



PUBLIKATIONEN
2021
PUBLICATIONS





Willkommen beim Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie

(ehemals Max-Planck-Institut für europäische Rechtsgeschichte)

Am Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie (mpihit) in Frankfurt am Main forschen Wissenschaftlerinnen und Wissenschaftler zur Geschichte und Theorie des Rechts. Gegründet 1964 ist es heute mit seinen drei Abteilungen, der Spezialbibliothek mit 490.000 gedruckten Medieneinheiten sowie zahlreichen internationalen Gästen zu einem Knotenpunkt für alle geworden, die weltweit zur Vergangenheit und Gegenwart unserer nationalen und transnationalen Rechtsordnungen arbeiten.

DAS INSTITUT

Das Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie (bis Ende 2020: Max-Planck-Institut für europäische Rechtsgeschichte) betreibt seit seiner Gründung im Jahre 1964 in Frankfurt am Main Forschungen zur europäischen und globalen Rechtsgeschichte sowie zur Theorie des Rechts. Mit seinen drei Abteilungen unter der Leitung der Direktoren Marietta Auer (Multidisziplinäre Rechtstheorie), Thomas Duve (Historische Normativitätsregime) und Stefan Vogenauer (Europäische und vergleichende Rechtsgeschichte), seiner Spezialbibliothek mit über 490.000 gedruckten Medieneinheiten sowie zahlreichen internationalen Gästen ist das Institut zu einem Knotenpunkt für alle Forschenden geworden, die sich mit vergangenen und gegenwärtigen nationalen und transnationalen Rechtsordnungen befassen. Viele der wissenschaftlichen Erträge werden in den Publikationsreihen des Instituts veröffentlicht.

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RECHTSGESCHICHTE – LEGAL HISTORY



RECHTSGESCHICHTE – LEGAL HISTORY

Rechtsgeschichte – Legal History (Rg) is the Institute's journal, edited by Directors Marietta Auer, Thomas Duve and Stefan Vogenauer. The journal aims to be a forum for high-level scholarship in all branches of legal history. Its scope therefore reflects the full breadth of the discipline and is not restricted to particular periods of time or specific areas of law. Its particular profile derives from the research conducted at the Institute on the legal history of Europe, the common law world and the Iberian empires.

The journal has an international orientation and adopts a multilingual approach in order to reflect the diversity of global legal and research cultures. A peer review procedure ensures the high quality of the contributions. The journal's »Research« section presents selected outstanding articles of general interest. The »Focus« section brings together contributions on a common theme, and the short pieces in the »Debate« or »Forum« section discuss a given topic in legal history. The »Critique« section contains reviews of recent publications in the field.

Rg is published by Vittorio Klostermann Verlag, Frankfurt am Main. Since 2012, the annual journal is also published online in Open Access on the journal website: rg.rg.mpg.de/en/. The journal is indexed, among others, in the *Directory of Open Access Journals (DOAJ)*.



RG 29

Frankfurt am Main: Vittorio Klostermann, 472 p.

ISBN 978-3-465-04359-1 print ISSN 1619-4993, 49 €

Open Access online edition: www.rg-rechtsgeschichte.de/en/rg29,
online ISSN 2195-9617

in memoriam

- Thomas Duve, Michael Stolleis (1941–2021)

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- Wolfram Brandes, Byzantinische Rechtsgeschichte in Frankfurt – eine Bilanz

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- Dóra Frey, Regulation of the Citizenship of Ethnic Hungarians Living Abroad: Ethnopolitics, Demographical Issues and Humanitarian Aspects – Bilateral and Unilateral Solutions



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- José Luis Egío García on Lorenzo Maniscalco, *Equity in Early Modern Legal Scholarship*
- Bertram Scheffold on Wim Decock, *Le marché du mérite*

