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INTRODUCTION
This report on the work of the Institute in the years 2018–2020 is in many ways different to the previous one. Since 1 January 2021, the Institute has a new name – the Max Planck Institute for European Legal History has become the Max Planck Institute for Legal History and Legal Theory. The reason for the name change is the welcome expansion of the Institute: the two existing Departments, led by Stefan Vogenauer and Thomas Duve, were joined on 1 September 2020 by a third Department, led by Marietta Auer. Marietta Auer’s plans outlined in this report show how promising the establishment of the Department is not only for legal theory but also for legal historical work. That we took this opportunity to remove ‘European’ reflects the fact that we are now active on all continents, and that we increasingly endeavour to place the legal history of Europe in its global context. Thus, European legal history continues to be an important part of our research, but we practice it differently than at the time the Institute was founded – and we understand Europe as a global region that is developing through intensive exchange with others.

A glance at the report will also show that not only the Institute but also the three Departments have been given names: Multidisciplinary Theory of Law (Marietta Auer), Historical Regimes of Normativity (Thomas Duve) and European and Comparative Legal History (Stefan Vogenauer). These designations are also programmatic. In addition, the number of independent Research Groups has also grown: next to the two existing Max Planck Research Groups – Governance of the Universal Church after the Council of Trent (Benedetta Albani) and Translations and Transitions (Lena Foljanty) – on 1 April 2021 a third Max Planck Research Group has been added: Legal Connectivities and Colonial Cultures in Africa (Inge Van Hulle).
Due to these changes in the year 2020, we have also renewed our research profile. With the Forum we have established a new level of scientific communication and cooperation at the Institute. In the monthly Plenum we report on research findings from the Departments and Research Groups to one another. In the Colloquium, also held monthly, all researchers meet to discuss methodological-theoretical questions and problems that are relevant to us all. In 2020, the topics were ‘Methods for Legal History’ and ‘Archives’. Interdepartmental working groups and seminars help to ensure that we continue to see ourselves as an Institute, despite the increasing number – soon to be 200 – of staff members.

In the last three years, our ways of working have also changed drastically. The pandemic, which characterised 2020–2021 globally, has been a challenge for us all. For many, this time brought great limitations. Over many months, access to archives and libraries was not possible. Many of our employees, who come from all continents, could not visit their families. Conferences were cancelled and research stays postponed. Here in Frankfurt, our Visitors’ Programme could only be maintained to a very limited extent.

In the day-to-day life of the Institute, we have learned to use new forms of communication. We are sure that much of that will remain. We have made intensive use of the opportunity to meet with the world's leading experts in our field for discussions – in an uncomplicated and resource-efficient way – through video conferences. It has also become even clearer how important electronic access to sources and literature is. This is not only a confirmation of our long practice of electronic Open Access publication. We have also seen that our projects digitising private law scholarship and legal journals as well as our extensive digital editions of foundational works of legal history have become everyday working tools for many colleagues around the world. This research infrastructure requires resources, and we are very pleased that we can now make many of these digital sources available through a modernised platform Digital Libraries Connected (DLC) developed together with other Max Planck Institutes.
But despite many innovations, we have also stuck with the tried and tested. The two legal historical Departments have, as is clear from the report, continued to develop their larger projects and Research Fields. Our researchers have published in journals and collected volumes, and produced monographs in various languages. In 2018 and 2019 we hosted our Summer Academy and were again able to welcome a large number of international visitors as scholarship holders. Overall, we have continued to work on implementing the Max Planck Society's mission in the scientific sector for the field of our small discipline: just as the Max Planck Institutes are intended to be complementary to university structures, we have endeavoured to use our resources for the further internationalisation of the discipline, for long-term expansive innovative research, for methodological innovation, not least in the field of Digital Humanities, and for interdisciplinary cooperation. Furthermore, our Institute is the permanent seat of Max Planck Law, which is led by Stefan Vogenauer; and this too, despite the pandemic, has resulted in dynamic processes of cooperation within the Max Planck Society. For doctoral students in particular, this cooperation offers important new qualification opportunities and the possibility to exchange ideas with colleagues from other Institutes.

An important dimension of our work in these years was the publication of our journal Rechtsgeschichte – Legal History and the supervision of our various publication series. In the journal, we published a wide variety of international research as well as works on legal history in the German-speaking world during the reporting period. The themes of the issues were as wide-ranging as our research activities: in Rg 26 (2018) and Rg 27 (2019), alongside the articles published in the Research section, we had special Focus sections on empires, convivencias in the Iberian worlds, the School of Salamanca, Tridentine marriage, translations of the Weimar constitution in a global perspective, as well as on the Oxford Handbook of Legal History and the Oxford Handbook of European Legal History. In issue 28 (2020), we were able to publish the results of a research project by colleagues from Switzerland on financial markets, speculation and regulation, in addition to essays from the context of our own research on pragmatic literature. A section with contributions on the work of our former External Scientific Member Knut Wolfgang Nörr, who died in 2018, gave us the opportunity to commemorate him.

Moreover, despite difficult circumstances, the established cooperation with Klostermann Verlag enabled us to publish 17 books in our series Studien zur europäischen Rechtsgeschichte as well as three volumes of the series Studien zu Policey, Kriminalitätsgeschichte und Konfliktregulierung during the reporting period. In addition, the Global Perspectives on Legal History series, published both online in Open Access and as printed books, has grown by six volumes, and the first volume of a new publication series Max Planck Studies in Global Legal History of the Iberian Worlds, also Open Access, was published. The Institute’s Research Paper Series at SSRN has amassed 68 new titles in these years.

As the consistent internationalisation of our work means that now a large proportion of our staff are not from Germany, and we maintain many international collaborations and have become a point of contact for legal historians around the world, we are pleased that we can also bring our work into new forms of cooperation with our colleagues in Germany. We do this, for example, in cooperation with the Goethe Universität in the framework of our contribution to the LOEWE Focus Architectures of Order, which began in 2020, and in the long-term School of Salamanca project, funded by the Akademien der Wissenschaften, which was positively evaluated in 2020. Members of the Institute were involved in the Collaborative Research Centre (DFG Sonderforschungsbereich 1095) Discourses of Weakness and Resource Regimes at Goethe Universität, which was funded
until 2019. We have maintained a Research Group at the Bonn Cluster of Excellence Beyond Slavery and Freedom since 2018. In 2020, a Max Planck Fellow Group The History of Labour Law in the European Union began its work; and we are engaged with various partners in labour law history, including in a third-party funded research project on special legal orders in the German metal industry, which began in 2019. Smaller projects contribute to these efforts to integrate our work into the German research landscape, such as the publication of a book entitled Rechtswissenschaft in der Berliner Republik (2018), which has since also been published in Chinese, our regular Rechtshistorische Abendgespräche, held in cooperation with the Institute for Legal History at Goethe Universität, and our engagement at the Deutsche Rechtshistorikertag. The fact that during the reporting period researchers who worked at the Institute during their post-doc phase were able to take up professorships at universities in Chile, Mexico, the USA, Ireland, Austria and China strengthened our integration into the international scientific landscape, as did research collaborations with institutions abroad. This is also evident in the participation of researchers in the RISE project Resistance within the framework of the EU Marie Skłodowska-Curie Actions.

We were also able to rely on excellent working conditions during the reporting period because we are fortunate to have outstanding support from the Editorial Department, the Administration, the Library, the IT Department and from our Research Coordinator. The pandemic and the expansion of the Institute by a third Department have presented these areas with special challenges. This can only be reflected to a limited extent in this Activity Report.

This report is thus the last to provide information on the work of the Max Planck Institute for European Legal History, even though it already appears under our new name and gives a brief overview of the work of Marietta Auer. It is also the last in which we can report on the work of Michael Stolleis. Michael Stolleis was not only our long-term Director, but also after his retirement a wise observer and helpful companion for all of us. We remember him in a short obituary in this Activity Report.

Frankfurt, May 2021

Thomas Duve, Managing Director of the Institute, 2019–2021
INTRODUCTION

MICHAEL STOLLEIS
(1941–2021)

There are few images that have shaped our idea of the early modern state as much as the frontispiece of Thomas Hobbes’ *Leviathan*, published in 1651. Above the head of the majestic colossus is written ‘There is no power on earth to be compared to him’.

Those who were born in 1941 in Germany and studied law in the 1960s had every reason to question the power of the state: after the injustices committed by the state – also through the use of the law – after the failure of the elites, after the role of the ‘terrible jurists’ in National Socialism. However, the 1968 movement and Brandt’s ‘Dare more democracy’ (*Mehr Demokratie wagen*) in turn gave many hope that a different state could be possible: a constitutional and welfare state that would not become a means of oppression, but rather one that could ensure justice and offer life opportunities for all.

For Michael Stolleis, the confrontation with German history already began at a young age. His birthday on 20 July, and his own family history, appear from a later perspective as a mandate to engage with the unfathomable. As a seventeen year old, his visit to the theatre at Schiffbauer-damm to see Brecht’s ‘The Resistable Rise of Arturo Ui’ was formative. While studying law, first in Heidelberg, then in Würzburg, he bought, like so many others at the university entrance, the ‘Brown Book’ from the GDR, which published material on jurists from the Federal Republic and their involvement in National Socialism. He attended the first lecture series on National Socialism and sought out an untainted doctoral supervisor.

He found more than such a person in the Munich legal historian Sten Gagnér. His dissertation on the late enlightenment philosopher Christian Garve was not least about the *Staatsräson* (‘reason of the state’), ie the boundary between the validity of the law and the violation of law, about the state of emergency as an instrument of law, about law in situations of injustice – one of the great problems of legal history that accompanied Michael Stolleis throughout his life. His habilitation thesis on formulas for the common good (*Gemeinwohlformeln*) in national socialist law directly addressed this lifelong topic. The study of National Socialism appeared to him, as he put it in a speech on the occasion of being awarded the Balzan Prize in 2000, to be both scientifically interesting and a requirement of political morality: from his student days, he asked himself why does a brutal and martial dictatorship – one that from the very beginning beat up, imprisoned and killed its political opponents – continue to use legal form? Why is it, following Brecht, that the times of extreme oppression are also generally the times when there is so much talk of great and lofty things? The method of carefully reconstructing the use of language that Michael Stolleis employed to examine the formulas for the common good owed much to his encounter with the Wittgensteinian critique of language in Sten Gagnér’s seminar. It became a creed for him, as it did for many other students of the now largely forgotten Gagnér. Language also includes images, as Michael Stolleis demonstrated in his well-known study on the metaphor and image of *The Eye of the Law* (*Das Auge des Gesetzes*).
To submit a habilitation like this on National Socialism in 1973 at the Munich law faculty – ie that of Karl Larenz and Theodor Maunz – was not without risk to his further academic career, even if pioneering studies such as that of Bernd Rüthers had paved the way for an examination of the role of law in National Socialism. The Savigny journal, the flagship of the discipline, limited itself to a short announcement of his thesis, perhaps also because the field of ‘contemporary legal history’ did not even exist yet, it was Michael Stolleis himself who later gave the decisive impulse for its establishment in the canon of university subjects. In addition, the combination of public law with legal history and canon law was no guarantee for his career prospects. However, in Frankfurt, where he was appointed professor in 1974, a liberal spirit prevailed. The university was growing, the basic legal subjects were strong and original minds were sought. Social law and Protestant church law, which he had engaged with as assistant to Axel Freiherr von Campenhausen, became his main focus areas in public law.

In legal history, Michael Stolleis turned back to the early modern period, to the time of the growth of the Leviathan. This resulted in studies on political philosophers of the 17th and 18th centuries, on the political theory of the 17th century and on the state and the ‘reason of the state’ in the early modern period. Above all, however, his plan for a history of the science of public law was maturing. The first volume was published in 1988; three others followed. Initially conceived as a single-volume counterpart to Franz Wieacker’s history of private law – this highly influential book that was based on a strong philosophical conviction about the nature of law – the history of public law became much more: an erudite overall account of *ius publicum* between 1600 and 1990 emerged such as had never existed before, not in Germany, not in Italy, not even in France, to which he felt particularly attached. Guided by the firm resolution to avoid writing a highbrow history of great minds or narratives of progress, and oriented towards guides such as Johann Stefan Pütter’s *Litteratur des Teutschen Staatsrechts* (1776–1783) and Robert von Mohl’s *Geschichte und Literatur der Staatswissenschaften* (1855–1858), it explores, down to the smallest details, the institutional contexts of knowledge production, the histories of the fields of law and politics, literary histories, constitutional history and the history of ideas over four centuries. For legal history, traditionally concentrated on private law, this work opened a new world.

In parallel, he produced countless reviews on the legal history of the modern period, collected works on German lawyers of Jewish origin, works on the history of legal history, and studies on social law and its history. In a large-scale research project at the Max Planck Institute for European Legal History, the institution where Michael Stolleis became director in 1991 and which he decisively shaped for two decades, a repository of early modern so-called police ordinances (*Policeyordnungen*) grew through a patient collection of sources. The research on early modern police ordinances that built on this uncovered a dimension of authoritarian and state control of behaviour that until then had been practically unknown to legal history. At the same time, it led the subject into a new dialogue with the historical sciences, in particular in relation to secularisation, confessionalisation, social discipline and norm implementation. The fact that Michael Stolleis clearly defined legal history as a historical subject, argued with an awareness of method and presented with a brilliant rhetoric, made him a sought-after dialogue partner in legal and historical scholarship. Over the decades, an overall picture emerged which he increasingly embedded in a European context. Against the background of his history of public law, he claimed that the shared
European ideal not only involved the search for the binding of state power to the law, the protection of zones of privacy and autonomy, and legal protection through judicial decisions, but also the responsibility of the authorities for a just social order.

It was also this insight into the rule of law and the welfare state as cultural achievements in European history that motivated Michael Stolleis to turn with particular enthusiasm to the legal history of the GDR and Eastern Europe after the fall of the Berlin Wall, and the Max Planck Institute gave him the institutional framework to do so. For this purpose, he used the funds from the Gottfried Wilhelm Leibniz Prize awarded in 1991, and in the 2000s he completed a larger project on the legal history of South Eastern Europe in cooperation with the Cluster of Excellence The Formation of Normative Orders. Support for young researchers from these regions was a particular concern of his, just as he spent a great deal of time and had a great personal commitment to developing and training the young European legal history research community. The Institute and the cooperation with the legal historians at the Goethe Universität Frankfurt gave him the possibility to do just this, and he never regretted having decided for legal history and against the directorship also offered to him at the Max Planck Institute for Foreign and International Social Law in Munich. There has been no lack of prizes and honours: a few years ago he was inducted into the order Pour le Mérite for Sciences and Arts and more recently was appointed to its Office of Vice Chancellor, along with receiving numerous academic memberships and honorary doctorates. He was always pleased to receive these, and could certainly state this with a quiet self-irony.

Above all, however, Michael Stolleis saw himself as an observer and narrator of the history of law, this history of the great attempt to lay the foundations for peaceful and just coexistence – which is, at the same time, also a history of the constant threat to civilisational achievements and the fragility of human existence. As a historian and thus one who works with language (Spracharbeiter), as he saw himself, the virtues of craftsmanship were important to him, as he had learned them in his apprenticeship as a vintner in his native Palatinate region. He valued integrity more than extravagance; he did not need to strive for elegance. He considered self-discipline, attention to detail, reliability and fairness to be the essential prerequisites for scientific work, and if they were lacking, he could be quite blunt. He viewed the emphasis on collaborative research structures and the associated rhetoric of relevance with increasing scepticism; for him it was a mark of the highest esteem to call someone erudite. His generosity with his time and his knowledge, kindness and understanding became exemplary for many of his companions and students.

As someone who would have preferred to study literature and art, in recent years he was increasingly drawn to storytelling. Playing with form and genre was also a piece of freedom he enjoyed after decades of disciplined research. The Akademie für Sprache und Dichtung (Academy for Language and Poetry) was particularly dear to his heart, and in the book Margarethe und der Mönch he told legal history in stories. The last volume, which he completed just a few weeks ago, is entitled recht erzählen (telling the story right and, at the same time, narrating law). It contains tales from Frankfurt and his native region, reflecting the growth of the Leviathan, whose power and greatness had been a lifelong preoccupation of his.

Thomas Duve
SPOTLIGHTS
AUTONOMY
AND THE DIGITAL PERSON

Marietta Auer

Recently, a book appeared in France and immediately received a full-page review in a major German newspaper: *La fin de l’individu. Voyage d’un philosophe au pays de l’intelligence artificielle* by the French philosopher Gaspard Koenig. The title says it all: a philosopher’s voyage into the land of artificial intelligence merits the conclusion that the digital society is the end of the individual person as we know it. However, does one have to accept this conclusion? Is digitalisation indeed the end of the autonomous person and of free will? This question, recently discussed not only by a prominent French philosopher but also by many other voices from philosophy, sociology, cultural theory and computer science, is obviously important for many legal issues as well. It raises the question of how legal debates can make use of the vast treasure of knowledge generated by the whole array of sciences and humanities. This is where legal theory comes into play.

**Law as a social system**

The first step towards an answer on how to fuse legal and social knowledge into legal theory is to understand the law as a subsystem of modern society. Any major social change such as digitalisation is highly likely also to affect the law, in particular, its conceptual structure. How can legal theory conceptualise such a shift? One useful way is to look at key concepts of modern law such as autonomy, and related concepts such as the individual, the person and freedom of will. All of these share the property of being not only legal but also social concepts with a strong philosophical foundation that bears the normative basis of modern society. Internal shifts of meaning of these and other core concepts of modern law thus provide a litmus test for similar changes within the normative basis of modern society.

In order to understand such changes and to formulate an adequate legal theory of the digital society, however, it is important to look not only at the outward surface of a concept like autonomy but also at the more subtle change of its internal meaning against a rapidly changing social background. ‘Autonomy’ has been a legally relevant concept for at least the past two centuries. Thus, in order to ask a theoretically meaningful question about the impact of the digital society on legal autonomy, it does not lead very far to ask whether the law still recognises individual autonomy in the digital age and to answer that question with a simple ‘yes’ or ‘no’, as Koenig seems to suggest. In fact, the answer to that question seems to be a clear ‘yes’ without teaching us anything about the specific form that autonomy takes on under the changing social parameters of the digital society. Instead, it seems more useful to ask questions like what autonomy specifically means under the changed social circumstances of the digital society, whether these changes cause new disruptions in the philosophically loaded normative meaning of autonomy as a legal concept, and what all of this might teach us about our self-definition as autonomous agents within the digitised modern society.
The modern person: individual or dividual?

What does it mean to be an autonomous person? While this question is a legal issue, it is also a fundamental problem of philosophy. More precisely, the legal import of the question depends on the philosophical background of the concepts of autonomy and the person. Thus, a sufficient understanding of the latter concepts is essential for coping with the former question of law. In Western thought, the specifically modern understanding of the person emerged in the 17th and 18th centuries with the rise of enlightenment thinking. One of the earliest thinkers to explore the idea of the moral person as the bearer of natural rights was Samuel Pufendorf. Writing one century before Immanuel Kant, Pufendorf already explored the idea that there is a quality of freedom to act morally attached to every moral person and that it is this very quality which bestows equal human dignity upon each and every human being. This idea reached its final and most elaborate form in the writings of Immanuel Kant around 1800.

This is, however, where things became difficult. In the history of ideas, the year 1800 also demarcates what is known as the Sattelzeit at the transition to industrial modernity. The Sattelzeit describes the formation of the modern, differentiated society which has emerged since the 19th century until today. One of the core differentiations of modern society, unknown to premodern conceptions of society, is the divide between law and morality. This distinction implies, in particular, a separation between the moral concept of autonomy and the legal concept of freedom. Even though the terms are often conflated and used interchangeably in morality and law, they do not mean the same thing. Interestingly enough, this separation occurs at the same time as autonomy appears as a core concept of modern law.

In Kantian philosophy of law, autonomy means internal freedom, which is equivalent to freedom of conscience as a moral category, ruled by the categorical imperative. The legal concepts of freedom or ‘autonomy’, on the other hand, pertain to the sphere of external freedom, also known as Willkür. There are, therefore, two complementary concepts of freedom that point in opposite directions: one inward towards one’s own conscience, and the other outward towards the other persons. Internal freedom is equivalent to moral autonomy, whereas the relationship between autonomy and external freedom is more complex. According to the Kantian principle of right, ‘any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law’. Thus, Kant tries to address the problem of conflict between concurring external freedoms with a formula closely resembling, or actually paralleling, the famous categorical imperative. The latter, however, only applies to the internal spheres of morality. Kant’s concept of right thus leads to a normative dilemma for the external conception of law embraced by modern society: the law, restricted to the external sphere of freedom, cannot command moral action, because the law holds no power over the internal forum of morality. Nonetheless, the law cannot do without the tacit presupposition of moral action, because the Kantian principle of right is only functional if human beings use their external freedom responsibly, that is, in analogy to the moral principle of right as guided by the categorical imperative. The Kantian gap between law and morality, between external and internal freedom, thus presumes a blank cheque of social morality in order to work as a social theory.
Against this background, we can put the key question with regard to autonomy in the digital society as follows: in what sense does the digital society change our self-understanding as autonomous agents, and how does the law reflect this change when it addresses the autonomous person as a legal actor in the sphere of external freedom? In other words, is there a restricted sense of moral autonomy in the digital society, and does this have any effect on the construction of the person as the bearer of legal autonomy?

That there is in fact some change taking place in our self-definition as autonomous agents under the conditions of digitisation seems indubitable. This is why a title like Koenig’s ‘end of the individual’ hits such a nerve in the current discourse. What exactly, however, is this change all about? Is it a truly qualitative change, a digital disruption, as thinkers like Koenig seem to suggest, so that we do indeed have to cope with something entirely new beyond the old paradox of Western individualism as exemplified by Kant’s inability to bridge the gap between legality and morality? Or is the rise of the digital age just the next step in the development of structures already inherent in modern society, namely, the advent of yet another network technology with – of course – dramatically increased potential compared to previous mass communication media such as the telephone or letterpress printing, but without the extreme disruptive potential ascribed to it? If the latter thesis holds true, the underlying structure of the digital society might not be so different from the pre-digital society after all.

I argue that the second theory in fact offers more fruitful insights than the only superficially ‘radical’ first theory that the digital age comes as something essentially disruptive to our society – like a biblical plague. Digitalisation is not a biblical plague. Rather, modern society has been proto-digital from its very beginning. Its structure is essentially digital. Digital methods have, therefore, been a part of social practices at least since the 19th century, when the potential of large-scale social planning and social statistics became evident. Thus, the tools of the digital world amount to no less – but also no more – than the structurally congenial tools of modern society, the fulfilment of the technical promise of modernity, which is essentially countable, in a word: dividual.

The concept of the countable ‘dividual’ as the core of modern personhood was aptly coined by Gilles Deleuze as early as 1992 as the antonym to the old in-dividual associated with indivisible autonomy in the classic sense. According to Deleuze, ‘we no longer find ourselves dealing with the mass / individual pair. Individuals have become “dividuals”, and masses samples, data, markets, or “banks.” Digitisation, in other words, has the potential to transform the indivisible individual into a divisible dividual. The individual person as an impartible entity endowed with human dignity has become obsolete as a conceptual tool of self-description within the technical framework of the digital society. Digital technology makes it possible to circumvent exactly the indivisible character of the person as a social construction in all kinds of contexts, because it is now possible to generate a better, more precise representation of the empirical human being as the product of digital information. Digitisation apparently poses a fundamental problem for our self-understanding as autonomous persons. We can only be moral persons if we are individuals gifted with indivisible autonomy. If the indivisible quality of the person disappears behind algorithmically generated type profiles, this means that the individual is no longer conceived as indivisible, equal and free, but rather as divisible, calculable, predictable and in that respect unfree.
As a consequence, the concept of individual right, the unquestionable basis of modern law, seems to collapse into a ‘dividual’ right as well. The concept of right seems to be in danger of no longer addressing human beings as indivisible, free and autonomous persons, but rather as the predictable results of mere statistical distributions and type profiles. The individual disappears behind big data and algorithmic readability. The concept of personhood becomes irrelevant for the purpose of legal control, because data statistics literally know the individual person better than she knows herself. Moreover, big data analysis offers the astonishing feature that it is no longer dependent on the personal data of any given individual. It is in fact possible to predict the statistically relevant behaviour of any individual with greater precision from mere data patterns than from the individual’s behaviour itself. All it takes is to combine the statistical frequency distribution of the behaviour of classes of given individuals with the skilful application of search criteria.

Is this Gaspard Koenig’s ‘end of the individual’? No, it is not. If it were true that we have been indivisible individuals up to now and that we are losing this individuality, we would most certainly fight to retain our self-definition. But that is obviously not what is happening. Instead, we are witnessing the opposite. Perhaps the most astonishing aspect of the development of the digital society is that we actually want it to happen exactly the way it is unfolding. We reinforce it every day by voluntarily consenting to giving away our data with every move we make on the internet. Everyone with a smartphone or those active on social media or in the digital economy actively participate in building a digital society on the basis of personal data without any certitude about how or in what contexts this data can and will be used in the future. At this point, virtually all of us already have a double existence in this world, as human beings and as data avatars. The fact that we actually want this to happen is the true challenge for our thinking about autonomy. For we assume quite naturally that we continue to exist as indivisible persons who are capable of exercising normatively significant autonomy in the sense of Kantian philosophy, whereas in fact we have stopped existing as individuals in the data world long ago and just have not noticed it yet. One can frame this as a paradox: what does it teach us about our understanding of autonomy that we believe ourselves to be fully autonomous also and especially with regard to the heteronomous predictability of our own use of autonomy?
The digitally conditioned self at the crossroads of legal theory

I will conclude by arguing that I do not believe in the end of the individual, but I do believe that we have to get used to a novel concept of autonomy in the digital world, whether or not we approve of it. Again, the starting point is that digital networks are not so different from pre-digital networks or communication media after all. Human beings have always depended on networks to define themselves. They cannot express themselves in any other way than through interaction with others. This applies particularly to the technical networks of the industrial age. It is, therefore, unreasonable to imagine a person endowed with full autonomy existing prior to and outside any network and then turning towards the network in order to say ‘yes’ or ‘no’ to their participation. The reality is quite different: we can only unfold our autonomous personality through participating in networks. We have to define autonomy also as a product and not only as a limit of our development through networks. There is no such thing as uncorrupted autonomy, defined as network-free autonomy.

What in particular, then, makes the digitally conditioned self so dubious to critics like Gaspard Koenig? As argued before, it is the paradox of modern society that it offers external freedom but cannot, at the same time, demand the exercise of moral autonomy in its fulfilment. And it is precisely this phenomenon, this built-in deficit of modern society, that is amplified and exploited by digital mass media and especially by social networks in an unprecedented way. Social networks seem to have developed into a congenial infrastructure for antisocial behaviour. By using social media, the digital society is deliberately conditioning itself into a dysfunctional use of freedom which runs against its tacit precondition of moral autonomy. If this is the case, however, why does the law not simply prevent abuses of digital freedom by appropriate regulation? The answer to this question, again, turns on the philosophical dilemma of autonomy underlying the legal concept of freedom: it is not the case that we do not regulate digital platforms because we cannot do so, but rather because we do not want to do so. In more precise terms, we cannot want to do so, because the notion of undivided external freedom by definition prevents us from selecting the desired from the undesired uses of legal external freedom.

At this point, one may still argue that each individual nonetheless remains free to exercise moral autonomy by using digital technologies responsibly. There is, however, a second, even more serious side of the problem concerning the form of freedom into which we condition ourselves in digital contexts. I describe this form as a collective education towards a consumptive use of freedom. Freedom itself becomes the object of consumption in the way it is made accessible through digital tools. In other words, the digital infrastructure we have built teaches us to use external freedom like a commodity and thereby to unlearn the use of moral autonomy. The reason for this is a formal – one might even say architectural – problem: the consumed freedom remains passive by virtue of its very form, which is conditioned through the one-sided, passivising architecture of the digital infrastructure which virtually reduces the world to a user surface.

This idea is, finally, also the key to overcoming the general complaint of the loss of personhood in the digital age as voiced by Koenig. We should shift the power of critique from the concept of personhood to the architecture of the digital infrastructure. The important thing to note is, again, that there is no freedom and no autonomy in the technical world untouched by its preconditions. The crucial question of digital autonomy is, therefore, not whether to use digital technology at all, but rather how to articulate autonomy within the structures of the technically preconditioned world.
– and, even more importantly, how to build a technical infrastructure which leaves the individual pathways to autonomy intact. Algorithms have the power to deconstruct individual human beings into statistical artefacts. But neither power nor technology are evil as such, and human beings have been calculable all along. The true problem for the digital self lies in the obstruction of personal autonomy by conditioning individuals into the merely passive exercise of freedom. This is where the regulation of the digital world should begin, that is, with the philosophical demand for autonomy remaining in the background.

Plan of Jeremy Bentham’s panopticon prison, drawn by Willey Reveley in 1791
MIGRATION AND TRADE: TWO SIDES OF THE SAME COIN?*

Thomas Duve

Sick and hungry people came to the cities in droves, strangers who roamed the streets. City authorities and elites began to fear the loss of public order and social peace, and searched in vain for an explanation to make sense of these developments. Maybe world trade was to blame, maybe failed harvests or corruption, or perhaps the migrants had brought their misery upon themselves. Whatever or whomever was to blame, decisions had to be taken and possible impostors weeded out from those truly in need. A new law was proposed according to which people were to receive aid at their place of birth. Those with official documents proving that they were entitled to support were to be cared for in special centres created for that purpose. This type of approach was already being practiced successfully in other countries facing the same problems. However, the new law, welcomed by many cities, also provoked criticism. Not least the Church voiced concerns. Was this still in line with the principles of Christianity?

This account of a poverty crisis, the state’s attempt to overcome it through legislation, the debates regarding who is worthy of support and who obliged to provide it, could be the description of present-day events. In fact, however, these issues, discussions and proposed measures date back to the 1540s, in what is now Spain. We know of these problems because leading theologians of the time voiced their views on the matter. One treatise arguing against the proposed law, In causa pauperum deliberatio, received particularly great attention. Its author was the Dominican Domingo de Soto, who published the text in 1545, the same year that he was sent to the Council of Trent to act as an advisor to Emperor Charles V. Domingo de Soto is seen as one of the central figures of the so-called School of Salamanca. This school of theologians – associated above all with Francisco de Vitoria, who is considered its founding father – has by now gained a firm place in the history of theology, philosophy, economics and the natural sciences. It also played an important role in legal history: during the decades of early modern state formation, shaped by the Reformations, European overseas expansion and the media revolution, its members made fundamental contributions to contemporary thought on punishment and guilt, contracts and restitution, and the legitimacy both of rule and of resistance. Indeed, the juridical-political language of their works influences international law up to the present day.

* This text is based on an article originally published in German in the Frankfurter Allgemeine Zeitung of 31 July 2018, p. 11.
Cosmopolitan reasoning

Domingo de Soto’s argumentation regarding the right way to deal with the poor is in many ways typical of the thinking of the School. While its rationality has become alien to us, it nevertheless remains impressive in its depth and coherence. De Soto’s reasoning also draws our attention to a historical connection that may be particularly thought-provoking given the current discussions on migration, the right of asylum and free world trade. Crucially, de Soto derived the right of people in need to be provided with what they required for self-preservation, from the same reasoning he and others used to legitimise the free movement of goods and missionaries. These early modern theologians and philosophers conceived of a world community that existed beyond all political units – all cities, all states – and was linked by rights and duties shared by all. The normativity of this world community was called the *ius gentium*. In their development of these ideas, the theologians and philosophers of the School of Salamanca drew on ancient thought, on Roman and canon law, and on the theology and philosophy of the Middle Ages. They derived from this *ius gentium* (which in subsequent centuries developed into the much more narrowly defined international law) the rights to freedom of movement, to engage in trade or mission – but also the concomitant duties to tolerate others engaging in these activities and to provide everyone with everything necessary for self-preservation, irrespective of where they were from. Thus, the free movement of goods and people and the opportunity for commercial profit resulting from it, on the one hand, and the duty to ensure a livelihood for everyone, on the other, were two sides of the same coin.

This cosmopolitan perspective led Domingo de Soto to make seemingly utopian demands for social policies: an obligation to provide aid to those in need, a right to a guaranteed subsistence minimum, and the duty of all political communities to tolerate peaceful migration, whether those migrants be Christian or not. But the argument on the basis of the *ius gentium* was ambivalent: it also served to legitimise European expansion. As shown by Domingo de Soto and, particularly effectively, by Francisco de Vitoria in his famous lectures on the New World in 1539, the Spanish presence in the Americas could not be justified by papal donation, as the Catholic kings had claimed, nor by the supposed inability of the indigenous ‘barbarians’ to hold property or to form a system of government, as some jurists had argued. While the papal bulls and decrees were nothing more than worthless pieces of paper for Protestant Europe, which was growing and consolidating precisely in this period, the contemporary encounter with the great Aztec and Inca civilisations clearly showed that those prejudged ‘barbarians’ had the same intellectual capacities as the overseas arrivals and were absolutely able to rule themselves according to coherent political and social criteria. Taking into account all these factors and constantly updating their reasoning according to new information arriving every month from overseas, the theologians of Salamanca argued that it was the *ius communicationis* – the right to move, to trade and to evangelise freely and peacefully throughout the whole world, derived from the *ius gentium* – that legitimised the Spanish presence in America. Anybody who sought to curtail this right could face a just war, a *bellum iustum*. 
Some modern interpreters see this argumentation as proof that the thinkers of the School of Salamanca were courageous critics of the Spanish Crown; others read it as the work of cynical apologists of power, granting their sovereigns a kind of sophisticated and pious alibi. Francisco de Vitoria has been hailed the ‘father of international law’, but his thinking, and above all the use made of it by the architects of Eurocentric, colonialist international law at the end of the 19th and the beginning of the 20th centuries, has also been severely criticised, not least by the representatives of so-called Third World Approaches to International Law (TWAIL). Vitoria’s and de Soto’s contributions to the poverty debate are also ambivalent, particularly regarding the question of who is to be considered truly in need. However, their modern critics often overlook the fact that the two thinkers used their argumentation not just to legitimise Spanish overseas expansion but also applied it to problems that led them, for example, to postulate a general duty to alleviate the famine in contemporary Salamanca. Thus, in several cases, thinkers of the School arrived at views different to those of the Crown. Had their argumentations been followed, in these as in other cases, it would have had enormous economic consequences for those in power.

The code of capital?

In the 500 years since Vitoria and de Soto articulated their argumentation based on the *ius communica-tionis*, European thinkers and lawyers used the *ius gentium* above all to expand the right to trade and the legitimate exercise of power. Grotius, Locke, Vattel and Schmitt, to name but a few, and in the 19th and 20th centuries also a number of so-called ‘semi-peripheral jurists’, forged out of the *ius gentium* an interstate law that primarily served European imperial interests. It also protected the informal European empires, the multinationals of the early modern period like the Dutch East India Company. Crucially, the *ius gentium* was also developed in imperial practices, as recent legal historical studies have emphasised. The result was the transfer of an unimaginable amount of resources from the colonies to the European metropole. It is estimated that in the course of this early modern globalisation, about 12.5 million people from Africa were traded as slaves, that is, as goods. They, too, contributed to the profits that made Europe and North America what they are today. In recent years, awareness of these connections has been rising, leading to the toppling of quite a number of monuments.

And the other side of the coin? The right to migrate, the right to be provided with what is necessary for self-preservation in any location, and the general legal obligation to enable opportunities for livelihood – all also postulated by Domingo de Soto – have not experienced a similarly extensive legal elaboration. This is astonishing not least because other philosophers and jurists were arguing for similar obligations, such as Hugo Grotius in his *De iure belli ac pacis libri tres*, who here, as in many other instances, follows Francisco de Vitoria’s earlier reasoning. Whereas Grotius supported his claim for a duty to take in refugees mainly with references to antique authorities and offered little in the way of additional philosophical arguments, Samuel Pufendorf provided the latter in his *De iure naturae et gentium* of 1672, a work which was subsequently translated into many languages. In this text, Pufendorf not only wrote that human beings should not act like dogs, barking at strangers, he also established certain general obligations of humanity, *officia humanitatis*, to which corresponded certain (albeit not enforceable) rights. According to Pufendorf, even during a famine, one is not permitted to expel migrants whose lives would be threatened should they return to their original home.
The presence of the past

Of course, the fact that some Aristotelian-Thomist thinkers of 16th-century Salamanca and Protestant natural rights theorists in 17th-century Germany held that the free movement of goods and people, basic rights to migration and trade, the opportunity for profit and the duty to secure the livelihood of the poor belonged inseparably together does not create obligations for us today. What does, however, is our actions in the past – the undeniable fact that European prosperity and African poverty are historically inseparable. The texts from Salamanca and the arguments of Grotius and Pufendorf serve to draw our attention to the strong original connections between the philosophical and legal legitimation of the free movement of goods and of people, and to the simultaneity of rights of mobility and trade with the duty to care for the needy and to provide livelihood opportunities. Both rest on the same cosmopolitan reasoning.

Looking at legal history since the 17th century, however, the effectiveness of the regimes developed in European law to protect these different rights varies greatly: there is strong protection for trade and only weak protection for migration. The current simultaneous ‘crises’ of migration and of world trade also demonstrate that, without a cosmopolitan perspective such as that of the non-state-bound *ius gentium*, we quickly come up against the limits of our national, supranational and international law, which ultimately always take the state as their frame of reference. Would it not be time to recognise that globalisation, which for centuries has made Europeans a great deal of money, is not only associated with rights but also with minimum obligations of equal binding force?

It was not by accident that after World War II, Europe constituted itself as a ‘community of law’ and founded its identity above all on a shared legal culture that had developed over the course of centuries. Among the key achievements of this legal culture is the idea that law does not only serve to protect power, that it does not take as its yardsticks only individual self-interest and economic considerations, but instead assumes a minimum of reciprocity and coherence. To insist on these is perhaps the core of our understanding of law and the very particular task of legal scholars. At the University of Salamanca, which celebrated the 800th anniversary of its foundation in 2018, and among the scholars of its epoch-making school, there was never any doubt that law could only be just if it was coherent and consistent. We would do well to remind ourselves of this.
BREXIT AND THE POWER OF HISTORICAL NARRATIVES*

Stefan Vogenauer

Brexit day

It was meant to be the moment in time when ‘church bells were rung, coins struck, stamps issued and bonfires lit to send beacons of freedom from hilltop to hilltop’. Those celebrating were to be seen ‘weaving through the moonlit lanes of Sussex, half blind with scrumpy, singing Brexit shanties at the tops of their voices’. Such was the vision of Brexit Day offered by then newspaper columnist Boris Johnson, now Prime Minister of the United Kingdom, three days before the UK was first supposed to withdraw from the European Union (Daily Telegraph, 26 March 2019).

In reality, it was significantly quieter when the UK finally left the EU on 31 January 2020. What remained striking, however, were the endeavours of the ‘Brexiteers’ time and again to work with historical imagery. Bonfires? These burn annually up and down the country to commemorate the uncovering of the Gunpowder Plot of 5 November 1605, the plan of Guy Fawkes and further catholic assassins to blow up the Houses of Parliament together with the king. ‘Remember, remember! The fifth of November’, begins the verse that English schoolchildren learn to recite. Church bells, cider and moonlit lanes? These evoke the idyll of a rural England that has long since vanished. The analogies know no limits. Politicians are not afraid to equate the EU with the Soviet Union, to describe member states as ‘vassals’, or to call the day of the referendum ‘independence day’, thus alluding to the American Revolution.

The ‘Remainers’ have long mocked this sort of reminiscence. This is also true of professional observers and explainers, of journalists and academics, particularly those from abroad. Almost without exception, they were surprised by the result of the 2016 Brexit referendum. The decision to leave was taken as irrational and an act of wilful self-harm. There was a certain sense of bewilderment, not least amongst Germans, that a people generally known as the paragon of common sense and sober pragmatism would take what appeared to be such an obvious economic and socio-political wrong turn. How could this happen?

For a start, there might be different understandings of common sense at play. Let us assume, with the Oxford English Dictionary, that arguments from common sense are those that appeal to or are in accord with our instinctive understanding and sound judgement. Such innate and tacit understandings are bound

* This essay is an updated and shortened version of a lecture given in July 2019 to the Frankfurter Wirtschaftspolitische Gesellschaft von 1947. It addresses a number of questions that connect the Institute’s Research Fields Legal Transfer in the Common Law World and Legal History of the European Union.
to be conditioned by our experiences, past and present, and these experiences will differ from one country to another. Once they are taken into account, and particularly when the UK and the German experiences are contrasted, the outcome of the referendum appears to be much less outlandish than many foreign observers are prepared to believe.

When looking at present and past experiences, it is possible to distinguish three types of cause underlying the vote to withdraw from the EU: immediate causes, as examined by the social sciences; recent causes, as studied by contemporary historians; and profoundly long-term causes, as analysed by historians concerned with the more distant past. The latter causes are the focus of this essay because they have been less commented upon so far; yet they might have been decisive in the vote to leave: the power of historical narratives remains strong.

Immediate causes: the perspective of the social sciences

Most explanations offered for the result of the referendum relate to contemporary factors. The first of these is the economy. The rigid austerity in the public sector in the decade after the 2007/2008 financial crisis led to real income losses and a drastic scaling back of public services. Public libraries were closed, schools left crumbling. The provision of healthcare, though one would barely have thought it possible, declined even further. The North-South divide deepened, along with the gap between London and the rest of the country. Whole areas and generations felt and feel left behind. The referendum can thus be seen as sounding the alarm bells in order to put the political class on notice.

In fact, according to the second explanatory approach, the result of the referendum mirrors populist dissatisfaction with elites. This was not only directed against the political class, which the British public still had not forgiven for the parliamentary expenses scandal that had emerged in 2009. It also targeted the ‘experts’, whose predictions were met with suspicion. Was it not the case that even her Majesty had humiliated economists with the naive question as to why they had not seen the financial crisis coming?

A third cause of the result, we are told, was the on- and offline disinformation campaign before the referendum: the dissemination of ‘fake news’, the distorted reporting on the functionality of the European Union, and the legendary bus with the unfeasible promise to redirect the national contribution to the EU budget directly to the NHS – 350 million pounds per week.

Fourth, it is said that the Brexiteers took advantage of nationalist, xenophobic and at times openly racist attitudes of the public. Germany’s conduct during the migration crisis in the summer before the referendum stirred up fears of an infiltration of foreigners, be it the hundreds of thousands of Eastern Europeans that were already in the country, or the 80 million Turks who were allegedly sitting on packed suitcases.

Fifth, and finally, it has been pointed out that the result of the referendum was distorted by conscious or unconscious decisions on the eligibility to vote and the voting modalities. This led to a situation where many of those who would have voted to remain were not entitled to vote or could only do so with a great deal of effort. This group included students and UK citizens residing on the continent.
Economists, political scientists, sociologists and media scholars have extensively analysed all of these phenomena. There is no doubt that the factors they identify were hugely influential in the outcome of the referendum. At the same time, they suggest a certain historical contingency: perhaps it could have all been so different, and insignificant domestic political events in the run up to the referendum might have brought about a majority for ‘remain’?

**Recent causes: the perspective of contemporary history**

Talk of such contingency sounds less convincing, once the focus of enquiry moves to past experiences. With regard to the more recent past, contemporary historians have frequently pointed out that the breeding ground for the exit vote had been prepared for quite some time. The Euroscepticism of the British before and certainly after joining the then European Economic Community (EEC) in 1973 is proverbial. They were always ‘reluctant Europeans’ and an ‘awkward partner’ for the other member states.

No other country and its people were more opposed to the process of integration. Non-participation was deemed a virtue, be it via opt-outs from the Euro, Schengen and, initially, the EU Charter of Fundamental Rights, or via a reduction of the contributions to the EU budget through the so-called ‘UK rebate’. Symbolic acts, such as flying the EU flag on public buildings, remained undone. The European passport, a further symbol, was resented, particularly by older citizens. In the political discourse on the relationship with the EU an ‘us against them’ mentality permeated. Against this background, it might be argued, the outcome of the referendum was not surprising at all.

