

UNIVERSITY OF
LUCERNE



ANNUAL REPORT 2020



Lucernaiuris
Institut für Juristische Grundlagen

Annual Report 2020

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TABLE OF CONTENTS

I. Institute

- Profile
- Message from the Head
- Team and Organisation

II. Teaching

- Teaching Profile
- Lectures and Seminars
- Law and Theory Workshop
- LLM in Legal Theory
- Critical Times: Law, Humanities and Critique

III. Research

- Research Profile
- Podcasts: Law, Art, Politics
- Doctoral Forum in Law and Humanities
- Visiting Fellows
- Research in Focus
- Research Projects
- Publications and Presentations

IV. Cover Image

V. 2021: A Preview

A photograph of several bright green rectangular blocks stacked on a dark surface. The blocks are arranged in a way that creates a sense of depth and perspective. The text "I: INSTITUTE" is overlaid on the image in a bold, black, sans-serif font.

I: INSTITUTE

PROFILE

The Institute for Interdisciplinary Legal Studies – *lucernaiuris* is a hub for leading-edge teaching and research that crosses traditional boundaries between law, the humanities and the social sciences. It holds a distinctive position within the national and international academic landscape as a vibrant site for critical and creative thinking.

The institute's main priorities are to:

- provide a rallying point for inter- and transdisciplinary work on the foundations of law and justice
- foster intellectual and methodological innovation in teaching and research
- promote the training of postgraduate and early career researchers in interdisciplinary legal studies
- stimulate collaborative activities with national and international partners

To borrow a distinction from the late legal historian Marie Theres Fögen, the institute has long seen its role as more that of 'troublemaker' than 'troubleshooter'. A consistent priority has been to undertake work that critiques and unsettles accepted categories and concepts, norms and discourses, practices and methods. This impulse continues to shape the identity of the institute today. Faced with the urgency of our present moment, however, we also turn our attentions increasingly to the future – to pursuing new forms of future-oriented critical thinking; to imagining future alternatives or alternative futures; to asking not just what is happening now, but what happens next.

A NOTE ON OUR NAME

During the middle ages, "lucerna iuris" was a term applied to the most significant Bolognese jurists. In taking the name for our institute, we of course lay no personal claim to it – we are but mere dwarves on the shoulders of giants. Rather, the title serves to acknowledge a connection to one of the mythical 'origins' of legal studies (Bologna), and to underline our commitment to a critical engagement with the modern 'Bologna Process' and its implications for teaching and research in law.

MESSAGE FROM THE HEAD

A little over twelve months ago, when I wrote my message for last year's annual report, the tone was one of optimism. 2019 had been a milestone year for the institute, marking the fifteenth anniversary of our founding, and marked by the successful organisation of the IVR World Congress. Looking forward, we were anticipating a busy year of lectures, conferences, workshops, and other opportunities for critical and creative exchange.

Alas, 2020 will be remembered as the year in which our lives were upended by the COVID-19 pandemic. By early spring, we were wrestling with the challenges – both technical and pedagogical – of migrating our courses and seminars online, and ensuring the requisite support for students. Lockdown, building closures, and travel restrictions led to the cancellation of several events – including our proposed summer school on “Law, Art, Politics”. Regrettably, such disruptions meant we were not able to build on the momentum of the preceding year in the way we had hoped and planned.

Yet even as COVID slowed our activities, it did not bring them to a standstill. Our bi-weekly law and theory workshop, for example, survived the changes and continued to run in a virtual setting in both spring (on legal fictions) and autumn (on law and futurity). Towards the end of the year, we were also able to hold our annual doctoral forum in law and humanities. Here, the digital format allowed for an especially international gathering of early career researchers, who met over two days to discuss an array of topics, concepts, ideas and methods from a rich variety of interdisciplinary perspectives. In addition, we also commissioned a series of online interviews on themes around the nexus of law, art and politics, with guests including leading legal theorists, emerging scholars, and practicing artists. The podcasts will be released shortly via our website and we encourage you to drop in for a listen.

Alongside these activities, we registered a further notable success with an application to Movetia, the Swiss national agency for mobility and exchange, for funding for a new project under the heading “Critical Times: Law, Humanities and Critique”. This is an ambitious collaboration with institutions from Australia, South Africa, the US, and Europe, the centrepiece of which will be two summer schools bringing together students and academics from across the partners for a week of intensive discussion and exchange. The first event will take place in early September of this coming year, and promises to be a wonderful experience for all involved.

Pleasingly, the effects of COVID also did not prevent a host of well-qualified scholars applying to our visiting fellow programme for 2021. After careful consideration, we were able to offer fellowships to two outstanding young researchers, Laura Knöpfel and Nicole Karam, who will – COVID permitting – be joining us for an extended research stay during the course of the year. We very much look forward to welcoming them.

Lastly, 2020 brought a further important development at an organisational level, with the establishment of a new advisory board for the institute. The board comprises ten leading international scholars, who have generously agreed to act as a source of ideas, insight, expertise and advice. We are delighted to have the support of such high-calibre colleagues, and are grateful to each of them for their commitment.

With thanks for your interest, and all best wishes for a safe, healthy and happy 2021,
Vagias Karavas



TEAM & ORGANISATION

MEMBERS



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Professor of Legal History,
University of Roma Tre

Prof. Michelle Cottier
Professor of Civil Law, University of Geneva

Prof. Thomas Duve
Professor of Comparative Legal History,
University of Frankfurt

Prof. Desmond Manderson
Professor of Law and Humanities,
The Australian National University, Canberra

Prof. em. Ulfrid Neumann
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Philosophy and Legal Sociology

Prof. Alain Pottage
Professor of Law, Sciences Po, Paris

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II: TEACHING



TEACHING PROFILE

At the core of our teaching philosophy lies a firm conviction of the importance of what in German are usually referred to as the 'foundational subjects' (*juristische Grundlagenfächer*) for the discipline of legal studies. Our courses encourage students to engage with the historical, philosophical, social, cultural, economic and technological contexts of law, in the belief that such an approach is vital in:

- strengthening contextual and foundational knowledge
- enhancing methodological competence in understanding structural and systemic connections
- promoting critical reflection on the meaning and validity of positive law
- boosting key skills needed for practice as a lawyer, including analysis, evaluation and communication

Two further principles are also central to our teaching programme. The first is the view that legal education in Switzerland should strive for a more intensive exchange with neighbouring disciplines in the humanities and social sciences. Thus alongside lectures in legal history, legal philosophy and legal sociology, we also offer a set of supplementary seminars and workshops that pursue new interdisciplinary directions. The second is the belief that the study of law should also become more international in content and outlook. To this end, we aim to help familiarise students with other legal cultures and orders by opening up teaching to international guest lecturers, developing collaborative projects with partner universities, and nurturing student exchange relationships.

LECTURES AND SEMINARS 2020

BACHELOR

Grundlagen des Rechts

Prof. Malte-Christian Gruber, Prof. Vagias Karavas,
Prof. Michele Luminati, Prof. Klaus Mathis

Recht und Wahrheit

Prof. Malte-Christian Gruber, Prof. Vagias Karavas,
Prof. Michele Luminati

Einführung in das juristische Arbeiten

Prof. Michele Luminati

MASTER

Lektüreworkshop zur aktuellen juristischen Grundlagenforschung

Prof. Malte-Christian Gruber, Prof. Vagias Karavas,
Prof. Michele Luminati

Critical Legal Tech: Wissenschaftliche Perspektiven auf Technologie und Digitalisierung im Recht

Prof. Malte-Christian Gruber

Law and Society in a Global Context

Prof. Vagias Karavas

Geschichte des Handels- und Wirtschaftsrechts

Prof. Michele Luminati

Rechtsökonomie

Prof. Klaus Mathis

Rechtsphilosophie heute: Theorien und Kritiken

Prof. Malte-Christian Gruber

Biomedizinrecht

Prof. Vagias Karavas

Immaterialgüterrecht

Prof. Malte-Christian Gruber, PD Dr. Gregor Wild

Integrationsseminar Recht und Politikwissenschaft: Verfassungsgerichte – rechtliche oder politische Institutionen?

