

Preface

This collection of essays presents to the public the proceedings of the 18th Forum of Young Legal Historians, which took place at the University of Vienna, Austria, from 30th May to 2nd July 2012. The Forum is an annual event organised by volunteers from various academic institutions, who act under the umbrella of the Association of Young Legal Historians (AYLH).

The hosts of the 18th Forum were the University of Vienna, represented by the Department of Legal and Constitutional History and the Department of Roman Law and Ancient Legal History, as well as the Austrian Academy of Sciences, namely its Commissions for the History of Ancient Law and for Austrian Legal History (KRGÖ; the latter changed its affiliation in April 2012 and joined the University of Vienna).

'Recht [durch] setzen. Making Things Legal' was also the overarching theme of the conference: The secular tradition of modern European jurisprudence agrees on the basic assumption that law is actually 'made' in one way or another. The conditions and procedures of law-making are subject to constant change and, accordingly, the creation of legal norms is one of the major areas of research for legal historians. The questions they ask relate to the legitimacy of normative acts, their economic, political and social impetus or even the media of their representation. Scholars direct their attention at all stages of the legislative process, i.e. from the very first considerations to the publication of a legal act.

*Some traditions are even characterised by a unity of law-making and the administration of justice where one can hardly be considered without the other. In ancient Rome, for instance, the highly significant figure of the praetor combined both the enforcement of the law and its advancement in his role as a magistrate. According to Papinianus' famous definition of the praetor's office his task was to further, amend and correct the civil law for the common good – *adiuvandi vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicam* (D 1.1.7.1.). The Common Law tradition of most of the English-speaking world continues to be based on case-law.*

*In all legal traditions however and also in all fields of law, the positive law requires transformation into social reality. There the concept of 'proceedings' occupies a central position: In Roman antiquity the term *ius* originally referred not only to the law but also to the place where the law was administered, thus reflecting the interconnectedness of substantial law and legal proceedings. Over time the handling of the law by specialised experts was established as a particularly efficient mode of law-enforcement. Today it is widely accepted that their*

role amounts to more than that of a mere “Subsumptionsautomat”; still, the idea of the judge as a “Richterkönig” (R. Ogorek) is equally rejected. The Roman jurist Ulpian referred to lawyers as the “priests of justice” (D.1.1.1.), which hints at the ethical dimension of their position in society. The significance attributed to these specialists finds its manifestation in the interest legal historians take in the legal professions and their members – including their social backgrounds, their education and their roles in the exertion of state power – and the material remains of their past actions. With the latter, researchers often face the methodological challenge that the traces of legal practice tend to be less tangible than the normative texts on which they are based.

Obviously not everyone who is ‘in the right’ will eventually obtain justice. The problems of legislative injustice and miscarriages of justice have become central themes in legal history. The relationship between unjust, man-made laws on the one hand and norms that might rank higher than those on the other has also been discussed at great length – notwithstanding the insight that sometimes an unjust decision may have to be accepted in the interest of peace and order in society.

The Forum itself was divided into two parallel panels that comprised a total of 51 papers by presenters from the following countries: Austria, Belgium, Brazil, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, the Netherlands, Poland, Serbia, the Slovak Republic, Switzerland and the United Kingdom. Thematically, the contributions covered aspects of ancient legal history, including Roman private law as well as Greek and Hellenic legal history, medieval and (early) modern constitutional and legal history (with a strong regional focus on Hungary and Poland respectively), the reception of Roman law into European private law traditions, and historical approaches to military law and law of conflict, criminal law, international law, labour law and commercial law. Individual papers also addressed questions of legal theory and the broad field of politics/the media and the law. This very broad range of papers made the event an international and interdisciplinary one, both in terms of the participants themselves and the topics of their contributions.

As usual, the academic event was accompanied by a rich social and cultural programme. The participants were invited to the Austrian Parliament, the Kunsthistorisches Museum Wien with its famous collection of Greek and Roman antiquities, the Imperial Treasury and the Haus-, Hof- und Staatsarchiv, one of the branches of the Austrian State Archives. Emeritus Professor Werner Ogris took a group on a legal history city walk, and on the last day of the conference, there was also the opportunity to join an excursion to Klosterneuburg Monastery. Formal evening receptions for the participants were hosted by the President of the Administrative Court of the Republic of Austria and the Mayor of Vienna.

On behalf of everyone who took part in this immensely successful conference the organisers would like to thank the following individuals:

The Hon Barbara Prammer, President of the Austrian National Council, for accepting the patronage over the event and inviting the participants to the Parliament; Prof Clemens Jabloner, President of the Administrative Court of the Republic of Austria, for his opening lecture and the reception at the Bohemian Chancellery; Prof Werner Ogris for his legal history city walk; Prof Thomas Olechowski for his continuous support and encouragement as well as for guiding a group through the Imperial Treasury; Paul Frey of the Kunsthistorisches Museum Wien for the invitation to visit their collections; Gerhard Gonsa of the Austrian State Archives for the guided tour through the Haus-, Hof- und Staatsarchiv; and Falk Pastner of the University's Conference and Event Management Division for his assistance in organisational matters.

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