The Balkan Peninsula: A Historical Region *Sui Generis*

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1. Preliminary Observations

The terms "Balkans", "Western Balkans", and "Southeastern Europe" continue to cause confusion. "Western Balkans", to start with the simplest example, is one of the *termini technici* introduced by the EU at the end of the 1990s to designate the post-Yugoslavian states (aside from Slovenia) and Albania – a terminological crutch that is neither academically nor historically justifiable and can be attributed to everyday political affairs. Political territorial concepts come and go. One is reminded of "Eastern Europe", which functioned as a collective designation for all the socialist countries of Europe during the "cold war" (usually aside from Yugoslavia with its independent model of socialism) and became obsolete after 1989. In contrast, *historical* territorial terminology enjoys more durability, but is by no means unambiguous. Hence, "Balkans" and "Southeastern Europe" are frequently used in German research with varying delineations. Both cases involve formulations or definitions that are not right or wrong *per se*. Definitions can be plausible, adaptable, and coherent. Or the opposite. But they cannot be right or wrong. To begin with: "Southeastern Europe" ranges from the western part of the former Kingdom of Hungary, the present Slovakia, over Hungary and the Republic of Moldova to approximately Odessa on the Black Sea. Everything that lies below this line is Southeastern Europe.[1] Thus regions exhibiting a large variation of development can be pooled into a putative entity that is characterized above all by its diversity. From a historical-structural perspective (I will return to the significance of structures below), however, one could differentiate between a broader Southeastern Europe and the narrower concept of the Balkans.

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1 *Müller* 2003; for the history of the region, cf. *Stadtmüller* 1950; *Bernath* 1973; *Grothusen* 1976; *Kaser* 1990; *Clewing & Schmitt* 2011; Reference work: *Hösch, Nehring & Sundhaussen* 2004.

2. Terminology and Borders of the Balkan Region

What are the Balkans? In contrast to those who study the Balkans primarily as an imaginary region or mental map,[2] the following discussion treats the Balkans as a real region. Whoever deals with them needs perseverance. For the Balkans are complicated like hardly any other European region.[3] During the Ottoman Empire, the Turkish word "Balkan" (mountain) served to designate a mountain range in Bulgaria, the "Stara Planina" ("Old Mountain") that was named "Haemos/Haemus" by ancient geographers. In 1808, the Berlin geographer *August Zeune* coined the expression "Balkan Peninsula". He shared the ancient geographers' misconception that the Balkan mountain range extended over the entire southeastern European region from the Slovenian Alps to the Black Sea and that the term had a similarly definitive meaning for the entire region like the Apennines for the Italian Peninsula. After the untenable nature of this assumption was recognized, the terms "Balkan Peninsula" or "Haemus Peninsula" met with increasing criticism. In 1893, the geographer *Theobald Fischer* recommended substituting the term "Southeastern European Peninsula" for "Balkan Peninsula",[4] but his suggestion was not fully accepted. The actual Balkan mountains, the Stara Planina, extend only over a length of 420 km (with an average width of 30–50 km) in an east-west curvature from the Danube, under the Iron Gates, in the direction of the Black Sea and separates the northern part of Bulgaria (Danubian Plain) from the southern half (Upper Bulgaria). In spite of its limited size and regardless of advances in geographic knowledge since the middle of the 19th century, the Balkan Mountains became the eponym for an entire region of the most eastern of the three southern European peninsulas that protrude into the Mediterranean (Pyrenean, Apennine and Balkan Peninsulas). The latter is bordered on three sides by five seas (Black, Marmara, Aegean, Ionic, and Adriatic Seas). Even so, the North lacks a precise geographic border. Usually the Sava-Danube line is used for this purpose, or more precisely, the lower stretches of the Sava and Danube, which have often also served as political borders. There are differing views on the boundaries of the extreme Northwest and the lower stretch of the Danube. Although the Kupa occasionally defined the northwestern border, it was usually the Una. In the first case, Central Croatia or the region of the former Habsburg military border in Croatia, known during the first half of the 1990s as the "Republic of Serbian Krajina," counts as Balkan, in the second case it does not. Occasionally, the term "Balkan" also extends (in light of structural similarities) to the former Romanian principalities of Wallachia and Moldova.[5]

2 Cf. *Todorova* 1997.

3 For the following, cf. *Sundhaussen* 1999.

4 *Fischer* 1893.

5 The most important distinction between the former Danube principalities and the Balkan region is the fact that Wallachia and Moldova were never an integral part of the Ottoman Empire, but were just subject to the suzerainty of the sultan. While the nobility in the

The origin and proliferation of the term "Balkan Peninsula" occurred during a time when the Eastern Question increasingly occupied the public and the European superpowers. The incremental dissolution of the Ottoman Empire, the emergence of rival Balkan states, the Balkan Wars of 1912/13, and the diverse hotbeds of territorial conflict in the Balkans made the region appear as "Europe's powder keg" at the beginning of the 20th century. As a designation for the conflict-fraught national fragmentation processes, the political catchword "balkanization" became vernacularized after WWI. It soon spread to other parts of Europe and the non-European world (e.g. in the Near East). *Paul Scott Mowrer*, a long-standing correspondent of the Chicago Daily News, defined balkanization in 1921 as "the creation, in a region of hopelessly mixed races, of a medley of small states with more or less backward populations, economically and financially weak, covetous, intriguing, afraid, a continual prey to the machinations of the great powers, and to the violent promptings of their own passions".[6] And the murder mystery author *Agatha Christie* captured this point in a nutshell when she described her invented country "Herzoslovakia", a curious mix of Herzegovina and Slovakia, in 1925 with the words: "It's one of the Balkan States (…) Principal rivers: unknown. Principal mountains: also unknown, but fairly numerous. Capital: Ekarest. Population, chiefly brigands. Hobby: assassinating kings and having revolutions."[7] During the same period the Englishman *Archibald Lyall* had a conversation with a Persian Presbyterian in Athens. The latter asked him: "Why do you want to go to Albahnia, my dear sir? Zere is nothing to see zere, only black stones. And no houses, only little forts wiz cracks and holes in zem, wiz rifles peeping out of zem; and ze Albahnians, zey sit zere and zey go pop-pop-pop. It is worse zan ze Wild West. (…) It is Timbuctoo, my dear sir, ze very middle of Timbuctoo … I tell you zis, my dear sir, God'e made ze Albahnians after he'd just had a fight wiz his muzzer-in-law."[8]

