



MAX-PLANCK-GESELLSCHAFT

MAX-PLANCK-INSTITUT  
FÜR EUROPÄISCHE RECHTSGESCHICHTE

PUBLIKATIONEN **2019** PUBLICATIONS

MAX PLANCK INSTITUTE  
FOR EUROPEAN LEGAL HISTORY



## **The Institute**

Since its establishment in 1964, the Max Planck Institute for European Legal History (MPLeR) has devoted itself to investigating the history of law in Europe and beyond. The research activities in the two research departments (led by the Institute's directors, Stefan Vogenauer (dept. I) and Thomas Duve (dept. II)) and together with numerous cooperation partners have made the Institute one of the central research hubs for the worldwide scientific community concerned with investigating our past and present national and transnational legal orders. Many of the research results are published in the Institute's own publication series.

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**Rechtsgeschichte – Legal History** 

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*Rechtsgeschichte – Legal History* is the journal of the MPIeR, edited by the Institute's directors, Thomas Duve and Stefan Vogelmann. The journal aims to be a forum for high-level scholarship in 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. Its particular profile derives from the research conducted at the Institute on the legal history of Europe, the common law world and the Iberian empires.

The journal has an international orientation and adopts a multilingual approach in order to reflect the diversity of global legal and research cultures. A peer review procedure ensures the high quality of the contributions. The journal's »Research« section presents selected outstanding articles of general interest. The »Focus« section brings together contributions on a common theme, and the short pieces in the »Debate« or »Forum« section discuss a given topic in legal history. The »Critique« section contains reviews of recent publications in the field.

*Rg* has been published by Klostermann Verlag since 2002. Since 2012, the annual journal is also published online in Open Access simultaneously with the printed edition.



*Rg 27*

Frankfurt am Main: Vittorio Klostermann, 486 p.,

ISBN 978-3-465-04384-3, print ISSN 1619-4993, 49,00 €

Open Access online edition: [www.rg-rechtsgeschichte.de/en/rg27](http://www.rg-rechtsgeschichte.de/en/rg27),

online ISSN 2195-9617

*research*

- António Manuel Hespanha †, *Thirty Years of Studies on Prosopography of Portuguese Early Modern Jurists*
- Jean-Louis Halpérin, *A German Linkage Between Criminal Law and Law of Nations as Academic Disciplines*

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- *Tridentine Marriage*, with an introduction by Benedetta Albani and contributions by David L. d'Avray and Werner Menski, Ana de Zaballa Beascochea, Pilar Latasa, Robert C. Schwaller, María Elena Imolesi, Hélène Vu Thanh, Marya Svetlana T. Camacho, Cecilia Cristellon
- *Translating Weimar*, with an introduction by Thomas Duve and Fupeng Li, and contributions by Leticia Vita, Carlos M. Herrera, Xin Nie, Fupeng Li, Donal K. Coffey

*forum*

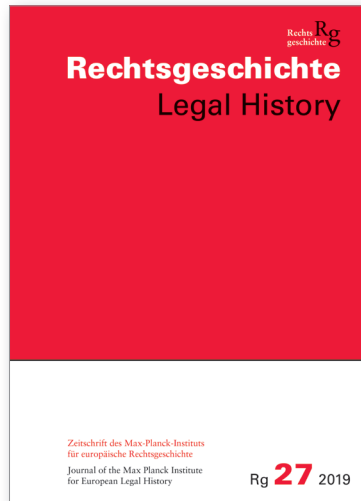
- *Oxford Handbooks*, with an introduction by Stefan Vogenauer and contributions by Caspar Ehlers, Zeynep Yazici Caglar, Anselm Küsters and Laura Volkind and Andreas Wagner, Luisa Stella de Oliveira Coutinho Silva, Victoria Barnes and Sean Bottomley and Anselm Küsters, Mariana Dias Paes, Christoph H.F. Meyer, José Luis Egío García, Aleksii Ollikainen-Read, Peter Collin, Gerd Bender, Jan-Henrik Meyer

