

# LEGAL HISTORY & LEGAL THEORY

Newsletter of the Max Planck Institute,  
February 2024 #75



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 mpilhl.*

**14 February, 19:00 – 20:30, MPI-TAU Transnational Legal History**

**Workshop:** Julia Moses (University of Sheffield), *Harmonizing the Family? International Law, Cultural Norms and Marriage at the Turn of the Twentieth Century*. Online; to register, email [mpitauwkshp@gmail.com](mailto:mpitauwkshp@gmail.com)

For more information on the documents required and the application procedure, click [here](#).

The Institute is looking for an [editorial and data management assistant](#) (m/f/d).

**Deadline 11 February 2024**

The Institute is looking for an [editorial assistant](#) (m/f/d). **Deadline 29 February 2024**

**15 February, 16:15 – 17:45, Max Planck Lecture in Legal History and Legal Theory:** Shivprasad Swaminathan (Dean-Designate, Shiv Nadar School of Law), *Theory, Method and the Common Law Mind*.

**20 February, 13:00 – 14:00, Iberian Worlds:** Ana Plaza Roig, *A good server for both Majesties: the patronage of Juan José Fernández Campero de Herrera*.

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## Featured Event

15 February 16:15 – 17:45, mpilht

### Max Planck Lecture in Legal History and Legal Theory: Theory, Method, and the Common Law Mind

This lecture by Shivprasad Swaminathan (Dean-Designate, Shiv Nadar School of Law, Chennai) will seek to provide a theoretical account of the common law building upon Michael Polanyi's idea of polycentricity. Polycentricity in the context of the common law involves a number of decision-makers who go about making their decisions by anticipating – with the guidance of tacit knowledge – what is likely to pass muster with the community of decision-makers. And having thus arrived at a decision, seek to persuade the community by justifying the decision at hand by showing its similarity with previously decided cases. The prong of anticipation is where tacit knowledge comes in: through years of training, the common lawyer tends to internalise the gaze of the professional group and its sensibility of what is the apt response in a given case. The idea of polycentricity holds the key to explaining much in the common law which might be inscrutable to the onlooker, including a) the malleability of common law precedent caused by the leeway available to a judge in determining what amounts to rationes in past decisions; b) the counterintuitive nature of analogical reasoning in the common law (which involves invoking a past case as an example after a prior decision has been arrived at in the case at hand), thereby giving the judge great latitude in picking an analogy; c) the model of normativity underlying the operation of the common law instantiated in reasoning with precedent and analogical reasoning which shows how normative constraints are possible despite the common law operating without rules or standards.



# mpilht out and about

**Keeping you up-to-date on some of the activities and public engagements of the Institute's researchers beyond our four walls. If you are in the area, feel free to stop by.**

**Matilde Cazzola**, Max Planck Law [Exchange Programme](#) at the National University of Singapore. **12 February – 12 April, Singapore**

**Thomas Duve**, History of Latin American Law. (Book Discussion of the new *Cambridge History of Latin American Law in Global Perspective*) **14 February, Yale Law School**

**Johanna Wolf**, [ETUI Conference](#) - History(ies) of the European trade union movement. (Talk about the founding of the Women's Committee at the European Trade Union Confederation in the 1970s) **22 February, Brussels**

**Magdalena Gebhardt**, [Tagung: Helen Silving-Ryu – Der Aufstieg einer jüdischen Migration aus Wien zur 'First Lady of US-Criminal Law'](#). (Talk about 'Was macht es jüdisch? Das orthodoxe Judentum in Helen Silvings Leben und Werk') **29 February, Vienna**

**Martin O'Donoghue**, The Irish Parliamentary Party and its successors: lessons for parties in times of transformative change. (Talk at the University College Cork School of History Seminar Series) **29 February, online**

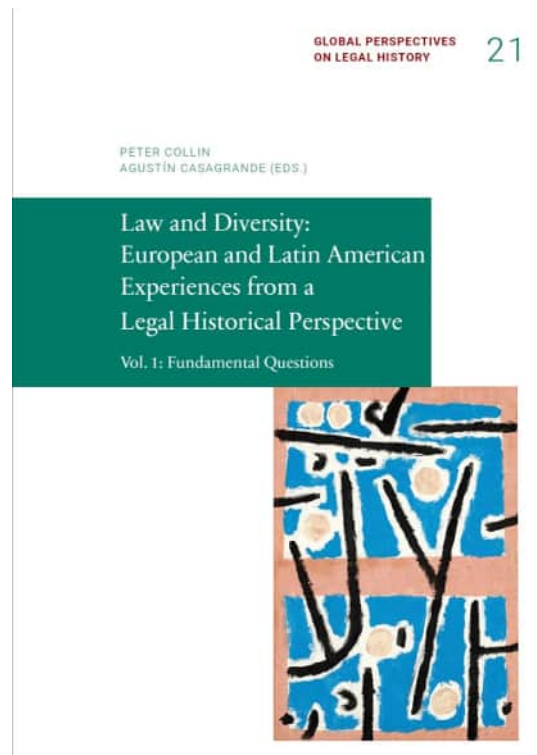
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## New Publications

Peter Collin, Agustín Casagrande (eds.)

