Between Restoration and Revolution, National Constitutions and Global Law: an Alternative View on the European Century 1815-1914

(EReRe)

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Sponsored by the European Research Council

Estimated working period: September 2009-August 2013

1. Introduction: the Alternative 19th Century Legacy
The point of departure of this project is that a good part of the present deficit of legitimacy of European institutions emerges from a deeply a-historic view of Europe's past. There is an urgent need for a more realistic history that rejects any teleological understanding of Europe as a self-propelling project on steady march towards a predetermined goal. Instead, the fragility of European peace and progress needs to be highlighted. Recent attempts to look for historical analogies to the EU in the American constitution convent in Philadelphia in 1787 or in the German-Roman Empire, which collapsed in 1806, bypass the 19th century European experience of violent nation building and global expansion. This circumvention – and the theoretical foundation of Europe in teleological modernisation and globalisation theories – has lead to a-historical understandings of Europe's past that disturbs our ability to plan for its future.

The focus of our alternative approach is on the relationships between politics and law, nationally as well as *inter*nationally. It is crucial to see the tense entanglements between politics and law in their realistic historical perspective in order to understand the present situation. By realistic we mean a view of the past as open towards the future, fragile and contentious in its achievements, and contingent rather than causative in terms of outcome.

We are not as in the common view seeing law and politics as parallel tracks, but in their entangled and inter-dynamic dimension. Furthermore, law as well as politics have both a national and inter- or transnational, ultimately global dimension. This double pattern of entanglements and inter-dynamics – law and politics, national and international – is underpinned by our alternative non-teleological historical perspective. Our focus does not begin with the revolution in 1789, but with the

restoration and the search for European stability, which did not prevent new revolutions, however, as we know today. In the achieved stability was fragility. Our revision does not only deal with Europe in terms of *time* but also its *spatial* dimension. Europe is systematically regarded in its global context. Our third component is the issue of European *values* created through references to time and space.

When we explore the fragile 19th century Europe we do not depart from the standard focus on national diversity defined in terms of identity, but focus on political shaping in more complex forms than identity construction. For the past 30 years, national identities have been used as a blueprint for the imagination of today's Europe. These identity stories all begin with a reference to 1789. We begin with 1815 and end with 1914 as an alternative temporal frame dealing more than with identity with politics and law and with a fluid non-essential conceptualisation of values. With our approach we discern Europe's external relationships in more open and interactive ways than the identity analyses do.

Our alternative history has the potential to establish a European link between constitutional patriotism and coming to terms with the past, which Jürgen Habermas emphasised when he in the German case argued that *Vergangenheitsbewältigung* was the precondition *sine quae non* of *Verfassungspatriotismus*. This connection has been flagrantly missing in the debate about a European constitution.

Our approach is pronounced interdisciplinary (law-politics-history), with a trans- or counter-disciplinary potential. In terms of methodology our analyses focuses on the role of language and the dynamic and contentious conceptualisation of law and politics under transformation of semantic fields.

2. Three Thematic Fields of Tension

Our realistic outline of Europe's past – which we want to explore, refine and underpin in great empirical detail – focuses on the period between the Peace of Vienna (1815) and the outbreak of the "Second European Thirty Years War" (1914). The century 1815-1914 was the pre-war historical ground on which the peace of 1945 and our present conception of Europe were built. It testifies at least as much to conflict and fragility as to progress. The century is traversed by a series of tensions in the political, cultural, social, economic and legal fields and struggles between the protagonists of different conceptions of European modernity. The legal and political basis for a new European order established at the Congress in Vienna was what was called the European concert. The Treaty of Vienna opened an era that lasted until 1914 in which wars in Europe decreased, whereas the number of civil wars increased and "'the Revolution' came to no end" (Koselleck 1969:199-229). The only wars which challenged the borders regulated in the Treaty were the Italian and German unification wars between 1859 and 1871. The other international wars during the century after Vienna – the Crimean War 1853-56, the Russian-Turkish Wars 1828-29 and 1877-78 and the Balkan Wars 1912-13 (about the spatial order in South-Eastern Europe and in the Ottoman Empire) and the colonial wars between European powers – were excluded in the Vienna Treaty. The European battlefields were exported or transformed into internal social conflicts.

Our history will not embody a homogeneous notion of "Europe". Instead, it presents the 19th century in terms of a series of tensions which were imposed upon the European states and other actors in the wake of the French revolution and the Napoleonic wars. These tensions were articulated in different geopolitical strategies, constitutional conceptions, prescriptions for economic efficiency and claims for social protection, and alternating views of the meaning of "Europe". In one way or the other, they all dealt with the interactive dynamics between politics and law, nationally as well as internationally. These interactive dynamics were also visible in the permanent movement between search for and expectations of stability and experiences of fragility.

Our three thematic fields of tension deal with Europe in terms of *space*, *time* and *values*. All three thematic fields are tied together in tight webs of interaction. They are selected as separated entities basically for analytical operative purposes. Our research organisation will do justice to their interconnectedness. Our historical argument is that *these tensions have not gone away with the EU but rather mutated*. They were historically articulated in the different constitutional traditions and notions of European international law, public order and territorial power politics.

2.1 Space
2.1.1 Teleology to be contested

Through numerous historical examples we aim to undermine one of the most persistent present-day teleologies: that Europe will be the leader of the world. The most recent contribution in this vein is the Lisbon decision in 2000 about Europe as the world's most prosperous and technologically advanced region by 2010. We will begin our contention of the argument about Europe as the centre and point of departure for global progress by a critical view on Immanuel Kant in his "Idea for a Universal History with a Cosmopolitan Purpose" (1785) where he refers to a "regular process of improvement in the political constitutions of our continent (which will probably at the end legislate for all other continents)".

2.1.2 Two languages of European space

There were two languages of 19th century ordering of European space, the language of dynastic territorial politics, which at the end of the century became geopolitics, and the language of international law. Throughout the 19th century, conceptions of European public order varied between the territorial stability established by the Holy Alliance and the European concert, and the emerging international law of sovereign equals as alternative modes of stabilisation. The interplay between the two modes became more pronounced after 1870 when the establishment of the German Empire fundamentally changed the power relationships on the European continent. Would diplomacy become *Machtpolitik* or a search for some (natural) order? The tension between national and international in the two languages was obvious when state positioned themselves in an international game about show of power and control of power. The transformation of the states from monarchical towards parliamentary rule and legitimacy (although to a little extent achieved by 1914) increased the tension between the two languages: who would have the authority to bind the state?

2.1.2.1 The language of geopolitics

The dynamic between a European system of nation-states and a global system of Europe-based empires is crucial to grasp in order to account for the territorial power politics of 19th century Europe. It also affected politics within individual nation-states which in turn produced feedback effects to the European level. It offers important contrasts and similarities with the two levels of foreign policy existing in Europe today, firstly between European states and secondly between European states and third parties.

