



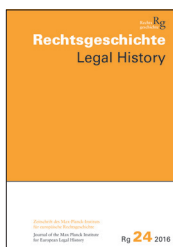
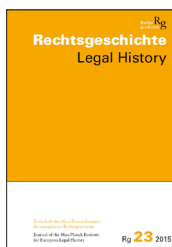
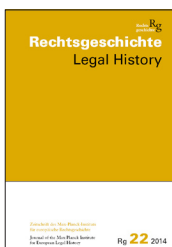
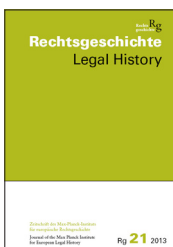
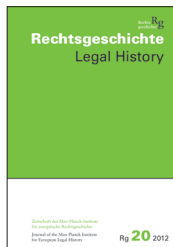
MAX-PLANCK-GESELLSCHAFT

MAX-PLANCK-INSTITUT
FÜR EUROPÄISCHE RECHTSGESCHICHTE

PUBLIKATIONEN 2018 PUBLICATIONS

MAX PLANCK INSTITUTE
FOR EUROPEAN LEGAL HISTORY





Rechtsgeschichte – Legal History (Rg) **1**

Journal of the Max Planck Institute for European Legal History,
edited by Stefan Vogenauer and Thomas Duve

Frankfurt am Main: Vittorio Klostermann, 530 p.,
ISBN 978-3-465-04346-1, print ISSN 1619-4993

Open Access online edition: www.rg-rechtsgeschichte.de/Rg26,
online ISSN 2195-9617

Rg 26 includes

research

- Joachim Rückert, Die Erfindung nationaler Rechtsgeschichten in Europa
- Tay-sheng Wang, Die Rezeption des kontinentaleuropäischen Zivilrechts in Taiwan und die Eigenständigkeit des taiwanischen Zivilrechts

focus

- Convivencias, with an introduction by Thomas Duve and Raja Sakrani, and contributions by Raja Sakrani, Christoph H. F. Meyer, Max Deardorff, Alfons Aragoneses, Elena Paulino Montero, and Vera-Simone Schulz
- School of Salamanca, with an introduction by Christiane Birr, Before Vitoria. Early Theological and Juridical Responses to the Spanish Expansion, and contributions by José Luis Egío García, Christiane Birr, and Marco Toste
- End of Empires, with and introduction by Thomas Duve and Massimo Meccarelli, and contributions by Arno Wehling, José María Portillo, Manuel Bastias Saavedra, and Eliana Augusti

critique

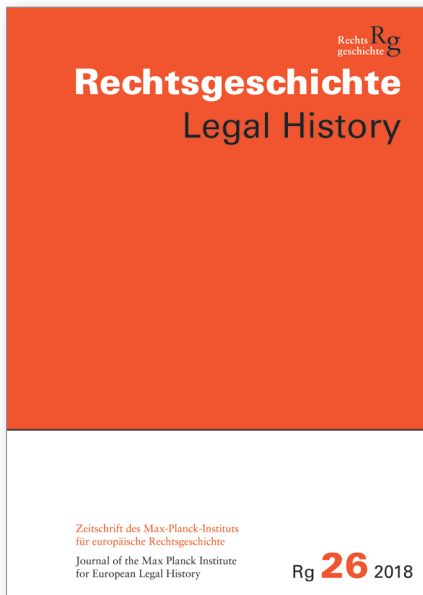
- Michael Stolleis on *James Q. Whitman, Hitler's American Model*
- Mario G. Losano on *Luca Baccelli, Bartolomé de Las Casas. La conquista senza fondamento*
- Daniel Damler on *Jörg Michael Schindler, Rechtsmetaphorologie – Ausblick auf eine Metaphorologie der Grundrechte and many more*

About the journal

Rechtsgeschichte – Legal History (Rg) is published by the Max Planck Institute for European Legal History since 2002 and edited by its directors Thomas Duve and Stefan Vogenauer. The journal aims to be a forum for high level scholarship on all branches of legal history. Its scope therefore reflects the full breadth of the discipline and is not restricted to particular periods of time or specific areas of law. However, the journal aspires to cover the legal histories of non-Western societies more extensively than has traditionally been the case.

