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The Baltic States as a legal culture space within the discourse of law history processes (searching for the identity of Baltic law)

ABSTRACT

The sense of belonging and togetherness plays an important role throughout the existence of any nation. It is not only a stable social organisation or, in other words, social structure, but also a continuity of common emotional experiences, that is necessary for a harmonious and sustainable existence of any society. While discussing national identity, we also discuss common European values and an identity that unifies the European nations. However, it is considerably easier to substantiate the existence of a regional identity as opposed to an identity that can unify one particular part of the world. The Baltic states are often perceived as a unified cultural space; hence this paper assesses to what extent they have developed a common legal tradition that could be used to form a common identity of the Baltic peoples. The paper looks at several distinct historical periods: the Middle Ages up until the collapse of Livonia, from the collapse of Livonia until the territory of the Baltic states was annexed by the Russian Empire, the rule of the Russian Empire, the time of independent nation states in between the two world wars in the twentieth century, the period of the occupation by the USSR, the restoration of independence, and finally – a common existence and future as a part of the European Union.

Key words: European identity, regional identity, legal history of Baltic states, legal culture, common values

Słowa kluczowe: tożsamość europejska, tożsamość regionalna, prawna historia państw bałtyckich, kultura prawna, wspólne wartości

Introduction

For centuries, common values had been provided to society by religion and explained by the church. However, during the last few centuries, since sciences developed and human freedoms such as, for example, freedom of consciousness and freedom of speech, were consolidated, the foundations of people's shared understanding of the essence, genesis and evolution of a nation have been laid by history. History is not just a body of scholarly publications and the content of textbooks. The knowledge of history is formed by both academic research in the field and people's memories of the past which traditionally are passed down from generation to generation by word of mouth. The collective historical memories that live in our minds can unite a society, yet they can also divide it when different social groups have substantially different ideas of what really happened in the past. Raymond Aron (1905–1983) thought that history was an ever-evolving – time-linked – myth.¹

Historical memories often travel for centuries without any substantial transformation, smouldering in the public subconscious, until the moment they “flare up” for some reason, and people start doing incredible things. This is attested to by historical facts. For instance, the Baltic peoples subjected to occupation by a foreign power retained memories of their state's independence – memories which even the Soviet information monopoly had been unable to erase. These memories served as the people's common values and underlay the Singing Revolution of the late 1980s.² Another example is the Srebrenica massacre, which occurred spontaneously as one ethnic group's “revenge” on another for “historical injustices”. All this leads to the conclusion that the message recorded by history and travelling from generation to generation must not be ignored, as it is a living force that resides in people's consciousness, determining the society's sense of community, its values, behaviour, and, of course, its law.³

We may conclude that national identity is a culture-historical phenomenon which is inseparable from the history of the nation and state. The concept of nation includes the existence of common (identical) values rooted in the collective conscious.⁴ For a sustainable and harmonious existence, every society

¹ Раймон Арон *Избранное. Введение в философию истории*. (Университетская книга, 2000) 480.

² Daina Bleiere, Ilgvars Butulis, Inesis Feldmanis, Aivars Stranga, Anatolijs Zunda *Latvijas vēsture 20. gadsimts. Otrās papildinātais izdevums*. (Jumava, 2005) 389.

³ Karl-Ludvig Kunz, Martino Mona *Rechtsphilosophie, Rechtstheorie, Rechtssoziologie*. (Haupt Verlag, 2006) 38-41.

⁴ Entonijs Smits *Nacionālā identitāte*. (AGB, 1997) 6,7.

needs not only a stable social organisation, i.e., structure of relations, but also continuity in shared emotional experiences.⁵ At the basis of a nation's existence lies a shared political and cultural experience, which was acquired in the past and keeps being passed on. There is a number of criteria determining national identity, e.g., place of birth, citizenship, place of residence, language, religion, loyalty to the laws in place and authorities ruling the state. And still, all the above, in my opinion, just serves as additional characteristics of the essence of national identity – the sense of belonging and community.⁶ The formation of identity is a long-time collective process which also depends on historical circumstances. The wish to keep one's identity is inherent in every individual, as it forms the basis of social orientation.⁷

At present, not only national, but also regional identity is spoken of with increasing frequency. Research devoted to both national and transnational identity invariably starts with a historical study. For example, since the end of the 20th century, due to the processes taking place in the European Union, or, rather, along with the growth of their intensity, the history of European law has progressively gained importance.⁸ It is especially important in the context of searching for answers to questions concerning common European values and European identity. However, European identity is not the only regional identity that has recently been given increased attention. Today I would like to draw your attention to the Baltic states, which are often perceived by foreigners as a united, cohesive group, though we ourselves in most cases see substantial differences that separate us.⁹ One thing can be said for sure: the course of history has both separated and united Latvia, Lithuania and Estonia, and it has done so in the most incredible of combinations. The main question is whether historically a unified legal tradition, i.e., legal culture, of the Baltic peoples has formed. Naturally, my perspective in this research is the Latvian experience as part of our common history. I will focus on the states which used to include the

⁵ Georg Homans *Theorie der sozialen Gruppe*. (Westdeutscher Verlag, 1969) 259-261.