Prof. Michele Luminati, Dr. Stefan Rieder,
Dr. Christof Georg Schwenkel

Law and Justice in Literature and Film

Dr. Steven Howe

Law and Economics Workshop

Prof. Klaus Mathis

Technikrecht

Prof. Malte-Christian Gruber

Forschungskolloquium zur Geschichte der vormodernen und modernen Welt

Prof. Michele Luminati, Prof. Patrick Kury,
Prof. Valentin Groebner

Law and Globalisation (Guest Seminar)

Prof. Georgios Pavlakos

LAW AND THEORY WORKSHOP



The law and theory workshop is a fortnightly gathering of students, PhDs, postdocs and staff, who meet to discuss select essays and book chapters on key legal and theoretical issues. Each semester is organised around a particular thematic focus, which is looked at from a range of critical perspectives.

The workshop provides a relaxed space for open discussion and exchange. As much as it is an intellectual exercise for members of the institute, it is also designed as an opportunity for students to gain exposure to advanced critical reading and thinking in law and theory.

In spring 2020, the overarching theme of the session was “Legal Fictions”, with discussions taking in classical statements by theorists such as Hans Kelsen alongside more contemporary work by scholars including Yan Thomas, Niklas Luhmann and Annelise Riles, and moving freely across diverse topics – from the role of fictions in legal practice to the rhetoricity and fictionality of law as a system of representations. In the autumn semester, the focus was on “Law and Futurity” – here too the programme traversed a variety of themes around questions of time and futurity in and for law, from fundamental theoretical concepts (Reinhart Koselleck, Elena Esposito) to future-oriented critical approaches to environmental law (Andreas Philippopoulos-Mihalopoulos).

LLM IN LEGAL THEORY



In 2009/10, the European Association for the Teaching of Legal Theory (AEETD) and the European Academy of Legal Theory (EALT) launched an initiative to establish a new collaborative Master's Course in Legal Theory. The following year, the AEETD and a consortium of European partner universities (Lucerne, Vienna, Frankfurt, Brussels, Cracow and Stockholm) prepared and submitted a successful funding application to the EU's Lifelong Learning Programme (Erasmus Multilateral Projects – Curriculum Development), designed to facilitate the development and implementation of a new “EALT LLM Programme in Legal Theory”. Subsequently, the partner universities collaborated intensively, over the course of three years, on the design of the teaching curriculum in preparation for its accreditation at the Goethe-University, Frankfurt. In summer 2014, accreditation was approved, and the course was opened to its first cohort of students. At the start of the autumn term 2020, the programme began its seventh year of operation with approximately fifteen participants.

As the only course of its kind in Europe, the LLM in Legal Theory offers a unique perspective on the study and practice of law. Based around a series of subject-specific modules, taught by specialists from the various partner universities, the programme is designed to equip students with the conceptual tools and skills required for a thorough understanding of the workings of law in a modern, globalised world. Strongly interdisciplinary in orientation, the modules promote a productive synthesis of the study of the intellectual heritage of law's traditions and institutions with deep methodological and theoretical reflection, allowing participants to not only gain expertise in a wide range of domestic, European and international subject areas, but to also develop advanced, transferable analytical and critical skills.

Since 2014, the institute has contributed a number of modules to the LLM programme, particularly in the fields of Law and Economics (Klaus Mathis) and Law and Literature (Steven Howe).

CRITICAL TIMES: LAW, HUMANITIES AND CRITIQUE



We live in critical times. Populism, climate change, mass migration, artificial intelligence: these and other pressures have, in recent years, strained – and changed – familiar forms and norms of law, politics and society. Now, the COVID-19 pandemic poses an unheralded global challenge, exposing asymmetries of power and inequalities (of race, gender and social class), and raising hard questions about fundamental freedoms, privacy protections and democratic rights – while also opening the door to previously unthinkable reforms.

Critical times call for critical minds. The pressing problems of our contemporary world are complex and defy easy answers. They demand attention from diverse analytical perspectives and disciplinary fields of expertise. They also require sophisticated

critical theories and practices capable of supplying the deep insights needed to comprehend their complexities, to test and contest underlying ideologies and discourses, and to conjure alternative visions of human and social organisation.

To this end, a cohort of international partners, led by the institute and the Centre for Law, Arts and Humanities at the Australian National University, conceptualised in early 2020 the project “Critical Times: Law, Humanities and Critique”. Centred around a series of intensive study sessions, Critical Times will offer a unique space for advanced graduate students from different disciplines and geographical regions to come together and think – deeply, critically and creatively – about urgent matters of law, politics and justice.

Such space is much needed. Currently, critical-theoretical work in this vein tends to be scattered and diffuse, with scant opportunities for sustained cross-cultural and cross-disciplinary exchange. The lead aim of this new project is to offer just such an opportunity for scholars and students from diverse backgrounds to pool intellectual resources and chart novel ways of understanding the present and thinking the future.

Within this overarching framework, Critical Times pursues two particular objectives. First, it proposes to draw on the expertise of the partner institutions across law, the humanities and critical theory to develop new and original concepts for understanding, engaging and critiquing the challenges of our contemporary world. Second, it responds to a demand from PhD students for fora that foster interdisciplinarity and international exchange, and offer space for work that is critically informed, socially relevant and intellectually imaginative.

Critical Times: Law, Humanities & Critique is an international collaboration between the following partners:

- *Institute for Interdisciplinary Legal Studies – Lucernaiuris*
- *Centre for Law, Arts and Humanities, The Australian National University, Canberra*
- *Institute of the Humanities and Global Cultures, University of Virginia*
- *Wits Institute for Social and Economic Research, University of the Witwatersrand*
- *Faculty of Law, University of Roma Tre*

The project is funded by Movetia, the Swiss National Agency for Mobility and Exchange.

Project No.: 2020-1-CH01-IPP-TER-0006

Funding Amount: 40'000 CHF

Project Leads: Vagias Karavas, Steven Howe

III: RESEARCH



RESEARCH PROFILE

The institute is committed to advancing pioneering research and projects. We pride ourselves on being a hub of contact and exchange – an open laboratory for the discussion of issues and ideas, methods and theories. This openness is reflected in the work of our members, much of which is based on innovative, often cross-disciplinary, collaborations with colleagues in Lucerne or at other institutions at home and abroad.

The research undertaken at the institute spans local, national and international concerns in areas as diverse as law and technology, law and economics, legal history and law and humanities studies. Our core interest lies in exploring the conceptual foundations of law, its assumptions and aspirations, and its workings and effects in diverse social and cultural contexts, both historical and contemporary.

Each year, we run a varied schedule of lectures, seminars, workshops and conferences, together with a visiting fellow programme for young scholars. These activities enable us not only to foster a vibrant research community that brings together established and emerging academics, but to also consolidate existing national and international networks, and support new collaborations.

PODCAST SERIES: LAW, ART, POLITICS

Concept and Interviews by Justine Poon (PhD Candidate, ANU & Former Visiting Fellow, lucernauris)



The Law, Art, Politics Podcast comprises a series of interviews with academics and artists exploring issues on the entanglements of law, art and politics. 2020 was an emblematic year in which forces that have been bubbling under the surface across all aspects of society intensified dramatically into identifiable events. The dramatic imagery of Australia's bushfire crystallised for many that the ravages of climate change have already arrived. The novel coronavirus – a long predicted and perhaps inevitable threat stemming from the expansion of human industry and urban density – changed the way we work, travel and be amongst one another. Long withheld reckonings with racial justice in colonial states could no longer be contained.

Great art has often emerged at times when opposing social and ideological forces intensify into conflict. Picasso's *Guernica* is a moving portrait of a world being broken apart by fascism. Its stark tableau of figures and animals in great distress continues to move audiences and to draw attention to what is missing in the official propaganda of war – a consideration of the dignity of the 'ordinary' masses swept into its maw. Art emerges from specific contexts but their experimentation with forms can also prefigure new ways of representing, seeing, writing and speaking that builds possible bridges between one era and the next. In this way, art is both a commentary on its time and place and the beings that occupy it,

and a vision of some other world and ways of being yet to come. Because of the potential for novel forms and relations, art contains politics.

