

Conference ‘Imposing Liberty: Overseas Influences on the Legal Reconstruction of Europe after World War II’ organized by research project *Reinventing the foundations of European Legal Culture 1934-1964* and NYU at NYU Florence, La Pietra, 15-16 April, 2016.

The project ‘Reinventing the Foundations of European Legal Culture 1934-1964’ (foundlaw.org) organized its fourth international conference, in collaboration with New York University, in April 2016 in Florence, following previous successful conferences in Helsinki in 2014 and 2015 and in Rome in 2015. The purpose of the conference was to explore the impact of American and British influences on the legal aspects of European reconstruction in the post-WWII era – in particular, the impact of scholars exiled by the Nazis in the formation of Allied policies supporting the imposition of a liberal model of society on Germany and their influence on the advancement of post-war European integration.

In the first session, *The Prewar Background*, Noah Rosenblum (Yale) opened the session with a paper titled ‘The Need for a True Chief: Losing Faith in Representative Assemblies in the Interwar Atlantic’ in which he outlined the reactions of legal academics from both sides of the Atlantic on the rise of authoritarianism in Europe and the attraction that the strong executive had on elite thinkers. While important authors like James Bryce remarked that for Americans, the dispute of what is the best form of government was now settled and the winner is democracy, for many others the crisis of parliamentarism in Europe was a crisis of leadership. For them, the answer would be the strengthening of the executive to overcome the problems inherent in democracy like self-interested parties or gridlock. To a number of them, the economic prosperity of Germany, or the way that Mussolini resolved problems or Hitler curbed the Jewish influence were admirable demonstrations of what a strong executive could achieve. The next paper by Bill Nelson (NYU) on ‘The Emergence of an Ideology of Ethnic Equality in New Deal New York’ explored the counter-reaction in New York and the US in general to the beginnings of the persecutions in Germany in the 1930’s. While the New York elite had had its share of anti-Semites and nationalists despising the influx of migrants, the news of the Kristallnacht in Germany marked a watershed. Before that, German influence in the public opinion had been shaped by institutions like the German-American Bund, which was controlled by the Nazis. According to Nelson, the brutality of Nazis and the persecution of Jews led not only the legal academia, but also the public opinion to embrace the

ideology of freedom, of human dignity and liberty. While the Jewish influence was great in New York, the appeal of these ideals was universal as different religious and ethnic minorities saw the threat extending potentially to them as well. Not only was the ideology of liberty and equality important for the self-understanding of the US in contrast to totalitarianism in Europe, but it also formed the basis of war propaganda and the post-war emphasis on freedom.

The second session, *The early impact of American ideas on Europe*, started with Ben Brady's (NYU) presentation 'Free of private and public barriers alike: Reconstructing the European economy after World War II' focused on the discussion and policy of de-cartelization of Germany after the Second World War. On the contrary to some previous elaborations, Brady argued that the American side lacked a clear agreement, vision and aim in their attempts to deconstruct the German economic cartels originating from the pre-war era. Rather the practical policy of 'Three Ds' in rearranging the German society was not solely guided by the ideological battle against communism or attempt to wash away the structures of National Socialism, but by a power struggle between the Western countries of occupation and competing efforts to exploit the coal resources of Germany. In this struggle law and economic theories became a discourse in which political attempts were negotiated and which offered the Germans an opportunity to take the initiative in the measures defining their place within the process of European unification. Jacob Giltaij (University of Helsinki) concentrated on the Transatlantic co-operation in legal science before the Second World War through in his talk 'Fritz Schulz, refugee scholarship and the Riccobono lectures'. Giltaij emphasized that the interest from the Anglo-American academic world in legal science as it had developed in Europe was evident already before the actual immigration wave. He approached the theme through the character of Fritz Schulz, and argued that the change in the personal status of Schulz, related to the National Socialists' accession in Germany, caused him to seek employment in the US. In elaborating certain 'markers' in Schulz's Riccobono lecture, and analyzing the correspondence between Schulz and some influential American legal scientists, Giltaij was able to show how refugee scholars actively searched similarities and points of comparison between the Roman and American legal traditions, and Schulz's idea of principles in Roman law and its universal essence as a basis for the creation of legal concepts, was formulated with this purpose in mind.

The first speaker of the third session, *Émigré Scholars and the Legacy of the Nazi Experience*, was professor emeritus Alfons Söllner (University of Chemnitz). His topic was the adaptation of German refugee scholarship in the fields of constitutional law and its related disciplines to political science in the United States, actually referring to some of these scholars as the ‘founding fathers’ of the discipline of political science back in Germany after the War. Prominent examples of these scholars are Ernst Fraenkel, Karl Löwenstein and Franz Neumann. Questions were asked about cross-referencing the sample with age due to the possibility of re-education, the method of political hermeneutics, Fraenkel’s framing of the notion of democracy, and their lack of attention to the concept of Europe. The second speaker of this session then was Magdalena Kmak (University of Helsinki). The presentation concerned the starting-points for future research into the notion of refugee scholarship in the legal field as a whole, meaning also pertaining to the phenomenon as it occurred in the Cold war, and as it is possibly happening presently in relation to the European migration crisis. Three concepts are paramount in this research: the shift, e.g. the refugees becoming ‘catastrophe-minded’; the influence of this shift on their work; and the export of the ideas of the scholars that were formulated in exile. Finally, the presentation focused on more broad question of exile as method of knowledge production. The questions pertained to the switch in scholarship and the role of the underlying discipline, the search for ‘central questions’ such as the utilization of societal needs in judicial decision-making, and the exiles ‘living comparative law by losing their accent but not too much of it.’

