# RCSL NEWSLETTER

## INTERNATIONAL SOCIOLOGICAL ASSOCIATION
## RESEARCH COMMITTEE ON SOCIOLOGY OF LAW

**http://rcsl.iscte.pt/**

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**No 1**
**2018**

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**PRESIDENTIAL ADDRESS**

Dear Colleagues,

I hope you had a wonderful start to the New Year. 2018 will be a challenging and also memorable year for the RCSL, as we will not only participate in the ISA World Congress in Toronto in July but also hold our own annual meeting in Lisbon in September. This is the first time we will organize our own meeting in addition to the ISA meeting and our plan seems to be going well. The ISA gave us 14 sessions, including a general business meeting. But we received far more paper proposals than this space allows, and our program organizer had to decide not to accept a large number of paper proposals. We had a similar situation at the ISA Forum in Vienna, and how we can liberate ourselves from the space constraint is a serious question for our future. In this regard, our Lisbon meeting could present us with a solution: a separate annual meeting in the same year. In fact, the preparation for the Lisbon meeting is going well, thanks to Pierre Guibentif and his team. The organizing committee received about 450 paper abstracts by the deadline, which just passed. We expect that the Lisbon meeting will be one of the largest annual meetings of the RCSL. The Lisbon meeting makes another departure from traditional RCSL practice. Pierre and his team asked international members to join the scientific committee and help to organize the programme. In the past, RCSL depended upon the local organizing committee almost completely. This time, the local organizing committee still undertakes almost all the work of organizing, but our international members will share a part of the responsibility for organizing sessions.

We will provide grants for participants to register for the Toronto and Lisbon meetings. For the Toronto meeting, the call for grant applications is open until January 31, 2018. If you participate, please apply to Ravi Malhotra at ravi.malhotra@uottawa.ca. For the Lisbon meeting, the Call for Grant Application will be issued after the Scientific Committee accepts submitted paper abstracts.

2018 is also a year of elections. Two Nomination Committees have been organized: the Nominating Committee for candidates for the next President and Board Members which consists of Carlos Lista (Chair), Anne Boigeol, Angelica Cuellar, Rosemary Hunter, and Rashmi Jain, and the one for candidates for the next Scientific Director at the International Institute for the Sociology of Law in Oñati which consists of Benoit Bastard (Chair), Lisa Webley and Pierre Guibentif. The call for nominating candidates for the next President and Board Members can be found in this edition of the newsletter. The nomination period started on January 7 and will end March 10, 2018. As the RCSL faces increasingly challenging situations, moving into uncharted territory, we will need leadership, imagination and commitment. I hope many scholars who are committed and motivated to work for the RCSL will be nominated. The call for nominations for the next Scientific Director in Oñati

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## ARTICLES & REPORTS

will be issued shortly. The new SD will serve for a period of two years and be also employed as Distinguished Professor at the University of the Basque Country.

I would also like to remind you of the opportunity to nominate candidates for the Podgorecki Prize for Young Scholars. Nominations should be sent to Hakan Hyden at hakan.hyden@soclaw.lu.se by May 1, 2018. The call appeared in the last edition of the newsletter (http://rcsl.iscte.pt/rcsl_nl_2017_2.pdf).

Let's hope our experiments will result in success. I am looking forward to seeing you in Toronto and Lisbon!

Masayuki Murayama

Welcome to Maite and Leire!
Maite Elorza took over the position of the Administrative Director of the International Institute for the Sociology of Law in Oñati from Jose Antonio Goyenaga in September 2017. Leire Kortabarria began to work as a publications officer at the IISL (See the introduction of Leire in this issue). Both of them are multi-lingual. We started working together well!

**CALL FOR NOMINATIONS FOR THE PRESIDENT AND BOARD MEMBERS OF THE RESEARCH COMMITTEE ON SOCIOLOGY OF LAW 2018-2022**

The current RCSL President and Board are about to end their terms. The RCSL Statute requires a new election for the posts of President and 7 members of the Board for the period July 2018-July 2022. Nominations are now called for these posts. Newly elected members will formally take office in 2018 in order to fit with the calendar of the International Sociological Association (ISA).

All individual members of the RCSL are eligible for election to the Board, provided they have paid the annual fee. All members are also eligible to stand for election as President of the RCSL. Members of the Board who are currently in their first term of office are entitled to stand for reelection.

The Nomination Committee is composed of Anne Boigeol (France), Angélica Cuellar Vázquez (México), Rosemary Hunter (UK), Rashmi Jain (India) and Carlos Lista (Argentina).

Nominations should be sent from **January 7** to **March 10 2018** to Carlos Lista (Chair of the Nomination Committee) clista.argentina@gmail.com

Nominations should include:

- a brief CV of the candidate (10-20 lines);
- a statement by the candidate agreeing to be nominated and to remain a regular member in good standing of the RCSL for the duration of their time in office;
- (for candidates for President) a short resume of their candidacy (10-15 lines) expressing their motivations and proposing what they expect to do and to accomplish; or
- (for candidates willing to be members of the Board) a short statement (5-10 lines) expressing their motivations.

Complete applications will be published and sent to RCSL members for voting. The ballot will be supervised by the Nomination Committee.

The new President is expected to attend the ISA World Congress (Toronto, Canada, July 15 – 21, 2018) and represent the RCSL at ISA administrative meetings to be held during that event.

The RCSL Board is responsible for the institutional and administrative activities of the research committee. The support of the activities of the International Institute for the Sociology of Law of Oñati (IISL) is highly relevant as well as the participation of the President and representatives of the RCSL Board in the Board of Directors of the IISL. An active involvement of Board members in board life is expected.