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- Mariana Dias Paes on Mariana Pinho Candido, *Fronteiras da escravidão*, Christina Nogueira da Silva, *A construção dos territórios ultramarinos portugueses*, and Flávia Maria de Carvalho, *Sobas e os homens do rei*
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- Elisabetta Fiocchi Malaspina on Georgy Kantor et al. (eds.), *Legalism: Property and Ownership*
- Michael Stolleis on Karl-Peter Sommermann/Bert Schaffarik (Hg.), *Handbuch der Geschichte der Verwaltungsgerichtsbarkeit*
- Philipp Siegert on Elina Lemaire (ed.), *La Grande Guerre et le droit publique* and Comité d'Histoire du Conseil d'État (eds.), *Le Conseil d'État et la Grande Guerre*
- *and many more*

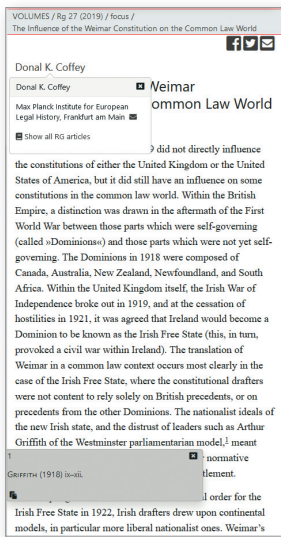
*marginalia*

- Anette Baumann, Visuelle Evidenz. Beobachtungen zu Inaugenscheinnahmen und Augenscheinkarten am Reichskammergericht (1495–1806)



**A new website for Rg**

In 2019, *Rg*'s online version got a new look. Clear design, intuitive navigation, additional functions, mobile use: with new responsive design, the journal's website can now not only be used conveniently on mobile devices such as smartphones and tablets, the modernized design also convinces in classic desktop view. Bright colours and clear lines create a calm background, enabling the viewer to concentrate on what matters: the scientific content. Navigation has moved completely to the upper menu bar. It now offers a quick overview of issues, categories and articles as well as easy access to all available additional data (PDFs, metadata, abstracts, etc.). In addition to the streamlined structure, functional innovations have also been implemented to increase the site's user-friendliness. A table of content-field, for example, now makes it possible to navigate through longer articles more easily. Footnotes, information on the author or pagination can be shown or hidden at the click of a mouse. Articles can be forwarded via the most important social media channels. And finally, the search function has also undergone a general technical overhaul and now makes qualified suggestions for hits using *elastic search*.



The new homepage (above)  
Article view on a smartphone (left)



HOME ARTICLES VOLUMES ABOUT RG

Rg 27 (2019)

research focus forum critique marginalia

Editorial PDF Citation

Metadata

VOLUMES / Rg 27 (2019) / forum / Introduction: Two Oxford Handbooks on the History of Law

Stefan Vogenauer

### Introduction: Two *Oxford Handbooks* on the History of Law

You wait ages for a bus, the saying goes, and then two (or three) come along at once. A similar feeling set in when Oxford University Press published two volumes on legal history in its *Oxford Handbooks* series within the space of four weeks last year. They are a welcome addition to the prestigious and well-established series that now boasts hundreds of volumes, including around 50 on history and over three dozen on law. The latter do not only cover established sub-disciplines of legal studies, such as jurisprudence and philosophy of law

Navigation at a glance

Rechtsgeschichte - Legal History

Journal of the Max Planck Institute for European Legal History

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Rg 27 (2019)

research focus forum critique marginalia

Editorial PDF Citation

Abstract Metadata

VOLUMES / Rg 27 (2019) / research / Thirty Years of Studies on Proposography of Portuguese Early Modern Jurists

António Manuel Hespanha 1\*

### On Proposography of Portuguese Early Modern Jurists

António Manuel Hespanha 1\*  
Universidade Nova de Lisboa

al project

Show all RG articles

Thirty years of studies on Portuguese early modern jurists have made remarkable progress in the last two decades.