Christian democracy was a uniting theme in the papers presented in the fourth session, *European Ideas of European Futures*. Catherine McCauliff’s (Seton Hall) presentation ‘Borders Not Walls, Brothers Not Others: A Catholic Plan for Reconstructing Europe’ concentrated on the figure on Robert Schuman, whose vision of society, with ‘conscience before doctrine’, was greatly influenced by Jacques Maritain. In the New Christianity of Schuman and Maritain, focus would be on ‘the whole person’, employee’s and worker’s rights, avoiding the dangers of capitalist individualism and communism. Outside agents (e.g. trade unions) holding Christian values could forward the goal independently of the Church. Schuman remained wildly influential through the Christian Democratic movement. Tommaso Beggio joined McCauliff to expand on the formulation of the 1945 Italian constitution, result of all the parties involved in the Italian resistance – not to mention the fundamental Communist influence on the constitution’s 1st article. Pascaline Winand (College

of Europe) talked about 'Jean Monnet and the Transatlantic Connection'. Jean Monnet's lobby group worked for the European project, the 'United States of Europe', the main goal of which would be the prevention of wars within Europe and maintaining relations with the US. For the existence of an Atlantic community, an economically and politically strong Europe would be required. The idea was that while a strong, reliable West Europe would attract satellites from East Europe and pull Eastern Europe onwards with it. This entailed a long discussion in the US on what European integration *meant*. There were similar policy-makers in the US, such as Dwight D. Eisenhower and Foster Dulles.

First speaker of the fifth session, *After the War*, on the morning of Saturday 16th of April, was Carolyn Eisenberg (Hofstra University). Her presentation, titled 'Imposing "Self-Determination": US Policy and the Reconstruction of Postwar Germany, 1945-1949', presented the narrative of division of Germany after World War II contradicting the dominant Cold War stereotypes. The main premise of this narrative was the disagreement within American administration, in particular between New Dealers and Conservative Multilateralists, on how post war Germany should look like. However, the US approach before 1947 aimed towards collaboration with the Soviet Union. This approach changed during the 1947-49 period when the division of Germany became the dominant aim of the US Administration. This happened despite the willingness of Soviets to compromise. One of the main claims of the presentation was that the division of Germany enabled the USA to formulate the policies they would not have been able to pursue otherwise, in particular to minimize British and French influences on the shape of future Germany. Questions and comments concerned the influence of US domestic politics on international politics in Germany, the position of émigrés regarding the future Germany, the focus in Dumbarton Oaks and Potsdam on the future administration of Germany and the role and interests of the Soviets. The second speaker, Bill Davies (American University) focused on the life and work of jurist Walter Much, employee and later director of the EU legal service, and his impact on the development of the European Union. The aim of the presentation was to show how the individual story could have an impact in larger changes and political developments. Much's personal story was also rather fascinating. He started his career in prison camp and ended in a courtroom as a lawyer, gaining in a short period of time direct access to leading European intellectuals such as Jean Monnet or Robert Schuman. Finally, from 1970-1975 Much became director of the EU legal service. In this period, the

European Court of Justice created the principle of the primacy of the EU law and expanded the direct effect principle. The main thesis of the presentation was that Much had an influence on the direction of the EU integration, in particular on these legal developments deepening the constitutional integration of the EU. Questions asked referred to the relationship of Member States to the European Court of Justice, the balance between EU and Member States and the influences of American federalism on the administrative design of the European Union.

In the sixth session, Kaius Tuori explored the course of nationalist particularism and Enlightenment universalism in the paper titled 'Beyond Traditions and Ideals: The Post-War Battle Between Universal Rights and Legal Heritage in European Legal History'. He traced the personal histories of a number of legal historians, most importantly Helmut Coing, from the fascination of Nazism to the embrace of natural law, and with it, subjective rights such as human rights. He emphasized that even to academics who had joined the Nazi movement, the personal and scientific crisis of the end of the war led to a fundamental re-evaluation of the legal principles and philosophy. For Coing, this meant the retracing of the European legal tradition through their basic values and an emphasis of subjective rights. He maintained that in the European legal heritage there were in fact two traditions coexisting, first the Enlightenment tradition of natural law, from which things like human rights can be traced, and second the Roman law tradition of private law.