The journal has an international orientation and deliberately adopts a multilingual approach. As such, it reflects the diversity of global legal and research cultures. Each issue has a ›research‹ section with selected articles on questions of broader interest to legal historians, one or several thematic ›focuses‹ with a number of corresponding contributions, and sometimes a ›debate‹ or ›forum‹

section with pointed and controversial essays on a given topic. The ›critique‹ section contains reviews of recently published books. *Rg* is an annually, peer-reviewed journal that is made available simultaneously in print and online in open access.



American Journal of Legal History

edited by Stefan Vogenauer and Alfred L. Brophy

Oxford: Oxford University Press, 569 p., print ISSN 0002-9319

online ISSN 2161-797X

Volume 58 includes

issue 1

- Daniel R. Ernst, »In a Democracy We Should Distribute the Lawyers«: The Campaign for a Federal Legal Service, 1933–1945
- Penney Lewis, The Lawfulness of Gender Reassignment Surgery
- Timothy Milford, »Patent Property«: The Fulton Lawyers and the Franchising of Progress
- Deborah A. Rosen, Slavery, Race, and Outlawry: The Concept of the Outlaw in Nineteenth-Century Abolitionist Rhetoric

issue 2

- Josh Howard, Defending Person and Reputation: Efforts to End Extralegal Violence in Western Virginia, 1890–1900
- Thomas J. Snyder, Developing Privacy Rights in Nineteenth-Century Germany: A Choice between Dignity and Liberty?
- Michelle Johnson / James Oldham, Law versus Equity – as Reflected in Lord Eldon’s Manuscripts
- Greg Taylor, The Grand Jury of New Zealand in The Nineteenth Century

issue 3

- Peter Karsten, Revisiting the Critiques of Those Who Upheld the Fugitive Slave Acts in the 1840s and ‘50s
- Alexandra D. Lahav / R. Kent Newmyer, The Law Wars in Massachusetts, 1830–1860: How a Band of Upstart Radical Lawyers Defeated the Forces of Law and Order, and Struck a Blow for Freedom and Equality Under Law
- Susan J. Siggelakis / Nicholas Mignanelli, »O Amherst, Where is Thy Shame?«: Republican Opposition to Federalist Policies in a New England Town

- Victoria Barnes, Judicial Intervention in Early Corporate Governance Disputes: Vice-Chancellor Shadwell's Lost Judgment in *Mozley v Alston* (1847)

issue 4

- Alessia di Stefano, Italian Judges and Judicial Practice in Libya: A Legal Experiment in Multinormativity
- Lloyd Bonfield, Farewell Downton Abbey, Adieu Primogeniture and Entail: Britain's Brief Encounter with Forced Heirship 1836
- Mark Coen / Niamh Howlin, The Jury Speaks: Jury Riders in the Nineteenth and Twentieth Centuries
- Coel Kirkby, Law Evolves: The Uses of Primitive Law in Anglo-American Concepts of Modern Law, 1861–1961

About the journal

The *American Journal of Legal History* was founded in 1957 and was the first English-language periodical in the field. The journal was relaunched as an Oxford University Press (OUP) publication at the beginning of 2016 with new editors, Stefan Vogenauer and Al Brophy (University of North Carolina School of Law, Chapel Hill).

The new *AJLH* aims to publish outstanding scholarship on all facets and periods of legal history. While retaining its focus on American legal history, it accommodates the enormous broadening of the intellectual horizon of the discipline over the past decade and is particularly interested in contributions of a comparative, international or transnational nature. Book reviews are a regular feature. *AJLH* is a quarterly, peer-reviewed journal, made available in printed and electronic form.



