

EUROPEAN SOCIETY FOR COMPARATIVE LEGAL HISTORY

INAUGURAL CONFERENCE:

'Law and Historical Development from a Comparative Perspective'

5-6 July 2010, University of Valencia

Henry Yeomans¹

The European Society for Comparative Legal History was formed in 2009 with the aim of promoting cross-national research within this interdisciplinary subject. The Society's inaugural conference at the University of Valencia sought to exemplify this mission statement by providing a platform for scholars, from around the world, to discuss diverse aspects of legal history. The conference also enabled participants to explore some of the common challenges encountered by those undertaking comparative legal historical research.

Methodological Challenges

The first session saw a number of speakers explore some of these conceptual and methodological challenges. The issue of language was raised by Lara Magnusardottir, who discussed the problem of understanding a Concordat for Icelandic speakers and its relevance, as a concept, to Icelandic law. Clearly certain types of research demand an understanding of two or more languages and sets of legal vocabulary. Language itself became evidence for Merike Ristikivi, who described her research on the importance of terminology in legal history. She examined the use of Latin terms in Estonian and Soviet law journals and treated them as symptoms of broader political changes. Ristikivi connected trends in the use of Latin legal terminology in the late 1980s/early 1990s to the breakdown of the USSR and the emergence of Estonia as an independent country. Language certainly appears, therefore, a crucial consideration for comparative researchers, as well as being a medium through which researchers come to understand particular legal systems. This last point was elaborated on later in the conference by Michael A. Livingstone who noted the basic problem of competence which affects comparative legal history. Understanding the legal system of one country is far from easy, tending, as they do, to be complex and fraught with technical complexity and competing interpretations. But in order to produce comparative

¹ Henry.Yeomans@plymouth.ac.uk Associate Lecturer in the School of Law and currently writing up PhD 'Intoxicating Measures and Temperance Agendas: Attitudes to Alcohol in Britain'.

legal history it is necessary to have a working understanding of *at least two* legal systems. In terms of language and actual content of law, it is fair to say that this is no mean feat.

Another problem inherent in comparative research was described by Pia-Letto Vanamo, who spoke of the need to recognise heterogeneity within national legal histories. She discussed how Finland is often clumsily classified alongside other Scandinavian countries despite having its own historical identity, hardened through civil war and Russian/Soviet imperialism, as well as its own legal system and traditions of legal scholarship. An inclination to over-homogenise the legal systems of different nation states was highlighted as undermining any appreciation of cross-national variation in history and legal tradition. There is a converse risk inherent in comparative research, however, which Livingstone's paper commented on. Livingstone described how, in his own research on the development of anti-Semitic laws in Germany, France and Italy, there are complications given the sensitive nature of the subject matter. The Holocaust is often seen to be a special or unique event which is somehow above comparison to other atrocities or acts of genocide. Equally focusing on anti-Semitism as an issue also runs the risk of offending other victimised social groups who may feel their own historical suffering is being overlooked and therefore negated. The easy response to such parochial attachment to the subject matter may be to exclude the comparative dimension and, in doing so, implicitly reinforce the individual character and heterogeneous nature of such historical events. However, this type of reaction would leave us basically ignorant to both the similarities and differences between twentieth century anti-Semitism in different countries which Livingstone went on to document. Clearly there is a balance to be struck between recognising similarities and respecting differences within comparative legal history.

Representing the Law

These methodological issues aside, a number of other common concerns emerged from the conference papers. Several papers raised the issue of public representations of either the law or the criminal justice system. Anthony Musson gave a fascinating paper on visual representations of law and justice in medieval Europe. Using architecture and stained glass windows as his main sources, he argued that depictions of the last judgment promoted obedience to the law. Lurid images of the terrors of hell which await sinners encouraged reflection on personal behaviour which, it was argued, would help consolidate the earthly legal order as it stood. Judith Rowbotham also dealt with representations of law and justice, although this time using nineteenth century media depictions of crime as the source material. The example of the Ripper Murders was used to show that local interests could sometimes

manipulate news stories to promote their own causes, in this case street lighting and greater public security. But generally, Rowbotham presented the Victorian state as a cooperative partner in crime reportage; while the press made money from reporting crime, it represented the state as an instrument of justice and public protection, thus generating consent for its continued rule. Be it in news print or stained glass, the importance of the public face of the criminal justice system was emphasised.