At the start of this increased attention being paid to legal scholars' biographies the perception of their importance for what, very simplistically, has been called the European *ius commune*. From the beginning of the second millennium onwards, this complex of norms was created and disseminated by university-educated lawyers. This learned law was not the only, or even the most pervasive, of European legal orders at the time, since the social domains of its validity corresponded to a communicative sphere shared by only a few thousand specialists all over Western Europe. Nor was there much overlap between this social elite, distinct because of its legal culture, and the

- 1 The «proposographical project»
- 2 The proposographical work of Joana Escrivão, Nuno Camarinha and José Subtil
- 3 The sound of the law students
- 4 The treatises in Nuno Camarinha's works
- 5 The sound of the elite magistrates (desembargadores)
- 6 The database Stória Jurisprudêncial Lusitanae emlineae
- 7 Conclusion

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### American Journal of Legal History

The *American Journal of Legal History* was founded in 1957 and was the first English-language periodical in the field. After a comprehensive relaunch in 2016, it is now published by Oxford University Press and edited by Stefan Vogenauer (MPIeR) and Felice Batlan (IIT – Chicago-Kent College of Law).

*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.

The *AJLH* is a quarterly, peer-reviewed journal, made available in printed and electronic form.



*Volume 59*

Oxford: Oxford University Press, 544 p., print ISSN 0002-9319  
online ISSN 2161-797X, 132,00 £ (institutional print and online  
subscription)

*issue 1*

- Yifat Monnickendam, *The Exposed Child: Transplanting Roman Law into Late Antique Jewish and Christian Legal Discourse*
- Britt PTevis, »The People's Judge«: Jacob Panken, Yiddish Socialism, and American Law
- Jason Yackee, *Investor-State Dispute Settlement at the Dawn of International Investment Law: France, Mauritania, and the Nationalization of the MIFERMA Iron Ore Operations*
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- John Harrington, Ambreena Manji, »Africa Needs Many Lawyers Trained for the Need of their Peoples«: Struggles over Legal Education in Kwame Nkrumah's Ghana
- Zachary Newkirk, »Full Justice May Be Done Them«: The Case of *Bill, Charles, Jupiter, Randolph, et al. v. William A. Carr* in a Florida Freedmen's Bureau Court
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- Penelope Russell, *Re-tying the Knot? Remarriage and Divorce by Consent in mid-Victorian England*

*issue 3*

- Jeffrey S Adler, »To Stay the Murderer's Hand and the Rapist's Passions, and for the Safety and Security of Civil Society«: The Emergence of Racial Disparities in Capital Punishment in Jim Crow New Orleans

- Angela Fernandez, *American Treatise Writers and the Nineteenth-Century Debate on Marriage with a Deceased Wife's Sister in Transatlantic Context*
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- Mark L. Wilde, *Railway Sparks: Technological Development and the Common Law*
- Gabrielle Wolf, *Machinations of the British Medical Association: Excluding Refugee Doctors from Queensland's Medical Profession, 1937–1942*

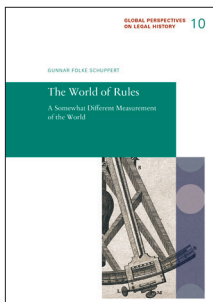
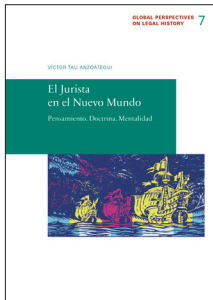
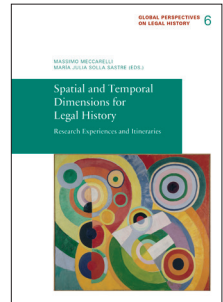
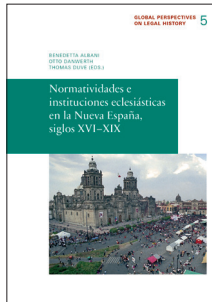
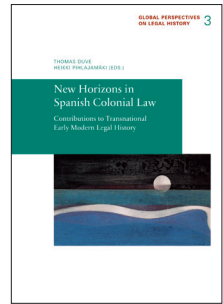
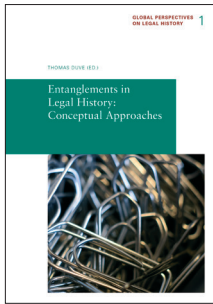