### **Law and Diversity: European and Latin American Experiences from a Legal Historical Perspective.**

The principle of equality is one of the cornerstones of modern legal systems. Modern law is based on equality, and therefore assumed to stand in sharp contrast to the law of pre-modern, estates-based societies characterised by special legal regimes for particular groups or individuals. However, it is worth asking if this dichotomy can perhaps only be maintained if one looks solely at the fundamental postulates and the major codifications with their equality-orientated system formations. 'Modernity', too, is highly socially differentiated and continues or



transforms 'pre-modern' distinctions to a not inconsiderable extent. All of this is often reflected in special rules created by the state or by the groups themselves – even if, in the latter case, they are often not recognised as law.

In this volume, the term 'diversity' denotes constellations of social difference that are relevant to normativity. This understanding of diversity only partially overlaps with the categories of postmodern diversity discourses. Rather, this volume's central questions ask what social differences are relevant to normativity, to what extent and in what respect. Or, to relate it more specifically to the relationship between law and diversity: which social differences also make a difference to the law?

Adriane Sanctis de Brito

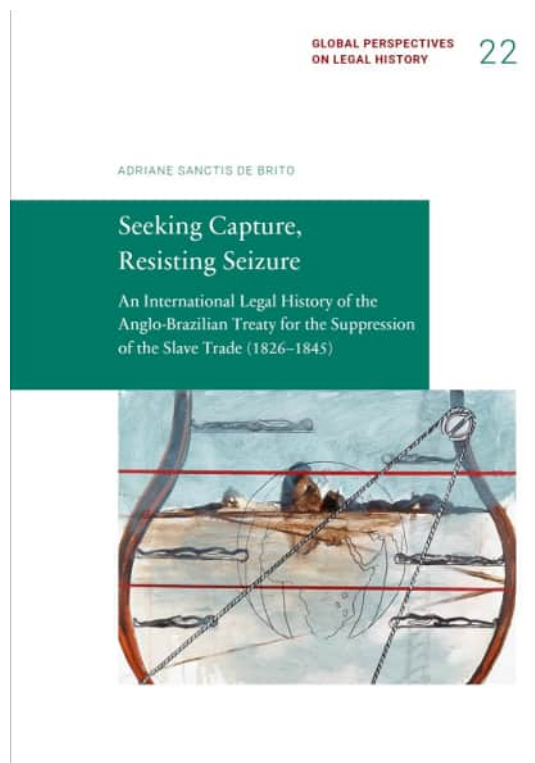
## Seeking Capture, Resisting Seizure

The treaties to suppress the slave trade were the subject of intense legal battles and debates in the first half of the 19th century. By delving into the legal disputes that took place in the context of the Anglo-Brazilian treaty for the suppression of the slave trade of 1826, this book highlights the political importance of what might at first glance be perceived as little more than argumentative hurdles over the rules and proceedings regarding the search and capture of ships. Some of these legal battles were carried out in the correspondence between the Foreign Offices, sometimes between diplomatic representatives or in mixed commissions, while others involved the process of interpretation and the resignification that took place over the course of years and involved a multiplicity of exchanges between various actors and institutions.

Britain constantly pushed to expand the legal use of force and possibilities of capture within the spaces outlined by the treaty regime. Brazil actively engaged in the legal interpretation, and in so doing created an argumentative onus that would later continue to transform British legal approaches and the very expectations about the content of the law the two parties were applying.

By constantly challenging the scope and limits of the treaty, Brazilian representatives slowed down the process of abolishing the slave trade, thus preserving the perverse practice, while at the same time protecting Brazil's independence against the expansion of British interference. Whether reading the bilateral treaty clauses as analogous to or different from prize law or general international law, the day-to-day interpretation forged anti-slave trade rules that kept ships, instead of enslaved people, protagonists of slave trade suppression mechanisms.

This history of the Anglo-Brazilian treaty provides more detail about the mechanisms created by international law to combat the slave trade. It also reveals the complex legal



translations of state inequality, humanitarianism, violence, and the fine line between war and peace.

