We are delighted to welcome you to our newsletter. It is designed for everyone with an interest in legal history, global history, or legal studies. The Max Planck Institute for European Legal History investigates the history and development of law in Europe and beyond. In our monthly newsletter, we keep you updated about events at the Institute, new publications by our fellows, and other news about the field. For comments, suggestions, and general feedback please email us. We hope you enjoy this month's issue.

Opportunities

CfA: Max Planck Summer Academy for Legal History 2019, deadline is 31 January 2019. For more information click here.

CfA: We are looking to recruit student assistants for our research and our editorial department. For more information and on how to apply, follow

Events

07.12., 10:00, Initiative Arbeitsrechtsgeschichte 2018, Historizität des Richterrechts, Gerd Bender (MPIeR)

10.12., 12:00, Jour Fixe Roland Freisler (1893-1945) and the National Socialist vision of a European legal space, Thomas Clausen (Trinity College, Cambridge, UK)
Publications

Zisterziensische Rechtslandschaften

by Dennis Majewski, Studien zur Europäischen Rechtsgeschichte 308, Frankfurt am Main, Klostermann 2019, ISSN: 1610-6040

Using the example of possessions and rights of the Cistercian monasteries Dobrilugk (today Doberlug-Kirchhain) and Haina, this volume develops the concept of 'legal landscape'. While Haina lies in the Franconian Altsiedelland ('old settlement land'), Dobrilugk was founded in Lower Lusatia in an area that was little by little opened up to and developed by the order patterns of the Roman-German Empire starting in the 11th century. By means of an intensive, systematic and map-based comparison, the perspectives of 'space', 'time' and 'actors' were used to determine how the two monasteries, using similar instruments, reacted to different conditions in order to expand their sphere of influence, in which terms like territory or dominion are not suitable representations.
Martín de Azpilcueta (1492-1586) et ses traductions


The “Manual for Confessors” by the celebrated canon law professor Martín de Azpilcueta (1492-1586) was a real bestseller of the 16th century. It played a fundamental role in the construction of normative knowledge not only in Europe, but – thanks to the presence of the book in the missionary libraries – also in the New World and, we might even say, all over the world. This article analyses the very complex editorial history of the book, which the author himself transformed and translated many times during his travels from Portugal to Rome. It thus sheds new light on the importance of translation, namely of “self-translation” in the production of 16th-century normative knowledge, showing how the fact of thinking and rewriting a text in another language had an impact not only on its form but also its content.

¿Más allá de una narrativa del cambio epocal? Desafíos para una mirada histórica y comparativa sobre la penalidad contemporánea

by Máximo Sozzo, SSRN Research Paper Series Np. 2018-14

This paper problematizes the construction of narratives of epochal change frequently used in the contemporary sociology of punishment. By means of a critical analysis of the "thesis of the late modern penality" embodied in the work of David Garland, as an example, two limits are identified. These narratives of epochal change are obsessed with change in the penal field, and this prevents the identification and evaluation of the multiple inertias of the distant and recent past. Moreover, these are often articulated via the projection of a simplified image of the past that historical exploration challenges and is usually translated into a nostalgic attitude that is unsustainable and infertile both analytically
and politically speaking.

Árbitros (DCH) (Arbiter (DCH))

by Gustavo César Machado Cabral, SSRN Research Paper Series Np. 2018-12

This paper discusses the role of arbiters in the Canon Law of Hispanic America. In the Christian tradition, arbiters have been involved in the resolution of conflicts at least since the early centuries of Christianity. By examining different types of arbiters, the paper emphasizes the consensual nature of such arbitration processes, which required an agreement signed by both parties and the arbiter. It investigates what qualifications were necessary for becoming an arbiter, who was entitled to negotiate with the arbiter, the issues that could be submitted to arbitration, and the extent of arbiters’ competences. It ends with an examination of the arbiters’ decisions, of the appeal system and of the processes for enforcement.

