Second Central and Eastern European Forum for Young Legal, Social and Political Theorists
Budapest, 21–22 May 2010

PROGRAM

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Program Overview

JP = John Paul II Hall
D = Dean's Council
30 = Seminar Room 30

Friday, 21 May

08:30–09:30	Registration	In front of JP
09:30–10:00	Opening Welcoming address	JP
10:00–11:00	Parallel sessions I	D, 30
11:10–12:40	Parallel sessions II	D, 30
12:40–14:30	Lunch break	In front of JP
14:30–16:00	Parallel sessions III	D, 30
16:00–16:30	Coffee break	In front of JP
16:30–18:00	Parallel sessions IV	D, 30
19:30–	Conference dinner	XO Bistro (see map)

Saturday, 22 May

09:00–10:30	Parallel sessions V	D, 30
10:30–11:00	Coffee break	In front of JP
11:00–12:30	Parallel sessions VI	D, 30
12:30–13:30	Parallel sessions VII	D, 30
13:30–13:45	Closing and Farewell	JP
14:00–15:00	Lunch	Restaurant Ruben (see map)
15:00–	Optional social programs (not included in fee)	

Sessions Friday, 21 May

	Dean's Council	Seminar Room 30
10:00–11:00	**Legal Reasoning** Chair: M. Könczöl	**Law and Society** Chair: M. Soniewicka
Parallel sessions I	K. Ficsor Legal Formalism from Conceptual and Normative Point of View	M. Kądziela Law Supporting Discrimination?
	Á. Kovács Legal Reasoning in the Practice of the Hungarian Constitutional Court	U. Šinkovec & D. Modic The Gap between Higher Education Institution and the Economy
11:10–12:40	**Political Philosophy** Chair: Sz. Tattay	**Law as System** Chair: A. Zétényi
Parallel sessions II	V. Hidasi The Communitarian View of the Community	M. J. Golecki Complex Laws and Self-Referential Rules
	I. Ivković Refusal as a Political Act	M. Hein Constitutional Conflicts between Politics and Law in Transformation Societies
	M. Vavřík G. W. F. Hegel and Foundations of the Philosophy of Bureaucracy	K. Staudigl-Ciechowicz The State as Übermensch: Alexander Hold-Ferneck and his Legal Theory
12:40–14:30	Lunch Break	

Sessions Friday, 21 May (Cont'd)

	Dean's Council	Seminar Room 30
14:30–16:00	**Interpreting Hart** Chair: Sz. Hegyi	**The International System** Chair: E. Kirs
Parallel sessions III	G. Dajović Rule of Recognition and Written Constitution	J. Busch From World War I to 'Peace Through Law'
	M. Jovanović 'Natural Necessity', Moral Objectivism, and the Separation Thesis	V. Negrescu Theoretical and Conceptual Analysis of the Cooperation for Development
	M. Paksy On Hartian Questions of Legal Philosophy	M. Yılmazata Neofunctionalism as Integrative Theory
16:00–16:30	Coffee Break	
16:30–18:00	**Law and Moral Philosophy** Chair: P. Sólyom	**EU Policies** Chair: I. Raducu
Parallel sessions IV	M. Pieniążek Why Do We Keep Our Agreements?	Á. Töttős The Newest Steps Towards a Common European Immigration Policy
	A. Szerletics Paternalism as Care	Á. Vincze Language Use and Language Laws in the EU
	M. Könczöl Fairness, Definition and the Legislator's Intent	K. Zámbó The Schengen Area and Co-operation
19:30	Conference Dinner, XO Bistro (Rákóczi út 5)	

Sessions Saturday, 22 May

	Dean's Council	Seminar Room 30
09:00–10:30	**Rights, Duties, and Reason(s)** Chair: Ch. Papacharalambous	**National Courts and Transnational Law** Chair: B. Fekete
Parallel sessions V	Sz. Hegyi Legal Duty and the Idea of Public Reason	A. Groza The Reform of the Institutional and Juridical System of the EU
	Sz. Tattay The Subjective Concept of Right in Francisco Suárez	B. Hohler & N. Vižintin International Law in the National Legal Order of Slovenia
	A. Zétényi Practical Reason and Practical Reasonableness: Raz and Finnis	I. Raducu The Courts' Deference: an Interplay Between Domestic and European Legal Orders
10:30–11:00	Coffee Break	
11:00–12:30	**Courts** Chair: M. Pieniążek	**Criminal Justice** Chair: M. Paksy
Parallel sessions VI	M. Dybowski Judicial Power	E. Kirs Concurrence and Complementarity within the System of Transitional Justice Institutions
	A. Kalisz & A. Szot General Clauses	Ch. Papacharalambous Joint Criminal Enterprise
	K. Kelemen The Road from Common Law to East-Central Europe: The Dissenting Opinion	O. V. Petrova The Issue of Restorative Justice in Belarus

