MAX PLANCK
RESEARCH GROUPS

GOVERNANCE OF THE UNIVERSAL CHURCH AFTER THE COUNCIL OF TRENT

Benedetta Albani

The Max Planck Research Group, active at the mpilhlt since 2014, aims to analyse the emergence and development of the global governance of the Catholic Church through the study of the Congregation of the Council (*Sacra Congregatio Concilii, SCC*), the dicastery of the Roman *Curia* in charge of the implementation of the Council of Trent throughout the Catholic world.

The Group's research is modulated into individual and team research projects. As for individual research projects, in the three-year period 2018–2020, Alfonso Alibrandi (Université Paris V Descartes) concluded his thesis on the role of the Congregation of the Council in defining the concept of authentic interpretation in the modern age. Anna Clara Lehmann Martins (Federal University of Minas Gerais and Westfälische Wilhelms-Universität Münster) continued her research on the role of the Council of Trent in ecclesiastical administration in 19th-century Brazil and will defend her thesis in 2021. The Group has also been enriched by two new PhD students who brought new research topics and expertise: Francesco Giuliani (Universität Mannheim) is writing his dissertation on governance of local churches in the Papal State in the modern age, and Alexandra Anokhina (Universität zu Köln) started her dissertation on geographical imagination in early modern Catholicism with a special focus on Digital Humanities visualisation tools.

Claudia Curcuruto and Brendan Röder, former doctoral students of the Group, engaged in research on the relationship between the Congregation of the Council and apostolic nuncios at the end of the 17th century and on disability within the clergy in the early modern age, respectively. Brendan Röder successfully defended his thesis *Der Körper des Priesters* in 2019 and was awarded summa cum laude. Claudia Curcuruto is scheduled to defend in 2021–22. Finally, Constanza López Lamerain's research, carried out within the Research Group from 2014 to 2019 and dedicated to the relations between the Chilean bishops and the Holy See in the 16th and 17th centuries, will be pursued at the Universidad de Chile (Santiago de Chile). The composition of the Group has evolved over time with some doctoral students who, having completed their period of activity in Frankfurt, have continued their work elsewhere while remaining linked to the Group as external members. This structure is extremely practical for the continuation of the Group's work, as it allows the professional skills developed over the years to be maintained within the Group and facilitates the transfer of knowledge between older members and newcomers. At the same time, it offers an institutional bond to young researchers at a particularly delicate moment in their careers, namely the completion of their doctoral thesis and the search for a first position in the academic world. All members of the Group contribute, based on their specific research interests and expertise, to the realisation of team research projects.

In 2017 the Group concluded the project *Reorganisation of the Archive of the Congregation of the Council*, carried out in collaboration with the Vatican Apostolic Archive (formerly Vatican Secret Archive) and aimed at ensuring full usability of the dicastery's archive for researchers. Based on the results obtained, since 2018 the Group has been working on the implementation of the *SCC explorer* project, a complex of computer tools programmed by the team that aims to offer the scientific community a solid base of scientifically organised data to facilitate future research on the Congregation of the Council.

The *SCC explorer* project consists of four closely related subprojects. The *SCC resource explorer* offers the possibility to access, through a web application, a rich database of specialised bibliography on the Congregation of the Council. This bibliography is primarily the result of the personal research of the members of the Group but has been implemented by a systematic analysis of the historiography produced on the dicastery from the post-Tridentine era to the present day. To organise the material, the team elaborated a complex system of keywords based on the specific legal competences of the dicastery. This system allows for a very thorough search of the material and facilitates an analytical reflection on the history and competences of the Congregation of the Council. A large part of the database is also accompanied by data on the archival sources from the archives of the Congregation cited in the scientific literature, which is extremely useful given the complexity of the archives and their still limited use by scholars. The second subproject, the *SCC timeline explorer*, will offer the possibility to visualise through a web application, different timelines describing various aspects of the history, competences and functioning of the Congregation of the Council. The synoptic visualisation aims to facilitate the contextualisation of the activities of the dicastery in the broader framework of the evolution of the Roman *Curia*, the history of the Church and the global history of law. The third subproject *SCC libri decretorum explorer* offers the scientific community easier access to the volumes of the decrees of the Congregation of the Council kept in the Vatican Archives. The Group has financed the digitisation of the first 68 manuscript volumes of the series, volumes that constitute the initial nucleus of the dicastery's activity and precede the printed collections of the Congregation's decrees promoted since the beginning of the 18th century. For the first time, it will be possible to access the complete collection of decrees, even for those who are not familiar with archival research.

In recent years, the team has created a complex set of archival metadata that will be accessible as an accompaniment to the images, enabling easier navigation through the documents. The project is being carried out in collaboration with the Vatican Apostolic Archive and the Institute Library. Finally, the preparation of the fourth subproject continues, the graph-database *SCC positiones explorer*, which will make available to the scientific community for the first time an analytical description of more than 33,000 *positiones* from the dicastery between 1564 and 1681, in which the decisions taken by the dicastery about specific issues on interpretation regarding Tridentine canon law are preserved. This subproject is also carried out in collaboration with the Vatican Apostolic Archive and in synergy with the Digital Humanities expert at the Institute, Andreas Wagner. Also collaborating are an archivist, Dr Francesco Russo, and Yohan Park, student assistant of the Group and master's student at the Johannes Gutenberg-Universität Mainz, who is writing his thesis in Digital Humanities on ontologies of database design based on the data provided by the Group.