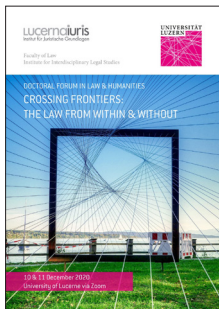


What then of law? Will the existing categories of law be adequate to the task of governing the future? How have aesthetics, law and politics interacted at various moments in order to build new worlds and ways of being? Has their ability to do so been disrupted by contemporary forces of the siloing of the public sphere, neoliberalism's impact on institutions including universities and the means of dissemination of art, and the sense of helplessness in the face of corporate power and climate change?

These are just some of the questions that form a background and spirit to the series. An initial cycle of interviews with Desmond Manderson, Andreas Philippopoulos-Mihalopoulos, Margaret Thornton (pictured), Aileen Walsh and Dario Haux have been recorded and will be released shortly online. Further conversations are planned for 2021. Please keep an eye out for further details.

DOCTORAL FORUM IN LAW AND HUMANITIES

Organisers: Fabienne Graf, Dario Haux, Josephine Heinzelmann, Steven Howe, Stephanie Wirz



The third annual doctoral forum in law and humanities took place on 10 and 11 December 2020. Like a majority of meetings since the onset of the COVID-19 pandemic, the event was held online, disrupting the forum's longstanding aim to gather early career researchers together in a congenial space for face-to-face discussion. On the flipside, the virtual format allowed for a significantly more diverse group of speakers and respondents than would have been possible in a physical setting, and the conversations over the two days were all the richer and more fruitful for this.

The lead theme of this year's gathering was "Crossing Frontiers: The Law From Within and Without", with contributors invited to present work (re-)thinking the law from a variety of internal and external perspectives, or critically engaging the supposed boundaries between inside and outside. This was more prompt than prescription, and the organisers were delighted to receive proposals on an impressive array of topics, ideas, concepts and concerns.

The final programme included fifteen presentations from researchers at various stages of their careers – from those just starting their doctoral studies to more advanced postdocs. All papers were circulated beforehand, and each was assigned a direct respondent, with additional time set aside for open questions. This format was designed to allow in-depth discussion of thematic and methodological issues, as well as more spontaneous feedback in the round. Pleasingly, the pairings of speakers and commentators also threw up a host of productive – and not always entirely expected – parallels, convergences and divergences, which the participants used to enter into lively exchange.

All told, the forum was a marked success. In light of the additional stresses and strains of the pandemic, the number of attendees exceeded expectations – over the two days, approximately 25 young scholars participated either actively or as listeners. Individually, the papers and follow-up discussions each provided rewarding new insights and ideas. Collectively, they showcased a remarkable breadth and depth – both contextual and theoretical – to current work being undertaken by early career researchers at the intersections between law and the humanities.

PROGRAMME

THURSDAY 10 DECEMBER

10.00–10.15	Welcome Vagias Karavas (University of Lucerne)
Session 1	(Chair: Stephanie Wirz)
10.15–10.45	Slow Groundings: Humanity, Ecocide, International Law Tim Lindgren (University of Melbourne) Commentator: Daniel R. Quiroga-Villamarin
10.45–11.15	The Court as the Narrating Self in Judgments of the European Court of Human Rights Yuliia Khyzhniak (University of Groningen) Commentator: Marco Mazzocca
12.00–12.30	On the Vulnerability of Legal Drama: Slobodan Praljak's Courtroom Suicide Tessa de Zeeuw (Leiden University) Commentator: Nicole Karam

Session 2 (Chair: Josephine Heinzelmann)

- 13.30–14.00 **‘Architects of the Better World’: The Birth of the International Conference Complex (1918-1998)**
Daniel R. Quiroga-Villamarin (Graduate Institute of International and Development Studies, Geneva)
Commentator: Fabienne Graf
- 14.00–14.30 **Legal Journals, Universities, and Legal Disciplines: Interrelationships Across the 19th Century. Foundations of an Intellectual Transnational History**
Fernando Liendo Tagle (Universidad Carlos III, Madrid)
Commentator: Filippo Contarini (University of Lucerne)
- 14.45–15.15 **Auratic Algorithm**
Bart Jansen & Agnes Schreiner (University of Amsterdam)
Commentator: Giulia Walter
- 15.15–15.45 **Technological Innovation and Torts Law: Some Considerations**
Alessandro Drigo (University of Lucerne)
Commentator: Dario Haux

FRIDAY 11 DECEMBER

Session 3 (Chair: Steven Howe)

- 10.15–10.45 **Training the Political Imaginary: Approaching the Discussion about the Emergency Laws through a Civil Defense Exercise (Germany, 1966)**
Jandra Böttger (Hochschule für Gestaltung Karlsruhe)
Commentator: Tim Lindgren
- 10.45–11.15 **Repairing Touch**
Danish Sheikh (University of Melbourne)
Commentator: Tessa de Zeeuw
- 11.30–12.00 **Violence and Poverty: Case Studies from the Global South**
Paola Forgione (ICRC Geneva)
Commentator: Danish Sheikh
- 12.00–12.30 **Artemisia Gentileschi and Just Representation: A Visual and Legal Analysis of Rape Myths in Art and in Law**
Sophie Doherty (Dublin City University)
Commentator: Jandra Böttger

Session 4 (Chair: Fabienne Graf / Dario Haux)

- 13.30–14.00 **A Case for a Visual Legal Education**
Marta Dubowska (Jagiellonian University, Kraków)
Commentator: Sophie Doherty
- 14.00–14.30 **Coping with Copying: A Rendering of Law**
Giulia Walter (University of Zurich)
Commentator: Bart Jansen & Agnes Schreiner
- 14.45–15.15 **Imagining a New Natural Law Jurisprudence: Michel de Servan and la femme protestante (1767)**
Nicole Karam (Johns Hopkins University, Baltimore)
Commentator: Marta Dubowska
- 15.15–15.45 **The Laws of Magic and the Magic of Laws: A Study on the Unbreakable Vow in “Harry Potter and the Half-Blood Prince” from a Legal and Philosophical Perspective**
Marco Mazzocca (University of Trento Law School)
Commentator: Yuliia Khyzhniak

VISITING FELLOWS

Since 2013, the institute has sponsored a dedicated visiting fellows programme for young researchers. The aim of the scheme is to enable promising doctoral candidates and early-career scholars to spend a period of time in Lucerne, during which they can share and develop research and teaching ideas with our members. We believe that the academic and international diversity of our fellows greatly enriches the intellectual life of the institute.

The fellowships are awarded in response to an annual call, and provide a stipend to defray travel and accommodation costs. The standard tenure is between four and eight weeks.

The institute offers visiting fellows a vibrant environment within which to pursue their research. Participants are encouraged to attend our events, present their work in one of our research fora, and to avail themselves of further opportunities for exchange with our members and visitors.

2020 FELLOWS

Alexander Damianos

Project: The Technofossil: A Media Geology of the Anthropocene

Alexander Damianos is an ESRC funded PhD candidate at the London School of Economics law department. He holds an MSc in Law, Anthropology and Society from the LSE and a BA in Critical & Visual Studies from Pratt Institute.

For the past three years, Alex has been conducting ethnographic research into the ongoing effort to define the Anthropocene as a formal geological unit. This includes extended participant observation of the Anthropocene Working Group, a team of geologists, Earth System scientists, chemists, historians of science and one lawyer, who have been commissioned to investigate whether there is a sufficient geological foundation to the Anthropocene hypothesis. In 2019, he was the recipient of the Simon Roberts Modern Law Review Scholarship. Prior to commencing the PhD, he was researcher at Studio Olafur Eliasson in Berlin.

The period of Alex's fellowship at the institute was regrettably cut short by COVID, but he will hopefully be returning for a longer stay in 2021.