When we employ the term "geopolitics" we are well aware that this concept was invented only around 1900 and that other conceptualisations were used in Vienna. The issue in 1815, and since long before, was territorial politics through monarchical marriages and alliances. It is a common misunderstanding that the European Peace of 1648 meant a rupture of the medieval multi-layered monarchical order (Teschke 2003). One monarch could still in the 19th century rule over several kinds of territories, which continuously shifted through marriages and wars. The Danish king, for instance, was in his capacity of Duke of Sleswig and Holstein member of the German *Bund*. The British monarch was until 1837 also the ruler over Hanover. In the Peace of Kiel in January 1814 the Danish king gave Norway to the Swedish king (Stråth 2005). State politics were dynastic politics pursued as family enterprises. The monarchs had a stronger control over foreign politics than in domestic affairs. This lasted long after 1648 and was challenged only in the 19th century by the idea of national (people´s) sovereignty. The competition between these two principles of rule – monarchical and parliamentary – provides a basic part of our rethinking of the history of Europe.

It was not (unlike Versailles 1919) the nations or the states but the monarchs who established territorial stability in Vienna. Their decision was driven by ideas of the balance of power. In a document a few months after the Vienna Congress, Tsar Alexander I added on another legitimising principle based on a religious belief in peaceful settlement of conflicts among the European monarchs (the Holy Alliance). The monarchs would according to the Tsar's manifest commit themselves to govern their peoples according to the Christian commandments about justice and mercy. Tsar Alexander I, Emperor France I of Austria and King Friedrich Wilhelm III of Prussia signed the manifest and invited the other European monarchs to join them. So they did with the exception for the Ottoman Sultan, who because of his Muslim confession never was invited, the Pope, who claimed exclusive authority in the religious domain, and Great Britain, where the leading statesman Castlereagh feared Russian expansion plans behind the religious and idealistic rhetoric. The attempt by the Holy Alliance to make their ruling order permanent through regular congresses (Aachen 1818, Troppau 1820, Ljubljana 1821 and Verona 1822) failed in the confrontation with the principle of national sovereignty. Already the revolutions in Spain, the Two Sicilies and Greece in 1820-21, and later in the 1830s and 1840s claims for German and somewhat later

Italian unification challenged the principles laid down in Vienna. In 1830 (France, Belgium, Poland) and even more in 1848 the confrontation between the principles of territorial power balance and national sovereignty was violent and shook the continent.

The territorial stability was paid at the price of internal instability all over Europe: the number of civil wars and revolutions grew. The more precise contours of these complicated connections between external and domestic conflicts and between the two alternative principles of legitimacy remain to be explored. There was a tension between the Holy Alliance and the European Concert. In the Treaty of November 20, 1815 the four victors against Napoleon laid down the principles of concerted diplomacy whenever the political situation required intervention. Whereas the references to holiness crumbled away after a few years the idea of concerted action/diplomacy remained all the time up to 1914, although the capacity to respond to the growing challenges decreased (Sellin 2001).

South-Eastern Europe and the overseas colonies were not included in the Vienna Peace. Instead, they became novel terrains for warfare between and by European states. The closer relationships between the internal European transformation of the conflict and its development in the external direction remain to be explored, too.

The proclamation of the German Empire in 1871 shifted fundamentally the power balance on the European continent. The event foreboded a new time, which not only should be related to the German demonstration of military power but also to the break-through of industrial capitalism and the subsequent formation of working classes, where the language of nationalism clashed with the language of class. The national question remained on the agenda but the stress on the European order grew through the acceleration of the social conflict in the wake of the market expansion. National socialism and class struggle socialism were two alternative outlines of the future in Europe (cf theme 2).

In 1858 Charles Darwin and A R Wallace launched the theory on the evolution of the species through natural selection. A few decades later this biological theory was translated into a social theory about the struggle for survival and the natural selection among nations. Competition on the world markets would result in the survival of the strongest and ever higher stages of European social organisation. Social Darwinism canalised the social conflict in the emerging nation states into colonialism and struggle among the Europeans for global power. The biological metaphor was particularly strong around 1900. This was the time of imperialism when "informal empire", managed by colonial companies and missionary societies, shifted to "formal empire" created through territorial annexation. The language of empire integrated the language of nation.

The European conflict and stabilisation pattern we vaguely discern at the outset of this project is more complicated than just a matter of nation-state building. There was a global dimension to the European formation of nations, and the shift from monarchical to people's sovereignty was anything but a one-way linear development. The project will develop a more sophisticated and complex theoretical view on the territorial transformation of Europe in the 19th century and on how this transformation was connected to the issue of legitimacy and power. As opposed to the standard IR analyses we will refer to the Vienna system by connecting the question of international order to the problem of national disorder. So far no real attempt has been made to systematically study and theorise the principal tension between territorial politics and global law in tandem with the tension and interdependence between the national and international levels of politics, neither in historical nor in contemporary cases. [1]

The language of geopolitics was thus based on the contradictory and complex mutation of ideas of monarchical territorial sovereignty, nationalism and its counterpart, popular sovereignty, colonialism and imperialism. If politics within this order was based on the law of the jungle, law was brought in as an attempt to bring order therein.

2.1.2.2 The language of international law
This language speaks about equality, sovereignty, federalism and diplomacy. What existed in the 17th and 18th centuries as a form of philosophical contemplation about the natural rules applicable in inter-sovereign relations was consolidated after the Vienna Peace of 1815 as "international law" in the chancelleries and universities of major European powers. As *jus publicum europaeum,* it provided a mirror in which European states could recognise and manifest their sovereignty and formalise their

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[1] For instance, a work as seminal as Schroeder 1994 only deals with extra-European dynamics and relations on the margins. In the same vein Bridge and Bullen 2005.

interaction. In fact, the Vienna Peace itself inaugurated a form of conference diplomacy that became one visible manifestation of the novel system for territorial stability ("the European Concert"). Other aspects of that system were a developed system of alliances and commercial treaties between major powers, a complex network of formal dependencies between European powers and their colonial possessions as well as the formalisation of the "state of war" with rules on neutrality, belligerency, occupation and other forms of lawful conduct. Alongside the formalisation of the territorial stability by means of ideas of power balance, "international law" was used to provide legitimacy for territorial and dynastic systems in Europe as well as to contest such possessions by reference to ideas of international and domestic justice. For example, political debates on nationalism, balance of power, legitimacy, democracy, free trade, religious toleration and degrees of "civilisation" were formalised in the course of the century in the form of new legal instruments (such as those of "recognition of states" or formal "equality") and as legal doctrine.

