KATJA ŠKRUBEJ

POSITION

Associate Professor, University of Ljubljana Faculty of Law (from 2013) Head of Chair for Legal History and Roman Law (from 2015)

EDUCATION

1998 Masters, Univ. of Ljubljana, Faculty of Law

2002 Doctorate, Univ. of Ljubljana (interdisciplinary: Co-mentors from Legal history and Indo-European Linguistics)

2003/2004, Post-doc, Univ. of Michigan School of Law (Ann Arbor)

OTHER STUDIES: completed 6th semester of History; 8th semester of Comparative Indo-European

Linguistics (Univ. of Ljubljana, Faculty of Arts);

LANGUAGE PROFICIENCY: Engl. (A), Spa. (A), Ger, (A), Fr. (A), Cro. (A); It. (P)

SCHOLARSHIPS

2000 DAAD Visiting researcher (Uni Würzburg, Institute für Slawistik; Germany)

2003/2004 University of Michigan Law School (Ann Arbor), Visiting Researcher Grant; Post-doc;

Awarded the NYU Hauser Global Scholarship (J. H. H. Weiler), as well, but opted for the Michigan Grant.

2015 Max Planck Inst. for European Legal History, Visiting Researcher Grant (Frankfurt/M)

(Project: "Legal spaces of the Alps-Adriatic Region")

TEACHING

Legal History, obligatory course, 1st Cycle

Law and Language in the European Tradition, elective course, 2ndCycle

Introduction to the Ancient Near Eastern Law, elective course, 3ndCycle (among others)

RECENT INTERNATIONAL CONFERENCES

2014 Société d'histoire du droit : Journées internationales de Ljubljana 2014 »Le juge dans

l'histoire: Entre création et interprétation du droit » (5.-8. June) http://www.pf.uni-lj.si/media/journees.internationales.de.ljubljana.2014.programme.final.2.pdf (CO-organiser)

2015 "Magna Carta 1215: Parallels and Influences" with Professor John Hudson (St. Andrews,

UK) (22. Oct.) http://www.pf.uni-lj.si/en/news-board/erasmus/en-arhiv/magna-carta-1215-parallels-and-

influences/ (Organiser in chief)

SELECT BIBLIOGRAPHY

1. BOOKS:

Ritus gentis Slovanov v vzhodnih Alpah: model rekonstrukcije pravnih razmerij na podlagi najstarejšega jezikovnega gradiva. Ljubljana: Založba ZRC, ZRC SAZU; Pravna Fakulteta, 2002 [Ritus gentis of the Slavs in the Eastern Alps (A Model of Reconstruction on the basis of the Old Vernacular Language Material)] http://www.pf.uni-lj.si/media/katja.skrubej.ritus.gentis.doc (ENGLISH SUMMARY) http://isifr.zrc-sazu.si/sl/publikacije/ritus-gentis-slovanov-v-vzhodnih-alpah#v

Pravo v zgodovini s poudarkom na razvoju na današnjem slovenskem prostoru : odlomki virov s komentarji. ([Law in history (with the emphasis on today's Slovene territory)]. Ljubljana: Založba GV, 2010. It encompasses excerpts from about 150 legal historical sources divided into eighteen chapters, organised in part chronologically, in part thematically, each followed by a succinct commentary. Thirteen of the chapters refer to the legal history of today's Slovene territory from the Early Middle Ages onwards, whereas the first few are devoted to the most important sources relevant to law that were preserved from Mesopotamia (i.e. cuneiform laws), ancient Greece (of the archaic period) and ancient Rome. The file rouge that runs through all the eighteen commentaries is the interplay among the customary law, ruler-made law, usus fori and the role of legis periti (when they existed).