Sessions Saturday, 22 May (Cont'd)

	Dean's Council	Seminar Room 30
12:30–13:30	**Law and Ethics** Chair: A. Szerletics	**Comparative Law** Chair: M. Jovanović
Parallel sessions VII	J. Kot Legal Ethics	B. Fekete Comparative Legal Cultures
	M. Soniewicka Legal Restrictions on the Use of Genetic Test Results	Cs. G. Tamás The Concept of Sovereignty in Pre- and Post-War Japan
14:00–15:00	Lunch, Ruben Restaurant (Magyar utca 12–14)	

Abstracts

Jürgen Busch

From World War I to 'Peace Through Law': Kelsen's Theory of International Legal Integration and the Paradox of (European) Constitutionalism

Based on his personal experience as legal officer in the Austro-Hungarian Ministry of War during World War I, Hans Kelsen devoted a considerable number of writings to questions related to law as a means to the end of (world) peace. The paper will summarize the gradual development of Kelsen's *Leitmotiv* of 'peace through law' leading to his major contributions in the field, put this theoretical evolution in relation to biographical aspects of Kelsen's life, and finally discuss the relation of Kelsen's theory to similar structural and institutional questions in regional processes of legal integration and supranational constitutionalism in organisations like the EU.

Goran Dajović

Rule of Recognition and Written Constitution

The paper deals with the concepts of rule of recognition and written constitution and the relation between the two. It is very intriguing to observe that these two concepts are of different kind—the first one strictly theoretical or jurisprudential while the second mainly practical, familiar to any educated man. Due to that fact, it is both practically important but also theoretically tempting to analyze this relation. In a system with a written constitution the rule of recognition as a criterion of law's validity, commonly and partly at least, provides that norms which are duly enacted according to the constitutional procedure are valid law. The paper also outlines an account of the most important features of a written constitution: supremacy, judicial protection, durability and rigidity.

Maciej Dybowski

Judicial Power

In my paper I will consider the following problem: what is meant by those who claim that judicial power is expanding? Apparently there can be very different answers to this question, depending not only on the discipline, but also—and most of all—on a perspective adopted within one's legal philosophy. It will be

shown how to clarify the problem in order to facilitate the debate in which participants make claims about judicial power, its possible expansion and its scope. The paper will also examine major trends in approaching this subject expressed in the literature on judicial power. Moreover, there will be some observations concerning the theoretical approach to the problem of the rise in judicial power in Central Europe in relation with approaches adopted in Western Europe and America.

Balázs Fekete

Comparative Legal Cultures: Discussion and Critique

Some theorists of comparative law frequently propose a shift from the positivist approach of legal comparison to a cultural one. They assert that rule-based or lego-centric comparative law is outdated due to its incompatibility with the latest trends in philosophy or its inability to deal with the socio-cultural dimensions of law. Through an in-depth discussion of these conceptions I try to define the core of the relatively blurred concept of 'comparative legal cultures'. The second part will focus on the critique of this concept. I will argue that comparative law needs a methodological reform but this should happen by preserving the values of the older approach. The so-called 'moderate version of functionalism' developed by Jaako Husa could be a proper way to reform and modernize the classical theses of comparative law instead of getting rid of its entire heritage.

Krisztina Ficsor

Legal Formalism from Conceptual and Normative Point of View

In this paper I will attempt to demystify some questions about legal formalism, one of the most criticized views in legal theory. In order to understand legal formalism we should clarify its main thesis conceptually and normatively as well. The necessity of a conceptual analysis stems from the circumstance that there are a lot of conceptions of legal formalism. My examination will take mainly the essays of Frederick Schauer and Michael S. Moore into account because their conceptions of legal formalism illuminate its most important features, such as the deductive structure of legal reasoning, the right answer thesis, and rule-based decision making. If we get a clearer picture about the concept of legal formalism we will be able to answer more confidently whether this formalist model of legal decision-making is normatively appropriate.

