

## IVR 2015

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## 01. ÁLVAREZ GÁLVEZ, Íñigo (Chile)

*W. Godwin: ¿What justice? Things as they are*

**Author:** Íñigo Álvarez Gálvez

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**Title:** W. Godwin: ¿What justice? Things as they are

**Key-words:** Justice; Law; Utilitarianism

**Abstract:** Godwin's *An Enquiry concerning political justice* was published in 1793; and one year later, the novel *Caleb Williams, or Things As They Are*. It is sometimes said that the second is, somehow, an attempt to put his *Enquiry* in other words and to convey his thoughts about justice, law or politics to a wider audience. Be as it may, the thing is that in *Caleb Williams* we can find out important ideas about those topics (specifically about justice and law) and we can link those ideas to his political philosophy (developed in the *Enquiry*). Godwin shows in *Caleb Williams* how things are; how justice and law are made by and for the ruling class. And behind these ideas we can guess those others that are not expressed in the novel, basically what law should be in a fair world, or how things should be if they were not as they are.

Godwin was a supporter of anarchism (according to Kropotkin, the first to formulate the political doctrine *in toto*), and being so, we can be quite sure that a great amount of ideas not expressed in *Caleb Williams* have to do with this political movement. But he can also be considered as a supporter of utilitarianism, so that we can hold that the novel is, in the same way, a defense of this moral theory. In short, Caleb Williams (the main character) is the victim of human society and human justice, as they are; but (we may add) there is still another justice; that one whose aim is the happiness, the greatest happiness, of the majority of the members of a given society.

## 02. AROSO LINHARES, José Manuel (Portugal)

*From Brave New World to the Island : Huxley's tales about the Alternatives to Law?*

### FROM BRAVE NEW WORLD TO THE ISLAND : HUXLEY'S TALES ABOUT THE ALTERNATIVES TO LAW?

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The present paper intends to explore the so-called *Alternativendebatte* (Kurt Seelman) -- and very specially the problem of *alternatives to law* (Castanheira Neves) --, developing a deliberate exercise of *law in literature*. As the problem in question has to do with the institutionalization of plausible social orders from where law (as an *autonomous* civilizationally specific *order of validity*) remains absent, two major novels by Aldous Huxley (the first one published in 1931, the second one more than thirty years later!) are as such revisited: the aim is in fact *opposing* the (very well-known) overlapping of a totalitarian *order of necessity* and of a rational *order of possibility* (if not of *social engineering*) which characterizes the global society (the «world State») reconstituted in *Brave New World* (1931)... to the (less well-known) experience of *continuum* between ethics, morality, philosophy, mysticism, religion and shared narratives (but also *epistemology*...) which distinguishes the utopian experience of (eastern) Pala fictionalized in *Island* (1962) — without forgetting the bridge between these two universes exposed in the essay *Brave New World Revisited* (1958). The intention is not however to pursue a pure intellectual exercise (more or less arbitrarily conceived) — even less to reconstitute in detail the historic-cultural contexts which inspired both novels —, it is rather to ask if the counterpoint deliberately constructed by Huxley with these two masterworks has a specific contribute to the contemporary discussion about law (and law’s cultural project), namely when one considers the emergence of an alternative of *pure ethics* and the challenge of *inter-civilizational debates* (if not globally the need to distinguish between alternatives to law *in* the Western-European canon and alternatives to law *beyond* this canon).

**Keywords:** Alternatives to Law - Aldous Huxley - order of possibility - order of necessity - ethics - practical continuum

### **03. BELLO HUTT, Donald (United Kindom)**

*Democracy, Law, Judges and Solitude— Some reflections from Walden and the Lake Isle of Innisfree"*

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#### **Democracy, Law, Judges and Solitude— Some reflections from Walden and the Lake Isle of Innisfree**

*Abstract for the SWS: The Idea of Justice in Literature*

The paper reflects upon Henry David Thoreau’s Walden; or, Life in the Woods and W.B. Yeats’s The Lake Isle of Innisfree, and aims at showing that the image of solitude

and isolation pervading both works of literature functions as a good metaphor of the paradigm of judicial reasoning which is dominant among legal scholars, particularly among those who champion a prominent role of the judiciary in the interpretation of constitutional norms, as well as the control exercised by judges of other branches of government. This last assertion works as a methodological constrain for the paper, as I shall only be concerned with the way in which judges perform their duties in polities where judicial supremacy is the norm, i.e., where judges hold the final word in the interpretation of a constitution.

