

MASSIMO MECCARELLI
MARÍA JULIA SOLLA SASTRE (EDS.)

Spatial and Temporal Dimensions for Legal History

Research Experiences and Itineraries

Massimo Meccarelli, María Julia Solla Sastre

Spatial and Temporal Dimensions for Legal History:
An Introduction | 3–24



MAX PLANCK INSTITUTE
FOR EUROPEAN LEGAL HISTORY

ISBN 978-3-944773-05-6
eISBN 978-3-944773-15-5
ISSN 2196-9752

First published in 2016

Published by Max Planck Institute for European Legal History, Frankfurt am Main

Printed in Germany by epubli, Prinzessinnenstraße 20, 10969 Berlin
<http://www.epubli.de>

Max Planck Institute for European Legal History Open Access Publication
<http://global.rg.mpg.de>

Published under Creative Commons CC BY-NC-ND 3.0 DE
<http://creativecommons.org/licenses/by-nc-nd/3.0/de>

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie;
detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

Cover illustration:

Robert Delaunay, Rythme, Joie de vivre, 1930
Centre Pompidou – Musée national d'art moderne, Paris
© bpk Bildagentur für Kunst, Kultur und Geschichte, Berlin

Cover design by Elmar Lixenfeld, Frankfurt am Main

Recommended citation:

Meccarelli, Massimo, Solla Sastre, María Julia (eds.) (2016), Spatial and Temporal Dimensions
for Legal History. Research Experiences and Itineraries, Global Perspectives on Legal History,
Max Planck Institute for European Legal History Open Access Publication, Frankfurt am Main,
<http://dx.doi.org/10.12946/gplh6>

Spatial and Temporal Dimensions for Legal History: An Introduction

“Zum Raum wird hier die Zeit” (*Parsifal*, erster Aufzug)

1 Time and Space: A Historiographic Approach

Where is legal history heading today? This is a concern that is not exclusive to those of us who encouraged the dialogue that gave rise to this volume.¹ Indeed, in recent times broad sectors within the academic community have experienced a sense of having gone adrift with regard to the history that, in general terms, has ceased to meet a very concrete – and prolific – aim in the construction of national entities, and is in need of new challenges to endow it with meaning as a discipline.

Assuredly, legal history’s bearings are an issue directly related to the purpose we want it to achieve, and therefore, the specific aim toward which we wish to guide it. The perception over the last few years, however, is that we are bereft of a firm course or major themes, aims or perspectives.

Despite this uncertainty, however, two facts are clearly discernible. The first is that we must continue to reflect deeply and persistently on the problems and challenges posed in a global world to the social and legal sciences

1 The essays that have shaped this book are the result of the proposals and reflections shared at the international seminar *Ambiti geografici e dimensioni temporali nella storia del diritto: esperienze e percorsi di ricerca*, held at the Scuola Superiore Giacomo Leopardi, Università di Macerata, on 20th and 21th June 2013. This event took place within the framework of the international agreement between Universidad Autónoma de Madrid and Università degli Studi di Macerata. The contributions of the members of the former institution (A. Agüero, J. Barrientos, L. Beck, M. Lorente and J. Solla) have been carried out within the research project of the Spanish Ministry of Science and Innovation with reference DER2014-56291-C3-1-P. We extend our thanks to Thomas Duve for his proposal to publish this volume as part of this collection, and to Ludovica Bosica for her diligent editing.

in the West.² In fact, serious reflection is being fomented by researchers and scientific groups of considerable renown that is of direct interest to legal historians.

To set an example, the celebration of the fortieth anniversary of the *Quaderni fiorentini per la storia del pensiero giuridico moderno* was dedicated to examining the state and the course on which legal historiography is set.³ Moreover, the constant initiatives taken by the *Max-Planck-Institut für europäische Rechtsgeschichte* have been opening up for some time now new horizons for a European legal history from a global perspective.⁴ Even the American Journal of Legal History has inaugurated its new stage with a re-launching issue devoted to “The Future of Legal History”.⁵ From a more general viewpoint, the debates in the Anglo-American world are likewise crystallizing in suggestive proposals and mechanisms for the recovery of the role of history to illustrate contemporary problems and to envision balanced democratic governance and public policies for the long haul.⁶

All these contributions within the framework of a large-scale mobilization serve to exemplify the second aspect we consider to be beyond question: there can be no doubt that this reflection must be collective. The idea of collectiveness surpasses that of the sum of individual efforts, to become inserted in the sphere of major lines of cooperative research. Consequently, the third aspect that emerges clearly is that we need to reconsider that which links us through our specificity, as two indispensable elements in the historian’s trade: time and space.

Indeed, within this difficult debate over the common destination of this discipline, we have considered it necessary to turn our regard to the spatial-temporal conjunction that, aside from various ideological rapprochements and methodological differences, is indefectibly shared in the legal reflection on the historicity of law and the need to historicify its use through other disciplines.

These, in a word, are the elements underpinning the reflection offered herein on this state of affairs.

2 DUVE (2014b); RENN (2014); MCCARTHY (2014).

3 SORDI (2013). Regarding the MPIeR, a good example is found in DUVE (2014a), and in the series said volume opens: *Global Perspectives on Legal History*.

4 DUVE (2012); DUVE (2014b).

5 <http://ajlh.oxfordjournals.org/content/56/1>.

6 GULDI/ARMITAGE (2014); ARMITAGE/GULDI (2015).

Nowadays, no-one could question the contextual character of space and time through history. Or that the manner in which legal spaces and times – and space and time in law – have been conceived has been inseparably linked to the historical contexts in which those times and spaces were imagined or perceived should be beyond all discussion for historians. Similarly, historians’ understanding of time and space in their context has conditioned, limited or opened up new possibilities for the comprehension of law, and may even be found in the groundings of the definition of law itself.