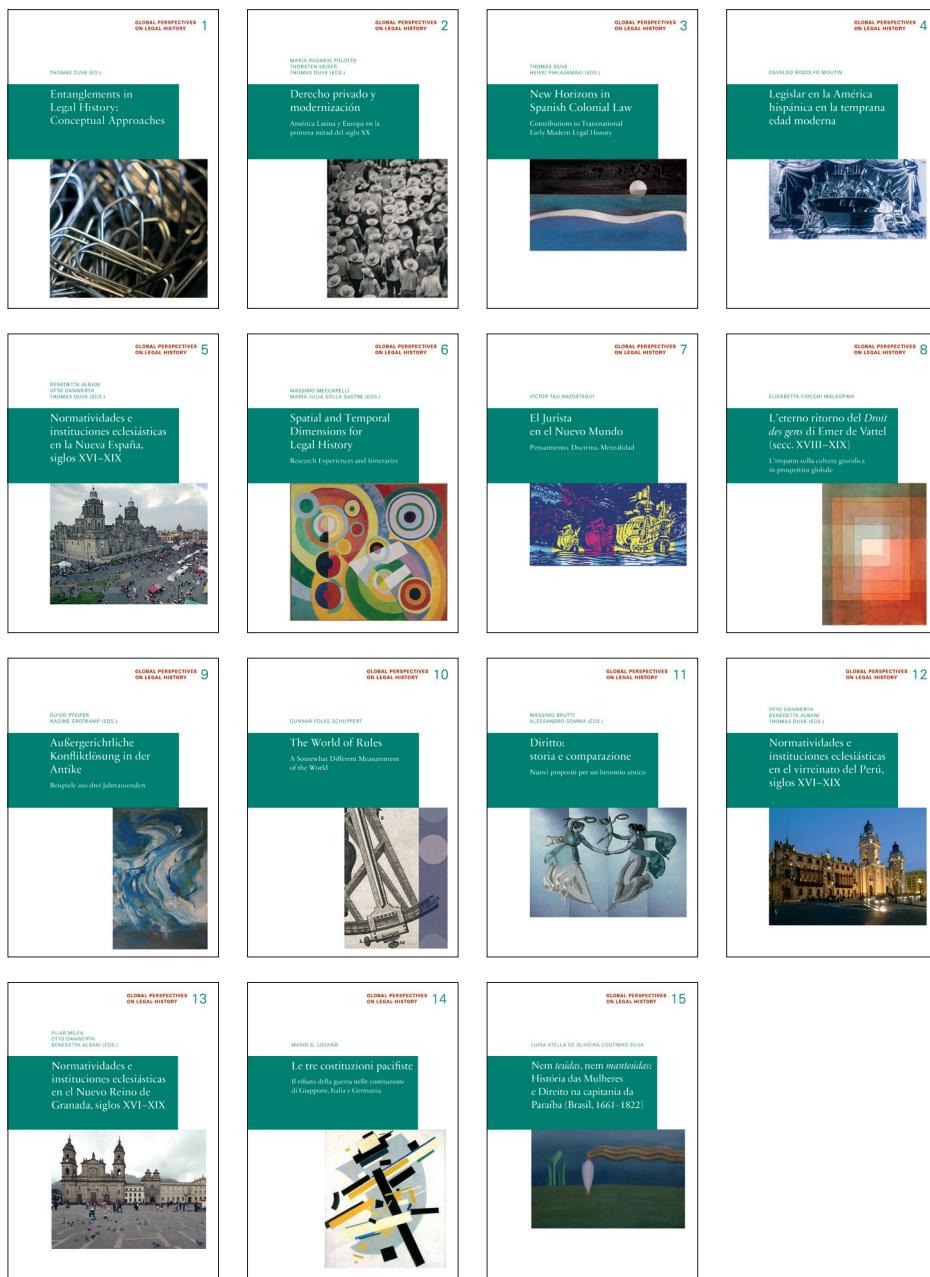
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- Marietta Auer on Bruce A. Kimball, Daniel R. Coquillette, *The Intellectual Sword*
- Alessandro Somma on Jessica Whyte, *The Morals of the Market*
- and many more

marginalia

- Johannes W. Flume, Constructing the Stock Exchange
- Michael Widener, From Law Book to Legal Book: The Origin of a Species



GLOBAL PERSPECTIVES ON LEGAL HISTORY



GLOBAL PERSPECTIVES ON LEGAL HISTORY

The book series *Global Perspectives on Legal History*, edited by Directors Marietta Auer, Thomas Duve and Stefan Vogenauer, opens up the legal history of Europe to the history of its global connections. It publishes monographs as well as edited volumes which transcend the established boundaries of national legal scholarship and focus on different modes of normativity and law as well as on their historical development.

The peer-reviewed series addresses the global research community also in terms of its format. From its outset in 2014, it was designed as a multilingual Open Access publication series. *GPLH* primarily appears online, freely accessible to everyone on the Institute's homepage and can be found via DOAB, OAPEN, JSTOR and Project MUSE. A print-on-demand service is available for those readers who prefer or require a printed copy. With the publication of the 13th volume, the print editions are available as hardcover.