2. PAPERS, PARTS OF MONOGRAPHIES:

- »Avstrijska sanctio pragmatica in francoska lex salica: prestiž poznoantične pravne forme za novoveško vsebino« [Austrian sanctio pragmatica and French lex salica: prestige of the late antique legal forms for the early modern notions]. IN: LETO 1713 IN NJEGOVI ODMEVI V SLOVENSKEM PROSTORU (E-book), (ed. Miha Preinfalk). Ljubljana, Slovensko društvo za preučevanje 18. stoletja, Zgodovinski inštitut Milka Kosa ZRC SAZU, Inštitut za literaturo in literarne vede ZRC SAZU, 2015. http://ezb.ijs.si/fedora/get/ezmono:sd18z15/VIEW/ (POLNO BESEDILO)
- »Austrian General Civil Code (1812) and the Slovenes: the Blinding Legacy of Legal Monism«. *COLLECTED PAPERS OF ZAGREB LAW FACULTY*, VOL. 63 No. 5-6 Dec **2013**, pp. 1063-1080. http://hrcak.srce.hr/index.php?show=clanak&id clanak jezik=171870&lang=en (FULL TEXT)
- »Courtroom oaths and patrimonial court in 18th-century Carniola: vestiges of "ius proprium" and local autonomy: The case of the Estate of Vedes/Bled." *LEX LOCALIS*, jul 2012, Year. 10, No. 3, pp. 203-228 http://pub.lex-localis.info/index.php/LexLocalis/article/view/212 (FULL TEXT)
- Entre le Code et la jurisprudence : le principe de la "lex mitior" et le faux témoignage comme atteinte à l'honneur. IN : GOJOSSO, Eric (ur.) *CAHIERS POITEVINS D'HISTOIRE DU DROIT. Troisième cahier* (Collection de la Faculté de droit et sciences sociales de Poitiers). Poitiers : Faculté de droit et sciences sociales de Poitiers, 2011, pp. 43-55 http://www.pf.uni-li.si/media/skrubej entre.le.code.et.la.jurisprudence.pdf (FULL TEXT)
- »La province de Carinthie d'après E. S. Piccolomini, De Europa, 1458/1490 : locus, populus, imperium dans une perspective diachronique.«, IN: GOJOSSO, Eric (ur.), VERGNE, Arnaud (ur.) LA PROVINCE : CIRCONSCRIRE ET ADMINISTRER LE TERRITOIRE DE LA RÉPUBLIQUE ROMAINE À NOS JOURS, Paris: LGDJ, 2010, pp. 97-153; https://univ-droit.fr/recherche/actualites-de-la-recherche/parutions/19292-la-province-circonscrire-et-administrer-le-territoire-de-la-republique-romaine-a-nos-jours
- »Diahrona pomenska stabilnost nekaterih najstarejših slovenskih pravnih izrazov in performativ. V: Razvoj slovenskega strokovnega jezika.«[Diachronic semantic stability of some of the oldest Slovene legal terms and the Performative] IN: RAZVOJ SLOVENSKEGA STROKOVNEGA JEZIKA. Irena Orel (ur.). Ljubljana: Filozofska fakulteta, 2007, str. 247-261. http://centerslo.si/wpcontent/uploads/2015/10/24-Skrubej.pdf (FULL TEXT with the English abstract)
- »Historisch Analysierte Lexik: relevante Quelle für rechtsgeschichtliche Forschung? (Am Beispiel der altslawischen Bezeichnung zakonik).« IN: FELDNER, HALBWACHS et al (eds.). AD FONTES. Europäisches Forum junger Rechtshistorikerinnen und Rechtshistoriker Wien 2001. Frankfurt: Peter Lang, 2002, pp 357-370. http://www.pf.uni-lj.si/media/katja.skrubej.hystorish.pdf (FULL TEXT)

RESEARCH:

Research topics have broadly followed my trainings in law, history, comparative, and historical linguistics of Indo-European languages. Although varied at first glance, they are interconnected. In part, they also follow the research of our predecessors at the Chair of legal history, especially those of Sergij Vilfan (https://en.wikipedia.org/wiki/Sergij Vilfan) and that of Viktor Korošec (https://de.wikipedia.org/wiki/Viktor Koro%C5%A1ec), but in significantly smaller part.

Sources of law in the continental legal tradition and the conceptualising of 'legal spaces'

- The interplay among *customary law(s)*, *usus fori (mos iudicorum)* of secular Courts (Manorial, Town, of nobility and others), *ius commune* and ruler-made law; legal change in the age of great codifications, especially in the case of ABGB in the Austrian Empire; the role of judges and *legis periti* in lay courts etc.