⁶ Günter Hartfiel *Wörterbuch der Soziologie*. (Kröner Verlag, 1972) 464.

⁷ Lelde Krasnā 'Latvijas un latviešu identitātes: kultūra, izziņa un komunikācija' (2005) 12 *Psiholoģijas Pasaules*, 14.

⁸ Since 1992 we have so many new books about European Legal History, for example: Paolo Prodi *Una storia della giustizia. Dal pluralismo dei fori al moderno dualismo tra coscienza e diritto*, (Il Mulino, 2000), Randalf Lesaffer *European Legal History. A Cultural and Political Perspective* (Cambridge University Press, 2009), Susanne Hähnchen *Rechtsgeschichte: Von der Römischen Antike bis zur Neuzeit*. (C. F. Müller, 2012), Hans Hattenhauer. *Das Europäische Rechtsgeschichte*. 3. erweiterte Auflage. (C. F. Müller, 1999), *How to teach European comparative legal history*. Edit. Klell A. Modeer and Per Nilsen (Juristförlaget i Lund, 2011).

⁹ For example, *Nationalismus und Rechtsgeschichte im Ostseeraum nach 1800*. Hrsg. Ditlev Tamm, Helle Vogt. (Jurist-og Ökonombundets Forlag, 2010), *Einheit und Vielfalt in der Rechtsgeschichte im Ostseeraum*. Hrsg. Marju Luts- Sootak, Sanita Osipova, Frank L. Schäfer. (Peter Lang Verlag, 2012), *VII. Rechtshistorikerkonferenz im Ostseeraum. Justiz und Justizverfassung*. Hrsg. Frank L. Schäfer, Werner Schubert (Peter Lang Verlag, 2013)

territories of the present-day Baltic states, and on the legal sources that have become part of our shared legal history.

I would also like to point to an additional factor – language. If we consider the statement by the outstanding Latvian linguist Karlis Milenbahs (1853-1916) that language is the centre and core of a people's life, then language is certainly important also in the studies of identity.¹⁰ Therefore, it should be noted that Latvian and Lithuanian are kindred languages and the only living Baltic languages belonging to the Indo-European language family, whereas the Estonian language belongs to the Finno-Ugric family.¹¹ However, when in search of an identity, one should also take into account that tribes of Livs, whose language belongs to the Finno-Ugric group and is related to Estonian,¹² had inhabited the territory of Latvia even before the Baltic tribes entered it. Furthermore, the influence of the Livonian language can be traced in Latvian, as the Baltic tribes assimilated the Livs in the course of centuries, borrowing hundreds of words from their language. Most of the words borrowed by the Latvian language from Livonian and Estonian denote natural phenomena or are connected with the sea and fishery.¹³

Common statehoods and legal culture in the Baltic in the 13th – 16th centuries

The common history of Latvia and Estonia began in the 13th century,¹⁴ when, as a result of the Pope's crusade policy and the German "yearning for the East" (*Drang nach Osten*) movement, the State of the Livonian Order was established on their territory¹⁵ and was to last until its collapse in 1561. In the 13th century, the Baltic lands were colonised by Catholic Christians, most of whom were Germans. The Order of Livonian Knights was a constituent unit of the Teutonic Order.¹⁶ Livonia recognised its dependence on the German Kaiser in secular affairs, and the power of the Pope of Rome in spiritual matters.¹⁷ We may say that the inhabitants of the territories of Latvia and Estonia in the period

¹⁰ Ina Druviete 'Latviešu valoda kā valsts valoda: simbols, saziņas līdzeklis vai valstiskuma pamats.' In *Latvija un latviskais. Nācija un valsts idejās, tēlos un simbolos*. (Zinātne, 2010) 129.

¹¹ Dīte Liepa 'Lietuviešu un latviešu identitātes atspoguļojums: attieksme pret savas valsts valodu.' (2012) *XII Res Humanitariae* 186-204.

¹² *LIVONES.NET* available at: < <http://www.livones.net/valoda> > accessed 6 December 2017.

¹³ Lembit Vaba 'Kādi vārdi latviešu meteoroloģijas leksikā ir cēlušies no Baltijas jūras somu valodām un otrādi.' (2010) 3/4 (64) *Latvijas Zinātņu Akadēmijas Vēstis* 74-77.