Other thematically related research projects and activities are linked to the Research Group. Among these, it is important to mention the project *Information as resource for juridical decision-making processes: on the emergence of the modern information regime in the early modern papacy* carried out within the framework of SFB 1095 *Discourses of Weakness and Resource Regimes* from 2014 to 2019. As part of the project, Cecilia Cristellon investigated the role of information as a resource for Roman congregations for administering religious plurality, and José Luis Paz Nomey, PhD candidate at the Universität Heidelberg, studied the role of translation in the relations between the Apostolic See and the viceroyalty of Peru in the 16th and 17th centuries. In 2020, the SARS-CoV-2 pandemic affected the work of the Group, especially due to the long periods of closure of the archives. The Research Group therefore requested and obtained a ten-month extension of its activities from the Max Planck Society.

Alfonso Alibrandi

Former Doctoral Student

The dominion over the interpretation of the law

The research project *The dominion over the interpretation of the law* focused on the interpretative competence of the Congregation of the Council and its influence on the legal theory of the concept of authentic interpretation of the law during the 16th and 17th centuries.

Authentic interpretation of the law means the interpretation given by the legislator itself. One of the most important examples of the application of this juridical concept is the interdiction imposed by Pope Pius IV at the end of the Council of Trent. As a consequence of this interdiction, the pope created a specific organ to control the correct application of the decrees of the council: the Congregation of the Council. In order to prove the influence of this Roman congregation on the evolution of the concept of authentic interpretation of the law, the research aims to outline the general procedure followed in order to solve the *dubia* coming from all over the Catholic world and to demonstrate that its activity was largely taken into consideration by the jurists and the legislators of the 17th century.

Based on the analysis of the handwritten sources conserved at the Apostolic Vatican Archive and through the consultation of many juridical books, it appears clear that the activity of the Congregation of the Council deeply influenced the legal doctrine of the 17th century. In particular, the decisions of this congregation were used in the development of legal theories on authentic interpretation, influencing the ideas on this concept until the codification period. Moreover, it is now possible to demonstrate that the importance of the Congregation of the Council went beyond canon law, influencing other juridical systems, such as French legislation during the legal reform process started by Louis XIV.

Thanks to the Max Planck project cataloguing the archival sources of the Congregation of the Council, it is now possible to demonstrate the importance of this organ of the Roman *Curia*, both within the Catholic Reformation and more broadly as one of the main protagonists in the development of legal theory regarding the concept of authentic interpretation of the law during the early modern period.
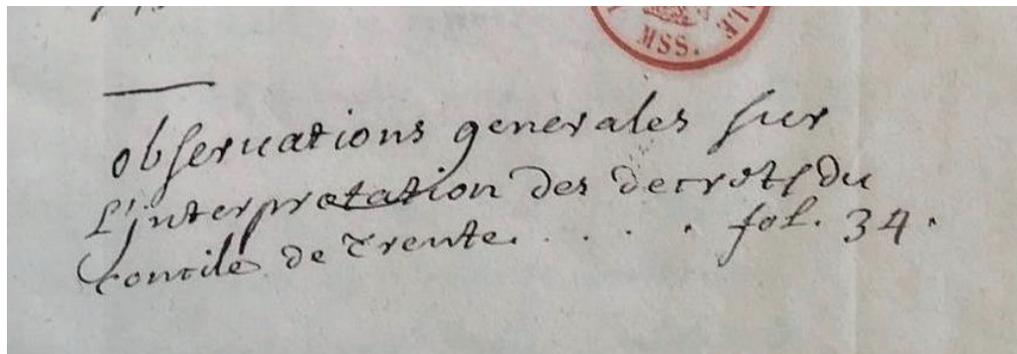
Alexandra Anokhina

Doctoral Student

Mapping the world after the Council of Trent: an analysis of the language of geographical imagination in early modern Catholicism

My research focuses on mapping legal spaces and geographical imagination in Post-Tridentine Catholicism. I use 'mapping' as an umbrella term for the definition of the space that includes not only cartography, but also textual descriptions, suspicions and projections. Following the exploration of new territories, ecclesiastical institutions established new structures and missions that required a mapping projection. Examining the relationships between geographical imagination and legal structures, I focus on the combination of two layers: first, the definitions and names that the Holy See used to identify and order territorial subjects and applicants in a hierarchy, and second, topographic projection, based on the transfer of geographical and biological knowledge. I explore interactions between the linguistic and spatial data, the transfer of knowledge depicting an image of the world, and the Holy See's expectations regarding the borders of the world and the borders of jurisdiction versus their geographical reality. Since my research contains two components, language and geography, I use two types of digital tools. For the analysis of the linguistic data, I use R, a free software environment for statistical computing. To examine the spatial data within the linguistic framework, I use GIS and game engines to combine an imaginative aspect of topography and legal space on global and local levels.

In addition to my own research, I worked on three of the Research Group's digital projects. The first is an interactive bibliographical catalogue of the Congregation of the Council, which aims to provide a usable and clear navigation among 180 keywords in more than 3000 texts and to connect them with the index of the Vatican Apostolic Archive. I added a double conversion of .bib (EndNote) to the data table, multiple search keywords organised into trees, and graphic visualisation of bibliographical trends, where users can choose parameters and see the chronological dynamic. This app, suitably adapted, can also be used for other research projects and will soon be available as an open source resource for the scientific community.

Secondly, I made an internal app for the Group, *Positiones explorer*, which enables interactive searches in the catalogue of *positiones* and their graphic visualisation. All projects are programmed on R Shiny with html and js widgets.

Thirdly, within the framework of the EU-funded RISE-project *RESISTANCE. Rebellion and Resistance in the Iberian Empires, 16th—19th centuries*, I am developing a web app, *Mapping resistance*, which aims to visualise a large amount of spatial and statistical data of rebellions and revolts in the Iberian empires between 1500 and 1850. The dashboard includes multi-level navigation, a reactive dynamic timeline, WMS historical maps and an analytical part with graphs and statistics.

