

UNIVERSITY OF  
LUCERNE

# ANNUAL REPORT 2021



**Lucernaiuris**  
Institut für Juristische Grundlagen



Annual Report 2021

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*The Caddy Court*, 1986–1987  
mobile tableau

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A stack of light green rectangular blocks, possibly made of wood or cardboard, is shown in a close-up, shallow depth-of-field shot. The blocks are stacked on a dark, reflective surface. 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

I am delighted to present this annual report of our activities over the past twelve months, and to address readers for the first time in my new capacity as head of *lucernaiuris*. I take the baton from Vagias Karavas, who I salute for his many accomplishments at the helm over the past eight years. I am grateful to Vagias for passing on the institute in such excellent shape, and for agreeing to stay on as deputy director in this next phase of our development. I would also like to thank Michele Luminati for his sterling work in the deputy role over the past few years, and to express my delight that he too will remain a full and active member of the institute moving forward.

Looking back, 2021 continued to be marked by the challenges of the pandemic. Throughout the year, we found ourselves having to adapt to new and endlessly changing circumstances. Inevitably and regrettably, this meant we had to forego many of the in-person convenings that would usually constitute the core of institute life. In response, we committed to offering a full programme of online activities, delivered with a drive for the sort of accessibility and inclusivity afforded by the switch to digital formats.

Nowhere was this more evident than during our 24-hour virtual workshop *For One Day Only: Law, Space, Matter*. Organised as a series of interconnected events, each coordinated by one of our international partners, the workshop rolled around the world from Canberra and Johannesburg, through Rome, Helsinki and Lucerne, to Virginia and Melbourne, and drew in a live global audience of over 200 participants. A perfect showcase for the advantages of virtual collaboration, the workshop was also an impressive feat of logistical planning, and we thank colleagues at our partner institutions for their excellent cooperation and support. Further thanks also go to Steven Howe for supervising the overall coordination of the event in his usual elegant manner.

Our own *lucernaiuris*-led contribution to the workshop was a particular highlight of the year – a talk by artist Carey Young that took us on a fascinating tour of her law-based artistic work, including her video *Palais de Justice*, and which was followed by a wonderfully insightful conversation with Desmond Manderson. Beyond this, we were also happy to be able to run our law and theory workshop in both semesters – in spring on the topic of “law and emotions”, and in autumn on “legal anthropology”. Especially pleasing in this context was the active contribution of our visiting fellow Laura Knöpfel to the autumn workshop, including a presentation of her own work on global and local negotiations of corporate responsibility. Sadly, our second fellow, Nicole Karam, was not able to undertake her visit this year as planned, though we hope to rectify this soon.

Casting our eyes now forward, 2022 is shaping up to be a busy and exciting year. We start in February with the seminar series “Private Law in the Ecological Transition”, bringing together leading international experts to discuss matters around climate change and the protection of future generations. In May, the interdisciplinary conference “Inclusion / Exclusion”, organized by Klaus Mathis, will take place with a stellar line-up of renowned and emerging scholars. At the beginning of September, we plan to run the next event in our Critical Times project – a week-long summer school, organized with our international partners. The *laboratorium lucernaiuris* lecture series will also kick back into life with a series of talks focusing particularly on digitalisation and the law, while the law and theory workshop will return in the spring with a session on “facts and fakes”. In addition, we also hope to be able to welcome our two 2022 visiting fellows, Lisa Stuckey and Cristiano Moita, to the institute later in the year and to enter a fruitful exchange of thoughts and ideas with them.

I look forward to reporting back on these activities in a year’s time. Until then, I wish you all a happy, healthy and productive 2022.

With thanks for your interest and support,  
Malte-Christian Gruber



# TEAM & ORGANISATION

## MEMBERS



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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 2021

## BACHELOR

### **Grundlagen des Rechts**

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

### **Recht und Emotionen**

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

### **Einführung in das juristische Arbeiten**

Prof. Michele Luminati

### **Introduzione alla scienza giuridica**

Prof. Michele Luminati, Dr. Filippo Contarini

## 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 Strafrechts und des Strafvollzugs: Schlagen, Verstümmeln, Einsperren**

Prof. Michele Luminati

### **Rechtsphilosophie heute: Theorien und Kritiken**

Prof. Malte-Christian Gruber

### **Biomedizinrecht**

Prof. Vagias Karavas

### **Rechtstheorie und Prozessbeobachtung zwischen Fairness und subjektiver Empfindung**

Prof. Michele Luminati, Dr. Filippo Contarini

### **Immaterialgüterrecht**

Prof. Vagias Karavas, Dr. Dario Haux

### **Integrationsseminar Recht und Politikwissenschaft: Gewaltenteilung und Gewaltenkontrolle – checks and balances in der Krise?**

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

### **Forschungskolloquium zur Geschichte der vormodernen und modernen Welt**

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

### **Funktionsbedingungen von Privatautonomie im Zivil- und Wirtschaftsrecht (Gastlehrveranstaltung)**

PD Dr. Roman Guski

# 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.



## SPRING 2021: LAW AND EMOTIONS

02.03.21 Psychoanalytische Rechtstheorien und die Reflexion von Gefühlen in der Rechtsphilosophie (Stefan Häussler)

16.03.21 Juristisches Urteil – seine wahrnehmungstheoretischen Voraussetzungen (Julia Hänni)

30.03.21 Vom inneren Trieb zum psychophysischen Paradox: ein emotionshistorischer Blick auf die Vermessung des Rechtsgefühls um 1900 (Sandra Schnädelbach)

