Welcome to our newsletter. This newsletter is addressed to legal historians, legal theorists and others interested in global history, social sciences, humanities and legal studies more broadly. We keep you updated about events, new publications by our researchers and other news from our Institute. Any feedback and suggestions are more than welcome.

We hope you enjoy this month’s edition.

Opportunities

Apply now to join our Visitors' programme and take advantage of research opportunities at our Institute!

Please ensure that your application reaches us at least four months before your intended research stay. Submit your complete application via our online application system.

Events

Unless otherwise stated, these are in-person events at the mpilhlt.

8 November, 18:15–19:45, Frankfurter Rechtshistorische Abendgespräche: Matthias Jestaedt (Albert-Ludwigs-Universität Freiburg im Breisgau), Der Stufenbau der...
For more information on the documents required and the application procedure, click here.

Rechtsordnung – Von den Tücken einer Metapher.

15 November, 09:30-16:00, Legal History meets Digital Humanities Seminar: Annemieke Romein (Huygens Institute, Amsterdam), Transkribus for Legal History Research.

20 November, 14:15-15:15, Common Law Research Seminar: Radhika Singha (Jawaharlal Nehru University / University of Münster), Deporting foreigners, deporting subjects: Foreigners Act III of 1864 in colonial India.

8 Dezember, 10:00-16:00, Jahrestagung Initiative Arbeitrechtsgeschichte: Stunde Null des Arbeitsrechts?, Registration before 15 November here.

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Rechtsgeschichte – Legal History 31 (2023) now published

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Zeitschrift des Max-Planck-Instituts für Rechtsgeschichte und Rechtstheorie

Journal of the Max Planck Institute for Legal History and Legal Theory

Rg 31 2023
The most recent edition of our journal *Rechtsgeschichte – Legal Theory (Rg)* once again gathers together scholarly research contributions and opinionated reviews on topics relevant to legal history from Germany and around the world.

In the *Research* section, Dieter Grimm offers an English summary of the thesis put forward in his widely acclaimed book *Die Historiker und die Verfassung* ('The historians and the constitution'). He is critical of the fact that the leading accounts of the history of the Federal Republic of Germany consider the contributions of the Basic Law and the Federal Constitutional Court only in a highly selective manner. Thought-provoking responses to his critique, together with Grimm’s reply, are presented in the *Forum* section of the journal.

In his contribution, Jan Thiessen asks whether archival law as well as the case law on the right to privacy in Germany obstruct research on contemporary history, whereas Jakob Zollmann investigates final decisions by German courts – above all the *Reichsgericht* – in cases that started out in local colonial jurisdictions. The *Research* section is rounded off by two contributions that take us to Central and Eastern Europe. József Szabadfalvi offers an overview of the genesis of an independent Hungarian legal terminology, which – after Latin had lost its predominance as the language for law – struggled to resist, and only eventually prevailed over, the German legal terminology used in the Habsburg monarchy. Stefan Cristian Ionescu shows how Romanian civil servants who had actively engaged in the 'Aryanisation' of Jewish-owned property and businesses during the Second World War continued their career trajectories largely unchallenged after the war, at least initially.

The *Focus* section, coordinated by David Rex Galindo, presents new approaches to researching Indigenous forced labour in the frontier regions of the Spanish Empire from the late Middle Ages to the 19th century. The four articles in this section illustrate that it would be inaccurate to simply apply the term 'slavery' to all forms of this phenomenon. They describe various institutions and normative orders that enabled the exploitation of Indigenous labour in territories as diverse as the Canary Islands, Chile, New Mexico, and the Philippines. The series of images in this year’s *Rg* depict historical maps and cityscapes related to several of the regions covered in the *Focus* contributions.

The multilingual *Critique* section offers 40 book reviews reflecting the diversity of the field of legal history and research carried out here at the Institute in Frankfurt. The volume closes with a *Marginalia* contribution by Thomas Duve on the œuvre of Paolo Grossi, who passed away in July 2022. The Italian legal historian, whose work centred on the medieval 'legal order' in Europe, had maintained a close connection to the Institute over many years.

*Rechtsgeschichte – Legal History 31* is now available in print (Verlag Vittorio Klostermann). The online version, which will be accessible via Open Access, is currently in preparation.

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**New Publications**

Amelie Tscheu
The origin of the Reichsgericht's definition of journalistic treason during the Weimar Republic

This Research paper deals with the Reichsgericht's prosecution for journalistic treason (publizistischer Landesverrat) and explores the question of whether its decisions should be considered as evidence of an anti-republican tendency among the Weimar judiciary.

Alongside the high treason trials, historians have frequently taken the trials for journalistic treason, above all the so-called Weltbühne trial in 1931 against Carl von Ossietzky during the final years of the Weimar Republic, as exemplary proof of the anti-republican political bias of the Weimar judiciary. This achronological assessment ignores both the earlier origins of the Reichsgericht's decisions and how they developed in interplay with the changing German domestic and foreign policies of the Weimar years.

Tscheu analyses the prosecution against the journalist Walter Oehme, which resulted in the first Reichsgericht judgement on journalistic treason in 1923, within its historical context. The statement of reasons for the judgement (Urteilsbegründung) against Oehme exemplifies the close interaction between both official and unofficial government policies and their impact on the Reichsgericht's statutory interpretation in the crisis year of 1923. While she demonstrates that the judgement against Oehme can indeed be understood as political jurisprudence, in this case the judiciary decided not against but in the interest of the republican government.

