



PUBLICATIONS
2024



THE INSTITUTE

Established in 1964, the Max Planck Institute for Legal History and Legal Theory (until the end of 2020: Max Planck Institute for European Legal History) in Frankfurt am Main engages in research on European and global history and on the theory of law. With its three departments led by Directors Marietta Auer (Multidisciplinary Theory of Law), Thomas Duve (Historical Regimes of Normativity) and Stefan Vogenauer (European and Comparative Legal History), its specialist library holding over 500,000 printed media units, and its numerous international visitors, the Institute has become a worldwide hub for those working on past and present national and transnational legal orders. Many of the research results are published in the Institute's own publication series.

DAS INSTITUT

Das Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie (bis Ende 2020: Max-Planck-Institut für europäische Rechtsgeschichte) betreibt seit seiner Gründung im Jahre 1964 in Frankfurt am Main Forschungen zur europäischen und globalen Rechtsgeschichte sowie zur Theorie des Rechts. Mit seinen drei Abteilungen unter der Leitung der Direktoren Marietta Auer (Multidisziplinäre Rechtstheorie), Thomas Duve (Historische Normativitätsregime) und Stefan Vogenauer (Europäische und vergleichende Rechtsgeschichte), seiner Spezialbibliothek mit über 500.000 gedruckten Medieneinheiten sowie zahlreichen internationalen Gästen ist das Institut zu einem Knotenpunkt für alle Forschenden geworden, die sich mit vergangenen und gegenwärtigen nationalen und transnationalen Rechtsordnungen befassen. Viele der wissenschaftlichen Erträge werden in den Publikationsreihen des Instituts veröffentlicht.

- 2 JOURNAL**
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RECHTSGESCHICHTE – LEGAL HISTORY



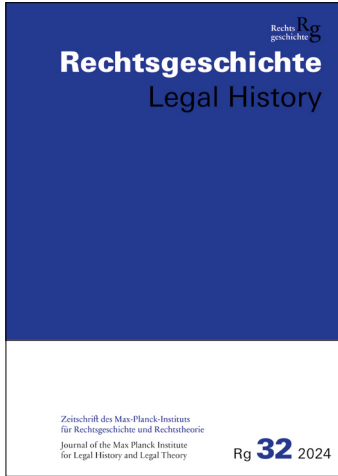
Rechtsgeschichte – Legal History (Rg) is the journal of the Max Planck Institute for Legal History and Legal Theory. It is edited by the Institute's directors, Marietta Auer, Thomas Duve and Stefan Vogenauer. The journal aims to be a forum for high-level scholarship in all branches of legal history. 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 is published in print version by Vittorio Klostermann Verlag, Frankfurt am Main. Since 2012, the annual journal is also published online in Open Access on the journal website: <https://rg.lhlt.mpg.de>

The journal is indexed, among others, in the *Directory of Open Access Journals (DOAJ)*.





RG 32

Frankfurt am Main: Vittorio Klostermann, 324 p.
 ISBN 978-3-465-04666-0, print ISSN 1619-4993, 49 €
 Open Access edition: <https://rg.lhlt.mpg.de>
 eISSN 2195-9617

research

- Carlo Bersani, *Persona, Homo, Res*: Building a Boundary in Early Modern European Legal Thought
- Tamar Herzog, *Enslaved as Outsiders, Enslaved as Property*: Understanding Slavery in a Global and Early Modern Context
- Matilde Cazzola, »There Is in the Great Big Law Too Much Bad Little Law«: The Slavery Abolition Act and Labour Laws in the Post-Emancipation British West Indies
- Christiane Birr, *Tradition and Innovation in Knowledge Production*: Gregorio López' Commentary on the *Siete Partidas* (1555)
- Tobias Schenk, *Knowledge of Production of Normativity at the Imperial Aulic Council*. Towards a Procedural Perspective on Early Modern Legal Reasoning