Against this background, our proposal consists of rethinking key confluences that lie at the base of all iushistorical constructs, in order to provide coordinates for this collective reflection. We do not, however, aim to draw up abstract considerations on methodology, but to rely on concrete researches from which stems a reflection on the conjunction of space and time, as well as on the reconstruction of certain lines of research that hold a spatiotemporal component. The volume, therefore, offers this reflection articulated in two major blocs: “Experiences” and “Itineraries”, comprising essays by Pietro Costa, Javier Barrientos, Alejandro Agüero, Marta Lorente, Paolo Cappellini, Laura Beck, Floriana Colao and Giacomo Pace.

From these different and enriching contributions we draw a number of conclusions that we shall endeavour to present below, given that in effect, they all reflect on the – declared or undeclared – use made throughout history of space and time as the essential tools of legal historians and legal histories.

1.1 Uses of spatiotemporal coordinates

For Michel Foucault “space itself has a history in Western experience and it is not possible to disregard the fatal intersection of time with space”.⁷ Despite the *fatality* of this encounter, space-time dynamics have not received particular consideration as a theme in itself either in legal historiography or in the social sciences in general, which, as pointed out by Pietro Costa, have not only remained over an extended period of time “blind” to this conjunction that constitutes legal phenomena, but have also, even when addressing the historical study of international litigations on limits and borders, turned

7 FOUCAULT (1986) 22.

their backs on the spatiotemporal historicity of the very origins of conflicts (Lorente).

Pietro Costa invites us, therefore, to take awareness of *spatiotemporality* as a dimensional conjunction that is not only a presupposition in historical research, but that also generates a use that is susceptible of being studied in its own right. But Marta Lorente also reminds us that its reuse from new disciplinary viewpoints must follow certain guidelines and be conducted with caution.

One of these is to abandon certain uses that fulfilled a historical function as the foundational constituent of certain long-term units of power, such as the construction of the national unitary State,⁸ but that today must be dismantled: it is necessary to surpass, if not already surpassed by the imperative reality of *transnational law*,⁹ the idea of State as an institutional player that is the protagonist taking full stage in legal and constitutional production and application (Agüero, Lorente). At the same time, however, it is equally necessary to detect, in the first place, and then to dismantle, the Eurocentric positioning that has served, in a manner similar to national histories, to define, explain and to justify Europe self-referentially, but that has not served to understand it unless inscribed within a global perspective of episodes, flows, players and forces of the widest diversity.¹⁰

Thus, generally speaking, it appears to be absolutely necessary to abandon monistic conceptions of space and time which, on the one hand, restrict political, social and normative pluralism that is difficult to reconcile with rigid, unitary structures and, on the other hand, consider unity to be unavoidably paired with uniformity (Agüero, Costa). However, the ease with which the limitations to certain past instrumentalizations of *spatiotemporality* can be detected contrasts with the difficulty of projecting new uses for the future and progressing toward new levels of analysis in line with an aim that is still being defined.

1.2 Paths of approach to spatiotemporality

With these premises, the authors in this book offer several proposals for addressing *the spatiotemporal* from the perspective of legal history. The point

8 RAFFESTIN (2013).

9 *Vid.* DUVE (2014b).

10 DUVE (2014b); MODÉER (2014).

of departure is identified by Pietro Costa from among a confusion of spatiotemporal elements: it is necessary to study the interaction between space and time and, consequently, it is necessary to discern which are the instruments that connect not only diverse spaces and times, but also spaces and times to each other within diverse spaces and times. It is, in fact, a matter of detecting and studying spatiotemporality as a legal phenomenon (Agüero, Barrientos, Beck, Lorente).

A direct consequence of the foregoing is the need to address this phenomenon from the perspective of interdisciplinarity. In effect, given that time and space are two concepts that cut across any social discipline, grasping the density of spatiotemporality is inconceivable without exercising a joint vision of those dimensions. Thus, inescapable dependencies arise, such as that anticipated by Pietro Costa between geography and legal history; likewise, notable uses are also found, namely sociology or anthropology in concepts such as localization (Agüero); or the interdependence of one history, that of the book, with another, the history of the sources of law (Beck). We also find clear interdependences within the legal disciplines themselves, such as between history and international law (Lorente).

This interdisciplinary approach, especially within the framework of legal disciplines, precisely reveals the artificial nature of a classification by subjects that generates added complexity on the historical front and which also needs to be dismantled in order to comprehend the structure of the origins of space and time in legal phenomena. Interdisciplinarity cannot imply unawareness of the autonomy of ‘juridicality’ and its potential for social and cultural creation, but nevertheless entails historicity. In this sense, perhaps, the exercise of seeking the origins may cause the fragmentary modern notion of multidisciplinary in the object of this study to come apart. Effectively, returning to the roots may uncover how, at certain foundational moments, juridicality gradually absorbed – in the absence of contradictions or barriers of any kind – concepts that, today, we would place in other fields of knowledge, to build the very essence of juridicity from given phenomena. This process can be appreciated fully, for instance, with regard to a person’s *status*, which is progressively being incorporated in legal discourse (Barrientos).¹¹

11 From this perspective, see also CAPPELLINI (2010) 49–109.

Indeed, another approach to *spatiotemporality* is a return to its origins, which in turn implies two inherent and unavoidable complications. The first of these difficulties is, precisely – as commonly occurs in legal history – pinpointing that *original moment* and thereby unmasking the limits that exist on the threshold to the determination of law,¹² to which we shall return later. All the above implies having understood models and paradigms, having unravelled elements of change and, especially, having scrutinised the spatio-temporal elements separating continuity from discontinuity (Lorente). Hence, a quest for the origins involves a particular and attentive examination of times and spaces that in fact cause a break, not always easy to detect in an apparent *continuum*.