Legal history of today's Slovene territory (i.e. of a significant part of former *Inner Austria*, and what in the Early Middle Ages were *patriae gentes* of *Carantani* and *Carniolenses*, as referred to by their contemporaries (e.g. Paulus Diaconus in *Historia Langobardorum*)

- Ritus gentis of gentes, called Slavic, and their neighbours in the Eastern Alps in the Early Middle Ages, the transformations of their *loci, populi* and the nature of the *imperium* after incorporation into the Empire of Franks, and consequently into the Holy Roman Empire; the process of new territorialisation of power and the forming of new political territories (*Länder, dežele*) and the rise of the Habsburgs, etc.

Language and the law

- Old vernacular legal terminology (analysed with the use of methods developed in comparative and historical linguistics) as a source for legal history; vernacular languages and the law; plurilinguism in law; the spread of literacy and its uneven effects in law etc.

Select topics from the Ancient Near Eastern Law

- The hendiadys kittum u misharum.

SOME OTHER WORK IN PROGRESS

(1) Protocols of "vineyard hill assemblies" (Bergrecht Protokolle) of Lower Carniola

Protocoling the legal business of the "vineyard hill assemblies" for Lower Carniola is preserved on records from the end of the 16th until the early 19th century, but the convening of the assemblies themselves is attested from the 12th century onwards throughout much of the wine growing hilly areas in inner, lower and upper Austria and well beyond (e.g. excerpts from some of the sources in DRW, under *Bergrecht III*. http://www.rzuser.uni-heidelberg.de/~cd2/drw/e/be/rgre/bergrecht.htm)

My interest in these protocols is threefold:

- first, those who were required to attend the assemblies were all those entitled to a vineyard at each "vineyard hill" (Berg, gorica) under the special Bergrecht provisions (ius montium in vineis), i.e. the customary law provisions that rendered the relation between the lord (usually an abbot of a monastery, on the grounds of which the vineyards were established) and the holder akin to a free and hereditary leasehold (freie Erbleihe), the fact that attracted the candidates not only from the class of townsfolk and peasantry, but also from lower nobility; consequently, the members who conducted their mutual legal business at such assemblies (i.e. determining the course of the interdependent work at each hill and, most importantly, settling their disputes relative to vineyard matters) regularly came from all three different social strata;
- second, the research done by my predecessors (especially Metod Dolenc) and excerpts drawn from the protocols show that even after the "codifying" of the *Bergrecht* provisions in politically challenged collaboration among the *Landesfürst*, Estates and towns, which were only beginning to gain access to the Provincial assemblies of the Estates, as it is well known for the neighbouring Styria, where such a "code", *Bergrecht-büechel*, was adopted in 1543 and translated into Slovene in 1583 (i.e. *Gorske bukve*, the version afterwards used also in Lower Carniola, read out at the beginning of each assembly), the assemblies in their decisions, not even did they differ significantly from the letter of the "law (code)" but several times went expressly and without any apparent second thought against it, upholding its own customary rule or, at times, expressly forming a new general rule, that was to govern future disputes (i.e. *Gemein Urteil*, *obča sodba*);
- third, even though in the older literature on *Bergrecht*, the authors refer to it in terms of ethnicity (be it as typically "German" (customary) law or as typically "Slovene"), the already available excerpts of these protocols show that what determined the content of the customary provisions cannot be rendered in ethnic terms (in the sense of *mos maiorum* of any particular ethnic group) but was the

result of the centuries long traditions, developed regionally, and in the scope of such assemblies, best described as their own *mos iudicorum* (*usus fori*).

(2) "Law in books": origin myth or reality of continental legal tradition? (from legal pluralism to legal monism)

On January 1st 1812, one of the first major civil codes of continental legal tradition, *Allgemeines Bürgerliches Gesetzbuch* (ABGB) of the Austrian Empire came into force. As other similar codes at the time, it boasted the exhaustive treatment of the civil-law matter and, in its first paragraphs it explicitly denied the formal force of law of the decisions of judges (*Richterliche Aussprüche*) and of customary law (*Gewohnheiten*). From then on, the latter could only be applied if a statute specifically authorised it. With its Promulgation Act from June 1st 1811, the force of law was denied also to *ius commune* (*das Gemeine Recht*), with the received Roman law at its heart.