Mariusz Jerzy Golecki

Complex Laws and Self-Referential Rules: Towards an Evolutionary Theory of the Legal System

The aim of the paper is to scrutinize the model of a complex legal system from the perspective of social rule vs. legal rule model adopted in the law and economics literature as a standard description of the dynamics of legal sources. The economic theory of legal and social rules will be applied as a benchmark for the explanation of the interrelationship between simplicity and complexity of any legal system. The *prima facie* proposition states that the relationship between the subsystems of any legal system could be described as either substitution (competition) or complementarity (mutual cooperation), depending on their relative efficiency in terms of costs of rule production and application and certainty maximizing benefits. These propositions will be tested on empirical data about historical legal systems such as ancient classical vs. post-classical Roman law and medieval vs. modern common law.

Anamaria Groza

The Reform of the Institutional and Juridical System of the European Union Brought by the Treaty of Lisbon

The Treaty of Lisbon, an extremely important stage in the progress of the European integration, grants the European Union juridical personality, consolidates its democratic legitimacy and makes it more transparent. An objective analysis of the treaty should equally reveal those fields in which a contribution of the treaty would have been necessary but was not made. The paper discusses common external and security policy, the budget of the Union and the application of union law in the member states as problems which the treaty has not addressed satisfactorily. These problems do not question the important reforms brought by the treaty to the institutional and juridical structure of the European Union but enforce the idea that the new treaty is but a stage in the process of European integration and that on the treaty of Lisbon another will follow in the future.

Szabolcs Hegyi

Legal Duty and the Idea of Public Reason

There is a well-known theory about the normativity of law, i.e. the justification of the binding force of the legal duty. It is called 'institutionalized autonomy

theory' and contains a conceptual thesis and a normative argument behind it. This theory, rooted in many forms of legal positivism, states the limited domain of legal argumentation. It states that the legal justification of actions is distinct from the other ways of justification. I assert that the claim for the autonomy of legal justification of individual actions is justified only if the means of it (legal rules and institutions) are fit to public reasoning. The idea of public reason delineates a spare but complex political theory based on the moral equality of citizens in which the positivist legal theory mentioned above is seated. In the paper I would like to clarify the core and features of public reason.

Michael Hein

Constitutional Conflicts between Politics and Law in Transformation Societies: A Systems-Theoretical Approach

Constitutional conflicts between state powers have often occurred in democratic transformations. With respect to the question of the rule of law in young democracies, clashes between the legislative and the executive branches on the one hand and the judiciary and the constitutional court on the other hand as well as between ordinary and constitutional courts are particularly virulent. In these conflicts, the key distinction between politics and law is affected, which was mostly violated in the previous autocratic regimes. This paper presents a systems-theoretical approach in order to explain the above mentioned constitutional conflicts. By means of two case studies on constitutional conflicts between politics and law in Bulgaria and Romania, this argument is concretized into hypotheses on the question at which points in constitutional orders and under which circumstances constitutional conflicts are to be expected.

Viktória Hidasi

The Communitarian View of the Community

My contribution focuses on one of the fundamental questions of contemporary political philosophy. What holds communities in which people have different value notions together? First, I summarize the Rawlsian conception of community and its communitarian critiques. Then I deal with communitarian anthropology; I try to define the concept of identity on which communitarian authors such as Charles Taylor and Michael Sandel rely. My conclusion is that the communitarian authors' criticism of procedural liberalism is partly valid since Rawls is not able to lay the foundations for a viable community form in his theory. A

liberal political philosophy has to be built on a holist conception of the person if it wishes to ground the solidarity of a community's members.

Beti Hohler and Nadja Vižintin

International Law in the National Legal Order of Slovenia: From Theory to Practice

The divide between international and national law in the 21st Century is disappearing and the application and interpretation of international law is gaining momentum before national courts in various areas, ranging from human rights and trade law to environmental law and criminal law. In legal scholarship, the discourse on the relationship between international law and national law, however, often remains limited to the general theoretical concepts of dualism, monism and constitutional approaches in different States. This paper tries to take a step further and look at the actual practice of national courts applying international law. Our aim is to identify the extent and the manner in which the national courts in Slovenia use norms of international law, either as a source of law or as an interpretative tool. For this purpose, we have conducted an analysis of judgments of Slovenia's Supreme Court in 2009 and will present their conclusions and comments of this analysis.