The President should actively contribute to accomplish the institutional aims and objectives of the RCSL, according to its Statute: among others, to organize and promote meetings, groups and networks at international and national level devoted to sociology of law and to establish links with agencies interested or focused on sociology of law.

Further details of the role of the Board and President and the provision for elections can be found in the RCSL Statute at:
http://rcsl.iscte.pt/rcsl_intro_statutes.htm.

*In the following text, Jacek Kurczewski and Małgorzata Fuszara from the Institute of Applied Social Sciences, University of Warsaw introduce their book "How People Use the Courts". It appeared in 2017 with Peter Lang, Frankfurt/Main.*

**HOW PEOPLE USE THE COURTS**

In the careful analytical study of research made for the Nuffield Foundation, UK, more than 20 countries were listed where empirical research on the use of courts by the public had been conducted (Pleasance et al. 2013). Poland was not on this list. In fact, however, the functioning of the justice system in Poland had already been studied in the 1960s in a complex research project on lay assessors, modelled on the US Jury Project, run by S. Zawadzki and L.

Kubicki (1970). They cooperated with two eminent Polish sociologists of law: Maria Borucka-Arctowa who with her team had studied the public perception of courts and Adam Podgórecki who had focused on general attitudes towards law (Ziegert 2013). Interest in the settlement of civil disputes began when J. Kurczewski with K. Frieske prepared a study on the Social Concilliatory Commisions, the voluntary informal alternative to courts in case of petty neighbour disputes. This was published as part of the Florence Access-to-Justice Project headed by Mauro Cappelletti (Kurczewski and Frieske 1977). In the 1970s local surveys on the experience of disputes and dispute settlement patterns were directed by J. Kurczewski (1982; 1993), while M. Fuszara (1989) investigated disputes brought before local courts in the form of private criminal prosecutions (these are allowed by Polish law in cases of breach of physical and moral integrity such as insult, slander and minor physical injury). The studies mentioned were followed up in the 1990s after the change of political regime (Kurczewski and Fuszara 2004). This is the only example of a long-standing line of research that allows comparison between the use and perception of the courts compared with other options in a civil conflict during the period of the communist political-legal system and socialist economy with that of the political democracy in a capitalist market economy established in Poland in 1989. Though the historical comparison has already been made elsewhere (Kurczewski and Orzechowski 2016; Kurczewski and Fuszara 2017), the historical context of the above research must be born in mind in order to explain the specific choice of variables and concepts in our current research reported here. The Polish school of sociology of law as developed by Podgórecki and was based upon the empirical theory of law proposed at the beginning of the 20th century by Leon Petrażycki, professor first at the St Petersburg Imperial University and later after 1920 at the University of Warsaw.

The current book published by Peter Lang deals with dispute settlement patterns conceptualized earlier owing their origins to the Petrazycki/Podgórecki empirical theory of law.

As for the social function of law, Petrażycki's main point is that everyday social interaction except in crisis situations goes smoothly due to general agreement on the basic normative 'rules': We share similar normative emotions. Only in pathological cases does the need arise to turn to an external body such as a court to provide a normative decision. There is official law and unofficial law, intuitive law and positive law, and followers of Petrażycki are still in dispute about how to interpret these categories. Literally, if one accepts the verdict of a state court, one follows the official positive law, but if one feels one has a right that was not recognized by the court and appeals the verdict, this would arise from intuitive legal emotion. If the case is submitted to arbitration by friends this would be an unofficial legal decision unless legitimized by the state. The novelty of Petrazycki's position was that even in the 1900s he allowed for a plurality of legal, official and unofficial fora to be discovered under a unifying umbrella concept of law, liberated from the legal monopoly of the state.

As Petrażycki observed as early as 1906, apart from the procedural and internal arrangement of the institutions of power, the "(…) actual base of the proper social 'legal order' and real driver of socio-legal life in this respect in this area is in essence not positive law but intuitive law. Only in exceptional, pathological cases of conflicts, or abuses, is the application of positive law needed" (Petrażycki 1960: 260). Following this line of thinking Kurczewski's study of disputes led to the conclusion that "conflicts rarely move into the official sphere, and within this sphere rarely enter the courts. If the frequency of disputes expressed at an official forum is the tip of the iceberg for conflicts of various types in which an individual is involved, then the disputes already publicized at the official forum are forming an iceberg tipped by the dispute in a court" (Kurczewski 1982: 95) as the pathologization of conflict at the second level.

The focus of our research is the normative consciousness of Polish socjety, that is the preference for various forms of dispute settlement. We are therefore analysing ideal as well as actual patterns of behaviour. The authors believe that their interest in the continuity, change and diversity of such normative patterns is justified for two reasons: first, because the study of legal consciousness is of intrinsic academic value, not limited to the frame of the Petrazycki/ Podgórecki empirical theory of law but also because, secondly, we adhere to the widespread view that normative emotions (in Petrazycki's sense) are of direct influence as factors that may explain the actual conduct of people.1

We were able, by studying the declared patterns of preference for different forms of dispute settlement, to arrive at an evaluation of the role played by the official state administration of justice in the landscape of disputes and dispute settlement options. On the imaginary line starting with passive resignation and exit from a conflicted encounter and ending in the state court, there are many other options with different names but basically composed of two-party (direct negotiations) or third-party (conciliation, mediation and arbitration) arrangements. A random sample of 1065 people living in Poland was inteviewed face-to-face using the CAPI method by the professional Polish public polling foundation CBOS. The questionnaire included closed and open-ended questions on general patterns of dispute settlement as well as on the ways out of conflict advised in several specific examples of types of conflict between the individual and other private persons, or between the individual and public bodies such as local government, police or health service.