13.04.21 The Other Dimension of Law (Pierre Legendre)

27.04.21 From Fact to Feeling: An Explication of the Mimetic Relationship Between Law and Emotion (Julia J. A. Shaw and Hilary J. Shaw)

11.05.21 The Turn to Passion: Has Law and Literature Become Law and Affect? (Greta Olson)

25.05.21 Law and the Emotions: Prolegomena for a Psychoanalytic Approach to Legal Study (Costas Douzinas)



## AUTUMN 2021: LEGAL ANTHROPOLOGY

05.10.21 Does Anthropology Matter to Law? / Does Law Matter to Anthropology? (Contributions to the Discussion Forum of the Journal for Legal Anthropology)

19.10.21 Private Law, Anthropology and the Multinational Enterprise: Global and Local Negotiations of Corporate Responsibility (Laura Knöpfel)

02.11.21 Local Knowledge: Fact and Law in a Comparative Perspective (Clifford Geertz)

16.11.21 After Government? On Representing Law Without the State (Simon Roberts)

30.11.21 Law: A Map of Misreading. Toward a Postmodern Conception of Law (Boaventura de Sousa Santos)

14.12.21 A New Agenda for the Cultural Study of Law: Taking on the Technicalities (Annelise Riles)



## 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 2021, the programme began its eighth year of operation with approximately twenty 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, have conceptualised 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 – Lucernauris*
- *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.



# FOR ONE DAY ONLY: LAW, SPACE, MATTER



Amidst its very many challenges, the covid pandemic has had the marginal benefit of catalysing new ways of doing international collaboration and exchange. Deprived of the possibility of an in-person gathering, the Critical Times consortium alighted on a new and innovative format for this year's event – a 24-hour virtual workshop, comprising six individual sessions that were to roll successively around the world, from Canberra and Johannesburg, through Rome, Helsinki and Lucerne, to Virginia and Melbourne. The aim: to bring together an international community of thinkers, scholars and artists for – literally – a full day of conversations on current global issues and concerns.

The overarching theme of the event was “Law, Space, Matter”. This was chosen in reference to a new wave of recent critical approaches that have rejuvenated discussions on the substance and materiality of law, and opened new perspectives on the reciprocal materialisation of the legal and socio-spatial. Yet it was also – and more so – a response to our current moment, which presses us towards a renewed critical reckoning with the relation(s) between law, place and space, between spatiolegal representations, discourses, and materialities. In this context, the workshop proposed to look again to “the complex, shifting, and always interpretable blendings of words and worlds” (David Delaney) in which law is embedded and unfolds.

Together, the six workshop sessions, each hosted by one of the partners, showcased cutting-edge work that captures the stakes of critical, theoretical and socio-legal enquiry into the spatialisation of law and the legalisation of space, and which poses fresh challenges for thinking about law's depth and character, its politics and social resonances. The format was a success, with a global audience of over 200 participants tuning in for the individual events.

Recordings of the workshop sessions are available via the link [here](#).

## PROGRAMME & WORKSHOP DESCRIPTIONS

### **Market / Place: A Funny Thing Happened on the Way to the Forum**

Hosted by the Centre for Law, Arts and the Humanities, The Australian National University  
Legal space and legal geography have been important focuses of research in socio-legal scholarship in recent years. In what ways has the experience of public space been transformed under the pressures of neoliberal ideology and contemporary governmentality? How has biopolitics and securitization changed the materiality of public space and with what impacts on democratic life? How has COVID-19 constrained, revealed, or accelerated these processes? What are the opportunities or challenges facing us?

The Centre for Law, Arts and Humanities has assembled a panel of world class interdisciplinary scholars to reflect on these questions and to talk about their research—historical, theoretical, and experiential—at the intersection of law, power, and public space.

Speakers: Margaret Davies (Flinders University), Jessica Whyte (UNSW), Chris Butler (Griffith Law School) and Desmond Manderson (ANU).

### **Law, Politics and Emptiness**

Hosted by the Faculty of Law, University of Helsinki

Emptiness is assumed to be void of legal and political significance. Spaces without clear presence appear to have few connotations with the workings of the law and they are typically thought of as spaces that need to be filled. Law is usually seen as stepping in at the point when the emptiness is filled. This panel challenges these assumptions. It looks at emptiness generated by the law and explores different notions of emptiness and its significance for law, politics and ethics.

Speakers: Panu Minkkinen (University of Helsinki) and Dorota Gozdecka (University of Helsinki).

### **Algorithms and the End(s) of Law**

Hosted by the Faculty of Law, University of Roma Tre

We understand law as a complex of abstractions by which communities agree to be bound. Definitions of rights and rules of procedure produce an agreed version of the “truth” or of reality. But it has not always been like this. For many centuries determinations of rights and remedies was entrusted to the will of “god” as interpreted by religious authorities. The concept of law emerged from this system of religious control as a response to the perceived need to humanize the system of justice. Now, the digital revolution has produced a new phase in the cycle in which algorithms, under the guise of operationalizing legal principles, are instead supplanting them and creating their own version of the truth. If law as we now know it began at a certain point, can we also say that, thanks to the pervasive social power of technology, it is now at its end point?

Speakers: Emanuele Conte (University of Roma Tre), Giancarlo De Cataldo (Judge of the Court of the Assizes in Rome and award-winning novelist), Fiona Macmillan (Birkbeck University of London and University of Roma Tre) and Teresa Numerico (University of Roma Tre).