Ivana Ivković

Refusal as a Political Act

While resistance and disobedience are widely discussed topics in political philosophy, the phenomenon of refusal has mostly remained in their shadow. Refusal has often been deemed an act which lacks the properly political dimension, a token of disengagement, marking the retrieval from the public sphere into the private conscience of an individual. In my view, this negative or limited role assigned to refusal is premised upon an implicit and very common understanding of it as an act that renounces authority altogether ('You have no authority over me!'), and by doing so, steps outside the established order. Such an act can only count as political if one acts in the name of the order to come; and at this point, refusal fails. But does refusal really function in this way? I will claim that it does not, and I will offer a different understanding of this act, which captures its political features with more precision.

Miodrag Jovanović

'Natural Necessity', Moral Objectivism, and the Separation Thesis

One of the theses of Hart's theory of law that is conspicuously avoided by his followers is his teaching on '"natural" necessity'. Hart argues that, until human nature or social conditions change fundamentally, there are certain rules that stem from '"natural" necessity'. Furthermore, Hart argues that every system of general rules has to be administered in line with the standard of 'natural procedural justice', according to which like cases should be treated alike. In this paper, I will argue that Hart made an impermissible leap from the 'is' of human nature to the 'ought' of the minimum content of natural law. This way, Hart introduced a 'thin' version of 'moral objectivism' Moreover, with his teaching on 'natural necessity', Hart departed from the 'Separation Thesis' of legal positivism.

Małgorzata Kądziela

Law Supporting Discrimination?

In Polish culture almost every discourse against discrimination (like feminism) is perceived as an attack on national ideology, which—as scholars emphasize—is characterized by fear of and hate towards racial dissimilarity or homosexuality. Nationalism isolates and represses all public discourses characterized by sexuality. Feminism sees and denounces the paradoxes of nationalism, among which the most important seems to be the fact that it is the major source of danger for the values it was supposed to protect. Analysing the case of a draft act on gender equality put forward in 1996 by the Parliamentary Women's Group the paper raises the question: is law based on the rule of equality or supports discrimination and produces social exclusion?

Anna Kalisz and Adam Szot

General Clauses: a Measure of Universalization of the Content of Law or Rather Its Regionalization?

A general clause can be described as a legal construct that allows applying various legally undefined criteria and values to the legal decision. These criteria and values are axiologically determined and come from outside of the legal system, though they are laid down in the statutory provisions. This paper focuses on judicial decisions involving the interpretation of such general clauses as 'public morals/public morality' and 'public interest' in the judgments of Polish, Eu-

ropean and international courts. The main goal is to answer whether general clauses are a tool for universalization through the judiciary in the times of European integration and globalization process or rather the expression of local (regional) values.

Katalin Kelemen

The Road from Common Law to East-Central Europe: The Case of the Dissenting Opinion

The dissenting opinion is a perfect example of gradual convergence between common law and civil law systems and, therefore, an excellent and illuminating object of study for comparatists. The paper discusses the use of dissenting opinion by the constitutional courts of East-Central Europe, dealing with some peculiarities, like the case of Estonia where there is no constitutional court but the publication of dissent is allowed in almost the whole judiciary system, or the case of Latvia where dissenting opinions are not published together with the judgment, but once a year in the collection of judgments. Most of the information relating to the use of dissenting opinions by East-Central European constitutional courts contained in the paper was gathered by the author through interviews with and questionnaires filled out by judges and clerks of the courts.

Eszter Kirs

Concurrence and Complementarity within the System of Transitional Justice Institutions

Transitional justice has evolved into a multidisciplinary field by embracing not only legal, but political, economic, institutional or educational measures and decisions. Out of the main areas in the field of transitional justice, such as lustration, reparation or truth seeking programs the presentation will focus on the issue of criminal accountability. The paper will visit the issue of potentials and efficiency of institutions addressing criminal accountability of perpetrators of genocide, serious human rights violations, war crimes and crimes against humanity. The objects of analysis and comparison will be international, hybrid and domestic criminal judicial bodies, and certain alternative institutions, such as truth commissions and commissions of inquiry.

Jaraslaw Kot

'Legal Ethics'

Legal Ethics is a relatively young science which had formed from the combination of ethics and various sciences used in criminalistics (law, psychology, psychiatry etc.). In the Republic of Belarus the leader and founder of this scientific approach is Professor Andrey Vasilievich Dulov who developed and installed it as a necessary subject throughout the Republic for all legal professions in all institutions which execute their training. The main object of Legal Ethics could be determined as the study of the interconnection and mutual influence of Morals and Law, for the purpose of expanding theoretical and practical data in order to assist the moral development of society.