As for choosing the best ways out of the conflict situation in the hypothetical dispute cases, if we begin with the socio-demographic variables the findings are clear and consistent, Independent of type of dispute – with private or public opponents – the younger age group are more likely to choose a court or another public referral body as the way out of a conflict situation, while the older age group are more likely to choose directly negotiated compromise with the

opponent, which assumes the personal contact. The role of social habitat is also significant, whereby those living in the city prefer public agency and reject personal compromise independent of the type of dispute and choice of court in the public disputes. In the context of the fundamental controversy within the sociology of law about the role of institutional factors and attitudes or cultural factors, our findings speak in favor of the first as regression analysis pointed to the predictive insignifance of the attitudinal variables. It seems that at least within the scope of variables used in our study the attitudes matter but not enough to provide a safe basis for predicting the declared legal practices. The clearest general conclusion is that in Polish legal culture informality and compromise retained their popularity despite a marked increase in favor of court settlement of disputes during the consolidation of the legal democratic state. Though the preference for compromise with an opponent is more popular among the elderly, people living in the countryside, and the non-employed (pensioners, retired etc.) or generally, people on the social periphery, there is however also the cultural factor of religiosity which partially reinforces the trend to settle disputes amicably. Contrary to our expectations, withdrawal as a reaction to conflict situation was not significantly related to social position. The same lack of effect was disclosed when checking the relationship between private pursuit and social position.

Evidently a higher social position in general (measured by an aggregate index) predicts preference for court and other authoritative dispute settlement agencies, and lack of preference for informal dispute settlement by third parties.

But of primary importance seems to be the institutional context of the dispute – whether it is a dispute with an institution where going to court prevails, or with an individual where direct negotiations are the preferred option. Still, the sociological external variables seem to matter little, the use of the court being either the institutional formal necessity or the intrinsic specific traits of the dispute – its contents and soutext – as such. This initial analysis was also made on material collected in three small towns and one metropolitan area, and compared with ethnic samples taken in selected East European cities of Latvia, Ukraine, Romania and Bulgaria. The role of the ethnic factor was most often related to the relative position of the ethnic groups in the local majority/minority power structure.

As for the actual use of the courts our attention focused on the specific Polish procedure of private accusation by a wronged person acting as private prosecutor. A fundamental question prompted by the comparison of private prosecutions over the years (in particular in defence of the private prosecutor's honour) concerns the dramatic decline in the number of cases brought to the courts. After the post-Stalinist liberalization of life in Communist Poland “private accusation” accounted for 40.5% in 1957, while in the 1970s it was fallen to about 25% and in the mid-2010 it constitutes only about 4%. There are no reasons to believe that insults and defamation attempts occur less frequently now than they used to. M. Fuszara is comparing the result of her study of court records of such cases made in the 1970’s and in 2000’s with a recent review that covered 216 private prosecution cases in three years in four courts dispersed across Poland. The study was supplemented by an analysis of appellate court cases dealt following the alternative (and less popular) civil procedure aiming at compensation for harms inflicted by words or physical action and with an analysis of hate speech cases prosecuted by the public office. Research demonstrates that interpersonal defamation or abuse of physical integrity remains the most typical conflict in which Poles in a representative nationwide sample are involved. So why such a sharp drop in court case numbers? Sociological studies give no support to the hypothesis that this is due to diminishing trust in the court system. Another reason would be the relative increase in the costs of pursuing matters in the court system after the political transformation in Poland. In the early 2000s our respondents, who still had a recent memory of how things used to be before the transformation, emphasized the fact that the introduction of the free market economy meant that people became less willing to spend money on court cases. "Honour is less important now than time and money", said a president of a court back then (Fuszara 2004, 66). "It is a waste of time and money" is a common answer to the question why, despite the insults or defamation, no legal steps have been taken. Another possible interpretation hinges on the trust towards expressed opinions, including opinions that are defamatory to certain persons. One could argue that defence against defamation has lost significance in the era of post-truth. From this perspective, it is pointless to attempt to defend one's reputation by proving what is and what is not true. Yet another interpretation suggests that defamation today is much less stigmatizing than it used to be.

Footnote

1 For funding of the research on Patterns of Dispute and Dispute Settlement in Popular Legal Culture (NCN DEC-2012/07/B/HS6/02496) we wish to thank the Polish National Research Council.

The authors would like to take the opportunity to correct here the Table 1 on page 32 of the book as in the 3d row (Who is the judge) figures should read as 66, 18, 84, 10, 6 and 100 and in the 7th row, column 4 as 54.

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*Ji Weidong published a selection of his essays in English language. The two-volume book "Building the Rule of Law in China" appeared in 2017 with Taylor and Francis: https://www.world-of-digitals.com/en/ji-weidong-building-the-rule-of-law-in-china-ebook-pdf. We are quoting from a manuscript of the "Preface to the English translation".*

**BUILDING THE RULE OF LAW IN CHINA**

To help English-speaking people with this collection I begin with an outline of the history of modern China's legal development and illustrate some crucial phenomena and trends. From the perspective of changes to social structure, the six decades since 1949 when the People's Republic of China (PRC) was founded can be categorized in four 15-year periods.