Twenty five years earlier, on January 1st 1787, the criminal code for the hereditary Habsburgs lands which would officially constitute the Austrian Empire only from 1804, with the Holy Roman Empire being dissolved two years later, in 1806 -, the *Allgemeines Gesetzbuch über Verbrechen und derselben Bestrafung* of Joseph II, in short the *Josephina*, came into force. In criminal law matters, it fully upheld the principle of legality for the first time and thus prohibited the judges their long established power to create law (i.e. judicial analogy), recognised still in the preceding *Theresiana*, § 104).

How significant and "real" were these changes in the actual life of the law, but also in the legal consciousness of the contemporaries (of the legal community and of ordinary people), especially considering the fact that the Crown provisions that judges ought to be professionally trained came gradually into force only in the last decades of the 18th century and that the full system of state courts was not in place until well into the 19th century?

My working hypothesis, based on the sources for the legal history of today's Slovene territory which used to be the core part of the hereditary provinces of the Habsburgs (*inner Austria*), and with it of the Holy Roman Empire (only with today's Slovene littoral and a few of the Alpine valleys in its Hinterland also part of the Venetian republic), is that the role of the professors of law and professionally trained judges in the bulk of every day legal business in front of lay courts, especially of the nobles and towns but also of peasantry during the early modern period, in the traditional legal-historical accounts is much overstated. They fail to bring to the fore the importance of *usus fori* (*mos iudicorum*) of each particular court (Town, Manorial, those of the nobles and others). At the same time, if and when the reference to *usus fori* is actually made, it is often dismissive and negative (e.g. the criminal law not *yet* being unified or the powers of the judges' powers limited etc.).

Such evaluations are formed anachronistically. They are made from the point of view of the ideals of the 19th century "codification ideology" of "national" (state) laws and not, per chance, from the point of view of the historical communities themselves and their long traditions of political and judicial autonomy. That was certainly different from region to region, but nevertheless very much existent, relying vividly on what one might call a pluralism of legal sources. It is my surmise that the judges, besides drawing on their own *usus fori*, largely acted upon what could be paraphrased as *da mihi facta et regulae* (!), *dabo tibi ius*. The principle that *iura propria* (e.g. usually the so called customs of the land, in the early modern period indeed conditioned by being enshrined in a written document and thus produced), took formal precedence in Court over the use of *ius commune* (*ubi cessat statutum, habet locum ius civile*), the subsidiary value of which was in the theoretical legal works by Austrian jurists maintained until the end, is but one argument that supports this surmise.

The other basic question about the idea(I) or better, the myth of continental legal tradition of its law being (predominately, solely?) the "law in books", as it is indeed perceived nowadays, and not just by

the lay public, is that how can this hold water for any period before the 18th century, when "all law" was not even planned to be codified, when the other sources of law continued explicitly to have the force of law, when the judges, if by chance trained, where certainly not trained in the mentality of pure state officials who can only apply law, and without the whole judicial system being a vertically organised state system?

In the dynastic conglomerate of Habsburgs at least, not all of these requirements are met until well into the 19th century.

Consequently, the maxim of "law in books" as a major differentia specifica of the continental legal tradition for before the end of 18th century should seriously be brought into question and investigated for different parts of continental Europe. In any event however, one should start with a question what is and was meant by a "book", not forgetting at the same time, that its contextual meaning is inextricably linked to the second part of the proverbial phrase, reserving the emphasis on "action", by contrast, for the English legal tradition.