**Profoundly long-term causes: a longue durée perspective**

Yet, even the explanations offered by contemporary historians, valuable as they are, merely scratch the surface. Once an effort is made to trace the deeper causes underlying the referendum, it quickly becomes obvious that the UK’s exceptionalism in the process of European integration is but a symptom of a more fundamental and far longer evolution of ideas. From this perspective, it is possible to observe continuous developments stretching across the centuries. Viewed in their entirety, they coalesce, as it were, into an intellectual and cultural history of Euroscepticism: the decision to withdraw from the EU appears less as a reaction to current or recent historical developments and more as the result of long-lasting cultural conditioning, subjective historical truths, and the emotions bound thereto.

With regard to Brexit only few attempts have been made to adopt such a long-term perspective, which historians often refer to as longue durée. It requires us to take into account the particularities of the UK with regard to its constitutional, colonial and economic history (some of which predate today’s ‘United Kingdom’, so they are in fact features of English rather than British history). These particularities, in the view of many Britons, militate against membership in the EU and explain the desire to leave.

To this purpose, a simple thought experiment will help. For once, let us dispense with the stereotype of the ‘leave’ voter being a grumpy old unemployed Northerner without any qualifications. Think of a group of middle-aged, educated, urbane and affluent professionals instead. Ask them about their self-image and identity. They might even
consider themselves to be Europhiles. Yet, after pausing for reflection and discussion, they might agree on the following answer: 'We are a sovereign, democratic, liberal and cosmopolitan nation that is based on the rule of law and can look back on a thousand years of unbroken and successful history.' This, they might suggest, fundamentally differentiates their country from the continental states, whose histories have been shaped in very different ways.

This point of view itself has historical forerunners, particularly from the 19th century, when it served to provide legitimacy for the country’s ‘splendid’ or ‘noble isolation’ from the continent. In the run-up to the referendum, a group of ‘Historians for Britain’ revived it with reference to a supposedly uninterrupted, uniquely British path of development, which led to the distinctive character of the UK (for a German observer, there is a whiff of Sonderwegthese). Their arguments have certainly not gone unchallenged, with many others highlighting the disruptive elements of British history and its embeddedness in broader European developments.

For the purposes of this essay, it is not relevant which of these two camps has a claim to the elusive prize of best approximation to ‘the historical truth’. What matters is rather that British constructions of identity are pieced together by presenting the UK as antithetical to Europe as a continent rather than to the European Union. As Matthias Häußler has recently shown in the Vierteljahreshefte für Zeitgeschichte (2019, 263), this approach emerged in the British writing of history from the 1980s onwards, and it has now become a formative narrative in the political discourse.

This has occurred not least because it ties in with perceptions and ‘felt truths’ that are difficult to capture empirically. The fictitious answer of our hypothetical Brits about their shared identity can be broken down into seven basic features that are central for the self-image of the ‘Brexiters’: sovereignty, democracy, rule of law, liberalism, cosmopolitanism, war and continuity. This may be surprising at first glance, particularly for present-day Germans who might see the first five of these features as equally constitutive for their own national identity. However, for Germans the concepts used have very different connotations and this has immediate effects on the respective relationships with the European Union.

**Sovereignty**

This is particularly clear when looking at ‘sovereignty’. The concern to ‘take back control’ was central for the leave campaign. Sovereignty, according to the British understanding of the concept, is indivisible by its very nature. This reflects historical experience. England, and later the UK, has been strongly centralised since the Middle Ages. At first, the King ruled without notable restrictions, and so did Parliament after wrestling power from the monarch. Parliamentary sovereignty continues to be the central constitutional principle of the UK. Moreover, until very recently, the regions had no powers worthy of mention, and this continues to be the case for local authorities. As a result, a culture of compromise among the constitutional powers and institutions has never emerged.

The German experience in particular has been a very different one. The Holy Roman Empire and later the German Confederation of 1815 lacked clear hierarchies. Interests had to be balanced, and
for a long time undivided sovereignty remained just an idea. Once it was realised, war beckoned. Thus, in Germany there is a strong perception of the EU as a structure in which national sovereignty is shared and pooled in order to ultimately gain more sovereignty in areas where, in light of global developments, individual member states no longer possess the power and the ability to perform sovereign acts themselves. That this requires compromises between states is seen as the necessary price to be paid.

Viewed from the other side of the Channel, this approximates surrender. Not least for this reason, reversing the orientation laid out in the European Treaties towards an ‘ever closer union’ and returning to a loosely defined free trade area has been a major concern of the UK from the outset of its membership.

Democracy

‘Democracy’ likewise has a particular connotation in the UK. Almost every general election within living memory has guaranteed a stable majority in the House of Commons. The hung parliaments emerging from the 2010 and the 2017 general elections are widely regarded as aberrations. So is power sharing by coalition government. In normal circumstances, there is no need for the government of the day and its ruling party to compromise. There are no other serious constitutional checks and balances either: the House of Lords has not had the possibility to bring down legislation since 1910, the monarch only has a ceremonial role, and no court of law can strike down an Act of Parliament as invalid. Thus it was not entirely inaccurate when the then Lord Chancellor, Baron Hailsham, suggested in 1976 that the British political system resembled an ‘elective dictatorship’.

The flip side of this system is the abrupt and brutal loss of power if the next election goes the other way. Since 1832 at the latest, there has been a direct link between the voter, his or her Member of Parliament and the ruling party. If the voter is not satisfied, he or she can ‘kick out’ the MP and the government. The people are sovereign. Never does this come to life more vividly than on the day after a general election when the removal vans stop in front of 10 Downing Street and the belongings of the outgoing Prime Minister are loaded up.

How different to Germany, with its party lists, seemingly eternal coalitions, constant compromises and the judicial review power of the courts. In the European Union all of this is even more pronounced. The division of powers between the institutions is notoriously obscure, with the Parliament traditionally having the weakest role and no possibility of deselecting the Commission. The Commission is basically run by civil servants. It is easy to get the impression that there is a lack of accountability, as the same people stay in office no matter how the elections go. Therefore, while many Germans find it difficult to regard the Union as being a democracy that is worthy of the name, this is nigh on impossible for most British observers.
Rule of law

Moreover, the UK is used to a very specific conception of the rule of law. As developed in the 19th century, its first and foremost aim was that no politician should be above the law. It secured freedom of expression. There were no ‘political crimes’ for criticism of those in power. At the same time, in the Europe of the Restoration, Metternich censored the press and the Göttingen Seven were dismissed from their positions.

Even today, English law is very much concerned with retaining and guaranteeing a space where everyone is free to do as he or as she pleases. It is an important feature of the rule of law that there are sizable spheres of life that are not ‘juridified’, ie where both the legislature and the courts refrain from intervention. The judiciary in particular shows much more restraint on questions of legal policy than in Germany, where the Federal Constitutional Court arguably has to engage in a certain degree of activism in order to uphold the Rechtsstaat. It is therefore not surprising that criticism of the alleged ‘Brussels regulation frenzy’ and the ‘judicial activism’ of the European Court of Justice is much more vehement on the other side of the Channel than in Germany.

Liberalism

In a similar vein, Johnson’s description of Brexit as ‘the great project of European liberalism’ during the referendum campaign is not particularly astonishing if a peculiarly British world view is adopted. Since the ‘Corn Laws’ of the first half of the 19th century, ‘liberal’ is more or less synonymous with free trade. The self-image is that of a sea trading nation. In the late 20th century, the free trade ideology was reinforced by Margaret Thatcher’s neoliberal economic and social model, with the ideal of a night-watchman state, low taxes and radical deregulation.

Neither of these ideas is easy to reconcile with EU membership. On the one hand, being a member implies the loss of the possibility to conclude the much-invoked ‘global trade deals’, sovereign trade agreements with third countries outside the Common Market. On the other, from the point of view of the Brexiteers, membership forces the British under the yoke of a paternalistic European social model. When they hear ‘Europe’, they hear the bleak clattering of the small cogwheels of bureaucracy. They think of petty prohibitions and – once again – regulation, the proverbial ‘red tape’ of the ‘Brussels bureaucrats’. When asked which bits of EU law they actually object to, Brexiteers inevitably refer to the Regulation Laying Down Quality Standards for Bananas and the Working Time Directive, as applied to hospital doctors.

Cosmopolitanism

The slogan of ‘global Britain’ and the corresponding idea of a non-European identity of the UK are not entirely implausible either, at least if viewed from the other side of the Channel. Since the 17th century, British politics has been resolutely oriented towards overseas. World domination in the 19th and early 20th centuries cemented the self-image as a leading nation politically, economically and culturally. Today’s cosmopolitanism and global outlook is closely linked to yesterday’s imperialism.

As late as 1945 a good third of the world population lived under the Empire. Half of world trade was transacted in Pounds Sterling. One third of European industrial production took place in Great Britain. At the time of the founding of the EEC, the volume of British trade with the Commonwealth considerably exceeded that with the six founding members. For a long time, the UK saw itself in
the centre of three overlapping circles of influence that embraced the Commonwealth, the USA and Europe — and precisely in that order. In the parliamentary debates preceding the 1973 accession to the EEC, one speaker pointed out that the post office in his village received numerous letters from Sudan, Malaysia and Jamaica, but hardly any from Belgium.

To this day, the idea of a linguistic, historical and cultural Anglosphere is an integral part of British identity. Relatives live in New Zealand and not in Slovenia. Stopping over in Auckland has always felt more like home than visiting Ljubljana. Accession to the EEC evokes very different memories. It coincided and was inextricably linked with the process of decolonisation and the decline of the Empire, as well as the loss of economic hegemony. The hope that membership would compensate for this loss was soon disappointed, not least because it occurred at the time of the first major oil price crisis. Against this background, the post-imperial identity construction of ‘global Britain’ generates a resonance for many Britons that is entirely incomprehensible for Germans, with their non-seafaring past and their belated and feeble attempts at becoming a colonial power.

**War**

At least as relevant for the respective attitudes to EU membership are the different perceptions of the world wars, particularly World War II. What constitutes a traumatic collective memory in Germany is still celebrated as Britain’s ‘finest hour’. A country that has not witnessed any armed conflict with a foreign power on its own soil since 1066 is much more at ease with glorifying its military achievements and heroic tales.

It is certainly no accident that at the time of Brexit two new movies turned out to be instant blockbusters: an epic about Winston Churchill and the story of the evacuation of Dunkirk. It is often said that the war persists with the British because they were the victors. This has a direct impact on their relationship to Europe. Europe only appears in this narrative as a place that must occasionally be saved from itself. While the motto ‘Never Again’ was virtually constitutive for early German efforts towards European unity, it hardly played a role in the British debate on Europe. The idea that the EU is primarily a peace project is acknowledged, but not given similar prominence.

**Continuity**

This links up with the last of the seven identity-constituting factors mentioned above, the supposedly uninterrupted continuity of the island’s polity since the Norman invasion. Standing apart from the continent, it seems, was a recipe for being spared from catastrophes. Europe equalled war, chaos and revolution. England was synonymous with slow, careful and unbloody change. In retrospect, these perceptions result in a hazy sentiment of being a chosen people, favoured by fate and somehow always standing on the right side of history. It was this sentiment that Labour Party leader Hugh Gaitskell tapped into when he argued in 1962 that joining the EEC would mean the end of a thousand years of history.

The optimism that all crises will be overcome, even and especially without Europe, still runs through today’s debates on Brexit. The unshakeable belief that a ‘better deal’ exists somewhere outside the EU, the assumption that you can ‘have your cake and eat it too’, Johnson’s mantra that the Brexit problem can be solved with verve, brinkmanship and self-confidence alone — from the outside it all seems like acute self-deception. From the internal perspective it integrates seamlessly into a historical world view in which Britannia will invariably land on her feet in the end.
Narratives, identities and politics

Against the self-image of the fictitious Brits, on which the historical identity constructions of the Brexiteers were presented here, it may be objected that it is just that: fictitious. In reality, the country, the people and their self-perceptions are all significantly more pluralistic and diverse. But it is striking that many of the most influential Brexiteers read for a university degree in a historical discipline. In addition to Johnson and his Chief Adviser at the time of Brexit, Dominic Cummings, this includes long-time MPs Jacob Rees-Mogg, Bill Cash, Douglas Carswell, John Redwood and, in the European Parliament, Daniel Hannan. This enumeration alone shows that it is the world view of a particular class or group that permeates the political discourse. Other voices are drowned – those in power are, unsurprisingly, the ones controlling the construction of ‘the’ narrative.

From the point of view of professional historians, the use of historical arguments in the Brexit discourse is frustrating. ‘Much of this history is so very un- and antihistorical’, complained Jessica Reinisch of Birkbeck College, London. ‘History has become a caricature of parochial dreams, nostalgias and made-up analogies.’ (Cambridge Core Blog, 21 February 2019, https://www.cambridge.org/core/) And indeed the Brexiteers do not address how to reconcile British colonial rule with the rule of law, nor the fact that World War II would not have been winnable if it had not been for the USA and the Soviet Union – as they also fail to mention that the EU’s ‘Bendy Banana Regulation’ did not actually ban the selling of bendy bananas.

The belief in the blessings of Brexit has been compared to a religion or ideology. This is not entirely wrong. But an ideology can only exist on the basis of a particular world view. Therefore, constructions of identity are also relevant when they are incorrect. Historical narratives can develop a life of their own. This is also important for the frequently asked question about the relevance of history for the future. Today there is a broad consensus that no instructions for future action can be derived from history. But we access the present through our understanding of what has happened previously, saturated by historical experience. The discourse surrounding Brexit shows that, when looking to the future, it is difficult to free ourselves from the ghosts of the past.
DEPARTMENTS
EUROPEAN AND COMPARATIVE LEGAL HISTORY

Stefan Vogenauer

The Department explores the European and comparative dimensions of legal history. With regard to the former, we are particularly interested in the legal history of the European Union. With regard to the latter, our focus is on legal transfer in the common law world, i.e. on the interaction of English law with the laws and customs of the various parts of the British Empire from the 18th to the mid-20th century.

However, the European and the comparative dimensions cannot be neatly separated, as is clear from our research activities on private law and dispute resolution in a historical, comparative and transnational perspective. In a similar vein, we study the history of sources of law and legal methods across different legal systems and traditions. Another distinction that is difficult to maintain is that between legal history and contemporary law. We therefore approach historical phenomena with a keen interest in their contemporary relevance.

The Department was established in late 2015, and it has grown steadily ever since. While the first years were mostly dedicated to building up the infrastructure for the new research themes of the Department, such as establishing a number of crucial international collaborations and increasing the relevant library holdings and databases, the present reporting period was one of consolidation and gradual expansion. The research activities of our 20-odd PhD students, postdocs and senior researchers are set out in greater detail below. They are bundled together in four different Research Fields, which are briefly introduced in this overview of the Department’s activities.

Legal History of the European Union

The law of the European Union (EU) is very much a contemporary phenomenon. As such, it is subject to scrutiny by EU lawyers, political scientists, sociologists and others. Yet, more than 60 years after the Treaty of Paris, EU law has accrued a substantial history that has so far escaped the attention of legal historians. The Research Field Legal History of the European Union aims to fill this gap and analyse legal developments in EU law, sometimes reaching back to earlier developments and thus putting the legal history of European integration in a longue durée context.

The history of EU law has a strong comparative dimension. On the one hand, national models were a source of inspiration for many, if not most, rules and principles of EU law, as well as for the institutions and legislative techniques of the EU. On the other hand, EU law, once enacted, takes on very different forms after it has been implemented and embedded in the legal environments of 27 different Member States. A strong focus of this Research Field is also on key actors in the process of the legal history of integration, such as politicians, officials, judges – again at the levels of both the EU and its Member States.
An essential part of the work in this Research Field is dedicated to identifying and collecting sources. We employ innovative methodologies, including oral history projects, digitisation and making private archives accessible. In doing so, we collaborate with European institutions (the Council and the Court of Justice of the EU) and the Historical Archives of the EU in Florence.

**Legal Transfer in the Common Law World**

As the British Empire expanded, English law was being introduced in very different parts of the world. Rules, principles and institutions from England were brought into force in regions and societies as diverse as Australia, Ghana, India, Jamaica and Singapore. In this Research Field, coordinated by Victoria Barnes, we enquire how this process unfolded in various places.

In many cases English law encountered local or regional traditions, both legal and non-legal. To what extent did these encounters differ from each other? Was there ever anything resembling the frequently invoked ‘unity of the common law’? Or did the law of England acquire a distinctive flavour in each territory, depending on the geography, the climate and the prevailing religious, moral and economic views of the inhabitants? And, finally, can we learn anything from the experience of English law for the broader debate on legal ‘transplants’ and, even more generally, legal development as such?

Initial research projects have focused primarily on the following regions: India, South East Asia, North America and the Caribbean. Specific case studies turn on different areas of law, including constitutional law, the law of contract, land law and intellectual property. Apart from substantive law, they consider the various modes of conflict resolution in colonial courts and other venues.
Informal collaborations have been set up with leading scholars from all over the common law world. The bi-weekly ‘Common Law Research Seminar’, established in late 2016, has drawn many of them to Frankfurt and has become a major forum for the exchange of ideas amongst scholars working in the field.

**Private Law and Dispute Resolution in a Historical, Comparative and Transnational Perspective**

Research into the history of private law has a long tradition in Frankfurt. For Helmut Coing, our Founding Director, it was the key task of the Institute, for he considered this area of legal history to be ultimately the ‘direct foundation of the contemporary system of private law’. Thus the Institute’s first flagship publication, an extensive handbook, was entirely devoted to the sources and literature of the modern history of private law, covering the early modern *ius commune* and the 19th century (*Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*).

Today, the Institute’s research on the history of private law has become even more ambitious in four respects. Firstly, we analyse ‘legal’ history in close dialogue with social, economic and political history. Secondly, we examine ‘private law’ with a strong focus on how private law rights can be enforced and thus pay attention to the various modes of judicial and extrajudicial dispute resolution. Thirdly, we no longer limit ‘European’ legal history to the continental ‘civil law’ tradition: we include, as a matter of course, the history of the common law in Europe and legal developments in East Asia, South America and the Commonwealth. All these are intimately connected to the legal history of Europe but transcend it; in the Institute’s research, they are seen in the context of global history. Fourthly, we consciously link the history of private law to developments in contemporary private law, and thus connect it to the disciplines of comparative and transnational private law.
International collaborations in this Research Field have been on a personal, rather than an institutional level. Work on the six-volume *Studies in the Contract Laws of Asia* has brought together around 150 scholars from South, East and South East Asia. The *Ius Commune Casebook on Contract Law* was co-authored with three leading contract lawyers from England, France and the Netherlands.

**Sources of Law and Legal Methods**

Legal history cannot be studied without sources. These are often inaccessible or cannot be understood without a concomitant engagement with the methodological tools available to those who produced, interpreted and applied these sources in the past. We address these issues in the Research Field *Sources of Law and Legal Methods*. It aims to identify, catalogue and make available sources that were inaccessible to earlier generations of researchers as well as to provide the relevant tools and aids to study them.

Using repositories, publications and collections, sources are collated and edited in long-term projects, for example the collections of legal opinions (*consilia*) from medieval jurists. A census of 16th-century legal imprints seeks to provide a comprehensive listing and description of the entire legal literature produced during the relevant period, at the same time attempting to show how these works were disseminated throughout Europe. Another project seeks to uncover the complete manuscripts of the influential 14th-century jurist Baldus de Ubaldis. A more recent focus is on oral history, a key method of collecting sources in contemporary history, which is particularly relevant in the context of the Research Field *Legal History of the European Union*.

**Achievements and Outlook**

Needless to say, some of the projects straddle the boundaries of at least two of the four Research Fields. The above summary can hardly do justice to the diversity of the projects pursued in the Department with regard to regions covered, periods explored and methodologies employed. Work is pursued on territories ranging from the Bahamas to West Africa, Myanmar and China. Some researchers focus on the late Middle Ages, others on the European Commission in the 1980s. In terms of methodological approaches, we employ archival research, biographical studies, digital humanities, doctrinal history, history of concepts, intellectual history, oral history, palaeography and statistics, just to name a few. Nearly all our projects have a comparative, European or global dimension. It is a privilege to lead such a vibrant and diverse community of scholars hailing from nearly a dozen different jurisdictions.

In terms of scholarly output, much has been achieved over the past three years. Detail on the various publications can be found in the Annex to this Report. These include Donal Coffey’s path breaking two-volume work on the origins of the Irish Constitution, Emily Whewell’s study of British consular power in the borderlands of China, India and Burma and Insa Jarass’ prize-winning analysis of ‘private uniform law’, to single out just a few. I am also delighted to report that work on the final instalment of Coing’s *Handbuch* of sources and literature of the modern history of private law was finalised during the reporting period, almost 50 years after publication of the first volume!
The coming years will hopefully see us pushing ahead in all our Research Fields, with quite a few of the first doctoral and postdoctoral projects being concluded. With regard to the common law world, we aim to intensify our research on the Indian sub-continent, a region that presents particular challenges for legal historical work; a new project examines the interaction of English and Roman-Dutch law in British Guiana. Concerning the legal history of the EU, we hope to provide a first account of how to engage in research in a subdiscipline of legal history that has hitherto been uncharted, with a volume in the Institute’s *methodica* series. As to the comparative history of private law, a major focus will be on the continuation of the *Studies in the Contract Laws of Asia*. Work on sources of law and legal methods will be directed to the completion of the long-term projects on Baldus de Ubaldis and the census of 16th-century legal imprints.

We intend to continue and expand our collaborations with our many friends and partners at different institutions in Europe and beyond. Exciting opportunities for a further exchange of ideas have arisen with the establishment of the new Department of Marietta Auer, not least with regard to our work on private law and legal method. There is much more to be learned about European and comparative legal history, and we look forward to exploring them further.
Stefan Vogenauer

Director

Legal History of the European Union

Legal Transfer in the Common Law World

Private Law and Dispute Resolution in a Historical, Comparative and Transnational Perspective

Sources of Law and Legal Methods

Stefan Vogenauer’s research has been intimately linked to the various Research Fields of the Department of European and Comparative Legal History. A particular focus has been the ongoing work on the six-volume Studies in the Contract Laws of Asia, co-edited with Mindy Chen-Wishart from the University of Oxford and published with Oxford University Press. This is an ambitious attempt to map out the history and the present state of the contract laws of 13 different jurisdictions in South, East and South East Asia. Together, these account for nearly half the world population, ranging from India to the Philippines. The project is interesting with regard to legal transfer in the common law world, as it examines the borrowing from English law in jurisdictions as diverse as Hong Kong, India, Malaysia, Myanmar and Singapore. However, it also has a strong European comparative element because all the other contract laws concerned can be traced back to either French or German law.

Two volumes of the Studies were published during the reporting period [Chen-Wishart, Loke, Vogenauer, Formation and Third Party Rights, 2018; Chen-Wishart, Vogenauer, Contents of Contracts, 2020], and two further ones were edited with a view to publication in 2021 (on contractual validity) and 2022 (on termination and the adaptation of contracts in the light of supervening circumstances).

The last mentioned topic, contractual adaptation, has acquired particular relevance with regard to the COVID-19 pandemic, which has made it impossible or excessively onerous for many contractual parties to perform their obligations. This issue was addressed with a view to transnational sales law [McKendrick, Vogenauer, Supervening Events, 2020] and with a series of articles on force majeure, hardship and similar clauses [Vogenauer, Härteklauseln, 2021]. It also features heavily in the third edition of the leading student textbook on comparative contract law [Beale, Fauvarque-Cosson, Rutgers, Vogenauer, Ius Commune Casebook, 2019].

The latter publication, with its focus, inter alia, on the development of EU regulations and directives in the area of private law, also contributes to the Research Field Legal History of the European Union. However, in this area, Stefan Vogenauer’s work was mostly directed to the preparation of a volume featuring a number of key biographies of early protagonists of EU law at both the
national and the supranational level. The biographical approach also took centre stage in a special issue of the Journal of Legal History [Barnes, MacMillan, Vogenauer, On Legal Biography, 2020], in the institutional collaboration with Humboldt Universität Berlin on the F.A. Mann project and in the 2018 Annual Lecture of the Selden Society, which examined the lives and the work of three British translators of the writings of Savigny.

Finally, a monograph on the difficulties arising from the use of the English language in contracts governed by German law was mostly addressed to a practitioner audience. They were surprised to learn that many of the idiosyncrasies of modern English legal language cannot be understood without reference to medieval law French, the history of drafting deeds and the doctrinal origins of English contract law [Triebel, Vogenauer, Englisch als Vertragssprache, 2018].
Mapping Out, Comparing and Tracing the Origins of Asian Contract Laws

Two further volumes of the six-volume *Studies in the Contract Laws of Asia* were published during the reporting period. The series is edited by Professors Mindy Chen-Wishart (University of Oxford) and Stefan Vogenaer. Published with Oxford University Press, it provides an unprecedented account of the contract law regimes of selected Asian jurisdictions, including the continent’s major centres of commerce, on which so far only very limited critical commentary has been available in the English language. The coverage extends to Cambodia, China, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Myanmar, the Philippines, Singapore, Taiwan, Thailand and Vietnam.

All volumes pursue three objectives. Firstly, they intend to gather reliable information on the contract laws of the jurisdictions involved. Secondly, they attempt a first tentative comparison of these contract laws. Thirdly, they wish to shed light on the relationship between the Asian laws involved and their respective European source jurisdictions. The third of these objectives adds a strongly historical dimension to the comparative exercise. It requires a nuanced study of the legal transfers from English, French and German law that can be observed to various degrees in all the Asian jurisdictions covered in the series.

The various volumes deal with specific areas of contract law, including remedies, formation, content, parties, defects of consent, change of circumstances, illegality and public policy. Each volume features a joint introduction by the editors that specifies the research agenda, in-depth essays by leading scholars and commentators from the relevant jurisdictions and a concluding comparative discussion of the similarities and dissimilarities observed.

The volumes on *Remedies for Breach of Contract*, *Formation and Third Party Beneficiaries* and *Contents of Contracts* were published in 2016, 2018 and 2020, respectively. A volume on *Invalidity* is in preparation for 2021, another one on *Ending and Changing Contracts* for 2022.
Stephen Aranha  

Doctoral Student  

Legal Transfer in the Common Law World  

Subjects. Status and suffrage in the Bahamas during the past 100 years  

Through an analysis of archival sources, constitutional texts and election laws, this project investigates to what extent colonial subjects and, later, citizens of an independent Bahamas were empowered to participate in political processes. When the Bahamas’ first parliament convened in 1729, the franchise was very limited; the first election that could be described as adhering to the principle of one-person, one-vote was in 1967. The expansion of the suffrage was the result of battles fought between three fronts: the colony's white oligarchy, colonial administrators, and the broad masses of the Bahamian population and their political vanguard.

Important steps in the reform process towards a democratic suffrage include the introduction of the secret ballot, the removal of property qualifications and women's suffrage. At times, the oligarchy compensated for steps of democratisation with measures that reduced their democratic potential. This history is intertwined with political developments of the time – the global process of decolonisation in general, and the minutiae of this process in the Bahamas in particular. Bahamian historiography has focused on the socio-political aspects of this so-called ‘Quiet Revolution’ and defined its timeframe as about two decades. This project extends the timeframe to include the early twentieth century and the present. Shifting the focus towards constitutional and other legal developments will demonstrate that this revolution was never finished, but rather abandoned once political power had been wrested from the white minority. The result could be described as an independent nation of dependent subjects.
My research in the period under consideration is centred around three different projects. The first project, *European law and the rise of the EC/EU Council (1958–1993)*, is a reconceptualisation of the legal and institutional culture of the European Union from the 1950s through to the early 1990s, with two forthcoming publications on intergovernmentalism and culture. This project analyses, for the first time, why Member States of the European Communities have been seen as relatively passive with regard to the gradual establishment of the constitutional case law of the European Court of Justice (ECJ) from the 1950s through to Maastricht Europe. The project not only fills a gap in the recent historical and sociological literature, it also serves to test longstanding claims in law and politics literature about the obvious paradox between rising intergovernmentalism and the increasing legal integration promoted by the ECJ. A split in the Council over the ECJ and its constitutional case law was the key reason national governments did not curb the Court nor codify its constitutional case law. The project furthermore demonstrates that the rise of intergovernmentalism in the EC, which culminated in the Maastricht Treaty, led to a rejection of both the federalist aspirations of the Commission and the codification of the constitutional legal order developed by the ECJ, although Member States did accept how the latter worked as a basis for the Single Market.

The second project, *Key biographies in the legal history of the European Union (1950–1993)*, focuses on biography in the legal history of European unification. It originates from a conference held in the summer of 2018 at the MPIeR. The project addresses a wide audience of historically informed lawyers, legal historians, as well as historical and social science scholars of Contemporary Europe. An edited volume will appear in 2021 which will contribute to the development of the intellectual history of the field, focusing on the development of ideas and doctrines. At the same time, it will explore the links between social practices and the broader context of law and legal thinking.

The third project, *The legacy of the Luxembourg Compromise (1966–1986)*, examines the slow transition of the EC from a culture of consensual decision-making to the practices of majority-building and voting, which is regarded as a major trend in the cultural and institutional history of the EU. The project focuses on Member States’ initial resistance to this move towards voting that continued until at least the early 1990s. It will lead to a monograph to be published in 2021–22.

Victoria Barnes
Researcher

*Legal Transfer in the Common Law World*

*The evolution of corporate governance mechanisms in the Anglo-American world*

This project traces the evolution of doctrines that regulate corporate governance. In recent decades, English corporate law has moved towards a European style of law making. The Companies Act 2006 constituted a novel attempt to codify the rules surrounding directors’ duties. Hitherto, a director’s responsibilities were defined by the common law. Most significant here are *Carlen v Drury* (1812) and *Mozley v Alston* (1847). They are used to support the proposition that courts will not intervene in corporate governance disputes, unless there is strong evidence of fraud [Barnes, Mozley v Alston, 2018]. As courts were reluctant to intervene, shareholders looked to internal mechanisms to control corporate management instead [Barnes, Newton, Formalising Credit Markets, 2018]. In the United States, this rule appears in a different guise. How did this common law doctrine develop and then diverge?

This project emphasises three key factors as drivers for legal change: (1) the importance of individuals, particularly their background and socialisation, which both influenced their view of legal rule; (2) legal literature as a crucial mechanism for the diffusion of legal ideas; and (3) the importance of shared institutions as a way of harmonising law.

In this case study, doctrinal innovation is attributed to Nathaniel Lindley (1828–1921), who travelled to France and Germany and sought to emulate what he saw as a continental way of legal writing. His view of corporate regulation was otherwise typical in Victorian Britain [Barnes, Lord Lindley, 2020]. Nathaniel Lindley’s treatise on the *Law of Partnership* (1860) was crucial to this process of legal change. In jurisdictions that lacked or disregarded their own body of legal scholarship, texts written by English lawyers, such as Lindley, took precedence [Barnes, Whewell, English Contract Law, 2019; Barnes, Legal Transplants, 2020]. The highest court of appeal in the then British Empire was the Judicial Committee of the Privy Council. Lord Lindley’s vision of law was embedded into the common law by the Privy Council judgment in *Burland v Earle* (1902). As the United States had broken away, it did not follow contemporaneous developments in English law. Yet, as tenets of earlier English law had been so carefully embedded, lawyers there could not remove these rules so easily [Barnes, Shareholder Primacy, 2020; Barnes, Shareholder Rights, 2020].
Casebooks on contract law are plentiful. For early examples of how cases and those writing about them contributed to doctrinal development and instigated legal change, one might look to John Smith’s *Leading Cases*, first published in 1837. Others followed the same format of picking out individual cases which were felt to be illustrative of a common law rule. Christopher Langdell, pioneer of the case study method at Harvard, published *Cases on the Law of Contracts* in 1871. In *Leading Cases in the Common Law*, published in 1996, Brian Simpson examined nine cases. A more recent development is the series of edited collections called *Landmark Cases in...*. One might notice that the texts mentioned thus far have been from common law jurisdictions.

The research project *Roman-Dutch law and the common law world*, pursued by Victoria Barnes (coordination), Niels Pepels and Stefan Vogenauer, contributes to this well-established body of literature. However, it brings with it a new approach. Rather than focusing on describing, analysing or challenging the linear development of the common law, this study engages in a comparative method. It examines cases in jurisdictions where English law intersected with Roman and Roman-Dutch law. It focuses principally on shedding light on key cases in the contract law of Guyana and Sri Lanka. These colonial jurisdictions were often considered as the recipients of ideas from the metropole. Despite being distant from each other, these jurisdictions were linked by a shared legal background. They blended Roman-Dutch and English law, although in the 19th century, Guyana (British Guiana as it was then known) and Sri Lanka (Ceylon) were formally part of the British Empire.

This project, therefore, not only compares the law being made in these mixed jurisdictions to that of England and the Netherlands, but also to each other. It considers how contract law developed in these jurisdictions. What were the competing influences of Roman law, Roman-Dutch law and English law on doctrinal thought? This study does much to showcase the legal trends, unpick the comparative similarities and differences, but it ultimately explains why Roman-Dutch law persisted in some jurisdictions but was extinguished in others. It contributes to debates on the importance of culture, ethnicity and moral values of society (and their relationship to legal rules), the training and socialisation of those in the legal profession, and the embedding of judge-made law and stare decisis as a tool for eroding the structure of the civil law.
Under the influence of institutional economics, a consensus has emerged on the importance of the balanced state: one that is strong enough to fund and provide a legal framework enabling market exchange and security from internal and external predation, but which is constrained from undermining the security of private property rights. The formative example is England, where it is claimed that a balanced state emerged after the Glorious Revolution, leading in turn to the Industrial Revolution.

This account is controversial. It is widely accepted that property rights (certainly in land) have been secure since at least 1540. It is in this context that the project examines royal wardship in Britain from 1485 to 1660, a topic that has been largely neglected by historians since the 1950s and has never been the subject of an economic history. Beginning with Henry VII, the English Crown strained to re-establish its archaic, prerogative rights to 'wardship'. These included the right to take temporary proprietorship of freehold lands held of it by certain feudal-military tenures which had descended to an underage heritor (the ward) upon the death of their ancestor. It also included the right to take physical custody of the ward until they reached the age of majority and, when they were unwed, to decide who they would marry.

Three main points have emerged from the project so far. Firstly, the Crown’s re-imposition of wardship served to undermine property rights. Most commonly, the Crown sold wards and their lands on to third parties, acting as guardians. Guardians seldom had any incentive to take care of the estate, rather woods were chopped down, lands were over-cropped and buildings torn down for materials. It is partly in this context that Blackstone’s assessment of the Tenures Abolition Act (1660), which abolished wardship and the feudal-military tenures which underpinned it, as the ‘great[est] acquisition to the civil property of this kingdom than even Magna Carta’ can be understood. Secondly, the incidence of wardship was such that it had tangible economic consequences. For instance, land held by feudal-military tenures sold at a 10 percent discount relative to those tenures that did not entail wardship (socage) – significant in what was still a predominantly agrarian economy and where land was the pre-eminent asset and store of value. Thirdly, wardship is indicative of wider systemic failings of the early modern English state. It might have been an immensely productive source of revenue, but due to maladministration and the malfeasance of its officers, only a very small proportion of potential revenues actually accrued to the Crown.
Matilde Cazzola
Researcher

Legal Transfer in the Common Law World

Philanthropy, administration and the law in the 19th-century British Empire

The 19th century witnessed the increasing influence of philanthropists and philanthropic discourses on British imperial policies, most notably during the 1830s, with the abolition of the slave trade and slavery, the beginnings of Christian evangelisation in India and the establishment of protectors of indigenous peoples in Australia, New Zealand and the Cape. But philanthropic concerns had an impact inside the boundaries of Britain, too, as the same men and women who campaigned for emancipation, proselytisation and protection abroad often sat on the committees for the relief, schooling and nursing of the metropolitan poor and labouring classes at home.

This project assumes that disciplining the poor and labourers within and 'improving' the colonised without were two faces of one and the same set of social concerns. It therefore investigates philanthropy not as a private, moral relation between the wealthy and the needy, but as a branch of British imperial administration, with a public relevance and a transnational impact. By lobbying the Houses of Parliament and the Colonial Office, philanthropists influenced public policies and legal and legislative processes on a pan-imperial scale. They prompted the establishment of parliamentary select committees and commissions of inquiry, and ensured the approval of new, epoch-making pieces of legislation.

This project investigates how philanthropic ideas of humanness and reform were incorporated into – and most often disavowed by – the languages and practices of British imperial administration. To this end, it analyses a select number of influential philanthropists, transnational philanthropic groups and prominent colonial governors who interpreted their tenures as associated with a moral and 'civilising' responsibility. By surveying the relevance of the same set of social problems and of similar philanthropic solutions in different and distant spaces, this project will shed light on the interconnectedness of the British imperial framework from a transnational and comparative perspective.

This project aims to assess philanthropy as a key function of the 19th-century British imperial governance as it bent universalistic principles to the local and transnational need for social order. To 'love humans' meant, in fact, to govern and discipline them, while this disciplinary mission made an extensive use of the law.
Donal Coffey

Former Researcher

**Legal Transfer in the Common Law World**

*From unitary legal system to multipolar international organization: the legal history of the Commonwealth of Nations in the Inter-War Years*

This project concerned the constitutional development of the British Empire in the period leading into decolonisation. It specifically considered the relations between the self-governing parts of the British Empire, which made up the British Commonwealth of Nations, and the metropole. The project was pursued using a comparative approach. It drew on archival sources from each of the relevant jurisdictions to create a lattice of constitutional understanding, eg by using Canadian sources to shed extra light on the British interpretation of Irish legal liabilities in 1932. At the time, significant questions were raised about the correct forum and source of law that would be used to govern disputes between the various countries, eg should it be constitutional or international law [Coffey, 1930 Tribunal, 2019].

The questions raised at the time were fundamental to the legal structure of the Empire itself. A basic question – is it possible to leave the Empire and, if so, how? – was the subject of sustained debate over a period of 20 years until decisively settled by the Burmese independence movement [Coffey, Secession, 2018]. This, in turn, led to a change in the nature of the Commonwealth in order to incorporate republican India.

A particularly difficult member of the Commonwealth, at least in the eyes of the metropole, was the Irish Free State, whose constitutional changes in the 1930s sought to drive a wedge in the constitutional fabric of the Empire. This culminated in the removal of the Crown from the Constitution of the Irish Free Station [Coffey, Constitutionalism, 2018] and the drafting of a new Constitution [Coffey, Drafting, 2018].

By drawing attention to the multipolar nature of the Empire, and of law within the Empire, it was demonstrated that legal advances often occurred first in the periphery, although this was uneven between the various peripheries, before being adopted by the metropole.

Report of the Indian Constituent Assembly Debates (1947)
The research presented here focuses on Medieval juridical literature, its composition and dissemination. This literature was devoted to the *utrumque ius*, the civil and canon law, which constituted the European *ius commune*, the law common to Western Europe. The project investigates the sources of the *ius commune*.

Within the framework of legal literature and book production in the Middle Ages, the works of Baldus de Ubaldis (1327–1400), the most famous jurist of his time, became an important normative source of the *ius commune*. His commentaries and *consilia* spread throughout Europe in a large number of manuscripts and later in early printed books; indeed, they were still being published in the 17th century.

The project has succeeded in uncovering as many as 700 manuscripts that contain his works in whole or in part, which testifies to the wide dissemination of Baldus’s work. Prominent among these are the manuscripts of *consilia*, expert legal opinions given by Baldus at the request of litigating parties or judges (the project will provide a list of some 5,000 *incipits* of Baldus’s *consilia*). The Catalogue of the manuscripts has now been completed.

On the basis of the evidence provided by autographed copies of *consilia* which have been preserved, [Colli, *Auto­grafia*, 2019], a number of other manuscripts of a special character have been discovered. These are manuscripts that actually belonged to the author himself and which he kept as his personal working copies. He subsequently modified and expanded the texts throughout his lifetime through many annotations and additions written in the margin. The discovery of these ever-changing ‘living texts’, from which the variants and multiple redactions in the later tradition of the works derive (also analysed in the Catalogue), makes it possible to construct an intellectual biography of this important medieval jurist, determining the order in which his works were compiled and the major dates in his intellectual development. This is the focus of the monograph which will conclude the project.
Justine K. Collins
Former Doctoral Student

Legal Transfer in the Common Law World

Tracing British West Indian legal transplantation: an analysis of the development and role of slavery legislation (1500s–1800s)

The thesis project examined the introduction of imperial laws and their transplantation within the relevant island colonies, issues of mixed legal systems and forms of early governance. Part 1 therefore laid out the basis of how transplantation began on a constitutional level prior to the genesis of the plantation societies and eventual economic boom. The subsequent parts of the thesis focused on various aspects of transplantation throughout the English slaveholding Empire via the progenitor Slave Code of Barbados. Part 2 specifically examined the origins of the Comprehensive Slave Codes of the British West Indies. It delved into pre-colonial English society to identify various laws and regulations adopted and adapted in the colonies and argued that transplantation was central to development within colonial legislation. Part 3 then analysed aspects of the enslaved as a property conundrum. Parts 4 and 5 focused on the period leading up to the end of slavery and the fall out that occurred after the apprenticeship system failed. The thesis concluded by addressing the breadth and depth of these ramifications post-emancipation by tracing the legal consequences of labour schemes, transactions, movements, transportations and stratifications therein. What each chapter revealed in terms of legal transplants within the British West Indies was that the English were not innovators in this regard; after all they met a region which was already colonised to a large extent by their European counterparts. The Barbadian Slave Code and its successors were simply mirrors of pre-existing laws and regulations. Close analysis of various metropolitan laws shows these linkages from the creation of the governance structures, the slavery codes, the courts, manumission laws, apprenticeships and vagrancy regulations. Each depicted the connection between the centre and its peripheries, showing that the English were great at improvising in areas somewhat unfamiliar but not totally foreign to them.
The aim of this research is to examine processes of normative production, the transfer of British legal institutions and the attitude of the new English-style courts towards commercial relations in the palm oil trade in West Africa. This study aims to provide a legal historical account of the events that characterised West African commerce and British merchant capitalism on frontiers of trade and in the administration of the colony after the transatlantic slave trade. It will fill the gap in the existing literature that does not comprehensively address the interaction between the transferred English legal institutions and legitimate commerce. Ultimately, it looks at West African trade in the post-abolition Atlantic economy and addresses the normative framework regarding commerce in the colonial era.

It aims to understand how the normative framework pertaining to commercial relations developed from the era of the courts of equity to the period of formal English legal systems. At the onset, this research will take into account historical, legal, economic and political aspects. It aims not only to present key research findings with analysis but also contextualise them thematically, theoretically and with a view to assessing possible avenues for the next phase of research in the field.
Mandatory private law is of central interest in legal scholarship for many reasons. As legislators readily make use of mandatory norms to implement regulatory interests and courts usually apply mandatory rules ex officio, they require increased attention. Private parties must comply with mandatory norms to conclude valid contracts. Equally, mandatory private law has attracted the attention of legal theory, as the distinction between mandatory and non-mandatory law defines the degree of individual freedom in a legal system. Hence, it touches on crucial debates about the content, extent and raison d’être of private autonomy.

Because of the recent steady increase in mandatory private law norms, there has been criticism of national and European legislators in scholarship. In contrast, little attention has been paid to the role of the courts in the creation and development of mandatory private law and the associated legal doctrinal consequences. This is peculiar as in practice it is not only up to the courts to decide how mandatory norms must be interpreted, but often also whether a norm has a mandatory character at all. This raises questions about judicial law-making and a potential for conflict with fundamental constitutional principles.

From a historical and comparative law perspective, the research project aims not only to question the legality of this development but also to analyse the doctrinal and methodological consequences of the creation of mandatory law by judges. This study employs an empirical case law analysis of mandatory norms in various areas of private law as its methodological approach.

The second project undertaken in this period relates to Private uniform law. The national fragmentation of commercial law has always been perceived as a barrier to international trade. Therefore, it has not only been nation states that have tried to create legal unity through international treaties, private actors have also created non-state rules to this end. The classification of such non-state rules and regulations presents challenges for our understanding of legal doctrine and legal sources.