Ágnes Kovács

Legal reasoning in the practice of the Hungarian Constitutional Court

Justification of the authority of constitutional review needs appropriate legal reasoning. I try to highlight some general requirements which can help us to evaluate the rightness of a decision. In my view rightness means rational argumentation. Thus, the justification of reasoning depends on the coherency of the applied legal rules and principles. These criteria are equally applicable to a particular decision or chains of decisions which deal with the same subject matter. In particular, I will discuss the quality of legal argumentation of the Hungarian Constitutional Court. The decisions I will present are from cases involving sensitive legal issues related to the right to privacy and to self-determination.

Miklós Könczöl

Fairness, Definition and the Legislator's Intent: Arguments from *epieikeia* in Aristotle's *Rhetoric*

My paper deals with the arguments based on fairness (*epieikeia*) as described by Aristotle in the *Rhetoric*. I am going to argue that while part of what is traditionally interpreted as his discussion of fairness has no practical relevance or at least cannot be linked to any evidence of contemporary forensic oratory, the description he gives of *epieikeia* in the *Nicomachean Ethics* and the example in the *Rhetoric* may show the way for making a plausible argument for 'justice beyond the law' in judicial oratory. To reconstruct this kind of argument, one has to take into account the topic of definition, which immediately precedes fairness

in the discussion of the arguments useful in judicial speeches. I shall attempt to show the links between definition and the legislator's intent, a topic often used in arguments for a fair interpretation of law.

Victor Negrescu

Theoretical and Conceptual Analysis of the Cooperation for Development: a Research Field Generated by Public Opinion

The cooperation for development is a relatively new field in international relations and has its roots in the Marshall Plan. Initially understood in terms of humanitarian aid, its principles have been adapted and applied to developing countries. Different interpretations of development cooperation result from different conceptualizations of the system of relations between donor countries and recipient countries. Mainly developed by social activists and pushed forward by the public opinion interested in establishing strong and efficient policies in this field, the term has not yet been conceptualized in social science. To what extent can we conceptualize development cooperation today in international relations, given the existing ideological cleavages? This is the question that I try to answer in the paper by using a theoretical framework adapted from international relations theories.

Máté Paksy

On Hartian Questions of Legal Philosophy

In a broader research project my aim is to analyze contemporary French legal philosophy by highlighting its historical origins and its connections to other legal cultures. The framework is based on Hart's 'persistent questions' whereas the content consists of the 'would-be answer' of French legal philosophers. With regard to the Hartian questions, I shall develop the following argument. Although law itself is intrinsically connected to one political community, culture and history, legal philosophy recommends an abstract and general approach to the law. By virtue of this abstractness and generality, legal philosophers are obliged to treat basic legal problems independently from particular legal systems. This 'independence' requires analyzing not positive law, but the spirit of a legal system. Legal philosophy's project is possible if legal philosophers can elaborate sufficiently 'basic' questions which can be 'transplanted' to another legal culture. By answering these questions they can understand the spirit of the other legal system. I shall argue that Hart's 'persistent questions' meet these criteria.

Charis Papacharalambous

Joint Criminal Enterprise: Towards a New Concept of Criminal Participation?

Emblematic in its use through the case law of the ad hoc Tribunal for the former Yugoslavia, the construct of Joint Criminal Enterprise aims at transferring responsibility to individuals indirectly, i.e. through the fact that they were members of a group having committed international crimes in furtherance of a jointly decided and approved plan or purpose. This development is not a peculiarity of the ICTY jurisprudence, though; apart from being considered as a firm element of the ICC legislation too, it also reveals a deeper transformation of the respective dogmatic features as well as the attitudes of modern criminal policy in general. The paper tries to show that through this development criminal law's concept of responsibility has radically changed.

Olga V. Petrova

The Issue of Restorative Justice in Belarus

There is no mediation in the criminal justice system of the Republic of Belarus but the conception of juvenile justice is worked out based on a restorative approach. Accordingly there are counselling centres by juvenile courts and their officials are facilitators in criminal matters. Improving criminal procedure is a current problem in Belarus. The mediation provides a principle of procedural economy and saves resources for a due process by reducing a quantity of criminal cases in the courts. Moreover, it is important because although the rate of imprisonment reduces in the country, there is a high level of recidivism. The paper discusses some challenges for introducing mediation in Belarus: it requires a substantial change in national criminal policy; there is no tradition to apply for psychological help; people are used to avoid taking responsibility for their behaviour; there is no developed civil society which would play a leading role in restorative justice activities.

