also intended to show to what

extent definitive transpositions are necessary at all, or whether the mere use of a foreign regulation in the process of applying the law can be considered a legal transplant. Finally, the paper also attempts to answer the question of whether the concept of legal transplant can and should be used broadly, also with regard to non-legal normative systems.

Iva Stefanović
Pravni fakultet Univerziteta u Beogradu

UTICAJ RUSKOG KRIVIČNOG ZAKONIKA IZ 1903. NA JUGOSLOVENSKI KRIVIČNI ZAKONIK IZ 1929. GODINE

Pravni sistem Kraljevine Jugoslavije nakon Prvog svetskog rata značajno su oblikovale pravne tradicije prethodnih zemalja koje su postale njen deo, kao i uticaj francuskog, ruskog, nemačkog, pruskog, norveškog zakonika na rešenja domaćeg prava. Ovaj rad se bavi istraživanjem uticaja Krivičnog zakonika Ruske imperije iz 1903. godine na formiranje Jugoslovenskog krivičnog zakonika iz 1929. godine, fokusirajući se na poređenje pravnih principa i instituta. S obzirom na širok spektar reformi koje su obeležile pravni kontekst Evrope u XIX i XX veku, posebno je značajno istražiti kako su se ovi procesi odrazili na krivično zakonodavstvo jugoslovenskih zemalja.

Analizirajući kako su pravni principi i ideje iz ruske pravne tradicije preneti i prilagođeni pravu Kraljevine Jugoslavije, u radu ćemo proceniti doprinos ruskog Zakonika iz 1903. godine u formiranju temelja modernog srpskog krivičnog prava, ali i krivičnog prava ostalih jugoslovenskih naroda.

Period nastanka zakonika u Rusiji obeležen je sve izraženijim socijalnim i političkim nezadovoljstvom sa kojima se suočavao režim, što je izazivalo potrebu za reformama. Industrijski razvoj i urbanizacija dovodili su do novih oblika kriminala i društvenih tenzija, zahtevajući modernizaciju pravnog sistema. Zbog toga je i donošenje Krivičnog zakonika iz 1903. godine doprinelo preciznijem i sistematičnijem pristupu krivičnom pravu od ranijeg, Krivičnog zakonika iz 1864. godine. S druge strane, i situacija u novoformiranoj Kraljevini Srba, Hrvata i Slovenaca bila je dosta složena, s obzirom na to da je trebalo stvoriti jedinstveni krivični zakonik koji bi prevazišao sve pravne raznikolikosti i koji bi važio na celokupnoj teritoriji Kraljevine.

Đorđe Stepić
Pravni fakultet Univerziteta u Beogradu

O ROMEJSKIM ZVANJIMA U PRAVNOJ TERMINOLOGIJI ZAKONOPRAVILA SVETOGA SAVE

Sastavljajući Nomokanon za potrebe autokefalne srpske crkve i nezavisne kraljevine, arhimandrit i arhiepiskop Sava preuzima niz izvora romejskog crkvenog i svetovnog prava. Među kanonskim izvorima, po obimu i uticaju, izdvaja se Sinopsis kanona Svetog Stefana Efeskog, sa komentarima Aleksija Aristina i Jovana Zonare. Među svetovnim izvorima, glavno mesto pripada prevedenom Prohironu („Zakonu gradskom") Vasilija Prvog Makedonskog. Sem toga, svetovna pravila o položaju Crkve donose i glave 45. - 47. Zakonopravila (Zbornik u 87. glava, Novele cara Aleksija Komnina o braku i izvod iz *Collectio tripartita*).

Svi navedeni spomenici koji donose pravila potekla iz carskog zakonodavstva regulišu položaj Crkve u svetu, kao i odnos državnih i crkvenih vlasti u različitim granama prava. Nužno, u njima se pominje niz predstavnika državne vlasti koje njihove nadležnosti upućuju na odnose sa crkvenim.