As a result, this project established the concept of ‘private uniform law’. Based on the functional conditions of such law, private uniform law is defined as an independent doctrinal category that links certain facts of a case with specific legal consequences. The reasoning is based on an empirical analysis of English and German case law on selected non-state rules and regulations [Jarass, Privates Einheitsrecht, 2019].
My research is mostly focused on a conceptual history of the term Rechtsgemeinschaft, which is also the topic of my PhD project. The expression Rechtsgemeinschaft has been popular since the 1960s. The term was particularly associated with the idea of pro-integration policies. For decades, the fact that the EEC – and later the EU – was a Rechtsgemeinschaft, was tacitly taken as given. Now, as there is a perceived crisis among some legal scholars concerning European law and the controversies regarding the project of furthering European legal integration, the term is being called into question. Is Rechtsgemeinschaft still a fitting description of the EU both as it is and as it might aim to be in future?

Methodologically, I combine several historical semantic approaches, such as Koselleck, Wittgenstein and Skinner. As with all influential concepts, Rechtsgemeinschaft carries a lot of implicit meaning that can only be explained within the context of the contemporary debates in legal theory. As a study of legal semantics can gain much from exchange with legal theory, I have given seminars at the Goethe-Universität Frankfurt on legal theory and legal philosophy. I also contributed a comment to the Institute’s Jour Fixe, when Thomas Vesting presented his recent book Staatstheorie to engage in a dialogue between legal theorists and legal historians. A particular challenge is the translation of the term Rechtsgemeinschaft, which I have tackled in presentations in Luxembourg, Florence and Seoul.

The case study allows us to map the term’s changeability in debates on integration. In this way, this research project is a contribution to the incipient self-historicisation of European law.

I have published some of my results on a widely read blog for German constitutional law [Klünder, Was ist die europäische Rechtsgemeinschaft?, 2020] and also an English translation, which is more accessible for an international audience [Klünder, What is Rechtsgemeinschaft?, 2020].

Potential for misunderstanding: Does the term ‘legal community’ enable legal communication, or are we all talking about very different things?
Jasper Kunstreich
Researcher

Sources of Law and Legal Methods

History of legal scholarship within the Max Planck Society

This project is part of a bigger research network. The Institute endeavours to publish an edited collection of six individual studies of the histories of the six law-related Max Planck Institutes (MPIs) that were founded before 2000. Six scholars from different German universities, each of them acquainted with the respective MPI, have been invited to contribute. At the same time, the project forms a subpart of the Berlin-based research programme on the history of the Max Planck Society (GMPG), to which it contributes a synthesising analysis of the ‘legal’ within the Society. Another layer of collaboration included collecting material from different archives, including the Bundesarchiv, the local archives of federal ministries and the Länder, collections held by the individual Institutes and the Max Planck Society’s Archive in Berlin-Dahlem. Together with the latter, the research network has also built an extensive database that enables scholars to quickly access material, make cross references between different institutes or sections of the Society and identify network effects.

In addition to coordinating cooperation between the individual authors and liaising with the Berlin-based research programme, I also embarked on an overarching study of legal scholarship within the Max Planck Society: how did it differ from legal scholarship conducted at universities? How did Max Planck lawyers contribute to the shape and functioning of the Max Planck Society? What were their interactions with other institutions, in particular with the German Justice Ministry and the European Commission and civil service? The first three post-war decades witnessed a sustained growth of legal scholarship within the Max Planck Society with a focus on comparative and international law. This is the period during which the so-called ‘legal cluster’ emerged within the Max Planck Society; by 1966 it was well established. The cluster was characterised by complementarity – the respective institutes focused on different fields each and avoided direct competition – and strong continuity. They also provided a sort of semi-public good: their specialised libraries became reference points for legal scholars, their researchers regularly provided expert opinions for German courts. Further research looks into the changes that took place subsequently as the academy became increasingly international while their work was transformed by digital means.
Anselm Küsters
Doctoral Student

Legal History of the European Union

The influence of ordoliberalism on the development of European competition law as mirrored in European Commission publications (1952–2018)

Ideas matter. Different perspectives on thrift and competition shape the economic policy discourse on reforming the EU, while conflicting concepts of neutral monetary policy and the rule of law dominate the legal debate. This opens up the possibility of investigating the extent to which such nationally or culturally hegemonic narratives – be it in the form of frequently cited ‘lessons from the past’ or dominant schools of thought – have historically influenced economic policy and law in a European context (conceptual overview: [Küsters, Narrative, 2020]).

In order to do so, the rapidly growing set of instruments developed in the field of Digital Humanities can be used. In particular, corpus-linguistic methods allow for the clarification of the spread of narratives on the basis of word frequencies and correlations, network analysis, and algorithmically estimated topics (methodological overview: [Küsters, Volkind, Wagner, Digital Humanities, 2019]).

On the basis of these methods, my ongoing PhD project traces the ordoliberal influence on EU competition law by examining decisions and publications of the European Commission. Related work shows that a cultural preference for price stability and balanced budgets played a role both in the writings of German economic experts during periods of perceived domestic crisis [Küsters, Search, 2019] and in speeches given by ECB board members during the Eurozone crisis [Küsters, ECB, 2018]. Meanwhile, an analysis of the German medial discourse on Southern Europe finds that popular narratives do not have to be stable over time [Küsters, Garrido, PIGS, 2020].

Overall, this mixed-methods approach makes both assumptions and results intersubjectively verifiable and promises new answers to contested questions in legal history. It also strengthens the discipline’s connection with economic history [Barnes, Bottomley, Küsters, Economic History, 2019] and AI research [Küsters, Artificial Intelligence, 2020].

Network analysis can be used to group all competition law decisions according to semantic metrics. The resulting clusters of decisions (colour-coded) can be investigated further through a close reading to examine the influence of different schools of competition law.
Jan-Henrik Meyer
Researcher

Legal History of the European Union

A transnational history of European environmental law

Why and how did the European Union (EU) – an international organisation primarily devoted to peace and prosperity in Europe through market integration – become the leading lawmaker on the environment in Europe? Which actors were driving this process and established a new system of law? How did European environmental law change over time? These are the key questions of this research project. The underlying assumption is that transnational flows of ideas and the transnational interaction of a diversity of actors were key. The core hypothesis is that the direction of these flows changed over time. While the early makers of European environmental law – at a time when even the concept of the environment was not fully established – drew on precedents and concepts from outside, over time, European environmental law was increasingly exported, and became a point of reference internationally.

The project draws on a variety of historical sources from national, EU and civil society archives, published records, legal scholarship and oral history sources. Methods include not only the qualitative analysis of texts, but also Digital Humanities approaches, notably the analysis of the emerging ‘field’ (Bourdieu) of European environmental law.

The most important results so far explore the contribution of different actors to European environmental law. Even before it was directly elected in 1979, the European Parliament (EP) placed the environment on the European institutional and public agenda [Meyer, Responding, 2020], and demanded binding EC legislation. MEPs specified quite clearly what Treaty legal bases could be used, as highlighting in a contribution to a forthcoming special issue on the European Parliament. A contribution to a history of the European Commission, based on numerous oral history interviews, as highlighted its central role in framing environmental law, and the varying role of lawyers within the Directorate General (DG) Environment. It also underscored how global trends and implementation problems changed its approach to law-making [Meyer, Environmental Policy, 2019]. A forthcoming biographical chapter on a Commission environmental lawyer who used the courts to advance implementation contributes to the growing interest in biography among legal historians. Supranational activism has not always led to legislation, as a case study and talk at the European Environmental History Conference 2019 emphasised, highlighting the instructive potential for legal history in analysing such ‘failures’.

The environment ‘made in Brussels’
This research concerns the doctrinal history of English commercial instruments, and its interplay with mercantile custom. The common narrative among English commercial lawyers is that English law was too rigid in the 17th century and needed a jolt from mercantile practice to develop into the global commercial law that it is today. This project aims to show that this view is simplistic and misunderstands how the common law borrows content from other dispute resolution processes.

In order to do so, the research engages with several related issues in broadly two themes. The first theme concerns how the law of commercial instruments was first born out of mercantile practices in Britain and continental Europe. This project builds on the seminal work of JS Rogers (1995) by adding doctrinal detail regarding what the specific structural issues within the common law were that have since been interpreted as the common law’s ‘rigidity’. The second research theme relates to how these doctrines were then refined and adjusted when the British Empire pushed into South and Southeast Asia and the law came into contact with local trade practices.

Under the first theme, rich areas of inquiry have been unearthed by tracing the historical origins of certain doctrines that could inform not just historical debates, but advance our doctrinal and theoretical understanding as well. Once we understand the internal ‘mindset’ of the common law, the reluctance to accept new sales law in fact shows itself to be a sensible concern for maintaining boundaries between doctrines, limiting and directing parties’ disputes, and managing the amount of evidential material the courts had to consider. It is from these prosaic procedural concerns that the dominant commercial law of the modern world was born.

Under the second theme, a picture is emerging of differing trade practices and factual situations which then refine the content of the common law. English judges’ developing awareness of novel factual problems in trade disputes (eg differing customs, cultures or even languages) began to feed into a more responsive commercial doctrine. This already suggests that legal knowledge transfer was not just from London to the colonies, but involved a much more nuanced recognition of interconnected trading hubs and the admission of customary normative content.
While it has long been recognised that the printing revolution of the 15th century had profound effects on the production and dissemination of knowledge in Europe, not least in the field of law, our information on the vast book production of European publishing houses remains unsatisfactory. Only the incunable period up to the year 1500 can be said to be adequately described. However, in the last decades various projects have begun to document the printing production of Europe in the succeeding century.

These projects have proceeded along national lines. From the point of view of the legal historian, however, this approach is seriously anachronistic. In the 16th century, legal literature knew no such boundaries as those constituted by the modern nation state. The *ius commune* was a law common to all of continental Western Europe, written in a single European language, Latin. What were effectively extraterritorial printing centres, such as Venice, Lyon, Frankfurt, Antwerp and Geneva, permitted the distribution of legal scholarship throughout Europe and ensured that jurisprudence remained a supranational, European enterprise.

The project *Census of 16th-century Legal Imprints* seeks to provide a bibliography of the juristic production of the printing presses of continental Europe from 1501 to 1600. Its objective is the creation of a data bank in which surviving copies of legal editions held by individual libraries are brought together in a single union catalogue. Building on the information provided by traditional published library catalogues, attention has latterly been turned to the OPACs of the great German libraries. The comprehensive Census descriptions provide a key to interpreting the sometimes elementary information in these catalogues. This has been supplemented by visits to the libraries to inspect rare items and resolve any queries.

The Census will thus make available for the first time a systematic register of the extensive juridical holdings of the great historic German legal repositories: Freiburg, Tübingen, Heidelberg, Göttingen, Halle, Rostock, Gotha, Erfurt, Wolfenbüttel, Berlin and Munich. This should also reveal the patterns of dissemination of law books in Europe in these centuries.
On 7 January 1783, the artist John Trumbull, known as the ‘Painter of the Revolution’, addressed the American public in an open letter. He stressed the significance of literary property to reward American authors, in part because a ‘literary reputation is necessary to complete the national character’ in order to unite the public. In the first State of the Union Address on 8 January 1790, President Washington weighed in on the copyright debate, proposing that public happiness was to be achieved through promoting science and literature. This would also enable people to know and value their constitutional rights.

As Washington argued, the value of copyright lay and still lies in its capability to advance knowledge. He reasserted the importance of the intellectual property clause in the US Constitution. This clause laid the foundation for federal copyright law in the US, which in turn was heavily influenced by English copyright law. Over a period of seven years, Trumbull and Washington, along with other important politicians and literary figures such as James Madison, Joel Barlow and Noah Webster, proposed legislation on copyright. Why did these men think copyright law was important to the building of the early American republic? Furthermore, how did it come to pass that early US copyright law was based on English law?

This project chronicles the historical process of enacting US copyright law from 1783 until 1834, as well as tracing its English foundations – mainly the 1710 Statute of Anne, the first law to extend copyright protection to authors. It challenges current understandings of the origins of US copyright law and argues that this field of law was used to create a distinct American identity. While the English foundations of federal copyright law are well documented, relevant literature has overlooked the influence of state copyright statutes. Most states adopted copyright statutes between 1783 and 1786, all based on the Statute of Anne. The framers of the Constitution, seeing diverse state copyright laws, created a uniform body of copyright law on a federal level. Between 1783 and 1834, state legislators and Congress via statutory law, and courts via case law, continuously transferred copyright law from England to the US. Thus, early US copyright law relied heavily on English copyright law to protect and advance knowledge in the process of creating a national identity.
Sigfrido M. Ramírez Pérez

Researcher

**Legal History of the European Union**

*An oral history of the Court of Justice of the European Union*

*A history of EU lawyers in European institutions*

*EU law and constitutional law in Southern Europe: a comparative perspective*

*Writing the history of competition law in the European Union, 1945–2003*

*The history of Social Europe and EU labour law*

The research activities developed in 2018–2020 clustered in five research projects investigating different aspects of the legal history of European Union law.

The first research project, *An oral history of the European Court of Justice*, carried out with Stefan Vogenauer and the assistance of Dimitri Zurstrassen, was a pilot history project on the legal-administrative history of the Court of Justice of the European Union in Luxembourg. It involved a consortium of lawyers and historians who were brought together in a workshop in 2018 with the aim of defining the oral history methods to be used for this project. The second project, *A history of EU lawyers in European institutions*, deals with the role of supranational legal actors in the making of EU law, with a particular focus on the legal services of EU institutions. This was presented at two conferences in 2019 in Frankfurt and Brussels, which brought together specialists and lawyers from EU institutions with a particular focus on oral history methods and legal biographies. The third project, *EU law and constitutional law in Southern Europe: a comparative perspective*, dealing with the relationship between EU law and constitutional law, focuses on the role of non-institutional European actors in the adoption of EU law in a comparative perspective with a focus on southern European countries. The Italian case study looks at the role of the Italian Association of European Law (AIGE), which was presented at the conference celebrating the AIGE’s 60th anniversary in Rome in 2018. The Spanish case study is part of a Spanish research project dealing with EU enlargement to include Spain and Portugal, and was presented at two conferences in 2019 in Barcelona and Lisbon. This comparative perspective was the core objective of the DAAD 2019 conference, which included a conference on the comparative constitutional history of Italy, Germany and Spain in a European perspective. The fourth and fifth projects deal with the history of EU law in two policy fields: competition law and social labour law. The project on EU competition law, *Writing the history of competition law in the European Union, 1945–2003*, examines one century of European competition law in a comparative and transnational perspective in a co-edited volume with Brian Shaev (University of Leiden). This has been illustrated with publications on the impact of EU law on multinational companies in the automotive sector. The fifth project, *The history of Social Europe and EU labour law*, has been developed is tied to my role as coordinator of the working group panels of the European Labour History Network (ELHN) biannual conference. Its focus is on the role of European trade unions in the making of EU social and labour law.
This project focuses on the evidential significance of written contracts from a historical and comparative perspective. In many jurisdictions, written contracts have an absolute or at least superior evidential force regarding the completeness and the accuracy of their terms. What today sounds familiar even to a layperson was a tremendous legal change when introduced by statute in 16th-century France: the *ius commune* of that time considered witness statements as crucial for any proof before a court. The French development occurred at the time when the use of printed books became common and general literacy spread.

In the centuries that followed, similar legislation was introduced in England and several German territories. Comparisons of the interpretation of the French rule by courts and jurists with legislative drafts in England and Prussia bear strong evidence that their statutes were substantially influenced by the French model.

Adopting a historical and comparative perspective, the project also aims to shed light on current projects of legal harmonisation such as the Principles of European Contract Law. Curiously, there has been the suggestion of following contractual practice from the US, where the writing is protected through the use of merger clauses, by which the parties declare the writing to be their entire agreement. Case law analysis, however, shows that the application of such clauses is a frequent source of litigation which results in the implementation of numerous exceptions that are not reflected in the suggested rules. This research project is not limited to a purely doctrinal analysis. It is equally informed by a strong interest in the overarching historical topic of the change from an oral to a written culture in society and law and analyses policy considerations of courts and legislators from the 16th to the 20th century.
Philipp Schmitt
Doctoral Student

Legal History of the European Union

Minimum harmonisation: the development of a legislative technique in EU law

Legal harmonisation plays an important role in the European Union (EU). Its main aim is to develop a single market, but at the same time non-economic objectives must be considered. As national perspectives vary, the fundamental question remains: how much unification is necessary and how much flexibility, for example, by establishing minimum standards, is feasible? Analysing how and when different forms of harmonisation of national laws were developed allows for a better understanding of the changing character of the EU and its predecessors over the decades. Minimum harmonisation highlights the link between the fundamental question of the nature of the Union – neoliberal or social – with rather technical legal issues.

The tendency to allow for flexibility to foster integration despite national differences, such as minimum clauses and other forms of differentiation, played a role in Community law-making from the very start of integration. This finding challenges the established narrative that the Commission and the Council of Ministers initially – in a period of a now long-lost unity – only passed highly detailed directives without any flexibility. Instead, the period was characterised by contingencies and a lack of overview over the different areas of Community law and the techniques of harmonisation used.

Archival research shows how in the late 1970s a more theoretical analysis commenced within the Commission’s Legal Service. Its officials collected the different instruments and disseminated these in legal publications. As the Community grew and its legislative activities spread to non-economic areas, such as environmental law or consumer protection, minimum harmonisation played a more prominent role. By opening the ‘black box’ of the Commission, it is possible to show how a market-focused liberal approach cherishing unification and a growing ‘social’ tendency clashed. The ‘spill over’ of these internal debates into the legal discourse then sparked scientific discussion on different harmonisation techniques.
The mid-19th to early 20th century was a formative period for the creation, reformation and extension of law across the British Empire. Bilateral treaties, metropolitan Acts and local regulations attempted to stretch British jurisdiction across the Caribbean, Africa, Asia and the Pacific. Whether to protect important economic zones, to limit the reach of other imperial powers or to catch fugitives, British imperial regimes attempted to demarcate the extent of their jurisdictions and clarify the nature of imperial legal power. This project has focused upon the legal practices of extraterritoriality, extradition and deportation in two broad regions of the world: Asia and the Caribbean.

It has used case studies, legislation, newspapers and archival documents to understand how individuals, such as fugitives who transgressed frontiers, shaped British imperial jurisdiction and concepts such as nationality.

Imperial legal officials, such as consuls, also played a key role in creating and applying law across borders. They campaigned for, and implemented, British legal rights that defined the contours of British imperial power. Often they had careers that spanned across jurisdictions, taking legal ideas with them as they moved. Tracing their careers has helped to understand how they understood the laws they created, interpreted and applied. This research has made contributions to several fields: historiography of borderlands and frontiers, British Empire studies, China studies and Caribbean studies.

Published pieces on the project include a book publication [Whewell, Borders, 2020] exploring legal practices in the frontiers between China, Burma and India. Other publications include an article [Whewell, Mediators, 2020] examining legal mediators in the Burma-China borderlands in the early 20th century. Other articles have explored the role of fugitives in shaping legal regimes of extradition in the Caribbean [Whewell, Refuge, 2020] and the legal connections between India and Treaty Port China through political fugitives [Whewell, Deportation, 2020]. Finally, a co-written piece with Victoria Barnes explored the transfer of English contract law to extraterritorial courts in China during the late 19th century [Whewell and Barnes, English Contract Law, 2019]. These works demonstrate how law moved with various actors – such as fugitives and consuls – and how they shaped local and regional environments across borders.
Sarah Zimmermann

Doctoral Student

*Legal History of the European Union*

*The emergence of European Union procedural law*

Although the decisions of the Court of Justice of the European Union are studied intensively by lawyers, political scientists and historians, the procedural rules governing the Court and its decisions have attracted little attention in legal research.

The project seeks to answer the question of how the Rules of Procedure of the Court of Justice came into being. In this respect, it asks what the first procedural rules of the Court of Justice of the European Coal and Steel Community (ECSC) were, who laid them down, how they evolved during the first years of the European project and whether there were recognisable national or international influences.

Given that these procedural rules were, apart from the Founding Treaties, the very first legal provisions to be adopted by the Community, the project also seeks to provide an insight into the early Community decision-making processes more generally.

Using sources from the archives of the European institutions and the ministries of the founding states, the project examines the emergence of the procedural rules of the Court with a historical perspective to these legal and, more particularly, comparative questions.

The procedural rules of the Courts of the European Union are laid down in the Protocol on the Statute of the Court of Justice and in the Rules of Procedure of the Court. Work on the subject has so far shown that the first set of Rules of Procedure, dating from 1951, was drafted within only three months by the seven judges of the ECSC Court. Their first draft was very closely modelled on the Rules of Procedure of the International Court of Justice in The Hague. This changed, however, when it became increasingly clear that it was not a classic court under international law, which is why more and more rules from national civil and administrative procedures were incorporated into the drafts. Moreover, it is noticeable that there were very few arguments among the judges during the drafting of the rules. To what extent this can be attributed to a great similarity of the civil and administrative procedures in continental Europe will be worked out, based on a selected number of procedural rules.
Dimitri Zurstrassen
Former Researcher

Legal History of the European Union

An oral history of the Court of Justice of the European Union

Work was carried out on two projects during the reporting period. The objective of the first research project was to analyse the genesis of the new ECSC competition law that emerged during the European steel crisis of the 1970s and 1980s and its evolution. It was part of the Institute’s work on the history of EU competition law. Using primary sources, the research examined how this new legal framework was constructed, the actors involved, the arguments justifying its development and whether it constituted a model for the regulation of EEC sectors. The results will be published in a chapter of a forthcoming book, as well as part of a PhD thesis on the evolution of EU industrial policy in the steel sector.

The oral history project of the ECJ was initiated in 2017 and is coordinated by Sigfrido Ramirez and Stefan Vogenauer in collaboration with the Historical Archives of the EU. Its aim is to collect testimonies of people working at the institution from 1951 to 1991. My primary tasks were participating in general coordination of the project, the collection of primary sources and literature about the institution and the preparation and organisation of interviews. I also took part in the organisation of the workshop ‘Oral History of the ECJ’, held at the Institute in 2018. The proceeding of this event will be published in 2021 in the Journal Rechtsgeschichte – Legal History.
MAX PLANCK FELLOW GROUP

The History of European Union Labour Law

Thorsten Keiser

Max Planck Fellow

From the very beginning, the European Community, and later the Union, has been active in various fields of labour law. Different regulatory techniques of hard law and soft law can be observed. The Max Planck Fellow Group aims to understand these in a historical perspective and to reflect on them in their respective contexts of origin. Using archival materials, the first subproject will produce an overview that documents the regulatory emphasis of Union law in the area of labour in its supranational dimension and from a historical perspective. Parallel to this, a second project analyses these regulations in a bottom-up approach that takes the legal systems of the member states – not the Union – as its point of departure. While the first project will focus on the emergence and impact of supranational law, the second will highlight the interaction between national legal systems and European lawmaking. The resulting complementary perspectives on the development of European labour law reveal its specific characteristics: on the one hand, its roots in supranational compromise and, on the other, its adoption of certain normative patterns from the member states and thus its roots in European legal culture. The Max Planck Fellow Group will help to strengthen the existing network of research projects both at the Justus-Liebig-Universität Gießen and the mpilhl.

The project’s activities began in summer 2020. A doctoral position was filled and located at the Max Planck Institute. Networking with various research areas at the Universität Gießen has taken place. In the course of the work, it has emerged that the thesis will focus on the legal history of European Union labour law in Germany and France. Situated within the second project, the thesis takes up a bottom-up perspective that emphasises socio-political and economic factors. Two further doctoral positions will be filled in autumn 2021. The thematic focus will be the history of labour law in the EU in general, as well as the history of anti-discrimination law in Southern Europe.
Anna Quadflieg

Doctoral Student Max Planck Fellow Group

Legal History of the European Union

The origins, development and effects of anti-discrimination regulations in EU labour law

Although labour law lies within the competence of the member states, large parts of national labour legislation today are affected by European regulations. A study of the history of protection from discrimination in EU labour law is able to offer insights into the processes and effects of European legal integration. In a first step, the project explores how the development of anti-discrimination measures was influenced by international and national actors and debates. It then evaluates how the relevant directives have been implemented and what actual effects they have had on the ground.

The existing literature on European labour and social law examines it from a legal perspective, putting it in the context of the broader European development from functional integration to a value-oriented community. In contrast to such approaches, this project places protection from discrimination in labour law in the socio-political context of two member states, France and Germany. An analysis of French and German political and civil society debates explains what influence member states’ motives, actors and institutions have had on the formation of legal norms and how legal developments on the European level have affected both countries’ public discourses on labour law. Documents from the archives of the national parliaments and governments, the EU institutions and the social partners in both countries serve as the basis for the analysis. In addition, interviews with first- and second-line actors complement the picture of the socio-political negotiation process leading up to and following the Directives.

The research project is to be understood as part of the debate on European integration through law. It aims to draw attention to normative considerations and communities and to identify problem-solving alternatives in relation to the legal regulation of an economically relevant socio-political issue.
HISTORICAL REGIMES OF NORMATIVITY

Thomas Duve

The Department is dedicated to research on historical regimes of normativity in the European Middle Ages as well as in the early modern and modern periods in the Americas, Europe, Africa and Asia. We are researching diverse topics such as canon law and moral theology in 16th-century Latin America, norms regulating ownership and dependency in 18th- and 19th-century Philippines or Lusophone Africa, and the use of alternative means of conflict regulation like arbitration and conciliation boards in the German Kaiserreich.

Notwithstanding this breadth, our research relies on and contributes to some shared basic methodological premises. We build on a broad conception of normativity (‘multinormativity’), and we understand the history of law and of other forms of normativity as a continuous process of normative knowledge production through ‘cultural translation’. A focus on ‘regimes’ of normativity helps us to analyse historical constellations of norms, institutions and practices in their dynamic interaction. These methodological foundations draw on previous work at the Institute, not least on the former Research Focus Areas. The consolidation of a knowledge-historical approach to global legal history has provided us with a necessary tool for expanding the scope of research (see individual report Duve).

Structure and dynamics

The projects of the more than 40 researchers that have been working together in the Department in the reporting period are grouped together into six Research Fields.

As the individual reports will show, particular attention has been devoted to normative knowledge from the field of religion, above all, in research projects in the Research Field Religious and Secular Legal Cultures in the European Middle Ages (see individual reports of Brandes, Ehlers, Meyer, Spahn) as well as the Research Field Curia, Canon Law and Moral Theology in the Modern Era (see Birr, Bragagnolo, Decock, Duve, Egio, Mejia, Meyer, Moutin, Soler Otte).

One regional focus is the German-speaking world – in particular for the Research Fields on The History of Criminal Law, Crime and Criminal Justice in the early modern and modern periods (see Härter, Nuñez, Sirotti, Vegh Weis) and on Special Legal Orders, including labour law, in the 19th and 20th centuries (see Aragoneses, Bender, Casagrande, Collin, Fuchs, Meccarelli, Wolckenhaar, Wolf). Many of the Institute’s researchers have been involved in a major achievement of our former research on conflict regulation, namely a handbook of conflict resolution in a European perspective (see the report of the editor of volume 4, Collin).

Due to the expansiveness of the Iberian empires, the legal-historical research projects assembled in the Research Field Iberian Worlds are dedicated to several places on the four continents where the Iberian empires had, at some point in the course of their existence, been present: Africa, the Americas, Asia and Europe (see the reports of Aragoneses, Bastias, Birr, Bragagnolo, Coutinho, Danwerth, Dias Paes, Duve, Escobar, Egio, Espíndola Souza, Guerra Pedrosa, Gonzales Escudero,
An important focus of our work is to reveal transnational and transregional connections, for example, by studying regimes of criminal law in a transatlantic perspective (see Härter, Nuñez, Vegh Weis) or through work on comparative constitutional history (see Li, Losano). Many projects are based on sources from local archives and engage in cataloguing certain holdings. A number of research projects focus on the analysis of historical regimes of normative knowledge production – i.e. the history of the modes of knowledge production as such – as their core question (see the Research Field Knowledge of the Production of Normativity, and the individual reports of Bragagnolo, Cesari, Damler, Duve, Li, Lima, Pogies, Spahn, Woods).

In some cases, research projects generate Cross-Cutting Themes, such as Law and Diversity. Here we can make use of the comparative potential that results from working on different historical periods and spaces. In the so-called Joint Projects, several individual projects are carried out in close coordination with one another. The project Glocalising normativities, for example, provides a shared analytical framework to different individual research projects. In a similar way, a number of researchers are currently involved in the project to publish a reference work on fundamental concepts and terms of Canon Law in Hispanic America and the Philippines (16th–18th centuries) and in the research on the School of Salamanca. Working groups like Using normative knowledge from the past, initiated by Li and Woods, serve to discuss overarching aspects. A PhD colloquium, held by Duve and Ehlers, is a forum for the discussion of how to write a legal-historical thesis.

The researchers of the Department have made intense use of the Institute’s resources for inviting guests and publishing. In the reporting period, we have hosted more than 85 guests from 25 countries. In the Institute’s publication series, researchers from the Department have edited four ‘Focus’ sections in our journal Rechtsgeschichte 26 (2018), 27 (2019), 28 (2020), published five books in the Global Perspectives on Legal History series (nos 5, 6, 12, 13, 14), and two volumes in the Studien zur europäischen Rechtsgeschichte (308, 323). More than 50 research papers have been published by members of the Department or by invited authors as contributions to its research projects in the Institute’s SSRN Research Paper series between 2018 and 2020. In the same period, the Salamanca project, coordinated by Christiane Birr, prepared 18 digital editions of, in some cases, extremely extensive works, such as the Thesaurus Indicus by Diego de Avendaño with a total of 2868 pp folio. The new book series Max Planck Studies in Global Legal History of the Iberian Worlds (Brill Publishers) saw the publication of its first Open Access digital and print volume in 2020. Two further volumes will be published in 2021.

A great deal of our work was carried out in cooperation with researchers based at other institutions, which has in some cases led to them becoming ‘Affiliate researchers’. With both the Akademie der Wissenschaften und der Literatur Mainz and the Goethe-Universität Frankfurt, we have been working together closely within the framework of the School of Salamanca project (since 2013). The Department actively participated in the Cluster of Excellence The Formation of Normative Orders at the Goethe-Universität until 2019. In 2018, we joined forces with the Bonn Cluster of Excellence Beyond Slavery and Freedom to establish a Research Group on Law and Creation of Dependency in the Ibero-Atlantic (see Dias Paes). Both this Research Group and a Max Planck Partner Group in Chile dealing with the tribute obligations of indigenous peoples in the Andean Region in the 16th century, which began their work in 2019 (see Rex Galindo), are part of the joint project Glocalising normativities. Researchers of the Department are also involved in the EU RISE project RESISTANCE (since 2018, see Bragagnolo and see Albani, Max Planck Research Group
Leader). The project on the *History of Criminal Law in Argentina*, part of a Max-Planck/MinCyT project (since 2019, see Núñez), a third-party funded research project on *Special Normative Orders in the Metal Industry* (since 2019, see Wolf, Collin, Bender), and a LOEWE project on *Architectures of Order* (since 2020, see Damler, Cesari) all contributed to an expansion of our international and interdisciplinary cooperations. There is also a regular exchange with the Hugo Sinzheimer Institut für Arbeitsrecht (see Bender, Collin). Moreover, various researchers of the Department are engaged in the Max Planck Law network.

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**Research Fields & Major Cooperations (2018–2020)**

**DEPARTMENT HISTORICAL REGIMES OF NORMATIVITY**

- **Transnational Regimes**
  - Salamanca (GU/AdW Mainz)
  - Dependency (ExCluster Bonn)
  - Pragmatici (GU/SFB-DFG)
  - Viajes de ideas (MPG-PICT Argentina)
  - Labour Law (Hugo Sinzheimer Inst.)

- **Dependency**
  - Pragmatici (GU/SFB-DFG)
  - Salamanca (GU/AdW Mainz)
  - Viajes de ideas (MPG-PICT Argentina)

- **Indigenous Labour**
  - (MPG Partner Group Chile)

- **Middle Ages**
  - Curia & Canon Law
  - Criminal Law
  - Special Orders
  - Middle Ages

- **Normative Knowledge**
  - Architectures of Order (GU/LOEWE)

- **RESEARCH FIELDS**
  - **Iberian Worlds**
  - **Curia & Canon Law**
  - **Criminal Law**
  - **Special Orders**
  - **Normative Knowledge**

**Major Cooperations with Partners**

- **RISE** (EU Horizon 2020)
- **Dependency** (ExCluster Bonn)
- **Indigenous Labour** (MPG Partner Group Chile)
- **Transnational Regimes** (ExCluster Frankfurt)
- **Viajes de ideas** (MPG-PICT Argentina)
- **Labour Law** (Hugo Sinzheimer Inst.)
Results

What results have we achieved? While it is impossible to summarise the work of more than 40 researchers, which is sketched out in the individual reports following this introduction, some general developments and intellectual results should be highlighted.

First, we are extremely pleased that we have been able to expand our research to the non-American parts of the Iberian monarchies. To do so, we needed to incorporate new local expertise and find an adequate research design. The research project Glocalising normativities, established in 2018, has created such a framework for projects dealing with different situations involving the production of law in the Americas, Europe, Africa and Asia by focusing on certain regimes like ‘dependency’, ‘ownership’ and ‘diversity’. By involving scholars from Angola, Brazil, Chile, China, Germany, Peru and Portugal, we are now able to draw on a wide variety of local archival sources. In this context, Mariana Dias Paes and her Research Group Law and the Creation of Dependency in the Iberian Atlantic are carrying out pioneering work not only in terms of research but also with regard to the form and level of cooperation with local partners. Other research projects also dedicated to the Iberian Indian domains are currently being prepared as postdoctoral projects (see Sirotti).

Yet the integration of a set of local studies from very diverse backgrounds is only possible if it is built upon solid methodological foundations. This leads us to a second major aim embarked upon in the last few years: to consolidate a method of writing a global legal history. Through a critical revision of the emerging field of global legal history, we have developed a method for writing a modern legal history in a global perspective that avoids Eurocentrism, is open to practices and materiality and understands legal history as the history of a vast diachronic process of production of normative knowledge (see Duve).

Pursued within the context of several projects, our third goal has been to substantially advance our knowledge of normativity stemming from religious authorities, especially moral theology and canon law in early modernity. The 800th anniversary of founding of the University of Salamanca in 2018 provided us with the opportunity to engage more forcefully in the debates in this field, with major contributions by José Luis Egío. Under the coordination of Pilar Mejía, a large group of authors has contributed to the Historical Dictionary of Canon Law in Hispanic America and the Philippines (DCH). With nearly 50 articles and more than 1500 written pages, this project has already made a demonstrable contribution to the research community not only in terms of expanding our knowledge about historical institutions of canon law but also by increasing the reliability of this information (see the reports of Mejía, Moutin, Soler Otte).

A fourth major aim in the last few years was to foster a dialogue between projects dedicated to different periods and areas within the Department. Examples of this intellectual integration include the research on the School of Salamanca, carried out in cooperation with the Goethe-Universität, and on the pragmatic literature, developed as a project within a DFG-funded Collaborative Research Centre (Sonderforschungsbereich SFB), in which expertise on the European history of canon law (see Meyer) and book history, especially on one of the bestsellers of the early modern
book trade, namely Azpilcueta’s handbook for confessors (Bragagnolo), provided valuable insights for the projects dedicated to colonial history (see Danwerth). In a similar way, it was possible to situate research on criminal law within a transatlantic perspective (Härter, Vegh Weis). Not least the Cross-Cutting Theme Law and Diversity has been pivotal in bringing together researchers, especially from Latin America and Europe, to discuss different experiences and theories in response to societal diversity (Collin, Bastias, Casagrande). In a certain sense, the whole research agenda of the Department – expressed in the Department’s new name Historical Regimes of Normativity as well as the underlying concept – has emerged from a fruitful confluence of research experience and theoretical reflection taking place between the projects concentrating on Germany and those with other regional focuses. Peter Collin, working together with Manuel Bastias, Gerd Bender and others, has actively engaged in this endeavour of bringing together German and non-German research traditions.

Finally, we are pleased that in the reporting period six researchers earned their PhD (Cacciavillani, Dias Paes, Escobar, Li, Sirotti, Spahn). Some members of the Department made the first major step of their careers and have taken up professorships in Chile, China, Mexico and the United States (Rex Galindo, Li, Cacciavillani, Deardorff). Two researchers from the Department have achieved a major success for their careers: In 2020, Manuel Bastias Saavedra has successfully applied for an ERC Consolidator Grant to start in 2021, and Mariana Dias Paes has recently accepted the offer to become the leader of an independent Max Planck Research Group. The former and the new colleagues will help us to learn more about the complexity and interdependencies of what we are observing as ‘historical regimes of normativity’.
Thomas Duve

Director

Curia, Canon Law and Moral Theology in the Modern Era

Iberian Worlds

Knowledge of the Production of Normativity

How to write legal history in a global perspective? During the period under review, this question served as the backdrop for various ongoing and new research projects in the Department. This meant that the issue had to be dealt with in a very focused manner. In particular, the research on early modern moral theology, canon law and law in colonial contexts served as opportunities to do just this.

In the research project Knowledge of the pragmatici, planned in 2015 and carried out in cooperation with the Goethe-Universität Frankfurt until 2018, so-called ‘pragmatic literature’ was examined (see reports by Bragagnolo, Danwerth, Rex Galindo, Meyer) as a genre to which relatively little attention has been paid by the European tradition of legal history. Nevertheless, this genre is both of fundamental importance to the production of normative knowledge, not least in colonial encounters, and offers a productive medium for comparative studies between different legal cultures. In order to properly understand the function of this genre in the production of normative statements, a knowledge-historical approach was developed and tested in a series of case studies. Some of the results were published in 2020 in the first volume of a new series of open access publications [Duve, Danwerth, Knowledge of the Pragmatici, 2020]. Moreover, the findings of the more than 50 articles that were written during the reporting period by contributors from different countries for the Dictionary of Canon Law in Hispanic America and the Philippines (see Mejía, Moutin, Soler Otte) have improved our understanding of the processes of globalisation and localisation of religious normative knowledge in the early modern period.

The knowledge-historical approach has also proved fruitful with regard to the legal history of the School of Salamanca. Conceptual reflections and a close reading of the texts – of which many new digital editions have been created and made available by the long-term project financed by the Akademie der Wissenschaften und der Literatur Mainz (see Birr, Egío) and carried out in cooperation with Goethe-Universität Frankfurt – showed that the School can be understood as an epistemic community and a community of practice which is not limited to a specific place or institution [Duve, School of Salamanca. A Case of Global Knowledge Production, 2021]. As such, the project has contributed to a fundamental reconceptualisation of this significant intellectual movement.

Last but not least, an analysis of the state of the emerging field of Global Legal History [Duve, What is global legal history?, 2020] has motivated the development of these knowledge-historical perspectives on legal history. A number of other activities, such as the publication of a special issue of the American Journal of Comparative Law on the relationship between legal history and comparative law [Duve, Symposium: Legal History, 2018], a critical assessment of the German historiography [Duve, Ruppert, Rechtswissenschaft in der Berliner Republik, 2018] and contributions to two Oxford Handbooks [Duve, Global Legal History, 2018; Duve, Indigenous Rights, 2018] served
to further develop these perspectives. Presentations in different countries and to different types of audiences, not to mention teaching activities in Beijing and Nanjing in 2019, helped bring exposure to the methodology developed mainly from research on Europe and Latin America and to facilitate discussions with colleagues from other analytical traditions. A volume gathering together several studies on methods of legal history published in Chinese (2019) as well as a Chinese translation of a book on legal scholarship in the Berlin Republic (2021) should serve to enhance the transnational dialogue about these issues.

The Joint Project Glocalising normativities, conceived in 2018 and started in 2019, is an attempt to put these methodological reflections into practice in a variety of local settings in a longue durée perspective. To carry out this ambitious project, a new generation of scholars from different areas were brought onboard (see the postdoctoral projects of Bastias, Coutinho, Dias Paes and Li as well as the PhD projects of Espindola Souza, González Escudero, Guerra Pedrosa, Matos Ñgala, von Bogdandy).

New Open Access publication series: Max Planck Studies in Global Legal History of the Iberian Worlds

The first volumes of this new Open Access book series, begun in 2020 with Brill Publishers, publish the results of research carried out in the Department Historical Regimes of Normativity, especially in the Research Field Iberian Worlds. The focus of this series is global in the sense that it does not limit itself to the legal histories of the imperial spaces of Portugal and Spain as such, but also looks at the globalisation and localisation of norms within what we call the Iberian Worlds, ie the regions entangled with the imperial spaces of the Iberian monarchies during the early modern and modern periods. The global dimension is, moreover, underscored by the attention paid to the coexistence of a variety of normativities and their cultural translations at different times and in different places.

All of the monographs, edited volumes and text editions in the series are peer-reviewed and available in print and online in Open Access. Brill’s Open Access books are distributed free of charge in Brill’s E-Book Collections and can be found via DOAB, OAPEN and JSTOR.
Between 2018 and 2020 I participated in the project Convivencia and the Cross-Cutting Theme Law and Diversity. My approach to both was similar: I studied how legal discourses participated in the social reconstruction of the past in different historical periods.

All social groups, past and present, reconstruct the past to cause effects in the present, what anthropologist Christian Giordano called the ‘actualisation of the past’. Law has always played a role in this process of reinventing the past, for example, in the form of memory laws, reference to ‘legal tradition’, or preambles to laws or constitutions. The memory of law was the subject of a number of studies carried out during the reporting period [Aragoneses, La memoria del derecho, 2018].

My research on convivencia and filosefardismo [Aragoneses, Uses of Convivencia, 2018; Aragoneses, Judaism and Spanish identities, 2019] was aimed at understanding how the actualisation of the medieval past influenced the Spanish state- and nation-building processes. Spanish liberals used an idealised reinvention of Muslim, Christian and Jewish coexistence in the Middle Ages to defend their liberal / progressive political project for Spain. The message was that ‘Spain was tolerant in the Middle Ages, so Spain has to be tolerant today’.

My contribution to the activities related to the Cross-Cutting Theme Law and Diversity concentrated on legal unity and diversity in Spanish nation-building. Historically, Spanish cultural and linguistic diversity was not articulated via public law with a federal or regional structure. Diversity was recognised and accepted only in private law. When the process of codification started in the early 19th century, Catalan and other regional elites used the concept of tradition and references to history to pave an alternative way to legal modernity, resisting the unification of civil law and defending an actualisation of regional legal traditions. As a result, the Civil Code of 1889 did not unify Spanish private law, but instead respected the existence of different regional laws. History and tradition were used during this process to legitimise an alternative path to modernity. This explains the importance of regional civil law codes and traditions in today’s Spain [Aragoneses, El jurista en el barrio gótico, 2021].
Global legal history is an emerging field that raises many epistemological, methodological and conceptual problems. It challenges a focus on Western and state-centred concepts of law; it reflects on different historical spaces and the interactions between different scales of research; it seeks to look at the foundations of the globalisation of law as the result of interactions between different world regions; and it rethinks the sources that are relevant for legal-historical research.

Many of these questions are addressed in the Joint Project *Glocalising normativities*, which attempts to understand how law operated in different world regions that participated in the so-called Iberian world. During 2019 and 2020, the workshops on ‘Methods and Sources’ served to discuss the concepts of glocalisation and normative production as well as the use of sources for research in global legal history. The three-part lecture series on ‘Norms and Empires’ invited leading historians in the field of imperial history to reflect on how they observed law within their own research experience. The research colloquium on ‘Global Legal History’ was created to give early-career researchers a space to discuss their research findings. During 2019–20, eight sessions of the colloquium discussed cases from Asia, Africa, Europe and the Americas.

The research project *Frontier law* also takes a global legal-historical perspective to study how law operated beyond the realms of formal institutions traditionally associated with legal practice: books, universities and courtrooms. It focuses on notarial and judicial archives to study the regulation of land in two frontiers of the Spanish empire, Valdivia, in Chile, and Northern Luzon, in the Philippines. Initial findings of this project were published in 2018 [Bastias, Lived Space, 2018; Bastias, Jurisdictional Autonomy, 2018], and comparisons with land tenure regimes in other territories of the Spanish empire were addressed in a recently published critical historiographical essay [Bastias, Normativity of Possession, 2020]. An ERC Consolidator Grant, awarded in late 2020, will pursue these questions in different regions of the Iberian world (ERC IberLAND. Beyond Property: Law and Land in the Iberian World, 1510-1850). Together with Luisa Coutinho, I organised a panel at the Annual Meeting of the American Society for Legal History in 2019 in order to strengthen the Asian focus of the Institute. An edited volume on local normativities in Asia is currently under preparation.