GLOBAL PERSPECTIVES ON LEGAL HISTORY**VOLUME 16**

Gunnar Folke Schuppert

A GLOBAL HISTORY OF IDEAS IN THE LANGUAGE OF LAW

Frankfurt am Main: Max Planck Institute for Legal History and Legal Theory, 328 p.

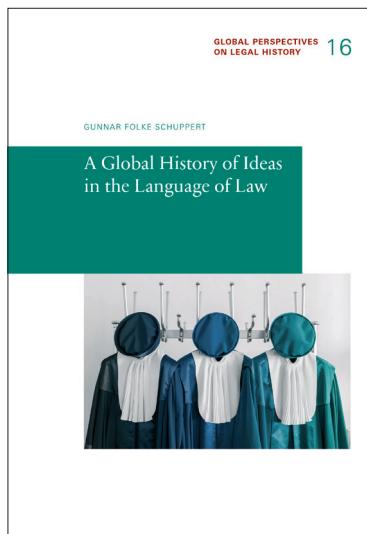
ISBN 978-3-944773-30-8, print-on-demand: www.epubli.de, 22,79 €

Open Access online edition: <http://dx.doi.org/10.12946/gplh16>

eISBN 978-3-944773-31-5

The book is based on the observation that the study of the global history of ideas is currently dominated by historians, philosophers and political theorists. Scholars of law play almost no role in this context. This neglect of the perspectives of legal history and legal sociology conflicts with the easily established finding that many central concepts of the history of political ideas are at the same time legal concepts, such as natural law, human rights, constitution, and the rule of law. Moreover, many key figures in the history of ideas engaged deeply with the world of law and some – such as Kant, Hegel, and Weber – published their own philosophy or sociology of law.

From this point of departure, the book explores the global history of ideas by asking to what extent the history of political ideas can also be told in the language of law. The result, unsurprisingly, is that a global history of political ideas not only can but should be written in the language of law. This book wants to make a small contribution to that end.



VOLUME 17

Mariana Armond Dias Paes

ESCLAVOS Y TIERRAS ENTRE POSESIÓN Y TÍTULOS

La construcción social del derecho de propiedad en Brasil (siglo XIX)

Frankfurt am Main: Max Planck Institute for Legal History and Legal Theory, 200 p.

ISBN 978-3-944773-32-2, print-on-demand: www.epubli.de, 18,00 €

Open Access online edition: <http://dx.doi.org/10.12946/gplh17>

eISBN 978-3-944773-33-9

The book examines the social construction of legal relations between people and things in Brazil between the 1830s and 1890s. To this end, the research focuses on 74 legal proceedings of the Court of Appeals of Rio de Janeiro discussing dominion and possession over slaves and land. The first chapter assesses the contours that the legal category of possession acquired in 19th-century Brazil. It analyzes the role of social recognition in the configuration of situations of possession. This chapter also describes how interpretations of theories of possession delegitimized acts of land usage employed by certain groups – namely: indigenous and *agregados* – as possessory acts.

The second chapter analyzes the debates over domain titles and the process of document production undertaken by parties in legal proceedings. It also highlights the role of judicial

demarcations in this process of production and shows how courts often disregarded titles issued by married women. The chapter closes with a discussion of the new configurations that debates over titles acquired in the last decades of the century.

The third chapter focuses on cases of illegal and irregular acquisitions of slaves and land. The detailed analyses of the court cases presented in the book show that during the 19th century the construction of property rights in Brazil built upon the pre-existing structures of *ius commune*, whose categories were re-signified.



VOLUME 18

Pamela Alejandra Cacciavillani

CELEBRAR LO IMPOSIBLE

El Código Civil en el régimen jurídico de la propiedad: Córdoba entre fines del siglo XIX y comienzos del XX

Frankfurt am Main: Max Planck Institute for Legal History and Legal Theory, 302 p.