Global Perspectives on Legal History 

The book series *Global Perspectives on Legal History*, edited by Thomas Duve and Stefan Vogenauer, opens up the legal history of Europe to the history of its global connections. It publishes monographs as well as edited volumes which transcend the established boundaries of national legal scholarship and focus on different modes of normativity and law as well as on their historical development.

The peer-reviewed series addresses the global research community also in terms of its format. From its outset in 2014, it was designed as a multilingual Open Access publication series. *GPLH* primarily appears online, freely accessible to everyone on the Institute's homepage and via online services that are also committed to Open Access. A print-on-demand service is available for those readers who prefer or require a printed copy.





*Volume 12*

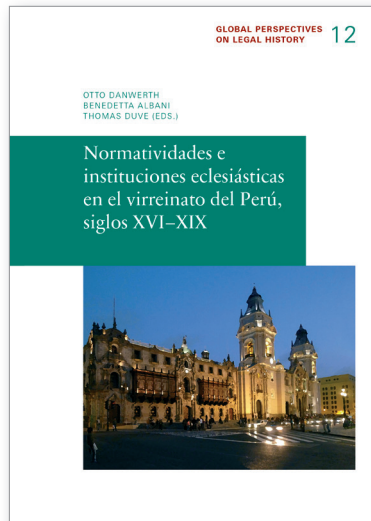
Otto Danwerth, Benedetta Albani, Thomas Duve (eds.)

**NORMATIVIDADES E INSTITUCIONES ECLESIASTICAS  
EN EL VIRREINATO DEL PERÚ, SIGLOS XVI–XIX**Frankfurt am Main: Max Planck Institute for European Legal  
History, 254 p.ISBN 978-3-944773-22-3, print-on-demand: [www.epubli.de](http://www.epubli.de), 13,40 €Open Access online edition: <http://dx.doi.org/10.12946/gplh12>,

eISBN 978-3-944773-23-0

The eight chapters deal with a diversity of themes relating to both urban and rural locations in what is now Peru, Bolivia, Argentina and Chile. They examine the ecclesiastical legislation of Toribio de Mogrovejo, explore the role of legal experts in canon law litigation, compare the activities of Jesuit missionaries in Austria and Peru, explain the life of the nuns in the *Monasterio de la Concepción* in Lima, discuss problems of diocesan administration in outlying zones of the archdiocese of La Plata, and analyse the *ius patronatus* in Chile during the independence movement.

The editors' purpose has been to present approaches that explore the relationship between different types of normativities, their local adaptations, their links to global debates, the forms of conflict resolution, as well as the role of jurists, theologians and other actors. The contributions propose new research fields for legal history and the history of the Church, but are also relevant for social and cultural historians. They contribute to a better understanding of the normative religious universe of Ibero-America between the 16th and 19th centuries. After a first volume on New Spain (GPLH 5, 2018), an upcoming third volume will cover the viceroyalty of New Granada; the tetralogy will be completed with a final volume on Brazil.



**Studien zur europäischen Rechtsgeschichte**

The volumes of this publication series, which started in 1971, were initially published under the title *Ius Commune Sonderhefte*, as additional volumes to the former Institute journal *Ius Commune*. In 2002 (from volume 151 onwards), the former subtitle became the series' new name: *Studien zur europäischen Rechtsgeschichte*. It now contains over 300 volumes. Monographs and edited volumes are published individually or within the current sub-series: *Savignyana*, *Rechtsräume*, *Moderne Regulierungsregime*, *Lebensalter und Recht*, *Recht im ersten Jahrtausend*, *Recht in der Industriellen Revolution*, *Rechtskulturen des modernen Osteuropa*, *Repertorium der Policeordnungen der Frühen Neuzeit*, *Juristische Briefwechsel des 19. Jahrhunderts*, *Das Europa der Diktatur*, *Bibliographica Juridica*.