International law emerged as an instrument of stabilisation in the framework of nation-state building and the establishment of national legal orders where positive law increasingly overshadowed the natural law tradition. The social question is a case in point (cf theme 2). There was quite obviously a tension between international law and politics for the expansion of transnational markets on the one side and positive national law for e g social protection on the other. A crucial question at the end of the 19th century was how to overcome this tension.

Our revisionist history does not treat "international law" as a monolithic or stable set of rules, principles or institutions – and both public and private international law will be discussed. Instead, we want to highlight the fact that it emerged as one of the languages by which the Great Powers consolidated their directorate over European and colonial affairs, and which likewise provided a platform over which such a directorate could be contested from the civil society. Behind a novel language of sovereignty, jurisdiction, occupation, binding force of treaties, neutrality, and lawful warfare various actors were pursuing various domestic and international objectives. For example, the setting up of Greece (1829) and Belgium (1830) as independent states would not have been possible without a complex set of legal rules on the conditions and guarantees of statehood. The unification of Italy in 1860-61 and of Germany in 1871 were thoroughly conditioned by assumptions about political personality, territorial jurisdiction, and binding force of treaties. A complex technical discourse on nationality, asylum, and "political offences" laid the framework for the movement of political activists, anarchists and refugees across Europe especially in the latter part of the century. Outside the continent, the colonial expansion of European states was being supported as well as attacked by reference to doctrines about lawful occupation and degrees and forms of "civilisation". In fact, the single most important aspect of the colonial history of the period 1815-1914 – the turn from "informal empire to "formal empire" – was a *legal* construction. Instead of one single "international law" emerging from some historical teleology or *Zeitgeist* of the period, we will examine the various ways, in which a changing legal language gave form and direction to political projects across the century and across the world – in public and private law entanglements. Therefore it is more justified, as we do in the title of this project, to talk about *global law* than the conventional term international law connoting well ordered inter-state regulations. We will in the project underpin our proposed conceptual shift in this respect. For the moment the term global law is just a tentative proposal.

The emergence of the USA as a world power complicated the situation. USA propagated a legalistic view of the formal equality pertaining between members of the international world; this was not always the way in which Europeans saw the conditions of their interaction. The Hague Conferences of 1899 and 1907 marked the end of "European" and the beginning of American domination. In the first years of the new century, US foreign policy imagined itself as "different" from Europe in large part owing to its commitment to international legal rules and principles.

An enormously complex legal network of dependencies developed in the course of the century between Europe and its colonial possessions ranging from unequal treaties, hinterland claims, arrangements for special "treaty ports" (Japan and China), to the use of consular jurisdiction or mixed tribunals so as to exempt Europeans from local jurisdiction, and to different types of protectorates in Africa and the Far East. No single regime and thus no single experience of "colonial international law" emerged. Likewise, although distinctions between "civilized" "half-civilized" (or "barbarian") and "savage" communities were routinely made, and marked relationships of inequality, they never linked up with clearly identifiable legal forms of institutions. Nevertheless, the images of the colonial "other" were

embedded in European laws in a way that had far-reaching consequences for domestic legislative policies way into the 20th century.

International law emerged from a set of formal rules of Great Power diplomacy and a rather marginal preoccupation of a limited number of (mainly German) academics to a politically powerful language to articulate the conflicting understandings of the nature and development of the international world by 1914. It was used by the peace and arbitration movements, by the officials and supporters of new international "unions", giving voice to interests at events such as the Peace of Paris, 1856, the Berlin Conferences of 1878 and 1885 or the Hague Peace Conferences of 1899 and 1907.

2.1.3 The entangled inter-dynamics between the language of geopolitics and the language of international law

The research in social sciences, legal history and history on 19th century Europe and the world has so far followed rather strict disciplinary methodologies of investigation with a focus on either imperialism, colonialism and geopolitics on the one side, or international law on the other. This project is going to bring them together in a perspective of entangled inter-dynamics. A target of analysis in this field is the variety of perspectives and practices along the axis from geopolitics to global law contingent on the variety of national viewpoints. Another analytical target is the complex legal and political dependencies between Europe and the colonies, which we will explore and map out in detail. The principles Europeans tried to develop in their relations with non-Europeans were subject to great public controversy, reflecting also different conceptions of the meaning and specificity of "Europe" itself. The shift from informal to formal empire, from imaginations of white man's burden to fully-fledged imperialism is of particular interest. Issues of suffrage, minority rights and gender inequalities were important during this transformation.

Our analytical efforts in this field of tensions will concentrate on such issues and moments as:
a) an assessment of Kant's imagination of a cosmopolitan order of peace and democracy,
b) the outline of a dynamic map of the 19th century European relationships between monarchs and territory in all its complexity of entanglements,
c) the outline of a dynamic map of the 19th century European legal relationships with the colonies.
With a point of departure in these dynamic dynastic and colonial maps a close reading of some crucial points of intense confrontation of the languages of geopolitics and international law will be undertaken with the aim to outline a European pattern in all its diversity. These intense intersections are:
d) the political and legal framing of the national movements in the 1820s (Greece and Belgium) and 1830s (Poland the German and Italian unification movements) challenging the order established in Vienna in 1815, culminating in the 1848 European revolution, and the Great Power reaction to these movements in legal and political terms,
e) the Young Europe Movement in the 1830s, the 1848 revolution and the peace congresses and peace and arbitration movements during the century's second half as attempts to provide an alternative or a supplement to the nation building projects and to control conflicts between nation states,
f) the Great Power stabilisation of Europe after the Crimean War in the Paris Peace in 1856,
g) the Berlin Congress in 1878 and the Berlin Conference in 1884-1885 for internal European and external imperial stability respectively,
h) the British-French legal and military ordering of South-Eastern Asia (Burma, Siam, Cambodia, Laos, Annam, Tonkin, China) in the 1850s (Bowring Treaty) and 1880s-1890s; the Fashoda crisis between France and Great Britain in 1898,
i) the Russo-Japanese War in 1904-1905,
j) the Morocco crisis between France and Germany in 1905-1906,
k) the peace congresses in the Hague in 1899 and 1907.

2.1.4 Links to the present

The establishment of international courts, and the attention received by developments in the fields of human rights and democracy after 1989 has given rise to a lively debate on the "constitutionalisation" of the international legal system, and what part European integration might play in it. On the other hand, Kosovo is a vivid example of the re-emergence of European protectorates based on ideas of a specific European responsibility and on the use of legal as well as military instruments in consolidating European influence. Our purpose is to provide background for these debates by examining their pedigree in the heterogeneous 19th century upsurge of international law. One of the most obvious heritages from this thematic field of tension deals with questions about a hard European security and defence political approach. Should Europe think itself as a super-power and prepare for global military interventions? Or should it develop a soft version of global power in the fields of economics and cultural influence?