The *uti possidetis* in the paper by Marta Lorente is a prime example of the need to dismantle a myth with regard to origins, having created, with the instruments of international law, the belief in a path of continuity from the categories of comprehension in a jurisdictional world and those of a world of States, heedless of their radical discontinuity. Another major difficulty in detecting the origins is found in the *dynamics of permanence and continuity*: this is the case, as set forth by Floriana Colao, of models that have survived through time. What is time in the case of these models? Do their readings of continuity change with each different space and time? Do they really remain just as they were conceived and understood, establishing a time of their own that surpasses other measures of time, thus becoming a space of time within others?

Yet a further difficulty, brought to our attention repeatedly by Alejandro Agüero, is that of singling out the appropriate *analytical instruments* to address said origins, once they have been located: we lack the elasticity of past concepts because we stem from a scenario – that of State law – that refused to imagine the world in a composite, heterogeneous manner, which it explained exclusively from a monolithic view comprising a number of subjects, namely the States, capable of generating units for the measurement of time and space that were highly homogeneous and comprehensible among said subjects.

However, we are currently immersed in a legal world in which statehood has become diluted in an ocean of non-State norms, and legal history is

12 MECCARELLI (2015).

called upon to contribute to building new legal categories to explain this reality. Precisely this exercise in envisioning new scenarios and new chronologies obliges us to renew our awareness of the malleability of the realities contained in past concepts, however foreign they may seem to our present world, and consequently, to seek new concepts that help us to explain and accommodate with the greatest degree of detail as possible processes that, as in the case of the formation, interpretation or enforcement of laws, cannot be resolved in a linear or unidirectional manner in every legal situation (Agüero). It also invites us to find new viewpoints to rethink abandoned concepts, such as geopolitics (Cappellini), which despite having been important in their time and being brought to a close with the space and time to which they belonged, can be turned to afresh in the quest for new channels for naming complex realities that have exceeded the reality that brought them to a close.

1.3 Dynamic perspective vs. static perspective

If there is any clear notion to be drawn from the contributions making up this volume, this is that there is no true correspondence between space and staticity. Furthermore, it would be extremely reductive to state that space corresponds to a place, thus highlighting a static component that is not essential to space. A space charged with chronic dynamism, to take the case in point, is that which exists between those reading from the sources and the sources themselves (and of which the essay by Javier Barrientos ensures we retain awareness); a space that, in turn, as illustrated by Floriana Colao, is impregnated with a dynamic temporality, insofar as productions from times in the past are interwoven with readings from present times that either create history by consolidating this past-present *décalage*, or update history by smoothing over the potential breaks in continuity.

The dynamism of times and spaces is manifested in two ways: on the one hand, in the multiplicity of their confines. The players, according to their own interests, contemplate different dimensions in the spaces and diverse uses of time, which by no means necessarily correspond to political measures and confines, such as the commercial vision of the world held by publishers or censors when disseminating (or preventing the dissemination of) works (Beck); on the other hand, in the dynamism of those instruments that serve to create spaces and certain comprehensions of time and space. A useful

example is given precisely in the essay by Laura Beck, on the subject of the “book” as a support, as an instrument connecting past, present and future spaces and times, making it possible to accomplish the unthinkable inter-relationship between seemingly unconnected places and times. Further, it possesses the potential to transmit approaches that, in turn, lead to the construction of legal spaces: such is the case of *ius patrum* which began to populate the legal literature of the eighteenth century.

In this sense, so are the devices giving rise to *spatiotemporalities* dynamic in themselves, contributing to establish the logic of dynamism in the heart of cultural communities.¹³ We refer to the various processes of interpretation and adaptation, transferences, etc. suffered by regulatory systems in relation with new spaces or different epochs (Agüero, Colao, Lorente). Likewise, the different instruments, in their movement and circulation, demonstrate the porosity, permeability and relativity of the borders established according to other parameters; or that this is true insofar as a concrete dimension is taken into account, such as politics, but ceases to be the case when different perspectives are taken, such as those of a cultural nature (Barrientos, Beck).¹⁴ Similarly, this process shows up the supporting framework in the construction of actual spatial and temporal borders, the result of their reformulation through that same time and space.

Another dimension of dynamism are the processes of adaptation and modulation of the law into different spaces and times. There is a need to study law-modelling processes, from the awareness that the issue is not only that the law, which may be deemed pre-existent, should adapt to the conditions within a given location, but that the law should be justly formulated and materialised at the moment of being imported from a different space or another time and be properly channelled toward its specific formulation and materialisation for a given community (Agüero). Thus, not only does the time and space of a norm become updated with each new reformulation and embodied in a community but, at the same time, in the same exercise, the act of spatialisation becomes an intrinsic quality of the norm,¹⁵ as we shall see in the following section.

13 TURNER (2008); ELIAS (1989).

14 Also SOLLA (2015b).

15 MECCARELLI/PALCHETTI (2015b) 13–15.

Envisioning new spaces or new conceptualisations of space, therefore, leads to thinking of a new chronology, while thinking of times and spaces differently allows us to alter the scale of representation and envisage new objects of study.¹⁶ Indeed, having removed the imperative nature of our spatiotemporal categories and become immersed in spatiotemporal dynamism, not only does the historian's regard detect new perspectives and dimensions in foregone themes, but new readings emerging from legal history: the historical component of legal history, although a privileged example (Lorente), is also an invitation to discover new areas for study in which the iushistorical perspective will shed much light on the artificiality of the origins of many subjects whose time and space has been determined (Cappellini). In short, an awareness of the dynamism of space and time (and the awareness the every space and time builds its own understanding of spaces and times, as exemplified by Giacomo Pace) makes it possible for us to see not only new perspectives on seemingly consolidated matters (Cappellini, Costa, Lorente), but also new fields of study in relation to legal history.