The increasingly multilingual series is traditionally published in print by Klostermann Verlag. All manuscripts undergo a peer review process. We intend to make newly published volumes available online in Open Access after a period of three years. Older volumes will successively also be digitised.





*Band 308*

Dennis Majewski

**ZISTERZIENSISCHE RECHTSLANDSCHAFTEN**Die Klöster Dobrilugk und Haina in Raum und Zeit  
(Rechtsräume 2)Frankfurt am Main: Vittorio Klostermann, 808 S., 139,00 €  
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.



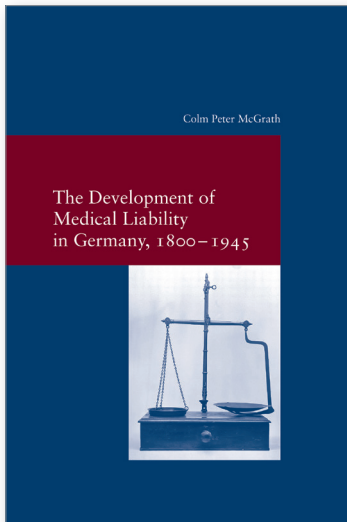
*Band 314*

Colm Peter McGrath

**THE DEVELOPMENT OF MEDICAL LIABILITY IN GERMANY,  
1800–1945**

Frankfurt am Main: Vittorio Klostermann, 262 S., 69,00 €  
ISBN 978-3-465-04367-6

This volume examines the development of medical liability in Germany during its intense formative period from 1800–1945. It focuses on how the fault requirement in civil law was conceptualised and applied to liability for errors in the diagnosis and treatment of a patient. By focusing on the development of the law, and how it related and responded to changes in the nature of medicine, medical practitioners and healthcare over this period, it uncovers a rich interaction between the legal and medical narratives concerning fault. It offers an account of legal development where the law and lawyers were deeply embedded in, and influenced by, the broader social context, identifying a gradual shift towards asserting the independence of courts from accepted medical narrative in the light of technological advances.



*Band 316*

Iole Fagnoli (Hg.)

**PHILIPP LOTMAR: DAS RÖMISCHE RECHT VOM ERROR**Frankfurt am Main: Vittorio Klostermann, 2 Halbbände, 1126 S.,  
189,00 €

ISBN 978-3-465-04368-3

Jahrzehntelang arbeitete Philipp Lotmar immer wieder am Thema des Irrtums. In einem monumentalen Werk untersuchte er den Error in den unzähligen römischen Quellen in jedem Bereich des Rechts in und außerhalb des Corpus Iuris Civilis, vor allem, um eine breite Basis für seine Kritik an Karl Friedrich von Savignys tonangebender Irrtumslehre im Vertragsrecht zu schaffen. Lotmar konnte aber das Werk, das er für seine romanistische Hauptleistung hielt, nicht mehr vollenden und kam auch nicht mehr zur Publikation des ersten, fast fertigen Bandes. Der gesamte erste Band und die Einleitung zum zweiten Band, also die Teile des Werks, die Lotmar in eine publikationsfähige Form auszuarbeiten schaffte, wird nun der Öffentlichkeit übergeben. Auf diese Weise wird das wissenschaftliche Werk eines prägenden Zivilrechtslehrers, der heute außerhalb der Romanistik in erster Linie als Schöpfer des modernen Arbeitsrechts wahrgenommen wird, nun auch auf dessen angestammtem Forschungsgebiet, dem römischen Recht und der allgemeinen Privatrechtsdogmatik, fast hundert Jahre nach seinem Tod zugänglich.