2.2 Time
2.2.1 Teleology to be contested

We contest the teleology about automatic progress through economic performance ("globalisation"). We contest that markets without political management and regular frameworks (cf the term "de-regulation") develop economic growth and wealth automatically, and that the markets thereby also automatically solve the social problems. Our contention means that we, instead of harmonious relationships without politics between the economic and the social, will thematise the tension between economic integration and social disintegration, and the role of politics and law in the attempts to respond to this tension. The key figure here is Adam Smith whose *The Wealth of Nations* (1776) was based on very specific – but contested – assumptions about economic progress and the role of law in it. In Smith's theoretical construction of a growing economy, labour became a means, not only to maintain existence, but also to create expanding capital. Labour was synonymous with economic growth, and economic growth signified material and moral happiness. There is a tension between persuasive utopian utilitarianism and pragmatic reasoning in Smith's text. There has been a strong tendency among later commentators and disciples to over-emphasise this utopian element, for example when neo-classical thinkers read Smith a hundred years after he wrote or when neo-liberal interpreters read him today. It is seldom remembered that Smith's early work was an extension of 18th century natural jurisprudence and that after the *Theory of Moral Sentiments* (1759), he suggested publishing a book on "the general principles of law and government". Smith's economic views are accompanied by a distinct "classical" theory of the role of legal rules in transmitting the perspective of the "impartial spectator" into the distribution of social goods. According to this view, it is possible to condense an "ideal" system of social relationships within a system of legal rules that, when applied, will produce the most just, and the most economically equitable outcome, regardless of time and place. Present debates about "rule of law" and "good governance" manifest this view of law as well. Like we began the confrontation of the teleology in theme 1 with a discussion of Kant we will do so for theme 2 with a re-reading of Smith.

2.2.2 Two languages of European Progress

European modernity has dealt with the idea of progress based on the understanding of a past that was different from the present – thereby rejecting cyclical understandings of history – and on the subsequent insight that the future can be made different through human agency. The imagination of a past that was worse and of a better future was in particular formulated as economic and social progress, often carried out by the development of public and private law. History received a direction from the nation's past, as expressed, for example, in the teachings of the historical school of law (Savigny). The language of economic efficiency and the language of social solidarity have historically been seen as two separate discourses analysed by two different academic disciplines, economics and sociology. In fact, they are pervasive within each field, both approaches constantly deferring to each other. This is also visible in the legal thought of the 19th century that oscillated between a naturalism that understood law as a set of rational solutions to social problems and a historical approach that emphasised the specificity of each national legal system. Instead of separating the opposite languages of progress, as is customary, and linking them to specific (for example, liberal and socialist) reform projects, we will bring the two languages together and demonstrate their entanglement and mutual constitution.

The imagination of economic, social and legal progress welded during the 19th century national communities of destiny through ideas about global markets and class solidarity. The national – international theme was prevalent in both languages.

2.2.2.1 The language of economic efficiency

Most European countries pursued in the 17th and 18th centuries mercantilist trade politics based on import obstacles and export promotion, which lead to accumulation of gold and silver and increased state prestige. Adam Smith argued that free trade facilitates division of labour, which, in turn, was the key to economic growth when increased specialisation lead to increased efficiency. Robert Torrens and David Ricardo developed Smith's thoughts and argued in the theory of comparative advantages that everybody could benefit from international production cost differences through free trade (Magnusson 2004:72). In legal terms, these arguments supported the emergence of "classical legal theory"(Horwitz) that was based on a combination of individualism, positivism, and legal formalism and held that a proper "science of legislator" (Smith, Haakonssen) would create a stable system of market-relations between individual property-holders by the enforcement of contracts through impartial rule. In this image, law would only transpose optimal economic relationships at the level of enforceable rights and duties. The only reason for public intervention in trade, for example, would be to guarantee freedom of exchanges.

No political break-through to free trade followed, however. In many European countries there was an outdrawn struggle between industry owners and workers, who argued for free trade for market outlets and for cheap import of food, and agricultural producers, who argued for protection against cheap import. Britain applied free trade from the 1840s and countries like e g Belgium, Denmark and the Netherlands reduced the customs on imports of industrial commodities. Countries like USA and Russia protected their growing industries with customs of 100 per cent or more. The problem was more complex than just an opposition between industry and agriculture. To make the picture even more complex, free trade adherents became protectionists under changing economic conditions. During the 1880s, under conditions of economic depression on markets for industrial products and dumping of cheap cereals from USA and Russia on the agrarian markets, the customs issue became a burning political problem. A European trend towards free trade since the 1840s shifted in the 1880s to a trend towards protectionism.

This shift brought national revisions of international legal agreements. There was a clear spill-over to military and geopolitical perspectives and to the relationships between Europe and the colonies (themes 1 and 3). The project will retrieve the complexity of dependencies and thereby present an alternative view to the standard of an unfolding market economy based on some inherent logic.

Growing competition on industrial markets increased the claims for standardisation of measures, sizes, weights, coins, etc in order to prevent unfair competition. This was paradoxical as standardisation undermined the competition it was argued to promote. Standardisation was the issue of the world exhibitions in London (1851) and Paris (1855). In the 1860s the focus of the standardisation debate was on the issue of a gold standard. Up to then each country had its own metal standard, as a rule gold or silver. Through different price and production developments coins in one country got higher value than in others. To solve this differentiation with exchange rate adjustment would decrease the predictability of trade agreements and increase speculation. The growing commodity trade required stable payment orders, enforceable by a robust and globally applicable system of laws and legal authorities. In 1865 the Latin currency union (France, Italy, Switzerland, Belgium) was established on the same gold and silver price calculated on the French franc. At the Paris world exhibition in 1867 experts from 19 European countries and USA discussed a general gold standard based on the French franc. All agreed on principle, although Britain, Prussia and the Netherlands had reservations concerning the French connection. The establishment of the German empire in 1871 killed the plan. In the 1870s a general transition to fixed gold prices occurred nevertheless. The growing predictability of the economic performances in Europe was paid with the price of declining flexibility and capacity to adjust to changing market preconditions. The link from the gold standard to the long economic depression from the 1870s to the 1890s seems clear but is under-explored not to say repressed into oblivion. Not the gold but military armament provided new economic momentum from the 1890s, which, as we know, ended in 1914 in the explosion of Europe's military order and implosion of its monetary.

The scenario we hypothetically discern is not the smooth development of Smith's economic liberalism in tandem with a not less smooth development of political liberalism towards democracy, as we usually want to see the 19th century in retrospect. The more precise connections in the international-national and political-legal nexuses remain to be explored.