Before I delve further into the Balkan Peninsula, I would like to address a question whose answer could fill several books: Why does the term "Balkans" exclude Slovenia, Croatia, Vojvodina (North Serbia) as well as Hungary, Transylvania, and the Romanian part of the Banat (aside from the Romanian Old Kingdom, which is an exception)? The division is based on the importance of long-standing (!) and differing courses of development to be discussed below. "Long-standing" refers to phenomena that have been formative over several centuries. The French historian *Fernand Braudel* coined the term "longue durée" (a long period of time) to describe this concept.[9] And the economist *Josef Schumpeter* compared the phenomena and struc-

Balkan region, for example, gradually disappeared following the Ottoman conquest, it continued in Romania up until the recent past.

6 *Mowrer* 1921.

7 *Christie* 1925.

8 *Lyall* 1930.

9 *Braudel* 1982.

tures of the "longue durée" with coins: they are not eternal, but they last a long time and are difficult to annihilate. "By *structure*, observers of social questions mean an organization, a coherent and fairly fixed series of relationships between realities and social masses," writes *Braudel*. "For us historians, a structure is of course a construct, architecture, but over and above that it is a reality which time uses and abuses over long periods. Some structures, because of their long life, become stable elements for an infinite number of generations: they get in the way of history, hinder its flow, and in hindering it shape it. Others wear themselves out more quickly. But all of them provide both support and hindrance."[10] Political actors are naturally frustrated by the phenomena of the "longue durée". The relationship between structures and actors has always been controversial. Sometimes the structures stand in the limelight, and sometimes the actors. Over the past two to three decades, the structures have usually stood in the shadows, and probably unjustly so, because actors operate neither in a social vacuum nor outside of structures. They act within the confines of structures. There have been actors in every time and space (although their numbers may have been small) who wanted to change a situation they perceived as unsatisfactory, cumbersome, and "backward". To this end they needed collaborators, had to organize themselves, required access to resources, and needed to try including or co-opting representatives of the structures they were fighting. In the course of their efforts, they usually had to compromise. The consequences were that they had to whittle down their original goals, that these goals became "corrupted", or that the actors completely gave up and came to terms with the existing situation. There are plenty of examples of these processes. Such a result can lead one to say that the structures were stronger than the actors. But then there are, of course, opposite cases in which the actors were stronger than the structures. On the question of when and under what conditions what result can be expected: thus, a "victory" of the structures or a "victory" of the actors seeking change, or partial victories, Pyrrhic victories, or defeats of one or the other side belong to the most exciting issues in the study of history. In short, structures emerge, change, and depart, but the speed of change remains comparatively slow. Even "revolutions" could enjoy longer lasting success only if they could tie into already existing trends. There is no such thing as a "zero hour" in history.

Slovenia and Croatia did indeed belong to the first and second Yugoslavian states for 72 years (with an interruption during WWII), as did Serbia, Bosnia-Herzegovina, etc., but 72 years are, from a historical perspective, a relatively short period. It was too short to smooth out or level the differences inherited at the founding of the Yugoslavian state at the end of 1918. Concerning all financial and social indicators, Slovenia yielded scores during the 20th century that clearly exceeded the Yugoslavian average. This fact cannot be explained by Slovenian politicians engaging in better politics than politicians in the other Yugoslavian republics. It can only be explained

10 *Braudel* 1982, 31.

by a historical legacy: for centuries, modern Slovenia was an Austrian crown land (and historically belonged neither to the Balkans nor to Southeastern Europe), and Croatia and the present Vojvodina were part of the Hungarian half or the Habsburg monarchy (they belong to Southeastern Europe, but not to the Balkans), whereas the Balkan region was a part of the Ottoman Empire for four to five hundred years and differed in other respects to historical Hungary. With respect to the history of their religion, culture, civilization, and law, the regions of the northern part of Southeastern Europe blazed other paths than did the regions in the South, in the Balkans. The North became predominantly Catholic (to an extent also Protestant), the South is predominantly influenced by the Orthodox Church, and in parts, has been reshaped by Islam. Although the borders of the former multi-ethnic empires, the Ottoman and the Habsburg Empires, disappeared between the beginning of the 19th century and the end of WWI (not to mention the borders of the Eastern Roman/Byzantine Empire), they still surface as "phantom borders" in varying contexts. Phantom borders are borders that no longer exist, but still appear in certain human constellations or behaviours. At some point in time the phantom borders will also fade.[11] Yugoslavia united very different regions within its borders. The "leitmotif" for its foundation was the concept of lingual kinship developed by philologists of the 19th century and the "family of nations" concept derived from them, even if the members of the "family" had lived for centuries in completely different political, societal, economic, and cultural contexts. Yugoslavia was a result of this "family of nations" school of thought. And in light of the ethnic conglomerations, there was a good argument for a South Slavic union. That might have even succeeded, and occasionally (e.g. during the 1960s) there were even signs pointing in that direction, but the past, with its disruptive features, took the upper hand in the relevant national commemorative cultures and narratives and finally contributed to the collapse of the entire state with foreseeable catastrophic consequences.

We return now to the Balkans.[12] The area of the Balkan Peninsula east of the Una and south of the lower Sava and Danube amounts to about 473,000 km^2 and is thus larger than Germany (357,000 km^2), but smaller than metropolitan France (547,000 km^2). At the beginning of the 19th century, the entire Balkan region still belonged to the Ottoman Empire. Following the Congress of Berlin in 1878, six states shared dominion over the region: Serbia, Greece, Montenegro, Bulgaria, and the two empires: the Ottoman Empire and Austria-Hungary. After the Balkan Wars of 1912/13, Albania was added as a seventh state, while European possession of the Ottoman Empire shrunk to Eastern Thrace. Subsequent to WWI, the number of states decreased to five due to the dissolution of Austria-Hungary and the foundation of the first Yugo-

11 The research project "Phantomgrenzen in Ostmitteleuropa" with the Centre Marc Bloch in Berlin, the Humboldt-Universität and other collaborators has focused on the phenomenon of phantom borders since 2011.