Fernando Liendo Tagle

Project: Legal Journals, Universities and Legal Disciplines. Interrelationships Across Half a Century (1836-1883)

Fernando Liendo Tagle studied Law at the Pontificia Universidad Católica del Perú. He has worked as a lawyer in dispute resolution and arbitration, and as legal advisor to organizations dedicated to the protection of historical heritage in Peru. In Spain, he participated in a European Commission project dedicated to a network of mediation and dispute resolution within the single market.

Fernando holds a Master's degree in Public Law from the Universidad Carlos III de Madrid. During his stay in Lucerne, he successfully defended his PhD thesis – written with the support of a full doctoral scholarship from the Spanish government – on “The Legal Press in the Formation and Teaching of Legal Disciplines and University Studies in Nineteenth Century Spain”. He also found time to publish a short book entitled *Prensa jurídica española. Avance de un repertorio (1834-1936)*, and to present a segment of his research at the doctoral forum in law and humanities.

RESEARCH IN FOCUS

The law is not exactly known for being open to the future. Franz Kafka gives us a symbolic reminder of this in his famous parable “Before the Law” – while the law “should always be accessible to everyone”, its entry points are barred by powerful gatekeepers. In the practice of environmental law, a host of claimants currently stand before the doors of the courts and demand access to the law. But the quest is invariably in vain when it comes to the assertion of ecological rights, which are currently oriented to internationally agreed climate protection measures and aims. In the five years since the Paris Climate Conference there have been few cases in which climate protectors have been successful in their claims against state signatories to the UN Framework Convention on Climate Change.

In the suit *Urgenda Foundation v. The State of the Netherlands* from 2015, the climate initiative Urgenda did obtain a ruling that required the Dutch government to reduce carbon emissions by at least 25% by 2020, relative to 1990 levels. The ruling was confirmed by the court of last instance in its judgement of 20 December 2019, binding the Netherlands by law to make stronger efforts and take additional measures to combat increasing climate change. Yet it remains doubtful as to how the fulfilment of these state obligations can be guaranteed. Their enforcement will continue to depend on the political will of the government and the legislative. The execution of the judgement thus remains in part at least a matter for the sentenced party itself.

What is undeniable, however, is the impact that the *Urgenda* case has had on the climate movement in law. The claim offers a template for numerous further climate claims from different parties with diverse representatives, who are elsewhere mobilising against inadequate state climate policies. Yet as a general rule, these claims tend to be much less successful. Their weakness lies assuredly not in their legitimate demands for climate justice, but rather in their deficient mode of strategic litigation, particularly their one-sided public-law-driven fixation on the state as the supposed sole bearer of responsibility for the climate, and of attendant protective obligations.

In Switzerland, an initiative of the “KlimaSeniorinnen” (loosely: Senior Women for Climate Protection) pursued a similar strategy. They too were unsuccessful with their complaint against the state’s inadequate climate policies and mitigation measures. The Federal Administrative Court did not recognise any particular affectedness for the KlimaSeniorinnen, who were considered no more vulnerable than the general populace to the effects of climate change. Thus the KlimaSeniorinnen case aligns with the prevailing majority of failed attempts to obtain legal protection in the interests of climate protection and future life.

If, then, there is in most climate cases no viable legal pathway, by which means might the legitimate aims of climate protection be recognised? Are political protests and acts of civil disobedience the only remaining option? Should we not rather seek to develop new legal processes and models capable of dealing with the conflicts that arise from the climate crisis by means of law? How might such a “law of the future” look if it is to meet the particular challenges of the problem?



These questions mark the point of departure for the SNSF-funded project “Future Generations in Swiss and European Private Law”. Led by Malte Gruber (principal investigator), Michael Monterossi (postdoc) and Alessandro Drigo (PhD student), the project aims to explore possible legal models and institutions for protecting future generations and to contribute – in both a theoretical and practical sense – to the further development of Swiss and European private law. In this way, the project seeks to lay the ground-work for a new field of research within private law.

With an eye to the limitations of previous and current conceptions of climate and environmental protection, modelled on government regulation at state level, legal doctrine and case law have already begun to develop new interpretations of private law categories and regulatory approaches. These legal changes can already be seen and felt in the increasing number of private law claims worldwide against private industries responsible for environmental and climate-related damage, particularly against energy groups such as Exxon and RWE.

The project addresses two main research questions. The first concerns the attribution of liability. This becomes especially thorny in those cases in which present-day actions lead to mid- or long-term risks or damages that will be borne by future generations. In this context, the project seeks to examine the extent to which public law environmental principles can influence and shape the rules governing the attribution of liability in private law. The second question is directed to the enforcement possibilities of private law constructs and civil procedural instruments that might be used to guarantee the legal status of future generations in private law proceedings.

To do justice to these questions – in sustainable, future-oriented fashion – demands a deep and far-reaching critical engagement with fundamental legal concepts. These include, for example, the legal personality of future, not-yet-born, generations, and the ecological rights of – and possibilities for bringing legal action in the interests and name of – nature. “Trees should have standing”: perhaps in this assertion we might find a key to unlocking a sustainable, ecological configuration of the private law system, which can keep the doors open to the future.

Malte Gruber

Translation by Steven Howe

Future Generations in Swiss and European Private Law. Models and Legal Institutions for Protecting the Interests of Future Generations

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RESEARCH PROJECTS

Milan and Ticino (1796-1848): Shaping the Spatiality of a European Capital

Michele Luminati

This research aims to study the evolution of Milan and of the Swiss Canton of Ticino between 1796 and 1848 via an international cooperation and interdisciplinary partnership. The study of the city's physical transformations and its projects is based on the use of a cross-cutting approach to the three fields that had a strong impact on the shaping of public space: legal changes, editorial policies, public opinion and political thought. The research addresses urban spatiality – a physical and cultural reality – taking the example of Milan and its territory and the Swiss Canton of Ticino in the first half of the 19th century: a case-study that can be used to construct a sophisticated model of hybridisation, in which physical, architectural and urban transformation, changes in culture and legal frameworks, were determined by the domination first of Paris and then Vienna, while not interrupting the continuity of practices and customs specific to the Italian-speaking areas in Italy and Switzerland that were its principal field of influence. Adopting a leading hypothesis defining spatiality as a reality both physical and cultural, this research combines, in interdisciplinary fashion, approaches used by the history of law, cultural history and history of architecture. The study period, 1796-1848, corresponds to the time when Milan assumed the status of a capital city, first "French" and then, from 1815, "Austrian" in the Lombardo-Venetian Kingdom. This historical shift, with its impact on the city's physical and cultural transformations, also saw Ticino acquire a political identity under French domination. In Milan there emerged an assertion of a consistent cultural policy that occupied its physical and intellectual space and turned it into a laboratory of modernity for all Italian-speaking areas – a laboratory that caused Ticino to examine the specific nature of its membership of the Helvetic Confederation. Milan will be presented as the archetype of a contemporary European capital: an alternative to the model of national capitals that involves an idea of spatiality combining the city's physical, intellectual and cultural dimensions. The project's general objective is to develop, starting from the Milanese example, a method and instruments that are valid for addressing a wider corpus of European cities, and thus to propose a new paradigm that will identify, indeed assert, the characteristics and values of relative centrality within a complex territorial system in which Ticino played a leading role.

Future Generations in Swiss and European Private Law: Models and Legal Institutions for Protecting the Interests of Future Generations

Malte-Christian Gruber, Michael Monterossi, Alessandro Drigo

This research project aims to explore possible legal models and institutions for protecting the long-term interests of future generations. In doing so, it seeks to contribute – in both a theoretical and practical sense – to the further development of Swiss and European private law, and to lay the foundations for a new field of legal inquiry.

Growing scientific and public awareness of the medium- and long-term impact of present-day actions on the Earth's systems, such as that produced by hazardous climate change, has led political institutions to establish a series of public law environmental principles (sustainability, precaution and inter-generational fairness) aimed at extending the temporal range of environmental policy and legal regulation. Due to the limitations emerging from a regulatory system based exclusively on public intervention, both legal doctrine and case law have begun to show signs of re-interpreting certain private law categories and rules in order to avoid externalising the costs of present choices to the collectivity that will inhabit the future.