2 Space and Law: Some Interpretative Categories

To study the conjunction of the *spatiotemporal* we need to pay attention to these two elements with a certain degree of independence.

Let us begin with the spatial variable. The works published here apply a range of different treatments. In this section, we shall relate these to a number of interpretative devices of a more general nature. Mainly we aim to differentiate between two levels: space in a reconstructive sense, and space in a constitutive sense.¹⁷

From the first of these points of view, perhaps the more recurrent in historiography, the problem posed by space in relation to the legal dimension operates instrumentally as an external factor that must be taken into account in order to refine the analytical focus. In line with this, it is the legal problem that determines the space of reference; hence, space has a *reconstructive* function.

¹⁶ GULDI/ARMITAGE (2014); ARMITAGE/GULDI (2015).

¹⁷ See also MECCARELLI (2015).

However, as confirmed in the research collected in this volume, it is also possible to consider the significance of the spatial dimension from within the legal dimension: that is to say, space as an implicit problem from the moment a legal question is formed. Here, space becomes a factor to the problem to be analysed, rather than being proposed as an analytical instrument. Thus, space assumes a value that is *constitutive* of the legal problem being addressed.

We shall now focus on this second interpretation, keeping an illustration of the first in mind throughout the following pages.

2.1 Space as a determining factor of law

Space, therefore, is an element that determines the legal object under observation; it is an internal element that *constitutes* our problem.

We could state, in agreement with Pietro Costa, that this valence becomes apparent on a bi-dimensional level: that of *lived space* and *imagined space*. This means that space, on the one hand, constitutes an «intrinsic component of social dynamics» and, on the other hand, represents a vision made explicit by society, as a moment's self-representation. Both of these horizons of spatiality contribute to the constitutional act of experience.

In the paper by Marta Lorente we also detect a use of space in constitutive key. Understanding the legal meaning of the principle of *uti possidetis* is possible as soon as we consider the perception of space inherited from the extended experience of the *Monarquía católica*. Such a space, necessarily understood in conjunction with the «jurisdictional and corporative nature of the political order»¹⁸ – i. e., as an 'open' space that aggregates political powers and social bodies in a network of reciprocal relations of dependence and autonomy – constitutes a factor that justifies and explains the emergence of *uti possidetis*. Its meaning, therefore, is conditioned by the original premise, including when it is employed in the construction of intentionally closed spaces such as national or State spaces.

From our viewpoint, we can add that precisely by assuming this spatial variable in a constitutive sense we are able to appreciate this profile, and to

18 GARRIGA/LORENTE (2007).

restore to a principle such as *uti possidetis* its due performativity with regard to political options and programs.

The essay by Javier Barrientos, in turn, illustrates the theme of subjective *status*, in which space models the legal problem. Over the centuries from the modern age up to codification, space took on an increasingly prominent role in the definition of *status*: this was a process of spatialisation that ‘degraded’ the *status* in *qualitas*, thus allowing, even in an egalitarian context with a single and indeterminate subject, different spheres of individual freedom within a society to be reproduced.

The spatial factor, another example of which can be found in the contribution by Giacomo Pace dedicated to the territorial complexity of the Kingdom of the Two Sicilies, likewise has a central value in the definition of legal-constitutional configurations «beyond the lighthouse». Further examples could easily be found in this volume, but those mentioned thus far should suffice to highlight at least two heuristic paths found when considering space in a constitutive sense.

These planes can be inverted: then, (pre-)comprehension of space operates as an assumption enabling the legal problem to be individualised (as opposed to the situation in the case of reconstructive space, where the legal problem determines the space of reference).

A further, equally relevant analytical capability is likewise gained for the critical appraisal of the performativity of legal figures produced by experience. In effect, it is less a question of drafting the history of their emergence, but rather of their limits. The distinct perspective we believe can be discerned here consists in appreciating the sustainability of juridical concepts and legal figures produced through time. History, therefore, should be written attentive to the pre-comprehension profiles underpinning the conceptualization of ideas and to the pre-conditions determining concrete legal configurations.¹⁹

Not wishing, however, to establish bonds between these approximations to a necessarily shared programme we can state that, generally speaking, the use of time in constitutive key allows a degree of subsequent analysis that is enriching to the field of action of legal history and the range of questions (historical and theoretical) to which legal history can provide answers.

19 For further examples, see MECCARELLI (2015).

This is how, to return to the point mentioned earlier, our discipline can be located in thematic fields with an effective interdisciplinary potential. All this – without lessening their identifying profiles – raises legal history’s capacity for dialogue with other legal sciences (which, in view of current problems, pose questions regarding the appropriateness of the instruments used to address them) and social sciences (interested in incorporating the legal dimension to their own analytical grounding).

2.2 Space as a field of action for law

In this volume we also detect a further use of space in constitutive key, that we feel merits brief individual attention. This use emerges when we consider space as a field for the *occurrence* of law. Legal historiography has recently confirmed the significance of this perspective.²⁰ Our volume contains, in particular, the pages by Alejandro Agüero that suggest this line of development. This author, in fact, considers the phenomenon from the standpoint of the dynamics of localization of law, viewed as a «constant process of interpretation aimed to adjust the rules to the precise conditions of time and place».