A Max Planck Institute for European Legal History Open Access
Publication, edited by Thomas Duve and Stefan Vogenauer
ISSN 2196-9752

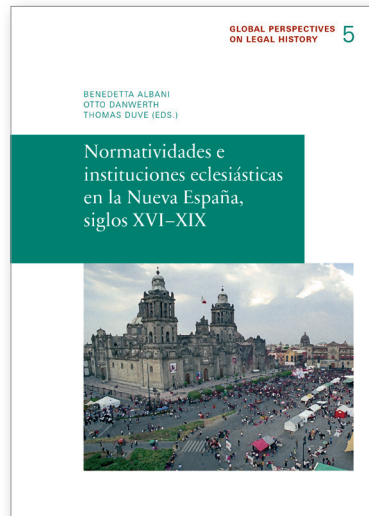
Volume 5

Benedetta Albani, Otto Danwerth, Thomas Duve (eds.)

**NORMATIVIDADES E INSTITUCIONES ECLESIAÍSTICAS
EN LA NUEVA ESPAÑA, SIGLOS XVI–XIX**

Frankfurt am Main: Max Planck Institute for European Legal
History, 303 p.,
ISBN 978-3-944773-04-9, print on demand: www.epubli.de
Open Access online edition: <http://dx.doi.org/10.12946/gplh5>

What significance did religious institutions and their actors have for the formation of normative orders in Mexico (New Spain) of the 16th to the 19th centuries? The present volume takes up this little-researched question in the field of legal history. In fourteen Spanish-language, interdisciplinary papers, the authors examine the relationships between various types of religious normativity (such as canon law and moral theology), their local adaptations and links to global debates. They also deal with diocesan administration and sacramental dispensation, with indigenous and Afro-American actors in court, and with normative aspects of piety in cultural life until the 19th century. These research findings are relevant not only to legal history, but also to the history of the church and theology, social and cultural history, and ethnohistory. The volume is the first of four planned books dealing with the contribution of ecclesiastical institutions to normative orders in early modern Ibero-America. The following volumes will respectively focus on Peru, New Granada and Brazil.



Volume 11

Massimo Brutti, Alessandro Somma (eds.)

DIRITTO: STORIA E COMPARAZIONE

Nuovi propositi per un binomio antico

Frankfurt am Main: Max Planck Institute for European Legal History, 595 p.,

ISBN 978-3-944773-20-9, print on demand: www.epubli.de

Open Access online edition: <http://dx.doi.org/10.12946/gplh11>

Comparative law and the history of law are traditionally devoted to expanding the context of legal rules and legal institutions. Comparison involves history, as the well-known motto proclaims, but history also involves comparison. Both disciplines are in fact interested in deepening the space-time coordinates of law as a social phenomenon, which means that they take up a critical approach to their object of study. In recent years, this trait is increasingly coming into conflict with the tendency to present law as a mere technocratic instrument for organizing societies. As a result of the »end of history« discourse, the Western economic and political order has become a definitive point of reference worldwide, with law scholars charged with identifying best practices to enhance their efficiency. A group of comparative lawyers and legal historians critically discuss this assumption from a theoretical point of view as well as from the perspective of their respective fields of research. The result is a multifaceted range of ideas on the significance and possible future of two disciplines that share, in addition to their traditional approach, a crisis of identity.



Studien zur europäischen Rechtsgeschichte**7**

Veröffentlichungen des Max-Planck-Instituts für europäische
Rechtsgeschichte
ISSN 1610-6040

Band 308

Dennis Majewski

ZISTERZIENSISCHE RECHTSLANDSCHAFTEN

Die Klöster Dobrilugk und Haina in Raum und Zeit
(Rechtsräume 2)

Frankfurt am Main: Vittorio Klostermann, 808 S.,
ISBN 978-3-465-04330-0

Der Band entwickelt am Beispiel der Besitzungen und Rechte der Zisterzienserklöster Dobrilugk (heute Doberlug-Kirchhain) und Haina das Konzept der ›Rechtslandschaft‹. Während Haina im fränkischen Altsiedelland liegt, ist Dobrilugk in der Niederlausitz in einem Gebiet gegründet worden, das erst seit dem 11. Jahrhundert nach und nach mit den Ordnungsmustern des römisch-deutschen Reiches durchdrungen und erschlossen wurde. Durch einen intensiven systematischen und auf Karten gestützten Vergleich wurde aus den Perspektiven ›Raum‹, ›Zeit‹ und ›Akteure‹ herausgearbeitet, wie beide Klöster mit ähnlichem Instrumentarium auf unterschiedliche Bedingungen reagierten, um ihre Einflussosphäre auszubauen, für die Begriffe wie Territorium oder Herrschaftsraum keine geeignete Beschreibung darstellen.