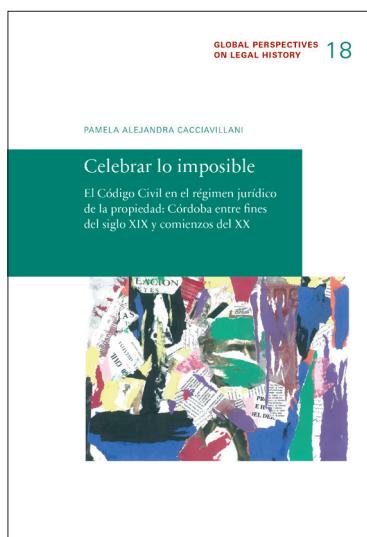
ISBN 978-3-944773-34-6, print-on-demand: www.epubli.de, 23,39 €

Open Access online edition: <http://dx.doi.org/10.12946/gplh18>

eISBN 978-3-944773-35-3

The book examines the challenges encountered by a national codification enterprise in the process of its implementation in the province of Córdoba, Argentina, at the end of the 19th century. The study's hypothesis is that the enactment of the Civil Code and its entry into force (1871) were necessary but not sufficient conditions to bring about significant changes in the traditional legal property regime.

The author analyses the operability of the code and the consequences that the enactment of this body of norms generated in society. She especially examines the impact that the Civil Code had on the processes of legal transition from a communal form of ownership – namely by indigenous communities – to private ownership.



Her analysis abandons a legalistic view of law by drawing on a wide range of sources to analyze both national and provincial developments. This dual perspective allows for a better understanding of the interpretation and implementation of the Argentine Civil Code in the provinces, but also stimulates a more general reflection on codification in federal contexts. The result is a multifaceted account that highlights the role of a particular provincial institution, the Topographic Department, and of a type of legal technical knowledge, land surveying, in rendering abstract property titles concrete.

VOLUME 19

Nicola Camilleri

STAATSANGEHÖRIGKEIT UND RASSISMUS

Rechtsdiskurse und Verwaltungspraxis in den Kolonien Eritrea und Deutsch-Ostafrika
(1882–1919)

Frankfurt am Main: Max Planck Institute for Legal History and Legal Theory, 316 p.
ISBN 978-3-944773-36-0, print-on-demand: www.epubli.de, 23,94 €
Open Access online edition: <http://dx.doi.org/10.12946/gplh19>
eISBN 978-3-944773-37-7

The book offers a comparative analysis of the history of colonial citizenship in the Italian and German colonial empires based on the close investigation of Eritrea and German East Africa. It not only looks at the production of legal texts, which mostly occurred in the metropolitan context, but also examines their implementation and the administrative practices regarding citizenship on the ground.

Historians of European colonialism have often stressed the distinction between metropolitan citizens and colonial subjects as an essential feature of colonial governmentality. This distinction existed in Eritrea and German East Africa, too, as Italians and Germans kept their legal status there, while the local population was excluded from metropolitan citizenship.

By dealing with colonial citizenship in Eritrea and German East Africa, this book addresses a central issue of the global history of European colonialism and its discriminatory nature.



Being aware of the many differences between the two East African regions analyzed, the work offers an innovative comparison looking at two colonies established in the same period and ruled by two powers, Germany and Italy, who were 'late' in acquiring overseas territories as compared to other European colonial empires. In this imperial space stretching between Europe and Africa, special attention is paid to the population on the spot, especially to agents of local origin.