The scenario presented under this interpretative premise allows us to analyse an articulate legal space in which the spatiotemporal flow of law is characterised by a «complex interaction of factors that frame the local determination of law». This explains a process that refers to how an interpretation that ‘locates’ an intrinsically flexible law closes a cycle of perfection and materialisation of law, forming part of this self-same ‘formulation’ of law.

Here, the dynamism of law does not describe the movement of an object that is predefined and unchanging in time and becomes dislocated in space. To the contrary, it is seen as a prime environment in which to observe law as a dynamic object; an object that, despite having an identifiable provenance, adopts different characteristics as it negotiates spatial – or more aptly, spatiotemporal – movement.

Taking this approach to space in endeavouring to understand the flow of law is undoubtedly of specific importance to the study of legal structure in

20 See, for example, CLAVERO (2012); HESPAÑA (2013).

the Iberoamerican space (before and after the *Monarquía católica*);²¹ nevertheless, we believe that this analytic approach can be applied with a wider scope, for example for the European perspective. In addition, it is applicable to different aspects of this complex phenomenon, covering rules and systems as well as doctrines or legal cultures.

It is, therefore, possible to make a general reflection on the opportunity of examining the dynamics of the flow of law in the light, shall we say, of *spatialisation*. As described above, by using this term we are underscoring the permanent tendency of law (understood in a broad sense) to take up a position in space, and to adhere to space. We wish thereby to highlight a process that has a bearing on the contents and configurations assumed in the legal dimension, a process that coexists with the moment of its manifestation.²²

It may be useful to mention some methodological implications that we believe derive from this constructive approach to the object under study.

We have recalled earlier that it was precisely Alejandro Agüero who drew our attention to the need to acquire the appropriate conceptual framework to interpret the relationship between space and law. In effect, there seems to be an imperative to surpass certain traditional modes of analysis (such as ‘importation’, ‘reception’, ‘transplantation’, ‘acculturation’...) for referring to the spatiotemporal flow of law.²³

For our perspective, it is inefficient and in certain aspects misleading to use a vocabulary that, used to describe the process of transmitting law from one place to another, emphasises the pre-existence of law and overlooks the aspect of its displacement in space. Instead, we must acquire an epistemic constellation of reference with which to capture the original meaning of the interconnection between space and law, making use for instance of the semantic potential of such terms as ‘translation’, ‘hybridisation’, ‘appropriation’, ‘acculturation’, etcetera.

To address spatialisation experiences and phenomena it is also necessary to concentrate on the cultural patterns acting as reactants in this process.

21 LORENTE/PORTILLO (2012). For later confirmations in this sense, please refer to SOLLA (2015b).

22 To this purpose, the idea of *global entanglements* proposed by ZIMMERMANN (2014) is convincing. On spatialisation, see MECCARELLI/PALCHETTI (2015b).

23 DUVE (2014b); MECCARELLI/PALCHETTI (2015b).

These elements assume the role of instruments that facilitate the historicification of singular legal experiences. The analysis at this point can be taken to considerable detail. Agüero, for example, regarding the foundations of the Hispanic Monarchy's dynamics of localization, individualises factors such as «particularism», «casuism», «normative factualism», or «hermeneutic frame linked to *convenientia rerum* transcendental principles of justice».

Finally, it seems appropriate to consider the possible feedback effects of the movement of law. Effectively, within its space of occurrence, the flow of law is no longer represented as a mono-directional phenomenon, as claimed in some recent works.²⁴

This is not the occasion to develop such a reflection in depth. We have considered it of use, however, to at least mention these methodological implications in order to highlight the opening offered by an understanding of space as a theatre for the movement of law.

2.3 Scales of spatiality

The volume, despite opening a window to opportunities for analysis through the understanding of space in constitutive key, nevertheless also offers clues to re-considering the value of space in a reconstructive sense.

Of particular importance is the contribution relating to the criteria for determining the spatial scale of reference for the object of historical-legal analysis. In effect, this poses a crucial problem from the moment we attempt to use space as an instrument of iushistorical discourse. It is not our intention to draw up herein a closed list, but we can try to extract some of the spatial scale types used in the volume.

Space as *place*: this indicates considering the place in which to determine the space that is relevant to studying the legal problem. Space, in this case, far from being a Newtonian aprioristic conception of 'homogeneous space', is viewed as part of 'a multiplicity of different places', each with its own 'idiomatic and irreplaceable features' (Costa). This facilitates the development of *spacing history* in which the 'development of social phenomena is possible insofar as they "have place", are "located" somewhere' (Costa). This is not, therefore, a localist redeployment having lost all interest in (and any capacity to consider) major historical phenomena. To the contrary, such a

24 COSTA (2004/2005); SOLLA (2015a) and (2015b); VITUCCI (2015).

‘spacing legal history’ enables the simultaneous consideration of several dimensions: it employs *place* as the key to interpreting the interconnections between the particular and the general dimension of law (Agüero, Costa).²⁵ This also leads to greater awareness of legal history in relation to the dynamics of legal pluralism and multi-normativity.²⁶

Internal spaces: the spatial dimension is also measurable in a diverse sense, that we can refer to as internal spaces. This spatial scale is distinct from local space, which operates in a context of complex and, to an extent, open legal spatialities. In the case of internal spaces, however, configurations involving closed legal spaces are considered, such as that represented by the State form (a form of legal spatiality characterized also by the formal determination of the territory on which it stands). This is the case of the Kingdom of the Two Sicilies discussed by Giacomo Pace.

An aspect that we find noteworthy is that no single internal spatiality exists within the territorial scope of the State. In fact, the essay by Pace shows, for example, the presence of multiple internal confines, and gives evidence of how multi-confinity is a relevant factor to defining the perspective on State space that has characterized those regions. The use of a scale of internal spaces has certain repercussions, owing to the fact that it places in the foreground players, institutional realities, or legal dimensions that would not stand out were they to remain within the formal pattern of articulating the State. For this reason we consider that careful analysis of internal spaces may be useful to offer a deeper perspective of the legal valence of the form of the State as historical experience.