To the Cross-Cutting Theme *Law and Diversity*, I contributed an article on diversity in Chilean constitutional history (in press), a methodological article [Bastias, Diversity as Paradox, 2020], and co-organised a conference on ‘Diversity and Public Law in Europe and Latin America’ in 2020.
The regulation of industrial relations and social security – including the corresponding justificatory narratives and constructs of legitimation, which focus on the use and abuse of private power – is one of the major issues that shaped the era of industrial society. From its beginnings in the 19th century, this historical field was marked not only by the emerging welfare state but also by the rise of associations that discovered subsystemic self-regulation as a new mode of labour policy.

There have been strong reactions to this development on the European continent. The self-regulating world of the new corporate actors comes into the perspective of the state. Self-regulation is transformed by state norms; the unfolding collective labour law, coupled with the novel regulator of collective bargaining autonomy, becomes a prototypical legal innovation. Regulated self-regulation refers to the template configuring the new notion of statehood, the expanded state or the political system with its increasingly rich periphery of associations linked to the state as the system centre. From the mid-19th century to the present day, strategies of fortification and consolidation have appeared in this context of interwoven regulation. Associations should assume the public role they have grown accustomed to and incorporate the reference to the state into their self-description. In return, they can expect state recognition and consideration (neo-corporatist trade-off).

The project attempts to capture this tripartite regime, its practices and its resonance within the legal system in a historical longitudinal view. Starting from the profound controversy about unemployment and economic stagnation that has affected the entire EU, especially Germany, since the 1980s [Bender, Herausforderung Tarifautonomie, 2018], the project focused on the labour constitution of Weimar, which developed the fragmented historical-institutional heritage of the German empire into an overarching normative order (publication forthcoming). The legal-theoretical turbulence that took place over the course of the innovations was dealt with using the debate on collective agreement as an illustration of an institution of the legal system.

The project is integrated into the Research Field Special Legal Orders. There are close ties to the research project Non-state law of the economy, and the ongoing cooperation with the project initiative History of labour law continues to offer a productive research context.
The School of Salamanca has traditionally been identified as a comparatively small and close-knit group of Spanish theologians – beginning with Francisco de Vitoria and arguably ending with Francisco Suárez – who shaped the intellectual transition from medieval thought to modernity, not only in Catholic theology but also regarding many key legal concepts. The university of Salamanca was seen as the centre from where new and exciting thoughts were being projected into the (New) world. This traditional picture has proven in need of various fundamental adjustments which are at the heart of the work being undertaken.

Two book chapters look at early writings about the discovery and conquista of the Americas and focuses on jurists and theologians, such as the Castilian court jurist Juan López de Palacios Rubios [Birr, Before Vitoria. Early Theological and Juridical Responses to the Spanish Expansion, 2018; Egío, Birr, Before Vitoria: Expansion into Heathen, Empty or Disputed Lands, 2020]. Palacios Rubios marshalled an arsenal of arguments from Antiquity, Scripture and the Church Fathers to come to terms with the new reality of the Americas, providing a pool of erudite arguments that later authors like Francisco de Vitoria would extensively draw upon. For example, he postulated the status of the Amerindians as free subjects of the Castilian crown (as opposed to the Aristotelian idea of ‘slaves by nature’) as well as the need to respect indigenous forms of property [Birr, Dominium in the Indies, 2018].

Another focus is the concept of the School itself, particularly the question of how we can define it to represent a global network whose members formulated answers to autochthonous questions in all parts of the Iberian empires, from the Americas to the Philippines, Japan and Goa, as well as in Europe. This perspective was discussed at an international conference in Buenos Aires in October 2018 and has been deepened in a volume in the series Max Planck Studies in Global Legal History of the Iberian Worlds [Duve, Egío, Birr, School of Salamanca, 2021].

Finally, the Digital Collection of Sources (part of the project The School of Salamanca, a cooperation between the Goethe-Universität Frankfurt, the Akademie der Wissenschaften und der Literatur Mainz, and the Institute) approaches texts printed in the 16th and 17th centuries with the methods and tools of the Digital Humanities. This work is carried out in close cooperation with colleagues from the technical disciplines: an in-depth understanding of each other’s research needs and methods is essential for a meaningful use of algorithmic tools for textual analysis, which will hopefully enable us to identify the School of Salamanca’s ‘digital fingerprint’.
According to our modern understanding, courts – and the judiciary more generally – are among the core competencies of the state. However, this understanding is the result of a long historical development. In the early modern period, many courts were feudal, municipal, or run by guilds or religious institutions, and thus derived their authority from a variety of sources that were often unconnected to the sovereign.

The doctoral project *Reforms of judicial systems in 18th-century Italy* examines how during the process of modern state-building the sovereigns of the main Italian states attempted to incorporate courts more firmly into their sphere of rule. A key question is how these different states tried to integrate the various tribunals into the developing organisation of the modern state, that is, to bring them under their authority according to the modern idea of sovereignty.

The starting point is the analysis of concrete reform projects in the formerly (until the Peace of Utrecht 1713) Spanish-dominated territories: the Kingdom of Naples-Sicily, the Duchy of Milan and the Papal States. Particular attention is paid to the reasons why certain reform projects were not, or only partially, successful, and thus other authorities persisted. This continued legal plurality within the individual territories could take two forms: either old institutions resisted the reform attempts, or they continued within the new institutions. This focus is part of a more general research question on the typical forms of judicial independence and accountability.

In contrast to previous research in this field, this study takes a more institutional approach and will in particular address the question of whether new courts were set up, how the courts and judges were organised and financed, and how dissenting judges were sanctioned. For the selection and presentation of the material, the theory of historical institutionalism is decisive.
By the emergence of print, books started to become the media that more than any other stored and mobilised normative knowledge. The question how the changes in the production, circulation and consumption of legal books affected the normative knowledge production in the Iberian worlds has been at the centre of two related research projects carried out in the last years on the most successful pragmatic normative book of the early modern period: the *Manual de Confesores* by Martín de Azpilcueta (1492–1586).

Both projects emerged out of a preceding one entitled *Martín de Azpilcueta’s Manual for Confessors and the Phenomenon of Epitomisation* (2016–2018) and follow complementary methodological approaches. *Legal knowledge and the emergence of print. Textuality and materiality in early modern legal books* combines legal historical research with methods and analytical categories from book history. In addition to the editions of the *Manual*, it explores archival documents such as lawsuits and notarial deeds.

The project *HyperAzpilcueta* focuses on the instability of early modern books, using Digital Humanities methods to create a comparative digital edition of the four main editions of the *Manual*. The project aims to visualise the authorial changes in the text in order to explore how normative knowledge changed within the ‘same’ book.

Two studies published during the reporting period [Bragagnolo, Managing Legal Knowledge, 2020; Bragagnolo, Les voyages du droit, 2018] shed new light on the textual dynamics of Azpilcueta’s work by showing the relevance of authorial changes to early modern normative knowledge production. The studies reveal a complex process of epitomisation in which the addition of legal doctrines, the text’s translation into different languages and the updating of the Manual with answers to questions coming from all over the world played a fundamental role.

While both the history of knowledge and book history have thus far paid little attention to law, nowadays, due not least to Antonio Manuel Hespanha’s seminal studies, approaches which were developed in the field of book history over the past decades are slowly being applied to legal historical scholarship. My research tries to further develop these approaches by using the material and digital ‘total history’ of an extremely successful book in order to show how normative knowledge was produced in the early modern period.

In addition to these research projects, I am cooperating in the project Digital Library De Indiarum Iure and am one of the Institute’s two responsible researchers in the EU-funded four-year project RESISTANCE.
The research undertaken in the years 2018–2020 focused on the study of the historical circumstances surrounding the synod known as Quinisextum or Trullanum, held in Constantinople in the spring of 692. It issued 102 canons, which to this day constitute the core of the canon law of the Orthodox Churches. The emperor Justinian II – one of the most fascinating figures in first-millennium Byzantine history – initiated substantial reforms of both state and Church. The synod’s 102 canons, some of which are very extensive, have been much discussed in international scholarship in recent years, but several aspects of their contemporary context have been overlooked. The most important of these is the imperial propaganda of Justinian II, directed against the Arab caliphate. The acts of the Quinisextum / Trullanum (composed of its canons and a long text from the council fathers to the emperor (logos prosphonetikos) include a number of Bible quotations, particularly allusions to the Old Testament, which contain hidden references to the emperor’s political agenda, of which the Quinisextum / Trullanum was part. Only by taking this into account can the content and intention of the canons be understood – and thus also the peculiarities of the canon law of the Eastern Churches, which are still relevant today.

The findings will be published in a monograph that will focus on the emperor himself, in addition to the canons mentioned above. However, the monograph will not be a biography of this fascinating emperor (though his life was worthy of a Hollywood movie of the 1950s or 1960s), since in my opinion the lack of sources prevents us from writing biographies for pre-modern figures.

At the same time, I am preparing a volume dealing with the history of Byzantine administration from the sixth to the ninth / tenth centuries for the methodica-series of the Institute. Considerable overlap between this volume and the study on the Quinisextum / Trullanum and Emperor Justinian II are of great benefit to both projects.
Pamela Cacciavillani
Former Researcher

*Iberian Worlds*

*The protection of private property in the face of the indigenous people’s reality in Argentina, between the end of 19th and the beginning of the 20th century*

During the period covered in this report, the main activities were dedicated to finishing my PhD thesis and preparing it for publication, as well as to developing a postdoctoral project.

The main aims of the PhD thesis *From communal property to liberal property. The legal system of property in Cordoba (1871–1885)* were to understand the legal-historical aspects that enabled the continued existence of indigenous communal property in times of codification, and to investigate what role the Civil Code played within the process eventually leading to the demise of indigenous communal property in Cordoba. The thesis was presented at Universidad Nacional de Córdoba, Argentina, in 2018 and obtained the highest qualification and recommendation to publish.

The postdoctoral project *The protection of private property in the face of the indigenous people’s reality in Argentina* seeks to contribute to a more comprehensive understanding of the phenomenon of land conflict concerning indigenous communities.

The focus is on an approach that puts the effects of the various mechanisms for the protection of property / possession into dialogue among themselves. A key concept within the project is the property registry and its function of protection and legal security.

The project is now being continued from my new affiliation as Full Professor for Legal History at the Universidad de Monterrey, UDEM-Mexico, and as a Candidate to National Research (SNI) of CONACYT (2020–2022).

Petition presented by the curaca of the pueblo La Toma before the Honourable Provincial Congress of Córdoba in 1882
One focus of research during the reporting period was the participation in the Cross-Cutting Theme Law and Diversity in cooperation with Peter Collin and Manuel Bastias Saavedra. The objective of the Cross-Cutting Theme is to bring together contributions from Latin America and Europe that tackle the question of how the modern law of the 19th and 20th centuries, based on the principle of equality, dealt with social inequality and social diversity. Two conferences held in June 2019 addressed this question from the perspective of national developments in Latin America and Europe and examined fundamental questions of legal doctrine. Two further conferences, held online in November and December 2020, respectively, dealt with the diversity dimension in public law. These events brought together specialists from both sides of the Atlantic not only to understand the way in which the logic of equality–diversity was institutioned in diverse social contexts, but also with the intention of displacing the hegemony of European perspectives. This involved the analysis of processes of the transfer and hybridisation of knowledge that allowed alternative responses to questions regarding the resolution of conflicts to be formulated in different legal spaces. My contributions focused, first, on the ‘sociological imagination’ in Argentine legal sociology in the 19th and 20th centuries, and, second, on the concept of autonomy as a tool of subjectivation and identity formation in 20th-century Argentina. A volume gathering together the key contributions from the first two conferences is being edited by Peter Collin and me.

The second focus of research, the project The crisis of liberalism and the formation of exceptional regulations (Sonderordnungen) in Argentina in the 20th century, is also connected to the diversity theme. The project’s first result was a study on how the concept of the rule of law in Argentina allowed for differentiated administrative regulation [Casagrande, The concept of Estado de derecho, 2018]. The second result was a monograph on the formation of the police institution – and its special regulations – aimed at the social control of particular sectors in Rio de la Plata in the 19th century [Casagrande, Gobierno de Justicia, 2019].

In addition to this, I contributed conference papers and articles to various other MPI projects, such as the Historical Dictionary of Canon Law (DCH) [Casagrande, Confesos, 2019] and Knowledge of the pragmatici [Casagrande, Forensic Practices, 2020].
Pietro Cesari

Doctoral Student

Knowledge of the Production of Normativity

The corporation and the conception of modern space

The project The corporation and the conception of modern space is part of the LOEWE focus Architectures of Order, which aims to analyse architecture as a cultural ordering practice that operates at the interfaces of control, knowledge, design and subjectivation. The LOEWE sub-project Corporate architecture investigates the architectural implications of both legal and managerial structures to better understand the corporate institutional revolution (see also the report of Damler).

The rise of the corporation as the predominant economic player in the early 20th century radically disrupted traditional economic theories. The stock exchange’s new mechanism of raising and collecting capital opened up completely new legal and economic perspectives. The parcelled-out ownership in shares led to the disintegration of the traditional unique right of property in its two distinct components of ownership and control. The rise of the modern corporation was made possible through the power of disposition (control) handled by the rising figure of the salaried manager. This new role contributed to the development of innovative systems of control and administrative coordination, which proved to be more efficient than the traditional market mechanisms of price equilibrium.

The connection between architecture and corporate organisational models remains substantially unexplored. Through an historical analysis, the project aims to investigate the ways in which the new structure of the corporation and its mechanisms have affected the built environment and how, conversely, architectural design has influenced corporate structural organisation. This is pursued through the analysis of selected case studies from Germany, Italy and the USA. At the centre of the study are the corporate architectures of control and coordination: headquarters as well as subsidiaries’ buildings. My comparative approach connects the selected case studies’ corporate strategies and organisational structures with their real estate ventures. Both realised and unrealised building projects are examined to clarify the relation between organisation culture and design culture, and the role of architectural practices within it.
Two projects were completed during the reporting period.

The project *Regulated self-regulation in a legal historical perspective*, which investigated private state regulatory patterns of the 19th and early 20th centuries, was concluded with a comprehensive, digitally available source edition [Collin, Regulierte Selbstregulierung, 2018], which illustrates the legal framework for various sectors of regulated self-regulation; each chapter begins with a comprehensive introductory essay.

The project *History of conflict resolution in Europe*, part of a larger project network in cooperation with researchers from the Goethe-Universität Frankfurt, has also been completed. The intention was not to produce a conventional history of justice but a presentation that also took into account extrajudicial and non-state forms of institutionalised conflict resolution. The result is a handbook in four volumes; I am editor of the fourth volume (19th / 20th century) with about 50 contributions, including research reports on almost all European states. The volume’s text has been finalised, but it is to be printed only when the other parts of the handbook are available too.

The starting point of the currently ongoing project on *Schiedsstaatlichkeit in the German Empire and the Weimar Republic* was the finding that, in addition to the ‘normal’ structures of state jurisdiction, there existed another judicial world of a more semi-state nature. Though these arbitral institutions dealt with relatively small numbers of cases compared to the state judicial system, and did not achieve a lasting status, they did not exist in insignificant niches but rather at key points of legal policy: in the economic sphere, the world of labour, in the field of social policy, and above all in times of war and crisis. The project aims to grasp the structures, normative frameworks and to some extent also the judicial practice of these institutions, and to identify common procedural and decision-making patterns. Publications have appeared on courts of honour [Collin, Nichstaatliche Disziplinierung, 2018] and on the arbitration tribunals of the war economy [Collin, Justiz mit abgesenkten Standards?, 2019]. A monograph is planned that will provide a comprehensive overview.

Details on another current project on *Non-state law of the economy* can be found in the report by project collaborator Johanna Wolf.

Both of the latter projects are part of the Research Field *Special Legal Orders*, which aims to examine how in the legal systems of the 19th and 20th centuries, which claimed universality, new particular legal spaces emerged. They are also part of the Cross-Cutting Theme *Law and Diversity*, described in the report of Agustin Casagrande. In addition to this, I currently supervise two PhD projects (see the reports of Fuchs and Wolckenhaar).
Luisa Stella de Oliveira Coutinho Silva

Researcher

Iberian Worlds

Glocalising normativities (Joint Project)

Christian Japanese in the Portuguese Empire: circulation and production of normativities in Japanese lay communities (1540s–1630s)

My postdoctoral research project on the circulation and production of normativities in Japanese lay communities builds on a methodological approach I developed in my previous work on the legal history of colonial women. Studying the women of Paraíba, a captaincy of northeast Brazil, I used the concept of multiple normativities to analyse dozens of daily life cases from Portuguese and Brazilian archives. The results of this research showed that the law of the metropole was not simply transplanted to the colony but rather interacted with local normativities, providing options to women depending on the intersection of their status, condition, religion and sexuality that demonstrated the flexibility of sex and gender categories according to the practice of law [Coutinho Silva, As dotadas e meeiras, 2020; Coutinho Silva, O saber médico e o corpo, 2019; Coutinho Silva, Land, Slaves, and Honour, 2020; Coutinho Silva, Nem teúdas, nem manteúdas, 2020].

For the current project, I expanded the scope of my study on women’s legal history in the Portuguese Empire to include Asian territories. Using missionary activity in Japan from the 1540s to the 1630s as my case study, I particularly focus on lay brotherhoods as loci of the production of normativities. In the absence of Catholic priests, these confrarias of converted Japanese were organised by Japanese lay practitioners, both women and men. In order to contextualise the missionaries’ sources about the lives of the converted and the mission in Japan (such as letters, reports, questions on daily life issues, pragmatic literature, and histories of Japan) that circulated throughout the Iberian empires, my approach takes into consideration also Japanese legal history and sources in Japanese. The aim is to write a legal history based on religious practices as normative cases considering both traditions, in particular to demonstrate how practices surrounding marriage, inheritance and kinship systems, repudiation, divorce, and the role of women in the confrarias redefined social roles and legal categories as they were culturally translated and adapted. Therefore, methodologically my work is still located at the intersection of legal history, women’s history, gender studies and global history.

During the first of several planned visits to archives and research stays, I was a Visiting Research Fellow at Waseda University, Tokyo, in June 2019, where I had the opportunity to develop networks of collaboration with Japanese scholars and to deepen my familiarity with Asian legal historiographies, the Japanese language and sources.

Rakuchū-rakugai zu (scenes in and around the capital), Edo period (1615–1868)
Daniel Damler
Affiliate Researcher

Knowledge of the Production of Normativity

Corpotopia. Architectures of fictional enterprises

Since 1 January 2020, the Institute has been involved in the LOEWE research project Architectures of Order, a four-year cooperation with the Technische Universität Darmstadt’s Department of Architecture, the Art History Institute of the Goethe-Universität Frankfurt, and the Deutsche Architekturmuseum, funded by the German federal state of Hessen. Like Pietro Cesari’s PhD project (see his report), my research on Corpotopia. Architectures of fictional enterprises is part of the sub-project Corporate Architecture. Corpotopia examines the political, legal, economic and architectural content of representations of corporations in popular utopias and dystopias since the 1920s. It builds on preliminary work, such as Konzern und Moderne. Die verbundene juristische Person in der visuellen Kultur 1880–1980 ('Corporate Modernism. Corporate Groups in Visual Culture 1880–1980'), published in 2016, which examined ‘corporate images’ as part of the psychological profile of high modernity.

At the same time as large multinational corporations began to compete with the state as the hitherto dominant political and economic actor in reality, the entertainment industry started to create fictional parallel worlds dominated by large corporations. Examples are the comics Superman (DC Comics, since 1938) and Batman (DC Comics, since 1939) with LexCorp in Metropolis and Wayne Enterprises, Inc. in Gotham City, respectively. Architectures play a prominent role in the dramaturgical concepts of comics and films, both literally and metaphorically: such corporations (often holding companies) have an astonishingly complex legal architecture, and this complexity and power requires a convincing visualisation, for which buildings (corporate headquarters) are best suited. A small database of almost eighty fictional large companies in films and comic strips is currently under construction.

The popular visions of corporate post-state structures are in some respects in the tradition of early modern Staatsromane (beginning with Thomas More’s Utopia of 1516), in that they condense political and social developments whose consequences are not yet foreseeable into vivid speculations and thus, thanks to their widespread circulation, influence these developments.

The CEO as world ruler – a German predecessor from 1920
Otto Danwerth
Former Researcher

Curia, Canon Law and Moral Theology in the Modern Era

Knowledge of the Production of Normativity

Knowledge of the pragmatici

Erasmus, Christian humanism and spirituality

The research carried out centred on the legal and cultural history of religious normativities in Ibero-America. The principal aim of the project Knowledge of the pragmatici was to show that the circulation of pragmatic normative texts – particularly religious ones – contributed to the establishment of knowledge regimes in Spanish America (16th–17th centuries). Handbooks of moral theology, catechisms and confession manuals were central media for the diffusion of normative orders in an emerging empire. Based on a review of the multidisciplinary historiography on the circulation of books and on archival sources, the project compared the respective roles of the transatlantic trade and the American printing presses. Case studies of book inventories in colonial Mexico and Peru showed that pragmatic books and manuscripts provided resources of normativity not only in towns but also to rural users and readers in areas of missionary activity. The research resulted in a number of publications [Danwerth, Duve, Knowledge of the Pragmatici, 2019; Danwerth, The Circulation of Pragmatic Normative Literature, 2020]. Two extensive research bibliographies, one on colonial Ibero-America in general and one on the circulation of pragmatic normative literature in Ibero-America, were prepared during the reporting period, the first of which was published in February 2021 [Danwerth, A basic bibliography, 2021].

These endeavours are connected to the three co-edited volumes on ecclesiastical institutions and normativities in the viceroyalties of, respectively, New Spain, Peru and New Granada, published in the GPLH series [Albani, Danwerth, Duve, Normatividades e instituciones, 2018; Danwerth, Albani, Duve, Normatividades e instituciones, 2019; Mejía, Danwerth, Albani, Normatividades e instituciones, 2020]. Taken together, they demonstrate the peculiarities of these key Spanish American regions whilst at the same time enabling meaningful comparisons. The co-written introductory chapters focus on the forms of production and adaptation of different types of normative knowledge in specific local contexts and reveal their links with global debates for both the colonial and post-independence periods.

A related research project was a study on Erasmus, Christian humanism and spirituality in Spain and New Spain (Mexico) [Danwerth, Erasmus, 2020]. The writings of Erasmus of Rotterdam exerted a significant influence on 16th-century Spain. The essay re-examines classical and recent historiography and deals with Erasmianism in Spain from its widespread reception in the 1520s to the inquisitorial persecution of its followers from the 1530s onwards. A discussion of newer research trends stresses their implications for legal history, also with regard to the relationship between humanism and scholasticism. To demonstrate Erasmus’ influence in New Spain, the investigation turns its attention to the attitudes of clerics as well as to early colonial case studies.
Convivencia: Iberian to Global Dynamics, 500–1750 was an interdisciplinary research project carried out by several Max Planck Institutes that ended in December 2018. As part of it, the comparative project New Christians, old Christians and others focused on the integration of moriscos (former Muslims of southern Spain) and indios (conquered subject peoples of the Americas) into the Catholic monarchy of the Spanish king Philip II (1556–1598). It highlighted how Catholic reform at the Council of Trent (1545–1563) reshaped the demands of municipal citizenship in the frontier territories of the Spanish empire. Research was conducted on three kinds of sources: notarial and municipal records of Bogotá (Colombia), Tunja (Colombia), and Granada (Spain); royal memoranda from archives in Seville (Spain) and Simancas (Spain); and synodal and conciliar statutes from across the Spanish Empire during the same period. A key question was how the legal rhetoric in petitions for and assertions of citizenship by imperial subjects (moriscos, indios) evolved in concert with successive conciliar and synodal legislation. The project found that whereas performative elements of orthodox Catholicism were not important in such assertions prior to c. 1560, they became crucial in subsequent decades, when those imperial subjects who did not adopt elements of performative Catholicism were increasingly relegated to second-class status and, in the case of the moriscos, completely disenfranchised and forced into exile.

A monograph with the project’s results is currently being prepared. A number of articles and one book chapter exploring different facets of the overall research project have already been published. Topics include the development of the social label morisco in the process of relegating mudéjars to second-class citizenship [Deardorff, Quién es morisco, 2018], the integration of local subject communities into the monarchy as republics [Deardorff, Republics, 2018], the performed Catholicism of early native converts in Colombia [Deardorff, Local Factors: Indigenous Devotion, 2018], and an investigation of how devotion to a Colombian miracle underwrote the integration of natives into the Christian body politic [Deardorff, Politics of Devotion, 2018].
During the three years as an affiliate researcher, the project *The canon law of business* generated several publications on major authors and their works that are directly relevant for studying the renewal of canon law thinking on economic and legal topics in the early modern period, such as Martín de Azpilcueta, Martin Becanus, Juan de Mariana, Charles Dumoulin and Tommaso de Vio Cajetanus. Because of the close collaboration with the Department of Roman Law and Legal History in the Faculty of Law at the Katholieke Universiteit Leuven (KU Leuven), where I hold my main appointment, several doctoral research projects at the crossroads of canon law, theology and economics have been carried out, e.g. Wouter Druwé’s project on *Transregional Normativity in Learned Legal Practice. Loans and Credit in Consilia and Decisiones in the Northern and Southern Low Countries (c. 1500–1680)*, Paolo Astorri’s prize-winning *Lutheran Theology and Contract Law in Early Modern Germany (c. 1520–1720)* and Joost Possemiers’ ongoing research on *Loans and Credit in Conrad Summenhart’s Opus Septipertitum de contractibus (c. 1500)*. All three junior researchers have been involved in research stays or conferences organised at the Institute.

Through collaboration with Drew McGinnis at the Acton Institute, the project has also been involved in managing the *Sources in Early Economics, Ethics and Law* publication series since 2018. The series provides translations of Latin sources relevant for the study of the relationship between Christianity (Lutheran / Calvinist / Catholic) and early modern business law. A final publication that illustrates the fruitfulness of the project’s ambition to study the interconnections between theology, law and economics is the monograph on the economic thought of Leonardus Lessius (1554–1623), a Jesuit from the Low Countries [Decock, Le marché du mérite, 2019]. It gives a detailed account of Lessius’s analysis of the dynamics of the market, information and speculation, trade and insurance, competition and monopoly, public and private lending, money and interest, etc. It shows that canon lawyers and theologians in the early modern period steeped in the tradition of the School of Salamanca contributed substantially to the moral legitimation and legal articulation of the rise of modern business and finance.
Cluster of Excellence Beyond Slavery and Freedom (Universität Bonn)

Since January 2019, the Department Historical Regimes of Normativity has been participating with a Research Group in the new Cluster of Excellence Beyond Slavery and Freedom. Asymmetrical Dependencies in Pre-Modern Societies at the Universität Bonn. The aim of the Cluster is to overcome the established analytical dichotomy of ‘slavery / freedom’ by promoting ‘asymmetrical dependency’ as a more precise concept for historical analyses of inequalities concerning the distribution of power and resources in different societies.

The Research Group Law and the creation of dependency in the Ibero-Atlantic is led by Mariana Dias Paes and composed of two PhD students, Maysa Espíndola Souza and Juelma Matos Ñgala. Together, they aim to analyse the role of law and normativities in creating and reshaping asymmetrical forms of dependency in the Ibero-Atlantic jurisdiction, with special attention to African ones. The group analyses colonial experiences in the early modern Ibero-Atlantic but gives special attention to the processes of reforms that normative orders underwent in the context of American independence and the re-framing of colonial orders in Africa during the long 19th century and the first decades of the 20th century.

The members of the Research Group: Maysa Espíndola Souza, Mariana Dias Paes and Juelma Matos Ñgala
Mariana Dias Paes
Researcher / Former Doctoral Student

**Iberian Worlds**

*Glocalising normativities (Joint Project)*

*Slaves and land between possession and titles: the social construction of property law in Brazil (1835–1889)*

*An ocean of norms: dependency and property in the Lusophone South Atlantic (1780s–1880s)*

*Global legal history on the ground: court cases in African archives*

Court cases are essential to the writing of legal history and global legal history as they show the active participation of subaltern groups in the process of normative production. They are thus at the centre of the research projects described below.

In 2018, the PhD project *Slaves and land between possession and titles: the social construction of property law in Brazil (1835–1889)* was concluded and defended. It was awarded the Max Planck Society's Otto-Hahn-Medal in June 2020 and the resulting monograph will be published in 2021. The dissertation focused on the social construction of legal relations between people and things in 19th-century Brazil by analysing 74 legal proceedings of the Court of Appeals of Rio de Janeiro that discussed dominion and possession over slaves and land. This analysis demonstrated that labour relations and access to land were entangled, both in terms of their legal regulation and in the historical agents' perceptions and demands for rights. Based on these findings, the postdoctoral research project *An ocean of norms: dependency and property in the Lusophone South Atlantic (1780s–1880s)* analyses these two dimensions of 'dependency relations', again on the basis of court cases.

Parallel to these individual projects, I lead the Research Group *Law and the Creation of Dependency in the Ibero-Atlantic*, a cooperation between the Institute and the Cluster of Excellence *Beyond Slavery and Freedom. Asymmetrical Dependencies in Pre-Modern Societies* at the Universität Bonn, advising two PhD projects (see the reports of Juelma de Matos Ngala and Maysa Espíndola Souza). I also cooperate with Mariana Candido (Emory University) and Juelma de Matos Ngala to create an inventory of the court cases in the archive of the Benguela District Court in Angola. A book containing an introduction to Angolan legal history and the inventory of the court cases is in its final stages of preparation and will be ready for publication in 2021.

All these projects draw attention to the existence of a shared legal space of normative production in the South Atlantic. Moreover, research in the African archives showed that the court cases they preserve hold great potential for writing a global legal history from a non-Eurocentric perspective that considers subaltern groups as active participants in normative production. The project *Global legal history on the ground* therefore seeks to foster research on court cases stored in Lusophone African archives. Currently, the project cooperates with archives in Cape Verde and Guinea Bissau to organise the collections, compile and publish inventories, and digitise documents.
José Luis Egío García
Affiliate Researcher

Curia, Canon Law and Moral Theology in the Modern Era
Iberian Worlds
Salamanca in America
The School of Salamanca. A Digital Collection of Sources and a Dictionary of Its Juridical-Political Language

In the reporting period, a number of contributions analysing the complex translation process of the Salmantine scholastic methods to the early modern Mexican context were made to the project Salamanca in America. The research showed how unforeseen dilemmas regarding war, conversion, forced labour or dubious commercial practices were resolved by jurists and theologians trained at Salamanca, who undertook a critical revision of the normative knowledge produced by their former masters. Among the more significant outcomes of this line of research are a contribution investigating these processes in the reception of the Speculum coniugiorum by Alonso de la Vera Cruz (first presented at the conference 'The School of Salamanca. A Case of Global Knowledge Production' held in Buenos Aires in October 2018 and now included in a volume of the mpiblih book series Global Legal History of the Iberian Worlds, edited by Duve, Egío and Birr) [Egío, Producing Normative Knowledge between Salamanca and Michoacán, 2020] and a study on Tomás de Mercado's role in the emergence of probabilism [Egío, Tomás de Mercado, 2020]. In these publications, some of the sources edited within the Digital Collection of Sources of the project The School of Salamanca are used to exemplify the methods of normative knowledge production put into practice by scholars educated in Salamanca working on both sides of the Atlantic.

This renewed perspective on the global impact of the School of Salamanca as a community of discourse engaged in the production of pragmatic knowledge aims not only to re-examine its geographical coordinates but also to re-evaluate its chronological framework and the role played by Francisco de Vitoria. Juridical and theological treatises authored by different Salmantine doctors since the mid-15th century show that Vitoria’s thinking on ius gentium was situated within a long tradition of debates on the expansion into heathen or disputed lands [Egío, Matías de Paz, 2018; Egío, Birr, Alonso de Cartagena y Juan López de Palacios Rubios, 2018, Egío, Birr, Before Vitoria, 2020].

A conceptual and multidisciplinary bibliography on the School of Salamanca (2008–19) [Ramírez Santos, Egío, Research on the School of Salamanca, 2020] and a critical reassessment of previous historiography are also among the important milestones achieved in the last three years [Ramírez Santos, Egío, Conceptores, autores, instituciones, 2020].
Caspar Ehlers
Researcher

Religious and Secular Legal Cultures of the European Middle Ages

Law and mission

One of the Institute’s four Research Foci between 2010 and 2020 was dedicated to Legal Spaces. Its main aim was to sensitize scholars working on different periods and regions to the importance of spatial concepts: how law creates space and is, in turn, shaped by it. One of the key research outcomes during the reporting period was a 150-page bibliography [Ehlers, Forschungsbibliographie Rechtsräume, 2019], available online and in Open Access as a mpilhlt Research Paper. This bibliography substantially extends and updates that of the monograph Rechtsräume, which was published in the Institute’s methodica series in 2016. A second key research outcome is an edited volume published in 2020 [Ehlers, Grewe, Rechtsräume, 2020] which combines historical and archaeological perspectives on the history of legal spaces and demonstrates the need to integrate knowledge from these still often separate fields. Notwithstanding the importance of archaeological finds, written sources – known as ‘traditions’ in methodological jargon – are of course the conditio sine qua non for most legal-historical research. However, only the inclusion of evidence from archaeology, architectural and art history, and of the results of the scientific sampling of biological finds opens up the dimension of ‘material remains’, the second, equally relevant group of historical sources according to Mommsen’s definition.

The new project on Law and mission, the development of which began in autumn 2019, puts these insights into practice and combines them with earlier research on the construction of medieval legal spaces. A number of preparatory publications have dealt with this subject [Ehlers, Straßen-systeme der Vorgeschichte 2018; Ehlers, Orte und Reisewege, 2020].

The participation in major exhibitions has brought the challenge of presenting research findings in a different format, for example in the context of the 2019 exhibition Der charismatische Ort in the museum of the Kaiserpfalz (imperial palace) at Ingelheim. Many of these and other methodological challenges were discussed in quarterly PhD colloquia and other working groups in which I participated as departmental PhD mentor.

In 2020, two further volumes were published under my editorship as a result of the project Die deutschen Königspfalzen, one on the city of Regensburg; the second, on Baden-Württemberg, completed the survey for that region.

Sometimes it takes an experienced eye to see what is important
Karla L. Escobar Hernández
Researcher / Former Doctoral Student

Iberian Worlds

Indígena legal culture. Multiple voices of citizenship, indigeneity, and justice in Cauca (Colombia), 1880–1967

The PhD project Indígena legal culture investigated the changes in indígena legal practices in Cauca, Colombia from the end of 19th to the mid-20th century in order to gain a better understanding of the entangled relations between the creation of law, its interpretation and usage, and social change.

The research focused on the communicative experiences of both the governmental authorities who were in charge of creating and applying the indígena law in Colombia and the people classified as indígena or who wanted to be classified as such. By using some of the tools of micro-history and ethnohistory, the project explored how the categories of citizenship, indigeneity and justice were constructed in the communication processes between these disparate actors. The study made three main contributions to scholarship. First, it described and analysed the inter-dependence of the processes of the creation and enforcement of laws as well as the roles that specific actors played in those processes from the legal historical perspective. It thus revealed the many (legal and extra-legal) conflicts and negotiations that lay behind the definition of basic legal categories. The interplay of the different uses of the term indígena in legislative debates, judicial discourse, in court cases and in practice changed not only legal strategies but also ways of collective identification and, in the end, the law.

Second, the work also contributes to the historiography of indigenous political and legal agency in Colombia and Latin America during the first part of the 20th century by detailing the complex relationships between indigenous and non-indigenous actors in the law-making process. The study of these entanglements enabled the analysis to go beyond the traditional approaches to ‘indigeneity’ that tend to oversimplify alterity.

Finally, the study made a consistent effort of narrating the complex political lives of indígena leaders, their interpretations of law, and the double nature of the uses of law to emancipate and constrain. It also inquired into the ambitions of all those actors: their hopes and their visions for the future, their failures, their despairs and their mistakes in the political arena. The doctoral dissertation was successfully defended in June 2020.
Based on a comparison between Guinea Bissau and São Tomé and Príncipe, the PhD project *Between Roças and Palhotas* analyses how courts contributed to the production of norms during Portuguese colonialism in Africa. Colonial courts were fundamental in negotiating the concrete meaning of Portuguese norms that affected Africans and furthered Portuguese domination and the terms of asymmetrical dependency. By resorting to ‘colonial justice’ and accepting the Portuguese as mediators of conflicts, Africans in effect also acquiesced to colonial policy in this area. Initial research results suggest a different picture of interpretation from the classic analyses of the history of law by showing how colonial legislation was influenced by readings of legality, customary rights, negotiations and resistance. Such multiplex influences and interactions disrupt the narrative of European law being applied unchanged in the overseas territories.

The project’s main sources are court cases, government reports, legal doctrine as well as maps and photographs, which are analysed using the methods proposed by the social history of law. The source material comes from archives located in Guinea Bissau, São Tomé and Principe and Portugal and was collected during various research visits in 2019. Since then, the documents photographed in the archives have been transcribed and an extensive bibliography on colonialism and law in colonial spaces has been drawn up and studied.

The project is part of the Research Group *Law and the Creation of Dependency in the Ibero-Atlantic* led by Mariana Dias Paes. The discussions of sources and literature within the Research Group underpin the concept of asymmetrical dependency and support reflection on shared legal spaces. The research is therefore expected to contribute to the interpretations of the functioning of justice during colonialism in Africa between 1870 and 1930.
Jeremias Fuchs
Doctoral Student

Special Legal Orders

Special orders of Catholic welfare in Germany in the 19th and 20th centuries

In the second half of the 19th century, the (regulatory) demands of the inwardly expanding modern state in Germany became a growing challenge to non-governmental institutions that had traditionally laid claim to regulate parts of society according to their own moral and normative concepts.

One area increasingly drawn into the sphere of public competence and legal regulation was the provision of social services and welfare. As a result of defining these services as of general interest (and thus a public task), the Reich, Länder and municipalities became actors in the area of public welfare, leading to a growing body of social legislation and associated public administration. The public sphere thus expanded its reach into an area that had traditionally been the monopoly of church organisations and religious associations, and that indeed was closely associated with the core of religious identity. This PhD project aims to investigate how Catholics as a social group created a specific system of norms that, driven by the need to defend and redefine their role in society, helped shape the dual system that remains characteristic of the German welfare state and its mix of public and private welfare institutions.

The study therefore examines normative sources that show how religious norms and interpretations of social phenomena such as poverty were translated into concrete normative texts that became part of a legal system, and explores where the framework of state legislation left enough space for private actors to fill according to their own normative ideas. In practice, it was texts such as the statutes of associations or house rules that regulated crucial aspects like the scope of benefits or the conditions attached to receiving them.

The project contributes to the study of the development of the German welfare state’s characteristic relationship between private and public institutions in the area of social service provision by examining the forms of coexistence and competition in this field, the alleged function of the private sector as a testing ground for the emerging welfare state, and the associated creation of non-state social law.
Damian Augusto Gonzales Escudero

Doctoral Student

Iberian Worlds

Glocalising normativities (Joint Project)

The production of the colonial landscape of the lower Chillón river valley during the curacazgo of Hernando Nacara

A central – though often neglected – aspect of Andean legal history is how spaces were produced in colonial contexts, and the role that law played in this process. The PhD project *The production of the colonial landscape of the lower Chillón river valley* uses a specific case study from the central coast of the Andean region to explore these questions. The main objective of the research is to show how in the context of early colonial rule, the interaction – whether conflictual or negotiated – of an indigenous chief with both indigenous and non-indigenous inhabitants of the valley produced the landscape of the lower Chillon River Valley between the end of the 16th century and the beginning of the 17th century.

The primary sources for this research are mainly archival. From August to October 2019, a research visit was made to the Archivo General de Indias in Seville, Spain, to collect documentary sources for the project. These consist of litigation by the valley’s inhabitants in the local courts, reports written by royal officials during the Indian resettlement processes and composiciones de tierras (land sales), and the probanzas (testimonial evidence) presented by the actors who sought mercedes de tierras (land grants) in the valley during the period studied. The methodology is based on the analysis of the narratives elaborated in the sources in order to identify the normative knowledge that informs them. At a second level, the analysis of practices will allow me to identify the knowledge reflected in the performance of law.

In the context of the increasing move to digital communication during the COVID-19 pandemic, a short video introducing the project was produced, edited and published on YouTube (https://www.youtube.com/watch?v=1gkm1fDVdho) in June 2020.
Gilberto Carvalho Guerra Pedrosa Ribeiro

Doctoral Student

Iberian Worlds

Glocalising normativities (Joint Project)

Decaying sweetness: differentiation and early modern citizenship during the Dutch intrusion in the Atlantic Iberian World, 1580–1674

The PhD project compares two frontier zones where Dutch and Luso-Iberian areas of influence and jurisdiction encountered each other: the state of Maranhão, located in the Amazonian region, and Congo and Angola, then jointly known as Central West Africa. The project seeks to address a number of questions about how different groups interacted and socially labelled each other, and whether there are discernible patterns of variability between the two situations of colonial expansion. Which basic normative concepts were more frequently invoked in those interactions, and what religious, political–legal guidelines of behaviour are expressed and used by historical actors in everyday interactions? Finally, I ask to what extent the historical archives of the two colonial projects meeting in these frontier zones can usefully unveil mechanisms of inclusion and exclusion in the Iberian South Atlantic during the late 16th and 17th centuries.

The documentation of interactions among diverse historical actors, whether sustained or short-lived, constitutes the primary archive of this study. Without rejecting theoretical perspectives, the project proceeds inductively from an analysis of the empirical evidence and assumes that the dynamics of any given location were the product of multiplex interactions of local people, officials, missionaries, merchants, sailors, soldiers, travellers, settlers, and enslaved persons. In sum, the project approaches the precocious globalisation of the Iberian South Atlantic from a legal historical perspective. Moreover, the dissertation intends to contribute to the field of legal history by demonstrating how current normativities of inclusion and exclusion are best understood by examining the evolution of regimes of diversity from the past.

Jasper Beckx (ca 1643), Don Miguel de Castro. Emissary of Kongo
Activities and coordination of the three above mentioned, interrelated projects are embedded in an international and interdisciplinary research cooperation. Regarding methodology and overarching questions, the research explores the global dimensions and utilises the overarching concept of historically changing, flexible criminal law regimes to integrate the different approaches. The thematically varied individual projects investigate not only the multinormativities of criminal law – from penal codes to extradition treaties – but also include the discourses of criminology and the circulation of expert knowledge as well as the practices of criminal justice. This also extends to infrajudicial contexts and extrajudicial means of conflict regulation as well as to popular media that disseminated juridical knowledge and particular images of crime, criminal law and justice.

Within the context of the Research Field, a number of colloquia and workshops (mostly held at the Institute) were organised in which guests and cooperation partners presented related research and discussed their projects (see Annex). Contributions and resulting publications explore the influence of the French penal code on juridical discourses and codification in the early 19th century, demonstrating the legal transfer of criminal law as well as the emergence of popular media that should convey legal knowledge to a wider public (see the Annex for my own publications and presentations). Media and communication formed a specific culture of criminal procedure characterised by various forms of communication within different judicial and infrajudicial settings, and generated pragmatic and popular print media that disseminated legal knowledge as well as ambivalent images of crime and criminal justice.

Further studies on political conflicts / crime, legal responses and the formation of transnational criminal and security law regimes investigate the cultural and transnational dimension of criminal law and court practices. The contributions of an upcoming collected volume (ed. O. Danwerth, K. Härter) explore the transatlantic dimension of legal responses to violent political conflicts in the ‘Age of Democratic Revolution’, focusing on the comparison of Western Europe and Ibero-America. Three concluded dissertations (supervision K. Härter) provide additional case studies: R. Sirotti investigated the interdependencies of criminal law and political repression in the First Brazilian Republic (1889–1930) by analysing particular court cases, criminal proceedings and related press media. T. Hannappel studied the reactions of the German and European legal systems to political crime. Finally, C. Tyrichter examined the cross-border prosecution of political crime in the German Federation and the formation a transnational security regime that involved norms, discourses and
practices which in general characterise the transnationalisation of criminal law. The results of the project are brought together in a volume that demonstrates the transnationalisation of criminal law in the 19th and 20th centuries for political crime, police cooperation, security regimes and normative orders [Härter, Hannapel, Tiryichter, Transnationalisation of Criminal Law, 2019]. Additionally, a soon-to-be published contribution for an international handbook demonstrates that norms, procedures and practices of transnational criminal law were rooted in the early modern ius commune and reshaped in the age of revolutions.