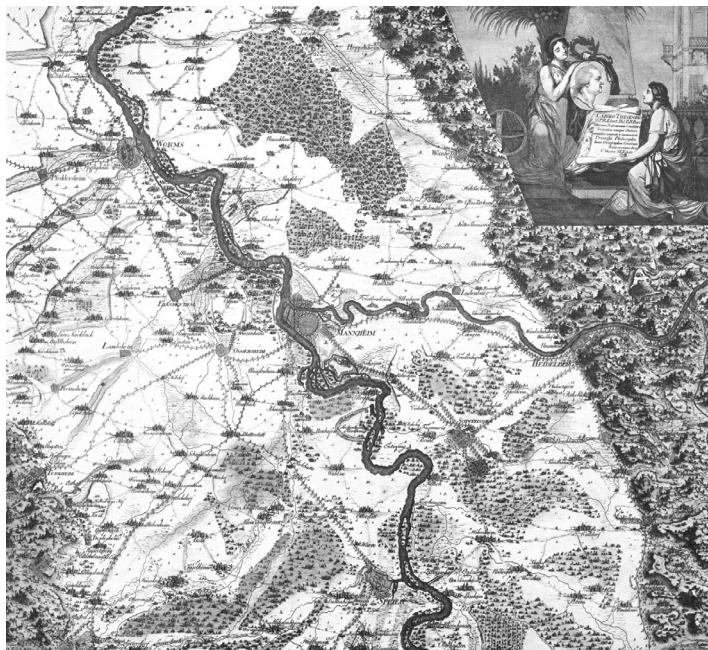
STUDIEN ZUR EUROPÄISCHEN RECHTSGESCHICHTE



STUDIEN ZUR EUROPÄISCHEN RECHTSGESCHICHTE

The volumes of this publication series, which started in 1971, were initially published under the title *Ius Commune Sonderhefte*, as additional volumes to the former Institute journal *Ius Commune*. In 2002 (from volume 151 onwards), the former subtitle became the series' new name: *Studien zur europäischen Rechtsgeschichte*. It now contains over 330 volumes. Monographs and edited volumes are published individually or within the current sub-series: *Savignyana*, *Rechtsräume*, *Moderne Regulierungsregime*, *Lebensalter und Recht*, *Recht im ersten Jahrtausend*, *Recht in der Industriellen Revolution*, *Rechtskulturen des modernen Osteuropa*, *Repertorium der Policeyordnungen der Frühen Neuzeit*, *Juristische Briefwechsel des 19. Jahrhunderts*, *Das Europa der Diktatur*, *Bibliographica Juridica*.

The increasingly multilingual series is traditionally published in print by Vittorio Klostermann Verlag. All manuscripts undergo a peer review process. We intend to make newly published volumes available online in Open Access after a period of three years. Older volumes will successively also be digitised.



BAND 326

Saskia Limbach

GOVERNMENT USE OF PRINT

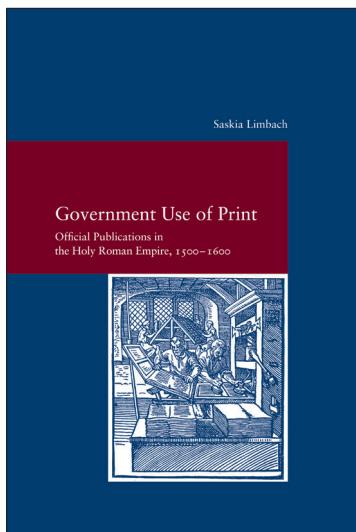
Official Publications in the Holy Roman Empire, 1500–1600

Frankfurt am Main: Vittorio Klostermann, 348 S., 79 €

ISBN 978-3-465-04425-3

Presenting the most comprehensive account of official print in the Holy Roman Empire during the sixteenth century, this study investigates the use of the printing press as an increasingly important instrument in the expansion of authority. By comparing and contrasting publications printed in the Duchy of Württemberg and in the Free Imperial City of Cologne, the author traces the tentative beginnings of collaboration between rulers and printers.

Making use of hitherto unexplored legal and business records, the study offers a sophisticated analysis of the early modern print trade which allows us to ascertain the business and market conditions that shaped the production of administrative and legal documents, such as police ordinances and announcements.



BAND 329

Till van Rahden und Michael Stolleis (Hg.)

EMANZIPATION UND RECHT

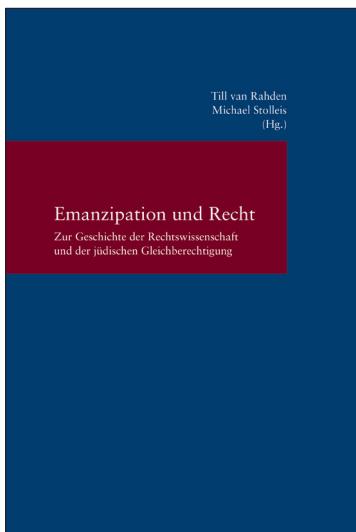
Zur Geschichte der Rechtswissenschaft und der jüdischen Gleichberechtigung

Frankfurt am Main: Vittorio Klostermann, 314 S., 69 €

ISBN 978-3-465-04535-9

Im Verlauf der jüdischen Emanzipation in Deutschland vom 18. Jahrhundert bis zum Ersten Weltkrieg entschieden sich viele jüdische Studenten für Rechtswissenschaft. Was mochten diese jungen Akademiker um 1850, 1880 oder 1910 überlegen, wenn es um ihre berufliche Zukunft ging? Sollten sie versuchen, im Staatsdienst, in der Richterlaufbahn, als Advokat erfolgreich zu sein, und welche Hindernisse waren gar auf dem Weg zu einer Stelle als Hochschullehrer zu überwinden?