Počev od lokalnih organa, pa do najviših prestoničkih, istraživanje ima za cilj da pomogne razumevanju načina na koji redaktor (arhiepiskop Sava) uklapa romejsku pravnu terminologiju ovih titula i zvanja, kao i njihove nadležnosti, u svoj zbornik. Dalje, značajno je shvatiti i na koji način on razume njihove dužnosti i kako ih opredeljuje. Metodološki saveznik u tome jeste i jezička analiza prevodilačkih postupaka koje on tom prilikom koristi. U pitanju su prevođenje po suštini, upotreba kalkova (bukvalnih prevoda sa izvornog jezika), te ostavljanje transliterovanih oblika grčkih naziva za pomenute pojmove.

Elena Stojić
University of Belgrade Faculty of Law

THE TWO FAILED LEGAL TRANSPLANTS OF THE CODE CIVILE IN SERBIA

The French Civil Code (Code Civile), previously known as The Napoleonic Code, was enacted in 1804 during the French Consultate period. Even though it wasn't the first European civil code, the Code Civile is regarded as a major influence on the creation of European civil codes during the 19th century.

The Serbian Civil Code was enacted in 1844 and was used until 1946. It was established during the reign of the Defenders of the Constitution (*Уставобранитељи*). During this period it was necessary for the Serbian population to have a law codification in order to provide a sense of legal and political stability, considering the fact that property rights were unregulated and complex due to hatt-i sharifs issued by the sultan (1830-1833). During the reign of Prince Miloš Obrenović, the Serbian people insisted on creating a law codification, much to the dismay of prince Miloš who stated that "it is better to rule withouth laws". Eventually, on 25 March 1844, the Serbian Civil Code was enacted, and it was primarily based od the Austrian Civil Code.

In the year 1829, prince Miloš formed a legislative committee (*Законодателна комисија*). Among the members were Vuk Karadžić and Georgije Zaharijades. Most of the members weren't legal experts, which made the codification process quite difficult. Prince Miloš ordered the committee to use the French Civil Code as the model for the Serbian Civil Code. In February 1829, Prince Miloš gave Georgije Zaharijades the task of translating the Code Civile into Serbian. Due to the fact that Georgije wasn't fluent in Serbian, the translation was considered inadequate; Vuk Karadžić even states: "He (Georgije Zaharijades) translated the text in such a way that nobody understood what he was saying, and many men almost died of laughter while reading the translation". Prince Miloš was deeply dissatisfied by the work of the committe and this is considered as the first failed attempt of legaly transplanting institutions from the Code Civile in Serbia. Due to the political instabilities in the state, work on the Serbian Civil Code was dissmissed until the year 1837.

In the year 1873, with the approval of the Austrian government, prince Miloš summoned Jovan Hadžić and Vasilije Lazarević to join the legislative committee. Due to the passing of Vasilije Lazarević, Jovan Hadžić was left to work alone. During his work, while reading the translation of the Code Civile, he sent a report to Miloš Obrenović stating that "French institutions are too foreign for the Serbian people". Because of that, the Code Civile was dismissed as a model for the Serbian Civile Code. In the end, Hadžić used the Austrian Civil Code as the main model, while leaning on Serbian customary law in creating legal norms regarding inheritance and family law. It could be argued that due to the fact that Hadžić was educated in the Austrian Empire, he was more inclined to use the Austrian Civil Code as he was more familiar with it.

Although the Austrian Civil Code was used as the main model, it's evident that the Serbian Civil Code has elements of the French Civile Code, Serbian customary law, Roman law and Ottoman law as well. Alan Watson states that it is easy for an underdeveloped nation to adopt legal customs of more developed nations, and even adds that sometimes the process of adopting legal norms occurs by pure chance.

Đorđe Timotijević
University of Belgrade Faculty of Law

LEGAL TRANSPLANTS IN SERBIAN ADMINISTRATIVE PROCEDURAL LAW BEFORE THE BEGINNING OF THE SECOND WORLD WAR

Administrative procedure and administrative dispute in Serbia, as the two pillars of Administrative Procedural Law, developed mainly under the influence of Austrian and French law.