From 1949 to 1964, the Communist Party of China (CPC) carried out the socialist transformation of the old economic and political institutions, and established an economy based on public-ownnership. From 1964 to 1979, "the socialist education movement in rural areas," the Cultural Revolution and other radical movements were instituted to transform the "national character" and ideology. These two periods covering thirty years are called the Mao era, with a theme of "breaking the private and establishing the public": on one hand, individuals are separated from their traditional family community and blood ties; on the other hand, individuals are incorporated into new units based on general political principles, and transformed into "organizational man" The period 1979 to 1994 was the Deng era, essentially characterized by the salvation of man from the shackles of the "unit" and transformed into homo economicus to respond to market needs. From 1994 and 2009, the goal of "letting some people get rich first" was achieved in the first half of this period, laying a solid foundation for building up a civil society; in the second half, the road to enabling all to become "equally rich" has been explored, and helped a smooth transition through a key development phase from $1,000 to $3,000 per capita gross domestic product (GDP). The reform and opening-up in this period created an economic miracle, made substantial improvements in people's lives and led to diverse and privatized pursuit of interests and values. Under these new conditions, the question of how to coordinate the relationship between different interest groups and how to deal with public affairs entered the agenda.

Although the 30 years after 1979 have been seen as the period of "economic development," with the emergence of different interest groups and corresponding qualitative change in social structure, the process of change in the political structure tore build public space has begun. The most important element is that the CPC has begun to change its position as a pioneering revolutionary party, evolving into a universal ruling party that transcends class interests. As a result, some authoritative expressions, such as the "Three Represents" (by Jiang Zemin) and "Harmonious Society" (by Hu Jintao), start to emerge; the pattern of governance has changed from struggle based to consensus based. Meanwhile, administrative reforms oriented toward more efficient services and the rule of law government have been carried out.

In this context, we have a clear picture of all segments of institutional transition and their relations with each other after observing the last 60 years' development of legal order in China. Before this period, for 30 years, with the aim of overcoming selfishness and fostering devotion to the public interest, it was not possible to emphasize individual rights in terms of laws and regulations; thus, the concept of "the people" was extracted from modern theory of sovereignty, and functioned as criteria and regulator for distinguishing the individual and the public. As a matter of fact, the concept worked to maintain strict control over its members. Accordingly, legislative and judicial organs must reflect the character of the people. During the latter 30 years, the construction of legal institutions, with the focus on economic performance, built up the continuous process of rationalization: first to rectify the institutional environment for investment and then to strengthen and safeguard the security and rights of transitions, and thus guarantee the effectiveness of dispute resolution as well as judicial justice. The operation of law shows increasing professionalism, and the changing relationship of the character of the people with professionalism has typical manifestations in the judicial field.

The characterisation of the people in the judicial field can be traced back to "Ma Xiwu's means of trial," which was advocated by Shaan-Gan-Ning Revolutionary Base Area. After the founding of the PRC, it

was further incorporated in the policy of civil trial, which aims "to merge with the masses, to investigate and research, mediation-oriented and solve it on site." To be frank, such means of trial is a "judicial mass production line." During the Cultural Revolution, judicial mass production went to extremes, which fulfilled Ma's prediction that the "true opinions of the masses are more powerful than law," and even produced a variant: "dictatorship by the masses." For the purpose of introducing judicial mass production, judicial reforms were carried out in the 1950s, which abolished the *Pandekten* system transplanted from Western Europe, reorganized the judicial institution, excluded legal practitioners, and implemented the mass production line and corresponding polices and ways of thinking. Such actions disapproving legal formalism can be contrasted with the rise of the Freirechtsschule in Germany; the le Phénoméne Magnaud in France, where judgment is made with no regard to statutes, precedents and doctrines; and the legal realism (especially the rule skepticism) in America in the early 20th century. Consequently, the certainty of norms was neglected, while judges' power of discretion was substantially expanded in the name of the 'will of the masses'.

This shift from the character of the people to professionalism took place in the late 1990s. Marked by the formulation and promulgation of the five-year outline on the reform of people's courts and in accordance with the objective requirement of legal and social development, the authorities concerned started to respond at the time by giving up to some extent the basic policies of the first judicial reforms. The objective of the second judicial reform was the rationalization and modernization of judicial power. In addition, in terms of human resources, the goal is professionalism and elitism; in terms of institutional design, the goal is to improve the efficiency of trials and strengthen the execution of judgments; in terms of theories, it resembles conceptual jurisprudence. However, considering the disadvantages, for example, the general public has a rather weak idea of procedural justice, and the legal interpretation community has yet to exist, such circumstances strengthen judicial independence and judging with respect to the modern trial system and the concept of legal professionalism. Therefore, the discretion of judges is intensified, leading to a backlash from various sides. In that context, the natural choice for China is to prepare for a third judicial reform: to restrict the abuse of discretion of judges with appropriate and effective measures. It should be noted that the third judicial reform is not returning to the mass line, advocated in the first stage. Otherwise, it is bound to backfire because there is no effective way to restrict the expanded power of discretion. To a certain extent, civil participation in judicial matters does contribute to restricting the discretion of judges. However, such restriction will not be distorted only if institutional conditions such as judicial participation and procedural justice, as well as the adversarial system are closely combined.

The third judicial reform, which was initiated at the end of 2013, must face the fact that in increasing complex and dynamic modern society, courts are making more laws, while precedents and judicial interpretations have tremendous power to formulate regulations, rights, and interests and policies. Accordingly, judges are entitled to an increasing level of discretion, while conventional internal administrative reviews and mass opinion are not enough to resolve issues of the new era; which are how to appropriately and effectively restrict the arbitrariness of judgments through institutional measures which has become a major topic in the field of jurisprudence. On the other hand, in judicial practice in China, there is formal continuing exclusion of discretion to guarantee compliance with regulations, such as the promotion of computational sentencing. Such ideas of absolute objectiveness are divorced from reality and will bring about negative results. Consequently, the appellate system will lose its significance, while the development of legal hermeneutics will also be suppressed; such a degree of absolute objectiveness will instead lead to an extreme legal formalism and rigid determination of thought.