Band 309

David Harbecke

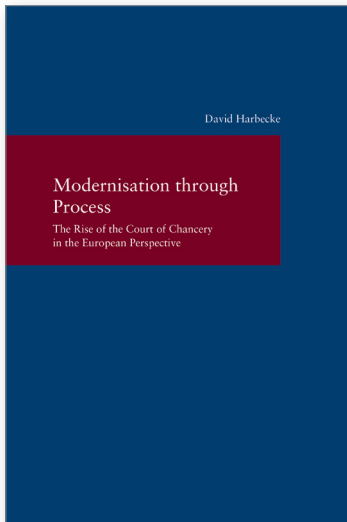
MODERNISATION THROUGH PROCESS

The Rise of the Court of Chancery in the European Perspective

Frankfurt am Main: Vittorio Klostermann, 317 S.,
ISBN 978-3-465-04331-7

The existence of a separate equitable jurisdiction long remained a seemingly idiosyncratic feature of the common law tradition. It is a source of continuous fascination and irritation for common lawyers and continental legal historians alike. The Court of Chancery was not the only but by far the most prominent of the equitable courts. It thus came to dominate the development of the equitable jurisdiction in the English legal system and our understanding thereof.

Much has been said about the evolution of the Court of Chancery and yet the historical accounts have commonly failed to explain the reason for the singularity of the English development satisfactorily for the modern reader. By examining the sources from the perspective of modern legal theory and comparing the English to contemporary continental European developments, this book aims to facilitate a better understanding of a seemingly inscrutable late medieval phenomenon.



Band 310

Hans-Peter Haferkamp

DIE HISTORISCHE RECHTSSCHULEFrankfurt am Main: Vittorio Klostermann, 405 S.,
ISBN 978-3-465-04332-4

Bücher über die Historische Rechtsschule könnten ganze Bibliotheken füllen. Gleichwohl fällt es bis heute schwer zu beantworten, wer warum zu dieser Schule gerechnet werden kann und wer nicht. Dies liegt auch daran, dass die geistesgeschichtliche Methode, welche die Rechtshistoriografie im 20. Jahrhundert lange dominierte, bis heute Spuren hinterlassen hat. Epochen wurden von Leitfiguren her gelesen, in denen der Zeitgeist vermeintlich zur Entfaltung kam. Die Historische Rechtsschule wurde seitdem weitgehend mit Friedrich Carl v. Savigny identifiziert. Die Forschung konzentrierte sich auf Savigny und ließ die meisten seiner Schüler fast unbeachtet. Als Gruppenphänomen erweist sich die Historische Rechtsschule bis heute als erstaunliche Terra incognita. Die Abhandlung unternimmt den Versuch, die Historische Rechtsschule erstmals als wissenschaftliche Schule und damit als Kommunikationszusammenhang einer großen Zahl von Rechtswissenschaftlern zu rekonstruieren. Drei Felder der juristischen Tätigkeit, in denen sich die Historische Schule als Einheit positionierte und in sich wandelndem Kontext auch mehrfach neu konstituierte, werden dabei betrachtet: der Jurist als Lehrer, als Rechtswissenschaftler und als Richter.