FULL CURRICULUM VITAE: EDUCATION, TEACHING, RESEARCH AND OTHER

2008 - 2017 University of Ljubljana Faculty of Law (Home institution)

- teaching (as principal):

Legal History, obligatory course, 1st Cycle
Law and Language in European Tradition, elective course, 2ndCycle
Introduction to the Ancient Near Eastern Law, elective course, 3ndCycle
- posts:

2015, elected Head of the Department for Legal History and Roman Law 2013, elected Associate Professor;

University of Ljubljana, Faculty of Arts, Department for History

- **Selected chapters from Legal History,** elective course, 2ndCycle (external post, co-holder)

Max-Planck Institut for European Legal History (Frankfurt/M, Germany)

Visiting Researcher, April-June, 2015; Research Project »Legal spaces in Alps-Adriatic Area around 1800: the Agents of Institutionalisation, Disappearance,
 Resistance and Transformation«

<u>University of Ljubljana Faculty of Law</u>: conferences (Initiator; Co-organiser)

- 22 October 2015; symposium "Magna Carta 1215: Parallels and Influences" with Professor John Hudson, the Author of *The Oxford History of the Laws of England, Vol II., 871-1216,* (2012);
- 5.- 8. June 2014 Société d'histoire du droit : Journées internationales de Ljubljana
 2014 : »Le juge dans l'histoire : Entre création et interprétation du droit »
 co-organiser with Prof. Dr. h.c. Janez Kranjc;

<u>Université de Poitiers, Faculté de droit et sciences sociales and University of Ljubljana, Faculty of Law (interfaculty cooperation, participant at colloquia)</u>

- 30. August 2016, Ljubljana, "Epuration"
- 7.-9. November 2013, Ljubljana, »Restauration et réactions juridiques«

- 26. Avgust 2011, »Les codification du droit civil au début du XIXe siecle et leur enracinement dans la tradition«
- 2.-3. September 2010, Poitiers, »Confrontation des systèmes juridiques et acculturation normative«
- 1.-2. September, 2008, Poitiers, »L'idée de province«
- 31. August 2007, Ljubljana »Coutumes, doctrine et droit savant«,

March 1-8th 2008, Universidad de Sevilla, Facultad de Derecho (Erasmus Mobility)

- lectures: El código civil austriaco de 1811 y los aspectos histórico-jurídicos del proceso de" 'codificación' and La revolución de 1848, la primera constitución austriaca de 1849 y el concepto de 'nación' en el Imperio Habsburgo – puntos de una comparación con la situación española de la época.

1998 – 2007 <u>University of Ljubljana Faculty of Law</u>

- teaching (jointly) the 1st cycle obligatory course in Legal history;

University of Ljubljana Faculty of Arts; Department for History

- from Sept. 2004 teaching the optional legal-historical seminar;

International symposium in memory of Sergij Vilfan, jointly with the Slovene Academy of Sciences and Arts and Ljubljana city Archives, **May, 22-25 2007**

- Co-organiser with Dr. Marko Kambič;
- on maternity leave in 2006/2007;

University of Michigan School of Law

Visiting Researcher (Post-doc), Aug. 2003 - May 2004

(Principle co-speakers, **William Ian Miller** for Icelandic sagas and law; Thomas A. Green, "Early modern colloquium"

and Gary Beckman at the UM Near Eastern Department: at special request: cuneiform readings of Akkadian (mainly Hammurabi's and Hittite laws)

University of Ljubljana Faculty of Law

Elected 'Docent' (Assistant Professor) to Chair for Legal History, Feb. 2003;

Ph.D. Ritus gentis Slovanov v vzhodnih Alpah [Ritus gentis of the Slavs in the Eastern Alps], **Oct. 2001**

(Co-mentors Vladimir Simič from the Chair of Legal History and Metka Furlan, from the Department of General and Comparative Linguistics, University of Ljubljana; presiding over the Committee for the defense, Radoslav Katičić, University of Vienna, Austria)

University of Ljubljana Faculty of Arts

a. Department of History

Completed the 6th semester of studies.

b. Department of General and Comparative (Indo-European) **Linguistics** Completed the 8^{th} semester of studies.

Max-Planck Institute for European legal history, Frankfurt/Main, Germany, Summer seminars in legal history: July 2002 and in July 2003

- participant (Invited by Michael Stolleis, Institute's Director).