Marcin Pieniążek

Why Do We Keep Our Agreements? The Civil Law Principle of 'pacta sunt servanda' in Relation to Paul Ricoeur's Philosophy

This presentation will attempt to interpret the civil law principle of 'pacta sunt servanda' in the light of Ricoeur's philosophical views, outlined in his book *Soi-même comme un autre* (Oneself as Another). According to Ricoeur's relational conception of a person the preservation of identity is an ethical postulate and stands for being faithful to one's own 'project of being oneself'. 'Being oneself' is analogous to the observance of the words given in a promise which means that the person who remains oneself is the one who irrespective of physical and mental changes that take place in him, remains faithful to his undertaken commitments. Moreover, in Ricoeur's opinion, commitment is never an obligation only to oneself but, above all, to another human being. Therefore, Ricoeur closely links identity with interpersonal and social relationships which take place at the level of 'fair institutions'.

Ioana Raducu

The Courts' Deference: an Interplay between Domestic and European Legal Orders. A Theory of Judicial Dialogue Questioned by Romanian Case Law?

Among the multiple challenges that the European integration currently faces one can note the constitutional courts *saga* with regard to the ratification of the Lisbon Treaty. The constitutional courts' jurisprudence put into light the need for a revisited and comprehensive theory for an effective national adjudication of state's international obligations, especially with regard to human rights protection. The major dilemma is to find the right standard of review in order to achieve the 'unity in diversity' goal, namely to preserve the coherence of the European project and at the same time to preserve the constitutional and national identity. This paper proposes a comprehensive theory of judicial deference as an effective and pragmatic way to address the problem of the final judicial authority in Europe. The second part will apply the theory to Romanian case-law.

Urša Šinkovec and Dolores Modic

The Gap between Higher Education Institution and the Economy: Transfer of Knowledge and Legal Regulation

The paper's aim is to reflect on the barriers in the process of transfer of knowledge between higher education institutions and the economy. First, the formation of knowledge in HEI is not in accord with the needs of the economy which therefore is forced to provide additional training/education for individuals. Second, the creation of 'new' professional knowledge for specific areas of work based on 'tailor made' knowledge and separate from those offered by formal study programmes increases the structural differences between higher education and the economic sphere. Third, the lack of efficient intellectual property protection laws prevents a stronger cooperation and transfer of knowledge. The authors identify the lack of efficient property protection as a major obstacle for the interests of both the HEI and the economy to be sufficiently protected.

Marta Soniewicka

Legal Restrictions on the Use of Genetic Test Results

Human genetic technology, based on the knowledge obtained from a great international scientific multi-billion dollar effort called Human Genome Project, has brought about a revolution into health care. The revolution consists in transforming medicine into genomic medicine, where treatment is individualized based on genetic information. Genomics opens new perspectives in preventing and healing diseases. If carefully used and sensibly restricted, genetic information can provide a lasting change of human health condition and bring about significant benefits to health care in the future. However, such information can be obstructive in some situations. The aim of the paper is to discuss the necessary scope of legal protection of an individual in the age of genomic medicine.

Kamila Staudigl-Ciechowicz

The State as Übermensch: Alexander Hold-Ferneck and his Legal Theory as a Counterpoint to the Pure Theory of Law

The most important as well as best known legal theoretician of the Austrian interwar period is undoubtedly Hans Kelsen. With his pure theory of law he gained a lot of recognition, but also received criticism. One of his fiercest opponents was Alexander Hold-Ferneck, professor of legal philosophy and public

international law at Vienna University between 1912 and 1945. He was an opponent of Kelsen on a professional level because of their different understandings of law but the dispute was rooted also in their different ideologies. The aim of the paper is to present Hold-Ferneck's legal theory as embedded into his personal and professional struggles as well as into the political environment of the interwar period.