Yobani Maikel Gonzales Jauregui

## Dote / Dowry (DCH)

The dowry was the contribution that the woman brought to her marriage. The bride's direct relatives gave several goods to support the new couple or, if applicable, her entry into a convent. In early modern times the practice of endowing institutions was also maintained so that their activities would not be interrupted. This article analyses the various dowry practices and their modifications during the three centuries of Spanish presence in America. In addition to the practice already mentioned between private individuals, the Crown regulated the endowment of churches through the *patronato regio*, and ordinary people left money to establish a chaplaincy for the benefit of their souls, in addition to the practice already mentioned between private individuals. The dowry was not an exclusive element of the elite but also a mechanism for the social ascent of subaltern groups.



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## Guests and Visiting Scholars

**Barrêto de Almeida Costa, Arthur** (Università degli Studi di Firenze, Italy): *Curbing the unknown: history of the concept of legal research between Europe and Latin America (1960s–2006)*, September 2023 – February 2024

**Kelland, Luke** (University of Cambridge, UK): *Behind the Veil of Law: A Genealogy of Paradigmatic Concepts within the English Legal System*, February – June 2024

**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 – March 2024

**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

**Martins Spindola Diniz, Ricardo** (Université du Luxembourg): *The Book of Judges: reoccupation, religion, and constitutional adjudication at the origins of the US Supreme Court (1789–1936) and the German Federal Constitutional Court (1949–1969)*, October 2023 – March 2024

**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

**Mehta, Kiran** (Worcester College, University of Oxford, UK): *Making Useful Subjects: Penal Labour and the Law in Britain and its Empire, 1780–1895*, October 2023 – March 2024

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

**Moutin, Pol Rene** (Universidad Nacional de Rosario, Argentina): *Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI-XVIII*, January – February 2024

**Nezhurbida, Serhiy** (NGO Jewish Heritage of Bukovina, Chernivtsi, Ukraine): *Eugen Ehrlich – a biographical approach*, February 2023 – January 2025

**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

**Plaza Roig, Ana** (Universidad de Buenos Aires, Argentina): *Un buen servidor de ambas majestades: un análisis del mecenazgo de Juan José Fernández Campero de Herrera (activo entre 1680 y 1718)*, January – March 2024

**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

**Roque, Ricardo** (Universidade de Lisboa, Portugal): *Mimetic normativities in the late Portuguese colonial empire*, February – March 2024

**Shahab, Palvasha** (Columbia Law School, New York City, USA): *Constitutionalising Private Law: How much justice an corporate due diligence laws for global supply chains brings about?*, September 2023 – February 2024

**Siciliano, Domenico** (Università degli Studi di Firenze, Italy): *The Frankfurt conflict between the jurist Rudolf Wiethölter and the philosopher Jürgen Habermas on the concept of law, the concept of jurist and of University*, February – July 2024

**Zhu, Yuxin** (Tsinghua University, Beijing, China): *Production of normativity in Glocalization: The late Qing opium suppression movement in the perspective of institutional change*, 15 January – 15 February 2024

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## Hansaallee 41



### 44. Rechtshistorikertag takes place in Frankfurt am Main

The 44th *Rechtshistorikertag* (the annual conference of Germanophone legal historians) is taking place in Frankfurt am Main from 16 to 20 September this year, organised by the Institut für Rechtsgeschichte of the Goethe-



### mpilhlt part of new Frankfurt Alliance science network

The mpilhlt is a member of the Frankfurt Alliance, a new network bringing together 16 research institutions from the Frankfurt/Rhine-Main region. The alliance aims to intensify cooperation and create synergies between its members. 'Cutting-

Universität. Dedicated to [Die Sprache der Quellen](#), its sessions will discuss the language and mediality of legal historical sources. Another focus will be the chances offered as well as the risks posed to legal history by the current transformations in the digital world (such as by AI).

In addition to the keynote lectures and panels, time has been set aside on Wednesday, 18 September for [presentations of research projects and for smaller discussion sessions](#) on 'problems and forms of legal history'.

Applications for such presentations should be submitted [here](#); the deadline is 31 March 2024.

The three best presentations by doctoral researchers will be awarded a prize by the Association of the Friends of the mpilhl.

edge research takes place in global networks and we need to attract the best minds in the world to Frankfurt. With the Frankfurt Alliance, we are creating a strong forum that will strengthen scientific networking within the region and develop Frankfurt into a global science hub', emphasised Marietta Auer, Managing Director of the mpilhl at the founding ceremony in Frankfurt's Römer.

### **Max Planck Institute for Legal History and Legal Theory**

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