Research was further developed by the project Transnational criminal law in transatlantic perspective (with V. Vegh Weis), which explores the transatlantic dimension of transnational criminal law, focusing on the relations between and activities of European and Latin American actors. Initial results demonstrate that the circulation of transnational criminal law between the Americas and Germany manifested in various transatlantic extradition treaties, international discourses, conferences and associations as well as reconstruct the transnational dimension of positivist criminology as an intertwined network that disseminated concepts such as the ‘typology of criminals’, ‘dangerousness’, ‘social defence’, transnational penalties and measures of security to a global arena (see K. Härter, publications).
Li Fupeng
Affiliate Researcher / Former Doctoral Student

**Knowledge of the Production of Normativity**

**Glocalising normativities (Joint Project)**

**Glocalising ritual normativities**

**Social revolution of the constitution**

For more than 500 years, China and Europe have been in intense contact with each other. From the initial presence of Christian missionaries (16th – 18th centuries) to the violent conflicts in the period of Western colonialism since the mid-19th century, this contact also meant an encounter of both different world views and bodies of normative knowledge. In contrast to colonial narratives and paradigms, the projects carried out in the reporting period sought to explore different facets of this encounter.

The PhD project *Social revolution of the constitution*, defended at Goethe-Universität Frankfurt in June 2020, analysed the Chinese translation of the social rights of the Weimar Constitution (WRV). Based on a detailed analysis of the constitutional archives of the Chinese and the Weimar National Assembly, this project traced the entire trajectory and process by means of which the social rights of the WRV were appropriated, reinterpreted and transformed by Chinese intellectuals and politicians [Li, Becoming Policy. Cultural Translation of the Weimar Constitution, 2019; Duve, Li, Translating Weimar, 2019]. Furthermore, by using a Digital Humanities approach, this study mapped the frame of reference in which the Chinese constitutions were formulated, thus anchoring the paradigm of the WRV in the complex setting of foreign constitutions and national resources (traditional Confucianism and party ideology).

The postdoctoral project *Glocalising ritual normativities*, developed in 2020 and part of the larger project *Glocalising normativities* (see also Bastias), focuses primarily on the Chinese Rites Controversy, triggered by the Jesuits and the Dominicans. This project investigates the normativity of Chinese rituals by re-examining the normative sources from the Chinese texts (in the collection of the Vatican Library, Roman Archives of the Society of Jesus, National Library of France, Zikuwei Library, etc) combined with local case studies of Macau, Taiwan and Manila, all located along the border between China and the Iberian empires. The global-historical approach and the methods developed in the Department, such as multinormativity and translation, provide a promising framework for these activities. How normative knowledge is circulated, appropriated and translated, and how legal traditions and identities are reshaped has also been discussed in the working group *Using normative knowledge from the past*.

The 'hierachical edge bunding' (Holten 2006) visualisation has been suggested and created by the Max Planck Institute’s Digital Humanities coordinator, Andreas Wagner, using the graph-tool library.
Bruno Rodrigues de Lima

Doctoral Student

*Iberian Worlds*

*Knowledge of the Production of Normativity*

*Archive, translation and practice: the legal knowledge of Luiz Gama*

The legal knowledge of Luiz Gama (1830–1882), the – as far as we know – only lawyer in the Americas who had been a slave, is the central theme of this research project. Gama’s legal writings had a notable influence on the construction of civil rights in Brazil during the second half of the 19th century. Even today, his legacy remains alive in Brazilian memory. Using the methodological approaches of legal biography, microhistory and social history, the project analyses how Gama acted in the courts in more than 120 cases, most of which dealt with achieving free status for enslaved people. What legal arguments did Gama construct, and what documents and other kinds of evidence did he use in his legal strategies to free the enslaved?

Based on a close reading of judicial sources, the project examines how Gama used the multinormativity of Brazilian legal culture surrounding slavery to create, translate and modify legal meanings, thereby producing original normative knowledge. The thesis draws attention to Gama’s legal strategies to achieve free status for his clients, explores how these were rooted in the categories of Portuguese civil law and political ideas of the Enlightenment, and compares his local experience with similar court cases in other Atlantic jurisdictions. Rather than investigating the heroic dimension of a former slave who obtained his freedom, the research addresses the question of how this former slave became a lawyer, especially given the fact that he had not attended law school. Gama fled slavery and served as a soldier for several years. After fifteen years of working in the police administration, he cleverly exploited a written norm and applied for the right to practice law despite not having a law degree. He acquired this right and became one of the best-known lawyers in the country. Gama’s actions in the courts helped approximately 500 illegally enslaved people achieve their freedom. By drawing on more than 500 archival documents, the thesis explains this achievement, unmatched in any other Atlantic slave society, from the perspective of legal history.
Mario G. Losano
Affiliate Researcher

Knowledge of the Production of Normativity

Entanglements between Italian and German legal scholarship in the 19th and 20th centuries

In the reporting period, a number of long-term research projects dealing with the interrelationships between different legal cultures were completed and their findings published. The focus was on a) the circulation of European legal ideas outside Europe; b) the reception of German legal ideas in Italy; c) the problem of peace in the three constitutions of the former Axis powers of Germany, Italy and Japan. In the first area, the Latin contribution to the modernisation of Japanese law in the Meiji period – already illustrated in three books on the Italian Alessandro Paternostro, the Portuguese Wenceslau de Moraes, and the Spaniard Enrique Dupuy, respectively – was extended to include the Brazilian contacts with Japan in the same era. The book I primi brasiliani nel Giappone ottocentesco was completed and is now in press at the Memorie of the Accademia delle Scienze, Turin (Italy). Regarding the second focus of research, the previously completed Italian translation of the second volume of Jhering’s Zweck im Recht was enriched by an introduction of more than 60 pages. This is the first complete translation into Italian of Jhering’s classic work. Finally, the volume on the three ‘pacifist’ constitutions of the former Axis powers was published in the mpilhlt’s Global Perspectives in Legal History series [Losano, Tre costituzioni pacifiste, 2020].
Juelma de Matos Ñgala  
Doctoral Student  

Iberian Worlds  

Glocalising normativities (Joint Project)  

Dependency relations beyond slavery in Benguela from 1850 to 1878

The doctoral project *Dependency relations beyond slavery in Benguela* developed out of my participation (since 2017) in the project organising, cataloguing and digitising the documents of lawsuits in the archive of Benguela District Court (Tribunal da Comarca de Benguela, TCB) in Angola, conducted together with Mariana Dias Paes (mpilhlt) and Mariana Candido (Emory University). It aims to identify the dependency structures inside households (*casas*, defined not only as family but also as economic units) in Benguela by analysing inventories (collections of documents of a juridical-civil character intended to solve issues of inheritance and the succession of a deceased individual) and lawsuits regarding a person's legal status filed, for example, by slaves, partners and patrons in order to challenge a certain legal status such as slavery. The two types of judicial process mentioned are analysed between 1850, the date of the oldest inventory process at the Benguela District Court, and 1878, the date of the definitive abolition of servile labour in the Portuguese Empire.

The project will analyse 66 randomly selected court cases. There is a gap in Angola’s historiography regarding dependency relations and the social and legal categories that structured them. The project is intended as a contribution to fill this research lacuna. In addition, court cases have not hitherto been used as a source to write Benguela’s history. This study will thus also introduce new methods and possibilities of research to the local academic community by fostering the usage of the TCB’s collection.

On the basis of the files that have been analysed and transcribed so far, the preliminary results of the research show that the legal framing of family relations inside the *casas* was grounded on ideas of kinship, protectionism, and friendship. Those affective relationships and issues of consanguinity appear in the court cases, demonstrating that the *casas* were not just social structures but also normative ones.

Building facade of the Benguela District Court
Massimo Meccarelli
Affiliate Researcher

Special Legal Orders

Diversity and regimes of normativity: pluralism and monism in the legal orders from the 16th to the 20th century

The purpose of the research project was to investigate links between the configurations of legal systems and forms of legal protection with particular reference to European legal thought of the 19th and 20th centuries. In this period, the issues of ‘diversity’ and ‘legal protection’ were related dialectically, as the concept of society assumed in the legal system, based on an abstract idea of equality between all members of society, did not reflect social reality. In order to analyse the contrast between the strong monistic setting of the legal system and the issue of diversity, the project considered the different functions performed by special legislation in social law (oriented towards the inclusion of particular groups or categories of people), criminal emergency law (directed towards exclusion) and colonial law (focused on anti-assimilation). This functional versatility of special legislation enabled the monistic legal system, despite its rigidity, to give multiple responses to the problem of diversity, without upgrading it to the rank of a structuring category. Special legislation functioned as an instrument to confirm the axiological function of legal monism and to legitimise its hegemonic potential in those situations that did not fit the universalistic program of equality.

A second subject of research focused on the development of legal thought during the early modern period, which, stimulated by the possibility of a New World, produced new theories in order to justify and support the enforcement of the European legal tradition also outside Europe. Against this background, the research considered the invention of individual rights as a tool to address the problem of generating community and social cohesion among people of very different origins and cultures. Finally, the project also addressed methodological issues related to employing global perspectives for legal history in the Italian and German historiographical contexts.
How did legal knowledge in the religious field translate into, and reproduce itself in, the particular socio-cultural contexts of Hispanic America during the early modern period? Departing from this question, the DCH seeks to show the various debates and normativities produced in the New World and to move away from Eurocentric and anachronistic perspectives on canon law by taking seriously the production of normative knowledge in both local and global contexts (see also Moutin).

The dictionary’s thematic articles are based on the analysis of a corpus of sources from a wide range of normative spheres (including moral theology, jurisprudence, legislation and customs). During the last three years, the first 50 articles of the DCH have been published in the Institute’s Research Paper series and on the project’s blog (https://dch.hypotheses.org).

A transversal reading of the published entries allows us to identify a series of important legal transformations that took place during this time. First, the acknowledgment of the particularities of legal actors (indigenous people, women, slaves, parish priests, interpreters, judges and procurators) led to processes of legal differentiation. Second, the intensive debates among theologians and jurists, mainly regarding questions of the clerical life and of marriage, especially among indigenous people, stimulated the rapid production of new legislation, both canonical and royal. Third, a series of legal institutions attained new meanings and uses; the study of their typologies allows us to understand how concepts with a long history could be applied to new circumstances, changing their classical meanings. Fourth, the versatility of legal knowledge is demonstrated by a whole range of legal institutions that were flexibly used by judges with greater discretion and according to the customs of local tribunals. The meanings of ancient and medieval legal concepts thus coexisted with new, modern uses in both judicial and extrajudicial contexts. Fifth, at a time of global debates between jurists and theologians, practical manuals of moral theology attained a new usefulness, as they were able to spread both theoretical and practical modes of reasoning even to the most remote territories of the empire.

I am the coordinator and co-editor of the DCH project and also coordinate the Research Field on the legal history of the ‘Iberian Worlds’. During the reporting period, my PhD thesis Restaurando almas supersticiosas: Prácticas procesales en el tribunal inquisitorial de Cartagena de Indias. s.XVII-XVIII has been prepared for publication and will appear in 2021.
During the reporting period, the first task was to complete the project *The infidel in pre-modern canon law*, which had been running since 2015 and was aimed at a bibliographic inventory and analysis of the literature on the history of non-Christians in the normative culture of the Catholic Church between Antiquity and the modern era (cf. Activity Report 2015–2017). Whereas the key results of the research were published in 2018 [Meyer, Nichtchristen in der Geschichte des kanonischen Rechts, 2018], the completion of the bibliography, arranged both chronologically and systematically, required more work than originally expected. It was finally published in 2020 [Meyer, Non-Christians in the Normative Culture, 2020].

Apart from this project, the phenomenon of epitomisation was the main focus of interest. After Antiquity, longer texts (e.g. collections of laws, legal literature) in law – as in other disciplines – were condensed into shorter versions or epitomes, for example to make the works easier to understand or to be able to reproduce them more cheaply. In legal historical scholarship, these processes have so far only been examined in isolated instances. It therefore seemed of particular interest to obtain an overview of the overall development of the phenomenon since late antiquity, focusing on the technique of epitomising and its significance for the dissemination of legal knowledge.

The study was based on the Latin tradition of secular and ecclesiastical legal texts and focused on Roman law for the first millennium AD and on the law of the Catholic Church for the second. In the course of the investigation, it became apparent that epitomising was by no means a sign of decay, as was sometimes claimed in older research, but could serve important functions in the development of law. This includes, for example, the removal of obsolete legal knowledge and the dissemination of legal information not only in schools and universities, but also to places far away from centres of learning.

In 2020, an English-language article on epitomisation was published in the volume *Knowledge of the Pragmatici* edited by Thomas Duve and Otto Danwerth [Meyer, Putting Roman and Canon Law in a Nutshell, 2020]. A significantly revised and expanded version of the article appeared in German in the same year [Meyer, Römisches und kanonisches Recht kurz und bündig, 2020]. Both publications are also the first fruits of a new, more far-reaching research interest that is being pursued together with other members of the Institute and is directed at the relationship between law and text in pre-modern times.
Osvaldo Moutin
Former Researcher

Curia, Canon Law and Moral Theology in the Modern Era
Iberian Worlds
Historical Dictionary of Canon Law in Hispanic America and the Philippines, 16th–18th centuries (DCH)

The objective of the DCH (see also Mejía Quiroga) is to provide reliable information about the canonical institutions that were in force at that time based on the ecclesiastical and secular legal sources of this period. Contrary to the more typical alphabetical order, the contributions to the dictionary are presented following the order of the liber extra, which enables a better understanding of the forma mentis of the Indian canonist. Much of the information available in the current historiography is influenced by subsequent evolutions of the juridical institutions or ideological positions anachronistic to the period studied. As a result, one of the primary objectives of the project is to present the institutions in terms of the structure and argumentation found in a carefully selected doctrinal and legal corpus of sources. A scholarly reading of these sources requires both a reliable theological and canonical formation and the pertinent historical sensitivity in order to contextualise the information, detect doctrinal evolutions and create a sufficiently pedagogical presentation, especially for those in research fields who need scientific precision but have little to no experience with theology or canon law. Much of the work has involved supporting the authors of the articles to varying degrees, both on issues specific to canonical science and regarding the style of the project – a process that was both highly individualised and time-intensive.

One of the key initial results of the project is that it shows how the medieval forms of reasoning and models continued to endure while becoming increasingly outdated – if not obsolete – as time went on and unanticipated situations resulting from new missionary efforts were confronted.
Jorge Alberto Núñez
Affiliate Researcher

Roberto Pettinato and the construction of Latin American penitentiary thought (1947–1955)

The research project on Roberto Pettinato and the construction of Latin American penitentiary thought is part of Max-Planck PICT project The travels of ideas about the criminal question to and from Argentina. Translation, contestation and innovation, 1880–1955, led by Máximo Sozzo (Universidad Nacional del Litoral, Argentina) and Thomas Duve (mpilhlt). Its main objective is to investigate the attempts to shape a penitentiary project that encompass the Latin America countries.

Roberto Pettinato, General Director of Argentina’s National Penal Institutions during the Peronist governments, can be considered a central actor in this context. By travelling to visit prisons in different countries, participating in penitentiary congresses, seeking technical advice and attempting to organise a Pan-American Penitentiary Congress, he constructed a network of experts that contributed to the creation and exchange of knowledge on the norms and practices related to imprisonment in various countries in Latin America.

The main features of Pettinato’s administration have already been analysed by renowned specialists who focused on the commonalities and ruptures with the previous administrations, not to mention with the positivist criminology paradigm of the late 19th century. This project, however, emphasises the ruptures of various characters’ biographies, of the ideas and in the overarching penitentiary project.

Pettinato’s attempts to shape a Latin American penitentiary system must be analysed in the light of these ruptures and the break with a long tradition that had prioritised links with European countries. Based on both unpublished and edited sources, this project utilises the new methodological approach proposed by the Research Group.

During the reporting period, an article was published analysing the technical advice given by Pettinato regarding the construction of the Penitenciaria del Litoral in Ecuador [Núñez, La exportación del penitenciarismo justicialista, 2019]. In another contribution, the attempts to build a Latin American penitentiary system were analysed by comparing two different time periods [Núñez, González, ¿Hacia un Penitencierismo latinoamericano, 2020]. Advances in the above-mentioned research and publications were presented at national and international congresses (see Annex).
Christian R. J. Pogies
Researcher

Knowledge of the Production of Normativity

The law of the sea in global history and comparative international law

Having previously worked as a student assistant on the Historical Dictionary of Canon Law (DCH) project and completed an MA in International Studies / Peace and Conflict Research with an emphasis on globalisation and law in April 2020, I am currently developing a PhD project. While the dissertation will be situated within the context of the research project Methods of global legal history, it is also connected with the working groups Regime theory and the Cross-Cutting Theme Using Normative Knowledge from the Past. The research focuses on the interface of the law of the sea, methods of writing global legal history and comparative international law. I am also a member of the Völkerrechtsblog editorial team.

The MA thesis operated with the hypothesis that international law contains not only mechanisms of conflict prevention aimed at safeguarding peace, but that structures of establishing new norms can also manifest, create or promote interstate conflict. Employing contestation theory, it examined the debate over the freedom of the seas in early modern Europe. The comparative history of the core works of the so-called ‘Battle of the Books’ identified the entanglements and interactions of the governance actors involved – such as publishing houses – and thus broadened the diversity of motives and circumstances that gave rise to new international legal norms. Moreover, the analysis enabled a more nuanced description of the norm-generative process between mare clausum and mare liberum as well as helped expand the common scholarly perspectives on the dispute.

Since international law and its newly developed norms were used to legitimise conflict and to make various claims against other international actors, the works published in the ‘Battle of the Books’ served as a shared language and a vehicle for communicating divergent interstate objectives. On another level, however, and despite the obvious differences in the legal arguments made by jurists and jurisconsults, the dispute ultimately helped to establish a new fundamental norm, namely the freedom of the seas.

Johan Loccenius (1651), De iure maritimo et navali
David Rex Galindo
Former Researcher

Iberian Worlds

Knowledge of the Production of Normativity

Franciscan missionaries and ecclesiastical normativities in New Spain’s northern frontiers, 1580–1630

The research project was part of the project Knowledge of the pragmatici and resulted in the publication of two book chapters. The first examines the role of local actors in the handling of resources in situations in which the opportunities for distribution are highly unequal [Rex Galindo, Kalfelis, Paz Nomey, Agency and Asymmetries, 2018]. When it comes to these situations, often described as asymmetrical regimes, it seems intuitive to show the distinctiveness of such asymmetries through the possibilities of actions on the part of the actors. The second essay explores the normative practices that emanated from religious authorities, especially with regard to moral theology, and the propagation and application of such religious normativities in a peripheral early colonial context [Rex Galindo, Shaping Colonial Behaviours, 2020]. The focus here is on the role Franciscan missionaries played in the establishment of ecclesiastical normativities in New Spain’s northern frontiers in the aftermath of the conquest (from roughly the 1530s until 1640) when, in a context of acute violence and only tenuous control by Spanish authorities, mendicant orders often were the only representatives of the colonial power in these regions. I contend that Franciscan missionaries actively participated in generating religious normative orders that – by relying on moral theology, catechetical and pastoral literature, indigenous practices, and orality – were part of the planned conversion of native peoples to Christianity and Spanish culture. The essay hence explores the creation of ecclesiastical normative knowledge and its practicality through confession and preaching.

Diego Rivera (1929–1945), Exploitation of Mexico by Spanish Conquistadors
All contributors to the project Historical Dictionary of Canon Law in Hispanic America and the Philippines (DCH) (see also Mejía Quiroga and Moutin) are required to make use of a set of mandatory sources, with the possibility of adding further sources of their choice. Due to the interdisciplinary composition of the group of authors, some coming from legal history, others from canon law, others from social history, theology etc, some sources are better known to some authors than others. Moreover, as one of the major aims of the project consists in scrutinising possible localisations or regionalisations of the universal and particular canon law – or, in other words, the (cultural) translations or the inculturación of canon law – an adequate understanding and mix of local and universal sources is key for the success of the project.

To ensure that the articles can meet these complex challenges, the Institute offers DCH authors research stays in Frankfurt, organises presentations and discussions during the writing period, and tries to establish an intense communication with and between the authors. After completion, each article is carefully revised, evaluated and returned to the author(s). As a member of the project group, I have mainly been involved in these activities. In this context, the authors’ blog set up by the team proved a valuable tool already before the pandemic, but has since become an indispensable vehicle for the exchange of ideas under challenging research conditions. It has enhanced pluriperspectivistic approaches and helped to enhance communication in this multidisciplinary community whose members are working on different continents.
Raquel R. Sirotti
Researcher / Former Doctoral Student

The History of Criminal Law, Crime and Criminal Justice

Iberian Worlds

Glocalising normativities (Joint Project)

Within the law: criminal law and political repression in Brazil (1889–1930)

Producing modus vivendi: labour, punishment and governance under the rule of the Nyassa Charter Company (Mozambique, 1891–1929)

The so-called ‘long 19th century’ (1789–1914) was marked by a wave of political conflicts with global legal consequences. Revolts, rebellions, strikes and political assassinations boosted the use of repressive legal measures both at the national and international levels. Several studies have mapped the complex set of legal and extra-legal measures aimed at the control and repression of such events in distinct regions of the world, but little research has targeted the way in which political conflicts were addressed in the courts.

The PhD dissertation *Within the law: criminal law and political repression in Brazil (1889–1930)* addressed this research gap by analysing criminal court records representing prototypical cases of political conflicts in distinct courts and jurisdictions. The case-based examination of judicial sources uncovered the multiple uses of legal concepts and categories from codified criminal law, proving that the repression of political conflicts was not always carried by means of extra-legal measures. The dissertation was concluded in early 2020 and was carried out in the context of the Research Field *The History of Criminal Law, Crime and Criminal Justice*.

In January 2020, a postdoctoral project was started within the framework of the Joint Project *Glocalising normativities*. The study focuses on the rule of the Nyassa Company, a chartered company in Northern Mozambique during the colonial period, and seeks to explain the interactions between punishment, labour and governance in such a context.

Furthermore, the coordination of a collective volume edited by Thomas Duve and Tamar Herzog on the *History of Latin American Law in Global Perspective* was also initiated in early 2020 and is being carried out in tandem with the postdoctoral project.

Map of the territories of the Nyassa company, 1899
Philipp N. Spahn  
Former Doctoral Student

Curia, Canon Law and Moral Theology in the Modern Era

The Bible as a norm? The struggle for the law of the church in the controversy literature from the time of the Investiture Contest, ca 1050 to 1140

Works on canon law usually spend few words discussing the Bible. However, neither the history of the Church nor its law can be fully understood if the reception of biblical texts in the ecclesiastical legal literature of the High Middle Ages is excluded in favour of papal decrees and canons of conciliar and synodal origin.

Although renowned scholars such as Peter Landau drew attention to this research lacuna years ago, it has not yet been filled. The aim of this PhD project was therefore to work out the significance of the Bible for the scientification of canon law, on the one hand, and the juridification of the Church, on the other. Both developments were decisively influenced by profound changes in the handling of texts from the second half of the 11th century onwards. These changes are particularly evident in the controversy literature produced in the context of the so-called Investiture Contest. These texts are perhaps the earliest testimony of a Western scholarly culture of dispute and represent an emerging body of ecclesiastical legal literature.

The authors of these texts strove to resolve legal issues through the harmonisation of discordant canons, and used new methods of textual analysis and interpretation aimed at ascertaining the correct meaning of their sources. Importantly, the key methodological innovations of the period regarding legal texts were also applied to working with the biblical text; for example, the form of biblical texts was used to determine the legal status of the norms derived from them.

Moreover, the new emphasis on, and methods of, working with the texts led to a paradigm shift away from custom (consuetudo) as a central figure of thought in early medieval secular law to the truth (veritas) as a significant figure of thought in canon law. In the historiography of the Investiture Contest, a tendency to focus on the historiographical narratives – in particular their descriptions of rituals – has led us to overlook the contribution of the associated controversy literature to the development of a scientific reasoning and methodology for the interpretation of sources in medieval canon law.
Valeria Vegh Weis

Affiliate Researcher

The History of Criminal Law, Crime and Criminal Justice

Transnational criminal law in transatlantic perspective (1870–1945). Towards a dialogue between the Global North and the Global South

The transnational criminal law regime on the trafficking of women (1870–1921)

The project Transnational criminal law in transatlantic perspective, carried out together with K. Härter, focuses on the relevant relations between and activities of European and Latin American actors in the period between 1870–1940. The basic approach is to study states and experts from both sides of the Atlantic as actors in transnational criminal law regimes and in the global governance of crime. These regimes dealt with various activities that were criminalised or labelled as threats to public safety and the existing moral order – such as the slave trade, trafficking (both of humans and of drugs), smuggling, as well as political dis-sent/violence and illegal migration – and that affected more than one state or jurisdiction. The project investigates the transnational practices of mutual assistance, extradition and police co-operation as well as international discourses and organisations that dealt with related issues. Qualitative methods guide the research, though some quantitative data are taken into consideration. In May 2019, a first workshop explored the research area and methodological questions, including a discussion of concepts such as ‘transnationalisation’, ‘criminal law and security regimes’, ‘critical criminology’, ‘criminal selectivity’ and ‘global legal history’. Experts from Latin America and Europe presented exemplary case studies on crimes, criminals, actors and practices of transnational criminal law as well as on transnational discourses and criminology. Several contributions are being prepared for publication in the mpilhit’s Research Paper series. Further research results were presented in various Institute colloquia (two each in 2018 and 2019) and contributions to books and journals (see the list of publications in the Annex). Current research focuses on The trafficking of women within transnational criminal law regimes (1870–1921), studying Argentina (and, to some extent, Brazil) and Germany (and, to some extent, Austria). It is therefore conceptualised as a comparative case study of the Global South and the Global North. The project not only (dogmatically) reconstructs the provisions and norms and their implementation in domestic criminal law, but also analyses the respective narratives, labels and modes of criminalisation that concerned criminal trans-boundary practices (‘kidnapping’, ‘trading’, ‘procuring’, ‘sexual exploitation’), the criminals (‘professional organised criminals’) and the victims (‘white women’).

Herbert Booker (1910), Fighting the Traffic in Young Girls or War on the White Slave Trade
Leonard Wolckenhaar
Former Doctoral Student

Special Legal Orders

Law and autonomy in German-language public law scholarship (Staatsrechtslehre) of the late 19th and early 20th century: discussing non-state law in the heyday of the state

The still dominant narrative regarding the discipline of Staatsrechtslehre between about 1871 and the middle of the 20th century attributes to it a monistically state-focused notion of law based on the dogma of the state’s inner sovereignty and monopoly of legislation. Nevertheless, as this PhD project shows, the idea that law could originate from different sources and be created by various actors was never entirely absent from academic debate. Even during the supposed heyday of ‘etatism’ between the foundation of the German Empire and the mid-20th century, the possibility of non-state law was discussed not only at the margins of the discipline but also in the context of several important fields of regulation, such as economic and work relations, the social services sector, the municipalities, and, of course, religion. Almost always, these discussions invoked certain vague but highly charged attributes of what (non-state) law should be: ‘organic’, ‘social’ or even ‘German’. Authors like Otto von Gierke served as much used – perhaps also misused – points of reference. Examining the discussions of non-state law in a number of sectors, the concepts employed, the relevant authors or ‘schools’ and their reception shows that the (in)famous German distinction between state and society was by no means clearly defined but rather highly contested. Such a comparative and historically contextualising analysis enables us to better assess the extent to which today’s discussions of concepts such as ‘transnational law’ or ‘legal pluralism’ in the context of globalisation are as revolutionary for the discipline as is often claimed. Even in the domestic context, non-state law appears as a latent but always present alternative, as the other side of the coin, so to speak. Moreover, in the late 19th and early 20th century, just as now, non-state law could not be discussed without also declaring one’s particular understanding of the fundamental concepts of law, state and society. The PhD project thus also aims to contribute to a more nuanced view of the development and role of these powerful concepts in our recent past.
The aim of the project, undertaken together with Peter Collin, is to investigate the non-state order of industrial relations in the metal industry in Germany from the Empire up to the 1950s. The area covered by today's labour law, the regulation of industrial production, has hardly been explored for the 19th century. The project will prepare a digital edition of normative texts and legal arrangements, including individual agreements such as employment contracts, internal company regulations (Fabrikordnungen, Arbeitsordnungen), collective bargaining agreements, company regulations with socio-political relevance (e.g. relating to company health or pension insurance) and statutes of employers' and workers' associations. The metal industry was selected as a case study due to its special importance for the industrial development of Germany and because the changes in the world of work during the period studied were particularly evident in this sector. The project has opted to define the sector broadly to include companies ranging from metal production and the manufacture of products to mechanical and vehicle engineering. The study focuses on a number of small-scale, sub-national spaces of interaction constituted by the density of traffic and migration, communication and trade that were of particular importance to the sector, like Saxony, the Ruhr area (Ruhrgebiet), the region around Nuremberg and Fürth in Bavaria, and Berlin.

The project conceives of these non-state legal orders of industrial relations as an example of regulated self-regulation. This approach builds on the concept of multinormativity developed at the mphylt, and explores the relations between private and state law and their constantly changing interaction. It examines workplaces as special legal spaces in which a specific normative order was developed. Moreover, it takes up the idea of historical regimes of normativity by exploring the development of the normative order in industrial relations in a longue durée analysis.

My part of this project explores the genesis of work regulations (Arbeitsordnungen), particularly the debates and conflicts occurring during the negotiations. Work regulations are the only source of information on the normative order of factories available for the 19th century. They established the legal basis for industrial relations by defining working conditions and the behavioural demands made on the workers. The analysis sheds light on the actors – individuals, institutions and organisations – that played a role in the negotiation.
Alexandra Woods

Researcher

Knowledge of the Production of Normativity

Localising norms in the material

The PhD project Localising norms in the material aims to give a material perspective on the production of legal norms in the Cape of Good Hope in the 19th century. Specifically, it investigates the claim that the English common law doctrine of judicial precedent as it is understood today – the legal rule and practice of giving authority to past judgments – depends on the reporting and publication of cases. The project thus asks: to what extent and how did judicial precedent depend on the publication of case law books?

In the early stages of the Cape Supreme Court, established in 1828, law reporting was conducted at the initiative of private individuals and, as a result, was ad hoc and unsystematic. Before the publication of the first case law book in 1858, generally referred to as Watermeyer’s Reports, manuscript notes of the judges were circulated by practitioners and judges alike and used in their arguments. Methodologically, this project traces the development of the doctrine of precedent by looking at changes in both its definition and its use in the Cape Supreme Court as reported in the case law books. The project also researches the book history of these publications, exploring the connection between the development of the doctrine of precedent and the history of the printing press in the Cape. The initial results show that while there is no indication of the doctrine of precedent in Watermeyer’s Reports, a clear practice of considering and relying on past decisions is visible in the next publication ten years later, although the doctrine remained under-established. By 1882, increasing precision in how past cases were cited might signal a new concern for accurate reporting to facilitate their use as precedent.

As this project also considers how lawyers rely on the past to argue their cases, the activities of the Cross-Cutting Theme Using normative knowledge from the past, led by Thomas Duve and coordinated by myself, provide analytical guidance. Since January 2020, a working group on this topic has conducted seven workshops, and a working paper has been written which surveys this theme.
MULTIDISCIPLINARY
LEGAL THEORY

Marietta Auer

The third and youngest Department, founded in September 2020, explores multidisciplinary approaches to legal theory. Its research focuses on conceptualising theoretical tools for an improved understanding of basic concepts and functions of law. The distinguishing feature of the Department’s research is a broad interdisciplinary, ie multidisciplinary, approach to theoretical perspectives on the law which include sociological, philosophical, historical, economic and other research dimensions. The three main Research Fields of the Department are as follows: first, multidisciplinary approaches to legal theory and particularly to private law theory as described above. Second, the Department conducts research on the theory, history and epistemology of legal scholarship. Third and finally, it welcomes and promotes all projects which concern the status, structure and social function of law in modern society.

Building up the Department

Since the founding of the new Department, I have invested considerable effort into building up an interdisciplinary research group to cover the thematic focuses within the scope of research outlined above. Several months into the Department’s existence, the growing structure is taking shape. Five objectives have been central for the selection of team members and the team building process:

1. Intellectual and scientific excellence and promise of all team members,
2. Diversity of the institutional structure and age distribution – with an even distribution of senior and junior researchers,
3. Diversity of gender, languages and nationalities of team members,
4. Multidisciplinary diversity, including law, the social sciences and philosophy,
5. Synergies between the individual research projects and amongst the Research Fields in the Department.

I was able to meet all five objectives via the hiring process up to this point. As a first step, I filled the main administrative positions within the Department by hiring a highly qualified team assistant (Rita Besang) and a distinguished senior researcher in the social sciences (Christian Boulanger) who will also serve as the Department Research Coordinator. Christian Boulanger is a political scientist and sociologist by training and has brought several outstanding research projects to the Department. His projects, centred on the comparative history of the sociology of law and on Digital Humanities, also fit in very well with the research conducted in the other Departments of the Institute.
As of May 2021, Ralf Seinecke, another outstanding senior researcher, has joined the Department. I have known and worked with him for many years within the context of a mutual collaboration at the Justus-Liebig-Universität Gießen. He holds degrees in both law and philosophy. His specific contribution to the Department’s multidisciplinary focus is a crossover of legal history and legal theory focusing on theories of legal pluralism. With this research approach, he is in a unique position to foster multidisciplinary exchange within the Department as well as within the Institute at large.

The third senior hire is Johan Horst, who will join the Institute in January 2022. He holds law degrees from German and American law schools and has also studied history and philosophy. His research focuses on the relationship between nature and normativity in the age of shifting boundaries between both domains through man-made technical changes, and thus bears directly on questions of legal theory in the digital age and the Anthropocene.

On the level of junior postdoc researchers, I am currently conducting interviews with several interesting candidates, among them three women whose research takes up different perspectives on the theory of property and inheritance.

Six new doctoral researchers have joined the Institute since last September. Of those six, two are currently pursuing LL.M. studies at American universities, one of them at the Harvard Law School. Another doctoral candidate is currently pursuing his postgraduate legal clerkship in Frankfurt and is thus working at the Institute on a part-time basis. Two of the dissertation topics are centred on law and logic, another three are dealing with the structure of legal doctrine, judicial law-making, legal hermeneutics and extra-legal arguments in the law, and the final one is researching the history of the idea of contract law. The contracting process with a seventh doctoral researcher from China is still pending. Her research will focus on a comparison between digital contracts in China and Germany.

Finally, I am expecting two academic guests at the Department as of January 2022. One is also from China and joins the Institute with a postdoctoral project on pre-contractual reliance. The other is a senior scholar at the professorial level from Brazil and is directly researching the possibilities of a multidisciplinary theory of law. It is worth noting that the new Department has attracted a great deal of attention from researchers interested in legal theory in Germany and from all around the world. More than 150 applications for the doctoral and postdoctoral calls for positions were received, and the overall high quality of the applicants meant that many suitable candidates could not be accommodated. In the meantime, the Department has taken up its academic work, including regular biweekly meetings and presentations of scholarly work by its members. After its dynamic launch, I am confident that the new Department will develop into an international hub for multidisciplinary theory in the years to come.
Personal research agenda and achievements

Since starting at the Institute in September 2020, my own research agenda has undergone a visible shift. The focus on multidisciplinary and international theory is much more pronounced, and the scope of international and interdisciplinary subjects of legal theory has become even broader than before. At my previous posts at the universities of Giessen and Munich, my research was always still somewhat focused on doctrinal German law. Since joining the Institute, however, I have used the freedom this new position offers to fully concentrate on the specific projects connected with my appointment. The institutional dynamic of the growing Department further highlights this development.

In this period, six law review articles and one book chapter have appeared in print (see Annex). I have written another four articles which have been accepted for publication in high-ranking, peer-reviewed law reviews, history reviews or collections of essays. My most recent work focuses on topics such as the history of ideas of legal theory, the epistemology of legal scholarship in the work of Carl Schmitt, the concept of paternalism in private law, and the intellectual genealogy of complexity. Moreover, I have written several book reviews, among them one longer review essay developing a comparative history of legal scholarship using the example of the Harvard Law School, and another one dealing with postmodern legal theory and legal aesthetics.

I also presented several digital talks and participated in digital panels since my arrival at the Institute, for example, on autonomy in the digital age (Polytechnische Gesellschaft, Frankfurt am Main, December 2020), on property and restitution to the former German imperial family Hohenzollern (Bundestagsfraktion Bündnis 90/Die Grünen, February 2021) and on the history of private law scholarship since the 19th century (Universität zu Köln and Universität Bayreuth, April 2021).

In addition, I have continued my widespread institutional activities as a board member and evaluator within numerous national and international scientific institutions and societies (see Annex). Furthermore, I am a member of the board of editors of several law journals and book series in the fields of legal theory and private law (Grundlagen des Rechts, Mohr Siebeck; Fundamenta Juridica, Nomos; Rechtsgeschichte and other book series edited by the Institute, Klostermann). Within the Max Planck Society, I am currently serving as a member of the appointment commission for a director position.

My future research plans include two book projects on the aesthetics of law and on the relationship between concepts of property and concepts of family. My new position at the Institute has put me in a unique position to pursue these projects. Both books require an exceptional degree of interdisciplinary research and intellectual effort that I could not possibly have invested as a law professor at a German university. Thus I am confident that the ongoing development of my new Department will also enable me to pursue my personal research agenda on a level simply not possible outside of the Max Planck Society.
Three projects are currently in development that share an interdisciplinary approach to legal doctrine and its ‘other’, the non-dogmatic study of law. The approach combines perspectives from the social sciences and legal theory to explore law as a social practice, including legal research and legal education.

The first project is a bi-national research project that investigates why the intellectual and institutional developments of Socio-Legal Studies in the UK and Rechtssoziologie in Germany have turned out so differently. Whereas Socio-Legal Studies are firmly established in UK law schools, Rechtssoziologie remains marginalised in German law curricula. The project Socio-legal trajectories in Germany and the UK will be undertaken together with Dr Naomi Creutzfeldt (University of Westminster) and Dr Jen Hendry (University of Leeds). It employs comparative and empirical methods alongside self-reflective socio-legal theory and will collect comparative data on the respective institutional landscape and history of the disciplines in the two countries as well as on the academic identities and biographies of scholars in the field. The project aims at enriching our understanding of key actors and events in the development of the non-doctrinal study of law in the last decades [Boulanger, Comparative Sociology, 2020; Hendy, Creutzfeldt, Boulanger, Socio-Legal Studies, 2020]. It will also be conducted together with the Department of Stefan Vogenauer.

The research literature and empirical data collected for the comparative project will subsequently be used in the writing of a monograph on the post-1945 history of the sociology of law in Germany, which will focus in particular on the 1960s–1990s and the struggle between doctrinal and non-doctrinal approaches in German Rechtswissenschaft. A key aspect will be the analysis of the central yet often undertheorised role of Rechtsdogmatik in German ‘Legal Science’.

In addition to these projects, which use traditional humanities and social science research methods, a third project employs methodologies based on network graph technologies, bibliometrics and corpus linguistics. The Legal theory graph project, which is currently in an exploratory phase, aims to produce publicly accessible linked data on legal theory scholarship (with a focus on socio-legal theory), mapping scholars, institutions, publications, and citations in a network. The project profits from existing expertise at the Institute in the application of Digital Humanities research methods to legal history.

In my role of Department Coordinator, I am working with Professor Auer to create the intellectual environment and infrastructure that will allow the Department’s staff to produce excellent interdisciplinary legal theory scholarship in the years to come.
GOVERNANCE OF THE UNIVERSAL CHURCH AFTER THE COUNCIL OF TRENТ

Benedetta Albani

The Max Planck Research Group, active at the mpilhlt since 2014, aims to analyse the emergence and development of the global governance of the Catholic Church through the study of the Congregation of the Council (Sacra Congregatio Concilii, SCC), the dicastery of the Roman Curia in charge of the implementation of the Council of Trent throughout the Catholic world.

The Group’s research is modulated into individual and team research projects. As for individual research projects, in the three-year period 2018–2020, Alfonso Alibrandi (Université Paris V Descartes) concluded his thesis on the role of the Congregation of the Council in defining the concept of authentic interpretation in the modern age. Anna Clara Lehmann Martins (Federal University of Minas Gerais and Westfälische Wilhelms-Universität Münster) continued her research on the role of the Council of Trent in ecclesiastical administration in 19th-century Brazil and will defend her thesis in 2021. The Group has also been enriched by two new PhD students who brought new research topics and expertise: Francesco Giuliani (Universität Mannheim) is writing his dissertation on governance of local churches in the Papal State in the modern age, and Alexandra Anokhina (Universität zu Köln) started her dissertation on geographical imagination in early modern Catholicism with a special focus on Digital Humanities visualisation tools.
Claudia Curcuruto and Brendan Röder, former doctoral students of the Group, engaged in research on the relationship between the Congregation of the Council and apostolic nuncios at the end of the 17th century and on disability within the clergy in the early modern age, respectively. Brendan Röder successfully defended his thesis *Der Körper des Priesters* in 2019 and was awarded summa cum laude. Claudia Curcuruto is scheduled to defend in 2021–22. Finally, Constanza López Lamerain’s research, carried out within the Research Group from 2014 to 2019 and dedicated to the relations between the Chilean bishops and the Holy See in the 16th and 17th centuries, will be pursued at the Universidad de Chile (Santiago de Chile). The composition of the Group has evolved over time with some doctoral students who, having completed their period of activity in Frankfurt, have continued their work elsewhere while remaining linked to the Group as external members. This structure is extremely practical for the continuation of the Group’s work, as it allows the professional skills developed over the years to be maintained within the Group and facilitates the transfer of knowledge between older members and newcomers. At the same time, it offers an institutional bond to young researchers at a particularly delicate moment in their careers, namely the completion of their doctoral thesis and the search for a first position in the academic world. All members of the Group contribute, based on their specific research interests and expertise, to the realisation of team research projects.

In 2017 the Group concluded the project *Reorganisation of the Archive of the Congregation of the Council*, carried out in collaboration with the Vatican Apostolic Archive (formerly Vatican Secret Archive) and aimed at ensuring full usability of the dicastery’s archive for researchers. Based on the results obtained, since 2018 the Group has been working on the implementation of the SCC explorer project, a complex of computer tools programmed by the team that aims to offer the scientific community a solid base of scientifically organised data to facilitate future research on the Congregation of the Council.

The SCC explorer project consists of four closely related subprojects. The SCC resource explorer offers the possibility to access, through a web application, a rich database of specialised bibliography on the Congregation of the Council. This bibliography is primarily the result of the personal research of the members of the Group but has been implemented by a systematic analysis of the historiography produced on the dicastery from the post-Tridentine era to the present day. To organise the material, the team elaborated a complex system of keywords based on the specific legal competences of the dicastery. This system allows for a very thorough search of the material and facilitates an analytical reflection on the history and competences of the Congregation of the Council. A large part of the database is also accompanied by data on the archival sources from the archives of the Congregation cited in the scientific literature, which is extremely useful given the complexity of the archives and their still limited use by scholars. The second subproject, the SCC timeline explorer, will offer the possibility to visualise through a web application, different timelines describing various aspects of the history, competences and functioning of the Congregation of the Council. The synoptic visualisation aims to facilitate the contextualisation of the activities of the dicastery in the broader framework of the evolution of the Roman Curia, the history of the Church and the global history of law. The third subproject SCC *libri decretorum* explorer offers the scientific community easier access to the volumes of the decrees of the Congregation of the Council kept in the Vatican Archives. The Group has financed the digitisation of the first 68 manuscript volumes of the series, volumes that constitute the initial nucleus of the dicastery’s activity and precede the printed collections of the Congregation’s decrees promoted since the beginning of the 18th century. For the first time, it will be possible to access the complete collection of decrees, even for those who are not familiar with archival research.
In recent years, the team has created a complex set of archival metadata that will be accessible as an accompaniment to the images, enabling easier navigation through the documents. The project is being carried out in collaboration with the Vatican Apostolic Archive and the Institute Library. Finally, the preparation of the fourth subproject continues, the graph-database SCC *positiones* explorer, which will make available to the scientific community for the first time an analytical description of more than 33,000 *positiones* from the dicastery between 1564 and 1681, in which the decisions taken by the dicastery about specific issues on interpretation regarding Tridentine canon law are preserved. This subproject is also carried out in collaboration with the Vatican Apostolic Archive and in synergy with the Digital Humanities expert at the Institute, Andreas Wagner. Also collaborating are an archivist, Dr Francesco Russo, and Yohan Park, student assistant of the Group and master’s student at the Johannes Gutenberg-Universität Mainz, who is writing his thesis in Digital Humanities on ontologies of database design based on the data provided by the Group.