Public perceptions of law as a theme also surfaced in other papers. In her analysis of recent British, French and Italian measures to deal with terrorism, Francesca Galli commented that criminal justice policy may sometimes be made simply to allay public fears. Terrorism is not a new phenomenon, a point evidenced by Leandro Martinez's investigation of Italian and German anti-terrorist legislation in the 1970s. So whether the perceived need for new laws to tackle it is due to a deficit of practical legal powers or political posturing was a question Galli posed. Implicit in Galli's paper was the idea that law-making is not purely practical or instrumental but can be a symbolic act, a way for governments to affirm certain moral values or strategic commitments. The salience of this point was shown by Stephen Skinner who explored the Italian penal code and its origins in the period of Mussolini's government. While parts of the penal code, and Italian law more generally, have been re-written to expunge Fascist elements, sections of the code remain intact. Skinner thus asked whether the Italian penal code was tainted by association and ruminated on whether, despite new doctrine having altered the manner in which the code is put into practice, re-writing it completely would have a positive symbolic effect on the legitimacy of Italian law.

The Law and Wider Society

The relationship of law and politics was touched upon by a number of papers; notably those by Thomas Mohr and Gabriela Cobo del Rosal. Mohr criticised traditional historical interpretations of the formation of the constitution of the Irish Free State in 1921. It is commonplace for historians and lawyers to highlight the limited extent to which the authors of the constitution borrowed from the constitutions of newly independent European states, and overlook the much larger extent to which they drew on the constitutions of former British colonies with Dominion status, such as Australia and Canada. Mohr saw this historical oversight as a nationalistic attempt to further separate Ireland from Britain. Cobo del Rosal also questioned orthodox historiography, in this case the opinion that the concept of a Spanish nation state emerged as a reaction to the military aggression of Napoleonic France. She challenged this standpoint by documenting how the idea of Spain as a nation, not just a collection of kingdoms, existed in the earlier medieval period. While the importance of the

French Revolution to Spanish national history may have been diminished, Karl Harter's examination of the emergence of the current international order of criminal prosecution highlighted its importance to other legal developments. In terms of the development of notions of political crime and the erosion of traditional rights of asylum, the French Revolution was picked out as a turning point. Harter went on to relate these processes to the emergence of modern powers of extradition and mutual assistance in criminal matters. Isabel Ramos Vazquez gave a complementary paper in the same session as Harter, which discussed the development of criminal law in eighteenth century England, France and Spain, and noted, amongst other things, the transition from execution to prison as a form of punishment.

Although he did not look at war, revolution or nationalism, Jonathan Rose's paper was also pertinent to the relationship between law and wider society. Rose's paper concentrated on the development of the chivalric ethos of loyalty, confidentiality and respect for judicial and political authority, which has characterised the legal profession for hundreds of years. Ultimately, he rooted this ethos in medieval social values which were external to the law, yet still capable of influencing it. This connection of law, at any point in time, to contemporaneous events, processes and values was therefore a strong theme emerging from many papers. Understanding the historical context of certain legal developments is clearly indispensable if we are to understand the origins and effects of the legal developments themselves. This task of contextualising the law, historically and comparatively, appears therefore to be a crucial objective for the legal historian; it is both a vital component of research in legal history in addition to being, as discussed earlier, a methodological challenge.

Final Remarks

There were dual streams at this conference and so, sadly, the author is unable to comment on a number of papers. But given the uniformly high quality of all papers I watched, it is reasonable to assume the papers I missed were similarly interesting and well-researched. The introduction outlined the consistent discussion of common challenges faced by comparative researchers in legal history and some of these have been elaborated on, from language to the tendency to over or under-homogenise groups, nations or legal systems. But the conference also bore witness to the emergence of common analytical themes, for example the relationship of legal systems to broader historical events or the symbolic value of the law, as well as the consistent ability of scholars to produce fascinating and valuable pieces of empirical work. The overriding message of the conference, therefore, seemed to

be that if the research problems inherent in comparative legal history can be overcome, the pay-off in terms of contributing to existing legal and historical knowledge is significant.