### **In the Eyes of the Law**

Hosted by the Institute for Interdisciplinary Legal Studies - *Lucernaiuris*, University of Lucerne

Since 2003, visual artist Carey Young has developed a body of artistic work across multiple media that examines law’s relationship to ideas of space, language, performance, and materiality. Her talk will centre on a screening of Young’s noted video *Palais de Justice* (2017), in which the artist spent two years surreptitiously filming female judges and lawyers working at the main courthouse of Belgium. Using a painterly, hallucinatory aesthetic, the piece evokes a legal system centred on or controlled by women and explores intersections of power, gender and the ocular. Young will also include other examples of her law-based artistic works, which have conceptualised and explored law as an artistic medium. Young has collaborated with legal advisors to make artworks in installation, video, performance, print, sculpture, and photography, which also operate as bespoke legal instruments. These works have addressed disparate legal fields, including human rights, inheritance law, intellectual property and law relating to outer space. Experimenting with ideas of space, time, and materiality in relation to law, Young’s artistic work explores law as a separate kind of ‘reality’, one with its own inherent subjectivities and points of breakdown.

Speakers: Carey Young (Slade School of Fine Art and artist), Desmond Manderson (ANU) and Steven Howe (University of Lucerne).

### **Immunity and Quarantine: The Biopolitics of Space-Making in Pandemics**

Hosted by the Institute of the Humanities and Global Cultures, University of Virginia & Wits Institute for Social and Economic Research, University of Witwatersrand

“Immunity”, whether referring to the individual (the official, the diplomat, the patient, the police officer, the doctor) or to the group (civil officers, the police, pharmaceutical companies, the “herd,” or the population) has shuttled among the registers of language that are held responsible for human and social life. Used in law, medicine, politics, religion and philosophy, the idea of immunity underpins that which constitutes the human and its relation to the non-human, disease, impurity, danger, and spatial

containment. If natural immunity is the ability to resist infection, legal immunity is the granting of an exemption by a higher authority. In the case of ecclesiastical immunity, immunity is an exception from secular or civil duties. The afterlife of this ecclesiastical model can be found, for example, in the notion of qualified immunity given to police officers in the US who have murdered African Americans. Immunity as a category has gone hand in hand with the idea of quarantine: the enclosure of peoples and places to protect the larger population from contamination of various kinds - epidemiological, ideological, cultural, psychic, and moral. Together, immunity and quarantine have been mutually constitutive in the spheres they have shaped and curtailed. In this seminar, we will explore their interplay both in the context of the differential spatial logics of the Covid-19 pandemic and the cultural and political ramifications of the AIDS epidemic. Theories on vaccines and immunity, biopolitical thought, critical race theory, as well as cultural products such as literary works and art projects will feature in the presentations. Speakers: Sarah Nuttall (University of the Witwatersrand), Ranjana Khanna (Duke University) and Debjani Ganguly (University of Virginia).

### **In and Out of Place**

Hosted by the Institute for International Law and the Humanities, University of Melbourne

Addressing ourselves to the responsibilities of being 'in and out of place' might be one way of encapsulating a central theme of law and humanities scholarship in Australia. The Institute for International Law and the Humanities has assembled a panel of emerging scholars to attend to the topics, arguments, instruments and aspirations of place as jurists cross the city, and cross between cities and nations.

Speakers: Shaun McVeigh, Jo Commins, Alex Dela Cruz, Caitlin Murphy, Danish Sheikh and Valeria Vazquez Guevara (all Melbourne Law School).



## 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.

### 2021 FELLOWS

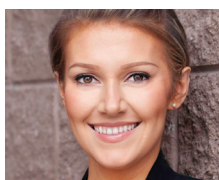


#### **Laura Knöpfel**

*Anthropological Re-imaginings of Private Law: A Legal Ethnography of Corporate Personhood and Responsibility of the Multinational Enterprise*

Laura is interested in the governance of global value chains at the intersection between law and anthropology. In her PhD at King's College London, she researches the negotiation of corporate responsibility in transnational economic relations and conducted fieldwork in the Colombian mining sector. Her project develops a methodological and conceptual approach to integrate these empirical observations with social theory and legal technique. A particular emphasis lies on the potential of private law to develop, advance, and integrate societal transformations. Laura was a guest researcher at the European University Institute in Florence and the Pontificia Universidad Javeriana in Bogotá. She studied law and social sciences at the London School of Economics and Political Science and the University of Bern. Besides her academic work, Laura has worked on transnational human rights and tort cases for King's Human Rights and Environment Clinic and for different NGOs in England and Switzerland.

During her fellowship at the institute, Laura worked on preparing her PhD thesis for publication, and also collaborated intensively on the organisation of the law and theory workshop on "legal anthropology", contributing a number of suggestions for readings, as well as an impressive presentation of her own research on global and local negotiations of corporate responsibility.



#### **Nicole Karam**

*Diderot and Enlightenment Judicial Philosophy*  
(Fellowship postponed)

Nicole Karam is a scholar of seventeenth- and eighteenth-century France and French legal culture. Her work is situated at the intersections of law, literature, history, theology, and the history of medicine, with research and teaching interests that include the history of the idea of taste and Enlightenment-era theories of judicial utopia. She is particularly interested in the ways in which legal eloquence was defined and discerned both within and without the legal profession from the sixteenth century until its dissolution in 1790. Nicole recently defended her doctoral dissertation entitled "Poetry in the Praetorium: Legal Eloquence in Prerevolutionary France" in the department of Modern Languages and Literatures at Johns Hopkins University, and holds a JD from the State University of New York at Buffalo School of Law. Her work has been supported by research fellowships including the Singleton Center and the Alexander Grass Humanities Institute. She currently holds a position as Assistant Teaching Professor in French and Francophone Studies at Syracuse University.