¹⁴ Sepo Zetterbergs *Igaunijas vēsture*. (Latvijas Mediji, 2018) 39-46.

¹⁵ Wilhelm Ebel *Deutsches Recht im Osten*. (Göttingen, 1952) 9-11.

¹⁶ Jānis Lazdiņš 'Livonijas vēstures īss pārskats.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Melķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 8.

¹⁷ Arveds Schwabe *Grundriss der Agrargeschichte Lettlands*. (Bernhard Lamey Verlag, 1928) 19.

between the 13th and 16th centuries were united in terms of law. Naturally, within Livonia there was no legal and state-like unity as understood today. The legal particularism, which was governing in Europe, also manifested itself here. The secular power established by the colonists applied its native common law, i. e., German land law (*Landrecht*) and feudal law (*Lehnrecht*).¹⁸ In 13th century Germany, the local common law was fixed in private collections. The Saxon Mirror (*Sachsenspiegel*, 1220/1235¹⁹) and the Swabian Mirror (*Schwabenspiegel*, 1273/1282²⁰), were followed by Baltic analogues, e.g., the Livonian Mirror (*Livländischer Spiegel*, 1322/1337), Livonian Knights' Middle Law, and other volumes.²¹ What formed itself in Livonia was a legal system characteristic of Continental Europe, i.e., a system composed of local land law, knights' law and urban (town) law, where, in addition, canon law was applied to Christians. A large part of Livonian towns were members of the Hansa, the German league of merchants, and lived according to their own urban laws. Riga and Reval (Tallinn) were especially strong ones, economically and politically.²² It should be mentioned that the statutes of various Hanseatic towns were more similar than they were different, as they had all been modelled on the Lübeck law.²³ In Livonia, the Baltic and Estonian tribes whose languages belonged to different language families came close together, forming a legal culture belonging to the Germanic legal circle of Continental Europe. Common law of the local tribes was added to this culture as peasants' law – e.g., the Archbishopric of Riga peasants law,²⁴ Livonian-Estonian peasants law,²⁵ Couronian peasants law.²⁶ Still, the largest part of the local tribes' common law was not admitted to the law or statute books and gradually lost its significance. The Livonian Confederation

¹⁸ Jānis Lazdiņš 'Komentārs. Bruņinieku tiesības.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Melķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 101-106.

¹⁹ *Der Sachsenspiegel*, übersetzt und eingeleitet von Paul Kaller. (C. H. Beck, 2002) 4.

²⁰ Armin Wolf *Gesetzgebung in Europa 1100–1500 zur Entstehung der Territorialstaaten*. (C. H. Beck, 1996) 102.

²¹ Jānis Lazdiņš 'Komentārs. Bruņinieku tiesības.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Melķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 102.

²² Paul Dollinger *Die Hanse*. 5. erweiterte Aufl. (Alfred Kröner Verlag, 1998) 96-102. and Indriķis Šterns *Latvijas vēsture 1290–1500*. (Daugava, 1997) 344, 345.

²³ Wilhelm Ebel *Hansisches Recht. Begriffe und Probleme*. (Göttingen, 1949) 20 - 25.

²⁴ 'Rīgas arhibīskapijas zemnieku tiesības.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Melķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 26, 27.

²⁵ 'Lībiešu – igauņu zemnieku tiesības.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Melķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 30, 31.

²⁶ 'Kuršu zemnieku tiesības.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Melķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 28, 29.

of the 16th century was characterised by an early acceptance of the ideas of the Reformation and the introduction of Lutheranism.

While the nations that would later become Estonians and Latvians were drawing together, Lithuania, which already in the 13th century had established itself as an independent state governed by Mindaugas, a ruler crowned by the Pope,²⁷ from the 14th century started being brought closer together with Poland. At the end of the Middle Ages, Lithuania was a large and powerful state comprising not only the territories inhabited by Balts, but also those inhabited by Slavs (Belarusians, Ukrainians, Russians).²⁸ Even today, Belarusians feel close with the peoples of the Baltics, having once been the subjects of the Grand Duchy of Lithuania. The Latvian for Belarusians is a compound of two words – “balt” meaning “Balts”, and “krievi” meaning “Slavs”. In the flag of Belarus, one can recognise the same equestrian as in the national symbols of Lithuania. The merger of Poland and Lithuania involved a range of mutual agreements, starting with the attempts to incorporate Lithuania in Poland in 1385, when Jogaila, the Grand Duke of Lithuania, concluded the first agreement with Poland in Kreva, was baptised as a Catholic and concluded a marriage with the Polish monarch Jadwiga (Hedwig). The concluding stage in the merger of the two states is considered to be the Union of Lublin signed in 1569.²⁹ After two centuries, these two states finally merged into one. It had been a complicated process, the complications being due to the fact that the throne of the Duchy of Lithuania was heritable while the Polish King was elected, that peasants in Lithuania were free while in Poland they were dependent, as well as to many other legal nuances that needed to be resolved before the final merger.³⁰