- Andrew James Harding, The Diffusion of Common Law in the Straits Settlements: »The Six Widows' Case« and the Rout of Custom
- Paola Revilla Orías, Pablo Quisbert Condori, *Kintal sut'i*: Preservación, transmisión y usos de saberes normativos en ayllus y comunidades (Charcas, Bolivia, siglos XVI–XXI)

critique

- Wolfgang Ernst on David Lloyd Dusenbury, *The Innocence of Pontius Pilate. How the Roman Trial of Jesus Shaped History*
- Serdar Kurnaz on Holger M. Zellentin, *Law Beyond Israel. From the Bible to the Qur'an*
- Orazio Condorelli on Amedeo Feniello e Mario Prignano (eds.), *Papa, non più papa. La rinuncia pontificia nella storia e nel diritto canonico*
- Caspar Ehlers on Stephan Bruhn, *Reformer als Wertegemeinschaften. Zur diskursiven Formierung einer sozialen Gruppe im spätangelsächsischen England*
- Peter Oestmann on Josef Bongartz, Alexander Denzler, Carolin Katzer, Stefan Andreas Stodolkowitz (Hg.), *Feder und Recht. Schriftlichkeit und Gerichtswesen in der Vormoderne*
- Marian Füssel on Anette Baumann (Hg.), *Juristen als Experten?*
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- Karolyne Mendes, Mendonça Moreira on Antônio Bispo dos Santos, *A terra dá, a terra quer*
- Sebastian M. Spitra on Natasha Wheatley, *The Life and Death of States: Central Europe and the Transformation of Modern Sovereignty*
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- Paulien Broens on Immi Tallgren (ed.), *Portraits of Women in International Law*

marginalia

- Erk Volkmar Heyen, Zur Inszenierung des Rechts in der Malerei des späten 19. Jahrhunderts. Treppen als Schauplätze geschlechtsspezifischer Verherrlichung und Verurteilung
- Paul W. Kahn, The Multicultural State: Progress or Tragedy?



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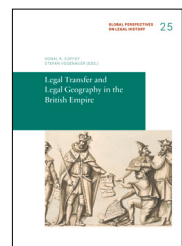
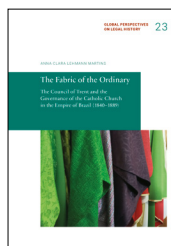
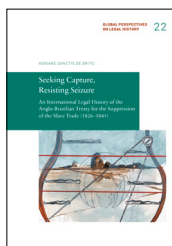
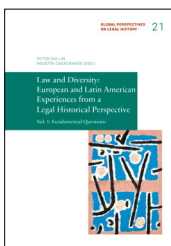
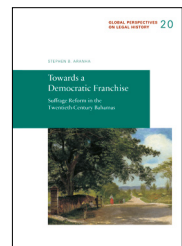
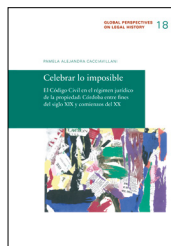
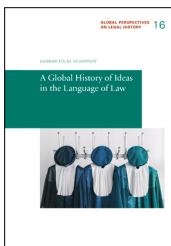
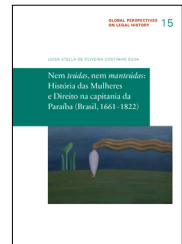
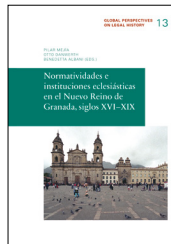
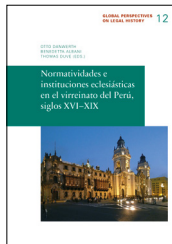
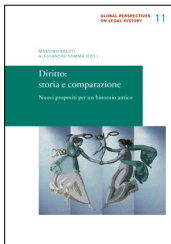
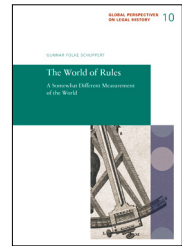
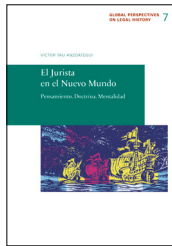
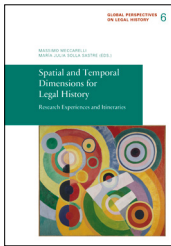
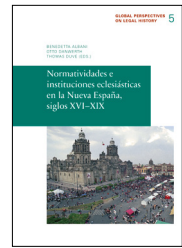
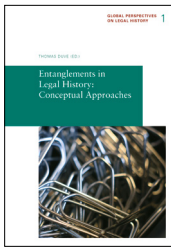
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GLOBAL PERSPECTIVES ON LEGAL HISTORY