*2018 von der NJW unter die
»Juristischen Bücher des Jahres«
gewählt*



Band 311

David von Mayenburg

GEMEINER MANN UND GEMEINES RECHT

Die Zwölf Artikel und das Recht des ländlichen Raums
im Zeitalter des Bauernkriegs

Frankfurt am Main: Vittorio Klostermann, 506 S.,
ISBN 978-3-465-04333-1

Der Bauernkrieg von 1525 wurde bislang selten als Problem der Rechtsgeschichte wahrgenommen. Der Konflikt zwischen den Bauern und ihren Herren wird als politische Auseinandersetzung interpretiert, die in ihren 12 Artikeln formulierten Forderungen der Bauern gelten als religiöse Utopie. Das Buch stellt diese Auffassung in Frage und geht der Rolle des Rechts im Kontext des Bauernkriegs aus verschiedenen Blickwinkeln nach: Lässt sich der Konflikt als Auseinandersetzung über Rechtspositionen beschreiben? Wie nahmen die Bauern das Recht, wie das Recht die Bauern wahr? Welche Chancen und Risiken barg der Weg des Rechts für eine dauerhafte Konfliktlösung? Eine exemplarische Betrachtung des Streits um die Frondienste belegt die zentrale Bedeutung des Rechts für die Geschichte des Bauernkriegs.

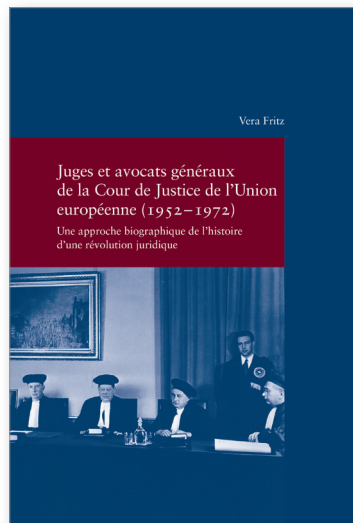


Band 312

Vera Fritz

**JUGES ET AVOCATS GÉNÉRAUX DE LA COUR DE JUSTICE
DE L'UNION EUROPÉENNE (1952–1972)**Une approche biographique de l'histoire d'une révolution
juridiqueFrankfurt am Main: Vittorio Klostermann, 405 S.,
ISBN 978-3-465-04350-8

Drawing on archives assembled in the six founding member states of the European Union, this book offers a new perspective on the ›constitutionalisation process‹ of the European treaties that were launched in the 1960s by the EU Court of Justice. It examines the dynamics that prevailed within the institution during its revolutionary years and highlights the professional and personal backgrounds of the first European judges and Advocates General, some of whom help shape some of the most well-known and commented judgments of the Court. The author seeks to understand how the judges succeeded in seriously limiting the sovereignty of the member states without provoking a rebellion by national decision-makers. The book focuses on the Court's political network and the relationship of judges with the governments of the member states. Through a detailed study of the selection process of the members of the Court, this work also provides answers to the question of whether governments tried to put an end to its bold jurisprudence by changing the composition of the bench of judges.



Manlio Bellomo

ROFFREDO BENEVENTANO, PROFESSORE A ROMA

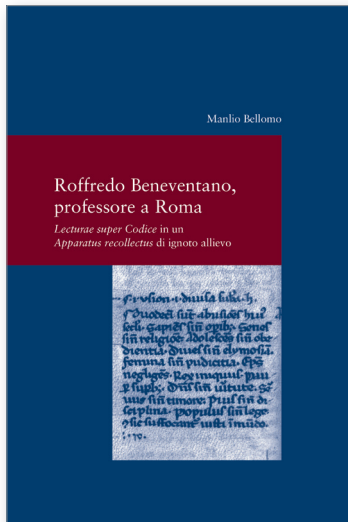
Lecturae super Codice in un Apparatus recollectus

di ignoto allievo

Frankfurt am Main: Vittorio Klostermann, 316 S.,

ISBN 978-3-465-04357-7

A well-known manuscript in the Prague National Museum contains the text published in this volume. The author was a student of Roffredus Beneventanus. He composed an apparatus of glossae recollectae and concealed his name behind a siglum consisting of three points in the shape of triangle. He used the first person in only a few instances. The work preserves important parts of Roffredus' lecturae held in Naples between ca. 1220 and 1230 and later for a few years in a school in the Roman Curia that is not well known. The work demonstrates that, among the civil law glossators of the 13th century, Roffredus was among the first ones to use the ius canonicum extensively. It also provides us with information about the final period of Roffredus' life.