Since the main purpose of the third judicial reform is to restrict discretion through appropriate measures, institutional conditions such as judicial participation, procedural justice and the adversary system will be combined. Therefore, we shall discuss how to formulate the ideal environment for discourses in the Chinese society, lay stress on the communications and interactive mechanism between legal professionals and ordinary citizens in and out of the courts, and focus on the two vital and operational issues of "institutional design conforming to reason" and "rules of discourse conforming to ethics." Objective effect or structure must arise out of such subjective interactions, while the dynamic structures will help to restrict the abuse of discretion.

In conclusion, genuine legal norms are reflected through judgments. Trials are routine and living law, at least in the eyes of ordinary citizens. For the building of our socialist country under the rule of law, how to define the role of judicial power is a very critical issue. In recent years, the aim and measures of institutional reform of courts have been rectified, generating heated argument. In any case, however, the in-depth research on judicial institutions and their direction of development remains the core task and the most fundamental topic in the field of jurisprudence, in a considerably long period of time. Accordingly, the basic direction of legal institutional development in China for the 30 years after 2009 shall be the institutional innovation of appropriate reorganization of relations between the character of the people and professionalism, and the establishment of a Chinese pattern of democratic rule of law that conforms to the global landscape of the 21st century.

Our predictions for the development of legal institutions in China are based on the structural and radical changes that took place in China in the 1990s. The introduction of a market competition mechanism and the differentiation of interest groups gave rise to the people's desire for unrestricted and impartial rules, generating the demand for institutional reform. To respond to such a trend and its demands, the

Chinese government has taken steps to accelerate its modern codification, push forward judicial institutional reform, and promote the development of legal professions. As a result, by 1997, the ruling party in China proposed its fundamental policy "to govern the state by the rule of law and construct a socialist state under the rule of law"; the amendment to the Constitution approved in 2004 added clauses such as "the state respects and safeguards human rights," and "the state encourages, supports and guides the development of the non-public sectors of the economy." In 2014, the fourth plenary session of the eighteenth (CPC) Central Committee announced the decision of ruling in line with the Constitution and governing the state by the rule of law.

The blue book Annual Report on China's Rule of Law, published by the Chinese Academy of Social Sciences since 2004, and the white book China's Rule of Law, which was first published by the Chinese government on February 28, 2008, thoroughly sorted out, investigated and concluded the structural and practical changes of the legal order in China since the reform and opening-up. In academic aspects, especially that of legal sociology, the rich phenomena and examples in those books constituted vital empirical data and the reference for theoretical consideration for the "law and development" movement and its paradigm. In fact, after establishing the market economy system, the biggest topic of jurisprudence in China is to discuss and determine the non-market ground, which is required by a "healthy market economy," or the non-liberal conditions, which can safeguard freedom. Thus, I suppose that rather than the direct safeguard of freedom of concrete individual behaviors and the absolute order of a tangible contract such as individual bargaining, jurisprudence shall, on the premise of admitting the initiative of the government, determine the reason and the boundary of lawful mandate through justified principles, concepts and measures. Moreover, it must reconstruct the ideology and establish the public philosophy of justice in a way that conforms to the needs of the time.

In the past 30 years, there have been profound changes in the concept of the legal system and theoretical basis. Especially since the late 1980s, China has developed a large-scale and comprehensive interest in accepting new theories. However, in this process, they have put significant (perhaps too much) emphasis on their own subjectivity. In accordance with the conditions in China, the government regards this selective and mixed reception as its consistent position, and scholarly research is essentially subject to such a political pattern. As a result, there are only a handful of foreign legal theorists who are very influential in the intellectual circle in China. From my point of view, there are four popular trends that deserve our attention – namely, the theory of spontaneous order by Friedrich von Hayek, the theory of politics and public law by Carl Schmitt, the economic analysis of law by Richard A. Posner, and the jurisprudence of nation and history by Friedrich K. V. Savigny, which have, respectively, found their support among Chinese scholars, and resonate with a certain range of society. In fact, they are four typical perspectives of legal orders. In contemporary China, however, these perspectives have been somehow combined to establish the theoretical basis of the paradigm for modernization.

The representative positions noted earlier happen to reflect power, interests, and culture, the three elements of the social system, and the freedom to live in and interact with the social system, which together constitute the coordination of legal thought in contemporary China. To comprehend the context of legal discourse between China and the West at this stage, and the tendency of social thinking, it is vital to understand the theory of Hayek and Schmitt, as well as the Chinese interpretation of their basic discourse. In addition, it is interesting to see that the two contrasting theories are being introduced and analyzed, respectively, by Deng Zhenglai and Liu Xiaofeng, the two most influential scholars in contemporary China. The essence of the traditional Chinese legal order is the combination of coercion and consensus, which is similar to the structure of the Tai-Chi diagram. In a sense, it corresponds to Schmitt's determinism and Hayek's spontaneous order. This indicates that China's introduction and reception of Western legal theories, whether intentionally or unintentionally, has been very selective, resulting in a new pattern of traditionalism.