Cecilia Cristellon

Former Researcher

Roman congregations and information as a resource for administering religious plurality

My project analysed the communication between Roman congregations and European local churches as a resource for the construction of a normative order in the field of religious pluralism. The project aimed to understand how Roman congregations received, selected, censured, ignored and interpreted information from the local churches about religious pluralism in different ways in order to achieve diverse goals at various times historically. This analysis underlines how information served as a flexible resource for the negotiation and administration of religious plurality that enabled the reconciliation of dogmatic rigidity with pastoral flexibility.

Communication between local churches and Roman congregations occurred mainly through reports, either those presented by bishops to the Congregation of the Council or those of the missionaries addressed to the Congregation of Propaganda Fide, as well as through the formulation of *dubia* and the requests for dispensations sent to the Holy Office. This communication reveals the will of the Catholic Church to reconcile its aspirations to a monopoly over doctrinal truth and the universalism of its jurisdiction over the baptised with its limited enforcement capability in places where Catholics did not hold political power. This inability to intervene prudently led the Roman congregations – and in particular the Holy Office – to avoid a general prohibition on religious pluralism, limiting themselves for a long period to collecting information on local practices and to finding concrete solutions on a case-by-case basis. This communication, which sometimes had a self-justifying function (when the members of the local clergy described the difficulties that prevented a literal application of the dictates of the Council of Trent), also produced a reservoir of information upon which the Roman congregations could draw. It contributed to constituting a praxis that diverged from the norm so as to become a norm itself, and therefore played a dynamic role within the normative order regarding religious pluralism.

Francesco Giuliani

Doctoral Student

Governing the local churches in the Papal State: the Congregation of the Council and the Marca pontificia between the 16th and 17th centuries

The *Marca pontificia* constituted a specific territory close to the Roman *Curia* within the Papal State, characterised by a considerable institutional and diocesan fragmentation, where there was a merely formal distinction between temporal and spiritual power that was difficult to untangle. The analysis of the role played by the Congregation of the Council in the government of the local church in this province – hitherto little explored by researchers – allows a detailed study of how the Tridentine decrees were implemented as well as of the relations that were established between a Roman institution and the diocesan ones in the early modern period, from both central and local perspectives. The research project raises the following questions: how did the Congregation of the Council behave in the translation process of the Tridentine normative order in the jurisdictional complexity of the Papal State? How did the proximity of the Marches to Rome affect the relations between the Congregation of the Council and the diocesan institutions from the quantitative and qualitative point of view? How did a global institution develop itself in the diocesan dimension of the local church? So far, the research has focused on tracing, collecting and processing the sources of selected dioceses in the diocesan archives and the Vatican Apostolic Archive. The work with sources is accompanied by an essential theoretical analysis of curial and diocesan legal practices and their interconnections. The first provisional results show a continuous dialogue between Rome and the *Marca pontificia* throughout the 17th century, and above all a remarkable variety in the subjects dealt with. The Congregation in this geographical context was primarily concerned with the granting of licenses for the alienation of the assets of the regular clergy, the administration of ecclesiastical benefices and matters relating to the residence of the clergy.

Anonymous, Cardinal Innocenzo Cibo (detail)

Anna Clara Lehmann Martins

Doctoral Student

Governance of the Brazilian Church between Rome and Rio de Janeiro: the role of the Council of Trent in ecclesiastical administration (1840–1889)

The Empire of Brazil (1822–1889) structured its relations with the Catholic Church based on *padroado* rights. This means the administration of the Brazilian Church depended on interactions between three institutional levels – the local clergy, the Brazilian state and the Holy See – and was anchored on canonical norms, civil norms and custom. In this context, it is surprising that the Council of Trent, a 16th-century disciplinary corpus, was the object of renewed interest for lawyers, bureaucrats, clergymen and cardinals during this period. Having surpassed its colonial adaptations and remaining relevant until the 1917 Codex, the Tridentine decrees witnessed the rise of new networks of interpretation and enforcement during the Second Reign (1840–1889).

This project outlines the different appropriations of the Council of Trent in the Brazilian Church's system of governance, particularly in administrative matters of a mixed nature. The main sources are cases from the twelve imperial dioceses that were directed to two higher administrative bodies with interpretative competences – the Brazilian Council of State and the Roman Congregation of the Council. In the case sample, five themes were selected as they featured in petitions to both the Council of State and the Congregation of the Council: provision of benefices, residence, foreign clergy, seminary and discipline.

Preliminary results show that, in petitions and decisions, the Council of Trent adopted multiplex and distinctive functions, including, first, as a norm both rejected and protected by the state that was used as a model for civil norms; second, as a norm remodeled by the Holy See to address new phenomena; third, as a weapon of resistance against the episcopate; and fourth, as a norm informing joint strategies between the three levels of governance. Overall, this project challenges the explanatory power of 19th-century dichotomies such as the supposed opposition between the 'regalist, liberal state' and the 'ultramontane, Tridentine clergy'. Instead, it reveals the ecclesiastical administration in the complexity of its actual practice.

Louis Aubrun, Panorama da cidade de Rio de Janeiro, 1854

Constanza López Lamerain

Former Doctoral Student

From universal to local governance. The Chilean bishops before the Holy See in the 16th and 17th centuries

Ecclesiastics on indigenous slavery at the Hispanic–Mapuche frontier (16th and 17th centuries)

During 2018 and 2019, I worked on the project *From universal to local governance. The Chilean bishops before the Holy See in the 16th and 17th centuries*, on the topic of the governance of the Universal Church after the Council of Trent and the observance of canon law by local churches within the Catholic sphere. The project analysed the relation between the Holy See and the Chilean dioceses that existed mainly through their bishops during the 16th and 17th centuries in the context of Spanish colonialism. The guiding enquiry of this research focused on how the governance model of the Universal Church influenced local churches in Chile in the context of royal patronage. To achieve this, a deep examination of Vatican sources and their correlation with local documents was undertaken. Preliminary results identified that bishops pursued and succeeded in presenting doubts, petitions and complaints concerning their government communicating directly with various institutions of the papacy despite the restrictions imposed by the royal patronage.