The idea of living on the edge of the world of politics, isolated from society, safeguarding fundamental values and reaching the ideally best moral answers to hard cases is a flawed conception of how justice should be distributed in a contemporary democracy. In *Walden* and *The Lake Isle of Innisfree*, wisdom is achieved via running away from the world of others, escaping from society. Thus conceived, this process, if arguably adequate for aesthetic reflection, distorts the kind of justice imparted in a judicial setting insofar as this account of justice implies not only wisdom of a specific kind, but knowledge of, and concern for others. Accordingly, political wisdom and political justice are better attainable in a democratic deliberative setting.

#### **04. CHANG, Li-ching (Taiwan)**

*Kafka's classic "The Trial" -- a portrait of criminal law through the lens of literature*

**ABSTRACT TITLE:** Kafka's classic "The Trial" -- a portrait of criminal law through the lens of literature

**AUTHOR:** Li-ching CHANG , Professor of the National University Kaohsiung College of Law

**ABSTRACT:** Comparative study of Law and Literature has attracted the attention of many scholars in recent years. This article is an introduction to readers in this field. Moreover, to enhance the readers' comprehension to the mentioned comparative study, with the example of a literary classic, "The Trial", from Franz Kafka, we could examine their integration from the standpoint of Literature. This work will prove their amusing segments and their importance in the integration of Law and Literature.

**KEYWORDS:** Law and Literature, Kafka, The Trial, Criminal Law,

#### **05. CONKLIN, William E. (Canada)**

*The Enigma of Kafka's 'Before the Law'*

##### **ABSTRACT**

**ABSTRACT TITLE:** The Enigma of Kafka's 'Before the Law'

**AUTHOR:** William E Conklin, Professor, Windsor Law

**ABSTRACT:** This is a paper about the boundary of the legal structure and the locus of justice external to the boundary. The Paper identifies how Kafka's 'Before the Law' presupposes a territorial sense of law with a consequence for the externality of justice. The Paper identifies an assumption about legal space that the antagonists and Kafka take for granted. The Paper ends by outlining an alternative view of legal space and, therefore, of justice and law.

**KEYWORDS:** Boundary of Law, Language and Emotion

## **The Enigma of Kafka's 'Before the Law'**

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By retrieving Franz Kafka's "Before the Law", I shall argue that the man from the country, the gate-keeper, and Kafka himself imagined that 'the Law' (or *Recht*, *le droit*) took the form of a territorial-like space.

Kafka describes how the man from the country patiently waits before the castle of law over many years, if not his adult lifetime, in order to have his grievance heard by jurists inside the castle. A gate-keeper or guard, whom I interpret as a lawyer, guards the castle's doorway. There is one door available for the man to enter. The guard/lawyer discourages the man from entering the castle through the doorway, however. The guard/lawyer advises that the closer one gets into the centre of the Castle, the more violent would the man find the Law. There seems to be no opportunity for the guard or other officials inside the Castle to respond to the man's harm in a manner which the man might understand. Shortly before his death, the guard announces that although the doorway was intended for the man and the man alone, the gatekeeper was closing it.

Kafka's parable begs the question, 'could the man have ever accessed justice if he had entered into the Castle?' The resolution of such an issue, I suggest, depends upon the nature of the Castle and that, in turn, depended upon the nature of the boundary of 'the law'.

I argue that the man, the gate-keeper, Kafka and jurists today assume that the Law manifests a territorial form of knowledge. I shall explain what I mean by territorial knowledge. The thrust of my argument is that jurists of the modern legal order have taken for granted that 'the Law' is a territorial-like legal space in legal consciousness. The boundary of such a space delimits what we count as legal knowledge and what is extra-law. What is external to the boundary is extra-law. Discrete laws only exist as valid laws inside the familiar juridical language of the Castle. The parable leaves one with Jacques Derrida's conclusion that justice cannot be accessed by the Law because justice is constituted from the singularity of an experience and an experience can only be re-presented through configurations of signifiers. Such an image of 'the Law', I argue, takes for granted that the boundary of the Law encloses a territorial-like space in legal consciousness. As long as the Law is assumed to exist by virtue of such a territorial-like bounded space, justice will be inaccessible to Law. I shall outline a sense of the Law which dissolves such a boundary and thereby raises a series of issues which the territorial sense of legal knowledge has heretofore concealed.

