Masterclass:
International Law and
Constitutional Development in 19th Century Europe

(image: the Congress of Vienna, 1814-1815)

Present-day lawyers look back at the 19th century as a repository of amusing “antiquities”, or, at best, as the cradle of the Belgian Constitution or the Civil Code. Politicians often snub the era of “Napoleon” or “old jurisprudence”, either by blatant ignorance or shrewd opportunism, in order to sell own short-sighted ad hoc “réformettes” in a 16 seconds-quote. Yet, the study of the past offers a unique surrogate for lack of personal experience. As such, legal history is the most valuable asset for policy-makers and an efficient handmaiden for scholars interested in the structure of legal rules.

The present interactive masterclass proposes to address the highly political issue of legitimacy, sovereignty and multi-level governance. An evergreen of legal theory, public law and international law, but an especially challenging and relevant topic for the “century of revolutions” stretching from 1776 to 1917. The masterclass will consist of two parts. The first section will be a presentation by dr. F. Dhondt (UGent) on public international law. Dr. J. Beke-Martos (visiting in Ghent, Univ. Mannheim/Jena) will present the case of constitutional order in the composite Austro-Hungarian monarchy.

Audience
This masterclass aims at Ph.D.-students and senior researchers both at the Ghent Law Faculty and outside. Participants willing to discuss their own research are more than welcome.
Part 1: Public international law from the French Revolution to the Congress of Vienna

1. International law can be introduced as a story of **gradual progress**. In this sense, the rule of law inexorably advances on a march to the present-day institutions of international law, such as the International Criminal Court and the UN Security Council. Or, from a more realist perspective, international law can be seen as the collection of norms **observed and accepted** by sovereign states. In this case, history leads us further back in time, since states have engaged with each other for thousands of years. The principles governing their interactions did not undergo radical changes, but have evolved between fixed extremes. The binding nature of norms is either attached to the international community as a whole (top-down), or to the result of state behaviour (bottom-up). The latter approach restricts the content of international law to a limited set of rules, the former is of a more philosophical-normative tendency.

Historical introductions in main public international law manuals tend to give a **master narrative** of main authors (Grotius-Vattel-Bluntschli) and treaties (1815, 1856). The logic linking the society of states to what these states actually observe generally falls away. This is regrettable. Concrete factual outcomes of negotiations are swept away by the tide of history, just as municipal law when new norms abolish preceding systems. However, **diplomatic process and dynamics** reveals how norms are constructed. “The life of 19th century international law” remains relevant today. Moreover, legal thinking emerged in an international and national societal environment. **Context** is vital to understand “big name treatises”, and to relativise their impact on state practice. It would be more accurate to see the era from the French Revolution to World War One as a gradual evolution in both domestic and international legitimacy.

2. Next to this theoretical panorama, a more practical aspect will be considered: the **access to texts and other materials** that bring an essential epoch alive, either in publications, at conferences or in the classroom. The (often free) digitization of primary sources offers an easier access than ever before to international treaties, constitutions, legislation or doctrine. Recent scholarly developments will equally receive due attention. The history of international law is a **world-wide booming field**. It is easy to get lost in an ever greater variety of specialist studies, or in the kaleidoscope of ambitious all-encompassing collective works. This masterclass will not drop its attendees in generalised post-modern confusion, but would rather focus on essential overviews of international legal thinking.

Part 2: The Hungarian constitutional order in the composite Austro-Hungarian Monarchy

The above mentioned questions of legitimacy, sovereignty and multi-level governance in the 19th century are examined and evaluated by and through the history of international law. The second part of this masterclass proposes a take on these issues from another perspective, that of the **constitutional and legal history of Hungary**. In 1867, this country became an equal constituting partner of the Austro-Hungarian Monarchy.

1. Today, Hungary is a small Central-Eastern-European country making headlines with its domestic political and constitutional controversies. Yet, throughout its 1000-year history, this country had many struggles and developments, which, when put into a European comparative context, are relatively unknown and nevertheless very interesting. Hungary was **similar to its Western-European counterparts** in many ways: it was a monarchy, which joined the Roman Catholic Church upon its founding. It established a domestic administrative system, regulated land ownership and eventually established feudal representation. The pace of its development may have been a little slower sometimes than that of the West, but Hungarian scholars studied at the Western Universities, its rulers fought and consulted their
foreign counterparts and the country had a normal-size territory to be considered a country, like any other, in Europe.

2. At the same time, Hungary was also different in many ways than its Western counterparts. The country only had a so-called historical constitution and no written constitution until the 20th century. Due to certain elements of this historical constitution, the structure of land ownership, local public administration and social structures remained the same throughout the middle ages. As a result of the Turkish occupation in the 16th-18th centuries, the country dipped into the second wave of serfdom. It did not embark on the road to a civil society as the West has after renaissance and reformation. Roman law was never officially received in Hungary and multiple codification attempts for domestic laws failed throughout the 18th-19th centuries. A closer examination of the 19th century constitutional development in Hungary and especially the rather unique dualist state of the Austro-Hungarian Monarchy may provide additional meaning to legitimacy, sovereignty and multi-level governance in international law. A multitude of questions arise in this regard, such as the true significance of the 1867 Ausgleich between the Austrian Empire and Hungary from the perspective of international law, the relevance of domestic constitutional order within related states, etc.

Participants to this masterclass are welcome to assess and evaluate the proposed ideas in order to better understand connections and relations with European legal history as well as present-day problems and issues.

Practical Details
Thursday 25 June 2015, 14:30-17:30
Ghent Law Faculty, Moot Court Room

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