Therefore, the first edition, reprint, and supplementary edition of this collection have scrupulously recorded and analyzed the formation and development of the concept of the modern rule of law in today's China and have also reflected the twists and turns of institutional changes and the trajectory of thought over the past 30 years. Moreover, it covers my preliminary exploration of the new paradigm of law and society. Volume 1 of the Chinese edition of the book, The Key to Institutional Innovations, expounds five pairs of contradictions in the modernization process of the Chinese legal system – namely, substantial and procedural justice, moral and legal debates, formal and reflective rationality, the major responsibility of bureaucrats and lawyers, and the motivation of public welfare and profit, and explores the appropriate approaches to combining the different factors. It is presented as Volume I, Building the Rule of Law in China: Procedure, Discourse and Hermeneutic Community in the English edition. Volume 2 of the Chinese edition, Practice and Contention, and volume 3, Frontiers of the Legal Landscape, covering ideological debates on politics and law that I have been involved in, high level institutional design, critical summarizing propositions based on practical experiences, and review of contemporary Western jurisprudence based on the practical needs of China. The combination and reconstruction of these papers brings about Volume II, Building the Rule of Law in China: Ideas, Praxis and Institutional Design.

To this day, the concept of the rule of law in China seems to have become a general consensus for the giant Chinese society. However, it is obvious that people have entirely different understandings of the concept. We have to admit that it remains unfinished business to promote the modernization of state

governance in terms of power, norms, and concrete mechanisms. At the same time, the whole world may face structural transformation from time to time. Exploring new political and economic systems and the new paradigm of legal and social development will have a profound impact on our modernization process. Therefore, we need to sort out the problems we are facing, compare different ideas and initiatives to prevent the resurgence of political or cultural conservatism or even radicalization, and search for opportunities in institutional and theoretical innovation from the fractures and gaps of reality. In this sense, many of the concepts, propositions, and doctrines presented in this book do have some inheriting and enlightening significance. From the standpoint of Constructive Jurisprudence of new proceduralism, by embedding the diversity and the relationship network, which are typical in the Chinese society, isomorphism and interaction on local and global scales into the reform mechanism and top-level design, we can find a compound and dynamic analysis framework on the forming, shaping, transforming, and planning of the rule of law in China, which will contribute to comprehending and interpreting the wonderful phenomena during the transition period.

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## RCSL MEMBERSHIP AND FEES RENEWAL

RCSL´s members whose membership expired or expires can renew it by using the form under this link:
http://rcsl.iscte.pt/rcsl_join.htm
Please send the completed form to our membership office:
Manttoni Kortabarria Madina (manttoni@iisj.es).

## The Department of Sociology of Law at Lund University, Sweden

On July 1, 1972, the subject Sociology of Law was born in Lund, Sweden when Professor of Civil Law, Per Stjernquist, was awarded a newly established professorship in Sociology of Law. At this time the professorship was allocated the standard number of staff for Swedish universities. At the same time, a department in Sociology of Law was established in the Faculty of Social Sciences at Lund University. Stjernquist was interested in the factors that, together with the law, affect behavior. In his magnum opus, Laws in the Forest (1973), empirical studies were conducted on the methods and approaches that the Forestry Boards used when implementing the Forestry Act in the field. The conclusions from Stjernquist's study, which included the implementation of forestry legislation during the 1900s to 1960, were that the law itself had not had any direct effect. It was rather the activities of the authorities, the forest management boards and the inspectors which had an impact on forest owners' behavior.

The establishment of sociology in Lund and Sweden during the post-war period can be said to be linked to the emergence of the welfare state and the special forms of law that this brought with it[1]. The first to defend their doctoral theses in Sociology of law were Karin Widerberg and Håkan Hydén in June 1978, on “Women's Legal and Social Status 1750-1980” and “The Societal Functions of the Law”, respectively. In 1982, Aster Akalu put forward a dissertation on land reforms in Ethiopia.

In 1979, the subject and the professorship were upgraded to become nationwide. In 1977, Sociology of Law became a compulsory subject in legal education, but with only five-weeks of full-time study, which gradually shrank to two weeks and then completely disappeared from the law syllabus in connection with the replacement of the national curriculum for legal education in 1989 with locally decided curricula. There was no longer any place then for Sociology of law. However, the Department of Sociology of Law has still trained a large number of lawyers over the years. Up to one third of students at the one semester of Sociology of Law has an optional course within the legal program.

Sociology of law as norm science has been a successful project and laid the foundation for the development and enhancement of the subject´s own identity. This is reflected in the final assessment received by the National Evaluation of Universities in Sweden, conducted in 2008, RQ08 (Research Quality Assurance for the Future). In this evaluation, the expert team stated the following on this point:

“The vision of a research centre on norms is an extremely interesting and original idea for the future. The University would be wise to make a note of this vision, and give it support. Many departments could be involved, and interests in questions of ethics, gender, socialization, and culture and society in general could be vitalized.”

Sociology of Law in Lund works with a norm concept which, based on expectations, includes “norms without subject”, i.e. expectations which are a result of structures and/or emanating from the rationality of different systems (Hydén 2011; Banakar 2015). Lately the norm approach has been tried in relation to understanding normative implications of algorithms. The study of norms is found more and more in e.g. gender studies (Martinson and Reimers 2010).

As part of increasing internationalization, the department of Sociology of Law was included in research collaboration with several European universities, initiated by the University of Milan, the so-called Renato Treves International PhD Program in Law and Society. The department has had two doctoral students in this context and in addition, PhD students from other countries have been visiting researchers for periods of between two and six months.