The idea of internal space also appears to be useful for interpreting closed legal spaces. In these cases, the issue is to explain the genesis of certain closed spatial realities or, if you will, the process of transforming legal realities founded on the dialectic between “local” and “universal” in closed and self-sufficient legal realities. The problem of *uti possidetis*, as presented within the appropriate historical-legal coordinates by Marta Lorente, indeed entails special significance, as mentioned, in understanding the peculiarities accompanying Latin American State formations.²⁷

25 This approach also in CLAVERO (2012); HESPAÑA (2013).

26 Respecting pluralism and multi-normativity as a field in legal history, see recent works by DUVE (2014b).

27 Vid. for this purpose LORENTE (2010); LORENTE / PORTILLO (2012).

Extensive spaces: another spatial dimension relevant to historical-legal research is extensive spaces.²⁸ We are referring to a comprehensive scale of spatiality that allows us to observe the interactions and interconnections among diverse legal phenomena. The legal historian's attention may turn to extensive spaces in different ways.

A parallel conception of spatiality can be addressed, such as that of great spaces which emerges «in tune with a 'Newtonian' view of space», discussed by Pietro Costa. From an analytical standpoint, this means considering, together with the closed spatiality of the Nation-State, an additional dimension, intertwined with the former, giving rise to a perspective of the experience of legal spatiality. In this manner it is possible to comprehend how the construction of international law in the nineteenth century has allowed the field of action of the Nation-State to be guided toward a «differentiated and heterogeneous spatiality» and has enabled «different combinations between space and politics»; this also holds for other phenomena pointed to by Costa that are supported by the premise of extensive spaces, such as colonial occupation, the emergence of the category of human rights or, in like manner, the reunion of State doctrines with geopolitics.

The latter is again subjected to analysis in the dense essay by Paolo Capellini; in this case, recourse to an extensive spatial scale highlights its added analytical value. Recovering the problem of great spaces (considered from the Schmittian viewpoint, but also according to the proposal implicit in the Monroe doctrine) becomes, in fact, an opportunity not only for narrating a parabola of the modern State, but also to explicitly examine the perspectives of meaning in the international legal order (between the possibility of a unipolar global order and the *pluriversum* of great spaces). The idea of extensive spaces may be applicable beyond the closed spaces of the Nation-State, as suggested in the researches by Marta Lorente and Alejandro Agüero who employ this notion in their reasoning on the determination of legal spaces in a condition we could define as pre-State (Lorente) or local (Agüero).

28 For an updated reflection on the implications for legal history see DUVE (2012) and (2014b). The problem is discussed in general also from the point of view of the historical sciences; for a historiographical treatment, see, recently, ARMITAGE/GULDI (2015), GULDI/ARMITAGE (2014).

3 Adscriptive Temporal Dimensions and Legal History

The problem of space, as confirmed in these pages, is assuredly a major focus of attention from the moment we contemplate the issue of *spatiotemporality*. It is space, going back to Michel Foucault, that causes «the anxiety of our era», while time is merely «one of the various distributive operations that are possible for the elements that are spread out in space».²⁹

We find this statement persuasive but, at the same time, find it necessary to remark that in considering time, we are obliged to appreciate the complexity of the temporal dimension of historical phenomena, most especially those of a legal-historical nature.³⁰ Reviewing the articles composing this volume, the trend mentioned earlier regarding the relationship between space and law can be seen applied to the relationship between legal problem and time.

In this case the time factor appears to operate as the adscriptive rather than descriptive moment of a legal problem. On this point, we wish to underscore that our authors, despite dealing with very different subject matter, consider the time element as an inner feature of the legal problem in hand, that has a bearing on its nature, scope and development dynamics.

To give an example, this approach may be applicable to the principle of *uti possidetis* (Lorente), in which past time (as well as its rhetorical value in legitimating new legal forms, in relation to new political structures) determines the appropriate perspective to comprehend the construction of the State. Similarly, the time factor is seen as one of the aspects upon which doctrine acts to offer new meanings for the legal *status* (Barrientos) in a context that favours spaces for individual liberties and a unitary type of legal subject. The «creation and diffusion of legal knowledge», in turn, implies a temporal dimension (as well as spatial) as its determining moment (Beck).

Many more examples can be found, as it is precisely this persistence in time of the ritual forms in criminal justice («without the political time» in which it is applied) that explains, beyond abstract models of legal theory, the nature of Italian criminal procedures in the nineteenth and twentieth centuries (Colao). The time factor is an integrating element in the localization process of law (Agüero), as law is often articulated through legal instruments

29 FOUCAULT (1986) 23.

30 See, in this respect, PAIXÃO (2013); for a more general treatment, see also HARTOG (2015); ARMITAGE/GULDI (2015); GULDI/ARMITAGE (2014); MARRAMAO (2008); ELIAS (1989).

created in a different temporal (as well as spatial) context. Finally, to round off this brief list of examples, an adscriptive character is also discernible in the temporal qualities of colonial law discussed by Pietro Costa.

From a methodological point of view, we find no predominance of conceptual dyads counterposing measurable profiles of the time factor, such as: continuity-change; tradition-modernity; crisis-stability; transition-revolution. Instead, it seems that the conceptual dyads, assuming an analytical value, are capable of exerting stress on the bonds between heterogeneous (but often simultaneous) characteristics of the time factor, such as for instance continuity-modernity or tradition-change; at the same time, conceptual combinations that highlight time States, such as transition-construction or transition-circulation, take on importance in their own right.