After the First World War, Serbia, as an independent country, entered the state of the southern Slavs, the Kingdom of Serbs, Croats and Slovenians, which changed its name to the Kingdom of Yugoslavia in 1929. Considering the great political and legal influence of the Austro-Hungarian monarchy, whose legal system even formed part of the law in some areas of the common South-Slavic state, it is not unusual that the first Yugoslav Law on General Administrative Procedure (LAP) was adopted very soon after the Austrian Law on General Administrative Procedure and was largely modeled after it. The first draft of the LAP was prepared by the Croatian author Ivo Krbek. That draft, with certain changes and additions, was adopted on 9 November 1930. Although it was written according to the Austrian model, the Yugoslav Law had almost twice as many articles as the Austrian one. The reason for this increase lies in the fact that the Yugoslav legislator introduced numerous provisions that concerned the civil procedure into the LAP.

The administrative dispute was introduced in Serbia very early and it started developing under the influence of French law. Serbia established the institution of the State Council very early on, during the First Serbian Uprising, and the Council remained the supreme administrative court until the beginning of the Second World War. Even though it was inspired by the French model, the Serbian State Council exercised supreme legislative, administrative and judicial power, unlike the French State Council that performed only judicial and advisory functions.

However, the Sretenje Constitution of 1835 introduced the State Council as the body that had legislative and administrative power together with the Prince, and in one department, also performed judicial functions in the third and last degree. Nevertheless, just as the Constitution of 1835 itself was short-lived, the Council was the highest authority alongside the Prince for only a short time. Instead, it quickly became an organ completely subordinate to the Prince. The Constitution of 1838 improved the Council´s position by granting permanency to all its members. This permanency was reflected in the fact that the members could be replaced only with the consent of the Porte and on the condition that they were found to have worked illegally and contrary to the interests of the state. This way, Serbian law introduced a deviation from the French system, according to which members of the Council were not permanent and could be replaced at any time by the Council´s decree. Based on the Constitution of 1838, the Law on the organisation of the Council of State was adopted in 1839. This Law marked the beginning of the development of true administrative judiciary in Serbia, but it also granted certain executive and legislative powers to the Council. Furthermore, the competences of the Council continued to change, and just like in France, they were broadened and narrowed several times before the Council was abolished after the Second World War. Meanwhile, with the creation of the Kingdom of Serbs, Croats and Slovenians, the two-level administrative judiciary was introduced and special administrative courts were established.

In my paper, I will focus on the most important laws in the field of administrative procedure and administrative dispute, that were partially transplanted into the Serbian and Yugoslav law before the beginning of the Second World War. The paper will also contain the analysis of the Serbian and Yugoslav regulations that were influenced by the French and Austrian law, simultaneously comparing them to today´s regulations.

Izabela Wasik
Jagiellonian University Doctoral School in Social Sciences

FROM GALICIA TO VIENNA, AN EXAMPLE OF A USURY LAW IN THE HABSBURG MONARCHY

There are many examples of the influence that laws of individual states exerted upon others, and legal history can provide many interesting observations on the matter. The exchange of ideas by legal academics, later also developed by the increasingly popular literature, made it possible to familiarise oneself with 'innovations' in the legal area. It is therefore not surprising to see attempts to adopt particular solutions and then, sometimes after some kind of modification, to adapt these specific solutions to the realities of individual countries. It is usually indicated how individual institutions from country A are recycled in country B. However, it is also possible to imagine a slightly different situation, related to the system of a given state. Indeed, quite specific solutions can be observed in the Habsburg monarchy.

The second half of the 19th century saw fundamental changes in the political system, through some quite significant legal acts. The first of these acts was undoubtedly the October Diploma of 20 October 1860, and the author of this act was a Pole, Count Agenor Goluchowski. It regulated the exercise of legislative power by the Emperor, the Parliament, i.e. the Council of State, and the national assemblies. The October Diploma established a presumption of competence in favour of the national assemblies, taxatively specifying matters reserved to the jurisdiction of the Council of State. The second such act was the February Patent of 26 February 1861. From a formal point of view, this was an act executing the October Diploma. The presumption of legislative competence was shifted in this case to the Council of State. At that time, the individual crown states were granted autonomy, and within this autonomy, the individual national assemblies were also able to regulate through their legislation the matters concerning them.