Håkan Hydén succeeded Per Stjernquist as Professor in Sociology of Law in 1988. He was succeeded by Reza Banakar in 2013 when Hydén

became Professor Emeritus. The Department of Law is today a fully-fledged social science department with a number of employees such as doctoral students, university lecturers, postdocs and also technical staff. At the department courses in sociology of law are offered at the undergraduate level, master's level and PhD level. Recently, positions as PhD candidates were announced. Of 55 applicants from all over the world, four have been accepted and employed for four years each. At the undergraduate level, between 100 and 150 students are trained in Sociology of Law each year. One course is provided online: "Sociology of Law: Introduction", bearing 10 credits. This is an on-line full-time course given in English and it started in Autumn 2017. The course is offered as a single subject course at Lund University.[2]

The department of Sociology of Law also provides a Master's Programme in Sociology of Law (SASOL), which introduces the study of law, legal institutions and legal behaviour in a social context. The Master of Science Program in Sociology of Law, SASOL, is an interdisciplinary campus-based program starting on 28 August 2017.[3]

Footnotes

1 The background seems to have been the same in Germany, see Machura (2011).

2 For more information, see the website http://www.soclaw.lu.se/en/education/sociology-of-law-introduction-online-course-rasa14.

3 For more information, see the website: http://www.soclaw.lu.se/en/education/masters-programme-in-sociology-of-law-sasol.

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**Leire Kortabarria new Publications Officer at the IISL**

Leire Kortabarria has started working as Publications Officer at the IISL. She has a BA degree in Journalism. Prior to joining the IISL, she has worked for regional media in her hometown of Oñati and the surrounding area. She also has expertise in proofreading. For a Spanish book review blog Leire Kortabarria does voluntary work. Leire is fluent in Basque, Spanish and English and has knowledge of Italian and German.

Leire Kortabarria

**Working Group on Popular Legal Culture**

Guy Osborn is stepping down as chair of the Working Group on Popular Legal Culture. There will be an election of a new chair.

For the RCSL Lisbon conference, 10-13 September 2018, two panel proposals have been submitted on the general topic "Developments in Popular Legal Culture".

Anyone with an interest in the work of the WG Popular Legal Culture please write to s.machura@bangor.ac.uk.

**Eleventh International Junior Faculty Forum at Stanford Law School**

Call for Papers
Sponsored by Stanford Law School, the International Junior Faculty Forum (IJFF) was established to stimulate the exchange of ideas and research among younger legal scholars from around the world. We live today in a global community – in particular, a global legal community. The IJFF is designed to foster transnational legal scholarship that surmounts barriers of time, space, legal traditions and cultures, and to create an engaged global community of scholars. The Eleventh IJFF will be held at Stanford Law School in fall 2018 (the exact date has not yet been fixed).
In order to be considered for the 2018 International Junior Faculty Forum, authors must meet the following criteria:

- Citizen of a country other than the United States
- Current academic institution is outside of the United States
- Not currently a student in the United States
- Have held a faculty position or the equivalent, including positions comparable to junior faculty positions in research institutions, for less than seven years as of 2018; and
- Last degree earned less than ten years before 2018.

Papers may be on any legally relevant subject and can make use of any relevant approach: they can be quantitative or qualitative, sociological, anthropological, historical, or economic. The host institution is committed to intellectual, methodological, and regional diversity, and welcomes papers from junior scholars from all parts of the world. Please note, however, that already published papers are not eligible for consideration. We particularly welcome work that is interdisciplinary.
Those who would like to participate in the IJFF must first submit an abstract of the proposed paper. Abstracts should be no more than two (2) pages long and must be in English. The abstract should provide a roadmap of your paper—it should tell us what you plan to do, lay out the major argument of the paper, say something about the methodology, and indicate the paper's contribution to scholarship. The due date for abstracts is Friday, February 23, 2018, although earlier submissions are welcome. Please submit the abstract electronically to ijff@law.stanford.edu with the subject line, International Junior Faculty Forum. The abstract should contain the author's name, home institution, and the title of the proposed paper. Please also send a current CV.
After the abstracts have been reviewed, we will invite, no later than end of March 2018, a number of junior scholars to submit full papers of no more than 15,000 words, electronically, in English, by mid-May 2018. Please include a word count for final papers. There is no fixed number of papers to be invited, but in the past years up to 50 invitations have been issued from among a much larger number of abstracts.
An international committee of legal scholars will review the papers and select approximately ten papers for full presentation at the conference, where two senior scholars will comment on each paper. After the remarks of the commentators, all of the participants, junior and senior alike, will have a chance to join in the discussion. One of the most valuable — and enjoyable — aspects of the Forum, in the opinion of many participants, has been the chance to meet junior and senior scholars, and to talk about your work and theirs.
Stanford will cover expenses of travel, including airfare, lodging, and food, for each participant. Questions should be directed to ijff@law.stanford.edu.