12 On the following, cf. *Blanc* 1965; *Carter* 1977; *Hupchick & Cox* 2001.

slavian State. And today – following the breakup of Yugoslavia (1991), the dissolution of the State Union of Serbia and Montenegro (2006), and Kosovo's Declaration of Independence (2008) – there are nine states: Bosnia and Herzegovina, Serbia (not including Vojvodina), Kosovo, Montenegro, the Republic of Macedonia, Bulgaria, the European part of Turkey (Eastern Thrace), Greece, and Albania. To this list we need to add the corridor between the Lower Danube and the Black Sea (Dobruja, split between Romania and Bulgaria). From north to south, the Balkan Peninsula measures some 1,300 km, and from east to west some 1,000 km (in the north) and 300 km (in the south). The peninsula is separated from neighbouring Asia Minor by the easily crossable straits of the Bosphorus and the Dardanelles. The wide northern portion of the peninsula resembles a trapezoid. The southern portion (essentially the Peloponnesian Peninsula) is considerably narrower and is demarcated by numerous bays cutting deeply inland. The Peloponnese, to the south, is surrounded on all sides by the sea and has only a narrow land bridge to the mainland. The Western Balkan Peninsula is characterized by the Dinaric Alps and Pindus mountain range that extend from the Northern Albanian Alps and the Pindus to the south of the Peninsula, from which they continue over the Peloponnese and Aegean islands to Asia Minor. Between the Dinaric Alps in the west and the Balkan Range in the east lies the Thracian Massif with the Rhodope Mountains. Only in Northern Bulgaria, the coastal regions of Albania and Macedonia, and south of the Balkan Range in the Marica Valley and in Eastern Thrace, are larger plains and valleys situated south of the Danube. Hence, the Balkan region is primarily mountainous and thus differs from the Romanian lowlands and the Pannonian Basin (Hungary) in the north.

At the turn of the 20th to the 21st century, approx. 45 million people of various national, ethnic, and religious affiliations (over 40% South Slavs, followed by Greeks, Turks, etc.) lived on the Balkan Peninsula. A total of nine official languages (six South Slavic: Serbian, Bosnian, Croatian [in Bosnia], Montenegrin, Macedonian, Bulgarian, and two further Indo-Germanic languages: Greek and Albanian, as well as one non-Indo-Germanic language: Turkish), written in three different alphabets (Cyrillic, Latin, and Greek). With respect to religion, the populace has been divided into three major faiths since the Early Modern Era (Orthodox, Muslim, and Catholic [especially in the Dalmatian, Bosnian-Herzegovinian, and Northern Albanian regions]). Up until the Holocaust, Jews (primarily Sephardic) represented the fourth major faith. The average population density of about 87 per km² is, as a consequence of the geographic realities, much lower than in Western or Central Europe (e.g. the Netherlands with 380 per km² or Germany with 225 per km²). The Greeks, Albanians, and the remaining Romanized population (some of the Vlachs and Aromunians) belong to the oldest, still surviving population groups of the Balkan Peninsula. During the early Middle Ages the South Slavs arrived – often in close affiliation with nomadic horsemen (Avars, Khasares, Proto-Bulgarians). The youngest population groups (since the end of the Middle Ages) include the Turks, Sephardic Jews, Armenians, Romas, Tatars, etc.

3. The Balkans as a Religious and Legal Territory

During the course of the 20th century, academic approaches to a *structural* understanding of the Balkan region have emerged that have been supported by multiple disciplines (including linguistics, ethnography, anthropology, and history). From a comparative, historical perspective, the Balkans constitute a unique historical and cultural region – apart from detailed differences – of Europe or a sub-region of Southeastern Europe. As a consequence of the Balkan region's open borders in the Northwest, North, and East, toward Croatia, Hungary, Romania, and Asia Minor (Anatolia), the political geography has repeatedly changed. The Balkans were never a closed region, but rather a part of larger empires extending widely over the region, whose borders to neighbouring regions fluctuated over the course of centuries. Especially on both sides of the region's borders there were and still are transitional and overlapping zones. It is primarily the ethnic settlement areas that overlap in numerous places. Nevertheless, the Balkans exhibit a cluster of characteristics that exists nowhere else in that form. The emphasis here is on cluster, because the individual characteristics that make up the cluster can be found in the same or similar forms in other regions (but in differing cluster formations or in differing concentrations).

The history of the Balkans since the great migration of the Slavs (beginning at the end of the 6th century; the antiquity is beyond the purview of this analysis) can be generally divided into periods as follows:

1. the period of the Byzantine Empire and the medieval (Bulgarian, Serbian, etc.) Balkan states whose culture and civilization were shaped by the "Byzantine model",
2. the 400–500-year period of direct or indirect Ottoman rule, and
3. the period of modern state and nation building since the beginning of the 19th century to the present.

The Byzantine millennium (from the 4th to the 15th century) and the half-millennium of Ottoman rule (from the 14th to the 20th century) have lent the Balkans a special profile as a historical realm of action and experience (similar to large regions of Asia Minor). However, whereas the "Turkification" of inner Anatolia since the Byzantine defeat against the Seljuks (Battle of Manzikert, 1071) and as a consequence of internal Byzantine chaos progressed rapidly, it remained a fringe phenomenon in the Balkan region. For that reason, Anatolia is usually not considered part of the Balkan region. Amongst the long-term, structurally-formative characteristics of the region, the Byzantine legacy, including the medieval Balkan legacy, and the Ottoman legacy, emerges due simply to its long duration.[13] Although the rest of the Byzantine Em-