Welche Orientierungen innerhalb der Jurisprudenz gewählt wurden, beleuchten die Beiträge des Sammelbandes. Sie zeigen, dass eine Mischung aus Prägungen durch Elternhaus und Erziehung, Reaktionen auf akademische Zwänge, idealistischer Aufbruchsstimmung in eine sich öffnende Welt der Gelehrsamkeit und Neugier auf »moderne« Gebiete ausschlaggebend war. Der Grundton jener etwa drei Generationen war freiheitlich und international; sie fühlten sich angesprochen von den geschichtlichen Fächern, von Rechtstheorie, Rechtsvergleichung und Völkerrecht sowie Handelsrecht und Gesellschaftsrecht, nicht zuletzt auch vom neuen Arbeits- und Sozialrecht.



Weil das Studium der Rechtswissenschaft ein freiheitliches Versprechen auf Gleichberechtigung enthielt, lassen sich die Beiträge des Bandes auch als Vorstudien zu einer verschränkten Geschichte von jüdischer Emanzipation und der Entstehung des säkularen Rechtsstaats in Deutschland zwischen 1850 bis 1933 lesen.

STUDIEN ZUR EUROPÄISCHEN RECHTSGESCHICHTE**BAND 341**

Michael Stolleis

»RECHT ERZÄHLEN«

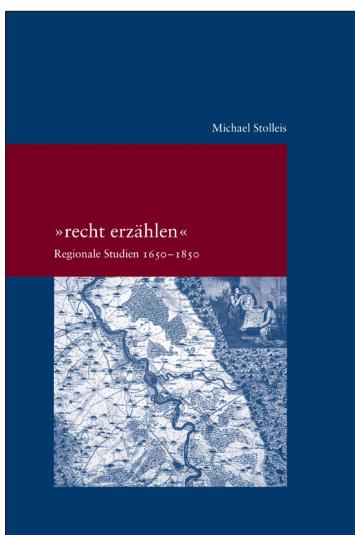
Regionale Studien 1650–1850

Frankfurt am Main: Vittorio Klostermann, 232 S., 28 €

ISBN 978-3-465-04560-1

Wer »recht erzählt«, bewegt sich im Grenzgebiet zwischen wissenschaftlicher Arbeit und fiktiver Narration. Die in Quellen überlieferte Ausdrucksweise historischer Akteure nicht zu verfälschen und sie als Rechtsgeschichte(n) den eigenen Zeitgenossen zu vermitteln, ist ein Balanceakt. Michael Stolleis wählt in diesem Band den Weg über anschauliche Einzelfälle, die sich zu einem pfälzischen Panorama fügen.

Der Bogen der an Rhein und Neckar angesiedelten regionalen Studien erstreckt sich von der frühen Neuzeit bis ins 19. Jahrhundert. Uns begegnen pfälzische Hochzeitsleute, Frankfurter Juristen, Seidenbauern, Migrantenschicksale und der obrigkeitliche Umgang mit Bettlern in der Kurpfalz. Das spannungsreiche Verhältnis zwischen Bayern und der Pfalz entlud sich u. a. im pfälzisch-badischen Aufstand (1849). Dass unter den Revoltierenden ein Neustadter Seiler namens Georg Stolleis auftaucht, ist nur ein überraschendes Detail dieser reichhaltigen Erzählungen vom Recht.



MAX PLANCK STUDIES IN GLOBAL LEGAL HISTORY OF THE IBERIAN WORLDS



The volumes published in this book 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.

The series is edited by Thomas Duve and published by Brill. 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.



VOLUME 2

Thomas Duve, José Luis Egío, Christiane Birr (eds.)