### **06. GADELHA XAVIER, Bruno (Brazil)**

*The Law of Tieta: The Connection between Law and Literature and the Social Critic of Jorge Amado*

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## **THE LAW OF TIETA: THE CONNECTION BETWEEN LAW AND LITERATURE AND THE SOCIAL CRITIC OF JORGE AMADO**

### **ABSTRACT**

The aim of this article, from a methodology that takes the basis of literature as a form of criticism of the legal culture, the analysis of the work of Brazilian writer Jorge Amado. In this context, literature - as a form of cultural expression – can be sustained with immense relevance. The literary world does not have concepts or arguments, but characters and plots that lead the reader to problems, crossroads, and solutions that emphasize an enviable originality. Debating on the thought toward the heart of literary magnitude against the law, it can be said that the uncertainty inherent to the genesis of literary stories allows diving in the imagination, in which we observe the fantasy and the reality we find in our wide hermeneutics that allows bonds between language and factuality. From the fertile ground which rises in the connection between law and literature, we can build a paradigm that can revisit the normative order as something only rational and logical, attached to an essence of certainty inherent in a impenetrable force. The literary work as the object of the article illustrates legal issues, and, in addition, enables the performance of the jurist to reflect on everyday social issues. With imagination, legal reason becomes better, more reflective, abandoning the threat and the unconstitutionality splash targeted by a ruthless dogmatism. All sciences are present in the literature thought, and hence, the insertion of a single reader in a literary work is perhaps one of the most distinct experiences of human experience. Therefore, the work of Brazilian writer Jorge Amado was chosen for discuss the impact of the emotion discussion in the legal culture, developing a deconstruction of legal rationality from works as “Tieta do Agreste”, “Gabriela Cravo e Canela”, e “Capitães de Areia”.

### **07. KABASHIMA, Hiroshi (Japan)**

*Romanticism and Political Violence*

**ABSTRACT TITLE:** Romanticism and Political Violence

**AUTHOR:** KABASHIMA, Hiroshi, Professor of Jurisprudence, Tohoku University School of Law

#### **ABSTRACT:**

Political violence is what we hear about very often these days. It appears sometimes in the form of individual acts of radicalized terrorists like as suicide bomb attack, hostage taking, and assassination, and also in the form of organized killing like as civil war incited by the Islamic State and the Ukraine separatist militants. It is commonly featured by the mindset of the agents who are inclined to fight not only on the material level, but rather on the intellectual one, which S. Huntington called “clash of civilizations.

In the history of ideas in general, the war has been perceived not only as one of political means, but rather as a sort of intellectual battle between different cultural groups. To take an historical instance of this issue, my report will discuss the

intellectual dimension of the World War II between the Axis Powers of Germany and Japan and the Allied Powers of West-European -American nations.

The German philosopher, H. Pressner, in his book "Die verspätete Nation", pointed out that the German hostility against the Western nations was already expressed in the literature movement of romanticism, indeed in its simplified dichotomy of intuition vs reason, passion vs calculation, miracle vs necessity, loyalty vs freedom, and authority vs democracy. Also in Japan interestingly, the literary romanticism arose in the early 20<sup>th</sup> century under the German influence. K. Kamei, a prominent critic in Japan at that time, for example, supported explicitly the Japanese declaration of war against the Allied Powers in 1941, by claiming the intellectual fight of the Eastern against the Western.

Those questions would be asked in our discussion: Is it necessary and inevitable for a shared idea of value and justice expressed in the literature to be realized by means of political violence? Can we meaningfully distinguish between the aesthetic in the literature and the validity in the politics? Can we even identify the *raison d'être* of literature independent of politics?

**KEYWORDS:** Helmuth Pressner, Totalitarianism, Fascism, Yojuro Yasuda

**08. KAHLIG, Wolfgang (Austria)**

**09. KAHLIG, Eleonora (Austria)**

*Rechtsvisualisierung - Viribus Unitis - mit C.O.N.T.E.N.T.*

**ABSTRACT TITLE:** RECHTSVISUALISIERUNG mit C.O.N.T.E.N.T.

**AUTHOR:** Wolfgang Kahlig, CEO, Vorstand, CONTACT AG, Institut für Immobiliensoftware, Wohnrecht, Rechtsanalysen und Rechtsmodellierung, Arbeitsgruppe Rechtsinformatik