*Band 317*

Volker Unverfehrt

**DIE SÄCHSISCHE LÄUTERUNG**

Entstehung, Wandel und Werdegang bis ins 17. Jahrhundert  
(Rechtsräume 3)

Frankfurt am Main: Vittorio Klostermann, 322 S., 79,00 €  
ISBN 978-3-465-04388-1

Die Handhabung rechtlicher Institute in der Vergangenheit erschließt sich oftmals nicht auf den ersten Blick. Dies gilt umso mehr für solche, die heute nicht mehr existieren – wie die sächsische Läuterung. Ihre Spur lässt sich bis in die mittelalterliche deutsche Rechtspraxis zurückverfolgen und endet erst 1877/1879 mit den Reichsjustizgesetzen. Zuletzt als Rechtsmittel verwandt deuten frühere Formen der Läuterung noch auf einen Gebrauch als bloße Urteilerklärung hin. Den Gründen für die Entstehung, den Wandel und die Langlebigkeit der Läuterung, die über mehrere Jahrhunderte im sächsischen Prozess praktiziert wurde, widmet sich die Untersuchung.



*Band 318*

Christopher Lattmann

**DER TEUFEL, DIE HEXE UND DER RECHTSGELEHRTE**

Crimen magiae und Hexenprozess in Jean Bodins

*De la Démonomanie des Sorciers*

Frankfurt am Main: Vittorio Klostermann, 390 S., 69,00 €

ISBN 978-3-465-04389-8

*De la Démonomanie des Sorciers* (1580) ist nicht das berühmteste, wohl aber das kontroverseste Werk des großen französischen Staatstheoretikers Jean Bodin (1529–1596). Darin erörtert er die Natur des Hexenwesens und gibt eine Anleitung zur rigiden strafrechtlichen Verfolgung des *crimen magiae*. Obgleich ein genuin juristisches Werk, wurde der Text bisher gerade aus rechtlicher und rechtshistorischer Perspektive nicht eingehend erforscht. Die Studie geht daher der Frage nach der Funktion und Bedeutung rechtlicher Normativität in Bodins Hexenmanual nach. Dabei zeigt sie die Verbindung von Bodins Weltbild und seinen Rechtsvorstellungen auf, legt die Ausgestaltung des Hexereitattbestands in seinen einzelnen Deliktselementen dar und erklärt das prozessuale Sonderrecht gegen Hexen.





Band 319

Guido Rossi

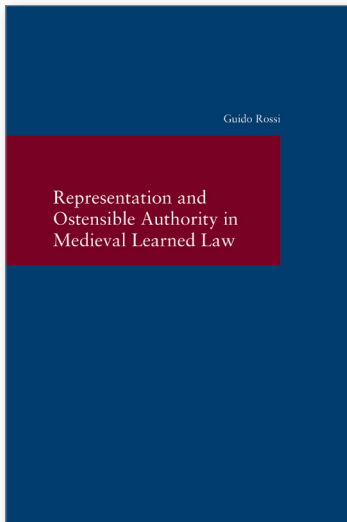
**REPRESENTATION AND OSTENSIBLE AUTHORITY  
IN MEDIEVAL LEARNED LAW**

Frankfurt am Main: Vittorio Klostermann, 598 S., 98,00 €

ISBN 978-3-465-04357-6

Open Access online edition (PDF) available under  
<https://dx.doi.org/10.12946/steurg/319>