2.2.2.2 *The language of social solidarity*

Smith's theory about universal economic expansion towards general wealth was closely connected to the notion of economic progress transmitted through a formal system of enforcing contractual rights. His ideas were, however, contested in the 1870s when a long economic depression began and reinforced the social disintegration in the wake of economic integration. The social protest increased and "class" emerged as an important political category. In attempts to integrate social protest and respond to the formation of classes, the German Historical School began to define mercantilism as state-making in a general sense under demarcation to the free trade theory. The doctrines of mercantilism were no longer seen as folly but as rational expressions of nation and state building. Gustav Schmoller was one of the most influential protagonists in the European-wide confrontation with Adam Smith in the 1880s. He propounded the active role of the state in economic modernisation and growth emphasising the pivotal role of protectionism and infant industry tariffs in order to create a modern industrial nation. The *Verein für Sozialpolitik* founded in 1873 with Schmoller as one of the founders emphasised the importance of the social dimension in nation-building and saw economy from the perspective of the social.

At the same time, the individualism and rationalism that had informed "classical legal theory" was being undermined by more collectivist, program-oriented ideas about law and legal reform. Instead of a transformation of rational (natural) rules, legislation was seen increasingly as a matter of contending interests (Jhering). Those interests now included collective demands for various social programs and improvements. In the 1860' and 1870's began a "second globalisation of law" in terms of expansion of social and labour legislation, and an increasingly interventionist public realm. The task of legislation was no longer the enforcement of private contracts but carrying out social reforms (Kennedy 1997). The idea of the *Sozialstaat*, which guranteed social rights, emerged as an alternative to the idea of the *Rechtstaat*, which guaranteed freedom of contract.

There was a clear connection between the discovery of the social question and the transition towards protectionism. Expanding markets triggered the experience of new problems and claims for new forms of political regulation, posing the key question: who is responsible for the problems and how is society to pay for the solution? The concept of unemployment was invented in order to mediate experiences in the growing and rapidly changing labour markets. During the 19th century a distinction emerged between poverty and unjust poverty, or, between the "deserving" and the "malingering and undeserving" poor, and, later, between the employed and the unemployed indicating that the existence of poverty and unemployment was not necessarily the fault of individuals. The causes of destitution, it was believed, had to be sought on a different level. The rise of the social question and the concept of unemployment reflected a growing understanding that industrialisation brought with it systemic problems that pushed the question of social responsibility for its victims to the fore (Topalov 1994 and Lepetit (ed) 1995).

With growing attention to the social issue the metaphoric language shifted from Smith's market to Darwin's "struggle among species and natural selection", which became nations struggling for survival. This had a clear connection to the emergence of formal empire overseas. Imaginations of civilisation in the framework of informal empire were transformed into military imperialism. The social pressure was also a pressure for economic protectionism canalised both into domestic and external conflicts (cf theme 1). The language of harmonious division of labour in global networks of free trade was overtaken by the languages of class struggle, nationalism and protectionism in various mixes. Claims for democracy were seldom canalised into claims for protectionism.

There was a clear connection between the language of economic efficiency and the language of the nation with "progress" and "economic strength" as bridging arguments. From the 1870s onwards a growing connection also emerged between the language of social solidarity and the language of the nation. It was the task of the legal system(s) to articulate the "social and historical reality" of the nation to far reaching legislative projects of reform and renewal. This was also seen as a means to integrate social protest in a collective nation-building project. Inside the contending legal approaches "nation" and "class"

emerged as competing categories of community. Politics and legislation about the social problems emerged through national compromises not through international class solidarity.

2.2.3 The entangled inter-dynamics between the language of economic efficiency and the language of social solidarity

"Mercantilism", "free trade" or any of the other slogans did not translate into well structured doctrines or settled principles of economic behaviour. Rather, they provided conflicting arguments in the public debate on wealth, progress, liberty, society, solidarity, etc. They offered an arsenal of concepts that could be combined in a great variety of ways depending on the historical situation. The economic and social theories connected to two metaphoric views on society which had emerged and constituted one another since the Enlightenment. The one metaphoric/theoretical vein sees society as a natural organism, a body, a family or a garden, or as an impersonal mechanical device, a machine or a clock, for instance. In the other vein the future is seen as *machbar*, makeable, by man in a progressive perspective (Unger). Neither legal positivism, nor any of its (naturalist) or social regulation competitors offered a self-evident set of social practices to be simply "applied". The furious search for legal articulation of the reality of a conflictual society after the 1870's may have been intellectually fruitful – and it certainly determined much of the legal controversy in the 20th century. But it did not resolve the problems of the fin-de-siècle years. The view on future as man-made opened up totally new possibilities for political entrepreneurs. At the end of the two metaphoric languages the social engineer stood against the social organism.

None of this meant that conceptualisations of society in terms of a self-propelling machine disappeared. On the contrary, ideas of self- organisation were expressed, for example, in organic and historical concepts of the nation. The metaphors of self-organisation and constructivism remained the two main metaphors of modernity producing interactive dynamics under their respective references to the fictions of the market and the state and to the theories of free trade and protectionism, involving tension between economic efficiency and social solidarity. The metaphors and the theories had a strong impact on the 19th century attempts to come to terms with future through politics and legal norms.

The tensions emerging from the bipolar theories, fictions and metaphors will in particular be explored through an analysis in legal and political terms of:

a) the role of the "social" in Adam Smith's *Wealth of Nations*,

b) the images of legislation in Smith and his followers,

c) the connection between peace and free trade in the European debate after 1815,

d) the tension between liberalism, socialism and nationalism in the 1848 revolution,

e) the emergence of economic and social legislation in Europe and the connection between public and private international law,

f) the condensation of free trade and customs protection, internal market and hard external regulation, in the German customs union from 1834 and Friedrich's Lists *Mitteleuropa* imagination in the 1840s,

g) the attempts in the 1850s and 1860s to create a European monetary system based on gold and the functioning of the gold standard from the 1870s,

h) the metaphoric imagination of progress and civilisation 1830s-1890s through the metaphorics of Smith's market and Darwin's natural selection in a sample of European countries

i) the emergence of the social question in the 1870s as a political issue and the invention of the concept of unemployment in a sample of European countries,

j) the contention between languages of social protection and military protection in a sample of European countries around 1900.

2.2.4 Links to the present

The tension between economic efficiency and social solidarity and between the fiction of the market and the fiction of the welfare state is one of the most evident *Spannungsfelder* in Europe of today, each carried a distinct vision of the role of law and legislation in the government and reform of society. What is the role of formal "rules" in contrast to wide legislative "policies" in legal thought and in social and economic reform? The 19th century European experiences provide a historical backdrop of high relevance as a corrective in a simplistic debate under the label of "globalisation".