Since 2019 I have been collaborating with the Max Planck Partner Group at the Universidad Adolfo Ibáñez in the project *Ecclesiastics on indigenous slavery at the Hispanic–Mapuche frontier (16th and 17th centuries)*, which studies how the members of the Church – clerics and missionaries – in Spanish America mediated between local populations, the king and other authorities when denouncing indigenous slavery at the southern borderlands of the Spanish empire in the 16th and 17th centuries. The guiding question of the project – focusing specifically on the communications sent by ecclesiastics from Chile – is if their intermediate position gave them a chance to present unjust and cruel behaviour towards indigenous communities on the part of *encomenderos*. Did their unique position as intermediaries between canonical and secular normativities enable them to denounce local conflicts that took place in the borderlands?

José Luis Paz Nomey

Former Doctoral Student

Translating to evangelise: discourses and translations of Christianity between the Holy See and lay people in the Viceroyalty of Peru (16th–17th centuries)

This doctoral project analyses, discusses and critiques the discourses on Christianity developed between two legal institutions – the Holy See and the confraternities – in the Peruvian region in the 16th and 17th centuries. Although the discourses addressed all aspects of Christian life, the research concentrates, in the first instance, on the analysis of the regulations concerning the evangelisation of believers through the study of bulls and other papal documents (196 unpublished and 126 published bulls) which regulated this process, as well as on the catechetical instruments resulting from the Tridentine and Lima Councils.

The project also studies the discourse and practices of the recipients of the papal discourse – the laity organised around the confraternities of 'God' in their various vocations. This is achieved through the analysis of papal *breves* addressed to the confraternities, on the one hand, and of the books of the confraternities in the local archives, on the other. As these are two institutions with different languages, in order to spread Christian discourse and carry out the evangelisation of the Peruvian faithful, it was necessary to resort to translation from the language used in Rome (Latin) to the languages of the Indians (Quechua and Aymara). For this reason, the two variables, 'discourses' and 'translations' (linguistic and cultural) are transversal to all the chapters of the thesis.

The thesis is divided into four chapters: the first is dedicated to contextualising the region of study, with emphasis on the types of interpreters and the work they developed. The exchange of information between the Holy See and the Peruvian Church served to design the methodology of spiritual conquest that would be carried out among the Catholic faithful, as shown in chapter two. A culminating aspect in the development of the Church in the early colonial period was the promulgation of instruments of evangelisation such as the Roman Catechism by the Council of Trent and the translation of this text into the Christian Doctrine and Catechism of the Third Council of Lima, a theme developed in chapter three. Finally, the transfer of devotional expressions from Spain to the New World favoured contact – direct or through a procurator – between Peruvian laity and Rome in order to obtain favours; these privileges would enable the confraternities to manage themselves in an almost autonomous way and have more power in decision-making processes, as shown in chapter four.

TRANSLATIONS AND TRANSITIONS: LEGAL PRACTICE IN 19TH-CENTURY JAPAN, CHINA AND THE OTTOMAN EMPIRE

Lena Foljanty

How was legal practice shaped in the encounter between European and non-European legal cultures in the late 19th and early 20th centuries? This is the main question of a Max Planck Research Group that started its work in July 2017. It investigates the path toward legal modernity in the three selected non-European countries: Japan, China and the Ottoman Empire. While none of the three countries were ever colonised, they nevertheless underwent substantial legal reforms during this key moment in the history of the globalisation of law, pressured by the Western nations as well as by internal needs for reform. Based on European models, every element of law was reconsidered: new norms and institutions were created, a new understanding of law was formulated and even a new legal language was established.

Legal practice at the margins: a comparative perspective on law's modernity

A great deal of research has been done on each of these countries. However, the Group's research is fundamentally new in several regards:

(1) The Research Group does not focus on legislative reforms, which have already received much scholarly attention, but rather on the transformation of legal practice. It asks about the impact of legislative change on the courts, at the local level. How did judges deal with the new law, and how did they find their position in the newly created courts? For this, the Research Group works with praxeological and socio-historical methods. Each researcher is conducting a case study on one of the countries. While the case studies differ in their focus, they are nevertheless all looking at the education and career paths of the judicial personnel and inquiring about their knowledge basis. Moreover, they are analysing court records and judgments, asking about the changes in style, argumentation and the perception of law and justice.

(2) Based on these case studies, the Research Group conducts selective comparisons of the transformations that took place in the three countries. The comparisons have already revealed that the steps taken in each of the countries to rebuild their respective legal system were indeed quite similar. While at the legislative level each of the countries struggled with the codification of law, at the level of the judiciary, a new court structure and a new understanding of the judges' role were implemented. Law schools were founded with the aim of creating a new environment for the socialisation of future lawyers, and new regulations for entrance to the judiciary were implemented. The large-scale translation of European legal knowledge was carried out by translation

offices within the justice ministries and transmitted to the local courts. The justice ministries of the Ottoman Empire and Japan even published journals in order to disseminate the new legal knowledge to the courts and to guide them in their decision-making processes.