Due to covid, Nicole was not able to take up her fellowship in 2021, but it is hoped that she will be able to spend time at the institute in 2022.

## RESEARCH IN FOCUS

### **Milan and Ticino (1796-1848): Shaping the Spatiality of a European Capital** (SNSF Sinergia Project) 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** (SNSF Project) 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.

### **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 einer 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 Bundesrichterninnen 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?

### **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 it is producing the global space we are living. In fact, logistics makes world: nodes, choke-points, 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 infrastructure.

### **Imagining Justice: Law, Politics and Popular Visual Culture in Weimar Germany (1919-1933)**

Steven Howe

This project proposes a first extended investigation of the relations between law, justice and popular visual culture during the era of the Weimar Republic. Its leading premise is that the interwar period in Germany witnessed a remarkable confluence of law, politics and cultural representations that radically altered the shape and texture of the legal imagination. Historical scholarship has not been blind to this, and there is a substantial body of work that considers how traditional journalistic and literary forms contributed to the development of a new popular legal culture. What has been almost entirely overlooked, however, is the impact of the ‘new’ visual media of the era – cinema, photography and mass image-reproduction techniques – that literally changed how legal subjects and the legal system were seen, and which engendered new spaces of conversation, contestation, dissent and critique. The project seeks to excavate this neglected archive of visual material as a way of opening new lines of enquiry on how perceptions and understanding of law and justice were experienced, constructed, conditioned or challenged through the new image regimes of the Weimar period. Working across three distinct media forms – cinema, visual art, photography – the aim is to develop a set of new and innovative critical perspectives on (i) the forms of legal image-making engendered by the visual media of the Weimar era; (ii) the meanings these images generate in the context(s) of their production, circulation and reception; and (iii) the cultural work these images perform in fostering and shaping a popular legal imagination outside the formal spaces of law and politics.

### **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.

### **Third-Party Funding of Collective Redress. A Law and Economics Perspective (SNSF Doc.CH Project)**

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 Geschworenengerichtbarkeit 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 Schöffengerichtbarkeit 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 Geschworenengerichtbarkeit als einige der Mittel erschienen, um diese Aufgabe zu gewährleisten. 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

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 Kulturfltrate, 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 «kunspezifische» 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.

### **Law on Artificial Intelligence: Existing Regulatory Approach and Shortcomings**

Rüya Tuna Toparlak

Artificial intelligence holds great value for the advancement of our society. Safety and ethical standards for AI are critical. This technological affordance presents the need for an analysis of the newly developing areas of law. This project discusses the existing regulatory approach, and the extent of a future comprehensive framework for artificial intelligence. For this purpose, the European Parliament's debated proposal for an electronic personhood is at the forefront of the analysis.

This project shall inspect a possible (partial) electronic personhood for AI. It is hypothesized that a functional need for a legal subject scheme for certain types of AI may arise. Thus, problems in attributing liability and the gap in responsibility will be researched. The project analyses both benefits and drawbacks of such a legal subject scheme against a civil law background with ethical considerations. It also aims to explore this debate through the lens of legal history, drawing upon the emergence of legal personhood in the mid-19th century in connection with developments in AI under our current socio-economic climate. Legal discussions regarding legal subjectivity arose due to the disruptive technologies of industrial revolution, and it is interesting to observe this in parallel to the disruptive technologies of today. Historical developments on the law of persons will be applied to different AI models with various levels of autonomy. While creating a legal scheme for AI, differing levels of autonomy and other characteristics must be observed. The project shall discuss different types of AI and identify pillars for their categorization as the variations in this technology makes it difficult to adopt a uniform regime. In this sense, this project aims to

introduce additional categorizations to the “risk-based” approach in the European Parliament and Council's Proposal for the AI Act. The project will regard the technological, social, and emotional relationships between humans and machines and research if it should have normative legal consequences. In this sense, social robotics will be inspected as a possible pillar for the legal categorization of AI.

## **Das personalisierte Recht**

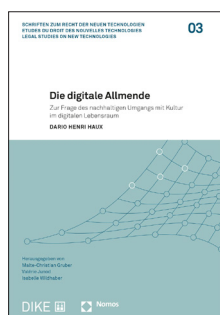
Suad Salihu

Die Digitalisierungstendenzen im Recht werden häufig als disruptiv beschrieben. Während damit unter der Abbeviation Legal Tech insbesondere automatisierte Rechtsdienstleistungen und die Möglichkeit, den Anwalt durch künstliche Intelligenzen zu ersetzen, gemeint ist, untersucht Suad Salihu in seiner Dissertation einen davon abweichenden Aspekt der Digitalisierung im Recht. Die Digitalisierung wird für das Recht noch nicht zu einem Wendepunkt, solange sie sich auf die Automatisierung der juristischen Praxis und der Rechtsanwendung beschränkt. Disruptive Kraft entfaltet die Digitalisierung im Recht erst dann, wenn sie die Rechtsnorm und ihren allgemein-abstrakten Charakter und somit das Gepräge des modernen, formal-rationalen Rechts, anvisiert. Durch den Einsatz von Big Data und künstlicher Intelligenz ist die Digitalisierung im Stande, allgemein-abstrakte Bestimmungen durch personalisierte, das heisst individuell-konkrete, Bestimmungen zu ersetzen. Gemäss Befürwortern eines solchen personalisierten Rechts soll die Rechtsordnung deshalb nicht mehr abstrahieren und verallgemeinern. Das Recht verallgemeinerte ohnehin nur – so eine dezidierte Lehrmeinung – weil dem Recht bis anhin die Informationen für eine personalisierte Normsetzung fehlte. Mit Big Data und durch Formen der algorithmischen Verarbeitung dieser Daten verfügt man nun über die notwendigen Mittel, um personalisierte statt «one-fits-all»-Regelungen zu entwerfen.