**AUTHOR:** Eleonora Kahlig, Institutsassistentin CONTACT AG, Institut für Immobiliensoftware, Wohnrecht, Rechtsanalysen und Rechtsmodellierung, Arbeitsgruppe Rechtsinformatik

**ABSTRACT:** Das Verstehen des Rechts ist für viele Bürger ein Problem. Für die Darstellung des "Contents" werden in erster Linie rein textuelle Formulierungen gewählt. Es werden nicht, wie heutzutage bei der Wissens- und Informationsweitergabe üblich, angemessene Methoden gewählt. Auch der trainierte Jurist scheitert oft beim Versuch, einen Sachverhalt voll zu erfassen, da er Gefahr läuft, Sonderfälle und Ausnahmen zu übersehen. Für eine klare Konstruktion und Strukturierung des Rechts kann das Rechtsgebäude als große Maschine gesehen werden, bei der tausende Zahnräder und andere Elemente lückenlos ineinander greifen sollten, jedoch manchmal nicht tun. Für die Verständlichkeit ist eine Kooperation von mehreren Wissensgebieten ausschlaggebend. Eine Reihe von Methoden ist in den letzten Jahren überlegt worden, wie z.B. UML, SYSML, LOIS, um Vereinfachungen zu bewirken. Mit dem bewährten System „C.O.N.T.E.N.T.“ (Crosslingual Ontologie for Network-Legistik by Text- Extended

Normative Thesaurus) könnten wesentliche Schritte durchgeführt werden.

**KEYWORDS:** Verständlichkeit, Rechtsvisualisierung, Rechtsmodellierung, Rechtsanalyse, Strukturierung

## 10. Kim, Yeonmi (South Korea)

<Abstract>

Legal poetics for legal thoughts.

Yeonmi Kim, professor  
(Law School of Chonnam National University, South Korea)

This paper aims to figure out the relationship between law and poetry in respect of language. Jurisprudence is not similar to poetics as a kind of literary genre. Despite the difference, I suggest that jurisprudence might recover an academic identity also from poetics.

When we trace up the course of making and ‘building’ a poem, we get to understand the nature of the poetical language which representates the world. Octavio Paz defines poetry as a primitive language, human experiences, feelings, emotions, knowledge, relief, and power etc. The foundation of a legal thought upon poetics can be observed in the cross-domain mapping between poetry as ‘source-domain’ and law as ‘target-domain’. My method to research on “legal poetics” depends on experientialism of M. Johnson & J. Lakoff. I suggest that we can understand the law through the poetry and I call this metaphorical mapping “Legal Poetics”. For this purpose, several viewpoints of poetics can be introduced.

Firstly, Poets listen to the public “rhyme”. It is not phoneme. Making a poem is a kind of searching on a new rhyme to recover the primitive language. This internal viewpoint of poet’ is vivid so that it can grasp the structure of the public imagination across the rhyme of the concrete realities. We can read the base on public emotion by way of colloquial languages.

Secondly, the poetic language describes the universal particularity. When a poet represents the world in a poem, he or she creates contemporary universal emotions in term of the new metaphor. A poet’s effort to read the universal emotions does not mean only the individual’s moan towards the world, but also the bridge of ‘Should’ (Sollen) and ‘Being’ (Sein). This aspect is related with the nature of law.

Thirdly, the poetic language appeals the ‘compassion’. The universal emotion, as mentioned above, can be recalled as the compassion. If poetry cannot give compassion to us, it fails to be a poem. An emotional world represented by the metaphorical language belongs to all of us. Therefore, the poetic language plays the role of unifying and banding the society.

Fourthly, the poetic language identifies the form as well as the substance of the poetry.

Lastly, the poetic language intends to the coherence. In other words, poetry has an inspissated form. Without the intensive and focused approach towards the life, there can be the gap between the world and the emotion, which means the empathic absence.

Literature is the fictional world related to the fact. If law does not lean to the legal

ideas of fiction, because it is close to the fact, it is difficult for law, in itself, to exist.

## **11. LIU, Shing-I (Taiwan)**

*Widerstand im Namen der Gerechtigkeit*

**ABSTRACT TITLE: Widerstand im Namen der Gerechtigkeit /Resistance in the Name of Justice**

**AUTHOR:** Shing-I LIU, Professor of Department of Law, National Taipei University, Taiwan

**ABSTRACT:**

Das Recht ist eine Erscheinung der Kultur. Wie wir das Recht in seinen kulturellen Zusammenhängen verstehen, so spiegelt sich auch die Kultur einer Zeit und eines Volkes in ihrem Recht. Recht hat enge Verbindung zum Gerechtigkeit, Staatsgewalt und Legitimität. Diese Begriffe gehören dem Kernbereich der Rechtswissenschaft.