University of Ljubljana Faculty of Law

Elected 'Assistant' to the Chair of Legal History, May 2000

Universität Würzburg, Institut für Slawistik Germany, (DAAD scholarship)

Research for doctoral thesis, April-May, 2000

Research Centre of Slovene Academy of Arts and Sciences

Appointed Associate member of the Preparing Committee for writing of the *Dictionary of Slovene legal-historical terminology*, May 18, 1999

1995 – 1998 University of Ljubljana Faculty of Law

Master's Degree Pravno izrazje v Dalmatinovi Bibliji, 1584 [Slovene Legal Lexis in Dalmatin's Bible, 1584], May 1998;

Junior Researcher at the Chair for Legal History, from Nov. 1995

Law Degree Pravna vprašanja v delih Georga Dúmezila [Legal-historical Questions in the Works of George Dúmezil], May 1995;

1992 – 1993 International certificates for the proficiency of Spanish (Diploma

superior de Español; El Ministerio de Educación y Ciencia; Universidad de Salamanca, Spain), **German** (Zentrale Oberstufenprüfung, Goethe Institut, Freiburg, Germany) and **French** (Eurocentre, le niveau 8/10, Paris, France).

1991 New Court Chambers, Newcastle (UK)
Summer Trainee, September, 1991

AWARDS and SCHOLARSHIPS

2015	Max Planck Visiting Researcher Grant
2003	Awarded two postdoctoral scholarships : NYU Hauser Global Scholarship and University of Michigan Law School (Ann Arbor) Visiting Researcher Grant
2001	University Award for Young Academics (Festive Diploma of the University of Ljubljana for Important Achievements in the field of Educational work and Scientific Research), December 4 th , 2001
2000	Scholarship of Deutscher Akademischer Austauschdienst (DAAD)
1996	Faculty of Law, University of Ljubljana Honors in recognition of academic excellence, April 15, 1996
1993	University of Ljubljana Prešeren Award for Students (held jointly) for the paper, The Implications of Consent in various Phases of Criminal Procedure from the viewpoint of the Exclusionary Rule Doctrine
1987	National competition in English language of Slovene secondary schools First Prize

MEMBER or PARTICIPANT

European Forum of Young Legal Historians, participant 1997-2007 (now http://en.wikipedia.org/wiki/Association of Young Legal Historians (AYLH); Slovene Historical Society; Slavistic Society of Slovenia, Societas Sloveniae Studiis Antiquitatis et Humanitatis Investigandis.

SUMMER AND WINTER SEMINARS FOR STUDENTS

- 2017 <u>Winter seminar "On persons, things and setting of boundaries in the comparative legal history"</u> with Prof. William Ian Miller (Univ. of Michigan Law School); February, 20-24
- 2007 <u>Summer seminar "The origins and development of English) jury"</u>
 with Prof. Thomas Green (Univ. of Michigan Law School), July 2007
- 2005 <u>Summer seminar "Icelandic laws and sagas"</u> with Prof.
 - with William Ian Miller (Univ. of Michigan Law School); July 4-9, 2005
- 2004 <u>Summer seminar "Readings of cuneiform laws and sermons"</u> (for students from the Department of the Comparative Indo-European Linguistics, Univ. of L, Faculty of Arts) with Prof. Gary Beckman of UM Near Eastern Department, June 30 July 6, 2004

SOME OTHER FACULTY WORK, POSTS AND PROJECTS:

2004 – present	Participant in a faculty project "Translation of EU legal terminology to Slovene"
2001 – 2007	Mentor to a students' historical research and debating group (extra-curricular)
2001 - 2003	Mentor to <u>a students research project</u> »Important Slovene women- jurists before the World War II«
1999 – 2003	Coordinator of a yearly three-day <u>seminar of junior</u> research and teaching <u>staff</u> (short presentations of work, debates on the controversial issues)
2003 - 2007	Coordinator of the faculty moot court teams; from 2007 President of the Faculty committee for the international moots
1996 – 2003	Coordinator of a faculty <u>students' team for the</u> yearly <u>Moot Court</u> Competition <u>René Cassin in Strasbourg, France</u> (at the European Court of Human Rights);