13 For a representative sample of a plethora of literature on this subject, see ***Ostrogorsky*** **1957,** ***Beck*** **1978,** ***Obolensky*** **1974 with respect to the Byzantine period and** ***Sugar*** **1977,** ***Stavrianos*** **1958/2000 and** ***Castellan*** **1991 for the Ottoman period.**

pire (and the medieval Balkan Slav states) foundered by 1453, at the latest, with the conquest of Constantinople by the Ottomans, the Byzantine legacy could still assert itself in diverse forms – in religion, in jurisprudence, and in culture in the broadest sense – and experienced a temporary renaissance in the Romanian principalities ("Byzance après Byzance").[14]

We next turn to the legal history. Not because it is more important than other aspects, but because special significance is assigned to it in the context of the present volume. It makes sense to compare the legal history of the Balkan region with that of Northern Southeast Europe (and Central and Western Europe as well). Until well into the 19th century, there existed an almost unmanageable plethora of legal systems whose relationships with each other were either loose or nonexistent, that had varying jurisdictional purviews, or that were interchanged repeatedly over the course of centuries.[15] Because they were often unsystematic, many of these legal systems cannot be characterized as legal *systems*. Along with (written) legal codices, institutionalized by the state and asserting national jurisdiction, there existed legal statutes for administrative districts, municipalities, churches and religious communities as well as a multitude of individual rules for specific population groups or for specific applications (animal husbandry, mining, etc.). Sources of the law were, along with formal legislation (in the form of individual statutes or statutory codes), customary law, the law of rulers, judicial case law, and religious precepts.

With respect to the legal cultures, pre-modern Southeastern Europe can be roughly divided into a Western Roman (Northern) and an Eastern Roman subarea. Pivotal for this division was the split of Christianity (with the "Great Schism" of 1054 and the conquest of Constantinople during the 4th Crusade in 1204 as high points). The denominational schism of Europe was significant for the cultural development as well as for the legal culture in a narrower sense.[16] This was due to the centuries-long interpretative monopoly of the Church and the trans-contextual interpretative authority of the priests, the political theology, and the environment in which the Churches evolved – an environment that shaped the Churches and that was also shaped by them. In particular, this process involved the configuration of spiritual and worldly authority as well as the reference system into which they were both integrated. It involved the "Byzantium Model" on the one hand, and the "Occidental Model" on the other. Over the centuries, the Christian dressed-up image of ancient emperors worshipped as divine, as well as the concept of "symphony" of Church and State in the Eastern Roman Empire, influenced the first model, and the rivalry between worldly and divine authority in the west influenced the second (i.e. the conflicting concepts of *Eusebios of Caesarea* and *Augustine*). The Eastern Roman ideal of secu-

14 *Iorga* 1935.
15 *Sundhaussen* 2011.
16 *Sherrard* 1959.

lar power and Orthodoxy has remained closely meshed since the 4th century without becoming completely absorbed within each other (in this respect, the catchword "Caesaropapism" presents a simplified description). This "symphony" has stood in clear contrast to the two-sword theory of Pope *Gelasius I* in the West ever since the end of the 5th century and with the centuries-long struggle between secular and spiritual power. Contours of two differing legal cultures began to emerge quite early – a Latin one and Greek one – whose forms and/or instrumentalities received significant support from the Churches and religious communities. These legal cultures had momentous repercussions on all areas of public life: on the legitimization of authority, on the separation of powers, the position of individuals and groups within society, on the relationship between authority/state and society, on the development of property law, on the understanding of law and justice, on the evolution of philosophy and science, et cetera.[17] It is no coincidence that the theory of separation of powers or of property law crystallized in the west. And whoever studies the history of corporative states, the city, the Enlightenment and Secularization, the modern formation of institutions, or the history of education in a European-wide (east-west) comparison repeatedly encounters – aside from a few overlaps and seamless transitions – the watershed separating the spheres of influence asserted by the Orthodox and Western Churches (Catholicism and Protestantism). Even if the boundary in a few places (e.g. in Bosnia) has once meandered westward and then again eastward over the course of centuries, the main demarcation has proved to be remarkably constant. Probably the most important distinguishing features between the two jurisdictions were: (1) the differing ideals of dominion and their associated unity or separation of powers, (2) the emphasis on individual rights in the West as opposed to the priority for communitarian approaches in the East, as well as (3) the systematic, abstract character of the Roman law (both substantive and procedural) in contrast to the concrete, case-by-case character of the legal systems of the East and Southeast.

Roman law, which formed the basis of all modern legal systems in the Western world, was first codified in a comprehensive fashion, following early, sporadic attempts, during the reign of Emperor *Justinian I* by a specially appointed commission in Constantinople (528–535). The three parts it contains (Digest/Pandects, Institutes, and Codex) as well as the amendments enacted by *Justinian*'s successors (Novellae) have been united under the designation "Corpus Juris Civilis" (CIC) since the Middle Ages. *Justinian*'s efforts to enforce Roman law throughout the entire empire failed. Both the legislation of the Eastern Roman/Byzantine Emperor and customary law undermined the CIC (written in Latin), which had been gradually forgotten. At the beginning of the 12th century, it was rediscovered by lawyers at the University of Bologna and became the focus of revived legal studies (Glossae). Roman-Justinian civil law became known throughout Latin Europe and appeared as general law in business, legal, and judicial practices: first in the Roman Catholic ecclesiastical law

17 **Benz** 1957.

and then – in the course of a long-lasting process of reception – in the secular law of the Central and Western European states, and finally in their modern legal codifications, above all in the Napoleonic Civil Code (1803–07) and the Austrian Civil Code of 1811. In the Kingdom of Hungary with its neighbouring countries, as well as in the coastal cities and island communities under Venetian rule or influence on the Adriatic Sea, Roman law was partially and gradually implemented already starting with the High Middle Ages. It also found acceptance in the famous legal collection of the Hungarian jurist *István Werböczy,* "Opus tripartitum juris", which was first printed in 1517 and was used by Hungarian courts until the Revolution of 1848 (and hence enjoyed the actual – if not formal – force of the law).