THE SCHOOL OF SALAMANCA: A CASE OF GLOBAL KNOWLEDGE PRODUCTION

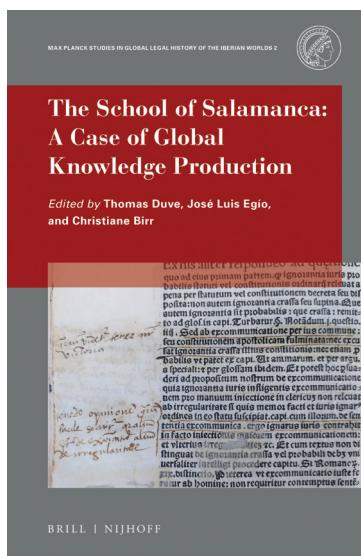
Leiden: Brill, 430 p., 143 €

ISBN 978-90-04-44973-2

Open Access online edition: <https://doi.org/10.1163/9789004449749>

eISBN 978-90-04-44974-9

Over the past few decades, a growing number of studies have highlighted the importance of the 'School of Salamanca' for the emergence of colonial normative regimes and the formation of a language of normativity on a global scale. According to this influential account, American and Asian actors usually appear as passive recipients of normative knowledge produced in Europe. This book proposes a different perspective and shows, through a knowledge historical approach and several case studies, that the School of Salamanca has to be considered both an epistemic community and a community of practice that cannot be fixed to any individual place. Instead, the School of Salamanca encompassed a variety of different sites and actors throughout the world and thus represents a case of global knowledge production.



Contributors are: Thomas Duve, Enrique González González, Adriana Álvarez, Lidia Lanza, Marco Toste, Dolors Folch, Natalie Cobo, Osvaldo R. Moutin, Marya Camacho, Virginia Aspe, José Luis Egío, and Esteban Llamosas.

Edited by Thomas Duve, José Luis Egío,
and Christiane Birr

EX HIS DIRECTA ET PONITUR AD QUERENDUM
quo id eius primaria patet. q[ui] gnosimis iuris pro
babio fuisse vix certum est. sed quod etiam in
partibus Hispaniarum et confiniorum hereticae fuisse
potest non autem ignorari a crassis seu fupina. q[ui] ue
stent ignorari et probantur. Et quod ad hanc rem
sit. Sed ab excommunicante per tuos communie
fem confundentes aportatam fulminatorem ex cu
m excommunicatae sententiae. q[ui] dicitur. q[ui] p[ro]p[ter]o
dubio ut p[ro]p[ter] cap[ut]. Et animarum. et per argu
a speciebus per gloriam ibidem. Et porro hoc plus
quod excommunicatio sententia est. q[ui] dicitur. q[ui] uita
qua ignoramus iuris intelligentia excommunicatio
nem pro manuam sacerdotum in clericis non refutat
neq[ue] pro manuam sacerdotum in laicis non refutat
neq[ue] excommunicatio sententia non refutat neq[ue]
excommunicatio ergo sententia interdicit. q[ui] senten
tia factit sententiam in excommunicato et
et vietur interdictio. Et ex parte excommunicato
fingitur ut ignoramus iuris et videtur debet vel
uerelatum habuisse p[ro]p[ter] cap[ut]. Et p[ro]p[ter] cap[ut]
q[ui] dicitur. q[ui] sententia excommunicatio sententia
nur ab dominante non requireatur contemptus sententia

VOLUME 3

Manuel Bastias Saavedra (ed.)

NORMS BEYOND EMPIRE

Law-Making and Local Normativities in Iberian Asia, 1500–1800

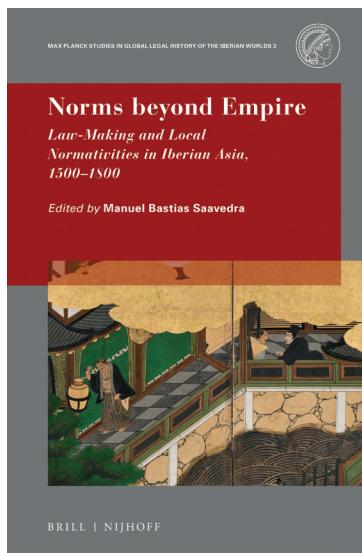
Leiden: Brill, 355 p., 132 €

ISBN 978-90-04-47282-2

Open Access online edition: <https://doi.org/10.1163/9789004472839>

eISBN 978-90-04-47283-9

Norms beyond Empire seeks to rethink the relationship between law and empire by emphasizing the role of local normative production. While European imperialism is often viewed as being able to shape colonial law and government to its image, this volume argues that early modern empires could never monolithically control how these processes unfolded. Examining the Iberian empires in Asia, it seeks to look at norms as a means of escaping the often too narrow concept of law and look beyond empire to highlight the ways in which law-making and local normativities frequently acted beyond colonial rule. The ten chapters explore normative production from this perspective by focusing on case studies from China, India, Japan, and the Philippines.