The proposed project intends to cover this area of research by addressing two crucial issues. The first concerns the attribution of liability. This becomes especially thorny in those cases in which present-day actions lead to mid- or long-term risks or damages that will be borne by future generations. In this context, the project seeks to examine the extent to which public law environmental principles can influence and shape the rules governing the attribution of liability in private law. The second question is directed to the enforcement possibilities of private law constructs and civil procedural instruments that might be used to guarantee the legal status of future generations in private law proceedings.

Blockchain Law: The Promise of an Automated Law

Vagias Karavas

Das Forschungsprojekt beabsichtigt die hinter der digitalen Kryptowährung Bitcoin stehende Technologie namens Blockchain sowie die mit ihr einhergehenden gesellschaftlichen Erwartungen einer rechtstheoretischen Analyse zu unterziehen. Die Blockchain ist nichts anderes als ein digitales Register bzw. Kontoauszug, der aus aneinandergereihten Datenblöcken besteht und Daten über alle möglichen Transaktionen enthält. Wesentliches Merkmal der Blockchain ist, dass sie von keiner zentralen Instanz (bspw. einer staatlichen Behörde) verwaltet wird. Im Gegenteil weist die Blockchain eine genuin dezentrale Natur auf. Das Register ist somit auf allen Knoten des Netzwerks verteilt bzw. alle Knoten des Netzwerks verfügen über die gleichen Datenblöcke, was dem Register selber grosse Resilienz verleiht. Ein weiteres Merkmal der Blockchain besteht darin, dass Daten unmanipulierbar in diesem Register abgelegt und durch ein mathematisches Kontrollsystem dezentral verifiziert werden, was sich wiederum als vertrauensfördernd erweist. Nicht nur die Finanzbranche erhofft sich inzwischen eine Revolution des Geldverkehrs durch den Einsatz der Blockchain. Auch der Rechtsmarkt stehe – so zumindest die Einschätzung vieler Experten – kurz vor einer richtigen Revolution. Statt vieler Beispiele an dieser Stelle nur zwei: Während Notare und behördliche Register (Grundbuch etc.) noch unentbehrlich sind, könnten sie doch bald durch die Blockchain ersetzt werden. Damit ist wiederum die Hoffnung auf vollkommen automatische Eigentumsverhältnisse und die damit einhergehenden Vorteile (erhöhte Rechtssicherheit sowie Effizienz; niedrige Betriebs- und Unterhaltungskosten) verbunden. Ein weiterer Einsatzbereich dieser Technologie stellten sogenannte Smart-Contracts dar. Hierbei handelt es sich um elektronische Agenten, deren Funktion innerhalb der Blockchain darin bestünde, die Bedingungen eines Vertrags zu kontrollieren bzw. einzelne Vertragsbestandteile bei der Erfüllung von gewissen Bedingungen automatisiert auszuführen, womit ebenfalls die Möglichkeit automatischer Vertragsverhältnisse eröffnet würde. Das Forschungsprojekt möchte genau diese Versprechen und Verheissungen, die mit einer vollständigen Automatisierung von Rechtsvorgängen einhergehen, einer rechtstheoretischen Analyse unterziehen. Konkret soll die Frage untersucht werden, ob das Verschmelzen von Recht und Technologie, wie man es im Fall der Blockchain zu erleben glaubt, JuristInnen tatsächlich entbehrlich macht und die dem Rechtsbetrieb inhärenten Kontingenzen ausräumt.

TA-SWISS-Studie Neue Anwendungen der DNA-Analyse

Malte-Christian Gruber, Vagias Karavas

In der DNA verborgene Informationen auszuwerten, war noch vor kurzem aufwändig, zeitintensiv und teuer. Doch heute sind Gen-Analysen zunehmend verbreitet. Einige Firmen bieten sogenannte «Life-style-Gentests» an. Damit erhalten beispielsweise Menschen einen eigenen genetischen Stammbaum oder ein Ernährungsprogramm, das auf ihre Gene zugeschnitten ist. Mit Genanalysen lassen sich auch Aussagen darüber treffen, wie ein unbekannter Mensch aussehen könnte, von dem man nur eine DNA-Spur gefunden hat. Strafverfolger und Polizei erhoffen sich, dereinst Phantombilder aus DNA-Proben erstellen zu können. Die neuen Anwendungsmöglichkeiten werfen aber auch Fragen auf. Eine DNA-Analyse offenbart sehr persönliche Informationen, nicht nur über einen selbst, sondern womöglich auch über seine Blutsverwandten. Wer soll Zugang haben zu diesen Informationen und wie sollen oder dürfen die Erkenntnisse aus DNA-Analysen genutzt werden? Diese und weitere Fragen sind Gegenstand der neuen interdisziplinären Technologiefolgenabschätzung zu neuen Anwendungen der DNA-Analyse, die im Auftrag der TA-SWISS an der Universität Luzern in Zusammenarbeit mit dem IHS und Open Science Wien durchgeführt wurde.

La città nascosta: Noto barocca

Michele Luminati

Aus der zufälligen Begegnung mit dem Archäologen Lorenzo Guzzardi ist eine über mehrere Jahre währende Kooperation zur systematischen Aufarbeitung der Entstehungsgeschichte der sizilianischen Barockstadt Noto, die mittlerweile von der UNESCO zum Weltkulturgut deklariert worden ist, entstanden.

Exemplarisch wird dabei das Phänomen von Zerstörung – Verschiebung – Wiederaufbau einer Stadt im Barockzeitalter untersucht und zwar durch Kombination von archäologischer und archivalischer Ausgrabung. Textuelle und räumliche Dimension eines hochkomplexen und konfliktuellen Entstehungsprozesses werden dabei sichtbar. Der Städtebau erfolgt auf dem Hintergrund rechtlicher und sozio-ökonomischer Strukturen und ist gleichzeitig durch Morphologie und natürliche Gegebenheiten des Standortes und durch vorbestehende Siedlungselemente beeinflusst. Gegenüber den bisherigen städtebaulichen und architekturgeschichtlichen Ansätzen, die sich vorwiegend mit der Monumentalität der Stadt beschäftigen, bringt das Projekt die versteckten, «zugedeckten» Dimensionen der Stadtgeschichte zum Vorschein.

Justizgeschichte des schweizerischen Bundesstaates: Justizelite zwischen Recht und Politik, 1848-2020

Michele Luminati

Die zunehmende Bedeutung der Justiz in der globalisierten Welt hat zu einem beträchtlichen Aufschwung der Justizforschung und Justizgeschichte geführt. Eine markante Lücke besteht allerdings in Bezug auf die Schweiz. Mit diesem langfristigen Forschungsprojekt (teilfinanziert durch den SNF, den Fonds zur Förderung des Akademischen Nachwuchses der UZH und die Stiftung Ecoscientia) sollen die Grundlagen für eine methodisch abgesicherte und international vernetzte Beschäftigung mit der Geschichte der Justiz im schweizerischen Bundesstaat geschaffen werden.

Ein erster Schwerpunkt liegt bei der rechts- und sozialgeschichtlichen Untersuchung des Schweizerischen Bundesgerichts. Auf der Grundlage einer prosopographischen Datenbank entsteht ein biographisches Lexikon der Bundesrichterrinnen und Bundesrichter für die Periode 1848 – 2020. Parallel dazu werden laufend multifaktorielle Analysen der gesammelten Daten publiziert, die Aufschluss über die Dynamik von Richterwahlen, Richterkarrieren und Richterprofilen liefern und über die Entwicklung der schweizerischen Justizelite Auskunft geben.

Ein zweiter Schwerpunkt bildet die Frage nach den Wechselwirkungen zwischen Rechtsprechung und Gesetzgebung in der Schweiz. Insbesondere wird der Umgang des Schweizerischen Bundesgerichts mit den grossen Kodifikationen (OR, ZGB und StGB) untersucht. In diesem Zusammenhang stellen sich etwa folgende Fragen: Was bedeutet Gesetzesbindung und Umsetzung des gesetzgeberischen Willens? Wie werden Konflikte zwischen unterschiedlichen (kantonalen) Rechtsprechungstraditionen gelöst?