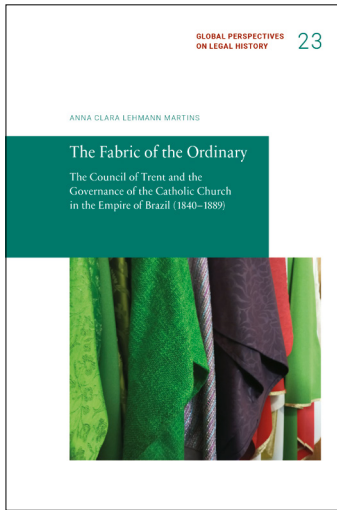
GLOBAL PERSPECTIVES ON LEGAL HISTORY



The book series *Global Perspectives on Legal History (GPLH)*, edited by Marietta Auer, 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 can be found via DOAB, OAPEN, JSTOR and Project MUSE. A print-on-demand service is available for those readers who prefer or require a printed copy. With the publication of vol. 13, the print editions are available as hardcover copies.





VOLUME 23

Anna Clara Lehmann Martins

THE FABRIC OF THE ORDINARY

The Council of Trent and the Governance of the Catholic Church in the Empire of Brazil (1840–1889)

Frankfurt am Main: Max Planck Institute for Legal History and Legal Theory, XXII, 511 p.

ISBN 978-3-944773-44-5,

print-on-demand: www.epubli.de, 27,11 €

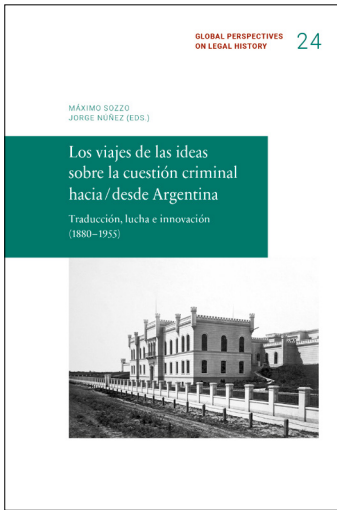
Open Access edition: <http://dx.doi.org/10.12946/gplh23>

eISBN 978-3-944773-45-2

Much has been written about the political tension between ultramontanists and liberal jurisdictionalists in the Empire of Brazil during the reign of D. Pedro II (1840–1889). Among the commonplaces of this historiography is the idea that the Council of Trent was a normative set implemented solely by the clergy and ultramontanists, if not a top-down imposition from Rome against liberal policies. But can we maintain this interpretation if we place ordinary administrative practices center stage?

This book focuses on these practices as they appear in two sets of sources: on the one hand, the consultations on ecclesiastical matters that local and central authorities submitted to the Brazilian Council of State; on the other, the cases sent by Brazilian actors to the Holy See and examined by the Congregation of the Council, the body of the Roman Curia in charge of interpreting the Council of Trent. The author interprets the Church as a structure of multilevel governance that involved multiple jurisdictions and a number of ecclesiastical and lay actors, all interacting in a scenario of intense multinormativity.

The analysis allows us to see the Council of Trent as a very plastic resource in the hands of clerics, bureaucrats, and jurists. It took on roles not only as weapon, but also as model for other laws, rhetorical support, part of tradition, a negotiable and even dispensable resource. Examining these practices yields the surprising conclusion that the polarisation between ultramontanists and jurisdictionalists was a precarious element within the governance of the Church in Brazil, often giving way to mechanisms for control of normative novelty and to a re-focusing on objectives and needs.