Whereas the first approach, in which time has a descriptive role, orients the analysis toward a diachronic profile, the second, attentive to the adscriptive function of time, reveals the synchronic profiles of juridical experience.

Working with objects containing different historical phases (the circulation of legal knowledge through books, legal grafts of European origin in America, institutions founded on the past to legitimise new constitutional configurations such as *uti possidetis*, etc.) an analytical value is attributed to the *transtemporality* of law in the interpretation of the historical period under study.

At the same time, a further element of temporality – seldom considered in historiography – gains visibility: the coexistence of diverse temporal conditions in the historical-legal experience, namely the «acceleration of history» (i. e., the redefinition of the relationships between the past, present and future), on which Pietro Costa writes in describing the effect of colonisation in relation to temporality in the colonised territories.

The above example invokes, however, the integrated perspective of the factors space and time. Let us return, therefore, to the reflection on spatio-temporal interactions with some conclusive considerations.

4 Spatiotemporality as a Challenge to Legal History

Space and time are not only closely interrelated categories, but also practically indissoluble, which has led us to speak directly of *spatiotemporality*. This spatiotemporality, as the moment and place at which the two elements intersect, can be recognised by certain essential aspects. From the interaction

between space and time arise conceptual categories that not only provide the basis for communities, collectives and societies, but also for modelling key components in forming the legal subjects who will examine the space and time in which they are inserted.

Such is the case of the *status* so masterfully expressed by Javier Barrientos, constructed from the notions of temporality and spatiality. The spatiotemporal conjunction is verified through the definition of societies (Costa), which are not only formed within spaces and times deriving from their own narratives, but, as in the case of nations, are inscribed within imaginary spaces and are the consequence of imaginary chronologies that are embodied in political representations (Costa).

In addition, entities such as States, whose existence stems from a marked redefinition of their place in time and of their time in space, need to invent other spaces and other times against which to object. Colonial experience comes into play in this dynamics, as the paradigm of a perfect conjunction of spatiotemporality, given that space becomes temporalized whereas space is spatialised: spatiality is materialised through temporality, insofar as the colonies' place lies in the past (Costa). Thus, the chronology imposed by the State as a body is so imperative that it creates a new, equally state-based chronology for other completely unrelated realities, which no longer respond to the challenges of their own space and time but form part of external spatiotemporal dimensions: those of Western States.

Historians will not cease to feel the inspiration and the challenge of the union of space and time. One of these challenges will be to uncover the terms of this conjunction through diverse historical experiences that, in the event, can be drawn toward present realities and projected into the future. This is the case of recovering complex spatiotemporal constellations that provide a plural environment for a reality that cannot aspire to be understood in monistic terms, such as the imagination of the *ius commune* which allowed attention to be paid to local specificity whereas the constellation of special features stood within a global space giving them unity as a whole within the universal (Agüero). In the same manner, certain patterns of thought are recoverable, such as the Schmittian «great spaces», which can be moulded into a global future of movement and constant self-definition (Cappellini).

But it is not merely a question of recovering, reformulating and re-using different appreciations of legal experiences in order to unravel and formulate

the historical dimension of today's juridicities; there is also the possibility of envisioning new spatiotemporal categories, such as *projected spaces* (Costa).

All in all, striving to find the value of the spatiotemporal coordinates for legal history is equivalent to reconsidering both the thematic and methodological boundaries of the discipline. Legal history will have the capacity to produce useful knowledge insofar as it remains open to critical discussion of its own methodological rules, to reconsider its place within the scope of knowledge and to redefine its role in a global, perpetually changing world.

The new course set by this discipline, demanded by the social sciences, needed by future legal operators and which legal historians are destined to provide, will depend on our capacity to question ourselves, on the quality of our answers and on the courage with which we address the ensuing implications.

Bibliography

- ARMITAGE, DAVID, JO GULDI (2015), Le retour de la longue durée: une perspective anglo-américaine, in: *Annales. Histoire, Sciences Sociales* (Dossier: "La longue durée en débat") 70, 2, 289–318 (available at: <http://dx.doi.org/10.1353/ahs.2015.0033>)
- CAPELLINI, PAOLO (2010), *Storie di concetti giuridici*, Torino: Giappichelli
- CLAVERO, BARTOLOMÉ (2012), Gracia y derecho entre localización, recepción y globalización (lectura coral de Las Vísperas Constitucionales de António Hespanha), in: *Quaderni fiorentini per la storia del pensiero giuridico moderno* 41, 675–773 (available at: <http://www.centropgm.unifi.it/cache/quaderni/41/0677.pdf>)
- COSTA, PIETRO (2004/2005), Il fardello della civilizzazione. Metamorfosi della sovranità nella giuscolonialistica italiana, in: *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, 33/34, 169–257 (available at: <http://www.centropgm.unifi.it/cache/quaderni/33/0170.pdf>)
- DUVE, THOMAS (2012), Von der Europäischen Rechtsgeschichte zu einer Rechtsgeschichte Europas in globalhistorischer Perspektive, in: *Rechtsgeschichte* 20, 18–71 (available at: <http://dx.doi.org/10.12946/gplh1>)
- DUVE, THOMAS (Ed.) (2014a), *Entanglements in Legal History: Conceptual Approaches*, Frankfurt am Main, MPIeR (available at: <http://dx.doi.org/10.12946/gplh1>)
- DUVE, THOMAS (2014b), *European legal History – Concepts, Methods, Challenges*, in: Duve (2014a)
- ELIAS, NORBERT (1989), *Sobre el tiempo*, México D. F.: Fondo de Cultura Económica