An additional characteristic of the Western legal sphere of influence in Southeastern Europe is the partial formation of constitutional law. The following are examples: the Pacta conventa of 1102, the purported – and historically controversial – treaty between the Hungarian King *Coloman* and Croatian nobility that founded the personal union between the Kingdom of Hungary and Croatia-Slavonia that lasted until 1918; in addition, the Pragmatic Sanction that established the indivisibility and inseparability of all the Habsburg hereditary kingdoms and lands, as well as the rules of succession that were adapted by the Hungarian parliament in 1722 (and that remained in force until 1867); furthermore, the Austro-Hungarian Compromise of 1867 and the Croatian-Hungarian Compromise of 1868 with which the constitutional position of the Cisleithanian and Transleithanian[18] halves of the Habsburg monarchy or the position of the Kingdom of Croatia were anchored within the Transleithanian (Hungarian) part of the empire.

In the Balkan region and the Romanian principalities, the reception of Roman civil law first started in the middle of the 19th century. It is a historical curiosity that Roman law was quickly forgotten in Byzantium, where it was codified, but then was rediscovered later in the West and through a long, complicated process, became the foundation of the entire occidental legal system, and was finally "re-exported" to its Byzantine-influenced region of origin in the 19th/20th centuries. South of the Sava and Danube and east of the Carpathian Arc, Byzantine law, in combination with the respective regional customary law, became accepted after the demise of the CIC (Corpus Iuris Civilis; Code of Civil Law). The medieval Bulgarian states, medieval Serbia, and the Romanian principalities relied almost exclusively on Byzantine law, especially the code (Ecloga) of Emperor *Leo III* of 726 and the "Basilicas" of Emperor *Leo VI* (originating around 888), the most comprehensive compendium after the CIC. As with secular law south of the Sava and Danube, the law of the Autocephalous Orthodox Churches was a creation of the Byzantine epoch. Under Emperor *Justinian,* canonical work reached its first apex. The most important canonist of this

18 The Leitha is a tributary of the Danube (east of Vienna). Cisleithanian designates the Austrian half of the Habsburg monarchy and the Transleithanian the Hungarian half.

period was *John Scholasticus,* who not only (in reliance on *Eusebius,* court theologian of *Constantine the Great*) regulated the relationship between Church and emperor or State in his "symphony model" (a type of *modus vivendi* between both societies), but also the spiritual and moral lives of the clergy, monks, and laity. The Slavic missionaries, *Cyril* and *Methodius,* translated the *John Scholasticus*' Synagoga of Fifty Titles into Old Slavonic and supplemented it with excerpts from the code of *Leo III.* Even the founder of the autocephaly of the Serbian Orthodox Church, *Saint Sava,* drew on Byzantine sources in his Nomocanon at the beginning of the 13th century. With the Ottoman expansion, Islamic law, the shari'ah (for Muslims) and sultanic law (Kanun) found their way into the Balkan region, while Byzantine civil law (in the form of Orthodox ecclesiastical law) and local customary law remained in force for major portions of the non-Muslim population or developed further, independently from Ottoman law. The comprehensive rights of self-government that the sultans granted the heads of the Christian and Jewish religious communities generated a complicated legal landscape in which Ottoman law, Islamic, Christian, and Jewish religious law as well as local customary law existed alongside each other. Customary law – to the extent it had not already been transformed into nationally institutionalized law during the pre-Ottoman period – was passed down only in a fragmentary fashion and – if it was passed down at all – was first reduced to writing much later. The most well known example is the Northern Albanian customary law, the Kanun of Lekë Dukagjini, named after the legendary ruler *Lek (Alexander) Dukagjini* (1410–1481). The material was first collected by the Franciscan priest *Shtjefën Gjeçovi* (1874–1929) at the end of the 19th century and partially published during the following period; the first complete publication appeared in 1933 in Northern Albanian Shkodra. Although almost 700 years passed between the transcription of the Kanun and the compilation of the Sachsenspiegel, both legal collections contain a striking number of similarities. Nevertheless, there are also clear differences. Both codices are an expression of the law of two different societies: the proto-national feudal society of Eastern Saxony, specializing in agriculture, on the one hand, and the pre-state, acephalous, primarily segmentary society practicing transhumance in the Northern Albanian region on the other hand.

Along with the legal systems mentioned above, a plethora of special rights emerged during the Middle Ages and Early Modern Era, such as those for the municipal communes on the Adriatic Sea (the statute of the city-state Ragusa/Dubrovnik of 1272 is cited as representative for many others), for the "free towns" of Hungary (e.g. municipal code of the city of Buda from the first half of the 15th century), for the Hungarian noble counties or for certain population groups. To the legally privileged groups in the Kingdom of Hungary belonged, among others, the three "Nationes" (Maygars, Székelys, Germans) that were granted autonomy; in addition, there were armed frontiersmen who settled on the Habsburg military border and who were usually Orthodox (e.g. those to which the Vlach Statute of Emperor *Ferdinand II* of 1630 granted autonomy). Even the Serbs who fled to Southern Hungary (today:

Vojvodina) in 1690 under the leadership of their Patriarch of Kosovo received autonomy with the decree of *Leopold I* of 1690 as did the colonists recruited to settle deserted estates toward the end of the 17th century (e.g. Settlement Patent of *Joseph II* of 1792) and many others. The efforts of absolutist-enlightened monarchs to reduce the confusing multiplicity of special rights bore only limited fruit. Only with modern state and nation building and its associated abolishment of privileges and special rights, national spheres of legal influence gradually emerged.