Lawrence M. Friedman

*The following congress overlaps by only one day with RCSL's Annual Conference in Lisbon (website: https://www.rcsl-sdj-lisbon2018.com/), so can be attended in conjuction with the RCSL event.*

**Basel 2018: Abolishing the Law?**
The fourth congress of German-language sociology of law associations, 13–15 September 2018, University of Basel

The fourth conference of German-language research on law and society addresses diverse trends whose implications are tantamount to abolishing the legal order and/or rights.
Populist authoritarian movements and regimes exert pressure on the institutions of the democratic rule of law. In the evolving "illiberal democracies," rights are being restricted and constitutional review is being called into question to help the will of the people assert itself. Physical and legal barriers aim at preventing people who are fleeing armed conflicts and other dangers from having access to rights. The logic of the state of exception and, with it, the expansion of the state of emergency and special rights, allow deviations from and interruptions of fundamental norms and principles, which grant the executive further powers. The informational and biotechnological transformation of society radically challenge the possibility of law. On the one hand, according to a widespread diagnosis of contemporary society, human decisions and the processes for forming opinions are increasingly guided by digital algorithms that defy legal control (big data). On the other hand, the law is threatened by the loss of the subject that accompanies the new possibilities of manipulating the human genome (transhumanism). In the context of the vision of a digital and post-human society, is rights-oriented law anachronistic? The marginalization of state-based law is accompanied, moreover, by an expansion of private regulation. State control often limits itself to procedural rather than substantive matters, for example, when laws prescribe how societal actors should enter into commitments. In

international treaties, arbitration tribunals that lack democratic legitimacy are proliferating as binding dispute-resolution fora", whose decisions can no longer be scrutinized by national courts ('soft law, hard effects'. In family law, construction law, and criminal law, mediation is increasingly replacing traditional trials for settling conflicts. And how should endeavours to reconceptualise entire fields of law in this context – such as demands to repeal inheritance law or reform family law – be analysed and evaluated? The empirical phenomena of crisis in law correspond to a new interest in radical theories of legal critique. The spectrum of theories stretches from neo-materialist criticism of law to updates of Carl Schmitt's critique of liberalism and to critical systems-theoretical demands to reorient law from individual rights towards protecting collective structures of systems differentiation.

How can these developing trends be appropriately described sociologically? And how are they to be evaluated? Are we observing the abolition of the law, a regressive trend in the differentiation of law, morality, and politics, or merely a transformation in the form and content of the law? How do the theoretical visions of an emancipatory liberation from the form of the law relate to the empirically observable trends towards marginalising the legal management of conflicts?

Scholars and researchers from all disciplines are invited to present and discuss the empirical results and theoretical perspectives of their research in the context of this general theme. The conference is divided into multiple thematic tracks. In principle, any topic with an interdisciplinary relation to law can be submitted to either a thematically suitable track, or to the track 'General Papers'. Other things being equal, papers whose content relates to the conference theme have a better chance of being accepted. We invite the immediate submission of proposals for papers or entire panels/sessions (with up to four papers). We particularly welcome panels with an international or comparative focus and/or composition. In addition, we are open to alternative formats in all tracks, such as book presentations, 'author meets critics', roundtables, 'fishbowls' with short statements by researchers on a theme from the perspective of their work, interviews or short discussions with guests (either moderated or as a 'hot seat'), film screenings, or artistic interventions.

Proposals (abstracts should not exceed 1500 characters) can only be submitted online, through the conference-administration system. The **deadline** for proposals is **28 February 2018**.

**The conference language is German, papers and proposals in English and French are welcome**.

For more information about the conference, see the website www.recht-und-gesellschaft.info/basel2018. Email contact for any qustions: rechtssoziologie-basel2018-ius@unibas.ch.

Programme Committee

There are several conference tracks. For example, Track 6: "Law in the Media – Patterns and Effects", organized by Stefan Machura. The description reads: "Since the 1960s lawyers, sociologists and others are analysing the depiction of law in the media and especially in popular culture. At first and continuing until today they looked at the portrayal of law, the legal profession and legal institutions in the press, in literature and film. In recent years television shows are systematically included and their off-springs in the internet. At the centre of this conference track is the contribution of media to trust in and legitimacy of the law. Do they work against people turning away from the liberal state of law or do they support a fundamental change? Or is media content so divers that media effects are hardly discernible?

Apart from masterpieces of film art and literature, print media and TV news were a focus for a long time. Concerns were raised about a skewed image which undermines public trust in the law. Nowadays, a broader spectrum of media products is included; social science and media scholarship underpin effects research describing more nuanced audience effects. In addition, society's influence on the media and the contribution of lawyers, for example those working for the media industry, are taken account of.

Following from the fascination for American media products and from their far-reaching market domination, the Hollywood cinema and US series first attracted attention. But increasingly, the cinema, literature and television of other, especially European, countries are being researched. The rise of the "social media" poses the question how they contribute to the picture of the law held by the public. Of interest is also, how discourses across media run and if they possibly enforce messages about law.

Papers dealing with the topics mentioned are welcome, but also papers on research methods and on teaching law in the media."

Track 9 "Abolition of Law Through Informalisation, Deformalisation and Privatisation" is organized by Kurt Pärli and Tobias Singelnstein. The Call is worded as follows:

"On numerous fields of law and to varying degrees, alternatives to the formal and mandatory law are used. Those alternatives focus on the inclusion of individuals and organizations, especially regarding their personal or corporate responsibility. Among them are phenomena such as mediation in general, victim-offender mediation, soft law, voluntary commitments by corporations, compliance, selfregulation, certification, codes of conduct and ethics, arbitration tribunals and numerous forms of negotiation-based New Public Management.

Regarding those alternatives, differences are made visible in comparison to conventional law and conventional law practice. Different protagonists are involved in the decision-making processes, the scope of judicial discretion is widened and the ultimate decision is often delegated from public to private protagonists. Higher efficiency is often ascribed to those proceedings compared to legal compulsion. However, they conflict with the principles of democratic legitimation and control as well as with traditional concepts of justice. Furthermore, as an example,

intra-corporate codes of conduct can collide with public legislation or a collective labour agreement.

Contributions to this track may focus on the fundamental development as well as on specific implementations in private law, criminal law and public law."

Stefan Machura



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