(3) By pointing out these similarities, the project shows that reformers in all three countries were well aware of the multilayered nature of law. Law was not seen just as a set of norms, but rather as a practice. Hence, the aim of the reforms was to transform not only written law but also legal practice. The transmission of new legal knowledge, the education and socialisation of future judges and the provision of guidance for the courts were therefore important steps in the reform agenda. At the same time, court records reveal a reluctance to abandon the old practices that interfered with the new legal ideals. The aim of the Research Group is to find a suitable characterisation for the legal practice that emerged from translation.

(4) The project questions narratives that have been prevalent in legal historical research throughout the 20th century. It aims to develop a new narrative that takes the complexity of legal transformations into account and that positions Japan, China and the Ottoman Empire in the global setting, asking about the non-European experiences of legal modernity. The legal reforms in Japan, China and the Ottoman Empire were grounded on translated knowledge of European law; however, they were neither mere copies of a European model nor is it appropriate to classify them as latecomers of modernity. By including a case study on the discussions surrounding legal education and professionalisation in Europe, and by looking at the interactions between the non-European countries, the Group's research aims to reposition Europe vis-à-vis the non-European countries. It also shows both that modernity was strongly negotiated at the same time in Europe, and that Europe was not the only point of reference for reformers in non-European countries: the laws of post-Ottoman Montenegro and Egypt were of interest to the Japanese reformers; China sent students to Japan to study European law in Japanese; and the Ottoman Empire admired Japan for its success in nation-state building.

A unique comparative environment: case studies and co-authoring

The Research Group offers a unique environment for achieving these research goals. Five of its members are conducting case studies on specific countries, focusing on a certain aspect that enables the development of a profound understanding of the transitions that took place in that country. Murat Burak Aydin analyses the evidence practices in Ottoman Nizamiye courts, comparing the court practice in Ankara city and the rural areas around Ankara. Similarly, Joseph Wang analyses the interaction between the Daliyuan (Supreme Court), the Beijing High Court and the Beijing local courts in contested divorce cases. Zheng Li explores the transformation of the feeling of injustice as it was negotiated in Chinese courts. Lena Foljanty has completed her study on Meiji local courts, showing the dynamics of change in the reform era with a focus on the legal methods used by the judges. Zeynep Yazici Caglar works on England and Germany, two main European countries that frequently served as models for those redesigning law and justice systems elsewhere, and has found that reforms of legal education and the question of professionalisation were negotiated there, as well. In addition, two researchers provide insights into the connections between the non-European countries: Egas Moniz Bandeira concentrates on legal education as a key element of reform and traces the careers of Chinese students who went to Japan to study law. Zülâl Muslu conducts biographical research on a British consul who was successively based in all three countries that serve as the Group's case studies.

The comparison is carried out in a setting of constant exchange. Under normal circumstances, the Research Group comes together at the Institute on a daily basis; during the pandemic, however, regular online meetings have taken place. Each member is well informed about the activities and status of the others in the project. The analytical categories for comparison developed out of this exchange process – in other words, the categories emerged out of the comparative exchange itself and were not artificially set up in advance. This ensures that they are linked to the dynamics of transformation in each of the countries as they are examined by the researchers in their case studies. The aim is to conduct comparisons without reducing complexity.

The task in the first two years of the project was to create a common knowledge basis within the Research Group. Currently, its members are co-authoring a publication that mirrors the unique comparative setting that has emerged. This joint endeavour offers the Research Group the opportunity to explore possibilities of developing a complex and integrative way of writing comparative legal history. Instead of a volume where every country is presented in separate chapters, banning the comparison to the conclusion, each of the chapters will be comparative in itself, bringing together observations from all the countries that the researchers are dealing with. The aim is to finalise the publication by April 2022, which is the official end date of the Research Group.

Network-building and activities

To accomplish this aim, the Group's members share their research findings at the regularly scheduled meetings. They also organised two three-day retreats held in Freiburg (September 2019) and in Limburg (August 2020). These research retreats enabled in-depth discussions about the structure and the main arguments of the co-authored publication as well as to set the agenda for the next stages of the working process.

As the case studies conducted by the researchers offer only a limited overview on the legal transformations that took place, from time to time the Research Group invites distinguished scholars to offer seminars conceived to broaden its members' perspective. In July 2019, David Sugarman (University of Lancaster) gave a seminar on 'Professionalization and Modernity'. In February 2020, Tzung-Mou Wu (Academia Sinica) gave a guest lecture on 'Missing Pieces in the Legal History of 19th- and 20th-century East Asia', followed by a workshop for the PhD students in which they presented their work to the guest. The same was planned with Marc Aymes (École des hautes études en sciences sociales, CNRS) in March 2020. While the pandemic meant that the guest lecture had to be cancelled, the PhD workshop nevertheless took place online. Another PhD workshop took place online together with Avi Rubin (Ben-Gurion University of the Negev) and Jérôme Bourgon (Institut d'Asie Orientale, CNRS) in July 2020.

A number of visiting scholars have also collaborated with the Research Group. Marie S. Kim (St. Cloud University) worked on the translation of the notion of customary law from Europe to Meiji Japan and from there to colonial Korea. Colin Jones (Columbia University) worked on the perception of the social in Japanese law in the early 20th century, investigating the Japanese interest in adopting French legal theory. Ninja Bumann (University of Vienna) used her stay at the mpilhlt to study legal practice in post-Ottoman Bosnia, where the Habsburg monarchy tolerated the continuation of Sharia courts in family matters. A deep level of exchange has taken place with all three scholars, primarily through seminars where the scholars presented their work. Unfortunately, the visits by Nishan Chen (Qingdao University), Mehmed Bećić (Univerzitet u Sarajevu),

Frédéric Constant (Université de Nice) and Andrew Watson (Sheffield Hallam University) had to be cancelled due to the COVID-19 pandemic.