Anhand von Beispielen aus dem dispositiven und zwingenden Vertragsrecht untersucht Suad Salihu zunächst die Potenziale eines personalisierten Rechts, um anschliessend aufzuzeigen, dass allein die (technische) Möglichkeit der Personalisierung des Rechts noch kein ausreichender Grund für die Abwendung vom allgemein-abstrakten Charakter der Rechtsbestimmungen ist. Denn nur weil etwas möglich ist, muss es noch lange nicht so sein. Die Eigenleistung des Verfassers besteht darin, für das proklamierte personalisierte Recht eine soziologische Basis in Form eines Imperativs zu schaffen. Das Recht kann personalisieren und soll es auch, lautet dann die These. Hierfür untersucht der Verfasser Andreas Reckwitz' Gesellschaftstheorie einer Gesellschaft der Singularitäten, die dem personalisierten Recht den soziologischen Unterbau liefern soll. Die zentrale Einheit, Ausgangspunkt und zugleich Produkt einer singulären Gesellschaft nach Reckwitz ist das singuläre Subjekt: Die Auseinandersetzung mit der Selbstbestimmung hat dazu geführt, dass der Mensch das Anders-Sein wahrnimmt, einfordert und auslebt. Für das Subjekt der Postmoderne bedeutet diese Entwicklung eine Singularisierung, womit das Subjekt jenseits aller Typisierungen eine anerkannte Eigenkomplexität erlangt und sich damit gegen eine Reduktion auf Funktionsrollen sperrt.

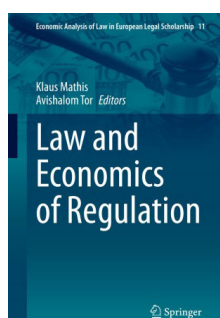
Vor dem Hintergrund, dass das singuläre Subjekt zugleich der neue Rechtsadressat ist, geht Suad Salihu in seiner Dissertation davon aus, dass der rechtliche Umgang mit dem singulären Subjekt nicht mehr durch eine Normenordnung gewährleistet werden kann, die verallgemeinert und typisiert. Denn dadurch, dass die Rechtsordnung verallgemeinert, sieht sie gerade über jenes Merkmal des Rechtsadressaten hinweg, welches das postmoderne Subjekt im Kern ausmacht: seine Singularität. Deshalb wird das singuläre Subjekt, so lautet eine weitere These der Forschungsarbeit, durch eine Rechtsordnung, die abstrahiert und verallgemeinert, in seiner Einzigartigkeit nicht mehr wahrgenommen, weshalb die Personalisierung nicht nur durch moderne Digitalisierungstechniken möglich, sondern zugleich gesellschaftlich geboten ist. Was diese Entwicklung für das Recht, seine Funktion und seine Grundsätze wie etwa Rechtssicherheit und Rechtgleichheit bedeutet, sind weitere Forschungsfragen, die der Verfasser in seiner Forschung nachgeht.

## NEW BOOKS



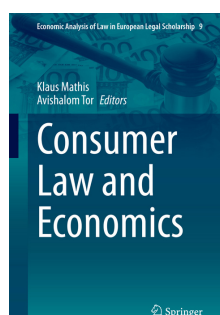
**Dario Henri Haux, Die digitale Allmende. Zur Frage des nachhaltigen Umgangs mit Kultur im digitalen Lebensraum. Recht der neuen Technologien, 1. Auflage, Bd. 3. Zürich: Dike, 2021**

Die Adaption des Urheberrechts an das digitale Zeitalter stellt eine zentrale Herausforderung für das Immaterialgüterrecht dar. Diskussionen um eine «Krise des Urheberrechts» machen deutlich, dass es an einer sachgemässen juristischen Erfassung neuer digitaler Kulturpraktiken weiterhin fehlt. Die richtungsweisenden Urteile zu «Metall auf Metall» zugrunde legend, zeigt die Dissertation von Dario Henri Haux am Beispiel des digitalen Musiksamplings zeitgemässe Ansätze auf. Angeregt durch Konzepte wie die sogenannte Kulturwertmark oder Überlegungen zu einem Grundrecht auf Zugang zum Internet wird die Bedeutung der Materialität im Urheberrecht herausgearbeitet und ein historisch rückgebundenes Modell der digitalen Allmende präsentiert. Der Autor hinterfragt das Verhältnis Materialität – Immaterialität, vollzieht die Beziehung zwischen urheberrechtlichen Werken sowie den daran Beteiligten nach und verweist auf die Bedeutung der Nachhaltigkeit digitaler Prozesse. Auf-grund dieser vielseitigen Perspektiven bietet die vorliegende Arbeit sowohl für Rechtspraktikerinnen und Rechtswissenschaftlerinnen wie auch für Studierende und Interessierte kritische Einsichten in die Rechtsgrundlagen eines im Wandel begriffenen Urheberrechts.