2.3 Values

2.3.1 Teleology to be contested

We contest that there is a stable European identity underpinning European integration with an uncomplicated relationship to national patterns of identification, a European identity seen as the motor of economic integration and its long-term outcome. We contest the idea of a European identity founded on values and on essentialised imaginations of a European patrimony. And we contest the standard view that particular types of law (formal law, social law, international law) have particular, pre-determined consequences in the social world, that law has been, or could ever be, merely an instrument of some perception of identity. We furthermore contest the view of a standard road of value transformation towards liberal democracy – with the German *Sonderweg* as the exceptional case – in an evolutionary linear teleology from monarchical power towards parliamentary democracy. The key instrument referred to in the demarcation between Europe and its Others was the imagination of development stages where the European values were the highest in the hierarchy. We will begin our contention of this teleology by a critical assessment of Hegel's theory on development and progress, which has fuelled the thinking in this vein.

2.3.2 Two languages of European values

There were two intertwined languages of values in 19th century Europe. One aimed at nation-building and the other at defining Europe's place in the world. The national value language dealt with the transformation of monarchical power towards popular sovereignty and parliamentary power. The instrument developed and exploited in this transformation was the constitution. The other language focused on the concepts of culture and civilisation and dealt with the colonial experience.

2.3.2.1 The language of constitutionalism

Constitutions were introduced everywhere in Europe during the decade after Napoleon's defeat, and in some cases, like Sweden and Spain even before that, although they were also part of the same turmoil. The constitutions have conventionally been teleologically interpreted as a first step towards parliamentarianism and final triumph of democracy in the wake of the French revolution. At the same time, their open-endedness and the way in which they have demarcated the (public) realm of legitimate political contestation from the (private) realm of consensus and search for private interest have remained almost completely unexplored.

In general, there is a lack of transnational or European studies concerning 19th century constitutionalism. The field has been dominated by national constitutional histories which has lead to the reiteration of nationalistic perspectives. Parallels or differences to other European states have been only marginally considered.[2] Only recently have new attempts emerged to write and interpret constitutional history on a comparative – above all European – level, especially in German historiography.[3] However, all these projects are oriented towards typology and argue very generally.

Our approach will look for a position between national detail studies and generalising European studies. We will focus on the permanent struggle between the principles of monarchical power and popular sovereignty and we will discuss the changing conceptions of the legitimacy of monarchical power under Max Weber's categories of traditional and rational *Herrschaft* with charismatising tendencies (Bonapartism). Of special interest is the emergence of a public sphere based on social critique and opinion formation which gave new preconditions for the execution of royal power. The role of the monarch changed from the absolute but rather invisible monarch of the grace of God to the *bürgerliche* monarch exposed to open public critique and enforced to actively participate in the formation of public opinion. The emergence of public spheres meant open value contention about legal arrangements.

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[2] The first innovative steps towards a comparative "European constitutional history", taken in the first half of the 20th century and especially in the 1930s and 1940s – in Germany particularly by Otto Hintze (1970 [1941]), Fritz Hartung (1940) and Conrad Bornhak (1935), in Great Britain by John A. Hawgood (1939) and in France by Boris Mirkine-Guetzévitch (1936), were scarcely continued in the post-war era and if so, primarily within political science.
[3] Among the authors involved in this ambitious project, Wolfgang Reinhard (2000 [1999]), Hans Fenske (2001) and Martin Kirsch (1999; Kirsch/Schiera 1999, 2001) can be mentioned. Also the ongoing German project on a handbook of European constitutional history should be referred to here (Brandt/Kirsch/Schlegelmilch 2006, 2008).

The difference between national constitutions and Empires undergoing constitutionalisation processes, such as the Austrian-Hungarian, Russian and Ottoman realms, will be considered as well as the "democratisation" of constitutions and the suffrages under discussion of questions of inclusion and exclusion, masses and elites. The aim of the analysis of this thematic field is a differentiated interpretation of European 19th century constitutionalism based on a broader understanding of "constitution" and "constitutionalism". We do not just think of constitutions as forms of juridical codification but try to envisage them under broader transnational contexts. This is particularly important given the global nature of the "project of modernity" 19th century constitutionalism in particular.

Much cultural analysis during the 19th and 20th centuries has focused on shared values and beliefs, assuming the existence of well-defined and homogeneous human communities. By contrast, we see the existence of such communities as the *result* of cultural construction and the political seacrh for internal coherence. We see cultures as contentious arenas of social negotiation. Constitutions were important pillars in this production and in the transition from monarchical towards popular rule.

We want to map out a European 19th century in all its complexity and ambiguity. Key issues were legitimacy of power and the search for stability. Both involved an intricate dynamics of politics and law. There was no script to follow. Instead, Europe muddled through progressive steps and setbacks, revolution, reform, and reaction. Liberalism and monarchical rule were both challenged and often entered a more or less tenuous compromise.

2.3.2.2 The language of culture and civilisation

Civilisation and culture are overlapping concepts as descriptions of social self-understandings. Both are the key to understanding the construction of the debates on "value" in Europe in the 19th century. "Culture" is derived from cultivate, grow plants, and is etymologically related to colony. "Civilisation" is derived from civil as opposed to military. In the forms cultivated and civilised they are practically synonymous in the meaning of well educated, having good manners, knowing to behave. In the 19th century these expressions began to connote social community in parallel to the construction of nations. They were products of the same process of fragmentation of universalistic principles as the idea of nationality. Civilisation described an assembly of values such as religious, moral, aesthetic, scientific, technical, etc shared by a big society or group of societies. Civilisation and culture were like constitution key concepts in the emerging political and legal cultures.

Whereas culture often was used in parallel to nation (cf Friedrich Meinecke: *Kulturnation*) and aimed at a division within Europe, civilisation was often used to describe Europe as an entity in relation to other world societies. Often the terms European, Western and occidental civilisation were used synonymously, but the latter attributes were in particular used in order to emphasise that the United States were involved together with Europe.

In practical and political use both terms were essentialised into a world view, where the civilisation or the culture remain unchanged or stable in the flux of time through imagined core values. In the 19th century the concepts and core values were connected to the idea of progress and the theory that different cultures, civilisations and nations were situated on different stages of development (Maine 1887, cf theme 2). These were expressed by intricate legal distinctions made routinely by lawyers and legal instruments between "civilised", "barbarian" and "savage" communities. This laid the basis for the idea of a Western or European mission, a *mission civilisatrice* where the task was to educate the uncivilised (Anghie 2005). Rudyard Kipling talked in this context about the "white man's burden".

Civilisation was one of the key concepts in the semantic field developed by informal imperialism. The 1790s brought a break-through for modern mass mission through various British church congregations. The period up to 1914 can be described as a triumph of the Christian world mission. The success was based on a general confidence in the superiority of the Western civilisation with personal commitment and self-imaginations of altruistic generosity as the driving force of a global missionary movement. The missionaries were key figures in this development of a European view on the world outside Europe. The imagination of civilisation in terms of value superiority connected truth claims to ideals of altruism in complex value patterns, which will be mapped out in more empirical detail.