Contributors are: Manuel Bastias Saavedra, Marya Svetlana T. Camacho, Luisa Stella de Oliveira Coutinho Silva, Rômulo da Silva Ehalt, Patricia Souza de Faria, Fupeng Li, Miguel Rodrigues Lourenço, Abisai Perez Zamarripa, Marina Torres Trimállez, and Ângela Barreto Xavier.



RESEARCH PAPER SERIES



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In 2017, an additional subseries, *subsidia et instrumenta*, was created to publish resources for researchers such as bibliographies or collections of primary sources. The results of the Institute's research project »Historical Dictionary of Canon Law in Hispanic America and the Philippines. 16th–18th Centuries (DCH)« are also published as part of the *Research Paper Series*. All articles submitted undergo peer review.

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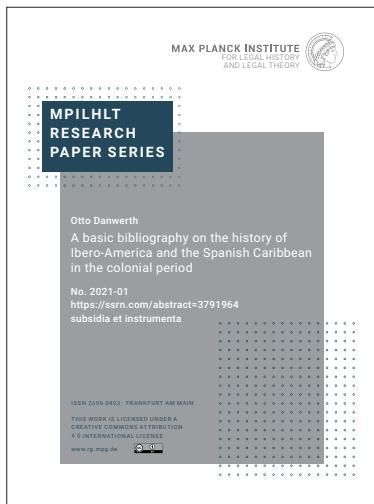
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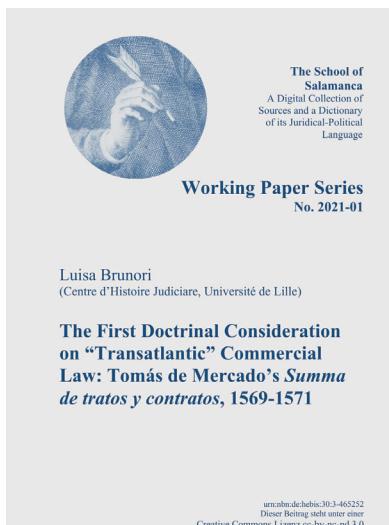
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IMPRESSUM**Herausgeber**

Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie (mpilhlt)
Hansaallee 41
60323 Frankfurt am Main

Webseite: www.lhlt.mpg.de

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Druck

Colour Connection GmbH, Frankfurt am Main

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Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie

THE INSTITUTE

Established in 1964, the Max Planck Institute for Legal History and Legal Theory (until the end of 2020: Max Planck Institute for European Legal History) in Frankfurt am Main engages in research on European and global history and on the theory of law. With its three departments led by Directors Marietta Auer (Multidisciplinary Theory of Law), Thomas Duve (Historical Regimes of Normativity) and Stefan Vogenauer (European and Comparative Legal History), its specialist library holding over 490,000 printed media units, and its numerous international visitors, the Institute has become a worldwide hub for those working on past and present national and transnational legal orders. Many of the research results are published in the Institute's own publication series.

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The Institute

The Max Planck Institute for Legal History and Legal Theory considers its most important task to consist in engaging in theoretically reflected historical research in the field of law and other forms of normativity in order to make a specific contribution to the fundamental research in legal scholarship, the social sciences and historical humanities.



The Institute's research examines law, its constitution, legitimization, transformation and practice. Particular attention is paid to the positioning of historical forms of law in the context of other normative orders. The establishment of a department engaged in developing a multidisciplinary legal theory in 2020 substantially expands the Institute's engagement with issues of legal theory.

The Institute is today able to build on its over 50-year history. While the emphasis was placed on the history of private law in Europe at the time Helmut Coing established the Institute in 1964, subsequent directors – Walter Wilhelm, Dieter Simon, Michael Stolleis and Marie Theres Fögen – gradually extended the fields of activity to other research areas, such as the history of public law, international law and criminal law. For quite some time, a great deal of importance was attached to the evaluation of legislation and key scholarly reference texts. Today, however, the focus is primarily on working with other relevant source materials. Whereas emphasis was traditionally placed on the legal history of Europe, under the direction of Thomas Duve (since 2009) and Stefan Vogenauer (since 2015) the Institute has increasingly expanded its scope to also include other regions. Comparative, global, and global-historical perspectives are employed to overcome the analytical divisions separating these regions, to critically evaluate certain fundamental assumptions about European legal history and legal theory, and, furthermore, to trace out Europe as a global region from a legal historical perspective. The establishment of a third department in September 2020 enlarged the Institute's previously predominantly legal-historical focus to now also encompass research on legal theory.