**Klaus Mathis and Avishalom Tor (eds.), Law and Economics of Regulation. Economic Analysis of Law in European Scholarship, vol. 11. Cham/Heidelberg/New York/Dordrecht/London: Springer, 2021**

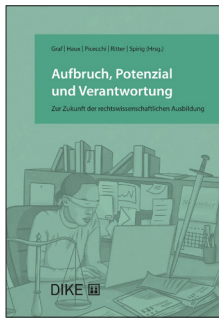
This book explores current issues regarding the regulation of various economic sectors, theoretically and empirically, discussing both neoclassical and behavioural economics approaches to regulation. Regulation has become one of the main determinants of modern economies, and virtually every sector is subject to general laws and regulations as well as specific rules and standards. A traditional argument to justify regulatory interventions is the promotion of public interests. Fixing markets that lack competition, balancing information asymmetries, internalising externalities, mitigating systemic risks, and protecting consumers from irrational behaviour are frequently invoked to complement the invisible hand of the market with the visible hand of the state. However, regulations can lead to unintended consequences, and serve the interests of powerful private interest groups rather than the public interest and social welfare. In addition, new insights from behavioural economics question the traditional regulatory approaches, most prominently in attitudes towards consumers. Furthermore, digitalisation and technological innovation in general present new challenges in terms of both the type of regulation and the regulatory process. Part I of this book discusses various theoretical approaches to the economic analysis of regulations, while Part II looks at specific applications of the law and economics of regulation.



**Klaus Mathis and Avishalom Tor (eds.), Consumer Law and Economics. Economic Analysis of Law in European Scholarship, vol. 9. Cham/Heidelberg/New York/Dordrecht/London: Springer, 2021**

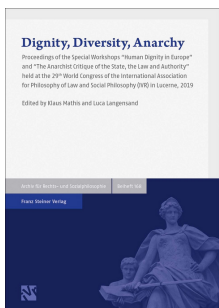
This edited volume covers the challenges currently faced by consumer law in Europe and the United States, ranging from fundamental theoretical questions, such as what goals consumer law should pursue, to practical questions raised by disclosure requirements, the General Data Protection Regulation and technology advancements. With governments around the world enacting powerful new regulations concerning consumers, consumer law has become an important topic in the economic analysis of law. Intended to protect consumers, these regulations typically seek to do so by giving them tools to make better decisions, or by limiting the consequences of their bad decisions. Legal scholars are divided, however, regarding the efficacy and effects of these regulations; some call for certain policies to be abolished, while others support a regulatory expansion.





Fabienne Graf, Dario Henri Haux, Dario Picecchi, Jan Hendrik Ritter and Eliane Spirig (Hrsg.), **Aufbruch, Potenzial und Verantwortung. Zur Zukunft der rechtswissenschaftlichen Ausbildung**. Zürich/St. Gallen: Dike, 2021

Unser Recht passt sich ständig den sich verändernden Lebensumständen an – sei dies auf dem Wege der Auslegung, Rechtsprechung oder Gesetzgebung. Doch inwiefern beeinflusst dieser stetige Wandel auch die Ausbildung der Juristinnen und Juristen von morgen? Als studentisches Forum für Recht und Gesellschaft lud «cognitio» dazu ein, die Entwicklungen zur Zukunft der rechtswissenschaftlichen Ausbildung im Rahmen der Tagung «Aufbruch, Potenzial und Verantwortung» zu diskutieren. In diesem Sammelband widmen sich nun Vertreterinnen und Vertreter der Rechtswissenschaft und Rechtspraxis verschiedenen Aspekten der juristischen Ausbildung. Im Fokus stehen dabei zwei Themenschwerpunkte: die Digitalisierung der Rechtswissenschaften sowie die gesellschaftliche Verantwortung der Juristinnen und Juristen. Aufgrund der vielseitigen Perspektiven bietet der Sammelband interessante Einsichten für Studierende, Rechtswissenschaftlerinnen und Rechtspraktiker.



Klaus Mathis and Luca Langensand (eds.), **Dignity, Diversity, Anarchy. Proceedings of the Workshops “Human Dignity in Europe” and “The Anarchist Critique of the State, Law and Authority” held at the 29th World Congress of the International Association for Philosophy of Law and Social Philosophy (IVR) in Lucerne, 2019. ARSP Beiheft, vol. 168. Stuttgart: Steiner, 2021**

The contributions in this volume add innovative insights to the debate on domination, power, dignity and the future of society. Problems of heteronormativity are fundamental to the anarchist critique of the principle of domination and at the same time central for the discussion of the concept of human dignity. The debates on dignity and diversity and on anarchist perspectives of domination-free organisation are particularly relevant in view of the softening of traditional power structures and the emergence of new ones, especially in the age of globalisation on the one hand and the resurgence of nationalist concepts on the other hand.