The primary instrument for broadening the scope beyond the case studies, however, is neither invited speakers nor visiting scholars. It is a network of scholars of Japanese, Chinese and Ottoman legal history that has accompanied the Research Group's work from the very beginning. These scholars, coming from Japan, China, Turkey and Israel as well as the US, France and Germany, are adding broader perspectives to the Group's discussions. In the initial workshop that took place in March 2018 at the Max Planck Institute, the possibilities and limits of comparison between the three countries were discussed. The second workshop, which took place in March 2019, engaged in the comparison of translation practices in all three countries.

A third workshop was planned for August 2020; due to the pandemic, however, it had to be rescheduled. Instead of a workshop, the group organised a virtual meeting of the network, in which we discussed the development of the project. Since then, the network comes together every month for an online seminar to make effective use of the time until a face-to-face workshop is again possible. The seminar allows the participants to deepen their comparative skills; at the same time, it offers room for discussions on the papers presented at the first two workshops in order to prepare them for publication.

Lena Foljanty

Max Planck Research Group Leader

Cultures of judgment: entangled legal practice in 19th–century France, Germany and Japan

Legal practice follows methodological rules that are mostly unwritten and grounded in traditions. Judges and lawyers acquire them through socialisation, often without reflecting on them.

The project deals with the making of these methodological rules in the context of 19th-century Japan. After the Meiji Restauration in 1868, the entire legal order was rebuilt based on the model of Western laws. Not only the judicial system but also the judicial professions and the methods applied by them were reshaped. This went along with a fundamental rupture with their own traditions. Translations of Western law became the core of a new legal (self-) understanding.

Japanese reformers were aware of the fact that law did not only consist of codifications and statutes, but that legal practice is a fundamental field of norm production. Through archival work, I was able to show that understanding the methodological rules of legal practice was one aim of the reformers' travels to France and Germany, the main model countries. However, I also demonstrated that re-producing these rules in Japan was complicated. The Ministry of Justice had their hands full with building up a new legal infrastructure, facing the challenge of insufficient resources and personnel. While the ministry provided advice to the courts to facilitate decision-making in specific cases, it did not intervene in their practice by regulating the methodological rules that they should apply.

The project was started before the Research Group took up its work in 2017. The outcome is a book that was completed in 2019 and accepted by the law faculty of the Goethe-Universität as a *Habilitationsschrift*. Its main finding is that even though the methodological rules of legal practice in the European model countries were studied by the Japanese reformers, what was translated was only the frame in which legal practice took place. The methodological rules themselves were developed independently in Japan in response to legal practitioners' needs at a time of instability and transition. Putting the parties' arguments at the centre of legal reasoning and relying on equity helped to overcome the lack of statutory law; legal formalism in evidence law helped to compensate for the lack of qualified personnel. The methodological rules that emerged were more influenced by the translational and transformative setting than by the translation of concrete Western legal knowledge.
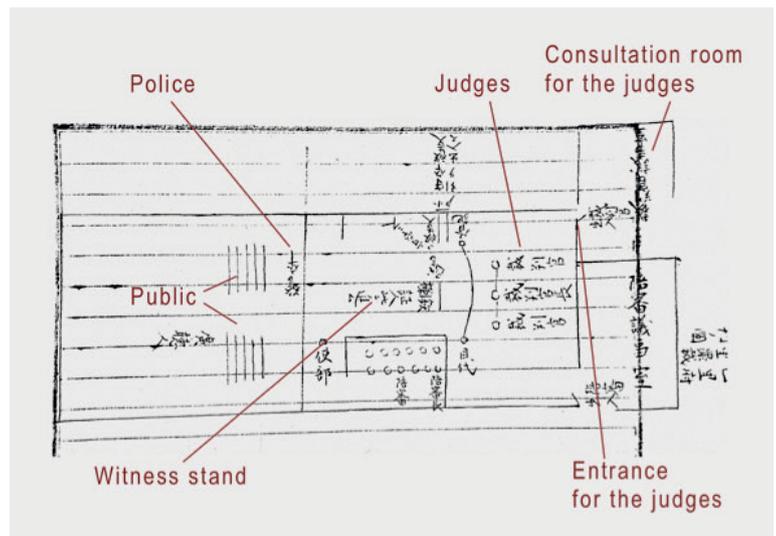
Sketch of a French court room, presumably made by Inoue Kowashi on the occasion of his visit to France in 1872

Murat Burak Aydin

Doctoral Student

Local court practice in late 19th–century Ottoman Nizamiye courts: procedure and legitimacy

The Ottoman Empire and its legal system went through a substantial transformation in the 19th century. Prior to this, Sharia courts, presided over by a kadi (*kadı*), were the primary official dispute settlement forum. Nineteenth-century legal reforms, especially the introduction of Nizamiye courts, changed this legal landscape. On the normative level, the jurisdiction of Sharia courts was narrowed and the new Nizamiye courts were separate from Sharia courts. In practice, however, this separation was less visible. The Nizamiye courts started to hear criminal, commercial and civil cases, and the new procedural and substantive laws were codified with reference to French codes.

This dissertation project tries to reveal the local-level Nizamiye court practices in Ottoman Ankara. Utilising the records of the Ankara Nizamiye courts (*îlâm*), the project explores the implementation of the new law and court structure in private law practice. The research also takes into account Avi Rubin's foundational studies, which illustrated the birth of a new formal procedural judicial culture. The present research tries to reveal the local applications of the new law and, in particular, of the evidence rules in the Nizamiye court that operated within this judicial culture.