This matter was specified in the national statutes. In the national statutes for the Galician Diet, matters relating to national culture, public buildings and charitable establishments maintained with national funds, estimates and national accounts were included in the subject matter of the National Diet. In addition, areas relating to general laws were singled out in municipal, church and school matters, such as the provision of water, supplies and accommodation for the army. In addition, the Galician Diet could also deal with matters relating to the welfare or needs of the country delegated to it by special ordinance. The above reforms were complemented by the enactment of the so-called December Constitution. It consisted of five laws with imperial sanction dated 21 December 1867. These were namely:

(a) the Constitutional Law on the Judicial Power;

(b) the Constitutional Law on the exercise of governmental and executive powers;

(c) the Constitutional Law on the establishment of a State Court;

(d) the Constitutional Law on the universal rights of citizens;

(e) an Act to change the February Patent

Given the above regulation of the system and the existence of a kind of dualism between the central centre in Vienna and the autonomous centres, it is probably not surprising that in many cases the Council of State in Vienna, i.e. the Austrian parliament, influenced the reception of certain legal solutions and institutions in the individual crown states. But there were also cases of the reverse, in which it was the Council of State that "took over" the solutions in force in the individual crown states. In the case of Galicia, the law against usury can serve as an illustration of the above situation. Due to the structure of the legal system and the division of competencies adopted in the state, this law could not be passed by the State Diet. In the Galician Diet, on the other hand, the above matter was debated just as strongly. In the end, the Council of State passed the law of 19 July 1877 on remedies against dishonest proceedings in loan contracts. It applied only in Galicia. In 1881, however, the usury regulation was extended, with minor modifications, to the whole Austrian part of the Habsburg monarchy.

Kacper Żochowski
University of Warsaw Faculty of Law and Administration

DE LEGE FERENDA PROPOSALS IN *TATAR AL-FURQAN*, A 17TH CENTURY PASQUINADE ON LITHUANIAN TATARS

"To the Tatars, it behooves to act in Lithuania as one would with the Jews in Egypt" – these words, excerpted from the Polish pasquinade first published in 1617 under the title "*Alfurkan Tatarski prawdziwy na czterdzieści części rozdzielony*" (The Genuine Tatar *Al-Furqan* Divided into Forty Parts), sum up one of the leitmotifs of religious polemical literature in the Polish–Lithuanian Commonwealth, namely how the state and society should deal with "infidels". The book became quite popular, and further editions appeared. It even provoked a response from the Tatars, a booklet titled "Apologia Tatarów" (Apology of Tatars) which unfortunately did not survive to modern times.

What I find interesting and wish to share during my paper is the fact that the author, in his argumentation against the Tatars, despite the aforementioned book not being a legal work, very often recalls various laws and customs. In the narrative, they serve different purposes: from merely an interesting illustration, through examples that can be used to amplify the argumentative force, to direct *de lege ferenda* proposals. The first two categories encompass, for the most part, legal orders already present in the Polish-Lithuanian Commonwealth, such as Polish law, Islamic law, Canon Law, as well as Tatar customs. But when it comes to the demands for the enactment of new laws, it is often stated that things should and can be done better. For this purpose, the author recalls Roman Law, alongside other foreign institutions.

In my paper, after a brief introduction to the work, I will bring your attention to a few examples of such instances of antique or foreign provisions that the author proposes to be applied to Lithuanian Tatars. Many aspects of such proposals need to be taken into consideration. Firstly, what is proposed by the author is his idea of legal provisions that may or may not be relevant to what is known about them nowadays. The problem of the understanding of legal institutions from antiquity should always be considered in such instances as this. Secondly, the character of this work is mainly polemical, with rather frivolous formulation; therefore, some of the examples may be manipulated so that they fit into the narrative. Another aspect is that the standard of redaction used in 17th century publications for notes and references is far less restricted than what modern scholars are used to. Sometimes annotations can be unclear and, despite many efforts, they remain as such. Lastly, the authors from this time very often used compendia or *silvae rerum* to draw various examples and use them in their works.

My presentation will illustrate how legal institutions can be (mis)understood, (mis)represented, and (mis)used to fit them into the argumentation. In the Polish-Lithuanian Commonwealth, fortunately, all these proposals remained in the postulatory phase but still provide us with examples of how propositions of legal transplants were presented to the wider public in the past.