Other thematically related research projects and activities are linked to the Research Group. Among these, it is important to mention the project *Information as resource for juridical decision-making processes: on the emergence of the modern information regime in the early modern papacy* carried out within the framework of SFB 1095 *Discourses of Weakness and Resource Regimes* from 2014 to 2019. As part of the project, Cecilia Cristellon investigated the role of information as a resource for Roman congregations for administering religious plurality, and José Luis Paz Nomey, PhD candidate at the Universität Heidelberg, studied the role of translation in the relations between the Apostolic See and the viceroyalty of Peru in the 16th and 17th centuries. In 2020, the SARS-CoV-2 pandemic affected the work of the Group, especially due to the long periods of closure of the archives. The Research Group therefore requested and obtained a ten-month extension of its activities from the Max Planck Society.
Alfonso Alibrandi
Former Doctoral Student

The dominion over the interpretation of the law

The research project The dominion over the interpretation of the law focused on the interpretative competence of the Congregation of the Council and its influence on the legal theory of the concept of authentic interpretation of the law during the 16th and 17th centuries.

Authentic interpretation of the law means the interpretation given by the legislator itself. One of the most important examples of the application of this juridical concept is the interdiction imposed by Pope Pius IV at the end of the Council of Trent. As a consequence of this interdiction, the pope created a specific organ to control the correct application of the decrees of the council: the Congregation of the Council. In order to prove the influence of this Roman congregation on the evolution of the concept of authentic interpretation of the law, the research aims to outline the general procedure followed in order to solve the dubia coming from all over the Catholic world and to demonstrate that its activity was largely taken into consideration by the jurists and the legislators of the 17th century.

Based on the analysis of the handwritten sources conserved at the Apostolic Vatican Archive and through the consultation of many juridical books, it appears clear that the activity of the Congregation of the Council deeply influenced the legal doctrine of the 17th century. In particular, the decisions of this congregation were used in the development of legal theories on authentic interpretation, influencing the ideas on this concept until the codification period. Moreover, it is now possible to demonstrate that the importance of the Congregation of the Council went beyond canon law, influencing other juridical systems, such as French legislation during the legal reform process started by Louis XIV.

Thanks to the Max Planck project cataloguing the archival sources of the Congregation of the Council, it is now possible to demonstrate the importance of this organ of the Roman Curia, both within the Catholic Reformation and more broadly as one of the main protagonists in the development of legal theory regarding the concept of authentic interpretation of the law during the early modern period.
Alexandra Anokhina

Doctoral Student

Mapping the world after the Council of Trent: an analysis of the language of geographical imagination in early modern Catholicism

My research focuses on mapping legal spaces and geographical imagination in Post-Tridentine Catholicism. I use ‘mapping’ as an umbrella term for the definition of the space that includes not only cartography, but also textual descriptions, suspicions and projections. Following the exploration of new territories, ecclesiastical institutions established new structures and missions that required a mapping projection. Examining the relationships between geographical imagination and legal structures, I focus on the combination of two layers: first, the definitions and names that the Holy See used to identify and order territorial subjects and applicants in a hierarchy, and second, topographic projection, based on the transfer of geographical and biological knowledge. I explore interactions between the linguistic and spatial data, the transfer of knowledge depicting an image of the world, and the Holy See’s expectations regarding the borders of the world and the borders of jurisdiction versus their geographical reality. Since my research contains two components, language and geography, I use two types of digital tools. For the analysis of the linguistic data, I use R, a free software environment for statistical computing. To examine the spatial data within the linguistic framework, I use GIS and game engines to combine an imaginative aspect of topography and legal space on global and local levels.

In addition to my own research, I worked on three of the Research Group’s digital projects. The first is an interactive bibliographical catalogue of the Congregation of the Council, which aims to provide a usable and clear navigation among 180 keywords in more than 3000 texts and to connect them with the index of the Vatican Apostolic Archive. I added a double conversion of .bib (EndNote) to the data table, multiple search keywords organised into trees, and graphic visualisation of bibliographical trends, where users can choose parameters and see the chronological dynamic. This app, suitably adapted, can also be used for other research projects and will soon be available as an open source resource for the scientific community.

Secondly, I made an internal app for the Group, Positiones explorer, which enables interactive searches in the catalogue of positiones and their graphic visualisation. All projects are programmed on R Shiny with html and js widgets.

Thirdly, within the framework of the EU-funded RISE-project RESISTANCE. Rebellion and Resistance in the Iberian Empires, 16th–19th centuries, I am developing a web app, Mapping resistance, which aims to visualise a large amount of spatial and statistical data of rebellions and revolts in the Iberian empires between 1500 and 1850. The dashboard includes multi-level navigation, a reactive dynamic timeline, WMS historical maps and an analytical part with graphs and statistics.
Cecilia Cristellon
Former Researcher

Roman congregations and information as a resource for administering religious plurality

My project analysed the communication between Roman congregations and European local churches as a resource for the construction of a normative order in the field of religious pluralism. The project aimed to understand how Roman congregations received, selected, censured, ignored and interpreted information from the local churches about religious pluralism in different ways in order to achieve diverse goals at various times historically. This analysis underlines how information served as a flexible resource for the negotiation and administration of religious plurality that enabled the reconciliation of dogmatic rigidity with pastoral flexibility.

Communication between local churches and Roman congregations occurred mainly through reports, either those presented by bishops to the Congregation of the Council or those of the missionaries addressed to the Congregation of Propaganda Fide, as well as through the formulation of dubia and the requests for dispensations sent to the Holy Office. This communication reveals the will of the Catholic Church to reconcile its aspirations to a monopoly over doctrinal truth and the universalism of its jurisdiction over the baptised with its limited enforcement capability in places where Catholics did not hold political power. This inability to intervene prudently led the Roman congregations – and in particular the Holy Office – to avoid a general prohibition on religious pluralism, limiting themselves for a long period to collecting information on local practices and to finding concrete solutions on a case-by-case basis. This communication, which sometimes had a self-justifying function (when the members of the local clergy described the difficulties that prevented a literal application of the dictates of the Council of Trent), also produced a reservoir of information upon which the Roman congregations could draw. It contributed to constituting a praxis that diverged from the norm so as to become a norm itself, and therefore played a dynamic role within the normative order regarding religious pluralism.
Francesco Giuliani
Doctoral Student

Governing the local churches in the Papal State: the Congregation of the Council and the Marca pontificia between the 16th and 17th centuries

The Marca pontificia constituted a specific territory close to the Roman Curia within the Papal State, characterised by a considerable institutional and diocesan fragmentation, where there was a merely formal distinction between temporal and spiritual power that was difficult to untangle. The analysis of the role played by the Congregation of the Council in the government of the local church in this province – hitherto little explored by researchers – allows a detailed study of how the Tridentine decrees were implemented as well as of the relations that were established between a Roman institution and the diocesan ones in the early modern period, from both central and local perspectives. The research project raises the following questions: how did the Congregation of the Council behave in the translation process of the Tridentine normative order in the jurisdictional complexity of the Papal State? How did the proximity of the Marches to Rome affect the relations between the Congregation of the Council and the diocesan institutions from the quantitative and qualitative point of view? How did a global institution develop itself in the diocesan dimension of the local church? So far, the research has focused on tracing, collecting and processing the sources of selected dioceses in the diocesan archives and the Vatican Apostolic Archive. The work with sources is accompanied by an essential theoretical analysis of curial and diocesan legal practices and their interconnections. The first provisional results show a continuous dialogue between Rome and the Marca pontificia throughout the 17th century, and above all a remarkable variety in the subjects dealt with. The Congregation in this geographical context was primarily concerned with the granting of licenses for the alienation of the assets of the regular clergy, the administration of ecclesiastical benefices and matters relating to the residence of the clergy.

Anonymous, Cardinal Innocenzo Cibo (detail)
Anna Clara Lehmann Martins

Doctoral Student

*Governance of the Brazilian Church between Rome and Rio de Janeiro: the role of the Council of Trent in ecclesiastical administration (1840–1889)*

The Empire of Brazil (1822–1889) structured its relations with the Catholic Church based on *padroado* rights. This means the administration of the Brazilian Church depended on interactions between three institutional levels – the local clergy, the Brazilian state and the Holy See – and was anchored on canonical norms, civil norms and custom. In this context, it is surprising that the Council of Trent, a 16th-century disciplinary corpus, was the object of renewed interest for lawyers, bureaucrats, clergymen and cardinals during this period. Having surpassed its colonial adaptations and remaining relevant until the 1917 Codex, the Tridentine decrees witnessed the rise of new networks of interpretation and enforcement during the Second Reign (1840–1889).

This project outlines the different appropriations of the Council of Trent in the Brazilian Church’s system of governance, particularly in administrative matters of a mixed nature. The main sources are cases from the twelve imperial dioceses that were directed to two higher administrative bodies with interpretative competences – the Brazilian Council of State and the Roman Congregation of the Council. In the case sample, five themes were selected as they featured in petitions to both the Council of State and the Congregation of the Council: provision of benefices, residence, foreign clergy, seminary and discipline.

Preliminary results show that, in petitions and decisions, the Council of Trent adopted multiplex and distinctive functions, including, first, as a norm both rejected and protected by the state that was used as a model for civil norms; second, as a norm remodeled by the Holy See to address new phenomena; third, as a weapon of resistance against the episcopate; and fourth, as a norm informing joint strategies between the three levels of governance. Overall, this project challenges the explanatory power of 19th-century dichotomies such as the supposed opposition between the ‘regalist, liberal state’ and the ‘ultramontane, Tridentine clergy’. Instead, it reveals the ecclesiastical administration in the complexity of its actual practice.
Constanza López Lamerain

Former Doctoral Student

*From universal to local governance. The Chilean bishops before the Holy See in the 16th and 17th centuries*

*Ecclesiastics on indigenous slavery at the Hispanic–Mapuche frontier (16th and 17th centuries)*

During 2018 and 2019, I worked on the project *From universal to local governance. The Chilean bishops before the Holy See in the 16th and 17th centuries*, on the topic of the governance of the Universal Church after the Council of Trent and the observance of canon law by local churches within the Catholic sphere. The project analysed the relation between the Holy See and the Chilean dioceses that existed mainly through their bishops during the 16th and 17th centuries in the context of Spanish colonialism. The guiding enquiry of this research focused on how the governance model of the Universal Church influenced local churches in Chile in the context of royal patronage. To achieve this, a deep examination of Vatican sources and their correlation with local documents was undertaken. Preliminary results identified that bishops pursued and succeeded in presenting doubts, petitions and complaints concerning their government communicating directly with various institutions of the papacy despite the restrictions imposed by the royal patronage.

Since 2019 I have been collaborating with the Max Planck Partner Group at the Universidad Adolfo Ibáñez in the project *Ecclesiastics on indigenous slavery at the Hispanic–Mapuche frontier (16th and 17th centuries)*, which studies how the members of the Church – clerics and missionaries – in Spanish America mediated between local populations, the king and other authorities when denouncing indigenous slavery at the southern borderlands of the Spanish empire in the 16th and 17th centuries. The guiding question of the project – focusing specifically on the communications sent by ecclesiastics from Chile – is if their intermediate position gave them a chance to present unjust and cruel behaviour towards indigenous communities on the part of *encomenderos*. Did their unique position as intermediaries between canonical and secular normativities enable them to denounce local conflicts that took place in the borderlands?
José Luis Paz Nomey
Former Doctoral Student

Translating to evangelise: discourses and translations of Christianity between the Holy See and lay people in the Viceroyalty of Peru (16th–17th centuries)

This doctoral project analyses, discusses and critiques the discourses on Christianity developed between two legal institutions – the Holy See and the confraternities – in the Peruvian region in the 16th and 17th centuries. Although the discourses addressed all aspects of Christian life, the research concentrates, in the first instance, on the analysis of the regulations concerning the evangelisation of believers through the study of bulls and other papal documents (196 unpublished and 126 published bulls) which regulated this process, as well as on the catechetical instruments resulting from the Tridentine and Lima Councils.

The project also studies the discourse and practices of the recipients of the papal discourse – the laity organised around the confraternities of ‘God’ in their various vocations. This is achieved through the analysis of papal breves addressed to the confraternities, on the one hand, and of the books of the confraternities in the local archives, on the other. As these are two institutions with different languages, in order to spread Christian discourse and carry out the evangelisation of the Peruvian faithful, it was necessary to resort to translation from the language used in Rome (Latin) to the languages of the Indians (Quechua and Aymara). For this reason, the two variables, ‘discourses’ and ‘translations’ (linguistic and cultural) are transversal to all the chapters of the thesis.

The thesis is divided into four chapters: the first is dedicated to contextualising the region of study, with emphasis on the types of interpreters and the work they developed. The exchange of information between the Holy See and the Peruvian Church served to design the methodology of spiritual conquest that would be carried out among the Catholic faithful, as shown in chapter two. A culminating aspect in the development of the Church in the early colonial period was the promulgation of instruments of evangelisation such as the Roman Catechism by the Council of Trent and the translation of this text into the Christian Doctrine and Catechism of the Third Council of Lima, a theme developed in chapter three. Finally, the transfer of devotional expressions from Spain to the New World favoured contact – direct or through a procurator – between Peruvian laity and Rome in order to obtain favours; these privileges would enable the confraternities to manage themselves in an almost autonomous way and have more power in decision-making processes, as shown in chapter four.
TRANSLATIONS AND TRANSITIONS: LEGAL PRACTICE IN 19TH-CENTURY JAPAN, CHINA AND THE OTTOMAN EMPIRE

Lena Foljanty

How was legal practice shaped in the encounter between European and non-European legal cultures in the late 19th and early 20th centuries? This is the main question of a Max Planck Research Group that started its work in July 2017. It investigates the path toward legal modernity in the three selected non-European countries: Japan, China and the Ottoman Empire. While none of the three countries were ever colonised, they nevertheless underwent substantial legal reforms during this key moment in the history of the globalisation of law, pressured by the Western nations as well as by internal needs for reform. Based on European models, every element of law was reconsidered: new norms and institutions were created, a new understanding of law was formulated and even a new legal language was established.

Legal practice at the margins: a comparative perspective on law’s modernity

A great deal of research has been done on each of these countries. However, the Group’s research is fundamentally new in several regards:

(1) The Research Group does not focus on legislative reforms, which have already received much scholarly attention, but rather on the transformation of legal practice. It asks about the impact of legislative change on the courts, at the local level. How did judges deal with the new law, and how did they find their position in the newly created courts? For this, the Research Group works with praxeological and socio-historical methods. Each researcher is conducting a case study on one of the countries. While the case studies differ in their focus, they are nevertheless all looking at the education and career paths of the judicial personnel and inquiring about their knowledge basis. Moreover, they are analysing court records and judgments, asking about the changes in style, argumentation and the perception of law and justice.

(2) Based on these case studies, the Research Group conducts selective comparisons of the transformations that took place in the three countries. The comparisons have already revealed that the steps taken in each of the countries to rebuild their respective legal system were indeed quite similar. While at the legislative level each of the countries struggled with the codification of law, at the level of the judiciary, a new court structure and a new understanding of the judges’ role were implemented. Law schools were founded with the aim of creating a new environment for the socialisation of future lawyers, and new regulations for entrance to the judiciary were implemented. The large-scale translation of European legal knowledge was carried out by translation
offices within the justice ministries and transmitted to the local courts. The justice ministries of the Ottoman Empire and Japan even published journals in order to disseminate the new legal knowledge to the courts and to guide them in their decision-making processes.

(3) By pointing out these similarities, the project shows that reformers in all three countries were well aware of the multilayered nature of law. Law was not seen just as a set of norms, but rather as a practice. Hence, the aim of the reforms was to transform not only written law but also legal practice. The transmission of new legal knowledge, the education and socialisation of future judges and the provision of guidance for the courts were therefore important steps in the reform agenda. At the same time, court records reveal a reluctance to abandon the old practices that interfered with the new legal ideals. The aim of the Research Group is to find a suitable characterisation for the legal practice that emerged from translation.

(4) The project questions narratives that have been prevalent in legal historical research throughout the 20th century. It aims to develop a new narrative that takes the complexity of legal transformations into account and that positions Japan, China and the Ottoman Empire in the global setting, asking about the non-European experiences of legal modernity. The legal reforms in Japan, China and the Ottoman Empire were grounded on translated knowledge of European law; however, they were neither mere copies of a European model nor is it appropriate to classify them as latecomers of modernity. By including a case study on the discussions surrounding legal education and professionalisation in Europe, and by looking at the interactions between the non-European countries, the Group’s research aims to reposition Europe vis-à-vis the non-European countries. It also shows both that modernity was strongly negotiated at the same time in Europe, and that Europe was not the only point of reference for reformers in non-European countries: the laws of post-Ottoman Montenegro and Egypt were of interest to the Japanese reformers; China sent students to Japan to study European law in Japanese; and the Ottoman Empire admired Japan for its success in nation-state building.

A unique comparative environment: case studies and co-authoring

The Research Group offers a unique environment for achieving these research goals. Five of its members are conducting case studies on specific countries, focusing on a certain aspect that enables the development of a profound understanding of the transitions that took place in that country. Murat Burak Aydin analyses the evidence practices in Ottoman Nizamiye courts, comparing the court practice in Ankara city and the rural areas around Ankara. Similarly, Joseph Wang analyses the interaction between the Daliyuan (Supreme Court), the Beijing High Court and the Beijing local courts in contested divorce cases. Zheng Li explores the transformation of the feeling of injustice as it was negotiated in Chinese courts. Lena Foljanty has completed her study on Meiji local courts, showing the dynamics of change in the reform era with a focus on the legal methods used by the judges. Zeynep Yazıcı Caglar works on England and Germany, two main European countries that frequently served as models for those redesigning law and justice systems elsewhere, and has found that reforms of legal education and the question of professionalisation were negotiated there, as well. In addition, two researchers provide insights into the connections between the non-European countries: Egas Moniz Bandeira concentrates on legal education as a key element of reform and traces the careers of Chinese students who went to Japan to study law. Zülâl Muslu conducts biographical research on a British consul who was successively based in all three countries that serve as the Group’s case studies.
The comparison is carried out in a setting of constant exchange. Under normal circumstances, the Research Group comes together at the Institute on a daily basis; during the pandemic, however, regular online meetings have taken place. Each member is well informed about the activities and status of the others in the project. The analytical categories for comparison developed out of this exchange process – in other words, the categories emerged out of the comparative exchange itself and were not artificially set up in advance. This ensures that they are linked to the dynamics of transformation in each of the countries as they are examined by the researchers in their case studies. The aim is to conduct comparisons without reducing complexity.

The task in the first two years of the project was to create a common knowledge basis within the Research Group. Currently, its members are co-authoring a publication that mirrors the unique comparative setting that has emerged. This joint endeavour offers the Research Group the opportunity to explore possibilities of developing a complex and integrative way of writing comparative legal history. Instead of a volume where every country is presented in separate chapters, banning the comparison to the conclusion, each of the chapters will be comparative in itself, bringing together observations from all the countries that the researchers are dealing with. The aim is to finalise the publication by April 2022, which is the official end date of the Research Group.

Network-building and activities

To accomplish this aim, the Group's members share their research findings at the regularly scheduled meetings. They also organised two three-day retreats held in Freiburg (September 2019) and in Limburg (August 2020). These research retreats enabled in-depth discussions about the structure and the main arguments of the co-authored publication as well as to set the agenda for the next stages of the working process.

As the case studies conducted by the researchers offer only a limited overview on the legal transformations that took place, from time to time the Research Group invites distinguished scholars to offer seminars conceived to broaden its members’ perspective. In July 2019, David Sugarman (University of Lancaster) gave a seminar on ‘Professionalization and Modernity’. In February 2020, Tzung-Mou Wu (Academia Sinica) gave a guest lecture on ‘Missing Pieces in the Legal History of 19th- and 20th-century East Asia’, followed by a workshop for the PhD students in which they presented their work to the guest. The same was planned with Marc Aymes (École des hautes études en sciences sociales, CNRS) in March 2020. While the pandemic meant that the guest lecture had to be cancelled, the PhD workshop nevertheless took place online. Another PhD workshop took place online together with Avi Rubin (Ben-Gurion University of the Negev) and Jérôme Bourgon (Institut d'Asie Orientale, CNRS) in July 2020.

A number of visiting scholars have also collaborated with the Research Group. Marie S. Kim (St. Cloud University) worked on the translation of the notion of customary law from Europe to Meiji Japan and from there to colonial Korea. Colin Jones (Columbia University) worked on the perception of the social in Japanese law in the early 20th century, investigating the Japanese interest in adopting French legal theory. Ninja Bumann (University of Vienna) used her stay at the mpilhlt to study legal practice in post-Ottoman Bosnia, where the Habsburg monarchy tolerated the continuation of Sharia courts in family matters. A deep level of exchange has taken place with all three scholars, primarily through seminars where the scholars presented their work. Unfortunately, the visits by Nishan Chen (Qingdao University), Mehmed Bečić (Univerzitet u Sarajevu),
Frédéric Constant (Université de Nice) and Andrew Watson (Sheffield Hallam University) had to be cancelled due to the COVID-19 pandemic.

The primary instrument for broadening the scope beyond the case studies, however, is neither invited speakers nor visiting scholars. It is a network of scholars of Japanese, Chinese and Ottoman legal history that has accompanied the Research Group’s work from the very beginning. These scholars, coming from Japan, China, Turkey and Israel as well as the US, France and Germany, are adding broader perspectives to the Group’s discussions. In the initial workshop that took place in March 2018 at the Max Planck Institute, the possibilities and limits of comparison between the three countries were discussed. The second workshop, which took place in March 2019, engaged in the comparison of translation practices in all three countries.

A third workshop was planned for August 2020; due to the pandemic, however, it had to be rescheduled. Instead of a workshop, the group organised a virtual meeting of the network, in which we discussed the development of the project. Since then, the network comes together every month for an online seminar to make effective use of the time until a face-to-face workshop is again possible. The seminar allows the participants to deepen their comparative skills; at the same time, it offers room for discussions on the papers presented at the first two workshops in order to prepare them for publication.
Legal practice follows methodological rules that are mostly unwritten and grounded in traditions. Judges and lawyers acquire them through socialisation, often without reflecting on them.

The project deals with the making of these methodological rules in the context of 19th-century Japan. After the Meiji Restoration in 1868, the entire legal order was rebuilt based on the model of Western laws. Not only the judicial system but also the judicial professions and the methods applied by them were reshaped. This went along with a fundamental rupture with their own traditions. Translations of Western law became the core of a new legal (self-) understanding.

Japanese reformers were aware of the fact that law did not only consist of codifications and statutes, but that legal practice is a fundamental field of norm production. Through archival work, I was able to show that understanding the methodological rules of legal practice was one aim of the reformers’ travels to France and Germany, the main model countries. However, I also demonstrated that re-producing these rules in Japan was complicated. The Ministry of Justice had their hands full with building up a new legal infrastructure, facing the challenge of insufficient resources and personnel. While the ministry provided advice to the courts to facilitate decision-making in specific cases, it did not intervene in their practice by regulating the methodological rules that they should apply.

The project was started before the Research Group took up its work in 2017. The outcome is a book that was completed in 2019 and accepted by the law faculty of the Goethe-Universität as a Habilitationsschrift. Its main finding is that even though the methodological rules of legal practice in the European model countries were studied by the Japanese reformers, what was translated was only the frame in which legal practice took place. The methodological rules themselves were developed independently in Japan in response to legal practitioners’ needs at a time of instability and transition. Putting the parties’ arguments at the centre of legal reasoning and relying on equity helped to overcome the lack of statutory law; legal formalism in evidence law helped to compensate for the lack of qualified personnel. The methodological rules that emerged were more influenced by the translational and transformative setting than by the translation of concrete Western legal knowledge.
Murat Burak Aydin
Doctoral Student

Local court practice in late 19th-century Ottoman Nizamiye courts: procedure and legitimacy

The Ottoman Empire and its legal system went through a substantial transformation in the 19th century. Prior to this, Sharia courts, presided over by a kadi (kadi), were the primary official dispute settlement forum. Nineteenth-century legal reforms, especially the introduction of Nizamiye courts, changed this legal landscape. On the normative level, the jurisdiction of Sharia courts was narrowed and the new Nizamiye courts were separate from Sharia courts. In practice, however, this separation was less visible. The Nizamiye courts started to hear criminal, commercial and civil cases, and the new procedural and substantive laws were codified with reference to French codes.

This dissertation project tries to reveal the local-level Nizamiye court practices in Ottoman Ankara. Utilising the records of the Ankara Nizamiye courts (ilâm), the project explores the implementation of the new law and court structure in private law practice. The research also takes into account Avi Rubin’s foundational studies, which illustrated the birth of a new formal procedural judicial culture. The present research tries to reveal the local applications of the new law and, in particular, of the evidence rules in the Nizamiye court that operated within this judicial culture.

Witnesses were the most important form of evidence in courts prior to the 19th century. Yet in the 19th century, the Ottoman codification process introduced novelties to evidence law based on the model of the French codes, especially with regard to civil procedure and written evidence. Focusing on evidence practice allows us to answer several questions. First, it reveals whether the prohibition of non-Muslim testimony against a Muslim was continued or stopped. Second, looking at the use and the forms of evidence can enhance our understanding of the daily legal transactions at the local level. Third and finally, evidence practice helps us to understand both the judges’ duties and the scope of their power during the trial. By scrutinising the Nizamiye court judges’ power for evaluating evidence and discretionary powers, it is possible to shed light on how this new type of judge differed from previous kads. My analysis of the local court records demonstrates that Islamic normativity continued to govern the private law practice at the local level while operating within the new formalistic legal culture described by Rubin.
Zeynep Yazici Caglar

Doctoral Student

Professionalising legal professions in England and Germany (1850–1900): the judge as the upper branch or as a separate profession

Focusing on England and Germany, the project considers how the two countries dealt with the conception of professionalisation with regard to the legal profession. The aim is to determine the extent of professionalisation of superior court judges at the end of the 19th century in two influential countries that served as models for the non-European countries dealt with by the Research Group.

Largely as a result of the differences between common law and civil law systems, the models of legal education and professions in England and Germany were by no means similar. Therefore, the project moves beyond the search for similarities and differences and instead focuses on 'legal education' in order to explore the nuances and variations in the processes of professionalisation. Legal education displays the origins of legal standardisation, qualification and identification. The developments of legal education in each country are apparent through the institutions. Based on an analysis of the records of these institutions, parliamentary papers and legal periodicals, the initial research results show that in both countries changes were made to the existing institutions rather than establishing brand new ones. The sources show that while England and Germany were not incapable of implementing reforms, they struggled between upholding ‘traditions’ and introducing ‘new’ structures. The institutional changes, though difficult to discern, are present in the approaches to teaching law, as the investigation of the supporting sources such as textbooks and curricula, and of the status of the teachers and the examination system has revealed.

Working with collected biographies of the superior court judges, the project also intends to develop a prosopography to pursue the social position of these key actors. It will thus shed light on their legal education, career paths, social backgrounds and social status. The preliminary results demonstrate two distinct paths to becoming a superior court judge based on the respective legal system in England and Germany. It is worth noting, however, that in both cases the socialisation of the judges seems to have played a major role. The concept of socialisation is further developed in the project, as it constituted the judges’ professional identity and was therefore strongly connected with the professionalisation process. Moreover, a review of contemporary discussions on legal education will try to verify whether an ‘ideal’ notion of the judge was ever conceived; the findings of this analysis will be juxtaposed with the ‘reality’ borne out by the prosopography. The aim will be to reveal whether the reality was ever able to match the ideal.
The doctoral project focuses on the traditional Chinese concept of injustice (yuan 官) and the practice concerning the redressing of specific injustices in people’s daily lives during the Qing dynasty (1644–1911) and the early years of the Republic of China (1912–1949). This research will closely examine China’s crucial modernisation process, which refers to the period between the 1840s and 1930s. By doing so, the project aims at finding out how the traditional Chinese concept of injustice has evolved and been shaped by the Occident, especially by modern theories and conceptions of justice and injustice. This also involves shedding light on how people perceived injustice, expressed their grievances and exploited a variety of different recourses to correct the injustice. Therefore, this research will also analyse injustice as a legal emotion and the emotional elements in the practice of redressing injustice.

The project was started in 2020 and is currently tracing the usage of the specific words and expressions referring to injustice in traditional Chinese society. The research intends to ascertain and present the evolution of this traditional Chinese concept in the process of modernisation by analysing the introduction and reception of occidental codes and legal works in China since the 19th century, especially through the translation of the conceptions of and theories on justice and injustice. Moreover, the project highlights the emotional aspect of injustice by carrying out a detailed analysis of both local and central legal practices on the basis of plaints, appeals and judgments. Other non-judicial sources, such as newspapers, journals, novels and religious books will be used to help establish the broader spectrum of how ordinary people understood injustice and justice.
Egas Moniz Bandeira
Researcher

Tracing the origins of legal practice in modern China

The project reconstructs Sino-Japanese entanglements in the formation of Chinese legal practice in the first decades of the 20th century. From the 1900s onward, thousands of Chinese students studied abroad, mainly in Japan, but also in Western Europe and in the United States. Instructors and advisors from abroad, again mainly from Japan, played an important role in the newly created Chinese universities and law schools. These encounters were crucial for the shaping of modern China: as Chinese intellectuals of the early 1900s recognised Japan as a ‘shortcut to modernity’, that is, as a geographically and culturally close model of rapid transformation into a powerful nation-state, many of the newly established norms and institutions – including, for example, the statutes of the bar associations – were closely modeled on Japanese blueprints.

Beneath the surface, however, there were considerable frictions, for the similar overall textual appearances of the new regulations concealed significant differences in their interpretation and application. The comprehensive political and legal reforms initiated at the end of the Qing Empire and continued after the establishment of the Republic of China cannot be understood as an isolated national process in which China tried to catch up with a set model of modernity. It should rather be examined through transnational and transcultural lenses, which reveal how Chinese actors interacted in global networks to create their own local versions of the globalising features of modernity instead of taking them on blindly.

The project has already led to a first publication, which demonstrates such complex interplays in the realm of constitutional law. But how did China’s first lawyers adapt their various experiences abroad to their Chinese upbringing? What were their typical education and career paths, and how did these influence their professional identities? How did China’s first female lawyers navigate the male-dominated legal professional world? By investigating these questions, the project plans to show how networks formed already among the Chinese student diaspora contributed to form a professional body of lawyers in China’s large cities. The development of modern legal professionalism, in turn, was a crucial factor that determined the implementation of the new legal codes enacted during the Republic.

Graduation group photo of the Waseda University preparatory course for Chinese students, 1907
Zülâl Muslu
Affiliate Researcher

Entangled histories: revisiting the legal globalisation in the 19th century

The global legal-historical approach promoted at the Institute offers the ideal framework for pursuing two projects that revisit legal globalisation in the 19th century. The first project reflects on global constitutionalism. It reconsiders the current scholarly discourse claiming that norms and institutions of global governance follow principles of constitutionalism – in its European understanding. The project aims at engaging in a constructive criticism through historical, non-statist and non-European perspectives by focusing on the different conceptions of citizenship across time and space, especially in the Ottoman Empire and China. The project sheds light on topical debates raised by the current constitutional crises and the related citizenship issues that have recently been observed, for example, in the post-Soviet uprisings, the Arab Spring or in Hong Kong.

The second project, which has been more thoroughly developed since joining the Research Group, examines extraterritorial justice and cross-cultural legal translation through the role of British consuls in the late 19th-century Ottoman Empire, China and Japan. The heuristic interest of the consul resides not only in his diplomatic role, connecting the national and international systems, but also in his unique social status, shaped within the cosmopolitan elite that the Vattelien international formation offered. To carry out this task, the project follows the path of Sir Edmund Grimani Hornby (1825–1896). He was the founder and Chief Judge of the British Supreme Consular Court in the Ottoman Empire, and later of the British Supreme Court for China and Japan. The latter had jurisdiction over disputes against British subjects under extraterritoriality and heard appeals for consular courts in China, Japan and Korea. Taking into account both the Marxist and the critical international law approaches present in the scholarly literature on the issue of extraterritoriality, the project combines both approaches to analyse the extent to which consuls played a role in the spread, legitimisation and settling of the 19th-century Western legal order in hypocolonial spaces. It also addresses the development of the profession of the consul, which offers a different insight into the birth of law as a scientific discipline and the emergence of a specific professional body as a key state apparatus. Finally, it will assess how the phenomena of acculturation and resistance contributed to the local production of norms. The project’s novel approach thus seeks to make both a substantive and methodological contribution to legal transfer studies as well as to the critical and comparative debates on legal extraterritoriality.
Joseph Wang
Doctoral Student

*Between normativity and reflexivity: how did the Beijing High Court review marriage-related cases (1912–1927)?*

The thesis project examines how the High Court in Beijing (jingshi gaodeng shenpanting, 京師高等審判廳) connected, negotiated and debated the judgments or decisions from both the higher- and lower-level courts throughout the law’s application from 1912 to 1927, when the legal system in China was undergoing a profound legal reform. The collection and case analysis work phases are finished, and the writing of the thesis is at an advanced stage, with draft versions of several chapters already having been commented on.

The project collected and centres on the 253 marriage-related cases originally from the Beijing High Court and sought to investigate how the new, foreign-derived laws were further translated into practice. By connecting these cases to the relevant interpretations and judgments from the Daliyuan (Supreme Court), the project has determined that the court rendered different judgments based on very similar facts. Furthermore, it sourced the legal basis to support its judgment to balance the tension between the old and the new laws during this transitional period. In some cases, the court produced views that contradicted the unpromulgated draft of the Civil Code while this codification for civil justice was unfinished and the sole legal basis for civil matters were the civil portions of the revised Qing Code. In other cases, setting aside such contradictions, judgments refrained from an explicit citation of law, even though the court was still applying the relevant interpretations from the Daliyuan.

Moreover, using the examples of evidencing for the establishment of marriage, the project also finds both the Daliyuan and the lower-level courts were making compromises when the law faced an immediate challenge by a long-standing social custom. In this way, the project contends that the practice of law produced a reflexive knowledge of law during the transitional years that brought together social and legal norms from pluralistic sources, while the legal basis for rendering a judgment in practice was shifting along the triangle of the old law, the translated codification and social custom.
The integration of the research on different eras and regions carried out in the Departments and Research Groups is of great importance to the Institute. Different formats as well as interdepartmental research projects and co-operations enable intensive exchange among researchers and visiting scholars.

EVENTS

Various joint events provide the opportunity for interdisciplinary exchange between all researchers across departmental boundaries on a regular basis. After the corona-related break in spring and summer 2021, we have been able to resume most of the joint events using online formats and continue the interdepartmental debate on fundamental research questions in legal history and legal theory.

Within the context of the monthly Plenum, all of the researchers have the opportunity to discuss their research projects, common issues and findings. The mpilhlt's monthly Colloquium is intended as a forum for all researchers at the Institute to discuss conceptual questions, methods and current debates in legal history. It provides a space for mutual exchange and the cross-fertilisation of ideas across departmental boundaries, but also serves as an opportunity for researchers to identify their own position within disciplinary and wider scholarly trends and debates. Finally, one of its key purposes is the development of a common frame of reference for discussions among the researchers of the Institute.
Twice per semester, the Institute hosts, together with colleagues from the Institut für Rechtsgeschichte at the Goethe-Universität, the *Frankfurter Rechtshistorische Abendgespräche*. Since the winter semester of 2014/15, we have taken turns hosting the event, at which a public talk by an external speaker is followed by the opportunity for conversation and exchange between researchers from the two institutes.

In May 2018 and 2019 all researchers took the time to go together on a retreat. The two-day stays in a conference hotel in the Spessart offered a particularly comfortable and intensive working atmosphere in which previous work was reflected on and the further development of the Institute's research agenda discussed.

**SUMMER ACADEMY FOR LEGAL HISTORY**

A highlight each year in the Institute’s academic life is the Summer Academy for Legal History. Its aim is to provide roughly 20 early-stage researchers from all over the world, usually PhD students, with an in-depth introduction to basic approaches and methods of research in legal history. Unfortunately, the Summer Academy had to be cancelled due to the pandemic in 2020 and 2021.

The Summer Academy aims to develop and enhance the ability of its participants to transfer legal terminologies and theories across linguistic and cultural contexts, thus providing a basis to build and consolidate international research networks. The 14-day course consists of three parts. The first part introduces the international group of PhD students to sources and methodological approaches as well as theoretical models and controversial research debates on fundamental research fields of legal history. The introductory courses are led by members of the Institute and invited guest speakers.

In the second part, the invited participants present their own projects within the context of the respective year’s special topic. The third part of the Academy offers all participants the opportunity to further develop their own research by making use of the library and by discussing their projects with the Institute’s experts in the different fields of legal history.

Since longer events like the Academy always consist of more than just academic activities, a variety of extra-curricular activities are offered, such as visits to nearby historical sites and several get-togethers in the evenings. The Academy concludes with an examination and the award of certificates.

*Summer Academy for Legal History 2018: The World and the Village.*

*The Global and the Local in Legal History*

16.07. – 27.07.2018

As an academic discipline, legal history emerged both in Europe and several other regions in the 19th and early 20th centuries: the age of the nation-state. Research in legal history that focuses on local and regional contexts — Europe, for example — is largely a product of this heritage. Global history, historiographic reflection and new methods in the humanities have helped to bring the complexity of local, national, regional and global relationships into the purview of legal history. Moreover, the increasing importance of supranational and transnational law make it all the more urgent from the perspective of legal studies to consider the relation between world and village.
Programme

Lectures

Stefan Vogenauer, The Max Planck Society and the Max Planck Institute for European Legal History

Thomas Duve, The global and the local in legal history

Christian Baldus, Roman law / antiquity

Christiane Birr, ius commune – legists

Thomas Duve, Legal history between law, history and theory

Christoph Meyer, Ius Commune – canonists

Stefan Vogenauer, Common law

Christiane Birr, Private law I

Phillip Hellwege, Private law II

Andreas Thier, Time, law, and legal history – some observations and considerations (evening lecture)

Thorsten Keiser, Contemporary legal history

Otto Danwerth, Legal history of Ibero-America

Karl Härter, History of criminal law

Donal Coffey, Legal transfer in the common law world

Alexandra Kemmerer, International law

Sigfrido Ramirez Perez, EU law and oral history

Andreas Wagner, Digital humanities in legal history
Presentations of participants

Alex Corona Encinas, The concept of municipium in the Corpus iuris civilis and its relationship with Roman classical law

Orit Malka, The role of witnesses in antiquity: Tannaitic law as a test case

Ana Luiza Ferreira, The sources of colonial law and the Portuguese Inquisition in the Captaincy of Ceará (Brazil)

Alexis Alvarez-Nakagawa, Cannibal laws: the origins of international law and the juridical forms of the conquest (16th–18th centuries)

Konstanze von Schütz, Universal(ist) conceptions of property and diverging sets of property rights: German law, French law and the common law tradition

Manon Moerman, What's in a name? Challenging early modern ideal-types of private partnerships in the Low Countries (17th–18th century)

Geneva Smith, The illegality of blackness: Pennsylvania’s ‘Special court for the tryal of Negroes’ and the Early Modern Atlantic World (1661–1780)

Roraima Estaba Amaiz, Legal spaces, judicial processes and legal strategies for the equality of free colored people in Spanish Royal Audiences of the Circum-Caribbean (1790–1821)


Adrian Alzate, Traitors, dissenters, and citizens: making and unmaking political crimes and criminals in Colombia and Mexico (1870–1910)

Arthur Barrêto de Almeida Costa, The history of expropriation in Brazil: legal thought, public debate and the construction of Belo Horizonte (1823–1930)

Gloria Lopera, We have the land titles! Indigenous litigants and the privatization of communal lands in Colombia (1873–1950)

Rajesh Kumar, Evolution of fiscal federalism in India with special reference to finance commission

Parvathi Menon, The authoritarian-humanitarian dialectic of protection measures in the British Empire

Timur Mitrofanov, Law and custom in villages of the Kazan Province of the Russian Empire after the emancipation reform

Francesca Martello, New legal trends in the municipalities: local dynamics and global discourse in the early 20th century in Europe

Melody Shum, The Police Mixte and the policing of the Sino-Indochinese borderlands (1896–1918)

Hyoung-Jin Nho, The Treaty of Shimonoseki: the transition to European international law in late 19th century East Asia (1876–1895)

Georgia Whitaker, Transnational ties: human rights and neoliberalism in the Chilean Cold War

Howard Rechavia-Taylor, Post-colonial Germany? Law, justice, and memory between Windhoek, New York City, and Berlin
Written texts represent the largest part of the sources of legal history. Obviously, they cannot be understood without their respective historical contexts. In recent decades, however, there has been a growing awareness that they must also be read with specific attention to their mediality and their interrelation with visual and oral sources, as well as objects and artefacts. Historians, but also legal theorists, are reflecting more intensively about textuality and normativity, and digital humanities seems to hold great opportunities for legal historical research. What do these developments mean for legal historical research, and its specific task?

Programme

Lectures

Thomas Duve, The Max Planck Society and the Max Planck Institute for European Legal History
Constantin Willems, Roman law / antiquity
Manuela Bragagnolo, Introduction law in text and context
Christiane Birr, ius commune – legists
Christoph Meyer, ius commune – canonists
Thomas Duve, Legal history between law, history and theory
Thomas Duve, Global legal history
Victoria Barnes, Common law
Peter Collin, Special orders and normative diversity
Alexandra Kemmerer, International law
Thomas Duve, Mariana Dias Paes, Manuel Bastias Saavedra, Li Fupeng, Glocalising normativities
Donal Coffey, Legal transfer in the common law world
Johannes Liebrecht, Private law and constitutional law in the 20th century: the German example
Thorsten Keiser, Contemporary legal history
Jan-Henrik Meyer, History of European Union law
Andreas Wagner, Anselm Küsters, Digital humanities in legal history
Marietta Auer, Legal theory
Presentations of participants

Brage Thunestvedt Hatløy, Developments in the field of commercial law and law of obligations in the Norwegian Middle Ages

Gijs Drijer, Maritime averages and normative practice in the Southern Low Countries (15th–16th centuries)

Mayer Juni, ‘Tell us the story of your life’: inquisition, biography, and power in the Spanish Empire

Rômulo da Silva Ehalt, Casuistry in the tropics: moral theology and missionary pragmatics in Portuguese Asia (16th–17th centuries)

David De Concilio, The development of legal texts in late twelfth-century England and Italy

Kate Falconer, The common law right to possession of the body of the deceased: a proposed history

Zheng Chi, The development of judicial independence in the Late Qing dynasty and the Republic of China (1906–1949)

Thinley Wangmo Chiniawengmu, History of Tibetan Buddhist religious property

Ninja Bumann, Marriages before Sharia courts: marriage and gender in legal culture and practice in Habsburg Bosnia-Herzegovina (1878–1918)

Nechama Juni, Laws, norms, and subjects: twentieth century Jewish Responsa and the worlds they create

Marjorie Carvalho de Souza, Free and freed labourers ‘in witness whereof’: the service rental contracts as employment arrangements in 19th-century Rio de Janeiro (1830–1888)

Lia Brazil, International law and the rule of law: white colonies in the British Empire (1899–1919)

Elena Kempf, Humanitarian calculus: the making and meaning of weapons prohibitions in International law (1868–1925)

Matthew Birchall, Law, empire, and the future of global history

Tashi Palzor Lepcha, Implementation crisis of pre-merger laws of Sikkim protected under article 371 F of the Indian Constitution: a critical analysis


Balaban Shlomi, The rise of the professional member of the Knesset

Rolando Víctor Guerrero, Scholastics and classicists: circulation of the legal thought in the south of Colombia between 1900 and 1930

Jingzhao Fan, Foreign direct investment: a comparative legal study in the UK, Russia and China
LEGAL HISTORIOGRAPHY

Shared Research Field

Every academic discipline profits from reflection on its own doings. This entails keeping up with the development of the academic system and, in the case of jurisprudence, of the legal system of which it is a part. Jurists must reflect on the history of their discipline and on the history of their research objects to build on existing analytical traditions, to identify and, if necessary, to overcome path dependencies. If a reflection on legal history is an essential component of each sub-discipline of jurisprudence, then legal history must also continuously and critically re-evaluate the foundations of its own work. The dynamic changes associated with the transnationalisation of law and academic research serve only to reinforce this imperative. The Max Planck Institute for Legal History and Legal Theory has taken on the task of encouraging such reflection on the goals and methods of legal history through academic events and publications on these questions. Among other efforts, the Max Planck Summer Academy for Legal History as well as the book series methodica – Einführungen in die rechtshistorische Forschung (Introductions to the Methods of Legal History), which is managed by the Institute’s own researchers, serve this purpose. Another important shared interest is the reflection on legal historical methods and the history of the field. The Institute is also taking part in the research project History of the Max Planck Society post 1945 (see Kunstreicher) and sees it as its task to shape the international discussion on the past and future of legal history.