The Polish-Lithuanian Commonwealth was strictly adhering to Catholicism and, unlike Livonia, there was no Reformation in it. Nevertheless, the Commonwealth was also subject to the considerable influence of German colonists and German urban law. With the help of the German colonists and merchants, German urban law was widely adopted in the 12th and 13th centuries in Central and Eastern Europe. A large number of urban law families were formed, two of which – Magdeburg and Lübeck – must be mentioned as the most considerable ones in Central and Eastern Europe. Their law also spread in the towns of the present-day Baltic states. The Lübeck law gained influence through Hanseatic town law, as it had been created for a seaport town, whereas

²⁷ Arnolds Spekke *Latvijas vēsture. Latvju tautas likteņcīņas Eiropas krustceļos*. (Jumava, 2003) 125.

²⁸ Norman Davies *Litva: The Rise and Fall of the Grand Duchy of Lithuania*. (Penguin, 2013) 10- 35.

²⁹ Norman Davies *God's Playground. A History of Poland. The Origins to 1795, I (Revised ed.)*, (Oxford University Press, 2005) 93-95.

³⁰ Read more in: Andres Kasekamp *A History of the Baltic States*. (Macmillan International Higher Education, 2010).

Magdeburg was an inland trading centre with corresponding law.³¹ The Saxon Mirror was used as an additional source alongside Magdeburg town law.³² This law was taken over by the majority of cities in Poland, Ukraine, Russia, Belarus, as well as Prussia and Lithuania (Kaunas, Vilnius, Trakai, Minsk, Smolensk, Vitebsk, Polotsk, etc.).³³

Common statehoods and legal culture in the Baltic in the 16th – 19th centuries

The further course of history was no less patchy. The dissolution of the Livonian Confederation was one of the events which in the Baltics marked a transition from the Middle Ages to the early Modern Period. Unable to fight against the military pressure from Muscovites in the second half of the 16th century, the ruling circles of Livonia were forced to seek the support of neighbouring states. As a result, North Estonia surrendered to the Swedish King, and the rest of Livonia to Sigismund II Augustus, the King of Poland and Lithuania.³⁴ Legally, submission to Sigismund II Augustus took place in 1561, with the conclusion of the *Pacta Subiectionis* agreement. Under its provisions, the last Master of the Livonian Order Gotthard Kettler obtained the former property of the Order in Kurzeme (*Courland*) and Zemgale (*Semigallia*) as a heritable duchy held in fief, while the rest of the territory north of the river Daugava came under the direct control of Sigismund II Augustus. The territory of Latgale was separated from the rest of Latvia and, for a start, became a part of the Polish-Lithuanian Commonwealth for several hundreds of years – until the end of the 18th century.³⁵ Therefore, the legal culture of Latgalians in this period was close to that of Lithuanians. Also, the same law was in force here, as it had been established in 1677 that the Statutes of Lithuania (3rd edition of 1588) would henceforth be applied in Inflantia, i.e. Latgale. In its turn, Vidzeme, as a result of the Polish-Swedish

³¹ Гарольд Дж. Берманн *Западная традиция права- эпоха формирования*. (Издательство Московского университета, 1998) 353.

³² Sanita Osipova 'Namnieku tiesību avoti un komentārs.' In *Latvijas tiesību avoti. Teksti un komentāri. I sēj. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.* edit. Edgars Meļķis. (LU žurnāla „Latvijas Vēsture” fonds, 1998) 162.

³³ Wilhelm Ebel *Deutsches Recht im Osten: Sachsenspiegel, Lübisches und Magdeburgisches Recht*. (Kitzingen: Holzner, 1952) 12.

³⁴ Arveds Schwabe *Grundriss der Agrargeschichte Lettlands*. (Bernhard Lamey Verlag, 1928) 148.