Featured Events

Jour Fixe: Roland Freisler (1893-1945) and the National Socialist vision of a European legal space

by Thomas Clausen (Cambridge), 10.12.2018, 12:00-13:00

Roland Freisler (1893-1945) was one of the most notorious jurists of the Nazi dictatorship. As President of the so-called People’s Court between 1942 and 1945, he was responsible for over 2600 death sentences against resistance fighters, partisans, and those merely caught for telling jokes about Hitler.

After a brief overview of his life and legacy, this paper examines a
particular aspect of Freisler’s work: his vision of a future European legal order.

In recent years, notions of space and spatiality have received increasing attention both from intellectual historians such as David Armitage and from historians of the Third Reich examining ‘Hitler’s Geographies’. Furthermore, the concept of ‘spaces of violence’ (Gewalträume) has been employed to explain instances of ultraviolence occurring in the ‘bloodlands’ of the 20th century. My paper uses the case of Roland Freisler to examine how the relationship between spaces of violence and spaces of law (Rechtsräume) developed from 1933 to 1945. Going beyond classic accounts such as Ernst Fraenkel’s famous distinction between the normative and the prerogative state, my paper argues that the Nazi spatial imagination is of central importance to understanding the complex dynamics between law, law-breaking, and violence in Nazi Germany and the occupied territories. Drawing on Freisler’s publications as well as archival records and personal correspondence, it is argued that his thought was fundamentally shaped by a sharp separation between a pacified space associated with the People’s Community, and an extra-legal space characterised by resistance, war and violence.

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**Guests and Visiting Scholars**

- **Allemann, Daniel** (University of Cambridge, UK): *Slavery in Spanish Scholastic Thought, ca. 1539 – 1682*, visiting October – December 2018
- **Carrilho, Leonardo** (Universidade de São Paulo, Brazil): *In Comparative Public Law, the similar and different conditions between the federal intervention and the state of exception that occurred in the Weimar Republic, and in some crucial moments in the Brazilian Republic 1937 – 1988*, visiting September 2018 – February 2019
- **Cecchinato, Andrew** (Universitá di Trento, Italy): *Reading Law in Revolutionary Times: Thomas Jefferson’s Reception of the Western Legal Tradition*, visiting October – December 2018
- **De Moraes Silveira, Mariana** (Universidade de São Paulo, Brasil): *Towards a collective understanding of the legal past: law conferences, historiography and public uses of history (Brazil, 1900 – 1943)*, visiting December 2018 – January 2019
Hooton, Victoria (University of Manchester, UK): A History of EU Citizenship and the Welfare State, visiting October – December 2018

Izecksohn, Vitor (Universidade Federal do Rio de Janeiro, Brasil): Insolvent Republics: Risk and Ruin for American Confederates and Argentinean Federalists in the Age of State-Building, 1848 – 1870, visiting September – December 2018

Kim, Marie Seong-Hak (St. Cloud State University, Minnesota, USA): Custom and Legal Change in European and East Asian History, visiting October – December 2018

Küsters, Anselm (Oxford University, UK): Der Einfluss des Ordoliberalismus auf die Entwicklung des europäischen Wettbewerbsrechts im Spiegel der Publikationen der Europäischen Kommission (1952 – 2018), visiting October 2018 – February 2019

Liendo Tagle, Fernando (Universidad Carlos III de Madrid, Spain): The legal press in the formation and teaching of legal disciplines and university studies in 19th century Spain, visiting October – December 2018

Lima, Bruno (Universidade de Brasília, Brasil): Between the Ancien Régime and Modernity: Natural Law and Constitution in the legal thinking of Fr. Joaquim do Amor Divino Caneca (1779-1825), visiting September 2018 – August 2019

Manganaro, Stefano (Università di Pavia, Italy): Shaping Legal Spaces through Personal Bonds. The Privilege of Royal Protection in a Comparative Study of Different Geopolitical Areas within the Ottonian Empire (936 – 1024), visiting July – December 2018

Mongey, Vanessa (Newcastle University, UK): Suspicious citizens: border control, diplomacy, and travel regulations: 1790 – 1870, visiting July – December 2018

Moutin, Pol René (Universidad Nacional de Rosario, Argentina): Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas, visiting December 2018 – February 2019

Qu, Jian (Heidelberg University, Germany): Social Order Through Contracts: A Study of Qingshui River Manuscripts, visiting July – December 2018

Sakseña, Priyasha (Harvard Law School, Cambridge, USA): Contestations over the idea of sovereignty in colonial South Asia / Attempted transfer of jurisdictional bases from Britain to colonial South Asia, visiting July 2018 – June 2019

Volkind, Laura (Instituto de Investigaciones de Historia del Derecho, Buenos Aires, Argentina): Publicaciones y Repositorios Digitales, visiting December 2018 – April 2019

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The School of Salamanca: a Case of Global Knowledge Production?