# PUBLICATIONS

## PROF. MALTE-CHRISTIAN GRUBER

- Futurities of Law. Versuche über die Zukunft des Rechts. In: Archiv für Rechts- und Sozialphilosophie 107.3 (2021), S. 367–391
- The Case of Diem. A Distributed Ledger Technology-Based Alternative Financial Infrastructure Built by a Centralised Multisided Platform. In: Journal of Intellectual Property, Information Technology and Electronic Commerce Law 12 (4) (2021), 301–330 (with Golnaz Abdollahi Jafari)

## PROF. VAGIAS KARAVAS

- Don't Ask, Don't Tell: Zum Stellenwert der informierten Einwilligung im Patentrecht. In: Karin Müller et al. (Hrsg.), Auf zu neuen Ufern! Festschrift Walter Fellmann. Bern 2021, S. 677–690

## PROF. MICHELE LUMINATI

- Die Bundesrichterwahlen im Wandel: «Denkzettel» und andere Eigentümlichkeiten. In: ZBI 12 (2021) (mit Filippo Contarini)
- Lina Graf: erste Anwältin der Schweiz? Die Geschichte einer Abwesenheit. In: Karin Müller et al. (Hrsg.), Auf zu neuen Ufern! Festschrift Walter Fellmann. Bern 2021, S. 587–603

## PROF. KLAUS MATHIS

- Interdisziplinarität und Rechtswissenschaft. In: ius.full 6 (2021), S. 196–201
- William Godwin's Utilitarian Anarchism. In: Klaus Mathis and Luca Langensand (eds.), Dignity, Diversity, Anarchy. ARSP-Beiheft, vol. 168. Stuttgart 2021, pp. 117–128

## DR. STEVEN HOWE

- In/Humanidad. Figuras de la Enemistad alrededor de 1800. In: Ángela Sierra González et al. (eds.), Los discursos sobre el otro: Cambios y continuidades en las retóricas de la dominación. Barcelona 2021, pp. 123–140 (with Clotilde Pégurier)
- Just Violence? War, Law and Politics in Kleist's Die Herrmannsschlacht and Shakespeare's Henry V. In: Jeffrey L. High et al. (eds.), Heinrich von Kleist: Literary and Philosophical Paradigms. Rochester, 2021, pp. 30–51

## DR. DARIO HAUX

- «Du raffst meine Welt nicht und trotzdem dringst du in sie ein». Kritische Überlegungen zur Zukunft des Musiksamplings im Urheberrecht. In: sic! Zeitschrift für Immaterialgüter-, Informations- und Wettbewerbsrecht 11 (2021), S. 583–593
- Analoge Welt – digitale Umwelt? Überlegungen zum Raumbegriff in den Rechtswissenschaften. In: Ylber Hasani et al. (Hrsg.), Recht und Umwelt. Junge Rechtswissenschaft Luzern, Bd. 153. Zürich/Basel/Genf 2021, S. 39–58
- Das Jus-Studium, Legal Tech und die Frage nach der Zukunft. In: ius.full 2 (2021), S. 63–68 (zusammen mit Fabienne Graf)
- Rethinking the Law. Discussing Andreas Philippopoulos-Mihalopoulos' Spatial Approach to the Law. In: cognitio, 29.01.2021 (with Justine Poon)

# PRESENTATIONS

## PROF. MALTE-CHRISTIAN GRUBER

- The Case of Diem. A Distributed Ledger Technology-Based Alternative Financial Infrastructure Built by a Centralised Multisided Platform  
SOCAI Conference Impact of Technological Advances on Individuals: Interaction of Law and Informatics, Zentrum für soziale Implikationen künstlicher Intelligenz (SOCAI), Julius-Maximilians-Universität Würzburg

## PROF. KLAUS MATHIS

- Third-Party Funding of Collective Redress Litigation – Emerging Regulation  
Doctoral Colloquium, Center for Law and Sustainability, University of Lucerne

## DR. STEVEN HOWE

- Imagining Law Otherwise: Theatrical Pre-enactments and Future Justice  
Frankenlaw, Critical Legal Conference 2021, University of Dundee
- The Reading Group and Love's Work in the University  
Law and Love (in and beyond Pandemic Times): Images and Narratives, Histories and Cultures, Law, Literature and the Humanities Association of Australasia, USC Sunshine Coast

## DR. DARIO HAUX

- Kybernetik und Biopolitik – Personalisierung, Ungleichheit und Diskriminierung in Biometriegestützten Apps? (zusammen mit Fabienne Graf)  
Ungleiche Gleichheit: Recht zwischen Anerkennung und Distribution, Bucerius Law School, Hamburg
- The Reading Group and Love's Work in the University  
Law and Love (in and beyond Pandemic Times): Images and Narratives, Histories and Cultures, Law, Literature and the Humanities Association of Australasia, USC Sunshine Coast
- The Impact of the New Materialism on Technology and the Law  
AIDEL Conference: Have We Ever Been / Will We Still Be Human? Law and Literature Facing the Shifting Boundaries of Humanity and Technology, University of Trento
- Rethinking Copyright: Observations on the Emergence of Culture within 'Digital Cultural Spaces'  
Law's Topologies: The Map, Territory and Spaces in Between, Osgoode GLSA, York/Toronto
- Neue Materialismen im Recht. Für eine zeitgemässe Ontologie des Immaterialgüterrechts  
Habilkreis-Recht, Goms

## **IV: COVER IMAGE**



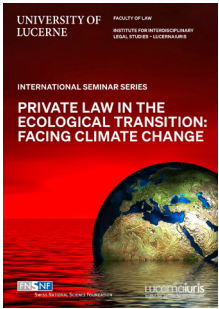
## EDWARD KIENHOLZ & NANCY REDDIN KIENHOLZ, THE CADDY COURT

Edward Kienholz and Nancy Reddin Kienholz's large-scale mixed media tableau, "The Caddy Court," 1986-87, reimagines the Supreme Court of the United States in one of its original functions as a circuit court. In their interpretation, The Caddy Court was conceived as a road-worthy vehicle, that could literally be driven across the country to adjudicate from state to state, and town to town.