"Was anders sind also Reiche, wenn ihnen Gerechtigkeit fehlt, als große Räuberbanden?" so meinte Aurelius Augustinus (354-430). Um Staaten von großen Räuberbanden zu unterscheiden, hat das politische, juristische Denken seit frühester Zeit nach den Rechtfertigungsgründen hoheitlicher Gewalt gefragt. Legitimität ist die Rechtfertigung des Staates, seiner Herrschaftsgewalt und seiner Handlungen durch höhere Werte und Grundsätze, im Unterschied zur Legalität (formellen Gesetzmässigkeit) und zur rein faktischen Machtausübung.

Die Legitimität der Staatsgewalt hängt mit Gerechtigkeit und Recht zusammen. Sie tauchen auch oft in der Kunst und Literatur auf. Vor allem dem Drama, und besonders der Tragödie, hat der Widerstand gegen Autorität immer wieder Modell gestanden. Dafür lassen sich Beispiele anführen: "Antigone" von Sophokles (5. Jh. v. Chr.), "Die Räuber vom Liang Schan Moor" von Nai-An Shi (1296-1370), "Egmont" von (Johann Wolfgang Goethe, 1749-1832), "Wilhelm Tell" von Friedrich von Schiller (1759-1805), "Michael Kohlhaas" von Heinrich Kleist (1777-1811).

**KEYWORDS:** Gerechtigkeit, Recht, Staatsgewalt, Widerstand

## **12. LÓPEZ, Nuria (Brazil)**

*A Penny for Your Thoughts: The Conceptions of Justice in the Literature of Cora Coralina*

**ABSTRACT TITLE: A PENNY FOR YOUR THOUGHTS: THE CONCEPTIONS OF JUSTICE IN THE LITERATURE OF CORA CORALINA**

**AUTHOR:** Nuria López, Theory and Philosophy of Law, Pontifical Catholic University of São Paulo – PUC/SP (Brazil).

**ABSTRACT:** This paper aims to demonstrate the different conceptions of Justice in the literature of Cora Coralina, a Brazilian poetry writer from Goiás, in the countryside, who lived a life filled of adversities. She had her first book released at the age of seventy-six and her poetry sings her past experiences. Usually, literature works are used as an allegory related to Law and Philosophy, universalizing the inferences that were drawn from the art. In this paper, the analysis is done otherwise by comprehending each work of art as an expression of the thoughts of a specific artist in a specific moment of time. If it is impossible to collect thoughts as research data to know what people consider Justice in our society, we can definitely collect works of art as samples of the expressions of these thoughts. It gives us a blossom perspective of analysis, because it considers the diversity of conceptions, making it possible to work with the variations in the spectrum. So instead of building a universal concept of Justice to work with in Legal Theory, we could build a more realistic cluster that is expected to light the irregularities inherent of a complex society. The literature of Cora Coralina could be used as a sample of how differently one can perceive Justice in different contexts in life. She wrote about the injustices of a poor childhood and youth in the countryside of Brazil, where people worked day by day for pennies; the injustices of the few choices given to her as women; and the justices she made with her own life decisions. She lived her last days the paradox of being an acclaimed poetess and making a living as a baker in an old house in her hometown. Her poetry strongly shows how people experience Justice in a much richer spectrum. Cora sang the injustices and the justices of her life experiences – “my lost penny, my penny of happiness/ the bigger capacity of being myself, my constant affirmation”. Our humanity is complex, and so are our thoughts. This paper gives a penny for Cora Coralina’s thoughts of Justice as a sample of our complexity.

**KEYWORDS:** Justice; Diversity; Literature.

### **13. LÜTGE, Christoph (Germany)**

*The Idea of the Honest Businessman in Literature*

**ABSTRACT TITLE:** The Idea of the Honest Businessman in Literature

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**ABSTRACT:** The idea of the honest businessman is a very old one in the European tradition. Its roots are going back to medieval Scandinavia and Northern Italy. This idea has also been taken up in literature: prominent writers have included depictions, analysis and criticism of the honest businessman in their works, such as Thomas Mann („Buddenbrooks“), Robert Musil („The Man without Qualities“) and others. Some of these depictions will be presented, along with a discussion of the concept’s relevance for today’s globalized economy.