Antal Szerletics

Paternalism as Care

The traditional approach towards paternalism has, for a long time, been determined by deontological ethics. Authors pertaining to the deontological tradition emphasize the importance of personal autonomy—both on the definitional and justificatory levels of paternalism. My paper aims to outline an alternative approach to paternalism based on the ethics of care and (partially) on virtue ethics. I argue that the main underlying virtue behind paternalistic practices (e.g. parenting, nursing, medical practices, etc.) is the virtue of care. If we reinterpret autonomy in a way that focuses on the importance of human relations instead of 'disengaged' rationality and accept that relations constitute autonomy (i.e. autonomy is not *a priori* given), autonomy will develop through the development of caring relations, including paternalism. Consequently, paternalism does not necessarily oppose relational autonomy.

Csaba Gergely Tamás

The Concept of Sovereignty in Pre- and Post-war Japan

The Constitution of the Empire Japan was adopted in February 1889 and came into force in November 1890. This modern written constitution was largely influenced by the Prussian constitution of 1850. The Constitution codified the so-called *tennō* system, i.e. *tennō*-above-all or the divine principle and Articles 1–17 listed the Emperor's powers. Following its defeat in the Second World War, Japan was occupied for the first time in its history. The new Constitution, promulgated on 3 November 1946 includes several new provisions on the Emperor. The paper shall discuss the possible interpretations of the Japanese concept of sovereignty, elaborating on the meaning of the Japanese word for Emperor in the pre and post-war Japan; the application of the term symbol and sovereignty; the significance of traditions versus interpretation of written codes; finally, the ceremonies of succession in 1989–90.

Szilárd Tattay

The Subjective Concept of Right in Francisco Suárez

The last great representatives of the medieval tradition of natural law and natural rights were Spanish theologians of the Second Scholasticism. They inherited the idea of natural rights indirectly from sixteenth-century Ockhamists. However, they were very far from being nominalists; on the contrary, they were devoted Thomists. Aquinas, their master, though certainly knew the subjective concept of right, seems deliberately to have avoided it. To be more precise, at times he used *ius* in a subjective sense in the *Summa theologiae* but this usage was sporadic and marginal. This clearly points out serious philosophical problems for any Thomist legal thinker who accepts the subjective concept of right. In my paper I will examine the answers that one of the leading figures of the Second Scholasticism, the Jesuit Francisco Suárez gave for these questions.

Ágnes Töttős

The Newest Steps towards a Common European Immigration Policy

Together with the evaluation of The Hague Programme the European Commission introduced its draft concerning the cooperation in matters of justice and home affairs for the period of 2010–2014. The Stockholm Programme accepted in December 2009 by the European Council is supposed to define the priorities for the next five years, take up the challenges of the future and make the benefits of the area of freedom, security and justice more tangible to the ordinary citizen. It follows a different type of philosophy by putting more emphasis on basic rights and by counting more on the possibilities offered by new technologies. Two overarching goals are to respond to the need for better regulation and to focus on the rights of EU citizens. The realization of these objectives depends much on the executive acts, in the forming of which the upcoming presidencies, including Hungary, will play a leading role.

Michal Vavřík

G.W.F. Hegel and Foundations of the Philosophy of Bureaucracy

The paper concerns the inspiration current social and political thinking can draw from the thinking of G.W.F. Hegel. Particular attention is given to the way his ideas combine social critique and a theory of bureaucracy. Focusing on Hegel's *Philosophy of Right* (1821) the paper defends the view that Hegel's

political thinking is not the justification of a particular form of the early modern state but a theory of the modern state in general. Political theorists of the 19th century built numerous conceptions of political modernity, associating it with liberalism, democracy, mass politics, civil equality, civil, political and social rights etc. Obviously, these processes were contemporary to the state-building; but were they essential to the very concept of the State? The paper interprets Hegel's writings as an attempt to build a theory of political modernity without the components mentioned above.

Ágnes Vincze

Language Use and Language Laws in the European Union

In my essay I would like to speak about languages and language laws in the European Union. I have been in Brussels a few months ago and I had a chance to see the press service of the European Parliament. I shall present the very diverse functions of the press service. I shall speak about the different uses of this service which offer much more opportunities than currently used. This service can be a very good opportunity to maintain linguistic diversity in the European Union. In the second part of my essay I shall speak about the Slovakian language law which has very important impact on the Hungarian minority in Slovakia. I present the premises and the details of this language law and discuss the European Parliament's position on this question.