In the Balkan states and the Romanian principalities, the unification and "Europeanization" of law developed in the course of the 19th century and has lasted to the present. The transformation of the legal system was comprised of three sub-processes: 1. the gradual development of modern constitutional law, 2. the reception of Roman civil and criminal law, and 3. the systemization of the judiciary and procedural systems. In all three cases, they involved a legal transfer from West to East, the adaption of the new constitutional law (in reliance on French, Belgian, Italian, etc. paradigms) and the unfamiliar Roman civil and criminal law and its association with domestic legal traditions.[19] Overall, this process met with major resistance, both in large sectors of the population and in representatives of a historic (Romantic) legal doctrine, who – similar to the followers of the German jurist *Carl von Savigny* (1779–1861) – rejected the Roman legal system as "alien" and "artificial". The Croatian *Utješenović* wrote, following a critical illumination of the family law provisions of the Serbian civil code: "It is very advisable, that in Serbia, with respect to the rural community [the traditional South Slav extended family], one should also return to simple customary folk law and strike the learned §§ that are in opposition to the latter … 'Civilization' is making giant strides towards the east in destroying domestic law and outfitting the fezzed and turbaned Balkans [pun on the Turkish headdresses fez and turban] with a modern judicial top hat reaching to the heavens."[20] And when the Serbian princ *Alexander Karadjordjević* first recommended a systemization of the numerous detailed criminal laws and regulations to the State Council in 1855, the high council refused the request with these words: "Our people are still living in a patriarchal condition … A good person doesn't need laws. The law is a product of the compulsion to obstruct evil and is written for those who are evil … Our people's outlooks are so good and healthy like perhaps no other in Europe. So they don't need any cure …, rather, one should protect oneself against too many laws, from

[19] A case on point is the civil code of the principality of Serbia that was enacted on 25 March 1844. It was written by the Serbian *Jovan Hadžić* from Southern Hungary (Vojvodina) and is essentially a very short translation of the Austrian Civil Code of 1811. *Hadžić* had to make amendments in family and inheritance law to accommodate Serbian customary law, but in this endeavour, the systematic character of the code was damaged. The author was probably aware of the problem, but without such concessions the code probably would have not been enacted.

[20] ***Utješenović* 1859, 50 et seq.**

which a multitude of crimes can be learned."[21] This argument juxtaposed so clearly the fact that the State Council, a short time later, instigated on its own initiative the enactment of a criminal code that became effective on 29 March 1860 and whose provisions soon had to be toughened as a consequence of increasing crime. But for a long time, Serbia – like other parts of the Balkan region – was caught in a gaping abyss between written law and legal practice (in both the pre-socialist and socialist periods) and one could hardly describe it as a state founded on the rule of law. The popular trust in laws and jurisprudence was correspondingly so minimal that many resorted to the protection of patronage networks through which the already fragile legal system once again eroded. Only gradually has the notion that Roman law is the common foundation of all European law and hence a common European legacy begun to assert itself – accelerated by the collapse of the socialist regime in 1989 and the southeastern expansion of the European Union and its associated "transitional justice".

4. The Balkans as a Migration Region

Another striking characteristic of the Balkan region is the instability of settlement ratios and their resulting ethnic conglomerations within a small region: as the Balkans function as a bridge between Asia Minor and Central Europe, and due to the open borders in the peripheries (from the South Russian steppes and Anatolia in the southwestern or western directions), the Balkan Peninsula had been subject to major population movements ever since the end of the antiquity – and beyond the Migration period from about 376 to 800 AD. Those movements were amplified by successive waves of imperial state-building. Before and after the great migration of the Slavs, nomadic horsemen repeatedly infiltrated the region. Due to wars and coerced resettlements, like those that were systematically practiced in the Byzantine and Ottoman periods, and further due to socially, politically, or religiously caused migrations and the widely prevalent migratory animal husbandry that continued into modern times, the ethnic structures of major portions of the region found themselves in permanent fluctuation. The history of the Balkan Peninsula is, to a large extent, a history of migration.[22] This is especially the case when, by "migration" one understands not only movements within space, but also movement over cultural borders (e.g. in the form of religious or linguistic change). The Balkans are a region of displacement *par excellence,* in which groups and individuals have continually broken through the respectively existing national, ethnic, religious, lingual, and cultural boundaries. The perspective that has been focused on nation and nation-state in written history and in public memory ever since the 19th century eclipses the significance of migration movements and treats them only under the notions of "win"

[21] ***Janković* 1960, 110.**

[22] ***Sundhaussen* 2006/07.**

or "loss" for the respective nation. This is ahistorical, especially for the Early Modern Era, because there were not yet any modern nations. The latter are (like almost everywhere) relatively young constructs of the 19th and 20th centuries. In contrast, the ethnic groups from which the modern nations arose are considered timeless. The characteristics most frequently included in their definition (common ancestry, common language, or common religion) prove in many cases, however, to be assumptions or fictions. Collective ancestry over centuries cannot be empirically proven with modern methodology. Language and religion are even less suited to substantiate the continuity of an ethnic group than is purported common ancestry. For one can change his or her religion and tongue. Namely, in those sections of the Balkan region that have, ever since the Middle Ages, stood in the crossfire between the Western and Eastern Churches and have been doctrinally ambivalent (e.g. in Bosnia and in the Albanian settlement region), conversion was very widespread: from Catholicism or from Orthodoxy to Islam. The Christian Balkan nations consider these converts and their descendents "renegades", "apostates", and "traitors": the individual had no right to abandon the societal place assigned to him by birth. Even a change of tongues or bilingualism appears to have been quite prevalent in some places in the Balkan region. From this situation emerged the "theory of the lost language" that was especially used by Greek nationalists to engross population groups that spoke no Greek as ethnic Greeks. In other words, neither faith nor tongue constitutes a sufficient indicator for establishing the existence of an ethnic group over a longer period. Of course people have spoken a language for time immemorial and have believed in something. But those who were Catholic a thousand years ago and who spoke a Shtokavian dialect are not necessarily the (biological) forefathers of those who today are Catholic and speak Shtokavian. It becomes especially problematic if the forefathers were migrants. For in the wake of migration, new experiences, new practices, and new hybridizations accrue that can contribute to a sense of identity, even if the migratory group has maintained its "original" language and religion.

Insofar as we can agree on specific traits constituting the existence of an ethnic group, there have always been ethnic groups, but they have continuously reconstituted themselves in the course of migrations: several members depart because they have changed religion and/or languages, and others join as new members. That does not mean that there was no biological continuity (e.g. at the family level), but collective continuity of an entire group is extremely doubtful. And – as already stated – it cannot be proved anyway. The conglomeration created by spatial and cultural migrations in a single area that is even smaller than France proved to be a hornet's nest of the first degree in light of modern state and nation building. Until that point, ethnicity (in contrast to religion) only played a subservient role, if any at all, in the formation of states. But now – in reliance on modern rights of self-determination of peoples – it has become a constitutive and "legitimizing" characteristic of new states. The consequences were more waves of coerced migration (population exchange) and ethnic cleansings.