Distributed Dispute Resolution Mechanisms Operated by a Community of Legal Professionals on a Smart Contract Code-Based Peer to Peer Transaction DLT

Malte-Christian Gruber, Golnaz Abdollahi Jafari

The advancement of different distributed ledger technology (DLT) networks has raised issues not only in terms of compliance with data protection and privacy of natural persons, but also in terms of the enforceability of smart contract codes upon which decentralised applications are built, in particular in the area of dispute resolution between peers and parties to transactions.

Data integrity is of primary importance in a network run by distributed computer nodes. Prior to the occurrence of transaction finality, parties would require validation of input and output states before entries on the ledger are correctly updated. An algorithmic consensus process would need to be in place in order to confirm that a certain input state for a proposed transaction has not been spent before. Solutions are foreseen through the intermediation of a distributed network of operating computer nodes controlled by a community of legal professionals.

Such community of legal professionals would provide validation services in order to ensure data integrity and to avoid double spending. Validation would take place through e-signatures using private key pairs by assigned individual participants of the community. In addition, the network would be able to issue verifiable third party claims under a joint data controller/processor framework, compliant with data protection laws such as the EU General Data Protection Regulation (GDPR).

Moreover, the network would use data propagation as opposed to data broadcasting, whereby the ledger would only be visible to participants to the extent of their subjective interests and expertise. This

feature would enhance privacy and would be compliant with the principle of data minimisation under GDPR.

In terms of technical and organisational measures, the network would also comply with the concepts of 'privacy by design' and 'privacy by default', as introduced by the GDPR. Personally identifiable information (PII) of data subjects would be stored effectively 'off-ledger', with access remaining under the ultimate control (through private key pairs) of natural and legal persons by means of an exclusive and pseudonymous representation of their identities through the use of decentralised identifiers (DIDs). Any disputes parties to transactions encounter would be governed by the terms and conditions of the legal agreement pointed to by the smart contract code. The assignment of the community network to settle disputes would be conducted on a case to case basis, whereby individual community participants are selected on the basis of their merits and expertise, and who would operate within the set limits of the network's governance model (or protocol).

The feasibility study will provide a preliminary and introductory insight into the scope of the proposed concept, in particular through a general analysis of smart contract codes and an identity management system as the central components of the design model network infrastructure, next to applicability from a legal standpoint. In particular questions related to legal enforceability and compliance with data protection laws, predominantly in the context of the multi regulatory system of the European Union (EU) and that of Switzerland are addressed.

Logistics of Life: The Logistics of Surrogate Motherhood

Vagias Karavas

This research project aims to use logistics to provide an epistemic angle for an analysis of law, its ontological capability and transformative power in the making of the current world regions. Logistics erases distances and uses it for profit facilitating a constant movement of goods, people, and information across sites, trading labour costs against transport costs, eroding the distinction between production and circulation. Within this framework an original process of value creation takes the stage: the transport of goods, rather than being an added cost, is a generative production of surplus value. In doing so, logistics is challenging our perception of time, while is producing the global space we are living. In fact, logistics makes world: nodes, chokepoints, hub, corridors and gateway are the infrastructure of our segmented, fragmented, continuously reassembled planet.

Taking into consideration the life science industries, or the expansion of the assisted reproductive technologies as a flourishing transnational market: there are global biomarkets, which involves multiple bodies as well as multiple locations where people and goods are translated by differential national regulations, shaped by overlapping jurisdictions, and produced by extra-territoriality laws. As logistics is productive, so is the law: special economic zones, unprecedented institutional configurations, transnational borders are opening incessantly new frontiers of capital and shaping our social world.

Within this outline, this research proposal will explore the case of commercial surrogacy practices and the cross-border assisted reproduction in the regions of Europe, which is on the rise due to differential regulations, cost factors, differing accessibility and personal choice. It will focus on the so called "fertility tourism" or "cross-border reproductive care", where national and provincial regulation creates distinctive geographies of permission and prohibition, so that intending parents may elude national regulatory restrictions and travel to a jurisdiction where surrogacy market is permitted. In particular, it will highlight the legal, technical, and commercial aspects of this biological process of reproduction, and the forms of value production made by this logistical infrastructures.

Law, Justice and the Popular Imagination in Weimar Germany (1919–1933)

Steven Howe

This project seeks to offer a first extended investigation of the relations between law, media and popular culture during the period of the Weimar Republic. Its leading premise is that the widely proclaimed 'crisis' of law and order in interwar Germany elicits a set of responses and debates that extend beyond official legal and political discourse into the public sphere, and that popular media become an important staging ground for the struggle to (re-)define law, rights and justice. Focusing on distinct media forms,

the study will attempt to illustrate how Weimar culture produces a set of popular interventions that variously negotiate, legitimate and/or challenge contemporary legal standards and values. By doing so, it aims to open new perspectives on the intersections between legal and popular culture in Weimar Germany – both via a historical resituating of the cultural texts of the era in the context of circulating discourses of law, crime and justice, and through close analysis of their relevance for transporting and questioning legal norms and normativities within the popular imagination.

Third-Party Funding of Collective Redress. A Law and Economics Perspective

Klaus Mathis, Philipp Anton Burri

Für eine Einzelperson lohnt sich eine Klage gegen ein Unternehmen wegen der hohen Kosten und des Aufwandes oft nicht. In der Folge werden Schaden verursachende Unternehmen zivilrechtlich regelmässig nicht zur Rechenschaft gezogen. Der kollektive Rechtsschutz ist ein Instrument, das einer Vielzahl geschädigter Konsumentinnen und Konsumenten den Zugang zum Gericht erleichtern soll, indem in einem einzigen Verfahren über die Ansprüche vieler Klagender entschieden wird und so Gerichtskosten und Honorar für die Anwältinnen und Anwälte geteilt und eingespart werden. Prozessfinanzierer können sich an diesen aufwändigen und teuren Prozessen beteiligen und im Erfolgsfall der Klage einen Anteil der an die Klagenden ausbezahlten Summen erhalten. Während in den USA mittels Sammelklagen hohe Schadenersatzzahlungen erwirkt werden konnten, sollen Sammelklagen in der EU und in der Schweiz erst noch eingeführt werden.

Für Prozessfinanzierer bestehen monetäre Anreize, Sammelklagen zu unterstützen und so den Rechtsschutz für Konsumentinnen und Konsumenten zu verbessern. Es stellt sich aber die Frage, ob dabei das Profitmotiv statt Konsumentenschutz zum Leitgedanken solcher Verfahren werden kann. In seiner Dissertation mit dem Arbeitstitel „Third-Party Funding of Collective Redress. A Law and Economics Perspective“ will Philipp Anton Burri die Frage klären, ob und inwiefern die Prozessfinanzierung im kollektiven Rechtsschutz besonders reguliert werden sollte. Für das von Prof Klaus Mathis betreute Projekt soll die Thematik aus rechtlicher und ökonomischer Perspektive beleuchtet werden. Es werden mögliche regulatorische Massnahmen wie Verbote, Preisregulierung, Einschränkungen der Einflussnahme auf die Verfahren, Offenlegungspflichten, Kapitalvorschriften sowie die Regelung der Verteilung von Gerichtskosten untersucht. Die Ergebnisse des Forschungsprojektes können als Grundlage für die mögliche Einführung von Instrumenten des kollektiven Rechtsschutzes in der Schweiz dienen.

La giuria (post)moderna – studio sulle aspettative riposte nella magistratura penale popolare in Svizzera

Filippo Contarini

Im Jahr 2010 hat der Kanton Tessin mit einer hauchdünnen Mehrheit per Volksabstimmung entschieden, die Geschworenengerichtsbarkeit in seinem Strafprozess beizubehalten. Ein historisches Relikt? Eine gerechtfertigte Kontrolle einer zunehmend technischen Gerichtsbarkeit? Wie kann es sein, dass die Laienbeteiligung noch Legitimation geniesst?