The conference *The School of Salamanca: a Case of Global Knowledge Production?* was held at the National Academy of the History of the Argentine Republic in Buenos Aires 24 – 26 October 2018. It assembled twenty experts from seven countries (Germany, Spain, Argentine, Brazil, Italy, Mexico and the Philippines).

In the opening session, Thomas Duve presented a methodological proposal aimed at rewriting the history of the School from a perspective combining legal history with the history of knowledge. He had published his ideas in the project’s *Working Paper Series*. This contribution served as a general frame for the discussions during the conference. The papers presented by the speakers covered a broad range of subjects, a common thread being the focus on how normative production took place at the School of Salamanca and how those methods were applied in far-flung world regions reigned by the Spanish and Portuguese monarchies during the 16th and 17th centuries. The case studies underlined how the university of Salamanca, its teaching methods, books, and the fundamental concepts as defined by

Justiz Macht Politik.

*Symposium at the Akademie der Wissenschaften und Literatur | Mainz*

Liberal democracy and constitutional order are under threat right in front of us: in Poland or in Hungary for example. It usually starts with an attack on courts. The latest developments in this regard were the motivation for a public symposium on 27th November at the Academy for Science and Literature in Mainz. It aimed to discuss the rule of law and the division of power in a constitutional setting with a diverse audience comprising scholars, lawyers, politicians, journalists and an interested public.

Michael Stolleis (MPI) opened the symposium by way of a historical *tour d'horizon* that showed that the rule of law and the judiciary were never free from political aspects and influences. On the contrary, we may only understand them properly by taking into account the broader socio-political conditions of their work. Similarly, Oliver Lepsius (Münster) called for stronger efforts in contextualizing and historicizing the rulings of constitutional courts in order to re-open some room of manoeuvre for both politics and courts. Hans
the Salmantine professors were regarded as essential points of reference in many places throughout the Spanish Empire, thus defining the School of Salamanca as a phenomenon of global knowledge production.

The conference also included a public presentation of the project **The School of Salamanca: a Digital Collection of Sources and a Dictionary of its Juridical-Political Language** in the historical plenary hall where the Argentine National Congress sat between 1864 and 1905. In this evocative setting, Thomas Duve, Christiane Birr, David Glück and Andreas Wagner talked about the selection of texts to be published in the project’s collection of sources and their characteristics, as well as demonstrated the features of their online full text edition.

*(Christiane Birr & José Luis Egío)*

Vorländer (Dresden) emphasized the integrational capacity that constitutional courts can exert in democracies.

As for the current development, Tomasz Tadeusz Koncewicz (Gdansk) described in bleak terms the erosion of the rule of law in Poland under the PiS-government. Justice Susanne Baer (German Constitutional Court) reminded the audience that polemical and undifferentiated criticism helps discredit courts in Germany as well.

The subsequent panel discussion involved Justice Baer, Susanne Leutheusser-Schnarrenberger (former Minister of Justice) and Jasper von Altenbockum (Frankfurter Allgemeine Zeitung). The panel members expressed a shared concern about the fact that democratic and constitutional achievements are thoughtlessly marginalized in a public debate increasingly characterized by polarization and aggression.

*(Jasper Kunstreich)*

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**Happy Holidays**

We cordially wish everyone a pleasant and festive season. The institute will be closed from the 24th of December until the 4th of January. We look forward to seeing you in the new year and to keeping you informed and updated about new and exciting research.

**Max Planck Newsletter for Ibero-American Legal History**

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