The Kienholzes created the mobile tableau by splicing a 1966 Dodge van between the front and back ends of a 1978 Cadillac. A blindfolded Justice with broken scales comprises its hood ornament; a checkerboard "racing stripe" depicts portraits of all of the Supreme Court justices from 1790 to the year of the work's creation; and on the car's doors, the unofficial seal of The Caddy Court of America upholds the motto "Under God We Twist." Upon entering a portico lined with a law library, the viewer enters the court chamber to discover the presiding justices portrayed by nine taxidermized animal heads and skulls in formal robes.

The tableau calls for reflection on the Judicial Branch's power and scope, and the powerful role the US Supreme Court plays in the daily lives of its citizens and its government.

**V: 2022 – A PREVIEW**



## PRIVATE LAW IN THE ECOLOGICAL TRANSITION: FACING CLIMATE CHANGE

In February 2022, the institute will launch a new international seminar series on “Private Law in the Ecological Transition: Facing Climate Change”. Part of the SNSF-funded project “Future Generations in Private Law”, the series will bring together leading experts from around the world to discuss current legal issues around climate change and the protection of future generations.

Confirmed speakers: Randall S. Abate (Monmouth University), Ugo Mattei (Università degli Studi di Torino), Andreas Gutmann (Universität Bremen), Michele Spanò (École des Hautes Études en Sciences Sociales), Gijs Van Dijck (Maastricht University), Annalisa Savaresi (University of Stirling), Ottavio Quirico (University of New England), Anna Beckers (Maastricht University), Jan-Erik Schirmer (Humboldt University School of Law)



## INTERDISZIPLINÄRE TAGUNG: INKLUSION - EXKLUSION

Wovon bin ich Teil? Wovon distanzieren mich? Wen schliesse ich aus und wer ist willkommen? Inklusion und Exklusion sind für uns alle eine tägliche Realität. Oft ist es uns aber gar nicht bewusst, wie wir durch unsere Entscheidungen ganz selbstverständlich Gruppen bilden und so Zugehörigkeiten schaffen oder ausschliessen.

Vom 13. bis 14. Mai 2022 findet an der Universität Luzern die Tagung Inklusion - Exklusion statt. Das Ziel dieser Tagung ist es, gesellschaftliche Phänomene und Mechanismen der Exklusion und Strategien der Inklusion theoretisch und anhand konkreter Fallbeispiele interdisziplinär zu analysieren, zu vergleichen und die daraus gewonnenen Erkenntnisse zu integrieren.

Keynote Speaker: Rudolf Stichweh, Universität Bonn («Forum Internationale Wissenschaft» und «Bonn Center for Dependency and Slavery Studies»)



## LAW AND THEORY WORKSHOP

The fortnightly workshop on contemporary issues in law and theory will return in early spring. The first cycle, on “facts and fakes”, will include readings that probe current questions around matters of ‘post-truth’ politics, ‘fake news’ and ‘alternative facts’ from a variety of critical and (legal-)theoretical perspectives. The topic of the second session will be confirmed during the spring semester.

## VISITING FELLOWS 2022

We are delighted to announce the following two fellowships for 2022:



### **Lisa Stuckey**

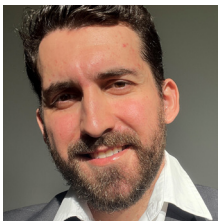
Postdoctoral Research Fellow at the Institute of Art Sciences / University of Applied Arts Vienna

Project: *Transitional Legal Architectures — Curating Negotiation in the 21<sup>st</sup> Century*

Dates of Stay: tbc

Dr. Lisa Stuckey is a cultural theorist and art critic. Her PhD-dissertation *LAW ON TRIAL* (awarded the “Prize for Scientific Work” by the Academy of Fine Arts Vienna in 2020 and the Austrian State Prize “Award of Excellence 2021”) will be published by De Gruyter in spring 2022 under the title *FORENSISCHE VERFAHREN IN DEN ZEITGENÖSSISCHEN KÜNSTEN: Forensic Architecture und andere Fallanalysen*. It addresses recent entanglements of art and jurisdiction in tribunalized contexts in the wake of institutional critique, conflicting evidence procedures between forensics, rhetoric, and aesthetics, as well as poetic architectures of theories.

In her postdoc project Lisa Stuckey studies current transitional legal architectures through the perspective of curatorial theory in three main areas of interest: (i) literal sense / building culture, (ii) conceptual sense / jurisprudential reformulation, and (iii) digital transfer / legal media architectures.



### **Cristiano Moita**

Research Assistant in Legal Philosophy, Free University of Berlin

Project: *Certainties and Deep Disagreements in Law: Towards a Hinge Legal Epistemology*

Dates of Stay: tbc

Cristiano Moita is interested in the intersections between law and philosophy. His PhD is focused on the investigation of certainties and deep disagreements in legal normativity, and is an original epistemological proposal that addresses worldviews (as a set of fundamental certainties, the so-called “hinges”) and the collision of worldviews (as deep disagreements) in legal praxis. One objective of the research is an attempt to design a “hinge legal epistemology”, focused on how to understand the role played by fundamental certainties within legal normativity, especially in explaining polarization in constitutional reasoning.

Cristiano Moita is a Research Assistant in legal philosophy at the interdisciplinary Research Training Group “Normativity, Critique and Change”, a partnership between the Free University of Berlin, Humboldt University of Berlin, Technical University of Berlin and the Deutsche Forschungsgemeinschaft (DFG). He holds a Master in Constitutional Law and a BA from the Federal University of Ceará. He is a lawyer and has experience as a lecturer in philosophy of law, hermeneutics, constitutional law and constitutional process.

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