The Ottoman-Islamic legacy is, along with the Byzantine-Orthodox legacy, one of the attributes of the Balkan region. The scepter of the Crescent ruled nearly half a millennium over the Balkan Peninsula, strongly shaping and changing the region. It was accompanied by the elimination of the medieval Balkan nobility, the settlement of new ethnic groups, the expansion of the Ottoman urban character, and the Islamization of a part of the native Balkan population (which was especially intensive in Bosnia and Herzegovina, Kosovo, Albania, and sections of Bulgaria). It underscored the significance of religious communities (division of society into Muslims and "infidels", internal autonomy of the tolerated "religions of the book", namely Christians and Jews, the strong position of the Greek Orthodox Patriarchate of Constantinople) and favored the conservation of inherited social forms on the local level (below the Ottoman administrative apparatus, especially intensive in the relatively inaccessible mountain regions of Montenegro and Northern Albania). Finally, it fortified the complicated ethnic and confessional conglomerations that already existed in some parts of the Balkans.

With the reception/adaptation of the Western and Central European models of nation and state, a more complicated, continually changing process of "Europeanization" finally began in the course of the 19th century.[23] The ethnicization of the national understanding (ethnic nation instead of political nation), the nationalization of religious affiliation, the relationship between the modern construct of nation and pre-Ottoman imperial concepts and the mixing of rights of self-determination and historical "rights" in nation building triggered, in light of the ethnic conglomerations, a highly explosive situation by the end of the 19th century.[24] The problems inherent in the assumption and adaptation of Western institutions and the reception of Roman law rent open societal fault lines everywhere and sparked heated conflicts between "Westerners" and advocates of indigenous models of development. The socialistic transformation of the northern part of the Balkan Peninsula following WWII once again delayed the process of democratization and pluralization.

5. The Balkans as a Region of Violence?

Is a propensity for violence an additional and especially salient characteristic of the Balkan Peninsula? Since the beginning of the 1990s, the term "Balkan Wars" has been on everyone's lips and has appeared in the titles of countless publications. What was meant were not the Balkan Wars of 1912/13 (even if the authors frequently refer to them), but rather the post-Yugoslavian wars between 1991 and 1999. That these "Balkan Wars" were occasionally designated as "new" or as "the third Balkan War" was misleading, because – in contrast to the beginning of the 20th century –

23 Cf. the overall views of *Jelavich & Jelavich* 1977 and *Siljak* 2002, among others.

24 Brief and concise: *Mazower* 2002, 187 et seq.

only a small portion of the Balkan region was involved and one of the main participants (Croatia) is located outside of the Balkans. Geographic ignorance might have played a role. Historical ignorance added to the problem; above all, the universal tendency to "explain" events that appear incomprehensible or shocking by means of stereotyping and reducing complexity. In the case of the post-Yugoslavian Wars, the rediscovery of pejorative Balkan stereotypes seemed to be obvious. *Maria Todorova* has portrayed this vividly.[25] Many authors both within and outside of the region were persuaded during the 1990s that "history repeats itself", that conflicts "continue", and that they repeat themselves or continue especially often in the Balkan region. They were not only thinking of the Balkan Wars of 1912/13, of the mutual enmity of the Balkan states in both world wars, or of the ethnic civil wars in the context of WWII, but rather of the numerous crises and wars in the 19th and 20th centuries.

With the progression of nation and state building in the post-Ottoman Balkan region, conflicts and wars had accumulated. In the 126 years from the beginning of the "Eastern Crisis" of 1875 to the Kosovo war 1999, the Balkan region was entangled, in whole or in part, in twelve wars (either as a theater of war or in that at least one Balkan state was a leading party in the war). Following the Serbo-Turkish War of 1876 came the Russo-Turkish War of 1877/78, the Greco-Turkish War of 1897, the first Balkan War of 1912, the second Balkan War of 1913, WWI in 1914–1918, the Greco-Turkish War of 1920–1922, WWII during 1939/1941–1945, and the three post-Yugoslavian wars of 1991–1999 (the Serbo-Croatian, the Bosnian, and the Kosovo wars). Along with the regular military, paramilitary units played a significant role in almost all the wars.[26] These paramilitary units were associated with the tradition of those "outlaws" that were called "Hajduks" and "Klephts" during the Ottoman period. In the Balkan narratives, they are honored as "heroes", "warriors against feudal injustice", or "champions of national liberation". The Ottoman sources denote them simply as "robbers".[27] Beyond dispute is that the "banditry" was a mass phenomenon starting in the 17th century. How can that be explained? First, it must be assumed that every society develops specific forms of protest. What is meant here are not individual violations of the law, but rather violations of a mass character. If "robbers" (to remain with the terminology used in the Ottoman sources) become an epidemic phenomenon, it is an unmistakable sign that there is an enormous potential for insecurity and dissatisfaction in the relevant society. How this potential for dissatisfaction articulates itself depends on the specific circumstances and the type of society. Segmentary societies generate other forms of protest than do complex societies. The minuteness of segmentary groups, their low levels of organization, and their penchant for isolating themselves from neighbouring groups define the form a protest takes against the outer world or against others or strangers. It is

25 *Todorova* 1997.

26 *Gerolymatos* 2002; *Sundhaussen* 2012a.