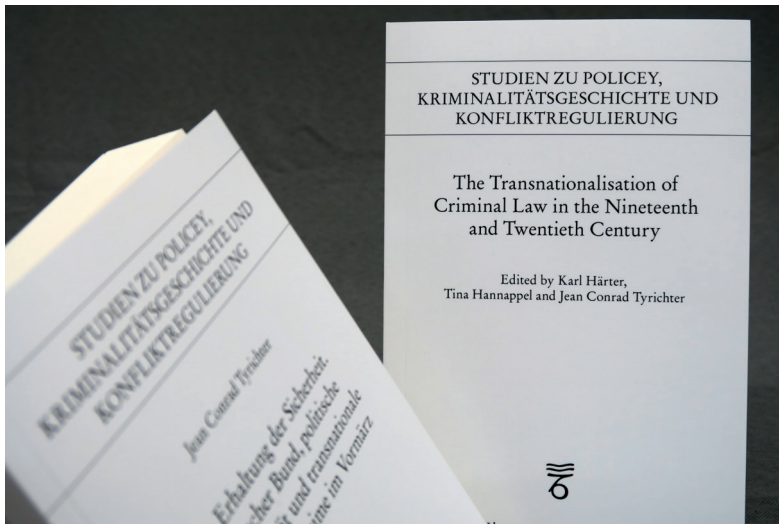
When is it possible to hold valid an act done unlawfully? To answer the question, medieval civil lawyers focused mainly on the case of a slave elected *praetor* in the mistaken belief that he was a Roman citizen. Most jurists argued that the validity of an act should depend on the validity of its source. But whilst early civil lawyers thought that the source was the person vested with some specific powers (such as the judge, the notary, etc.), later on they began to conceive of the person as representative of an office, and to ascribe the acts directly to the office itself. This evolution – and so, the foundations of the concept of ostensible authority – was due to the influence of canon lawyers, who had to deal with a similar problem: what if a bishop was secretly heretical?



## Studien zu Policey, Kriminalitätsgeschichte und Konfliktregulierung

The series, founded by Michael Stolleis in 1999 as *Studien zu Policey und Policeywissenschaft*, was renamed *Studien zu Policey, Kriminalitätsgeschichte und Konfliktregulierung* in 2012 and since then edited jointly by Michael Stolleis and Karl Härter. The series includes selected case studies and works dealing with the investigation of early modern police ordinances of the German empire's territories and imperial cities, as well as studies on historical crime or conflict regulation.

The series is published in print by Klostermann Verlag. All manuscripts undergo a peer review process. We intend to make newly published volumes available online in Open Access after a period of three years. Older volumes will successively also be digitised.



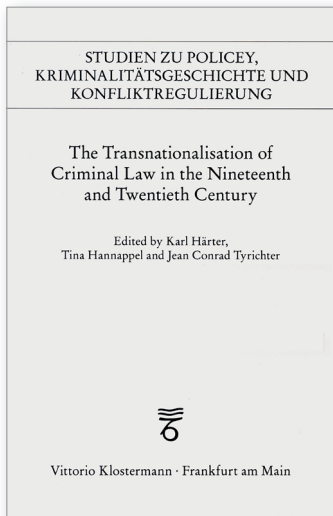
Karl Härter, Tina Hannappel, Conrad Tyrichter (Hg.)

**THE TRANSNATIONALISATION OF CRIMINAL LAW  
IN THE NINETEENTH AND TWENTIETH CENTURY**

Political Crime, Police Cooperation, Security Regimes and  
Normative Orders

Frankfurt am Main: Vittorio Klostermann, 238 S., 44,00 €  
ISBN 978-3-465-04391-1

The volume contains nine case studies on the recent history of transnational criminal law, having emerged from current international research projects. The papers cover cross-border political crime and security threats, extradition and expulsion, police cooperation and international expert discussions on social crime and torture. The focus is less on event-historical phenomena, and more on transnational legal-political interactions of different actors. The contributions thus analyse the historical development of transnational criminal law as a form of temporally, spatially and legally limited criminal law and security regimes. As a result, the volume shows that the investigated transnationalisation of criminal law in the 19th and 20th centuries did not lead to a cohesive normative order, and thus offers legal-historical interpretations of current problems in international criminal law.