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Featured Event

05 December 16:15 – 17:45, mpilhlt

What comes after the secularisation thesis? Religious and secular sources of moral universalism

Max Planck Lecture in Legal History and Legal Theory with Hans Joas

For many decades, the so-called secularisation thesis has dominated studies about religion in the humanities and social sciences. This thesis has never been a mere statement of facts about religious decline but claimed to
offer an explanation for such processes in the sense of a strong causal connection between the modernisation of societies and the weakening of religion. In the last twenty years, however, this thesis has lost much of its plausibility. This talk will ask (1) what the reasons for this change of mind are, (2) what a superior explanation could be, (3) how these changes affect our views about the 'prehistory' of modern European secularisation and (4) what a more fruitful perspective on long-term religious change could be.

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**Guests and Visiting Scholars**

**Audemar, Alexis** (Université de Lille, France): *The legal treatment of labour by the School of Salamanca*, October – December 2023


**Busch de Brito, Gabriel** (Universidade de São Paulo, Brazil): *Recht, Kapitalismus und Demokratie. Entstehung einer interdisziplinären Kritischen Theorie des Rechts in der Weimarer Republik*, August 2023 – January 2024

**Carvalho de Souza, Marjorie** (Università degli Studi di Napoli Federico II, Naples, Italy / Universidad de Huelva, Spain): *Freedom and contract on trial: the making of labour law in nineteenth-century Brazil*, October - December 2023

**Chen, Jidong** (Huazhong University of Science and Technology, China): *From insurance to welfare state: The transformation of the British social security system's function (1900–1950)*, October – December 2023

**Guijarro Santos, Victoria** (Georg-August-Universität Göttingen, Germany): *A relational perspective on the EU laws against data-based discrimination*, September – November 2023

**Khalili, Sayedeh Mones** (University of Tehran, Iran): *Examining the guarantee of breach of contractual obligations and claimable damages in the laws of Afghanistan, Iran, the Islamic jurisprudence and international instruments on law of contracts*, October – December 2023

**Knapp, Jakob** (Rheinische Friedrich-Wilhelms-Universität, Bonn, Germany): *Systematic mapping of existing transfer interfaces of the legal system for non-legal knowledge of reality*, September 2023 – February 2024

**Lillo Castañ, Víctor** (Universitat Autònoma de Barcelona, Spain): *The bull Sublimis deus and the Spanish laws on slavery of Native Americans (1530–1537)*, January 2022 – December 2023

**Londoño Alvarez, Marcelo** (Universidade NOVA de Lisboa, Portugal): *From the spaces of socialisation to the construction of political thought in the working class*, June – November 2023

**Martins Spindola Diniz, Ricardo** (Université du Luxembourg): *The Book of Judges: reoccupation, religion, and constitutional adjudication at the origins of*
Massuchetto, Vanessa (Universidade Federal do Paraná, Curitiba, Brazil): *Women and social uses of criminal justice: colonial normativities in southern Iberian-American Worlds (17th–18th centuries)*, April 2023 – March 2024


Mendes, João (Vrije Universiteit Brussel, Belgium): *Legal sociability as the need for clarity*, October 2023 – February 2024


Omollo, Juma Noah (University of Dar es Salaam, Tanzania): *From common law to common law. Analysis of the application of transferred common law to the resolution of bank insolvencies in British East Africa. A case of Uganda and Tanzania*, October – December 2023

Plamondon, Jacinthe (Université Laval, Québec, Canada): *Exploration of how some ideas, ideologies, perceptions and biases are reflected into representations of reality in a given social climate and also in the law*, September 2023 – February 2024

Ray, Reeju (O.P. Jindal Global University, Sonipat, Haryana, Delhi, India): *Intersection of indigeneity and ethnicity in colonial, national and international law*, July – December 2023

Rodriguez-Blanco, Veronica (University of Surrey, UK): *The grammar of responsibility for negligence in law and ethics: aspiration, perspective and civic maturity*, November 2023 – April 2024


Swaminathan, Shivprasad (O.P. Jindal Global University, Sonipat, Haryana, Delhi, India): *Theory, method and the common law mind*, August 2023 – July 2024

Yashiki, Takanori (University of Tokyo, Japan): *The theoretical foundations of customary international law*, August 2023 – January 2024
Unpacking the concept of 'Staatsräson''

Following the horrific attacks by Hamas on Israel, German officials have consistently stressed that Germany considers the security of Israel a matter of *Staatsräson* (reason of state). Now, they are facing increasing pressure to clearly define the practical implications of this stance.

The concept of 'reason of state' usually refers to a nation's pursuit of its own interests as the primary basis for its foreign policy decisions, prioritising national self-interest above all else. By contrast, Germany's claim that Israel's security is a matter of its *Staatsräson* makes the survival of another state its priority.

Asked about this potential contradiction, Marietta Auer, our Managing Director, explained in an interview with Deutsche Welle: ‘The way Germany invoked *reason of state* essentially conflates interests with values, simplifying the dynamics at play.’ Whilst this makes little sense in terms of legal theory, it is a strategic political decision based on Germany's history and the moral obligations deriving from it.

[Article on dw.com](https://www.dw.com)

[Marietta Auer on BR24 on YouTube](https://www.youtube.com)