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Introduction

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1 This special session of the journal "Forum Historiae Iuris" collects the contributions presented at the conference "Entangled international and national legal orders in the long nineteenth century", which took place in Zurich on 2 and 3 March 2020.[1] The conference aimed to investigate the complex and dynamic mechanisms of law and the entangled relationship between international and national legal orders. This period is traditionally seen as the era of codification, the death of the common European legal tradition (save for Savigny's German-speaking academic space) and the rise of nation-states. However, this idea is an oversimplification. Scholars retained academic correspondence.[2] Professors migrated from one jurisdiction to another.[3] The end of the century even witnessed a fever for comparative approaches to different legal systems.[4] Scholars travelled and created academic networks, societies and scientific journals dealing with comparative, constitutional and international law.[5] Many practical problems gave rise to the combination of diverse legal orders. The actors of the legal communicative community invoked, blended or borrowed arguments in court.[6] Conversely, the process of imperialism and colonisation offered venues to experiment with alternative solutions or to blend local non-Western customary law and European legal systems.[7]

2 Using the concept of "entanglements"[8], we asked scholars from various legal historiographical traditions to analyse how constitutional controversies intertwined with international legal argumentation; how political actors used and constructed the language of "law" and particularly of international law; how imperial powers borrowed and adapted arguments to fit the necessities of colonial geography; how transfers of colonial and metropolitan institutions for property and land ownership operated; and how the French diplomatic community used judicial expertise.[9]

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1 We would like to thank our contributors, who have accepted enthusiastically to join our project, Dr. Markus Prutsch for his presentation and Prof. Dr. Andreas Thier for his insightful talk as keynote speaker in our conference.

2 E.g. Lieselotte Jelowik (ed.), *Briefe Leopold August Warnkönigs an Karl Josef Anton Mittermaier 1833-1858* (Frankfurt am Main: Klostermann, 2009).

3 Raphaël Cahen, Jérôme De Brouwer, Frederik Dhondt & Maxime Jottrand (ed.), *Les professeurs allemands en Belgique : circulation des savoirs juridiques et enseignement du droit (1817-1914)* (Brussels: ASP, 2022).

4 Gustave Rolin-Jaequemyns, "De l'étude de la législation comparée et du droit international," *Revue de droit international et de législation comparée* 1 (1869): 1-17.

5 E.g. Raphaël Cahen, "Laboulaye et Kachenovsky et la fabrique du droit international : voyages, réseaux, circulation des savoirs juridiques," *Clio@Themis* 22, 2022, https://doi.org/10.4000/cliothemis.2076

6 E.g. Frederik Dhondt, "Het jonge België los van het droit public de l'Europe ? Reflecties bij een cassatiearrest uit 1848," *Tijdschrift voor Bestuurswetenschappen en Publiekrecht* 2 (2019): 48-60.

7 Florence Renucci (ed.), *Dictionnaire des juristes. Colonies et Outre-Mer (XVIII^{e}-XX^{e} siècles)* (Rennes: PUR, 2022).

8 Thomas Duve, "European Legal History- Concepts, Methods, Challenges," in *Entanglements in Legal History: Conceptual Approaches, Global Perspectives on Legal History 1*, ed. Thomas Duve (Frankfurt am Main: Max Planck Institute for European Legal History, 2014), 29-66, http://dx.doi.org/10.12946/gplh1

9 Jacob Katz Cogan, "A History of International Law in the Vernacular," *Journal of the History of International Law / Revue d'histoire du droit international* 22, no. 2-3 (2020): 205-217.

3 The nineteenth century was, by some degree, the most critical century for the development of international and constitutional law and their entangled dialogues. The rise of national sovereignty and the gradual reduction of "granted" constitutions seemed to enhance the legitimacy of national codes. In reality, the international system embedded these evolutions in long debates about recognition and adaptation to revolution (including the most radical option: intervention).[10] In the late nineteenth century, international law assumed precise characteristics. The science of international law emerged, separately from the craft of diplomacy (the realm of statesmen) and the study of natural law (where philosophers held sway).