Connected to commercial interests the term colony was an alternative key term in the informal imperialism. Civilisation, culture, colony, progress, backward, civilised-uncivilised, modern, primitive, exotic, traditional, white-coloured, black, yellow (peril) were some of the key concepts on the semantic field that underpinned the informal imperialism. Colonialism accompanied the European expansion since

the 16th century. The mercantilist era lasted until the end of the slave trade and the dissolution of the Spanish and Portuguese empires in the 1820s. The subsequent industrial capitalist phase was based on the dynamics between raw materials supply and outlets for industrial products. Economic dominance structures underpinned together with cultural dominance the informal imperialism deriving legitimacy from imagined specific European values.

2.3.3 The entangled inter-dynamics between the language of constitutionalism and the language of culture and civilisation

We will begin the analysis of theme 3 with a critical assessment of the teleology underpinning notions of progress and historical reason in present-day Europe.

We will thereafter outline profiles of a sample of political and legal cultures:

a) France, Germany (before 1871 the German-speaking territories) and UK constituting a "European core" and at the same time being colonial powers,

b) *Norden* as a region in order to increase the European complexity with at least retrospectively more stability, but at closer inspection not necessarily as consensual as it often has been seen, and although not great colonial powers not without languages of civilising mission,

c) Spain as a very interesting case of political and constitutional oscillation between revolution and restoration, and with colonial experiences of decline from South America at the beginning to Cuba, The Philippines, and Hawaii at the end of the 19th century,

d) the Russian and Ottoman empires as examples of clashing European empires with complex nation-religion nexuses.

We will focus on the national construction of meaning of notions such as "liberal", "democracy", "freedom", "sovereign", "culture", "civilisation", "development", "progress", etc in the political and legally articulated struggles in the course of the century. The profiles of the legal-political cultures will show the variety of legal arrangements (international-national, public-private, commercial-social), legislative entanglements and their various connections to politics (*Rechtstaat* vs *Sozialstaat*), for instance; law as frame of politics vs politics shaping law, law interpretation vs law making) as well as their self understandings in terms of civilisation and development (hereunder the emergence of European mission societies: their environments at home and in the colonies). We will also investigate the shifting basis of legitimacy due to the expanding public spheres with political critique as a crucial dimension. The legitimisation of political power moved from the divine and traditional to the public and modern. We will concentrate our analysis on some periods of particular value clash: the search for stability 1815-1820, the revolution 1848 and its aftermath, the emergence of the social question and its connection to the colonial question (~1875-~1885), and the transformation of informal to formal empire around 1900. We will also in a special study analyse the European utopia of peace and progress in Vienna in 1815 and in Paris in 1919 (under connection to Westphalia in 1648 and Potsdam in 1945).

2.3.4 Links to the present

The debate around the European constitution that failed in 2005 departed from imaginations of essentialised European values. So does the debate on the War on Terror and the Iraq War. The impasse of these debates demonstrates the urgent need for a more complex and fluid conceptualisation of "European values" with a development potential in very different directions. In a situation where the imagination of a European identity does not seem to provide mobilising and legitimising guidance any more, a more complex, political and legal understanding of the notion of "European values" will lead to a more realistic understanding of the historical foundation of Europe.

3. Methodology

Reinhart Koselleck's conceptual history is a methodological point of reference of the project. This focuses on the discursive struggle for interpretative power of key concepts as the engine of politics. His approach draws attention to *what* new concepts were introduced by *whom* and *when* (and which old concepts were given new meanings), and to what *purpose*. The conceptual struggle is open-ended and without a pre-existing teleology. Europe has no essence and no roots. Rather it is a constantly contested discourse – nothing more, nothing less – and must remain so in order to avoid any totalising goal (Stråth 2000b). Constantly contested means open in negative as well as positive terms.

In the same vein our methodology draws on the speech act theory of the Cambridge school with Quentin Skinner (1998 [1978], 2002) as protagonist. (We also endorse the comment by Michael Freeden (2006; Freeden, Humphrey and Talshir 1996) on the Cambridge approach, that the connection between language and action is not necessarily intentional in a perspective of rational choice, but quite often action comes first and the legitimising language afterwards). Ideologies provide arguments in a big arsenal where the arguments can be picked up and combined in mutative ways rather arbitrarily contingent on the context.

The role of law in processes of national and international conflict solution is more complex than usually envisaged: in particular, no legal institutions have automatic or predetermined consequences in social practice. Europe has according to Christian Joerges (2004, 2005, 2007) to learn how open markets can coexist with different legal cultures and differently shaped relations between state and "society. None of the established legal principles can provide guidance for the denationalisation and Europeanisation of private law. Europe must learn to cope with law collision. Joerges argues with a bearing on today's EU. However, his approach provides also a heuristic point of departure for the understanding of 19th century Europe. We also draw on Kennedy 1997 and Unger 1987. Both investigators have in their research applied similar methodological perspectives on the nexus politics-law, international-national (Koskenniemi 2005 [1989] and 2001, Stråth 2005, Schulz-Forberg and Stråth forthcoming). In methodological terms we are committed to believe that social, political and legal structures do not pre-exist their formulation. Their meaning is a matter of discursive struggle on conceptualisation.

4. Research Organisation

We envisage the organisation of a research team directed by the principal and co-investigators, consisting of six junior academics at post doc and in some case PhD level, employed by the project. In the intellectual environment there will also be 5-6 senior researchers and a few PhD researchers working in the area of the project but not on its payrolls. Furthermore we envisage the continuous presence of one or two guest specialists for shorter or longer stays. This means a framework of reflection of some 20 people, the half of which constitutes the core. They work between and across the three disciplines of political theory, law and history. The six core researchers are recruited through international advertisement and active search in order to identify candidates. We have already identified several potential candidates with a great interest in the project. The group also consists of an administrative assistant. We will furthermore apply for *separate financing of a graduate school* with 8-10 PhD students annexed to the project. The school will through a number of PhD theses increase the empirical underpinning of the project as well as the level of theoretical reflection.

The bolt of the activities will be the weekly 2 or 4 hours seminar where papers on work in progress, recent literature, and methodological or theoretical issues in connection with the integration of perspectives from politics, law and history are ventilated. There might also be guest speakers.