VOLUME 24

Máximo Sozzo, Jorge Núñez (eds.)

LOS VIAJES DE LAS IDEAS SOBRE LA CUESTIÓN CRIMINAL HACIA / DESDE ARGENTINA

Traducción, lucha e innovación (1880–1955)

Frankfurt am Main: Max Planck Institute for
Legal History and Legal Theory, V, 295 p.

ISBN 978-3-944773-46-9,

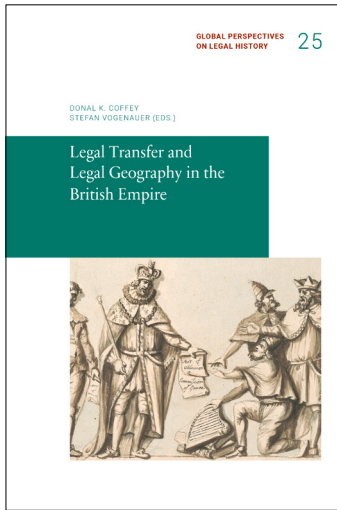
print-on-demand: www.epubli.de, 22,41 €

Open Access edition: <http://dx.doi.org/10.12946/gplh24>

eISBN 978-3-944773-47-6

Since the 1880s, Argentina underwent an impressive metamorphosis in knowledge about the set of problems related to crime and punishment. Until then, the discourse had been dominated by philosophical and legal perspectives that were the result of importing enlightened and liberal, but also Catholic, theoretical vocabularies developed in Europe. Building on the ideas of the 'Positivist School' in Italy, a new type of discourse on the 'criminal question' was developed in Argentina which challenged the fundamental concepts of criminal law.

This edited volume examines these transformations of knowledge on the criminal question between the late nineteenth and mid-twentieth centuries, emphasising the transnational circulation of ideas. The traditional view of these processes, based on the assumption that peripheral contexts depend on central contexts, focuses on the importation of ideas from the Global North to the Global South and presents the reception of ideas as consisting of transplants, appropriation, reproduction or adoption. However, this prevents us from observing the dynamics of adaptation, rejection and negotiation that, in some cases, led to significant innovations by local authors.



VOLUME 25

Donal K. Coffey, Stefan Vogenauer (eds.)

LEGAL TRANSFER AND LEGAL GEOGRAPHY IN THE BRITISH EMPIRE

Frankfurt am Main: Max Planck Institute for
Legal History and Legal Theory, VIII, 348 p.

ISBN 978-3-944773-48-3,

print-on-demand: www.epubli.de, ca. 26,00 €

Open Access edition: <http://dx.doi.org/10.12946/gplh25>

eISBN 978-3-944773-49-0

The legal history of the British Empire is in its infancy. The research field 'Legal Transfer in the Common Law World' at the mpilhl has been engaged in scientific examination and analysis of this field. In 2021, the Third Legal Histories of Empires Conference was held in the National University of Ireland, Maynooth. A stream looking at the state of the art in Legal Transfer in the Common Law World was organized by the co-editors of this volume which flows from that stream.

The book argues that a comparative approach can overcome jurisdictional and ahistorical biases still often present in the legal history of empires. In an imperial legal superstructure, such as the British Empire(s), models of legislative and interpretative methods were self-consciously adopted and adapted to different jurisdictions. Moreover, the process of decolonisation disclosed similarities and divergences in the legal development of these territories. Useful insights can be gleaned from a comparison across different methodologies which are concerned with a similar normative framework between and within societies, and their relationship to the natural world.

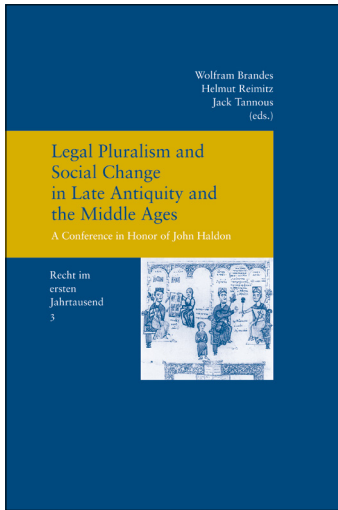
The volume has two parts. The first presents four case studies for legal transfers in chronological order. The second part contains a number of contributions engaging with the burgeoning field of legal geography in the context of the Empire. The different areas of law covered – including inter alia public law, employment law, land law – demonstrate the vitality of the comparative method.