³⁵ Valdis Blūzma 'Tiesību evolūcija Latvijas teritorijā poļu un zviedru kundzības laikā 16. gs. otrajā pusē 18. gs.' In *Latvijas tiesību avoti. Teksti un komentāri. 2. sējums*. Edit. Valdis Blūzma (Juridiskā koledža, 2006) 39.

war, found itself in the Swedish Baltic Province together with North Estonia and Estonian Saarland (1629–1710).³⁶ Thus, the south-western part of Latvia became legally connected with Lithuania, while its north-eastern territory, in the Baltic Province, was once again together with a part of Estonia. The legal consequences of this were that in Kurzeme, just as in the Polish-Lithuanian Commonwealth, the status of an individual was determined by the stratum he or she belonged to, whereas in the Swedish Baltic Province allegiance (nationality) was set as the primary principle.³⁷

As the most substantial contribution of Poles into the history of Latvian law, one should mention the 1617 Government Formula (*Formula Regiminis*) of the Duchy of Courland (Kurzeme) – the first constitutional act in force on the territory of Latvia and one of the first constitutional acts in Europe.³⁸ Another lasting contribution of the Polish rule was the restoration of Catholicism on the territory of Protestant Livonia.³⁹ In the 16th century, the first foundations were laid for the cultural divide of the Latvian people based on religion.⁴⁰

The Swedish rule is kept in the memory of Estonians and Latvians as the “good Swedish times”. There was no serfdom in Sweden, whereas in the Baltic Province (*Guberniya*) serfdom was maintained as one of the Province’s particularities. The Swedes recognised the individual’s allegiance (nationality), rather than his or her belonging to a stratum, as a primary factor. This policy led to new developments in law and the legal system, which were to the benefit of the local peasants. For example, in 1630–1632, territorial courts were established in each district, their jurisdiction covering civil and criminal cases of the local landlords and peasants.⁴¹ Landlords lost their jurisdiction over their serfs, and the peasants obtained the right to fair trial, which they started to exercise widely. Within the discourse of criminal proceedings, the Swedish time is notable for witch-hunts and cases against witches, in which the accused were Latvian and Estonian healers and fortune-tellers.⁴² The fact that the Church and the State had turned against the Latvian healers and seers with both religious and

³⁶ Sepo Zetterbergs *Igaunijas vēsture*. (Latvijas Mediji, 2018) 106, 107.

³⁷ Jānis Lazdiņš ‘Latvijas tiesību vēstures periodizācija un daži tiesību vēstures aspekti.’ (2000) 2 (38.), *Latvijas Vēsture Jaunie un Jaunākie Laiki*. 64.

³⁸ Jānis Lazdiņš ‘Komentārs; Valdības formula (Formula Regiminis) (1617).’ In *Latvijas tiesību avoti. Teksti un komentāri. 2. sējums*. Edit. Valdis Blūzma (Juridiskā koledža, 2006) 207.

³⁹ Anna Žigure *Latvijas policijas vēsture. Pirmā grāmata*. (Fakts, 1997) 108, 109.

⁴⁰ Revita Logina *Kāds tu esi, rīdzinieks? TNS iegūtie statistikas dati par rīdziniekiem*. Available at: <http://www.tns.lv/newsletters/2010/27/?category=tns27&id=social_b_ridznieks> accessed 31 January 2018.

⁴¹ Jānis Lazdiņš *Baltijas zemnieku privāttiesības (XIX. gs.)*. (Biznesa Augstskola Turība, 2000) 45.

⁴² Kārlis Straubergs *Latviešu buramie vārdi. I sējums*. (Latviešu folkloras krātuve, 1939) 64-77.

political means did not reverse the Latvians' faith in ethnomedicine – sorcerers, healers and wise-women. Folk healing is a legitimate occupation in present-day Latvia, and it is regulated in the state laws.⁴³ It should be admitted that I have no information on the neighbouring peoples' attitude to this phenomenon.

From the beginning of the 18th century and until its end, the entire territory of the Baltic states was being successively included in the Russian Empire. The last ones to be added were Lithuania and, along with it, Latgale (South West Latvia), after Austria, Prussia and Russia had divided the Polish-Lithuanian State.⁴⁴ Until the 19th century, the Russian Empire did not introduce any substantial changes into the judicial and legal system of the Baltics. Russia respected the privileges of the local landlords. The privileges of the Baltic landlords, which included preservation of the old judicial and legal system and legal autonomy within the Russian Empire, had been approved in 1743 for two years only.⁴⁵ However, the local rights continued to be respected in the Baltic Province of the Empire until the second half of the 19th century.⁴⁶ With the abolition of serfdom in the 19th century, life in the Baltics changed. Estonian peasants were the first to receive their freedom in 1816, followed by those of Kurzeme in 1817, and those of Vidzeme in 1819.⁴⁷ It was in 1857 that the Lithuanian landlords expressed the proposal that serfdom should be abolished following the Baltic model, and only in 1861 that it was finally abolished throughout the Empire.⁴⁸ The abolition of serfdom was followed by the formation of the Estonian, Latvian, and Lithuanian nations, and the second half of the century saw the beginning of Russification and centralisation of the Empire, which manifested itself also in the transformation of the judicial system.