Jean Conrad Tyrichter

**DIE ERHALTUNG DER SICHERHEIT. DEUTSCHER BUND,  
POLITISCHE KRIMINALITÄT UND TRANSNATIONALE  
SICHERHEITSREGIME IM VORMÄRZ**

Frankfurt am Main: Vittorio Klostermann, 470 S., 79,00 €  
ISBN 978-3-465-04374-4

Die so genannte »Restaurationspolitik« des Deutschen Bundes im Vormärz ist ein bekanntes, rechtshistorisch aber kaum erforschtes Thema. In dieser Arbeit wird sie nicht nur erstmals umfassend rekonstruiert, sondern auch aus der Perspektive weitreichender Fragestellungen analysiert. Hierzu gehören besonders die Fragen nach der Formierung transnationaler Sicherheitsregime gegen politische Kriminalität im 19. Jahrhundert, der Herausbildung einer normativen Ordnung transnationalen Strafrechts oder dem Verhältnis von »Restauration« und »Innerer Nationsbildung«. Auf diese Weise trägt die Arbeit über ihr Thema hinaus zur Erforschung der Geschichte transnationaler Reaktionen gegen politische Kriminalität bei und eröffnet neue Perspektiven auf das komplexe politische System des Deutschen Bundes.

STUDIEN ZU POLICEY,  
KRIMINALITÄTSGESCHICHTE UND  
KONFLIKTREGULIERUNG

Jean Conrad Tyrichter

Die Erhaltung der Sicherheit.  
Deutscher Bund, politische  
Kriminalität und transnationale  
Sicherheitsregime im Vormärz

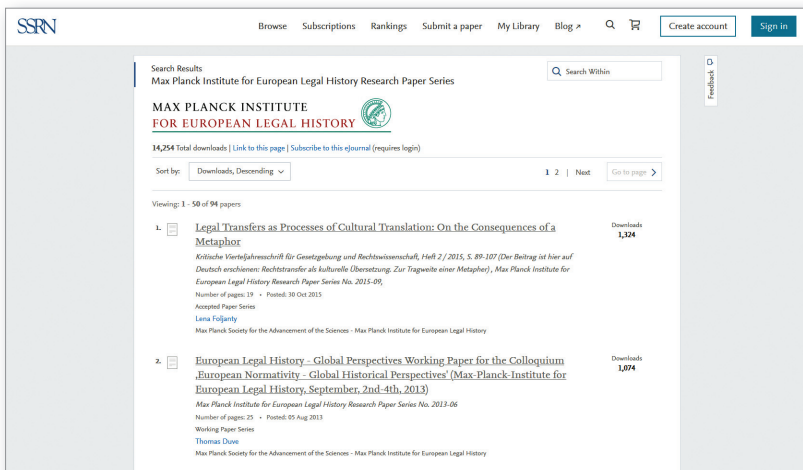


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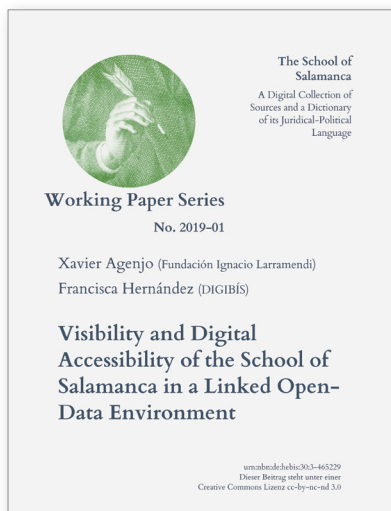
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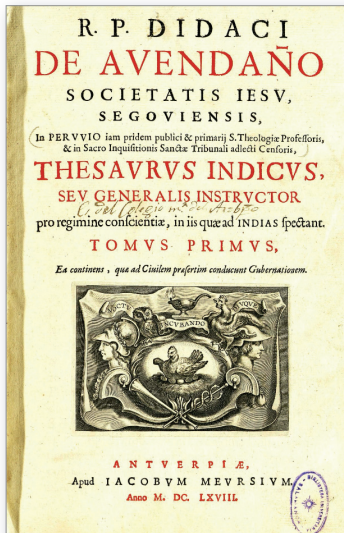
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