**KEYWORDS:** business ethics, honest businessman

### **14. MACIEL RAMOS, Marcelo (Brazil)**

## 15. SUPRANZETTI de MORAES, Bernardo (Brazil)

*Rule of Law and State of Exception in arts: a study of “V for Vendetta”*

### **Rule of Law and State of Exception in arts: a study of “V for Vendetta”**

Marcelo Maciel Ramos 1

Bernardo Supranzetti de Moraes 2

This study proposes to use the comic book "V for Vendetta" – an conceptual work of Alan Moore in the global literature - as a reference for understanding the relationship of the protagonist with the contradictions between Rule of Law and authoritarian governments or State of Exception, not at all democratic. Based on this understanding, we can observe the plot that is given as an alternative to overcome this "law" exception. The solution given by Alan Moore in his story is open to dialogue: Anarchy. To get a real change in the State, revolution is necessary and this is something that anarchy proposes. On the other hand, we cannot trust a total chaos, so we resort to authors such as HARTD and NEGRI to understand that we can live in a world dominated by the masses, the real one, the one that is constantly changing, which goes against the authoritarian measures of any state.

Published in the 80s in England, "V for Vendetta" was an critical tool of author, in describing the period lived by the country when Margaret Thatcher was in power. A period haunted with the fear of a possible nuclear war and without hope for a future. Her government was marked by its authoritarian and conservative elements, excluding the political participation of groups, and using the law itself in her favor.

"V for Vendetta" is beyond its one time, going beyond its relationship with the law and its characters. We see its elements in today's society, creating a characteristic symbology, which represents the constant struggle of the people against state bonds. It provides us with an beautiful example of a literary work exceeding its own pages and becoming a living part of an culture.

Keywords: Rule of Law; State of Exception; Art; Literature; “V for Vendetta”

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## 16. PAN, You-Da (Taiwan)

*Taming the Anger : One Jurisprudential Reading of Two Greek Dramas*

### **ABSTRACT SUBMISSION, You-Da Pan**

#### **ABSTRACT TITLE:**

Taming the Anger: a Jurisprudential Reading of Two Greek Dramas

#### **AUTHOR:**

You-Da Pan, PhD Student in Faculty of Law, National Taiwan University.

#### **ABSTRACT:**

In the final play of Aeschylus' trilogy “Eumenides”, the court, which is established by Athena and the citizens of Athens, stopped the pursuit of Furies, and made them rested in the newly found Athens. In Aeschylus' view, the law in its beginning is to end the endless turmoil of vendetta, providing an acceptable solution for both sides. However, since Furies are “rested in” rather than “expelled from “ Athens , law did not exclude Fury;

what the drama plot may indicate is that the Furies, being worshipped in the polis, is necessary for Justice. On the one hand, law tames anger, and on the other hand, law needs anger.

In this tragedy regarding the conflict between anger and prudence, oikos and polis, father and son, law as justice is considered as a synthesis of them. But in the Aristophanes' Comedy "Wasps", law makes the conflict begin: it is the law that makes a father being in conflict with his own son, it is the law that makes his fellow jurors angry. Law as synthesis ended up broken apart. Law is the end of tragedy, but the beginning of comedy. In Hegel's Phenomenology of Spirit, after the tragic conflict the legal status (Rechtszustand) appeared; but the comedy appears from the self-contradiction of it. Following these analyses, we may conclude that law needs emotion as well as reason; but emotion, tied with real human situation, i.e. oikos and polis, is bound to be untamable in legal way. The legal status is rather a conclusion of stability than its ground.

**KEYWORDS:** Law, Reason, Emotion, Greek Drama, legal status.

## **17. PAVČNIK, Marijan (Slovenia)**

*The Meaning of Legal Thought*

**ABSTRACT TITLE:** The Meaning of Legal Thought

**AUTHOR:** Marijan Pavčnik, Professor for Theory and Philosophy of Law, Faculty of Law, University of Ljubljana, Slovenia  
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**ABSTRACT:** Dominik Smole's (1929–1992) *Antigone* is one of the excellent re-interpretations of Sophocles' *Antigone*. The primary special feature of his *Antigone* (1959) is that *Antigone* never appears on the stage: she is in the background all the time, behind the stage, behind the text, within us and behind us. Since *Antigone* is physically absent, the main persona is Creon, who – in contrast to Sophocles – is much less high-principled and therefore much more pragmatic, philosophically and personally a sceptic, yet in spite of his doubts, he is unrelenting when the foundations of power are in question.