Witnesses were the most important form of evidence in courts prior to the 19th century. Yet in the 19th century, the Ottoman codification process introduced novelties to evidence law based on the model of the French codes, especially with regard to civil procedure and written evidence. Focusing on evidence practice allows us to answer several questions. First, it reveals whether the prohibition of non-Muslim testimony against a Muslim was continued or stopped. Second, looking at the use and the forms of evidence can enhance our understanding of the daily legal transactions at the local level. Third and finally, evidence practice helps us to understand both the judges' duties and the scope of their power during the trial. By scrutinising the Nizamiye court judges' power for evaluating evidence and discretionary powers, it is possible to shed light on how this new type of judge differed from previous kadis. My analysis of the local court records demonstrates that Islamic normativity continued to govern the private law practice at the local level while operating within the new formalistic legal culture described by Rubin.
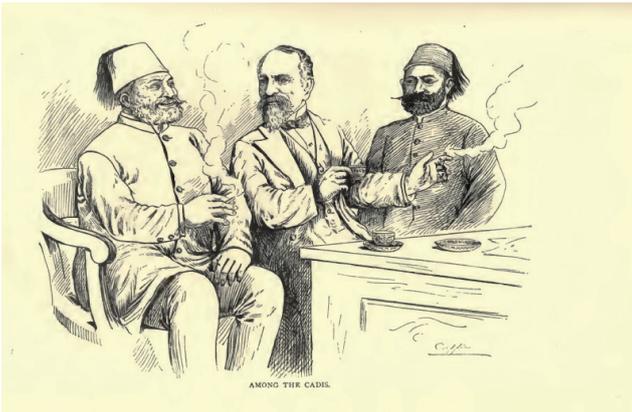
Diversions of a diplomat in Turkey – Samuel Sullivan Cox among new judicial staff

Zeynep Yazici Caglar

Doctoral Student

Professionalising legal professions in England and Germany (1850–1900): the judge as the upper branch or as a separate profession

Focusing on England and Germany, the project considers how the two countries dealt with the conception of professionalisation with regard to the legal profession. The aim is to determine the extent of professionalisation of superior court judges at the end of the 19th century in two influential countries that served as models for the non-European countries dealt with by the Research Group.

Largely as a result of the differences between common law and civil law systems, the models of legal education and professions in England and Germany were by no means similar. Therefore, the project moves beyond the search for similarities and differences and instead focuses on 'legal education' in order to explore the nuances and variations in the processes of professionalisation. Legal education displays the origins of legal standardisation, qualification and identification. The developments of legal education in each country are apparent through the institutions. Based on an analysis of the records of these institutions, parliamentary papers and legal periodicals, the initial research results show that in both countries changes were made to the existing institutions rather than establishing brand new ones. The sources show that while England and Germany were not incapable of implementing reforms, they struggled between upholding 'traditions' and introducing 'new' structures. The institutional changes, though difficult to discern, are present in the approaches to teaching law, as the investigation of the supporting sources such as textbooks and curricula, and of the status of the teachers and the examination system has revealed.

Working with collected biographies of the superior court judges, the project also intends to develop a prosopography to pursue the social position of these key actors. It will thus shed light on their legal education, career paths, social backgrounds and social status. The preliminary results demonstrate two distinct paths to becoming a superior court judge based on the respective legal system in England and Germany. It is worth noting, however, that in both cases the socialisation of the judges seems to have played a major role. The concept of socialisation is further developed in the project, as it constituted the judges' professional identity and was therefore strongly connected with the professionalisation process. Moreover, a review of contemporary discussions on legal education will try to verify whether an 'ideal' notion of the judge was ever conceived; the findings of this analysis will be juxtaposed with the 'reality' borne out by the prosopography. The aim will be to reveal whether the reality was ever able to match the ideal.

Zheng Li

Doctoral Student

Shenyuan: redressing injustice in China between the 17th century and the early years of the 20th century

The doctoral project focuses on the traditional Chinese concept of injustice (*yuan* 冤) and the practice concerning the redressing of specific injustices in people's daily lives during the Qing dynasty (1644–1911) and the early years of the Republic of China (1912–1949). This research will closely examine China's crucial modernisation process, which refers to the period between the 1840s and 1930s. By doing so, the project aims at finding out how the traditional Chinese concept of injustice has evolved and been shaped by the Occident, especially by modern theories and conceptions of justice and injustice. This also involves shedding light on how people perceived injustice, expressed their grievances and exploited a variety of different recourses to correct the injustice. Therefore, this research will also analyse injustice as a legal emotion and the emotional elements in the practice of redressing injustice.

The project was started in 2020 and is currently tracing the usage of the specific words and expressions referring to injustice in traditional Chinese society. The research intends to ascertain and present the evolution of this traditional Chinese concept in the process of modernisation by analysing the introduction and reception of occidental codes and legal works in China since the 19th century, especially through the translation of the conceptions of and theories on justice and injustice. Moreover, the project highlights the emotional aspect of injustice by carrying out a detailed analysis of both local and central legal practices on the basis of plaints, appeals and judgments. Other non-judicial sources, such as newspapers, journals, novels and religious books will be used to help establish the broader spectrum of how ordinary people understood injustice and justice.

Egas Moniz Bandeira

Researcher

Tracing the origins of legal practice in modern China

The project reconstructs Sino-Japanese entanglements in the formation of Chinese legal practice in the first decades of the 20th century. From the 1900s onward, thousands of Chinese students studied abroad, mainly in Japan, but also in Western Europe and in the United States. Instructors and advisors from abroad, again mainly from Japan, played an important role in the newly created Chinese universities and law schools. These encounters were crucial for the shaping of modern China: as Chinese intellectuals of the early 1900s recognised Japan as a 'shortcut to modernity', that is, as a geographically and culturally close model of rapid transformation into a powerful nation-state, many of the newly established norms and institutions – including, for example, the statutes of the bar associations – were closely modeled on Japanese blueprints.