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 340 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 Polizeyordnungen der Frühen Neuzeit*, *Juristische Briefwechsel des 19. Jahrhunderts*, *Das Europa der Diktatur*, *Bibliographica Juridica*.

The increasingly multilingual series is traditionally published in print by Vittorio Klostermann Verlag, Frankfurt am Main. 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 337**

Wolfram Brandes, Helmut Reimitz,
Jack Tannous (eds.)

**LEGAL PLURALISM AND SOCIAL CHANGE IN
LATE ANTIQUITY AND THE MIDDLE AGES**

A Conference in Honor of John Haldon
(Recht im ersten Jahrtausend 3)

Frankfurt am Main: Vittorio Klostermann,
XIV, 436 p., 89 €
ISBN 978-3-465-04547-2

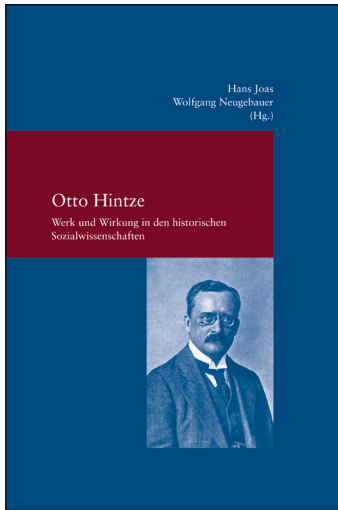
Throughout his career, Professor John Haldon has served as an intellectual link between different academic cultures, methods, and disciplines. A true scholar of Byzantine society, his work combines a meticulous treatment of texts and material evidence with a holistic approach to social history. His ideas have been instrumental in opening up the study of the Byzantine world to new methodological perspectives and ever wider horizons for comparison with other political systems and structures across the European and Islamic worlds from late antiquity to early modern times. Based on a conference organized by the Center for Collaborative History at Princeton University in 2018 on the occasion of his 70th birthday, this book – more than just a Festschrift – takes stock of Haldon's approach by focusing on the history of law and legal culture in the transformation of the Roman world.

**BAND 343**

Heinz Mohnhaupt
**PRIVILEGIEN ALS SONDERRECHTE IN
 EUROPÄISCHEN RECHTSORDNUNGEN VOM
 MITTELALTER BIS HEUTE**

Frankfurt am Main: Vittorio Klostermann,
 XII, 970 p., 149 €
 ISBN 978-3-465-04424-0

Nowadays, the term 'privileges', part and parcel of political and societal discourse in countries worldwide, carries a negative connotation as it contradicts the concept of justice and equality in state and society. The original, legal meaning of this ubiquitous term, which dates back to Roman canon law, has largely become lost. The author traces the history and European dimensions of the 'privilegia' and their relevance for the evolution of law, state and society in a *longue durée* perspective. He complements his account with a comprehensive overview of sources by territory, an abridged version of which had initially been intended for inclusion in Helmut Coing's *Handbuch* (vol. II/3), and a bibliography organised according to subject matter, ranging from the Middle Ages to the present day. A picture emerges how, by differentiating between the rights of individuals, groups and territorially defined areas of applicability, privileges also represented an individualised sense of justice, which prevailed until the Enlightenment and its – often futile – attempts to replace privilege thinking with laws applicable to all, in the sense of modern 'égalité'.

**BAND 346**

Hans Joas, Wolfgang Neugebauer (eds.)