In the late 19th century Baltic Province, the German language, which had been the local official language, was purposefully outrivalled by Russian. It was the Russian Empire's intentional state policy, started in 1880s by Alexander III. This policy also involved strengthening the Russian Orthodox

⁴³ 2007. gada 13. februāra Ministru kabineta noteikumi Nr. 125 "Noteikumi par profesiju klasifikatoru, profesijai atbilstošiem pamatuzdevumiem un kvalifikācijas pamatprasībām un profesiju klasifikatora lietošanas un aktualizēšanas kārtību". Available at: < <https://likumi.lv/doc.php?id=210806> > accessed 31 January 2018

⁴⁴ *История отечественного государства и права*. Под. Ред. О. И. Чистякова. (Юрайт, 2013) 288, 289.

⁴⁵ Sanita Osipova *Pētījums: Latvijas notariāta funkcijas un tā sniegtās palīdzības pieejamība, to izvērtējums*. Available at: < www.tm.gov.lv/lv/.../Osipova_petijums_07022009-final.doc > accessed 29 January 2018.

⁴⁶ Семён Викентьевич Пахман *История кодификации гражданского права*. (Зерцало, 2004) 716.

⁴⁷ Jānis Lazdiņš *Baltijas zemnieku privāttiesības (XIX. gs.)*. (Biznesa Augstskola Turība, 2000) 87.

⁴⁸ *История отечественного государства и права*. Под. Ред. О. И. Чистякова. (Юрайт, 2013) 365-376.

faith and restricting the rights of national minorities.⁴⁹ The 19th century in the Russian Empire was also the time when codification took place and the modern judicial system was introduced. The codification of law was carried out under the influence of the historical school of jurisprudence and consisted in processing the valid and practically applied law. In the process of codifying law in the Empire, local law was respected and thus the Baltics developed its own codification. Latvians became divided in terms of law. In the eastern part of Latvia – Latgale – Book I of Volume X of the Code of Laws of the Russian Empire (*Свод законов Российской империи*, 1832, hereinafter CLRE) was in force, while Part III of the Collection of Local Laws of Baltic Provinces (hereinafter CLLB) was in force in Vidzeme and Kurzeme.⁵⁰ Other territories, which later formed national states, e. g., Estonia and Poland, were faring no better. During this period, jurisprudence in the Russian Empire was greatly influenced by German Pandect law.

In contrast, the Russian Empire's judicial system was modelled on the French one, not only the three-step court system being taken over, but also the new type of organising land registries, notaries, advocacy, and judicial enforcement. It should be noted, though, that also the French novelties in the judicial system were taken over by the Russians through adoption of models already adapted by Austrians and Germans.⁵¹ The Regulation on the Judicial System of the Russian Empire, which was extended to the Baltics on 9 July 1889, made a substantial change to the traditional system and introduced, throughout the Baltics, a judicial system with modern independent courts.⁵² The consequences of the legal centralisation of the Russian Empire were the introduction of the French ideas of judiciary bodies and criminal procedure also in the Baltic territory. The impact of the Russian Empire's judicial reform is still discernible in the judiciary system of the present-day Republic of Latvia. It is particularly expressed in the institutions of sworn notaries and sworn bailiffs. Looking at the acculturation, under which the legal culture of the Baltic peoples was enriched with the elements of German and Russian, and through Russia's law –

⁴⁹ Михаил Геллер *История Российской империи*. Available at: http://www.krotov.info/history/11/geller/gell_10.html accessed 29 January 2018, and Гаврилин, *Православная Церковь и русификаторская политика в Латгалии во второй половине XIX начале XX веков (на примере Лудзенского благочиния)* Available at: „<http://shh.neolain.lv/seminar23/alm7.gavrilin.htm>” accessed 29 January 2018.

⁵⁰ Jānis Vēbers 'Ģimenes tiesības Latvijā. No neatkarīgas Latvijas valsts nodibināšanas 1918. gadā līdz neatkarības atjaunošanai 1991. gadā.' In *Latvijas Republikas Civillikumu komentāri. Ģimenes tiesības*. (Mans Īpašums, 2000) 112.

⁵¹ Н.И. Комаров, Д.А Пашенцев, С.В. Пашенцева *Очерки истории права Российской империи вторая половина 19- начало 20 века*. (Статут, 2006) 202.

⁵² Jānis Lazdiņš *Baltijas zemnieku privāttiesības (XIX. gs.)*. (Biznesa Augstskola Turība, 2000) 270.

also French, Swiss and Austrian legal cultures, we may state that historically,⁵³ until the First World War, the legal culture of the Baltic peoples was evolving in close connection with the Continental Europe law family.