- FONSECA, RICARDO (2013), *As Formas do Direito. Orden, Razão e Decisão*, Curitiba: Juruá
- FOUCAULT, MICHEL (1986), *Of other spaces*, in: *Diacritics*, 22–27
- GARRIGA ACOSTA, CARLOS, MARTA LORENTE SARIÑENA (2007), *La Constitución jurisdiccional*, Madrid: Centro de Estudios Políticos y Constitucionales
- GULDI, JO, DAVID ARMITAGE (2014), *The History Manifesto*, Cambridge: Cambridge University Press (available at: <http://historymanifesto.cambridge.org>)
- HARTOG, FRANÇOIS (2015), *Régimes d'historicité: présentisme et expériences du temps*, Paris: Seuil (available at: <http://dx.doi.org/10.7312/columbia/9780231163767.001.0001>)
- HESPAÑHA, ANTONIO MANUEL (2013), *Uncommon laws. Laws in the Extreme Peripheries of an Early Modern Empire*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, 130, 180–194
- LORENTE SARIÑENA, MARTA (2010), *La Nación y las Españas. Representación y territorio en el constitucionalismo gaditano*, Madrid: Ediciones UAM
- LORENTE SARIÑENA, MARTA, JOSÉ MARIA PORTILLO (2012) (Dir.), *El momento gaditano. La Constitución en el orbe hispánico. (1808–1826)*, Madrid: Congreso de los Diputados
- MARRAMAO, GIACOMO (2008), *La passione del presente: breve lessico della modernità-mondo*, Torino: Bollati Boringhieri
- MECCARELLI, MASSIMO (2015), *The Assumed Space: Pre-reflective Spatiality and Doctrinal Configurations in Juridical Experience*, in: *Rechtsgeschichte* 23, 241–252 (available at: <http://dx.doi.org/10.12946/rg23/241-252>)
- MECCARELLI, MASSIMO, PAOLO PALCHETTI (2015a) (Eds.), *Derecho en Movimiento. Personas, derechos y derecho en la dinámica global*, Madrid, Universidad Carlos III de Madrid (available at: http://e-archivo.uc3m.es/bitstream/handle/10016/20251/derecho_HD33_2015.pdf?sequence=3)
- MECCARELLI, MASSIMO, PAOLO PALCHETTI (2015b), *Derecho en movimiento: una cuestión teórica nada convencional*, in: MECCARELLI/PALCHETTI (2015a), 9–19
- MODÉER, KJELL Å. (2014), *The deep structures of European normativity in a global context*, in: *Rechtsgeschichte* 22, 275–281 (available at: <http://dx.doi.org/10.12946/rg22/275–281>)
- PAIXÃO, CRISTIANO (2013), *Tempo presente e Regimes de Historicidade. Perspectiva de Investigação para a História do direito*, in: FONSECA (2013), 77–87
- RAFFESTIN, CLAUDE (2013), *Por una geografía del poder*, México: El Colegio de Michoacán
- RENN, JÜRGEN (2014), *The globalization of knowledge in history and its normative challenges*, in: *Rechtsgeschichte* 22, 52–60 (available at: <http://dx.doi.org/10.12946/rg22/052-060>)
- SOLLA SASTRE, MARÍA JULIA (2015a), *El gobierno de la especialidad. Personas y cuerpos en movimiento entre España y Ultramar (1850–1885)*, in: MECCARELLI/PALCHETTI (2015a), 21–71

- SOLLA SASTRE, MARÍA JULIA (2015b), Ultramar excepcional. La construcción de un espacio jurídico para España y sus colonias (1837–1898), in: *Rechtsgeschichte* 23, 222–238 (available at: <http://dx.doi.org/10.12946/rg23/222-238>)
- SORDI, BERNARDO (Ed.) (2013). *Storia e diritto. Esperienze a confronto*, Milano: Giuffrè
- TURNER, FREDERICK JACKSON (2008), *The significance of the frontier in American history*, London: Penguin books
- VITUCCI, CHIARA (2015), Some considerations on the two-way circulation of legal concepts and experiences between colonies and motherland, in: MECCARELLI/PALCHETTI (2015a), 97–105
- ZIMMERMANN, EDUARDO (2014), Translations of the “American Model” in Nineteenth Century Argentina: Constitutional Culture as a Global Legal Entanglement, in: DUVE (2014a), 385–425

Contents

Introduction

- 3 | Massimo Meccarelli, María Julia Solla Sastre
Spatial and Temporal Dimensions for Legal History:
An Introduction

Experiences

- 27 | Pietro Costa
A ‘Spatial Turn’ for Legal History? A Tentative Assessment
- 63 | Javier Barrientos Grandon
Sobre el “Espacio” y el “Tiempo” y el “Estado de las Personas”:
Una mirada desde la Historia del Derecho
- 101 | Alejandro Agüero
Local Law and Localization of Law. Hispanic Legal Tradition
and Colonial Culture (16th–18th Centuries)
- 131 | Marta Lorente Sariñena
Uti possidetis, ita domini eritis. International Law and the
Historiography of the Territory

Itineraries

- 175 | Paolo Cappellini
Carl Schmitt revisited. Ripensare il Concetto di ‘Grande Spazio’
(*Großraum*) in un Contesto Globale

- 195 | **Laura Beck Varela**
The Diffusion of Law Books in Early Modern Europe:
A Methodological Approach
- 241 | **Floriana Colao**
Per una Storia del Processo Penale «all’Italiana». «Astratte
Modellistiche» e «Abitudini Profondamente Radicate»
- 279 | **Giacomo Pace Gravina**
Beyond the Lighthouse. Sicily and the ‘Sicilies’:
Institutional Readings of a Borderland
- 289 | **Contributors**