Heinz Mohnhaupt

Affiliate Researcher

Legal Historiography

Comparative law as a method of knowledge
Territorial sovereignty and legal sources of all European countries
Comparative law as a method of knowledge
The abolition and dissolution of law

Within the reporting period, several ongoing publication projects were successfully brought to a conclusion. One of the more noteworthy achievements is the completion of the volume Territorialhoheit und Rechtsquellen aller europäischen Territorien im 16. – 18. Jahrhundert (Territorial sovereignty and legal sources of all European countries in the 16th to 18th centuries), which is ready for printing. Originally intended for Coing’s Handbuch, this presentation of the 'constitutional' conditions for the production and development of statutory and judicial legal sources has far extended the originally envisioned framework.
The conceptual specification of the various legal sources possessing the status of law includes all normative acts from the *lex generalis* to the *privilegium* and the received Roman legal forms (deed, edict, mandate etc) to the comprehensive codification as well as the normatively operative *res iudicata* and the *opinio communis*. This legal pluralism gives rise to the question of how to determine the rank and relationship between the various legal sources. With the editorial process for the texts on Sweden, Scotland and Italy recently concluded, all 16 European contributions are now complete and will be published as a monograph (950 pages) in the Institute's publication series.

Another important contribution is the completion of the work on the volume *Privilegien als Sonderrecht in der europäischen Rechtsgeschichte* (The system of privileges in all European countries). Legislation, both in form and content, follows the ideal of equality as *lex generalis*. The *privilegium*, on the other hand, individualises law for specific persons (*privilegium speciale*) and for definable groups of persons (*privilegium generale*); or particularises law for local and regional areas (*privilegium particulare*). Following the Roman legal model, privileges are counted under the genus of *iura singularia*. According to this provision, the individualisation of law via privilege is seen as an ideal of justice, one which in the Age of Enlightenment collides with the just demand for equality. The excessive granting of privilege in lawless spaces can take over the function of laws (copyright, commercial law, inventor’s law). The text is now finished and covers theory and practice of all European countries. The sources referenced are arranged by territory, and the literature is arranged according to subject matter. This volume (950 pages) will also appear in the Institute's series of publications.

Rounding out the publication projects is the *Rechtsvergleichung als Erkenntnismethode. Historische Perspektiven des Vergleichens vom Spätmittelalter bis ins 19. Jahrhundert* (Comparative law as a method of knowledge concerning historical perspectives from the Middle Ages to the 19th century). This volume brings together ten essays by the author on the history of comparison as a method in philosophy, *ius privatum* and *ius publicum. Rechtsvergleichung*, used in examining different states and legal systems in order to determine the best legal solutions, benefited from earlier comparative approaches in non-legal disciplines (such as medicine, theology, linguistics as well as art history and cultural history), which are also examined in this book. The volume is due to appear in one of the mpilhlt publication series.

Finally, the collection of materials for the research project on *Abschaffung und Untergang von Recht* (The abolition and dissolution of law) is finished. In contrast to the numerous studies examining the emergence or production of new law, this research focuses on law that has lost its legal force, that is, has lapsed out of use (*desuetudo*), become outdated or has been abolished by legislators and judges. By examining the reversal of the production of law, this project addresses an often overlooked dimension of legal history.
VISITORS’ PROGRAMME

In 2018 and 2019 we invited a number of PhD students, postdoctoral and senior scholars to visit the Institute in order to use our library resources, take part in our events, and above all to discuss current questions of legal history with us. The mpilhlt awards a number of scholarships each year in order to enable researchers from institutions outside Germany to benefit from a longer stay at the Institute. Due to the measures necessary to prevent the spread of the coronavirus, we were forced to postpone or cancel the planned research stays from March 2020 on and could not accept any further applications for scholarships in 2021. However, we are confident to resume the Visitors’ Programme in 2022.

The overriding goal of the Visitors’ Programme is to foster transnational networks of scholars and thereby contribute to a more transnational jurisprudence. The visiting scholars form a crucial part in Institute's interdisciplinary exchange and contribute significantly to the internationalisation of the research agenda. All visitors – from PhD students to senior scholars – are invited to actively take part in the Institute's activities. Depending on the duration of the stay, this includes presenting their research projects in the Institute's 'Current research in legal history' workshop series.
Visitors at the Institute

Argentina

2018

Osvaldo Barreneche (Universidad Nacional de La Plata), The Legal and Political History of Buenos Aires Police Province, Argentina, during the 20th century

Melisa Andrea Fernández Marrón (Universidad Nacional de La Pampa, Santa Rosa / Universidad Nacional de Río Negro, Viedma), Discipline the police force. Police justice in the National Territories during Peronism (Peronismo) in Argentina

Pol René Moutin (Universidad Nacional de Rosario), Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI–XVIII

Jorge Núñez (Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET – INHIDE), Buenos Aires), Penitentiary Law in Argentina, 1890–1955

Gaston Pintos Iacono (Universidad Nacional de Córdoba), Foreign legal solutions and local legal culture: Legal translation and the case of the labour accidents law in Argentina (1880–1943)

Cristian Miguel Poczynok (Universidad de Buenos Aires), Los derechos de propiedad de la tierra en Hispanoamérica entre los siglos XVIII y XIX: un balance desde los aportes de la historia cultural y crítica del derecho

Marcela Sáenz Castro (Universidad de Buenos Aires), Cambio y continuidad en la sociedad indígena e hispanacriolla

Valeria Vegh Weis (Universidad de Buenos Aires), Criminal selectivity in Ibero-American modern legal history

Laura Volkind (Instituto de Investigaciones de Historia del Derecho (INHIDE), Buenos Aires), Publicaciones y repositorios digitales

Romina Zamora (Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), Buenos Aires), Derecho local y localización del derecho en las ciudades españolas en América. La servidumbre indígena en perspectiva comparada

2019

Pol René Moutin (Pontificia Universidad Católica Argentina, Rosario), Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI–XVIII

2020

Juan Bubello (Universidad de Buenos Aires), Resistance Project RISE

Cristian Miguel Poczynok (Universidad de Buenos Aires), Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI–XVIII

Jacqueline Sarmiento (Universidad Nacional de La Plata), Resistencias cotidianas y género a través de fuentes criminales
**Austria**

2019

Sebastian Spitra (Universität Wien), Semantical order and unequal encounters: the formation of private international law in the 19th century

Nicole Zilberszac (Universität Wien), Reconceptualising legal objectivity according to the concept of embodied, embedded, enacted, and extended cognition

2020

Ninja Bumann (Universität Wien), Marriage and divorce before sharia courts. Law and Gender in Habsburg Bosnia-Herzegovina (1878–1918)

**Belgium**

2018

Vincent Genin (Université de Liège), A biographical approach to the history of community law: Fernand Dehousse’s ‘strategic’ and pioneering stance (1945–1976)

2019

Joost Possemiers (Katholieke Universiteit Leuven), Systematische Analyse von den juristischen Werken des Theologen Konrad Summenhart (c. 1485–1502); Situierung, Quellen und Einfluss auf die Schule von Salamanca

2020

Wouter De Rycke (Vrije Universiteit Brussel), The legal construction of peace networks and arguments (1840–1870)

**Brazil**

2018

Samuel Barbosa (Universidade de São Paulo), Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas

Leonardo Carrilho (Universidade de São Paulo), The similar and different conditions between the federal intervention and the state of exception that occurred in the Weimar Republic, and in some moments in the Brazilian Republic (in the constitutions of 1937 and 1988)

Elisa Garcia (Universidade Federal Fluminense, Rio de Janeiro), The categories of conquest: slavery, Indians, and Mestizaje in the River Plate Basin in the 16th century

Gilberto Guerra Pedrosa (Universidade de Brasilia), Precocious globalization and entangled statehoods formations in early modernity: the case study of the ‘Dutch Brazil’

Vitor Izecksohn (Universidade Federal de Rio de Janeiro), Insolvent republics: risk and ruin for American confederates and Argentinean federalists in the age of state-building, 1848–1870
Bruno Lima (Universidade de Brasília), Between the Ancien Régime and Modernity Natural Law and Constitution in the legal thinking of Fr Joaquim do Amor Divino Caneca (1779–1825)

Mariana de Moraes Silveira (Universidade de São Paulo), Towards a collective understanding of the legal past: law conferences, historiography and public uses of history (Brazil, 1900–1943). Introduction and statement of the problem

Luíze (Stoeterau) Navarro (Universidade Federal do Paraná, Curitiba / Universiteit Leiden), Municipal councils: councilmen, Schepen and Indians in Dutch Brazil (1630–1654)

2019

Samuel Barbosa (Universidade de São Paulo), Practical legal books and practical legal reading in 19th century Brazilian law

Clara Borges (Universidade Federal do Paraná, Curitiba), A genealogy of the discourses on authoritarianism in the Code of Criminal Procedure of 1941

Bruno Castelo Branco (Universidade Federal Fluminense, Niterói), Fronteiras sobrepostas: entre o trabalho e a escravidão guarani na conquista e colonização da América meridional (1541–1641)

Maria Pia Guerra (Universidade de Brasília), Brazilian reforms and American ideas: the translation of the concept of public utility (1930–1964)

Vanessa Massuchetto (Universidade Federal do Paraná, Curitiba), Criminal legal culture and women's status in 18th century in Curitiba (1750–1800)

2020

Douglas Corrêa Santos (Universidade Federal Fluminense, Niterói), Homicidio y justicia criminal en Vila Rica de Ouro Preto y Buenos Aires en el ocaso del Antiguo Régimen

Marcelo Neves (Universidade de Brasília), Transdemocracy

Airton Ribeiro da Silva Jr (Faculdade Paraíso do Ceará, Juazeiro do Norte), The controlled circulation of normative knowledge in the Portuguese Empire (18th and 19th century)

Marcelo da Rocha Wanderley (Universidade Federal Fluminense, Niterói), Vocations in the Court: Secular Clergy and Ecclesiastical Justice in the Archbishopric of Mexico and Puebla in the 17th century

Canada

2018

Anne Boerger (University of Alberta, Edmonton), Institutional and legal history of the Treaties of Rome

Antoni Lahondès (Université de Montréal), The participation of the new Catholic subjects of British Empire to the public world, in the institutions and colonies concerned by the Treaty of Paris and the Royal Proclamation of 1763

2019

Ryan Alford (Lakehead University, Thunder Bay), The transmission of the concept of parliamentary sovereignty from the United Kingdom to Canada in the early 19th century
2020
Antoni Lahondès (Université de Montréal), Integration of conquered peoples and introduction of British legal system in Canada, Florida, and Grenada (1759–1783)

**Cape Verde**
2019
Ivone de Fátima Brito Monteiro (Universidade de Cabo Verde, Cidade da Praia), Os fundamentos da luta pela adjacência de Cabo Verde (Séc. XIX)
Elter Manuel Carlos (Universidade de Cabo Verde, Cidade da Praia), Corpo Submisso e Resistência na Dança do Batuku
Lourenço Conceição Gomes (Universidade de Cabo Verde, Cidade da Praia), Discursos e narrativas sobre resistência camponesa em Babo Verde no Século XIX
José Silva Évora (Universidade de Cabo Verde, Cidade da Praia), A Resistência Camponesa em Cabo Verde no Século XIX com enfoque na estrutura

**Chile**
2018
Sandra Cristina Montoya Muñoz (Pontificia Universidad Católica de Chile, Santiago de Chile), Integración y Resistencia de los negros esclavos en el Nuevo Reino de Granada, siglo XVII
Fernando Pérez Godoy (Pontificia Universidad Católica de Chile, Santiago de Chile), Estado, evolucion y funcion del derecho internacional en Chile decimonónico

2019
Nicolás Giron Zúñiga (Pontificia Universidad Católica de Chile, Santiago de Chile), Prácticas y representaciones de corrupción en el marco del proceso de construcción estatal de Chile decimonónico (1830–1891)
Rafael Sagredo (Pontificia Universidad Católica de Chile, Santiago de Chile), Rebellion and resistance in the Iberian empires, 16th–19th centuries
Catalina Saldaña Lagos (Pontificia Universidad Católica de Chile, Santiago de Chile), Resistance

**Colombia**
2019
Rolando Victor Guerrero (Universidad de los Andes, Bogotá), Legal Impure theories: an analysis of legal-theoretical circulation processes between regional legal forums and legal global forums. Legal thinking in Colombia between 1900 and 1930

**Cuba**
2019
Julio César Guanche Zaldivar (Unión Nacional de Escritores y Artistas de Cuba, La Habana), La ciudadanía republicana en Cuba (1902–2002). Un estudio integral
The Czech Republic

2019

Petra Skrejpkova (Univerzita Karlova, Praha), The role of the Law Faculty of the German University in Czechoslovak society in the interwar period

Estonia

2018

Merike Ristikivi (Tartu Ülikool), Professionalization of the first woman lawyers in Estonia

Finland

2018

Mia Margareta Korpiola (Turun Yliopisto), Popular Legal Learning in Pre-Modern Europe: Legal Literacy in Finland ca. 1800–1920

2019

Katja Tikka (Helsingin Yliopisto), Administration and Legal Development of the Swedish Chartered Companies in the 16th century

2020

Adolfo Giuliani (Helsingin Yliopisto), Three paradigms of legal historiography: Savigny, Kantorowicz and Glenn

France

2018

Sean Bottomley (Université Toulouse 1 Capitole), The English Court of Wards and Liveries, 1540–1660

Audrey Dauchy (Université Paris II Panthéon-Assas / Goethe-Universität Frankfurt), Historical Dictionary of Canon Law in Hispanic America and the Philippines (DCH)

2019

Samuel Klebaner (Université de Bordeaux), The determinants of the sectoral deregulation in Europe during the 80s

Germany

2018

Thorben Klünder (Georg-August-Universität Göttingen), Geschichte als Argument im Unionsrecht

Nina-Louisa Lorenz (N/A), Oral history of the court of justice
Franziska Meyer (Universität Passau), Verfassung und Rezeption: der Widerhall der alten Welt in Brasilien. Einfluss der europäischen Liberalitätsbewegung auf Verfassungsdebatten und -entwürfe Brasiliens 1823–1824
Jian Qu (Ruprecht-Karls-Universität Heidelberg), Social order through contracts: a study of Qingshui River manuscripts

2019
Nicola Camilleri (Freie Universität Berlin), Citizenship policy in the German and Italian colonial empires: ideologies, practices, comparisons
Winner Ijeoma (Goethe-Universität Frankfurt), Contracts, trade and British legal transplants in 19th century Nigeria and Ghana
Mechthild Roos (Universität Augsburg), The evolution of EU legislation on atypical work

2020
José Franco Chasán (Universität Augsburg), The reception of positivism in Spain: Pedro Dorado Montero
Kevin Kulp (Goethe-Universität Frankfurt), Child abuse in the church of the premodern age and canon law responses – a legal history study

India

2018
Aparna Balachandran (University of Delhi, New Delhi), The many pasts of Mamul: law and custom in early colonial Madras
Rahela Khorakiwala (Jawaharlal Nehru University, New Delhi), Research on comparative constitutional law between Germany and India, with a focus on the functioning of the court systems in these jurisdictions

Ireland

2019
Lynsey Black (University College Dublin), The mandatory death sentence in Ireland, Trinidad and Tobago, and Barbados: colonial legacies and sovereign symbols
Italy

2018

Andrew Cecchinato (Università degli Studi di Trento), Reading law in revolutionary times: Thomas Jefferson’s reception of the western legal tradition

Angela De Benedictis (Alma mater studiorum – Università di Bologna), Rebellion, Widerstand, Notwehr – Juristisch-theologische Debatten im 16./17. Jahrhundert

Alessia Maria Di Stefano (Università degli Studi di Catania), Justice and emigration: the judgments of the Arbitral Commissions for emigration in Italy between the 19th and 20th centuries

Claudio Ferlan (Istituto Storico Italo-Germanico (Fondazione Bruno Kessler), Trento), Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI–XVIII

Dolores Freda (Università degli Studi di Napoli Federico II), Across boundaries: the English justice of the peace on the continent

Stefano Manganaro (Università degli Studi di Pavia), Shaping legal spaces through personal bonds. The privilege of royal protection in a comparative study of different geopolitical areas within the Ottonian Empire (936–1024)

Ferruccio Maradei (Università degli Studi ‘Magna Graecia’ di Catanzaro), The juridical culture in the Kingdom of Naples before the enlightenment and its contribution to the development of European criminal doctrine between 17th and 18th centuries

Ferdinando Mazzarella (Università degli Studi di Palermo), Working for a social private law. The cooperation of German an Italian lawyers in the age of totalitarianism

Annamaria Monti (Università Commerciale Luigi Bocconi, Milano), Transfers and reception of legal knowledge: 19th–20th century commercial law

Maria Sole Testuzza (Università degli Studi di Catania), Comparing narratives of right over one’s own body (17th–18th centuries)

Flavia Tudini (Università degli Studi di Trento), Monarquia Hispánica and the governance of the Lima diocese (1580–1606)

Stefano Vinci (Università degli Studi di Bari Aldo Moro), Criminal codification of Kingdom of Two Sicilies

2019

Damiano Censi (Università degli Studi di Ferrara), A reconstruction of the European economic governance through the legislative and jurisprudential route of the role of European parliament

Alice Cherchi (Università degli Studi di Cagliari), New reflections on the Theophili Paraphrasis

Dolores Freda (Università degli Studi di Napoli Federico II), Across boundaries: the English justice of the peace on the Continent

Simona Langella (Università degli Studi di Genova), Studio, edizione critica e traduzione spagnola del commentario inedito di Francisco de Vitoria alla I–IIª de la Summa theologiae di san Tommaso d’Aquino
Claudia Passarella (Università degli Studi di Padova), Lay participation in the administration of criminal justice: the procedure of jury selection in Europe in the late 19th century

Pietro Schirò (Università degli Studi di Verona), The social school of criminal law

Simona Tarozzi (Alma mater studiorum – Università di Bologna), Rezeption der Grundlage des römischen Verfahrensrechts in römisch-germanischen Quellen und im common law

Umberto Tulli (Università degli Studi di Trento), The EEC, human rights and the right to development. From negative conditionality to the promotion of the human right to development

2020

Matilde Cazzola (Alma mater studiorum – Università di Bologna), Lord Elgin and colonial constitutional orders in the common law world

Giulia Di Giacomo (Università degli Studi di Milano-Bicocca), The regulation of migration in the early XX century: between governmentality and pluralism

Mariusz Kaczka (Istituto Universitario Europeo, Fiesole, FI), A cross-border Islamic-Christian court of justice: Ottoman-Polish example

Japan

2018

Masanori Okada (Waseda University, Tokyo), Die Transformationsprozesse des Rechts in Japan

2019

Natsuko Matsumori (University of Shizuoka), Conquest, empire, and sovereignty: the natural right of communication in the ‘New World’

Masanori Okada (Waseda University, Tokyo), Legal transformations in 19th and early 20th century Japan, China and Ottoman Empire

Mexico

2018

Enrique González González (Universidad Nacional Autónoma de México), Historical Dictionary of Canon Law in Hispanic America and the Philippines (DCH)

2020

Óscar Javier Barrera Aguilara (Universidad de Ciencias y Artes de Chiapas, Tuxtla Gutiérrez), Territories in dispute: laws, intermediaries and Indian peoples in the political chiefdom of Comitán, Chiapas, Mexico, 1790–1875

Maria Idalia García Aguilar (Universidad Nacional Autónoma de México), Order and agreement in a new space: circulation of legal literature in New Spain, 1585–1640

Yolanda Guzmán Guzmán (El Colegio de Michoacán, Michoacán), Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI–XVIII
The Netherlands
2018
Hylkje de Jong (Vrije Universiteit Amsterdam), Byzantinisches Recht
Jan Hallebeek (Vrije Universiteit Amsterdam), Seenrecht, iniuria
2019
Jan Hallebeek (Vrije Universiteit Amsterdam), Ausgabe und Übersetzung der Glossen zur Jurisprudentia Frisica (Codex Roorda)

Norway
2019
Mala Loth (Universitetet i Oslo), The European court of justice and the shaping of European social policy, 1964–1992

People's Republic of China
2018
Xiaojun Shen (Shanghai University of International Business and Economics), Modernisierung des chinesischen Vertragsrechts vor dem Hintergrund der Kodifikation eines chinesischen Zivilgesetzbuches: Eine historische und rechtsvergleichende Betrachtung
2019
Ningxin Fu (Tsinghua University, Beijing), Modernization of Chinese Fiscal and Tax Law (1912–1949)
Xin Nie (Tsinghua University, Beijing), Between Weimar Republic and traditional China: legal translation of social rights through Chinese tradition
Peru
2018
Carlos Ramos Núñez (Centro de Estudios Constitucionales del Tribunal Constitucional del Perú, Lima), Prophetic justice: the fight for the criminal jury in Peru

2019
Jorge Aramando Guevara Gil (N/A), Transgression, abjection and unfruitful pain. The case of Sister Dominga Gutierrez de Cossio (Arequipa, Peru, 1831)
Carlos Ramos Núñez (Centro de Estudios Constitucionales del Tribunal Constitucional del Perú, Lima), Prophetic justice: the fight for the criminal jury in Peru

The Philippines
2018
Marya Svetlana Camacho (University of Asia and the Pacific, Manila), Marriage in lowland Philippines in the early modern period: codes of law and behavior in intercultural encounter

Poland
2018
Przemysław Nowak (Instytut Historii im. Tadeusza Manteuffla Polskiej Akademii Nauk, Warszawa), The Constitutum Constantini. A critical study

Portugal
2018
Jesus Bohorquez (Universidade de Lisboa), Dispute resolution and contract enforcement: commercial law in the Spanish and Portuguese empires during the 18th century
Luisa Stella Coutinho Silva (Universidade de Lisboa), Women in colonial Paraíba: a feminist postcolonial study of Brazilian legal history, 1580s–1822 / Legal encounters between empires: Japanese and Portuguese normativities, 1540s–1630s
Antonio Muñoz-Sánchez (Universidade de Lisboa), Rotspanier vs FRG: An improbable legal fight of former forced workers for recognition as victims of the Nazi regime (1958–1972)

2019
Anabela Brízido (Universidade Nova de Lisboa), The armed conflict in Angola and Mozambique in the post-colonial period under the approach of IHL and IL: Is the Martens Clause a myth or reality for the ruling of private military companies’ activities
Jaime Gouveia (Universidade de Coimbra), Historical Dictionary of Canon Law in Hispanic America and the Philippines (DCH)

Republic of China (Taiwan)
2020
Sheng-Yen Lu (Academia Sinica,Taipei), Women’s rights under the small house policy in Hong Kong
Romania
2019
Loredana Gogoașe (Universitatea 'Lucian Blaga' din Sibiu), Der Codex Altenberger – das erste Gesetzbuch der Siebenburger Sachsen

Russia
2020
Anastasiia Savina (Lomonosov Moscow State University), Legal practice and public life in Pisa in the second half of the 14th century

Spain
2018
Manuel Angel Bermejo Castrillo (Universidad Carlos III de Madrid), European non-contractual civil liability in a historical and comparative perspective
Rosa Congost (Universitat de Girona), The role of agrarian contracts in (empirical and theoretical) historical research on land ownership: the example of Emphiteusis
Pilar Latasa (Universidad de Navarra, Pamplona), Clandestine marriage in Spanish America
Fernando Liendo Tagle (Universidad Carlos III de Madrid / Universidad de Huelva), The legal press in the formation and teaching of legal disciplines and university studies in 19th century Spain

2019
Juan Belda Plans (Universidad de Navarra, Pamplona), Relecciones teológicas de Melchor Cano
Héctor Domínguez Benito (Universidad Autónoma de Madrid), The end of an empire – titles over territories in Spanish and Ibero-American international law, 1810–1928
Antonio Manuel Luque Reina (Universidad Autónoma de Madrid), Dissolving the Polisinodia: the royal council of Spain and the Indies (1834–1836)
Fabricio Mulet Martínez (Universidad de Huelva), The Royal Council and the commercial companies by shares in Cuba and Spain (1848–1868). Itinerary between private law and state interventionism in colonial 19th century
Rafael Ramis-Barceló (Universitat de les Illes Balears, Palma de Mallorca), The relevance of the encyclopaedical texts in the development of modern jurisprudence
Enrique Roldán Cañizares (Universidad de Sevilla), The reception of Jiménez de Asúa's penal doctrines and acts in Spanish America
Víctor Saucedo (Universidad Autónoma de Madrid), Mapping Legal Change: Conspiracy in the 18th and 19th centuries
Joaquín Sedano Rueda (Universidad de Navarra, Pamplona), Modernization of Chinese fiscal and tax law (1912–1949)

Switzerland
2019
Andrei Mamolea (Institut de Hautes Études Internationales et du Développement (IHEID), Genève), Saving Face: The political work of the Permanent Court of Arbitration, 1902–1914
Turkey
2019
İpek Sevda Söğüt (Kadir Has Üniversitesi, İstanbul), *Exceptio Doli Generalis* in Roman law

Ukraine
2020
Alina Cherviatsova (V.N. Karazin Kharkiv National University, Kharkiv), At the origins of Soviet international law: the rise and decline of the first-generation Soviet legal scholars

United Kingdom
2018
Daniel Allemann (University of Cambridge), Slavery in Spanish scholastic thought, c. 1539–1682
Alexis Alvarez-Nakagawa (Birkbeck, University of London), Cannibal laws. The origins of international and the juridical forms of the conquest
Eddie Bruce-Jones (Birkbeck, University of London), *Kaala Paani* and the archive: ancestral memory and colonial administration
Thomas Clausen (Trinity College, University of Cambridge), Roland Freisler (1893–1945): an intellectual biography
Natalie Cobo (Brasenose College, University of Oxford), Translating Solórzano
Tom Hamilton (Trinity College, University of Cambridge), Criminal justice in early modern France: multinormativity and entanglements in practice
Victoria Hooton (University of Manchester), A history of EU citizenship and the welfare state
Anselm Küsters (University of Oxford), Der Einfluss des Ordoliberalismus auf die Entwicklung des europäischen Wettbewerbsrechts im Spiegel der Publikationen der Europäischen Kommission (1952–2018)
Brigitte Leucht (University of Portsmouth), Citizens or consumers? The origins of consumer protection in the European Union
Vanessa Mongey (Newcastle University), Suspicious citizens: border control, diplomacy, and travel regulations, 1790–1870
Guido Rossi (University of Edinburgh), Insurance, markets and the law: a comparative analysis on the development of barratry (XVI to XVIII centuries)

2019
Natalie Cobo (Brasenose College, University of Oxford), Translating Solórzano
Silvia Espelt Bombin (University of Exeter), Peace and treaty-making: different legal systems in action in early modern Amazonia and the Guianas

2020
Jonathan McGovern (University of York), Sheriffs’ courts and the execution of legal writs in England and Wales, 1485–1600
Erica Kim Olikainen-Read (N/A), Role of public information campaigns in common law transfer in South / Southeast Asian Colonies of the British Empire
United States of America

2018

Marie Seong-Hak Kim (St. Cloud State University), Custom and legal change in European and East Asian history

Andrés Pletch (University of Michigan, Ann Arbor), Isle of exceptions: race, law, and governance in Cuba, 1825–1856

Priyasha Saksena (Harvard Law School, Cambridge), Contestations over the idea of sovereignty in colonial South Asia / Attempted transfer of jurisdictional bases from Britain to colonial South Asia

2019

Juan Cobo Betancourt (University of California, Santa Barbara), Historical Dictionary of Canon Law in Hispanic America and the Philippines (DCH)

Hunter Harris (University of Michigan, Ann Arbor), When trust fails: merchants, law and the British Empire in the 18th century

Colin Jones (Columbia University, New York), Searching for social order: capitalism, empire, and the making of Japanese law

Adam Lebovitz (Harvard University, Cambridge), Cosmopolitan constitutionalism: French and American Constitutional Court, 1774–1800

Erik Peinert (Brown University, Providence), Post-war French competition rules in comparative perspective

Andrew Walker (Wesleyan University, Middletown), Strains of unity: property and emancipation in Haitian Santo Domingo, 1822–1844

2020

Katherine Godfrey (Pennsylvania State University), Negotiating law, justice, and ethnic identities in the New Kingdom of Granada, 1538–1680

Abisai Pérez Zamarripa (University of Texas at Austin), Tracing the origins of the Republic of Indians in the Philippines
Since 2018, researchers’ digital efforts have become more self-aware, more explicit and better organised, and there has been a noticeable increase in the public discussion and use of Digital Humanities methods and resources. Various venues for promoting digital resources, computational methods and workflows, and data literacy principles have been established; this has clearly encouraged researchers to seek guidance and support with regard to their research questions and methodological ideas. While researchers have thus acquired specialised as well as basic ‘digital competencies’ (like using the command line, data cleaning, version control systems, citing data and software), their concrete needs had in many cases not been anticipated and the process has involved a broadening of the competencies available in-house as well. On the other hand, longer-standing projects and the need for legacy data migration have induced a deepening of methods in the sense of a permanent effort to reconcile bespoke solutions with generic approaches and sustainability requirements (for example developing microservices and an infrastructure-as-code approach). In the following, the Digital Humanities activities at the Institute are described by focusing on some approaches that are driven by, and affect, a number of individual research projects. Some of these areas have been a constant in Digital Humanities activities from the outset, whereas others have just started to evolve.

**Digital editing**

Various projects are preparing their textual material in a way that will result in a digital scholarly edition of the source text(s). This involves discussion and decision of different methods of text acquisition, editorial markup, correction and enhancement, and publication. Whereas the School of Salamanca project, for instance, uses a mix of manual transcription and automatic text recognition from images (OCR), the more recent Non-state law of the economy project uses OCR exclusively. We have evaluated various software solutions for this task and have presented a viable approach to the Institute’s researchers in a workshop. The results in the Non-state law project are encouraging and we plan to make this method of text acquisition available to more researchers. In addition, different strategies in the editorial process must be pursued: the Non-state law project can easily forego some of the layout information from its original sources in favour of a more explicit tagging of norms and regulatory matters, which will be made accessible in a database-like interface. The Hyperazpilcueta project puts more emphasis on the preparation of comparable texts and the establishment (and presentation) of alignment information; it is thus most interested in expanding abbreviations to identical forms and in making the names of the authors comparable. In such ways, the scholarly aim of the final publication both determines the functionality the digital edition should offer and directs the focus of the editorial efforts. At the same time, we can make sure that no information is lost by preserving digital images and explicitly recording editorial interventions. For an insight into such considerations, the editorial guidelines of the Salamanca project (at https://www.salamanca.school/en/guidelines.html) may serve as an example.
Text analysis

One of the obvious advantages of having historical legal text available in digital form is the possibility to perform algorithmic analyses on it, independently of the amount of text. In fact, some ways of looking at texts make sense only if there is a larger basis of text to look at. Simple approaches use statistical methods to make assertions about a collection of texts, about single words, or possibly concepts, occurring in such collections. An example of this can be seen in the review of the two Oxford Handbooks on Legal History that has developed out of discussions in the Institute’s Interest Group for Digital Humanities [Küsters, Volkind, Wagner, Digital Humanities and the State of Legal History, 2019]. For legal history in general, the analysis of the relation between specific texts is often of particular interest, as evidenced by projects undertaken by Manuela Bragagnolo, Donal Coffey, or Anselm Küsters. Küsters, for instance, investigates the adherence of a journal to distinct strands of thought in a given time period. Bragagnolo assesses the similarity of text passages across languages (in different reworked editions of a 16th-century text) in order to identify correspondences and divergences. The study of Donal Coffey, examining the influence that a series of contemporary and earlier constitutions had on the drafting of the Burmese Constitution of 1948, has been published, along with the digital materials and software that were used to perform the analyses. In the projects mentioned, we have used various Text Reuse Detection and Topic Modelling approaches, and are looking forward to applying Semantic Shift Detection and Citation Network Extraction methods.

The two sources most similar to the Burmese constitution, per sentence
Graph data modelling, network analysis and visualisation

For the study of relations in particular, graph data models have become important facilitators. In the Governance of the Universal Church after the Council of Trent project, data gathered from session protocols of the Congregation of the Council of Trent is recorded in a graph database that allows finding unsuspected and indirect relations, e.g., between subject matters of the cases, regions where they originated, and advocates involved in their formal initiation. It also allows us to record information about the various uncertainties coming into play in the scribal, archival and contemporary scholarly contexts [Wagner, Ambiguität und Unsicherheit: drei Ebenen eines Datenmodells, 2019]. As the project proceeds, we expect to apply network analysis methods to identify cliques and gather information about the density of relations and the centrality/marginality of certain persons. However, such graphs frequently come with a complexity issue: while a network seems to suggest an intuitive visualisation, if you present all the information that is available in such a graph database, the result is so dense that you cannot anything make out (the technical term is a 'hairball'). Thus, researchers also have to think about abstracting and extracting just one aspect or component of the whole network (a 'projection'), or about how best to organise the layout of the network visualisation. For instance, in his dissertation Fupeng Li has used a ‘hierarchical edge bundling’ approach to visualising the network of citations in the two drafts of the Chinese constitution from 1923 and 1936. Again, the relevant materials and code have been published under an open licence [Wagner, Li, Citation Network Visualisation of two Drafts (1923 and 1936) of the Chinese Constitution, 2020].

Outlook and conclusion

Two tendencies may consolidate in the next years from activities that have recently been initiated. On the one hand, the semantic dimension of texts, in particular the aspects that play or define legal roles, may come more into focus. From the recognition of persons’ names and their networks, both by now well-established approaches in general digital historical research, our interest is likely to also move on to the recognition of legal roles, facts and arguments, requiring innovations in the areas of both language processing and data modelling. On the other hand, projects by Sigfrido Ramírez and Karla Escobar are extending the digital methods and resources in use at the Institute beyond written text to cover oral history. We are going to acquire competencies of datafication, storage and publication of audio or video recordings, and to develop new approaches to confront them with legal historical questions. We are very confident that the innovative use of digital methods in the Institute’s research will continue to provide original and ground-breaking results in the years to come.
OPPORTUNITIES
OPPORTUNITIES

The recruitment and qualification of early career researchers in legal history, legal theory and related disciplines is one of the Institute’s central tasks. The independent Max Planck Research Groups as well as the Research Groups and Research Fields established in the Departments offer the opportunity to carry out individual research projects integrated into the thematic and methodological context of the larger research activities and goals pursued at the Institute. With the Summer Academy for Legal History, the teaching activities of the Institute’s members at universities in Germany and beyond, as well as with the Visitors’ programme, the Institute is contributing to the formation of future generations of scholars working on fundamental aspects of law. In this context, we feel that it is important to promote gender equality and to create a working environment that helps to reconcile career and family life. Finally, as we are in the lucky position to work with researchers from all over the world, raising awareness of issues surrounding diversity has a high priority for us.

EARLY CAREER RESEARCHERS

Doctoral students

The doctoral students are employed at the Institute on the basis of a so-called support contract, which combines the guarantee of academic freedom with the security of an employment contract. These contracts generally have a term of three years, with the possibility of two six-month extensions in exceptional cases. The relative financial independence enables the PhD students to concentrate on their doctoral projects. Moreover, all doctoral students receive substantial support for research stays at archives and libraries and for participating in external conferences and professional symposia.

During the doctoral phase, research is carried out within the context of either one of the Departments’ various research projects or one of the Research Groups. This high level of integration ensures that the doctoral projects make a direct and important contribution to the profile of the individual Research Fields at the Institute. In addition to this, supervision of the doctoral students takes place in one-on-one meetings carried out on a regular basis with their supervisors at the Institute, in most cases the Directors or the Heads of the Research Groups. The Research Coordinator is also available to advise on how to organise one’s work and on individual career planning.

In summer 2018, the Institute’s supervision programme was expanded to include the establishment of an individual mentoring team and a supervision agreement between the doctoral students and supervisors. Further augmenting the abovementioned opportunities is the option of participating in the Max Planck Society’s professional development and training programmes as well as the training programme offered by the Goethe Research Academy for Early Career Researchers (GRADE), which is open to all doctoral students of the Goethe Universität.
Postdoctoral researchers

The Institute offers a challenging and motivating research environment to postdoctoral researchers in the history of law, legal theory and related disciplines who wish to remain in academia either for the time being or permanently after having completed their doctorate. Employment as a postdoc at the Institute is for a limited duration and enables early career researchers to pursue further academic qualifications and enhance their profile. During this time, the postdocs work on an independent research project within the context of the respective Research Fields of the three Departments. They benefit from the wide range of lectures, seminars and workshops at the Institute as well as from the opportunity to organise their own events. Moreover, like the doctoral students, all postdoctoral researchers receive substantial support to enable them to undertake research stays at archives and libraries as well as for participation in external conferences and professional symposia.

As a rule, postdoctoral researchers receive an employment contract for three years, with the possibility of an extension of up to an additional three years (maximum). While there are no teaching obligations associated with employment at the Institute, postdoctoral researchers are encouraged to undertake external teaching assignments. Moreover, postdoctoral researchers are integrated into the mentoring of the doctoral students at the Institute.
International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS–REMEP)

In December 2019, the International Max Planck Research School on Retaliation, Mediation and Punishment (REMEP) ended after 12 years. This unique and interdisciplinary research and teaching network for doctoral studies was operated by the Max Planck Institute for Social Anthropology (Halle), the Max Planck Institute for Foreign and International Criminal Law (Freiburg) and the Max Planck Institute for European Legal History (Frankfurt, local co-ordinator K. Härter) and it co-operated with university faculties in the fields of sociology, social anthropology, jurisprudence and history. The general activities included introductory courses on legal history, Summer and Winter University sessions (in which the students presented their research), and a number of workshops, conferences and publications. Regarding the scientific agenda, REMEP observed retaliation, mediation and punishment as interrelated and complementary concepts to establish, negotiate, maintain and re-gain social order, peace and human security. In this regard, REMEP was closely related to several Research Fields of the Institute, namely History of Criminal Law, Crime and Criminal Justice and Legal History of the Church, and the Cross-Cutting Theme Law and Diversity. The methodological concepts of REMEP started from the assumption of the plurality of forms in establishing and maintaining social order and sought to understand retaliation, mediation and punishment as a resource for social actors. During the reporting period, the Institute hosted three doctoral students who conducted and concluded their research projects: Karla Luzmer Escobar Hernández defended in June 2020 her dissertation on 'Citizenship, justice and indigeneity: a History of indígena legal practices in Cauca, 1880–1938'; Raquel Razente Sirotti finished the manuscript of her dissertation 'Within the law: criminal law and political repression in Brazil (1889–1930)'; and Laila Scheuch is concluding her study on 'The regulation of marital conflicts on the Left Bank of the Rhine and in France between 1798 and 1814'.

Joint research activities yielded the recently published collected volume On Mediation. Historical, legal, anthropological & international perspectives [Härter, Hillemanns, Schlee, On Mediation, 2020]. Following the basic research design of REMEP, the book explores mediation and related practices of alternative conflict regulation through an interdisciplinary approach. Eleven chapters observe historical and current relations between mediation and the criminal justice system, provide anthropological perspectives and case studies and explore mediation and arbitration in international arenas. The result verifies the general approach of REMEP: the interplay and blurred boundaries between extrajudicial and judicial conflict resolution and the ways conflicts and disputes are addressed within, beyond, across or even independently from state legal orders and institutions.
EQUAL OPPORTUNITIES

The Institute is committed to promoting gender equality and to creating a working environment free of discrimination in which all employees, regardless of their gender, nationality, ethnic or cultural background, religion, disabilities, age or sexual orientation, can develop their full potential.

To do so, the Institute has implemented a number of targeted local measures and set itself goals for future development. It also encourages and supports initiatives by its staff and facilitates its employees’ participation in MPS-wide measures and activities. During the reporting period, two grassroots initiatives in the area of equal opportunities were founded and organised by employees at the Institute: the Diversity Group and the Minerva LAW Network. Both have the full support of the Institute and will be discussed in more detail below.

The Directors of the Institute are committed to promoting awareness of issues relating to equal opportunities and to reinforcing such awareness at all levels. We understand a contemporary gender equality policy to consist of the firm implementation of mechanisms that allow for career perspectives to be developed and successfully realised at the Institute. The Gender Equality Officer has an established place in the process of recruiting and selecting new staff. She has access to all applications via the Institute’s online applications portal at an early stage and is given the opportunity to participate as an observer in all job interviews. She is also informed of relevant personnel matters at the same time as the Works Council.

The Institute’s Gender Equality Plan for 2018–2020 identified three main fields of action: the reconciliation of career and family life, the promotion of career advancement and the raising of gender awareness.

Reconciliation of career and family life

The company pme Family Service GmbH has provided support to the Max Planck Society and its staff in matters of childcare, eldercare and home care since 2015. Employees at the Institute as well as, in one case in 2019, participants of its Summer Academy have used its services above all to identify childcare options for children below school age, and have reported themselves to be satisfied with the service provided.

The cooperation with the Max Planck Institute for Brain Research that enables employees to take advantage of up to five places in a facility on the Riedberg campus of the Goethe Universität continued during the reporting period and was used in particular by researchers coming to the Institute from outside Germany. In future, the Institute will explore opportunities for offering childcare places closer to the Institute’s own site.

In 2019, the Institute realised its commitment in the Gender Equality Plan to create a space for baby-changing and nursing that is open to employees and to participants at the Institute’s conferences and workshops.

In order to continue recruiting excellent staff, particularly from abroad, the possibility for the partners of researchers to pursue their careers in Frankfurt is growing in importance. The Institute remains an active member of the Dual Career Netzwerk für die Metropolregion Rhein-Main (DCN-MRM). This network of 29 research institutions and four private-sector companies assists
the partners of qualified professionals working at one of the member organisations to find a suitable position that matches their career goals in the Rhine-Main area.

**Career development and mentoring for female employees**

The Institute puts great emphasis on fulfilling its responsibilities in supporting and developing its early-career researchers. It encourages female researchers to take part in the Max Planck Society’s measures: Institute staff took part in the Minerva FemmeNet Mentoring programme and in the SignUp! programme.

Looking beyond the Institute, in 2020 three female researchers of the Institute were among the founders of the Minerva LAW Network, an initiative funded as part of the Max Planck Law Network. The Minerva LAW Network organises regular events for female early-career researchers in law and related disciplines. The main topics of these events are career development for women in academia and beyond, and gender issues in law and in the legal professions. The Institute supports the network administratively.

During the reporting period, the Institute also supported the career development of a number of female non-scientific staff through individually tailored measures, as there are few Max Planck Society-wide programmes aimed at female employees who are not researchers. It is important that training measures are also offered to women in lower pay groups to support their professional development. The Institute would welcome more measures by the Max Planck Society to promote gender equality also for its non-scientific staff.
Gender awareness

Raising awareness is an important part of promoting gender equality. In addition, an understanding of the cognitive mechanisms of discrimination, such as unconscious bias, can help create a discrimination-free work environment also in other respects, as such mechanisms often cause stereotyping and work to the disadvantage of groups categorised by different types of factors – such as nationality or ethnic background, age, disability etc. – and not just gender.

The Institute uses gender-inclusive language in its German-language communications and calls for applications. The third gender category (diverse) now recognised by German law is also included in job adverts and can be indicated in the online application system.