27 *Adanir*1982.

important to indicate that the dissatisfaction is directed toward outsiders, for problems within the segmentary society are solved according to the rules of its tradition or customary law. Possible reasons for dissatisfaction and conflicts of segmentary societies with their outer world primarily result from three sources: 1. from socio-economic upheavals, 2. from violations of what members of the society perceive of as justice, and 3. from encroachments in the mechanisms of self-regulation in the segmentary society. The subtle deterioration of the "pax Ottomanica", the erosion of classical Ottoman institutions, and the obliteration of the boundaries between justice and injustice created a situation that definitely provoked protest. Every society, postulated the Belgian statistician *Adolphe Quetelet* in the 19th century, carries within itself the seeds of wrongdoing that will be committed against itself. Every social condition presupposes a certain amount of crime that follows as a more or less inevitable consequence of its organization. Hajduks and Klephts were representatives of a provincial, wild social rebellion[28] that was triggered by the internal decomposition phenomena and social fermentation in the Ottoman Empire – a protest that quickly developed its own dynamic and increasingly captivated even ordinary criminals. What was special about the Ottoman Empire was the long-lasting decline of public legal practice and institutions, the gradual perversion of the social order upon which the empire was built, the increase of injustice, despotism, and corruption. Hajduks and Klephts were the idealistic reaction to these grievances. And the longer these grievances continued, the more often deviations from the ideal type of social rebellion occurred. Marauding soldiers or police squads as well as outlaws bent on vendetta, "ordinary" ambushers, or "classical" social bandits could disguise themselves under the labels "Hajduks" or "Klephts". The spectrum ranged from "noble" avengers of the oppressed, to robbers and sadistic criminals. Over the course of the 19th century, the fighter for national liberation (whatever that was supposed to mean) replaced the social rebel, but the sadistic criminals remained the same; their number increased rather than decreased. The post-Yugoslavian wars of the 1990s were not only ethnic/national wars (although they were that, too), but additionally social vendettas and pillaging. The black market and criminal networks knew no national or religious boundaries. All of that appears to indicate continuity. But it concerns continuity less than it does ubiquity. Even in other parts of the world, where no Hajduks and Klephts, and their like are glorified, one can find very similar scenarios. If one wants to speak of a continuity in this regard, then the continuity consists of the fact that the Balkan states and their neighbours have not come to terms with their own history and that "values" were established that were never questioned.

For the development of mass violence – in the Ottoman Empire of the 16th to 19th century as well as at present, in the Balkans, and elsewhere – it is primarily six factors that are decisive: 1. crises and societal disorientation, 2. the search for and labeling of guilty parties/scapegoats, 3. ostracism of the "guilty parties" and their

28 As described by *Hobsbawm* 2007.

dehumanization, 4. staging of violence by groups that are initially small, 5. repeal of the previous body of rules and regulations, and 6. escalation of violence and its momentum.[29] A disposition to violence that is specific to the "Balkans" cannot be empirically demonstrated any more than "atavistic" hate between the population groups. *Robert Kaplan*'s "Balkan Ghosts"[30] has proved to be a mirage. Where and whenever rules and norms that people have negotiated for containing violence and for self-protection are eroded in reliance on hero or victim mythology or threat scenarios, or are replaced by rules that "justified" the use of violence for achieving certain goals, or where political and military authorities are not willing or in the position to enforce existing rules and to punish violations, the "appetite for evil" could be acted out; that can happen anywhere in the world and at any time. The differences are that in some societies, the rules for stemming violence and the control mechanisms for compliance to those rules are more deeply anchored than in other societies. In Germany, up until the end of WWII, they were instable, like in the young Balkan states or in former Yugoslavia at the end of the 20th century.

In a foreword to a report published in 1914 by the Carnegie Endowment about the causes and course of the preceding Balkan Wars, the following was written about those guilty of or responsible for violent crimes:

> "The real culprits in this long list of executions, assassinations, drownings, burnings, massacres and atrocities furnished by our report, are not, we repeat, the Balkan peoples …The true culprits are those who mislead public opinion and take advantage of the people's ignorance to raise disquieting rumors and sound the alarm bell, inciting their country and consequently other countries into enmity. The real culprits are those who by interest or inclination, declaring constantly that war is inevitable, end by making it so, asserting that they are powerless to prevent it. The real culprits are those who sacrifice the general interest to their own personal interest which they so little understand, and who hold up to their country a sterile policy of conflict and reprisals. In reality there is no salvation, no way out either for small states or for great countries except by union and conciliation" (Carnegie Report 1914/1993). Written on the eve of WWI.

29 For details, cf. *Sundhaussen* 2012b, 391 et seq.

30 *Kaplan* 1993. *Kaplan*'s theory of "atavistic hate" between the population groups of former Yugoslavia and the Balkan region influenced many Western politicians at the beginning of the post-Yugoslavian wars.

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Mapping the Criminological Landscape of the Balkans

Anna-Maria Getoš Kalac

1. Introduction

The aim of this contribution is to provide for a general introduction into the whole volume by discussing its background, evolution, structure, basic concepts and methodological approach. Accordingly, some of the key findings of the volume's individual contributions will be presented and discussed in their overall Balkan-relevant context. This should set the stage for properly handling the more detailed descriptions and analyses throughout the volume's contributions, which each, in their own way, vividly present the Balkans' criminological landscape.

In its introductory section, this contribution will be *Marking the Territory* by elaborating on the Balkans as a criminological region *sui generis*. This shall include defining the Balkans and its criminologically relevant particularities, as well as emphasizing the need to focus European criminological research on the Balkans and its present research potential (see the volume's *Chapter I*). In this context, the regional key players of a *Balkan Criminology* – the *Max Planck Partner Group for Balkan Criminology* (MPPG) and the *Balkan Criminology Network* (BCNet) – will be introduced.

The contribution's second section will deal with the volume's centre piece – the *Mapping of the Criminological Landscape of the Balkans* – which aims to present a Survey on *Criminology and Crime* across the Balkans and most of the areas relevant neighbouring countries (see the volume's *Chapter II*). The volume's country-section offers a detailed and in depth analysis of the situation in question in a total of 14 countries. Before discussing some of its key findings, basic conceptual and methodological considerations will have to be briefly touched upon in order to demonstrate the value and challenges, but also possible shortcomings of the country analysis. The *mapping* is then divided into two subcategories: the *criminological mapping* that focuses on the current state of art in criminological education and research in all the analysed countries, and the *crime mapping* that captures the general crime picture, but also particular crime and criminal justice problems in each country. Here the contribution will provide for an overall snapshot of the regional situation regarding