Studien zu Policy, Kriminalitätsgeschichte und Konfliktregulierung

hg. von Michael Stolleis und Karl Härter
 ISSN 2364-6314 (seit 2012), ISSN 1612-7730 (1999–2012)
 (bis einschließlich 2012: Studien zur Policy und
 Policywissenschaft)

Christian Kullick

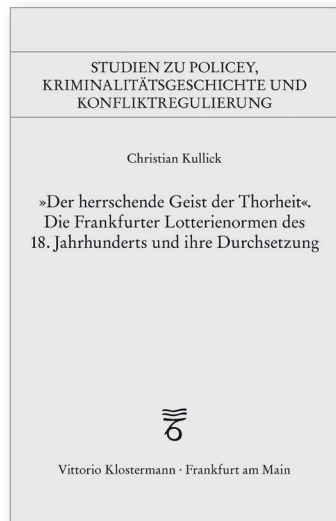
»DER HERRSCHENDE GEIST DERTHORHEIT«

Die Frankfurter Lotterienormen des 18. Jahrhunderts
 und ihre Durchsetzung

Frankfurt am Main: Vittorio Klostermann, 442 S.,
 ISBN 978-3-465-04334-8

Im 18. Jahrhundert hatte das »Lottofieber« die deutschen Territorien fest im Griff. Unzählige Klassen- und Zahlenlotterien buhlten um Spieler aller Schichten. Durch den Erlass von Edikten versuchten die Obrigkeiten dieses Phänomen einzudämmen oder selbst davon zu profitieren. Am Beispiel der Reichsstadt Frankfurt werden die Herausbildung des Lotteriewesens, seine technischen und rechtlichen Voraussetzungen beleuchtet, um davon ausgehend die Prozesse der Normsetzung und -durchsetzung durch den Frankfurter Rat zu studieren. Dabei zieht sich u.a. die Rolle jüdischer Lotteriekollekteure wie ein roter Faden durch die Arbeit.

Die Herausforderungen des Rates mit dem sich stetig wandelnden, organisierten Glücksspiel sind ein Paradebeispiel für die Schwierigkeiten wirtschaftslenkender Verwaltung in der frühen Neuzeit.





**Max Planck Institute for European Legal History
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edited by Thomas Duve and Stefan Vogenauer

Since 2012, the Institute's research paper series is available in the Social Science Research Network (SSRN) eLibrary on ssrn.com and is constantly growing ever since. Working papers, pre-prints and post-prints as well as research materials (within the new sub-series *subsidia et instrumenta*) are published exclusively online in open access.

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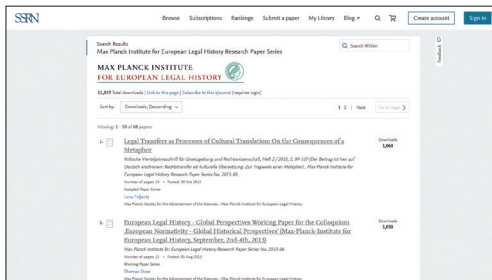
* This article is part of the Institute's research project «Diccionario Histórico de Derecho Canónico en Hispanoamérica y Filipinas. Siglos XVI–XVIII (DCH)» (Historical Dictionary of Canon Law in Hispanic America and the Philippines (16th–18th Centuries)), see also: <https://dch.hypotheses.org>.



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Herausgeber
 Max-Planck-Institut für europäische Rechtsgeschichte,
 Frankfurt am Main

Umschlagentwurf
 Elmar Lixenfeld, Frankfurt am Main

Umschlagabbildungen
 Christiane Birr, Frankfurt am Main

Druck
 Druckerei Imbescheidt, Frankfurt am Main

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 Max-Planck-Institut für europäische Rechtsgeschichte,
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