Each of the three thematic fields is explored by two of the six core researchers under the supervision of the principal and co-investigators and under participation also of other project participants dependent on speciality and competence. The two core researchers of each field establish over the five years the project is running 2-3-4 working groups on specific issues with 8-10 participants representing various parts of Europe. These working groups meet 3-4 times each, normally with the aim of publishing the results in edited volumes or special issues of well-reputed journals. We are expressly not driven by the principle of one conference – one volume. What we are going to publish will be based on careful consideration and revision of preliminary thoughts, where the contributions will have something fundamental to say about the problems of the project. The organisation of the working groups will be delegated to those responsible of the three themes, but the whole project will participate actively in the meetings. The working groups will in that way serve to integrate the perspectives across the thematic fields and provide input from various parts of Europe. Once a year, or every second year, we envisage a larger conference, where we present results to a broader academic public. Here the focus is on the methodological and theoretical experiences and implications of our interdisciplinary work. From each of the three thematic fields at least two monographs are expected. The principal and co-investigators will write one or two synthesizing monographs at the end of the project. The total output besides a continuous flow of journal articles and web publications will thus consist of 8-10 monographs, some 10 edited volumes and 8-10 PhD theses. With this organisation we will not only provide an optimal point of

departure for tackling the empirical and theoretical research questions we address in a way where we will have something substantial to say in the debate on Europe. We will also provide six young academics an excellent start of their careers with experiences not only in research but also in organisation and direction of it (through the working groups) as well as editing and publishing experiences. And we will provide optimal framework conditions and get critical feedback through 8-10 PhD researchers.

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The Research Environment

The University of Helsinki is the leading Finnish university with 8 faculties, more than 7 000 staff and about 38 000 students. **The Renvall Institute (RI)** is an interdisciplinary research and teaching institute organised around studies of the regions of the world. There are centres for European, Russian and East European, North American, Latin American, and East Asian studies. These centres are closely connected through regular meetings, briefings and intellectual cooperation and exchange of views. Physically all these centres are located in the same or adjacent buildings at the centre of Helsinki. Across the street is the big Alexander Institute with research and teaching on Russia and Eastern Europe. ECI (below) is located 300 meters from RI and CENS, both at the heart of Helsinki.

Within the RI the **Centre for Nordic Studies (CENS)** has under its Director Dr Henrik Stenius developed a special responsibility for problematising borders like those between Europe and its nations or subregions and between Europe and other world regions. One focus is on how a region like *Norden* in complex and dynamic entanglements interacts and overlaps with Europe and the world outside Europe as well as with the nations, states and other political entities that constitute *Norden*. The focus also implies a special attention to the centre-periphery problematic and the comparison to other regions in mainstream views argued to be "peripheric", in particular in East and Southeast Europe. The approach means in general terms a problematisation of spatial categories and a critical reflection on the centre-periphery dichotomy. An expression of this focus is the new Academy of Finland Distinguished Chair in Nordic, European and World History held by Professor Bo Stråth.

In methodological terms Dr Stenius has established CENS as a leading European centre of conceptual history. He has initiated several international networks and projects in this field. One of the core functions of CENS is to run research training and international research projects in the field. Henrik Stenius is a member of the *Finnish Centre of Excellence in Political Thought and Conceptual Change*, led by Prof. Kari Palonen, CENS also brings conceptual history expertise to the *Nordic Centre of Excellence: The Nordic Welfare State – Historical Foundations and Future Challenges*, of which it is a partner.

Among the ongoing projects at CENS are Early Finnish Debates (funded by the Academy of Finland); Nordic Openness (Kone Foundation); European Voluntary Associations in the Modern and in the Contemporary World (NordForsk); German National Socialist Conception of the North (Kone Foundation and the Academy of Finland); Intellectuals beyond the Nation (Academy of Finland); European Conceptual History (Europaeum); Conceptualisation of Europe in a Global History (Academy of Finland); and Beyond Classical Key Concepts (NordForsk). Established in 2002, the Centre for Nordic Studies is still an expanding unit. The Centre currently employs ten researchers, seven from Finland, two from Germany and one from Sweden.

The project has two institutional pillars to stand on: one is the Renvall Institute, while the other is the **Erik Castrén Institute of International Law and Human Rights (ECI),** which operates within the Faculty of Law at the University of Helsinki in order to provide a top-level centre for research and study of international law, human rights and related topics. The institute is directed by Professor Martti Koskenniemi and it has at any given time from 15 to 25 researchers, depending on the amount of commissioned research and scholarships for the support of doctoral or post-doctoral studies. In physical terms the ECI is located only 200 meters from the RI.

In the course of its ten years of activities, the Institute has completed a very large number of research projects, many of which have been commissioned by the public authorities, in particular the Finnish Ministry of Foreign Affairs. In an international evaluation of research carried out at the University of Helsinki in 2005 the Institute received the highest grade for quality of research (7 points). Consequently, it was awarded an annual prize by the University of Helsinki during 2006-2012. The most significant event of the year 2007 was the publication of the International Law Commission's Fragmentation Report finalised by Prof. Koskenniemi for the United Nations. The Report involved several ECI researchers and was published as part of the ECI Research Reports with the permission of the UN. A high-level conference was organised to debate the contents and prospect of the completed report.

The institute also houses the *Centre of Excellence in Global Governance Research* (CoE) led by Prof. Heikki Patomäki (political sciences), Prof. Jukka Siikala (antropology) and Prof. Jan Klabbers (law). The CoE is partly financed by the Academy of Finland during 2006-2011 and it

involves close interdisciplinary cooperation between the fields of international law, international politics and anthropology. ECI and the CoE form an intensive and interdisciplinary research unit that has a very large number of different activities, ranging from the carrying out of consultant research to the organisation of scientific conferences and colloquia, to various publishing activities.

The Erik Castrén Institute annually publishes several reports and monographs. In addition to occasional individual monographs, the ECI publishes series such as the *Erik Castrén Institute Research Reports* and the *Erik Castrén Institute Monographs on International Law and Human Rights*. An extensive collection of on-line articles and speeches by Professors Koskenniemi and Klabbers can be found on the Institute's website.

The Conferences and colloquia organized under the auspices of ECI are too many to reference here. The famous Annual Helsinki Summer Seminar in International Law the 20th session of which was held on the topic "Tensions in the Law Treaties" in August 2007, with distinguished speakers such as Professor Anthony Aust (London School of Economics), Dr Catherine Brölmann (University of Amsterdam), Enzo Cannizzaro (University of Macerata) and Professor Frédéric Mégrét (McGill University), deserves a special mention. From ECI staff Prof. Klabbers and Research Fellow Anja Lindroos contributed to this event.

ECI is the home of the acclaimed "Helsinki school" that is well-known for its high-level interdisciplinary and counter-disciplinary work on the international aspects of law, human rights and related topics. It is particularly well known of its combination of consultant research with critical enquiries on the role of law in global transformations. Many visiting researchers come to Helsinki annually to participate in the institute's cutting-edge work. In 2008 the Institute set up the "Erik Castrén Fellowship" as a Post-Doctoral position within the institute. The first holder of this will be Dr Daniel Joyce from Cambridge University from the fall 2008 onwards.

The Principal and the Co-Investicators will also collaborate closely with the **Institute of International Economic Law**, headed by Dr Pia Letto-Vanamo. The Institute is hosting the multidisciplinary Centre of Excellence in Foundations of European Law and Polity Research (with the own graduate school). Letto-Vanamo, who is legal historian, leads the research team Europe as Market in the Centre of Excellence.