Beneath the surface, however, there were considerable frictions, for the similar overall textual appearances of the new regulations concealed significant differences in their interpretation and application. The comprehensive political and legal reforms initiated at the end of the Qing Empire and continued after the establishment of the Republic of China cannot be understood as an isolated national process in which China tried to catch up with a set model of modernity. It should rather be examined through transnational and transcultural lenses, which reveal how Chinese actors interacted in global networks to create their own local versions of the globalising features of modernity instead of taking them on blindly.

The project has already led to a first publication, which demonstrates such complex interplays in the realm of constitutional law. But how did China's first lawyers adapt their various experiences abroad to their Chinese upbringing? What were their typical education and career paths, and how did these influence their professional identities? How did China's first female lawyers navigate the male-dominated legal professional world? By investigating these questions, the project plans to show how networks formed already among the Chinese student diaspora contributed to form a professional body of lawyers in China's large cities. The development of modern legal professionalism, in turn, was a crucial factor that determined the implementation of the new legal codes enacted during the Republic.

Graduation group photo of the Waseda University preparatory course for Chinese students, 1907

Zülâl Muslu

Affiliate Researcher

Entangled histories: revisiting the legal globalisation in the 19th century

The global legal-historical approach promoted at the Institute offers the ideal framework for pursuing two projects that revisit legal globalisation in the 19th century. The first project reflects on global constitutionalism. It reconsiders the current scholarly discourse claiming that norms and institutions of global governance follow principles of constitutionalism – in its European understanding. The project aims at engaging in a constructive criticism through historical, non-statist and non-European perspectives by focusing on the different conceptions of citizenship across time and space, especially in the Ottoman Empire and China. The project sheds light on topical debates raised by the current constitutional crises and the related citizenship issues that have recently been observed, for example, in the post-Soviet uprisings, the Arab Spring or in Hong Kong.

The second project, which has been more thoroughly developed since joining the Research Group, examines extraterritorial justice and cross-cultural legal translation through the role of British consuls in the late 19th-century Ottoman Empire, China and Japan. The heuristic interest of the consul resides not only in his diplomatic role, connecting the national and international systems, but also in his unique social status, shaped within the cosmopolitan elite that the Vattelien international formation offered. To carry out this task, the project follows the path of Sir Edmund Grimani Hornby (1825–1896). He was the founder and Chief Judge of the British Supreme Consular Court in the Ottoman Empire, and later of the British Supreme Court for China and Japan. The latter had jurisdiction over disputes against British subjects under extraterritoriality and heard appeals for consular courts in China, Japan and Korea. Taking into account both the Marxist and the critical international law approaches present in the scholarly literature on the issue of extraterritoriality, the project combines both approaches to analyse the extent to which consuls played a role in the spread, legitimation and settling of the 19th-century Western legal order in hypocolonial spaces. It also addresses the development of the profession of the consul, which offers a different insight into the birth of law as a scientific discipline and the emergence of a specific professional body as a key state apparatus. Finally, it will assess how the phenomena of acculturation and resistance contributed to the local production of norms. The project's novel approach thus seeks to make both a substantive and methodological contribution to legal transfer studies as well as to the critical and comparative debates on legal extraterritoriality.
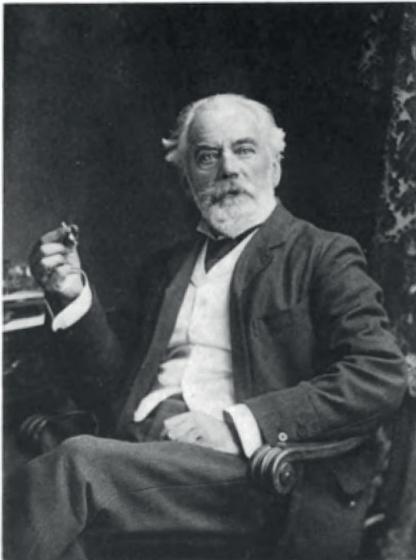
Sir Edmund Grimani Hornby

Joseph Wang

Doctoral Student

Between normativity and reflexivity: how did the Beijing High Court review marriage-related cases (1912–1927)?

The thesis project examines how the High Court in Beijing (*jingshi gaodeng shenpanting*, 京師高等審判廳) connected, negotiated and debated the judgments or decisions from both the higher- and lower-level courts throughout the law's application from 1912 to 1927, when the legal system in China was undergoing a profound legal reform. The collection and case analysis work phases are finished, and the writing of the thesis is at an advanced stage, with draft versions of several chapters already having been commented on.

The project collected and centres on the 253 marriage-related cases originally from the Beijing High Court and sought to investigate how the new, foreign-derived laws were further translated into practice. By connecting these cases to the relevant interpretations and judgments from the Daliyuan (Supreme Court), the project has determined that the court rendered different judgments based on very similar facts. Furthermore, it sourced the legal basis to support its judgment to balance the tension between the old and the new laws during this transitional period. In some cases, the court produced views that contradicted the unpromulgated draft of the Civil Code while this codification for civil justice was unfinished and the sole legal basis for civil matters were the civil portions of the revised Qing Code. In other cases, setting aside such contradictions, judgments refrained from an explicit citation of law, even though the court was still applying the relevant interpretations from the Daliyuan.

Moreover, using the examples of evidencing for the establishment of marriage, the project also finds both the Daliyuan and the lower-level courts were making compromises when the law faced an immediate challenge by a long-standing social custom. In this way, the project contends that the practice of law produced a reflexive knowledge of law during the transitional years that brought together social and legal norms from pluralistic sources, while the legal basis for rendering a judgment in practice was shifting along the triangle of the old law, the translated codification and social custom.

Grand Chamber of the Daliyuan