4 The protagonists of this development were international lawyers: academics, domestic legal professionals and diplomats. They lived during the period of radical change in the international panorama, which emerged in the late eighteenth century due to the American and French revolutions, the collapse of the Napoleonic empire and the emergence of the congress system (1815-1823) which founded a new international order.[11] This order was already disrupted and adapted in the 1830s and 1840s and had to be redesigned in the mid-nineteenth century as a result of the Crimean war, at the end of which, with the Paris Treaty of 1856, the Ottoman Empire was offered accession to the benefits of the "Public Law of Europe".[12] In this complex panorama, both constitutional law and international law underwent thorough transformations.[13]

5 The essays consider various nineteenth-century "entanglements" through case studies, involving both European, imperial and colonial legal spaces or arenas of argumentation. The "nation" and its development serve as a point of reference. This transpires in a dual role: both as a legitimising tool in local state-building processes and as a framework in the representation of the international order.

6 The entanglements between international law and nation-building are a rich ground for tracing different research paths around the concept of nation. Pietro Costa notes the plurality of uses, conceptions and contextualisation in which the words "nation", "state" and "nationalism" operated during the long nineteenth century and how the interplay of these concepts shaped the

10 Andrey Rahten, Gregor Antoličič (ed.), *The Congress of Ljubljana 1821. Personalities, Events and Historical Context* (Klagenfurt: Mohorjeva Celovec, 2021); Lothar Brock, Hendrik Simon (ed.), *The Justification of war and international order from Past to Present* (Oxford: Oxford University Press, 2021).

11 Claudia Storti, "Empirismo e scienza. Il crocevia del diritto internazionale nella prima metà dell'Ottocento," in *Constructing International Law. The Birth of a Discipline*, ed. Luigi Nuzzo, Miloš Vec (Frankfurt: Klostermann, 2012), 51-145. Raphaël Cahen, *Friedrich Gentz (1764-1832) : Penseur et acteur du nouvel ordre européen* (Berlin: De Gruyter, 2017), 283-313; Mark Jarrett, *The Congress of Vienna and its Legacy: War and Great Power Diplomacy after Napoleon* (London: I.B. Tauris, 2014). See also Beatrice de Graaf, *Fighting Terror after Napoleon. How Europe Became Secure after 1815* (Cambridge: Cambridge University Press, 2020).

12 Luigi Nuzzo, *Origini di una scienza. Diritto internazionale e colonialismo nel XIX secolo* (Frankfurt: Klostermann, 2012); Eliana Augusti, *Questioni d'Oriente. Europa e Impero Ottomano nel Diritto Internazionale dell'Ottocento* (Napoli: Edizioni Scientifiche Italiane, 2013).

13 Luigi Nuzzo, Miloš Vec, "Introduction," in *Constructing International Law. The Birth of a Discipline*, XII; Miroslav Sedivy, *The Decline of the Congress System: Metternich, Italy and European Diplomacy* (London: Bloomsbury, 2020).

international community. One path is characterised by the analysis of the nation as a historical product and foundation of the legitimacy of the political order, examining the desire of crafting a new common state, as in the Italian or German spaces. The nation is not something “aseptic”, but is the intertwined product not only of various historical and political elements but also of mythological and sacral elements that characterise “Western” national identity.

7 This path is flanked by another that is analysed above all by considering certain European states of more ancient formation, such as France and its overseas relations, between the metropolis and the colony. The colonial dimension is seen by nineteenth-century jurists as one of the “many sectors of the manifestation of sovereignty”; the definition of nationalism becomes very broad and the rhetoric of the nation is transformed into 'imperial' discourse. The imperial path, focusing on the British empire, is characterised by the multiplicity of different and entangled spaces, peoples, languages, cultures and traditions, by a law that is shaped and moulded by reality. The imperial dimension is in a dialectic relationship with the nationalist dimension, which is used as a tool to enlarge the original European community and to develop mechanisms and strategies of domination. Costa suggests an entangled reading of sovereignty between theory and practice, between unitary models of the order and the presence of a multiplicity of variegated spaces, difficult to place in Western (even legal) categories.