Statehoods and common legal culture in the Baltics in the 20th – 21st centuries

At the end of the First World War, all three Baltic countries established their statehood. For Lithuania, it was the restoration of independence, whereas Latvia and Estonia established independent states for the first time in their history. All three states were established as democracies but very soon arrived at being authoritarian dictatorships. Later, our countries shared one history in 1940, after Europe had been divided as a result of the Molotov-Ribbentrop pact signed in 1939 between the USSR and Nazi Germany. After the Baltic states were occupied and annexed by the Soviet Union in 1940, the introduction of the Soviet law was inevitable. This process started with the decree of 6 November 1949 of the USSR Supreme Council Presidium “On the temporary application of the Criminal, Civil, and Labour Codes of RSFSR in the territories of the Soviet Socialist Republics of Lithuania, Latvia, and Estonia”.⁵⁴ State authorities and legal institutions were also reformed to accord with the Russian SFSR model.

The influence of the Soviet law on the legal culture of the Baltic peoples is the hardest to evaluate. The discussion here is not so much about the impact of the legal culture of another people, even though the Russification policy characteristic of the Russian Empire was going on in the Soviet state, as it is about the imposition of Marxism-Leninism ideology on the people throughout the duration of 50 years. The Soviet law made use of the Roman law concepts, institutions and principles, however, their content was substantially transformed to fit the Marxist model:

1. private law was abolished. All legal relations were established as public in their nature;
2. private property was abolished on the grounds of the assertion that it was a basis for social inequality and exploitation. “Means of production” such as land, factories, plants, apartment buildings, etc., were removed from civil circulation;

⁵³ Sanita Osipova ‘Die allgemeine Bedeutung des österreichischen Rechtssystems für Lettland.’ In *200 Jahre ABGB – Ausstrahlungen. Die Bedeutung der Kodifikation für andere Staaten und andere Rechtskulturen*. Hrsg. Michael Geistlinger, Friedrich Harrer, Rudolf Mosler, Johannes M. Rainer, (Manzsche Verlags- und Universitätsbuchhandlung, 2011) 225- 238.

⁵⁴ *Latvijas tiesību vēsture (1914-2000)*. Edit. Andrejs Lēberas (Fonds Latvijas Vēsture, 2000) 288.

3. the Soviet law was grounded in legal positivism, which had dominated in the 19th century. In fact, the law and regulatory acts based on it were recognised as the only source of Soviet law. The methods of interpreting legal norms were limited to grammatical interpretation as the only recognised one.⁵⁵

The Soviet legal culture is characterised by one of the trends of Socialist legal philosophy, namely, Marxism-Leninism, being declared as the basis of the state ideology, which became the grounds for substantial transformations in legal relations, as well as for methodical work to alter accordingly the legal consciousness and legal culture of the people.⁵⁶ In Latvia, we have renounced the legal norms of the Latvian SSR (the last valid ones are the 1984 Latvian SSR Administrative Violations Code⁵⁷ and the 1970 Sentence Enforcement Code⁵⁸), while partially restoring the laws adopted in Latvia in the inter-war period (for example, *Satversme* (the Constitution) and the Civil Law), and partially creating new laws (for example, the Criminal Law and the Commercial Law); we have also made efforts to justly restore private property in the process of denationalisation and privatisation.⁵⁹ However, the mentality of legal culture is much harder to change than its material aspect. We experienced considerable difficulties giving up the doctrine of the Socialist legal sources and the methodology of applying legal norms. In order to completely let go of the Soviet legal culture, we had not only to replace the laws of the Latvian SSR, but also to alter the legal thought and replace the legal culture itself.⁶⁰ In my view, this process is still going on.

Changes in legal methodology are closely linked to legal consciousness and legal culture mentality. Any changes in collective thinking are a slow and complex process. We may say that Latvia has managed to succeed in changing the doctrine of legal sources and legal methodology in an incredibly short period from the restoration of its independence to [approximately] its accession to the European Union.⁶¹ And here we are again, in a shared legal space, only this time we have joined it of our own free will.

⁵⁵ Sanita Osipova, Jānis Lazdiņš 'Latvijas tiesību sistēmas ģenēzes un evolūcijas aspekti Eiropas tiesību kontekstā.' In *Tiesību harmonizācija Baltijas jūras reģionā pēc ES paplašināšanās*. (LU Akadēmiskais apgāds, 2012) 324,325.

⁵⁶ Ilgvars Krastiņš *Valsts un tiesību teorija*. (Zvaigzne, 1985) 12,13 and Ilgvars Krastiņš *Sociālistiskā juridiskā kultūra*. (P. Stučkas LVU Redakcijas un izdevniecības daļa, 1973) 8-15.