Anhand systemtheoretischer und rechtshistorischer Ansätze erforsche ich die «Entstehung» und den «Untergang» der Geschworenengerichte in der Schweiz. Als «Palladien» der bürgerlichen Freiheit der liberalen Revolution proklamiert, im Zentrum der Verfassungsgedanken der Gründungsväter des neuen Bundesstaates von 1848 gerückt, sind sie für die Hälfte der Schweiz allerdings nie eine gerichtliche Realität geworden. Abgesehen davon finden wir eine Geschichte des allmählichen Bedeutungsverlustes durch Korrektionalisierung, der Rollenänderung und der schlichten Abschaffung. Die Widerstände gegen diese Entwicklung, die sich als Mythologisierung der demokratischen Präsenz im Gericht verstehen, blieben allerdings konstant.

Ich verstehe die Geschworenen- und Schöffengerichtsbarkeit als eine Institutionalisierung des Chaos im Gericht. Angesichts der Paradoxie der unentscheidbaren, aber zwingenden Gerichtsentscheidung, stellt das moderne Rechtsverweigerungsverbot den Schluss des autopoietischen Zirkels des Rechtssystems dar. Um mit der Politik strukturell gekoppelt zu sein, muss aber die Autonomie des Rechts einen gewissen Grad erreichen, wobei neue Instanzenzüge, die Präsenz der öffentlichen Meinung und eben die Geschworenengerichtsbarkeit als einige der Mittel erschienen, um diese Aufgabe zu gewähr-

leisten. Waren die Geschworene aber vielleicht ein untaugliches Mittel? Eine kaum kontrollierbare Institution, die auf der Zufälligkeit der Wahl der Geschworenen (und nicht: aus der demokratischen Herkunft) die eigene Legitimation aufbaute? Oder waren sie eine unnötige Abweichung eines modernen Rechts, das aus einer gesellschaftlichen Komplexitätserhöhung seine eigene Ausdifferenzierung in der Schweiz suchte und letztendlich fand? Auf diese Fragen wird, auch über Fallstudien zu den politischen Prozessen gegen Revolutionäre, eine Antwort gesucht.

Die digitale Allmende. Zur Frage eines nachhaltigen Zugangs zum digital-kulturellen Lebensraum

Dario Haux (2019/20 SNSF-Gastforscher am Kernochan Center for Law, Media, and the Arts, Columbia Law School)

Im Urteil des deutschen Bundesverfassungsgerichts zu «Metall auf Metall», betont das Gericht die Bedeutung von kollektiver Zusammenarbeit und des Zugangs zu digital bereitgehaltenen Inhalten für die Weiterentwicklung digitaler Kultur. Angeregt durch diese Interpretation urheberrechtlicher Normen und Grundsätze sowie Konzepte wie die Kulturwertmark des Chaos Computer Clubs, der Idee eines Grundrechts auf Zugang zum Internet oder der Kulturflatrate, untersucht Dario Haux in seiner Dissertation grundlagenbezogene Perspektiven eines modernen Urheberrechts. Er hinterfragt das Verhältnis materiell/immateriell bzw. analog/digital sowie die Beziehungen zwischen den Beteiligten und den Werken. Deutlich wird, dass sich bestehende Grenzen auflösen. So werden Werke etwa immer seltener gedruckt und für die Ewigkeit aufbewahrt, sondern kontinuierlich abgeändert, überarbeitet und kopiert. Diese Prozesse sollen durch die Erarbeitung eines Konzepts der „digitalen Allmende“ sichtbar gemacht, nachvollzogen und innerhalb eines regulatorischen Rahmens erfasst werden.

Ausgehend von der genannten Entscheidung, setzt sich der Luzerner Doktorand und Mitherausgeber der Zeitschrift *cognitio* mit rechtlich-grundlagenbezogenen Ansätzen eines Urheberrechts für das digitale Zeitalter auseinander. So betont das Gericht im Streit um eine zweisekündige Musiksequenz (Samples) die «kunstspezifische» Auslegung urheberrechtlicher Normen und zeigt im Rahmen der Abwägung zwischen der Kunstfreiheit und dem Recht auf Eigentum Wege für ein zeitgemässes urheberrechtliches Verständnis von digitaler Kulturproduktion auf. Die rechtstheoretisch ausgerichtete Dissertation macht sich diese Ansätze zunutze und greift ergänzend auf Meinungen der Lehre und Nachbarwissenschaften zurück, um ein an traditionellen Institutionen rückgebundenes Modell der digitalen Allmende zu erörtern.

Anhand der im Urteil relevanten Musikpraxis des digitalen Samplings äussert er grundlegende Zweifel am Bestand einer allgemeinen Prämisse des Urheberrechts: dem Verständnis einer Einzelurheberin, die ex-nihilo Werke schafft und konsequenterweise auch alleine zur Verwertung der Rechte befugt ist. Im Gegensatz dazu steht die Erkenntnis, dass die Entstehung von Kultur durch Zusammenarbeit geprägt ist – Texte, Bilder sowie Musik aufeinander aufbauen. Mithilfe von Initiativen wie Open-Access wird mit zunehmenden Erfolg versucht, diese Grundentscheidungen des Urheberrechts zu hinterfragen. Gleichzeitig treten insbesondere im Bereich des Rechts starke Beharrungskräfte zutage, die an Zuschreibungen etwa in Form von Eigentumsrechten als Ausschliesslichkeitsrechten festhalten, die indes von «Zugangsregeln» abgelöst werden könnten.

Die normativen Grundlagen des Menschenrechts auf Wasser

Moritz Pachmann

Heute haben über 660 Millionen Menschen keinen Zugang zu sauberem Trinkwasser und ein Drittel der Weltbevölkerung keine Möglichkeit hygienische Toiletten zu benutzen. Die Wasserkrise wird sich in den nächsten Dekaden verschärfen, unter anderem weil Grundwasservorräte massiv übernutzt werden, sich das durchschnittliche Konsumverhalten der Weltbevölkerung verändert und aufgrund des Klimawandels. Ein wichtiges rechtliches Instrument, um den Folgen der Wasserkrise entgegenzuwirken, sind die Menschenrechte.

Das Menschenrecht auf Wasser ist bislang in keinem rechtlich verbindlichen völkerrechtlichen Dokument ausdrücklich statuiert. Es beruht auf einer Vielzahl von Erklärungen, Standards und völkerrechtlichen Übereinkommen, die jedoch nur zum Teil rechtlich verbindliche Verpflichtungen für die Staaten begründen. Solche werden hauptsächlich aus Art. 11 und 12 UNO-Sozialpakt hergeleitet.

Dieses Dissertationsprojekt nimmt eine Analyse und einen Vergleich der rechtlichen sowie der moralischen Normativität des Menschenrechts auf Wasser vor. Es erörtert die Legitimität einerseits der völkerrechtlichen Verpflichtungen, andererseits der moralischen Verpflichtungen. Dabei wird das Menschenrecht auf Wasser rechtsphilosophisch rekonstruiert, indem verschiedene Theorieansätze für eine legitimatorische Grundlegung geprüft werden. Daran anknüpfend soll ein Begründungsansatz spezifisch für das Recht auf Wasser entworfen werden.