The increased share of women among researchers has already been mentioned. However, growing awareness and attention being paid to issues of gender in recruitment of staff has also met with success in the area of the Service Facilities. In 2019 and 2020, the previously all-female Administration recruited male trainees, and in 2021, the previously all-male IT Department will be joined by a female member of staff. These might seem minor developments, but they actually have real impact in breaking up gender stereotypes and changing gender dynamics on the ground.

Diversity

As in the MPS as a whole, which in 2018 formulated its ‘Diversity Understanding’, in the last years the Institute has increasingly paid attention to issues of diversity in the workplace. Not least due to the Institute’s ‘global’ outlook, its staff has become increasingly diverse, with 58% of researchers in 2020 originally from outside Germany.

July 2019 saw the first meeting of the Diversity Group, one of the first such groups in the Max Planck Society. Its members are drawn from different Departments, Research Groups and the Service Facilities and include the Research Coordinator, International Officer and Gender Equality Officer. The group meets regularly to discuss issues of diversity at the Institute. In 2019, the Diversity Group also organised workshops (in English and German) introducing the concept of diversity in the workplace.

The Gender Equality Officer and the Diversity Group cooperate in two new measures. The mpilhl parents’ forum meets regularly in order to discuss the concerns of parents (and parents-to-be) at the Institute and is particularly useful for international parents who need help understanding the German childcare system. A new quarterly Gender Equality and Diversity Newsletter informs employees about equal opportunities issues and relevant funding opportunities, programmes, events and workshops.
LIBRARY

The library of the Max Planck Institute for Legal History and Legal Theory, with its holdings of 490,000 printed media units and a large number of electronic information resources, is one of the most important libraries worldwide specialised in legal history. Based on its rich stock of legal philosophical literature, it endeavours to offer works on legal theory with a similar degree of completeness in the future. In addition to providing research-relevant media, the library offers a wide range of research support services.

Our books

The library comprises around 490,000 printed media units from the 15th to the 21st century. Our oldest book is a comment of the decretals printed in Venice in 1477. We acquire the latest research literature in all European languages and complement our source inventory with antiquarian purchases.

From 2018 to 2020, the library’s holdings grew by more than 16,000 printed media units. The main focus of the collection is the legal history of Europe and Latin America as well as the non-European territories of the Commonwealth. A new addition has been the acquisition of literature on legal history and the history of Lusophone Africa. China is also moving more and more into the Institute’s focus and is accordingly taken into account in the build-up of the inventory. The donation of the private library of Sergio Ventura (1935–2020), who served on the European Commission from 1962 to 2000, is of particular benefit for research on the legal history of the European Union. Since the establishment of the Department of ‘Multidisciplinary Legal Theory’, the expansion of the legal theory portfolio has been pursued particularly intensively. Our antiquarian acquisitions focus on sources on pre-modern ecclesiastical normativity. With subscriptions to around 400 journals, the entire research spectrum of the Institute is covered.

E-books, e-journals, databases

Researchers at the Institute can access over 100,000 e-books, 5000 e-journals and 100 databases on ‘law’ or ‘history’. This offer is based on local licenses from our library, central licenses for the entire Max Planck Society and national licenses for all universities and research institutions in Germany.

In 2018, the library acquired ten collections from the ‘Archives Unbound’ database collection from Gale (Cengage Learning). It is archival material on the colonial history of Africa and Asia, the history of missions in Latin America, the history of India and China, and the Mexican Revolution and Constitution of 1917.

In 2019 the library acquired modules 5 to 8 of the database collection ‘Making of Modern Law’ (MOML) from Gale. Modules 1 to 4 have been available throughout Germany as a national license for a long time already. MOML offers the titles as digital facsimiles and as searchable full texts. The newly acquired modules contain international legal literature from the 17th to the 20th century.
In 2020, the library took part in a coordinated acquisition initiative by various Max Planck Institutes to purchase large, predominantly legal e-book packages from the publishers Nomos and Mohr Siebeck.

All online resources can also be accessed remotely via EZProxy, a web proxy server operated jointly with the Institute’s IT department. In this way, it was possible for us to support the researchers with a wide range of research literature even during the Covid-19 pandemic.

**Digital library**

In the digital library, we make older, legally relevant works accessible in electronic form, permanently and free of charge. A new technical platform with a unified interface to all collections offers expanded options for re-using data and for collaborative work.

In various digitisation projects, the library has built a digital library with ten collections and a total of more than 3 million pages over the past 20 years. A new addition is the collection ‘Discursos de recepción y de contestación / Real Academia de Ciencias Morales y Políticas (Madrid)’ with 159 titles. The collections ‘Dissertations on Jurisprudence = Tesis Doctorales en Derecho – Buenos Aires (1866–1903) – INHIDE’ and ‘Miscellanea’, mainly with works from the 16th century, have grown.

The servers, some of which were developed more than fifteen years ago, urgently needed technical modernisation and functional expansion. Supported by special funds from the Max Planck Society and together with three other Max Planck Institutes, the ‘Digital Libraries Connected’ (DLC) platform was completely renewed. It now contains all mpilhlit collections. It enables searching across collections, comparing works in the Mirador Viewer, selecting and citing image details, saving individual collections permanently and sharing them with colleagues, as well as downloading and processing data in various formats.
PuRe – research bibliography and repository

The Max Planck Society Publikations Repositorium serves the mpihlit in providing full documentation and maximum visibility for researchers’ publications. We store and maintain the data in PuRe.

Researchers’ publication lists on their individual websites and the list in this Activity Report are generated from the data in PuRe. 553 publications have been recorded for the years 2018 to 2020. 266 works are accessible in Open Access; they have a direct link to the publication.

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Open Access

The Max Planck Society promotes Open Access in a variety of ways. This includes the central provision of publication fees for important journals from high-ranking publishers. We offer information about this possibility and help with its realisation. In addition, the library answers all other questions about Open Access.

Digital Humanities

The area Digital Humanities supports researchers in the planning and use of digital methods from Artificial Intelligence to Zitationsnetzwerke citation networks. We also help with the design and publication of databases and digital text editions (see Forum).

Sigrid Amedick
Providing a home for the *American Journal of Legal History* (2016–2020)

The American Journal of Legal History (AJLH) was founded in 1957 and was the first English-language periodical in the field. When it was relaunched as an Oxford University Press (OUP) journal at the beginning of 2016, Stefan Vogenauer agreed to be its co-editor, together with Al Brophy (University of North Carolina School of Law, Chapel Hill; later University of Alabama School of Law) who handed over to Felice Batlan (IIT Chicago-Kent College of Law in Chicago) in 2019. As part of the relaunch, the Editorial Office was established at the Institute.

The relaunch involved a major reorientation of the journal. While retaining its traditional focus on the legal history of the United States, it now aimed to reflect the recent enormous broadening of the intellectual horizon of the discipline and include a substantial number of contributions of a comparative, international or transnational nature.

Moreover, the design of the journal was overhauled, with a new cover and a revamped page layout. The editorial process was professionalised: an Editorial Board was established, a Managing Editor (Donal Coffey, since 2019: Victoria Barnes) and book review editors were appointed. New author guidelines had to be drafted, and a state of the art double-blind peer review process was introduced. The publishers created an attractive journal website, making all articles since 1957 available online and offering an advance access function.

The Frankfurt Editorial Office not only handled the peer review process, it also provided linguistic editing of articles written by non-native speakers and style guiding ('blue booking' and 'OSCOLAing') of all manuscripts. Many members of the Institute were involved in various roles: Ben Kamis, Anselm Küsters, Amber Maggio, Niels Pepels, Christina Pössel, Philipp Schmitt, James Thompson and Emily Whewell. The team took pride in seeing through 21 quarterly issues overall, without missing a single deadline for submission to the publishers, and in consistently beating the OUP journal average for the speed of the review and production processes.

After five years, the relaunch was considered to have been completed, so Felice Batlan and Stefan Vogenauer handed over to a new team of editors at the end of 2020. Beginning with issue 2 of 2021, the editorial process has been dealt with in-house by OUP.
EDITORIAL DEPARTMENT

One of the tasks of the Editorial Department is to disseminate and thus increase the visibility of the Institute's research results through a variety of publication channels, including established and more recently created book series, two journals and a Research Paper Series. While much of the scholarly output is still published in printed form, its availability online and in Open Access is constantly growing. The work of the Editorial Department and the profile of our publications closely reflect the continuities as well as the changes in – particularly the expansion of – the Institute's research areas during the reporting period.

A sign of continuity is the cooperation with the Frankfurt-based publishing house Vittorio Klostermann, which received the Hessischer Verlagspreis and celebrated its 90th anniversary in 2020. The Editorial Department prepares and edits the texts for the annual journal *Rechtsgeschichte – Legal History (Rg)* and for the book series *Studien zur europäischen Rechtsgeschichte*, both printed by Klostermann. The latter now includes more than 325 volumes in a variety of languages. In the past three years, they have covered a broad range of subject matters and periods, from the Middle Ages to contemporary history. Among the numerous studies published in the last three years were three volumes of the subseries *Legal spaces*. Highlights of the series included Guido Rossi’s *erudite Representation and Ostensible Authority in Medieval Learned Law* (vol. 324, 2020), Martin P. Schennach’s *profound work on the Historische Rechtsschule* in the 19th century (vol. 310, 2018), and Vera Fritz’ *innovative biographical study of the judges of the European Court of Justice in the 1950s and 1960s* (vol. 312, 2018). Some books of the series received special acclaim: the Preis des 43. Deutschen Rechtshistorikertages 2020 (Zürich) was awarded to Christoph Lattmann for his PhD dissertation *Der Teufel, die Hexe und der Rechtsgelehrte. Crimen magiae und der Hexenprozess in Jean Bodins De la Démonomanie des Sorciers*, and Colm Peter McGrath’s *The Development of Medical Liability in Germany, 1800–1945* was recommended by Reinhard Zimmermann in the Neue Juristische Wochenschrift (43/2019) as one of the ‘books of the year’.

To celebrate the 50th anniversary of the series *Studien zur europäischen Rechtsgeschichte* in 2021, preparations have been ongoing to successively make all volumes of the series published before 2017 available in digital format, both via the Max Planck Society’s PuRe repository and on the Institute’s homepage. In addition, to improve the accessibility of the data collected as part of the *Repertorium der Policeyordnungen*, a book series completed in 2017, the library’s Digital Humanities specialist is working on making over 200,000 police ordinances of selected territories and imperial cities of the Holy Roman Empire and adjacent countries available online. The series *Studien zu Policey, Kriminalitätsgeschichte und Konfliktregulierung* has produced intriguing edited volumes and a monograph on security regimes and the transnationalisation of criminal law in the 19th and 20th centuries.

Reaching beyond the borders of Europe, the series *Global Perspectives on Legal History (GPLH)* has grown to include quite a number of edited volumes and monographs, available both as print-on-demand and online in Open Access; from vol. 13 onwards, the printed volumes are published in hardcover. Among the recent books, three interrelated volumes on ecclesiastic institutions and
Normativities in New Spain, Peru and New Granada offer a fresh comparative perspective on Hispanic America. Moreover, due to the expanding interest in the field of global legal history, a new series was created in cooperation with Brill during the reporting period. The first volume of the *Max Planck Studies in Global Legal History of the Iberian Worlds (MPIW)*, entitled *Knowledge of the Pragmatici*, appeared in 2020. This series, too, is published both in hardcover and in Open Access.

With regard to their online presence, the Institute’s digital offerings have experienced dynamic development during the last three years. The website of the Institute’s flagship journal *Rechtsgeschichte – Legal History (Rg)* was transferred to a modern responsive design and now offers a number of additional functions. Moreover, the journal has been included in the important *Directory of Open Access Journals (DOAJ)*, among other indices and repositories. The GPLH book series has also been accepted for inclusion in some of the most relevant online services for Open Access book publications: OAPEN, DOAB, Project MUSE and JSTOR. The editorial staff performs the digital data preparation and maintains the Rg website. In order to share experiences and improve Open Access capabilities, the Editorial Department participates in relevant conferences and meets with colleagues from other Max Planck Institutes. The first such meeting was organised by the Editorial Department in 2019 and held at the Institute. The Editorial Department has also intensified its presence at academic conferences outside Germany and exhibited the Institute’s publications at the British Legal History Conference (University of St. Andrews, July 2019) and the Annual Meeting of the American Society for Legal History (Boston, Nov. 2019), among others.

Last but not least, the well-established *Max Planck Institute for European Legal History Research Paper Series* (since 1 January 2021: *Max Planck Institute for Legal History and Legal Theory Research Paper Series*) became the publication site of choice for the articles of the Institute’s research project *Historical Dictionary of Canon Law in Hispanic America and the Philippines. 16th–18th Centuries (DCH)*. In addition, six papers were published in the subseries *subsidia et instrumenta*, which comprises resources for researchers such as collections of primary sources and research bibliographies. All papers of the series are available in Open Access via the Social Science Research Network (SSRN) eLibrary.

Dynamic developments and changes also led to the end of certain activities. Since the relaunch of the *American Journal of Legal History* (co-edited by Stefan Vogenauer) in 2015, the Editorial Department’s two English-language editors were responsible for language- and copy-editing the articles. As Professor Vogenauer considered the relaunch phase to have been successfully completed after five years, he passed on the co-editorship at the end of 2020. This journal will therefore no longer be edited at the Institute.

We would like to close on a personal note. After more than 30 years as editor of the Institute’s books series and journals, Karl-Heinz Lingens retired in February of 2019. He witnessed a large number of transformations at the Institute as well as in the world of publishing, and profoundly shaped the work of the Editorial Department, which grew from a team of just a few colleagues to a staff of ten in 2021. New challenges lie ahead. The Editorial Department is looking forward to developing and establishing further publication series and formats, both in legal history and in other fields of research, such as legal theory.

Otto Danwerth
PUBLICATIONS

The Institute publishes in-house research, research from its affiliates as well as excellent work of relevance to the Institute’s Research Fields by other scholars. Much of this research is still published in print, but it is increasingly also available online, mostly in Open Access.

RECHTSGESCHICHTE – LEGAL HISTORY

The Institute’s journal Rechtsgeschichte – Legal History (Rg) was launched in 2001. Starting with issue 20 (2012), the publishing concept was reshaped and now one issue per year is published, available both in print (Klostermann Verlag) and online in Open Access. Each issue assembles selected high-profile contributions on questions of broad interest to legal historians and articles concentrating on specific themes for its focus, debate or forum sections. Articles are written by Institute members as well as other national and international scholars. Last but not least, each issue is complemented by a critique section where monographs and edited volumes published within the past two years are reviewed. During the reporting period, the international and multilingual orientation was enhanced and now better reflects the multiplicity of global legal and research cultures.

Rechtsgeschichte – Legal History (Rg)
Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte
Editors: Thomas Duve and Stefan Vogenauer
Frankfurt am Main: Vittorio Klostermann
AMERICAN JOURNAL OF LEGAL HISTORY

The American Journal of Legal History (AJLH), originally founded in 1957, was the first English-language periodical in the field. Relaunched in 2016, the journal is now published by Oxford University Press. The new AJLH aims to publish outstanding scholarship on all facets and periods of legal history. While retaining its focus on American legal history, it accommodates the enormous broadening of the discipline’s intellectual horizon over the past decade and is particularly interested in contributions of a comparative, international or transnational nature. Book reviews are a regular feature. The AJLH is a quarterly, peer-reviewed journal, made available in printed and electronic form. Manuscript submissions are handled quickly and efficiently. Manuscripts concurrently submitted for publication elsewhere will not be considered. Accepted papers that have been copy-edited and typeset are made available online immediately through the ‘Advance Access’ function on the OUP website.

The American Journal of Legal History (AJLH)
Editors: Al Brophy (Alabama, until 2019), Felice Batlan (Chicago, 2019–2020) and Stefan Vogenauer (mpilhlt, until December 2020)
Oxford: Oxford University Press

60 (2020), issues 1-4, 584 pp.

STUDIEN ZUR EUROPÄISCHEN RECHTSGESCHICHTE

The Studien zur europäischen Rechtsgeschichte series has deeply influenced the discipline of legal history over the last few decades – and will continue to do so with ongoing publications. Nearly 330 volumes have been published as of the end of 2020. Current sub-series are: Bibliographica Juridica, Lebensalter und Recht, Moderne Regulierungsregime, Recht im ersten Jahrtausend, Rechtsräume, Savignyana.

Studien zur europäischen Rechtsgeschichte
Editors: Thomas Duve and Stefan Vogenauer
Frankfurt am Main: Vittorio Klostermann

vol. 308, 2019:
Rechtsräume, vol. 2:

vol. 309, 2018:

vol. 310, 2018:
vol. 311, 2018:

vol. 312, 2018:

vol. 313, 2018:

vol. 314, 2019:

vol. 316, 2019:
Philipp Lotmar, Das römische Recht vom Error, ed. by Iole Fargnoli. 2 vols., XXXII, VI, 1123 pp.

vol. 317, 2019:
Rechtsräume, vol. 3:

vol. 318, 2019:

vol. 319, 2019:
Guido Rossi, Representation and Ostensible Authority in Medieval Learned Law. XII, 598 pp.
GLOBAL PERSPECTIVES ON LEGAL HISTORY

As its title suggests, the series *Global Perspectives on Legal History* is designed to disseminate the research of legal historians who seek to transcend the established boundaries of national legal scholarship that typically focuses on a single, dominant modus of normativity and law. The series aims to privilege studies dedicated to reconstructing the historical evolution of normativity from a global perspective. It includes monographs, source editions and collaborative works in a variety of languages. All titles in the series are available both as premium print-on-demand and online in Open Access.

*Global Perspectives on Legal History* (GPLH)
A Max Planck Institute for European Legal History Open Access Publication
Editors: Thomas Duve and Stefan Vogenauer
Frankfurt am Main

vol. 5, 2018:

vol. 11, 2018:
Massimo Brutti and Alessandro Somma (eds), Diritto. storia e comparazione. Nuovi propositi per un binomio antico. VII, 595 pp.

vol. 12, 2019:
vol. 13, 2020:
Pilar Mejía, Otto Danwerth and Benedetta Albani (eds), Normatividades e instituciones eclesiásticas en el Nuevo Reino de Granada, siglos XVI–XIX. VI, 278 pp.

vol. 14, 2020:

vol. 15, 2020:

MAX PLANCK STUDIES IN GLOBAL LEGAL HISTORY OF THE IBERIAN WORLDS

The volumes published in this series deal with legal-historical research on areas that interacted with the Iberian empires during the early modern and modern periods in Europe, the Americas, Asia and Africa. The focus of this series is global in the sense that it does not just limit itself to imperial spaces as such, but also looks at the globalisation and localisation of norms within the spaces that were in contact with these imperial formations. The global dimension is, moreover, underscored by the attention paid to the coexistence of a variety of normativities and their cultural translations at different times and in different places. The volumes thus decentre traditional research perspectives and are open to exploring various modes of normativity.

All of the monographs, edited volumes and text editions in the series are peer-reviewed and available in print and online in Open Access. Brill’s Open Access books are distributed free of charge in Brill’s E-Book Collections and can be found via DOAB, OAPEN and JSTOR.

Max Planck Studies in Global Legal History of the Iberian Worlds (MPIW)
Editor: Thomas Duve
Leiden / Boston: Brill

vol. 1, 2020:
METHODICA – EINFÜHRUNGEN IN DIE RECHTSHISTORISCHE FORSCHUNG

The series *methodica – Einführungen in die rechtshistorische Forschung* offers introductions to research in legal history focusing on sources and methods. The volumes, each of which covers a different topic, provide basic information in a standard format, without claiming the completeness of a handbook, and cover topics from the history of research and sources to methods, the art of legal history and basic literature on the respective topic.

*methodica – Einführungen in die rechtshistorische Forschung*
Editors: Thomas Duve, Caspar Ehlers and Christoph H. F. Meyer
Berlin / Boston: De Gruyter Oldenbourg

vol. 5, 2018:
Karl Härter, Strafrechts- und Kriminalitätsgeschichte der Frühen Neuzeit, X, 204 pp.

STUDIEN ZU POLICEY, KRIMINALITÄTSGESCHICHTE UND KONFLIKTREGULIERUNG

The series *Studien zu Policey, Kriminalitätsgeschichte und Konfliktregulierung*, edited by Michael Stolleis and Karl Härter, publishes studies related to the Institute’s Research Field The History of Criminal Law, Crime and Criminal Justice. The monographs, dissertations and edited volumes cover a broad variety of research topics: gute Policey in early modern territories and cities, legal discourses and Policeywissenschaft, the regulation of economy, and the representation of crime in popular media.

*Studien zu Policey, Kriminalitätsgeschichte und Konfliktregulierung*
Editors: Michael Stolleis and Karl Härter
Frankfurt am Main: Vittorio Klostermann

2018:
Christian Kullick, »Der herrschende Geist der Thorheit«. Die Frankfurter Lotterienormen des 18. Jahrhunderts und ihre Durchsetzung. IX, 433 S.

2019:

2019:
DIE DEUTSCHEN KÖNIGSPFALZEN

The systematic research on medieval royal palaces (palatia), originally a project of the Max Planck Institute for History in Göttingen, is now characterised by the Institute's cooperation with local scientific institutions within the German federal states and local editorial departments. As head of the editorial board, Caspar Ehlers is supported by the founding editor of the series, Thomas Zotz (Freiburg).

Die deutschen Königspfalzen – Repertorium der Pfalzen, Königshöfe und übrigen Aufenthaltsorte der Könige im deutschen Reich des Mittelalters. Veröffentlichung des Max-Planck-Instituts für europäische Rechtsgeschichte Frankfurt am Main
Editor: Caspar Ehlers
Göttingen: Vandenhoeck & Ruprecht

Vol. 3,2,6, 2020:

Vol. 5,1,2, 2020:
Helmut Flachenecker, Bernd Päffgen and Rudolf Schieffer (eds) / Peter Schmid (Bearbeiter), Die deutschen Königspfalzen, Band 5; Teilband 1.2: Altbayern, Regensburg. XXXVIII, 286 pp.

MAX PLANCK INSTITUTE FOR EUROPEAN LEGAL HISTORY RESEARCH PAPER SERIES
(since 1 January 2021: Max Planck Institute for Legal History and Legal Theory Research Paper Series)

The research paper series, edited by Thomas Duve and Stefan Vogenauer, aims to enhance the international profile of the Institute. Since 2012, the series has been available online in the Social Science Research Network (SSRN) eLibrary. Working papers (WPS), pre-prints and post-prints (APS) are published in Open Access, formerly under a CC-BY-NC-ND license and since paper no. 2019-06 under CC-BY 4.0 International.

Max Planck Institute for European Legal History Research Paper Series
Social Science Research Network (SSRN) eLibrary
Editors: Thomas Duve and Stefan Vogenauer

No. 2018-01:

No. 2018-02:
No. 2018-03: Colette R. Brunswig, Perspektiven einer digitalen Rechtswissenschaft: Visualisierung, Audiovisualisierung und Multisensorisierung

No. 2018-04: subsidiaria et instrumenta
Lilly Gerstorfer and Jan Thiessen, Unternehmensrechtliche Lehrstühle in der Berliner Republik

No. 2018-05: subsidiaria et instrumenta
Peter Collin, Regulierte Selbstregulierung in rechtshistorischer Perspektive. Studien und Materialien

No. 2018-06: Francisco Cuena Boy, Presunciones (DCH)

No. 2018-07: Timothy Louis Schroer, Multinormativity in Western Arguments Regarding Punishment of the Boxers and their Patrons, 1900–1901

No. 2018-08: Sandro Olaza Pallero, Peticiones Excesivas (DCH)

No. 2018-09: Claudio Ferlan, Ayuno Eclesiástico (DCH)

No. 2018-10: Christoph Rosenmüller, Two Kingdoms in a Multi-Tiered Empire: New Spain and New Galicia in the Mid-Eighteenth Century

No. 2018-11: Eva Elizabeth Martínez Chávez, Precario (DCH)

No. 2018-12: Gustavo César Machado Cabral, Árbitros (DCH)


No. 2018-14: Máximo Sozzo, ¿Más allá de una narrativa del cambio epocal? Desafíos para una mirada histórica y comparativa sobre la penalidad contemporánea

No. 2018-15: Ana de Zaballa Beascoechea, Matrimonio (DCH)

No. 2019-01: Esteban Federico Llamosas, Abogados (DCH)
No. 2019-02:
Gunnar Folke Schuppert, Eine globale Ideengeschichte in der Sprache des Rechts

No. 2019-03:
Alejandra Juksdivia Vázquez Mendoza, Delitos de los niños (DCH)

No. 2019-04:
Diego Molina Pico, Purgación Canónica (DCH)

No. 2019-05:
Claudio Ferlan, Prácticas de piedad (DCH)

No. 2019-06:
Sebastián Terráneo, De la fe católica (DCH)

No. 2019-07:
Agustín Casagrande, Confesos (DCH)

No. 2019-08:
Audrey Dauchy, Arrendamiento y Alquiler (DCH)

No. 2019-09:
Rafael Ruiz, Pruebas (DCH)

No. 2019-10:
Pilar Latasa, Matrimonios clandestinos y matrimonios secretos (DCH)

No. 2019-11:
Silvano Giordano, Legados (DCH)

No. 2019-12:

No. 2019-13:
Samuel Barbosa, Juramentos (DCH)

No. 2019-14:
Pol Rene Moutin, Compraventa (DCH)

No. 2019-15:
Javier Barrientos Grandón, Bienes de los clérigos (DCH)

No. 2019-16:
Luize Stoeterau Navarro, A First Approach to the Law and Institutions of Dutch Brazil (1630–1654)

No. 2019-17:
No. 2019-18: 
Javier Villa Flores, Falseadores (DCH)

No. 2019-19: 
Thomas Duve, Pragmatic Normative Literature and the Production of Normative Knowledge in the Early Modern Iberian Empires in the 16th–17th Centuries

No. 2019-20: 
Francisco Javier Andrés Santos, Custodios (DCH)

No. 2019-21: 
Francisco Javier Andrés Santos, Secuestros (DCH)

No. 2019-22: 
Veronica Undurraga Schüler, Injuriantes (DCH)

No. 2019-23: 
Anastasia Assimakópulos, Oficios Eclesiásticos (DCH)

No. 2019-24: 
Joaquín Sedano, Impotencia (DCH)

No. 2019-25: 
subsidia et instrumenta 
Caspar Ehlers, Forschungsbibliographie „Rechtsräume”

No. 2019-26: 
Leopoldo López, Libelo, Citación y Contestación de la Demanda (DCH)

No. 2020-01: 
María del Pilar Martínez López-Cano, Usuras (DCH)

No. 2020-02: 
Francisco Castilla Urbano, The Salamanca School on Slavery: From Naturalism to Culture and Awareness

No. 2020-03: 
Gilberto Guerra Pedrosa, Depósito (DCH)

No. 2020-04: 
Stefan Vogenauer, Sources of Law and Legal Method in Comparative Law

No. 2020-05: 
Manuel Bastías Saavedra, Diversity as Paradox: Legal History and the Blind Spots of Law

No. 2020-06: 
Pol Rene Moutin, Trueque (DCH)

No. 2020-07: 
Osvaldo Rodolfo Moutin, Oficios Divinos (DCH)
No. 2020-08:  
Leopoldo López, Reconvención (DCH)

No. 2020-09:  
subsidia et instrumenta  

No. 2020-10:  
Rodolfo Aguirre Salvador, Parroquias (DCH)

No. 2020-11:  
Jaime Ricardo Gouveia, Episcopal Justice in a Time of Change: The Court of Portalegre, 1780–1835

No. 2020-12:  
Thomas Duve, The School of Salamanca. A Case of Global Knowledge Production

No. 2020-13:  
Fernando Jesús González, Inmunidad eclesiástica (DCH)

No. 2020-14:  
Fabiane Bordignon, Donación (DCH)

No. 2020-15:  
subsidia et instrumenta  
Christoph H. F. Meyer, Non-Christians in the Normative Culture of the Catholic Church between Antiquity and the Modern Era: A Select Bibliography

No. 2020-16:  
Sebastián Terráneo, Clérigos (DCH)

No. 2020-17:  
José Luis Egío García, Producing Normative Knowledge Between Salamanca and Michoacán: Alonso de la Vera Cruz and the Rocky Road of Books and Marriage

No. 2020-18:  
Juana María Marín Leoz, Instrumentos (DCH)

No. 2020-19:  
Eva Elizabeth Martínez Chávez, Comodato (DCH)

No. 2020-20:  
Joaquín Sedano, Bendición de las nupcias (DCH)

No. 2020-21:  
Manuela Bragagnolo, Crossing Temporal Boundaries. Lodovico Antonio Muratori's Note-taking Practice and the Material Circulation of the Thinking on Law between the 16th and 18th Centuries

No. 2020-22:  
Andrés Vargas Valdés, Hurtadores (DCH)
SALAMANCA WORKING PAPER SERIES

The Salamanca Working Paper Series, edited by Thomas Duve and Matthias Lutz-Bachmann, offers philosophical, legal, and theological articles related to the School of Salamanca. It reflects the research done in the project, but contributions from other scholars are also welcome. All articles are subject to a peer-review procedure. The working paper series is available online in Open Access.

Salamanca Working Paper Series (ISSN 2509-5080)
Editors: Thomas Duve and Matthias Lutz-Bachmann

No. 2018-01:
Francisco Cuena Boy, Contractus et quasi-contractus

No. 2018-02:
Thomas Duve, La Escuela de Salamanca: ¿un caso de producción global de conocimiento?

No. 2018-03:
Martin Schlag, Socio-Economic-Political Concepts in Late Iberian Scholasticism

No. 2019-01:
Xavier Agenjo and Francisca Hernández, Visibility and Digital Accessibility of the School of Salamanca in a Linked Open-Data Environment

No. 2019-02:
José Antonio Cervera, The School of Salamanca at the end of the known world in the 16th century: Martín de Rada, Domingo de Salazar and Juan Cobo in the Philippines, 1565–1594

No. 2020-01:
Otto Danwerth, Erasmus, christlicher Humanismus und Spiritualität in Spanien und Neu-Spanien (16. Jahrhundert)
RESEARCH COORDINATION

The tasks of the Research Coordinator at the mpilhlt are manifold. She supports the Directors in the coordination, further development, implementation and presentation of the Institute’s research activities. At the core of her tasks lies the facilitation of communication, both between the researchers – across all Departments and Research Groups – as well as between them, the Max Planck Society, the wider academic community, the media and the general public. The Research Coordinator achieves this by creating and maintaining structures and platforms as well as by organising events.

The activities can be summarised as belonging to five areas: (1) supporting the Directors, (2) creating structures to support the researchers, (3) coordinating and organising events, (4) communicating and documenting the Institute’s research findings, and (5) coordinating and fostering cooperations and scientific networks.

Supporting the Directors

The Research Coordinator manages the implementation of the Directors’ decisions and initiatives in the areas of research that concern the Institute as a whole. During the reporting period, the structures within the Departments as well as the Institute-wide event formats were reorganised to reflect developments in the Institute’s research profile and to prepare for the addition of the third Department. The Research Coordinator supported the implementation of these changes by adapting existing workflows and preparing the appropriate documentation. She also oversaw the associated complete revision of the Institute’s website and the implementation and publicising of the Institute’s new name.
In 2018 and 2019, the Research Coordinator also supported the setting up of the organisational and administrative infrastructure of the Max Planck Law network (see Cooperation below). A subject that will also require significant attention in future is the development and implementation of a sustainable research data management strategy at the Institute, which the Research Coordinator is currently preparing together with the Institute’s Head of IT and the Digital Humanities Officer.

**Working together**

A special concern of the Research Coordinator is to create structures that enable the researchers to organise their work in the best possible way. She identifies the concrete needs of the researchers and develops solutions in close cooperation with the Service Departments such as the IT. When most researchers had to suddenly shift to remote working during the pandemic, special attention was paid to quickly organising various tools and platforms in order to stay in touch with each other and to enable collaboration even under conditions of physical distance. These included an Institute-wide chat programme, which also functions as the platform for events such as the Books Day, and the organisation of various online workshops and help sessions regarding a variety of video conferencing and other digital collaboration tools.

Whether during a pandemic or not, a key instrument for creating a good and productive research environment lies in an effective and comprehensive onboarding system that helps new colleagues to quickly orientate and familiarise themselves with the procedures, features and opportunities of academic life at the Institute. The Research Coordinator has a special role to play in the integration of new researchers into the Institute’s community, as her position provides her with an overview of processes and activities in all Departments and Research Groups as well as in the Institute as a whole. In cooperation with the Diversity Group of the Institute, particular attention was paid during the reporting period to the welcoming of the new international researchers, especially in 2020, when their arrival in Germany was made even more difficult by the COVID-19 pandemic.

In addition, the Research Coordinator advises researchers on matters of third-party funding applications and project planning and is the contact person for doctoral students and postdoctoral researchers on questions of work organisation and career planning.

**Events**

A third important area of research coordination concerns the organisation of events that aim to foster cross-departmental exchange within the Institute, such as the Institute’s Away Day, the Plenum, Forum and Colloquium. They create the space for intellectual exchange and cross-fertilisation between the Institute’s researchers, and provide the opportunity to reflect on the common ground of the different Departments’ and Research Groups’ work (see Annex). A special highlight in the Institute’s academic year as well as in the Research Coordinator’s work is the Summer Academy for Legal History, which was organised and led by the Research Coordinator in 2018 and 2019. This, usually annual, event offers a special opportunity to present the Institute’s work to a group of international early career researchers and to lay the foundation for future cooperations. Many former participants of the Summer Academy have returned to the Institute as guests or even as doctoral students or postdoctoral researchers.
Visitors’ programme

Also crucial to building and maintaining the Institute’s international network is the Visitors’ programme, another key area of the Research Coordinator’s work. She handles initial inquiries by researchers and oversees the application and selection process for scholarships. Together with the International Office, which is part of the Administration, she is also one of the main contact persons for visiting researchers while they are at the Institute. The mpiphlt usually hosts about 70 visiting scholars each year (see the list of the Visitors in chapter 5 Forum). In 2020, the COVID-19 pandemic necessitated the cancellation or rescheduling of most research stays and posed significant logistical challenges.

Cooperation within the Max Planck Society

During the reporting period, the mpiphlt also significantly strengthened its connections to other researchers within the Max Planck Society as a result of the creation in 2019 of Max Planck Law, a network dedicated to fostering and intensifying the cooperation between the ten Max Planck Institutes engaged in advanced legal research. Max Planck Law is chaired by Stefan Vogenauer and hosted by the mpiphlt. Setting up the organisational structure and organising the Inaugural Conference (with more than 120 participants) in October 2019 was one of the major tasks for the Research Coordinator. She now continues to act as a liaison officer for the initiative at the Institute.

The Research Coordinator’s own networks within the Max Planck Society also benefit the Institute, eg through the sharing of best practices. She is part of the Public Relations Network and in February 2019 co-organised a two-day event for the Press Officers of the GSHS Section, which took place jointly at the mpiphlt and the Max Planck Institute for Empirical Aesthetics. She stays in close contact with the Research Coordinators of the other MPIs and is a member of the working group ‘NEW Work & Diversity’, initiated by the Talent, Gender & Diversity Board’ of the Max Planck Society’s Administrative Headquarters in Munich.

Research communication

Finally, the Research Coordinator is in charge of science communication and the presentation of research activities to those outside the Institute. She is responsible for press and public relations and coordinates the online presence of the Institute as well as the publication of the monthly newsletter. The Institute is proud to reach out to around 700 subscribers with its monthly newsletter and stays in touch with a total of just under 5000 followers via the Institute’s Twitter and Facebook accounts. During the reporting period, the Research Coordinator also organised the transition of the Institute’s website to a new, responsive design. As the site was also adapted to reflect the changes in the Institute’s research themes and structures at the same time, nearly all content was updated in the course of the transition. The addition of the third Department, the preparation for the consequent change of the Institute’s name and its web domain as well as for the implementation of the Max Planck Society’s new corporate design were other major tasks in the area of media and communication during the reporting period.

Stefanie Rüther
ADMINISTRATION

‘Excellent research requires excellent administration’

This guiding principle determines our aims: to relieve researchers of administrative duties and to promote highest-quality research by means of optimal personnel support and the appropriate allocation of the available funds in compliance with all regulations. We strive to operate as unbureaucratically, effectively and professionally as possible. This is made possible by a highly motivated and competent team and well-structured processes.

During the reporting period, the Administration supported two fully-staffed Research Departments, two Research Groups, a number of additional, externally funded projects, as well as the realisation of numerous projects regarding the repair and upkeep of our facilities. In addition, 2020 brought numerous new challenges due to the COVID-19 pandemic that had to be addressed and managed with the highest possible degree of flexibility, something which we successfully achieved. This was substantially aided by the introduction of virtual workplaces for administrative staff in July 2020, which enabled mobile working.

Marietta Auer’s appointment as a new Director as of 1 September 2020 led to the foundation of a third Research Department at our Institute, resulting in a need for expansion both in terms of office space and in supporting staff. We were able to create a number of additional positions, eg in the Editorial Office, in the Administration and the area of PR / science communication as a result of successful application to the central MPS administration. Unfortunately, the MPS declined or postponed our requests for additional posts in other Service Facilities.

It was also not possible to implement a satisfactory and timely solution regarding the required additional office space. We expect the additional rented offices — which, however, will not cover the existing demand — to become available probably only towards the end of the second quarter of 2021.

Already in 2019, the need for additional office space led us to convert our former caretaker’s flat into offices. This project was completed in 2020, but the resulting additional work spaces will be entirely taken up by a new Max Planck Research Group which will start working at the Institute in 2021.

We took advantage of the relative quiet in the Institute building during the COVID-19 pandemic to carry out a number of building and maintenance projects, including the renovation and refurbishment of our guest apartments.

In my additional role as General Head of Service Facilities, I also want to mention that during the reporting period, we were able to recruit two excellent new colleagues to head the Editorial Office and the IT Department, respectively. Otto Danwerth took up his role as Head of the Editorial Office in March 2019, and Jörn Hawliczek joined us as Head of the IT Department on 1 May 2020.

In the Administration, Rebecca Marian completed her training as office administrator (Bürokauffrau) with excellent success and joined us as a member of staff in the area of HR. This additional
position is necessary particularly to deal with the recruitment of staff and the general provision of personnel services to our third Research Department.

Another new member of staff is Isabel Koschnicke, who joined us in the area of purchasing and procurement on 1 August 2020. The creation of an additional position dedicated to these tasks was necessitated by the constantly increasing requirements regarding procurement and accounting and the steadily growing workload that is only partly the result of the creation of a new Research Department.

In the area of Building Services, we were able to recruit Matthias Jahn, who joined us in November 2020.

On a personal note, I would like to mention my new additional role as a member of the committee representing the Heads of Administration (Verwaltungsleitersprecherkreis) in the MPS. I was elected in July 2020 to serve as the regional representative for the Max Planck Institutes in Hesse, Rhineland-Palatinate and Saarland. This involves improving communication between the institutes and the Society’s central administration as well as finding workable solutions to problems arising out of the implementation of administrative directives at the institute level.

I would also like to take this opportunity to warmly thank all members of staff in the Administration and General Services for their excellent work, their support and good spirits even in difficult situations, like the current pandemic.

Carola Schurzmann
**Vocational training 2018—2020**

The Institute has for many years been continuously engaging in vocational training in three of its Service Facilities (Administration, Library, IT) along three different occupational profiles. Up to eight trainee positions are available. The Institute has been recognised as a provider of excellent vocational training and received awards from the Chamber of Commerce and the Max Planck Society.

In 2020, Rebecca Marian, who undertook her training in the Administration part-time due to family responsibilities and passed her exams in January 2020, won the Max Planck Society's Trainee Award. The mpilhlt’s Managing Director, Thomas Duve, and the Head of Administration, Carola Schurzmann, who had oversee her training, presented Ms Marian with the Award Certificate of the MPS President in a small ceremony in summer 2020. The prize, which also carries a monetary award, honours outstanding professional and educational accomplishments as well as personal development during the vocational training.

When possible, the Institute trains staff to fill its own demands, which has proved very advantageous particularly for the Administration and the Library. During the reporting period, we were able to fill positions in the Library and the Administration with excellent candidates who had received their vocational training with us.
IT MANAGEMENT

The extensive work required to maintain the Institute’s IT infrastructure usually takes place behind the scenes. The sudden need for a large proportion of the Institute’s staff – both researchers and non-scientific personnel – to work remotely during the COVID-19 pandemic, however, brought the importance of functioning and modern IT equipment to the fore. It also demonstrated how many different aspects of research now rely on digital and online services and tools.

Nevertheless, the pandemic was not the only significant change or new challenge that the IT Management dealt with during the reporting period. In summer of 2020, the mpilhl’s long-standing Head of IT, Dr Volker Novak, left the Institute, which profited greatly from his capability and commitment over many years. Dr Novak successfully established and developed the Institute’s IT Management and initiated many IT projects, the results of which will continue to benefit the Institute in the future. The first tasks of Dr Novak’s successor as Head of IT, Jörn Hawliczek, were to organise the quick transition of workspaces to remote working and to prepare for the first internal audit of the Institute’s IT Management by the Max Planck Society in August 2020. Further major tasks included the addition of a third Department to be equipped and incorporated into the IT infrastructure and the resulting name change of the Institute.

IT infrastructure

In any organisation, the need to continuously update hardware and software to create a high-quality digital work environment and to maintain the highest IT security standards is one of the main challenges of IT management. In addition, the Institute’s IT is committed to responding quickly to the current needs of the researchers.

At the beginning of 2018, the majority of desktop computers (ca 170) at the Institute were replaced. This necessitated not only the installation of equipment and software and its adaptation to each specific user’s requirements, but also led to an increase in individual support needs. The systems for the installation and updating of the software used at the Institute were repeatedly extended and revised during the reporting period.

The growing use of databases and digitisation in research on law and legal history has resulted in a continuously increasing need for data storage capacity. Also in 2018, therefore, the Institute’s data storage services and the associated strategy were successfully restructured and updated.

An important change in 2020 was the introduction of virtual workspaces for our colleagues working in the Administration. Provided by the Information and Communication Department (ICT) of the Max Planck Society’s Administrative Headquarters, these offer a secure, mobile and flexible virtual work environment for staff requiring access to the MPG’s online administrative systems.

Data protection and compliance

Another task which has gained in importance over the last years is data protection and security in all areas of IT and online services. The EU General Data Protection Regulation (GDPR), that
entered into force in 2018, resulted in extensive changes and additional compliance requirements. These include considerable reporting and documentation obligations, the fulfilment of which is facilitated by the productive cooperation with the Institute’s Data Protection Coordinator.

The Head of IT has also taken on the new role of local IT Security Officer introduced by the Max Planck Society during the reporting period. Based in part on the recommendations following the IT audit, further measures to improve data security, also on mobile devices, were implemented in autumn of 2020 in close consultation with the mpihlt’s Data Protection Coordinator.

As a result of the Max Planck Society’s introduction of centralised procurement of software systems and licences, the Head of IT now also holds the responsibility of Software Licencing Officer.

Communication and remote working

On top of the creation of optimal individual IT workspaces for all research and non-scientific staff, supporting our researchers also in their collaborations with partners outside the mpihlt is an important goal of the Institute’s IT Management. Already before the COVID-19 pandemic, the video conferencing equipment in the lecture room and elsewhere in the Institute was modernised. The selection and installation of suitable video conferencing systems and the equipment of all workspaces with webcams consumed considerable resources in 2020, also in terms of time and energy, but generally went smoothly. This was not least due to the organisation of various online ‘hands-on’ workshops introducing different tools and services, held in cooperation with the Research Coordinator.

New Department – new name

A further key aspect of the last years’ work was the equipping of the third Department and the implementation of the associated name change of the Institute. It was decided early on that the new name should be reflected also in our webpage domain and in the staff’s email addresses. Though the change was small in terms of the number of characters involved – with rg becoming lhlt – in practice, of course, the manifold connections of the Institute and its Research and Service Departments – from the Library to the Editorial Office, the Administration and the Research Coordinator – in addition to various projects’ online presence posed complex challenges. A project team led by the Head of IT was able to implement the changes with only minor hiccups, so that now the Institute and all its parts can be reached under lhlt.mpg.de.

Jörn Hawliczek
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IF IT'S NOT OKAY, IT'S NOT THE END.