OTTO HINTZEWerk und Wirkung in den historischen
SozialwissenschaftenFrankfurt am Main: Vittorio Klostermann,
VI, 249 p., 59 €
ISBN 978-3-465-04523-3

The great German scholar Otto Hintze (1861–1940) is still known to many as a historian only of Prussia or the Hohenzollern dynasty. Yet his research went far beyond these fields and are of impressive contemporary relevance. This is particularly true for his interest in a historical sociology of bureaucracy, a methodological turn towards global history and his realism regarding the politics of power which, however, also explored the possibilities of a stable international peace order. Hintze's work represents a critical continuation of historicism with the greatest openness towards the social sciences. It can be read as a supplement and corrective to the writings of Max Weber and Ernst Troeltsch, but also as an alternative to Carl Schmitt, and is therefore rightly attracting increasing international attention.

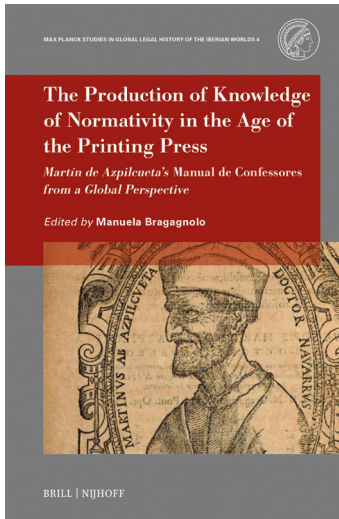
MAX PLANCK STUDIES IN GLOBAL LEGAL HISTORY OF THE IBERIAN WORLDS



The volumes published in this book series deal with legal-historical research on areas that interacted with the Iberian empires during the early modern and modern periods in Europe, the Americas, Asia and Africa. The focus of this series is global in the sense that it does not just limit itself to imperial spaces as such, but also looks at the globalisation of norms within the spaces that were in contact with these imperial formations. The global dimension is, moreover, underscored by the attention paid to the coexistence of a variety of normativities and their cultural translations at different times and in different places. The volumes thus decentre traditional research perspectives and are open to exploring various modes of normativity.

The series is edited by Thomas Duve and published by Brill. All of the monographs, edited volumes and text editions in the series are peer reviewed and published in print and online. Brill's Open Access books are distributed free of charge in Brill's E-Book Collections and can be found via DOAB, OAPEN and JSTOR.





Vol. 4

Manuela Bragagnolo (ed.)

The Production of Knowledge of Normativity in the Age of the Printing Press

Martín de Azpilcueta's *Manual de Confessores* from a Global Perspective

Leiden: Brill, XVI, 436 p., 166,92 €

ISBN 978-90-04-68578-9

Open Access online edition:

<https://doi.org/10.1163/9789004687042>

eISBN 978-90-04-68704-2

This volume explores the production of knowledge of normativity in the age of early modern globalisation by looking at an extraordinarily pragmatic and normative book: the *Manual de Confessores*, by the Spanish canon law professor Martín de Azpilcueta (1492–1586). Intertwining expertise, methods, and questions of legal history and book history, this book follows the actors and analyses the factors involved in the production, circulation, and use of the *Manual*, both in printed and manuscript forms, in the territories of the early modern Iberian Empires and of the Catholic Church. It convincingly illustrates the different dynamics related to the materiality of this object that contributed to 'glocal' knowledge production.

Contributors are: Samuel Barbosa, Manuela Bragagnolo, Christiane Birr, Luisa Stella de Oliveira Coutinho Silva, Byron Ellsworth Hamann, Idalia García Aguilar, Pedro Guibovich Pérez, Natalia Maillard Álvarez, César Manrique Figueroa, Stuart M. McManus, Yoshimi Orii, David Rex Galindo, Airton Ribeiro, and Pedro Rueda Ramírez.

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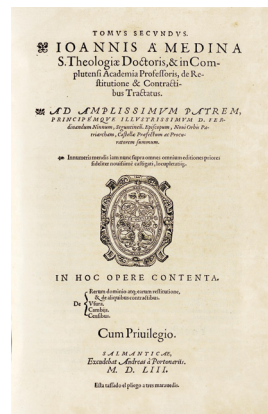
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