Others, who keep going to see her and talk to her, report on *Antigone*. Of fundamental importance is certainly report by the Page. *Antigone* wants to obtain a deeper sense of the thought that makes her resist Creon's order that Polyneices should not have a grave: »[S]he seeks the inmost meaning of some thought.« (Page) Finally, *Antigone* finds Polyneices and buries him. She is, as Ismene says, "a gentle flower that opens just to shed its petals."

The symbolic power of *Antigone*'s deed tells us that the range of legal

argumentation ends where the *sense of law* ends. It is in the character of law and its nature not only that so-called law is not law any more if it is humanly intolerable. These are extreme cases that are typical of authoritarian political systems. In political systems that accept the rule of law and are based on it, it is the opposite direction that is natural. Its basic characteristic is that it seeks to find the right measure, which is humane and takes into account that law is about mutual and interdependent relations that are tolerable to both sides.

**KEYWORDS:** the argument of non-law, the symbolic meaning of Radbruch's formula, legal sense, sense of justice, mutuality, coexistence.

### **18. PINHEL RIBEIRO, Karla (Brazil)**

*The Concept of Gewalt in Walter Benjamin Philosophy of Law*

**Title:** The Concept of Gewalt in Walter Benjamin Philosophy of Law

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**ABSTRACT:** The paper investigates the concept of Gewalt in the early works of Walter Benjamin, its origin in the language and its problems and developments in the area of ethics, aesthetics and law. The main argument is a interpretation of Benjaminian conception through Hannah Arendt thought, towards the differences among law, justice and right in christian jewish tradition.

### **19. PRADA, Aurelio de (Spain)**

*Antigone: The faces of Justice*

**Abstract Title:** Antigone: The faces of justice.

**Author:** Aurelio de Prada Garcia, Legal Philosophy Prof, Rey Juan Carlos University, Madrid, Spain

**Abstract:** Antigone is one of the greatest characters in Greek Tragedy and one that has deserved the greatest attention throughout posterity. Therefore, in this paper we not only analyze the concepts of justice included in Sophocles' homonymous tragedy, but also some of the most important later interpretations in order to reach an interpretation that would correspond to the present day.

Keywords: Antigone, legal justice, natural justice, interpretation.

## **20. ROVETTA KLYVER, Fernando (Spain)**

*Don Quixote de La Mancha: his struggle against injustice*

**ABSTRACT TITLE:** Don Quixote de La Mancha: his struggle against injustice

**AUTHOR:** Fernando Rovetta Klyver, PhD of Philosophy of Law of Castilla-La Mancha University.

**ABSTRACT:** We postulate the desirability that the jurist, familiar with codes or precedents usually applied with mechanical and substantive methods, consider literature and films because, as Machado said, "an idea is not worth more than a metaphor, in general, is less"

Cervantes's novel, both comic and tragic, describes the change of an era: from the middle ages to modernity; this gives relevance to an analysis from the perspective of the philosophy of law, considering the current return to another middle ages, no longer ecclesial but economic, in which the states have lost the "monopoly on the legitimate use of force".

Quixote could be seen as paradigm of the jurist who fights the economic, politics and social injustices, is a witness to the emergence of the "possessive individualism". He longs for a time where everything was common while encourages the utopian hope of Sancho (an island), or his own (the globe).

His "communicative personalism" is a mockery of the deterministic reality and opposes the Comte's positivism that resulted in novels of Dickens and Flaubert, and also goes against the formalism of Kelsen, only focused on "who" and "how" the law is made. We can postulate that Quixote's path retrieves the importance of the content of the law in concordance with the universal principles as proposed in the guarantees theory of L. Ferrajoli.

**KEYWORDS:** justice, principles, human rights.

## **21. ÜYE, Saim (Turkey)**

*Non-access to Justice: Literature in Times of Coup D'état*

**ABSTRACT TITLE:** Non-access to Justice: Literature in Times of Coup D'état

**AUTHOR:** Saim Uye, Associate Professor at Ankara University Faculty of Law, Department of Philosophy and Sociology of Law, Turkey

**ABSTRACT:**

There emerged a huge literature on coup d'états in countries, political histories of which include several military interventions. The novels, stories and poets written in or about these times make clear the conditions in which people lived, what they were scared of doing in their daily lives and the barriers they faced with regard to the legal

rights stipulated in legal texts.