Mehmet Yılmazata

Neofunctionalism as Integrative Theory: Theoretical Approach vs. Practical Implementation

This paper focuses on the theoretical and practical role of neofunctionalism as an integrative theory in the process of European Integration. Due to its practical implementation, neofunctionalism is not merely a theoretical approach; can be analyzed by evaluating. The main objective is to analyse the reciprocal influences of neofunctionalist theory and actual processes of integration as the political effects affiliated with the theory. Due to the close relation between theoretical debate and its impact on real life institutions, neofunctionalism was able to gain more outstanding achievements compared to other integrative theories, such as federalism. While the paper concentrates on the evaluation of neofunctionalism under the auspices of the process of European integration, the theory may be applied to all forms of integrative politics.

Katalin Zámbó

The Schengen Area and Co-operation

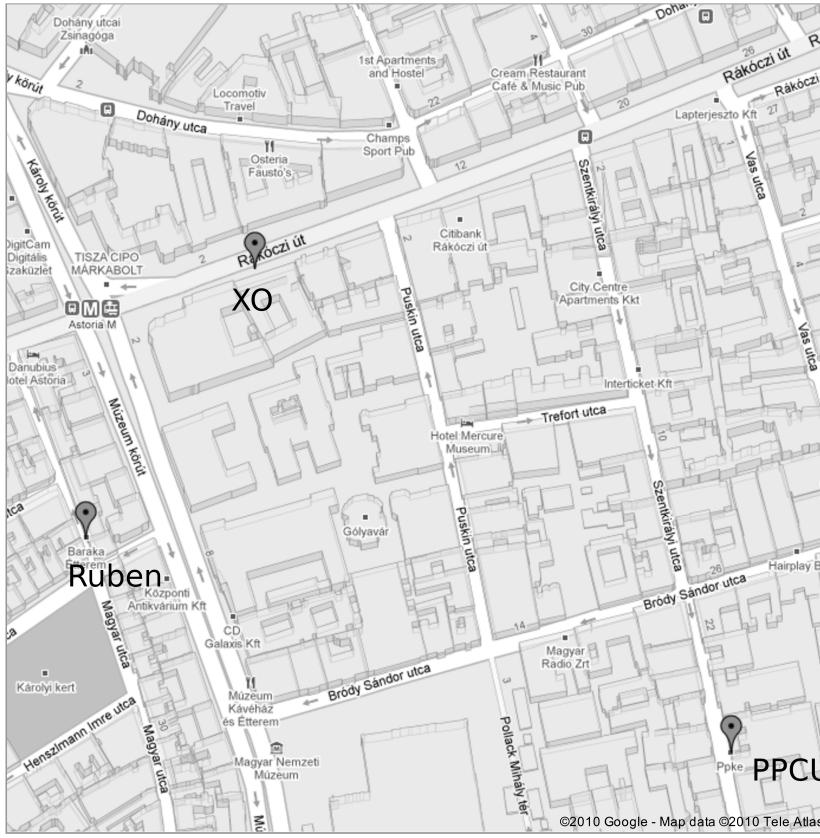
The Schengen area and cooperation are founded on the Schengen Agreement of 1985. The signatory states to the agreement have abolished all internal borders in lieu of single external border. Following the signing of the Treaty of Amsterdam, this intergovernmental cooperation was incorporated into the EU framework on 1 May 1999. The Schengen area gradually expanded to include nearly every Member State. At the heart of the Schengen mechanism, an information system was set up. The Schengen Information System is a sophisticated database used by authorities of the Schengen member countries to exchange data on certain categories of people and goods. Currently, work is in progress on a new system with enhanced functionalities and based on new technology. The paper discusses how this new system (SIS II) is going to operate.

András Zétényi

Practical Reason and Practical Reasonableness: Raz and Finnis on the Basis of Practical Philosophy

Legal positivist Joseph Raz and natural law theorist John Finnis base their conception of practical philosophy on strikingly similar concepts: practical reason and practical reasonableness. They both claim that the general principles of practical reasoning are self-evident, reject consequentialist morality and share the view that co-operation and commitment to one's community are important considerations for moral decisions. Although both find the understanding of practical thought necessary for the understanding of morality, the most important difference between their theories concerns the relation between practical reason and particular goods. For Finnis—with practical reasonableness being one of the basic goods—it is not possible to speak about practical reason without speaking of (particular) basic goods but for Raz the latter is necessary. He therefore places much more emphasis on social forms. Some argue that for today's religious and moral pluralism Raz' account has more to offer for jurisprudence than Finnis'. My aim is to show that Finnis' theory is not incompatible with pluralism.

Map



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