Julia Zygała
University of Warsaw Faculty of Law and Administration

ALAN WATSON'S THEORY OF LEGAL TRANSPLANTS AND THE TRANSFER OF PROPERTY IN THE JAPANESE CIVIL CODE OF 1898

The aim of the paper is to discuss the transfer of property in the Japanese Civil Code of 1898 in the light of Alan Watson's theory of legal transplants.

The Japanese Civil Code of 1898 had been called by one of its authors "the fruit of comparative jurisprudence". This expression is not an overstatement, given the fact that during the drafting of the initial version of this codification, the legal orders of more than 30 countries were referred to. There is no doubt that the process of creating this codification of private law was an interweaving of solutions from different legal orders and even legal traditions. In particular, French and German regimes, which competed with each other during the codification of law in Japan, were of great significance. A good illustration of the necessity to choose one of these legal orders is the issue of the transfer of ownership model for Japanese law.

According to Alan Watson's theory of legal transplants, two aspects are essential when choosing which law to borrow: the authority of the donor system and the availability of its law. He gives the following criteria as instances of meeting the accessibility aspect: the considered law is in writing, in a form that makes it relatively easy to find and understand and also readily available.

There seems to be no question that both France and Germany were regarded as authorities in Japan, as evidenced by the establishment of the French Law School in Tokyo as early as 1870, and later also the German Law School. Professors from both of these countries were invited to Japan by the Japanese government. Moreover, Japan's new constitution was modelled on the Prussian model.

As for the accessibility criterion, both the Napoleonic Code and the Bürgerliches Gesetzbuch were in writing, which gave them an advantage over English common law, schools of which had also been operating in Japan since the 1870s. There was also a need for both codifications to be translated into Japanese, which was not an easy task due to the previous lack of equivalents for many terms, such as "claim" or "subjective right". This leads to the conclusion that Watson's two main criteria for the donor system are equally met by both the French and German codes. The question may therefore be raised as to what factors determine the choice of a specific foreign law in such a case?

It will be necessary to refer to the history of the codification process of the Japanese Civil Code. After a first and second draft had been rejected as mere translations of the Code Civil in 1878, the French professor Gustave-Emile Boissonade de Fontarabie was appointed advisor to the ministry of justice in 1879 to work on a third draft. This version was also strongly leaning towards French law. For this reason, the *Abstraktionsprinzip* was not introduced; instead, the French solution for the acquisition of property with a "pure" contract was used.

After all, Boissonade's proposal did not gain much acceptance and it was decided to make some changes to it. Professors Nobushige Hozumi, Masaakira Tomii and Kenjiro Ume, who had all studied in Europe, were chosen to revise the civil code until 16 July 1898, when the code was intended to come into force. This time, the draft leaned towards the German BGB. It is worth noting that the provisions on property rights remained unchanged, even though the introduction of the German *Abstraktionsprinzip* was under consideration. However, it was rejected by the editors as too complicated, and they decided in favour of the French unitary system.

The literal wording of Article 176 of the Japanese Civil Code has not stopped the strong influence of German legal scholarship in Japan, called *Theorienrezeption*. Leading Japanese scholars, influenced by German law, started to interpret "the manifestation of the parties' intent" in Article 176 of the Japanese Civil Code as the contract transferring title and argued this contract should be understood to be different from a contract of sale, which should merely create an obligation to transfer title. That is how Japanese scholars

tried to introduce the German *Abstraktionsprinzip* into Japanese law. The influence of *Theorienrezeption* waned after WWI, when Japanese jurisprudence developed a strong interest in sociological jurisprudence, and withered completely after WWII. The prevailing opinion in Japan today is that the transfer of property takes place through the “pure” contract, just like in the Napoleonic Code.

The example of property transfer in the Japanese Civil Code shows that Watson's two basic criteria are not always sufficient to determine the mechanism for selecting foreign law as the donor system. The intuitiveness of the solution in question, the ease of assimilation and the number of countries already applying it also turn out to be of significance. The latter factor was also noted by Watson, some years after the first publication, and called “habit and fashion”. This thesis is supported by the fact that the *Abstraktionsprinzip* has been received to this day in far fewer jurisdictions than the French solution. However, there is no doubt that Alan Watson has laid a solid foundation for contemporary comparative law and his theory of legal transplants remains a valuable starting point for today's research.