Reviewing the so called “Coup D’etat Literature” is the best way to understand the alienation of people from justice. It must also be emphasized that it is important to recognise not only what had been written but also what had not been written in times of coup d’etat.

**KEYWORDS:** Literature, Justice, Coup D’etat

## **22. VELARDE, Caridad (Spain)**

*Legal reasoning in Shakespeare’s Merchant of Venice*

**ABSTRACT TITLE:** Legal reasoning in Shakespeare’s Merchant of Venice

**AUTHOR:** Caridad Velarde, Profesora de Filosofía del Derecho, Universidad de Navarra, España

**ABSTRACT:**

It is well known the role that law plays in many of the works of Shakespeare. Of all the plays, this paper will take care of The Merchant of Venice. More specifically the trial scene with the contribution of the young jurist from the University of Bologna and the development of the argument that avoids an unfair result through the application of a rule is unfair aswell. Among all the issues that could be addressed I will focus on the legal status of Venice and its relationship with Ius Commune at that moment and therefore with law as it was It is well known the role that law plays in many works of Shakespeare. Of all these, this paper will take care of The Merchant of Venice and specifically the argument that avoids an unfair result through the application of a rule is too. Among the issues that can be addressed I will focus on the legal status of Venice and its relationship with the Common Law and therefore with Law as it was taught in universities. Also in the treatment given to non citizens and especially to Jews. Finally it will make reference to the lex mercatoria looking for a comparison with the current situation.

**KEYWORDS:** Legal Reasoning, Shakespeare, Lex Mercatoria, exclusion, racism

## **23. WINTR, Jan (Czech)**

*Kafka und Schwejk - Karikatur des modernen Rechtssystems und Gefühl der Ungerechtigkeit*

### **Paper Proposal**

#### **Kafka und Schwejk – Karikatur des modernen Rechtssystems und Gefühl der Ungerechtigkeit**

Jan Wintr

Romane *Der Prozess* und *Das Schloss* von Franz Kafka und *Die Abenteuer des braven Soldaten Schwejk* von Jaroslav Hašek sind in der gleichen Zeit und in der gleichen Stadt geschrieben und wurden oft verglichen. Unter anderem alle thematisieren Position des Einzelnen gegenüber das moderne Rechtssystem.

Figuren in den Romanen sind Adressaten zahlreicher Befehle, deren Sinn und

Zweck oft unklar oder gar fehlend ist. Schwejk reagiert mit einem absurden Textualismus – er handelt nach dem Wortlaut des Befehls gegen jeden möglichen Zweck. Kafkas Helden sind machtlos angesichts ungreifbaren Befehle und wurden Opfer des Systems. Beide Werke sind ambivalent. Das moderne Rechtssystem ist einerseits auf unpersönliche allgemeine Normen angewiesen, andererseits steht jedoch in Gefahr, den Einzelnen zu unterdrücken oder sogar zu vernichten.

Es geht nicht nur um das Überleben und das Verständnis, sondern auch um das Gefühl der Gerechtigkeit oder der Ungerechtigkeit. Der Mensch möchte den Sinn und Zweck der Normen verstehen. Hat der Leser Gefühl der Ungerechtigkeit bei der Lektüre von Kafkas Romane, dieses Gefühl beruht nicht an einer Ungleichbehandlung der Gleichen. Vielmehr sehen wir als ungerecht, dass der Mensch bloßes Objekt eines unsinnigen und unbegründeten „Rechts“ ist.

Auch Hašeks Roman bietet viel Stoff zum Nachdenken über die Gerechtigkeit. Schwejk beschreibt mit Ironie und Sarkasmus mehrere strafrechtliche Fälle, wo oft das Strafmaß überschritten oder unterschritten war, und macht sich lustig über das Streben anderer nach der Gerechtigkeit. Es wäre nützlich auch da zu analysieren, woraus genau in diesen Geschichten das Gefühl der Ungerechtigkeit entsteht und ob das ähnlich zur Ungerechtigkeit der Kafkas literarischen Welt ist.

Kafkas und Hašeks Werke zeigen manche wesentlichen Probleme des modernen Rechtssystems in seiner kritischen Phase zur Zeit des Ersten Weltkrieges.

Key words: law and literature, interpretation of law, sense of fairness