⁵⁷ 07.12.1984. likums "Latvijas Administratīvo pārkāpumu kodekss" Available at <<http://www.likumi.lv/doc.php?id=89648>> accessed 23 February 2018.

⁵⁸ 23.12.1970. likums "Latvijas Sodū izpildes kodekss". Available at < <https://likumi.lv/doc.php?id=90218> > accessed 2 March 2018.

⁵⁹ Jānis Lazdiņš 'Latvijas Republikas tiesību attīstības tendences pēc neatkarības atjaunošanas 1990.-1991. gadā.' (2010) 1 *Latvijas Universitātes žurnāls. Juridiskā zinātne*. 67.

⁶⁰ Sanita Osipova, Ieva Roze 'Tiesiskā nihilisma saknes Latvijā.' In *Drošība un tiesiskums Latvijā*. Edit. Aivars Tabūns. (Latvijas Universitātes Filozofijas un socioloģijas institūts, 2007) 50.

⁶¹ Hans-Holger Herrinfeld 'Die Reform des Privatrechts im Zuge der Vorbereitungen auf den EU-Beitritt.' In *Zivilrechtreform im Balticum*. Hrsg. Helmut Heiss (Mohr Siebeck, 2006) 109,110.

Conclusions

Can we conclude from this retrospective journey that the Baltic States have a single legal identity? At any rate, we can say that the Baltic States have been historically closely connected and have repeatedly been united and subjected to one jurisdiction. Together, we have experienced the impact of the laws of German, Polish, Russian and Soviet rule. This has provided us with grounds, if not for a common legal culture, then at least for a sense of kinship and mutual understanding in the course of cooperation. The Baltic states share a common legal history and their legal culture is related, but it isn't possible to speak of a common Baltic legal culture. Nevertheless, due to a part of their territory falling under a different statehood, alongside a similar legal culture we have accumulated a dissimilar historical experience, which can create an emotional divide between us. But it should be noted that the legal rapprochement of the Baltic States will continue within the framework of the European Union.

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SUMMARY

The Baltic States as a legal culture space within the discourse of law history processes (searching for the identity of Baltic law)

In this research the traditions of the Baltic states – Estonia, Latvia and Lithuania – were examined in order to evaluate the validity of the hypothesis that the Baltic states share a common legal culture. Since the legal culture of any society develops over the course of history, the research was conducted by methods of comparative law, mainly comparative and historical analysis. Although many sources of law were

analysed, e.g., customary law, town law, statutes and legal acts issued in accordance with statutes, the research is mainly based on analyses in legal history. Works of historians and linguists regarding the genesis and evolution of Latvian, Lithuanian and Estonian legal culture were used in the research. The research was conducted from the point of view of Latvian culture, therefore the works used in the research were primarily those of Latvian scientists, e.g., Arveds Švābe, Valdis Blūzma, Jānis Lazdiņš, Ina Druviete, Dite Liepa, the author etc. Alongside the works of the aforementioned authors several authoritative works on the history of Estonia and Lithuania were used in the research as well, e.g., *The History of Estonia* by Sepo Zetterberg and *Litva: The Rise and Fall of the Grand Duchy of Lithuania* by Norman Davies. The author has analysed the culture of the Baltic states within the discourse of Europe as well, examining the works of several legal historians of different cultures, e.g., the work of the well-recognised German legal historian Wilhelm Ebel and the Russian scientist Semjon Pahmann, as well as, of course, the classical work on European legal history: *Law and Revolution, The Formation of the Western Legal Tradition*, by Harold J. Berman. The analysis of these sources has allowed the author to create a systemic overview of the development of legal tradition on the territory of the Baltic states from the Middle ages until the present time and to come to the following conclusions.

When evaluating the validity of the dominating opinion on a common legal culture of the Baltic states, can we conclude from this retrospective journey that the Baltic States have a single legal identity? At any rate, we can say that the Baltic States have been historically closely connected and have repeatedly been united and subjected to one jurisdiction. Together, we have experienced the impact of the laws of German, Polish, Russian and Soviet rule. This has provided us with grounds, if not for a common legal culture, then at least for a sense of kinship and mutual understanding in the course of cooperation. The Baltic states have shared a common legal history and their legal culture is related, but it is not possible to speak of a common Baltic legal culture. Nevertheless, due to a part of their territory falling under a different statehood, alongside a similar legal culture we have accumulated a dissimilar historical experience, which can create an emotional divide between us. But it should be noted that the legal rapprochement of the Baltic States will continue within the framework of the European Union.