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DR. STEVEN HOWE

- “Law, Narrative and Critique in Contemporary Verbatim Theatre”, Pólemos – Journal of Law, Literature and Culture 14 (2) (2020), 385-405 (with Clotilde Pégrier)
- “In/Humanity. Figures of Enmity around 1800”, in Christine Abbt, Leire Urricelqui & Ángela Sierra Gonzalez (eds.), In Terms of Exclusion. Thinking the Barbarian Then and Today / En términos de exclusión. Pensar el bárbaro de ayer, hoy (Barcelona: Laertes, 2021) [in press]
- “Just Violence? War, Law and Politics in Kleist’s Die Hermannsschlacht and Shakespeare’s Henry V”, in Jeffrey L. High, Rebecca Stewart & Elaine Chen (eds.), Heinrich von Kleist: Artistic and Political Paradigms (Rochester, NY: Camden House, 2021) [in press]

DR. DARIO HAUX

- “A Cultural Memory of the Digital Age?”, International Journal for the Semiotics of Law – Revue internationale de sémiotique juridique (2020) (with Antoinette Maget Dominicé & Jana Alexandra Rasputnig)
- “Saving Content in Digital Surroundings: A Safe Solution?”, Pólemos – Journal of Law, Literature and Culture 14 (1) (2020), 17-45 (with Antoinette Maget Dominicé & Fabienne Graf)
- “The Decision of the German Federal Court of Justice against Facebook: Opportunity to Define Digital Heritage?”, Santander Art and Culture Law Review 6 (2) (2020), 251-260 (with Antoinette Maget Dominicé)
- “Metallene Klänge als Wendepunkt der Urheberrechtsdebatte? Zur Frage der Freiheit der digitalen Kultur und Zukunft des Urheberrechts”, in Simon Schrör, Georg Fischer et al. (Hrsg.), Tipping Points – Zum Verhältnis von Freiheit und Restriktion im Urheberrecht (Baden-Baden: Nomos, 2020), S. 137-154

DR. MICHAEL MONTEROSSİ

- “Autonomia del consumatore e morfologia del mercato”, Rivista di diritto bancario (2020), 513-541
- “Il regime delle immissioni. Interesse ‘a non tollerare’ e conformazione delle sfere proprietarie”, The Cardozo Electronic Law Bulletin (2020), 1-40
- “Liability for the Fact of Autonomous Artificial Intelligence Agents. Things, Agencies and Legal Subjects”, Global Jurist (20.3.2020), 1-18
- “Responsabilità civile e cibersicurezza nell’ecosistema dell’Internet delle cose”, Giustizia Civile.com (2020)

ALESSANDRO DRIGO

- “L’evocativa’ integrazione analogica dell’art. 2052 c.c. per i sistemi emergenti di Intelligenza Artificiale: un’analisi critica”, *Giustizia Civile.com* (2020)
- “Sistemi emergenti di Intelligenza Artificiale e Personalità giuridica, un contributo interdisciplinare alla tematica”, in Stefano Dorigo (ed.), *Il ragionamento giuridico nell’era dell’intelligenza artificiale* (Pisa: Pacini Editore, 2020), pp. 179-198

FABIENNE GRAF

- “Social Media Platforms as Public Trustees: An Approach to the Disinformation Problem”, Working Paper TPRC48: Research Conference on Communications, Information and Internet Policy (2020) (with Philip M. Napoli)
- “Saving Content in Digital Surroundings: A Safe Solution?”, *Pólemos – Journal of Law, Literature and Culture* 14 (1) (2020), 17-45 (with Antoinette Maget Dominicé & Dario Henri Haux)
- “Can Museums Prevent their Visitors From Taking Photos and Posting Them? – Between Open Policies and Recent Case Law”, *The Columbia Journal of Law & the Arts JLA Beat* (2020)

PRESENTATIONS

PROF. MALTE-CHRISTIAN GRUBER

- *Futurities of Law. Versuche über die Zukunft des Rechts* (Berlin Legal Theory Seminar, Integrative Research Institute Law & Society (LSI), Humboldt-Universität zu Berlin)
- *Artificial Intelligence and Human Rights* (ELSA Day, The European Law Students’ Association (ELSA), University of Lucerne)

DR. DARIO HAUX

- *Metallene Klänge als Wendepunkt der Urheberrechtsdebatte?* (Tagung: *Tipping Points. Zum Verhältnis von Freiheit und Restriktion im Urheberrecht*, Weizenbaum Institut, Gesellschaft für Musikwirtschafts- und Musikkulturforschung (GMM), Berlin)

ALESSANDRO DRIGO

- *Technological Innovation and Torts Law: Some Considerations* (Doctoral Forum in Law and Humanities, University of Lucerne)

IV: COVER IMAGE

JACK TAN, FOUR LEGS GOOD



Four Legs Good was a contemporary revival of the medieval animal trials which took place in Britain and throughout Europe, where animals who had been accused of committing crimes were brought to court, provided defence counsel and prosecuted in full hearings before a judge.

For Compass 2018, artist Jack Tan reimagined Leeds Town Hall as the site of a fictional Department of Animal Justice and staged a series of live ‘moot’ animal trials where practising barristers/advocates argued claims brought by or against their animal clients, before a judge and jury at the old Victorian courtroom in Leeds Town Hall.

Exploring the legal framework which surrounds humans, animals and our shared environment, the work invites us to reconsider our understanding of the position of humans in relation to animals and the environment. Leeds Town Hall users encountered what appeared to be a working Animal Court evidenced by signage, court leaflets, legal heritage displays and a court website. This culminated in a day of live hearings of animals belonging to and nominated by local animal charities and organisations, where the animals also brought claims of their own against humans.

PROGRAMME



Leeds Town Hall

Corridor installation 17 – 24 November 2018

Day of live hearings 24 November 2018

1pm – R-v- Snoopy. Snoopy the Jack Russell charged with two counts: sheep worrying and aggravated sheep worrying contrary to the Protection Of Livestock (Worrying) Act 2013, which led to the actual bodily harm of Ms Apple Meadowfoot the sheep and her miscarriage.

3pm – Crayfish murder appeal. A challenge to *R v Dudley and Stephens* (1884) 14 QBD 273, the appellant ‘invasive’ American Signal Crayfish is appealing against its prior mass murder conviction of the native White Claw Crayfish in the Liverpool-Leeds Canal.

5pm – R -v- Marla and Polly Turnbull. Marla the Staffie charged with 1 count of ‘being a dangerous dog’ under the Crimes By Animals Act 1928, while her owner Ms Polly Turnbull is charged with owning a dog dangerously out of control.

Four Legs Good was commissioned by Compass Festival.

ABOUT THE ARTIST



Jack Tan is an artist who uses law, policy, social norms and customs as a medium of making art. He creates performances, sculpture and participatory projects that highlight the rules that guide human behaviour. Jack trained as a lawyer and worked in civil rights NGOs before becoming an artist. Jack's PhD at Roehampton University explored legal aesthetics and performance. He has also taught sculpture at the Royal College of Art and University of Brighton, politics at Goldsmiths and is based in Galloway, Scotland.

CREDITS

Photos by Lizzie Coombes | Graphic design by Darius Ou

V: 2021 – A PREVIEW

CRITICAL TIMES KICK-OFF WEEK



The Critical Times project will launch in early September with a week-long showcase of free online events on the topic of legal and public space. The programme will include lectures, workshops, and discussion panels featuring academics from the partner universities and a host of prominent guest contributors.

The aim of the kick-off week is not to provide a comprehensive treatment of issues around the lead theme, but rather to stimulate an initial burst of critical and creative energy that will carry forward into subsequent events. The full programme will be published shortly via our website.

VISITING FELLOWS 2021

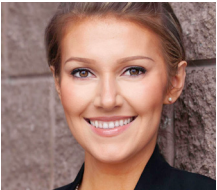
We are delighted to announce the following two fellowships for 2021:



Laura Knöpfel

Swiss National Science Foundation Fellow at the European University Institute (EUI) in Florence and the Max Planck Department for Law and Anthropology of the Institute for Social Anthropology in Halle
Project: Anthropological Re-Imaginations of Private Law: A Legal Ethnography of Corporate Personhood and Responsibility of the Multinational Enterprise

Dates of Stay: tbc



Nicole Karam

Postdoc, Johns Hopkins University, Baltimore
Project: Diderot and Enlightenment Judicial Philosophy

Dates of Stay: tbc

LAW AND THEORY WORKSHOP



The fortnightly workshop on contemporary issues in law and theory will return in early spring. The first cycle, on “law and emotions”, will include readings that ask whether, how and should emotions affect the work of legal actors and/or legal discourse, and others that reflect critically on the constellations of law and emotions in a variety of perspectives, including the history of emotions, psychoanalysis and affect theory. The topic of the second session will be confirmed during the spring semester.

For further information, and to keep up-to-date with our programme, please visit www.lucernaiuris.ch. If you would like to subscribe to our mailing list, please send a short message to lucernaiuris@unilu.ch.