8 Lisa Ford's study of the legal status of the logging settlement at Belize between the Spanish and British Empires, from 1763 to 1821 is a prime example of the powerful analysis inspired by her work and that of Lauren Benton.[14] Traditional private and public claims derived from Roman Law are adapted and blended to fit colonial geographies. Asserting authority (*imperium*) and property (*dominium*) is expressed in “sovereignty talk”, produced by more actors than the mere contracting parties in an international treaty between sovereign states. The imperial and colonial spaces are shaped by entangled discourses between the notion of sovereignty and the construction of settlements by British administrators and local magistrates. Ford demonstrates how multiple actors attempt to apply the conceptual language of legal-political discourse to practical realities between the Spanish and British empires.

9 The entanglements between international law, British domestic law, and African customary law are illustrated by Inge van Hulle, who examines the legal institution of the concession, its process, and the discussions for granting it in the Gold Coast and Lagos territories between 1880 and 1920. The scramble for Africa, inaugurated with the Berlin conference of 1884-1885, initiated the use of treaties “as a quintessential legal instrument of European imperialism”, but territories were controlled through a legal instrument, still little studied in the history of law: concession. The paper investigates the land reforms introduced by the British, in particular the Crown Lands Bill of 1894 and the Lands Bill of 1897. With the Concessions Ordinance of 1900, the British empire recognised the right of the indigenous population to access the concessions, after obtaining the approval of the Supreme Court of the Gold Coast. Jurists, such as Joseph Ephraim Casely Hayford

14 Lauren Benton, Lisa Ford (ed.), *Rage for Order. The British Empire and the Origins of International Law, 1800–1850* (Cambridge, MA: Harvard University Press, 2018).

and John Mensah Sarbah, strategically used international law, British law and African customary law to rediscuss and “attack” the British agrarian reforms.

10 Elisabetta Fiocchi Malaspina’s contribution deals with a classical question of private law: the registration of land ownership, both for purposes of transfer of legal title and of publicity against third parties. A comparison of European systems alone would occupy a scholar for a considerable period of time. However, the circulations and entanglements studied here transcend the comparison between French-inspired, German-inspired or common law. The article highlights the moment of exceptional creativity that arose at the end of the nineteenth century when the European imperial powers sought the most efficient way to organise land property and publicity in their colonial dominions. The article highlights the success of the Australian Torrens system and demonstrates how transnational networks of experts, which have been essential in the construction of colonial domination, stretched to the most essential concept of power over space: land ownership.

11 Turning back to the European classical concept of the nation-state, more entanglements appear than one would initially think. The struggle for independence, as in the Italian case, was linked with its recognition by the other European polities. Frederik Dhondt studies the parliamentary debates that took place in Belgium in 1861. The recognition of Victor Emmanuel II as King of Italy recalled the separation of Belgium and the Netherlands, in a context of permanent neutrality, which imposed self-restraint in external affairs and questioned the legitimacy of moving fast for mercurial reasons. Belgian politicians used the lower chamber of Parliament as an “academic aeropagus”, arguing through international law doctrines and referring to “decisive constitutional moments” such as 1789, 1814-1815 and 1830. Frederik Dhondt emphasizes that the very same actors who created the Belgian constitution were diverging in their interpretations of constitutional and international law patterns and presented “competing narratives” on how to assert the recognition of Italian independence.

12 The close interconnections between international and constitutional law also emerge from the study of the Consultative Litigation Committee of the French Foreign Ministry. This especially emerges from the role played by the committee’s membership, consisting of expert lawyers in both disciplines. On one hand, legal advisers were employed by the Ministry, but on the other hand, several members were recruited from the apex of the judicial system and the Council of State. As Raphaël Cahen shows, the Consultative Litigation Committee had been a laboratory of international law practice, dealing with a great variety of legal cases and disciplines. He highlights two topical case studies: the French claims regarding the indemnities of the 1815 peace agreements and post-Napoleonic press legislation.

13 As the examples in the focus section of the “Forum Historiae Iuris” demonstrate, studying the use and appropriation of legal arguments, institutions and tools unveils a vast field of research. This section promotes an 'intertwined' reading of law in its many nuances. Others are yet to be explored, and others are to be rediscovered. By critically reflecting on the use and adaptation of

words such as nation, sovereignty, concession, indemnity and landownership, the essays show several entanglements that were generated in Europe, as well as in the colonies, which built different spaces and shaped norms.