

UNIVERSITY OF
LUCERNE

ANNUAL REPORT 2022



Lucernaiuris
Institut für Juristische Grundlagen

Annual Report 2022

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Cover Image: Lawrence Abu Hamdan, The Witness-Machine Complex, 2021, Installation view, Sfeir-Semler Gallery Hamburg, 2022. Courtesy of the artist.

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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. The background is blurred, showing more of the same blocks and some indistinct shapes, suggesting an office or workshop environment.

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 year is a long time in academia. Twelve months ago, I was writing this message as newly-appointed head of lucernaiuris. In that note, I expressed both my gratitude to my predecessor, Vagias Karavas, for leaving the institute in such rude health, and my excitement at taking on the leadership role for the foreseeable future. In the meantime, however, the offer of a new professorship at the University of Giessen proved too attractive to turn down, and I write now as former head of the institute, having passed the baton back to Vagias, who resumed the role in early 2023.

I would like to take this opportunity to thank my colleagues at the institute for their support during my – unexpectedly short – tenure as head, and to wish them and lucernaiuris every continuing success moving forward. I leave knowing that the future of the institute is in good hands.

Looking back over 2022, we can reflect on a busy and rewarding year of activities. The laboratorium lucernaiuris lecture series was sparked back fully into life, post-pandemic, as we heard five insightful and thought-provoking talks from an impressive roster of established and emerging international colleagues. The Law and Theory workshop also returned with a first session on “Facts and Fakes”, and a second that was opened thematically to suggestions from our PhD students and postdocs – as a space for thinking and talking together about particular current interests and concerns.

Alongside these core offerings, we also staged an impressive programme of one-off events. At the start of the year, the research team on the SNSF “Future Generations” project ran a series of online seminars on “Private Law in the Ecological Transition: Facing Climate Change”. In May, Klaus Mathis organised the interdisciplinary conference “Inclusion / Exclusion”, while in June, Vagias Karavas and I hosted an international workshop on “Societal Constitutionality” in honour of our colleague Gunther Teubner. In September, Steven Howe convened the latest in our run of Critical Times events – a three-day online workshop on the topic of “Futurity Now?” that included a lucernaiuris-led seminar with the artist Jonas Staal. Towards the end of the year, in November, we also hosted a special lecture by legal historian Pietro Costa, delivered to mark the award of an honorary doctorate from the Faculty of Law in Lucerne.

Turning our gaze forward, 2023 is shaping up to be another lively year. A particular highlight promises to be the next Critical Times workshop on the topic of Movement(s), which will take place over a full week in early June, and which will include contributions from a cadre of high-calibre international scholars from across five continents. The lecture series will also return in the spring term, as will the Law and Theory workshop, with a session focusing on questions of law and (in)equality. 2023 will also see the start of work on the new SNSF project “Imagining Justice: Law, Politics and Popular Visual Culture in Weimar Germany”, led by Steven Howe and Laura Petersen. In addition, the institute is looking forward to welcoming two new visiting fellows over the course of the year – Cody Rei Anderson from the Victoria University of Wellington and Péter Tchet from the universities of Freiburg and Zurich.

I look forward to reading up on these activities in twelve months’ time. Until then, in the name of the institute, I wish you all a happy and productive 2023.

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



TEAM & ORGANISATION 2022

MEMBERS



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Professor of Legal History,
University of Roma Tre

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

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Philosophy and Legal Sociology, University
of Frankfurt

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 2022

BACHELOR

Grundlagen des Rechts

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

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

Vergleichende Verfassungsgeschichte: Entstehung und Entwicklung der Verfassungsgerichtsbarkeit

Prof. Michele Luminati

Geschichte des Handels- und Wirtschaftsrechts

Prof. Michele Luminati

Rechtsökonomie

Prof. Klaus Mathis

Rechtsphilosophie heute: Theorien und Kritiken

Prof. Malte-Christian Gruber

Biomedizinrecht

Dr. Dario Haux, Dr. Dario Picocchi

Integrationsseminar Recht und Politikwissenschaft: Klimakrise und Energiepolitik zwischen Notstand und langfristigen Perspektiven

Prof. Michele Luminati, Dr. Stefan Rieder

Law and Justice in Literature and Film

Dr. Steven Howe

Law and Economics of the Digital Transformation

Prof. Klaus Mathis

Intellectual Property Law and Society: Current Issues and Alternative Perspectives (Guest Seminar)

Dr. Jessica Lai

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.

2022 WORKSHOPS

In the spring term, the workshop centred on a series of readings around the topic of 'Facts and Fakes'. Discussions focused particularly on the challenges of post-truth discourse in relation to matters of free speech, constitutional rights, and algorithmic decision-making, and also explored the supposed ties between post-truth and postmodernism, and what this means for the contemporary role of critique.

In autumn, the workshop was left thematically open and we invited our PhDs and postdocs to suggest texts linked to their current work. This led to an eclectic set of conversations on diverse themes, ranging from the geopolitics of intellectual property law to the legal protection of social robots.





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.

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).

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.

LABORATORIUM LUCERNAIURIS

Lecture Series

Initiated in 2009, the laboratorium lucernaiuris lecture series provides a public forum for critical discussion and debate. Scholars and thinkers – both established and emerging – are invited to present aspects of their research and to share their expertise with students, faculty and the broader community.

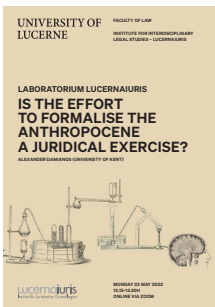
The series aims to strike a balance between convention and innovation. While open to lectures on traditional legal subject matter, it also strives to nurture a space for showcasing original work that moves beyond traditional disciplinary borders. Speakers are, moreover, actively encouraged to think outside the box, and to take the opportunity to test new ideas and approaches.

2022 LECTURES

Monday 23 May 2022

Alexander Damianos (University of Kent), Is the Effort to Formalise the Anthropocene a Juridical Exercise?

The Anthropocene presents a paradox: it suggests that human activity is so intense as to have fundamentally changed the material constitution of the planet; a geological event on par with the extinction of dinosaurs, or the end of the last ice age. Yet it also confirms human finitude. It implies that humanity is simply a passing event, and that one day the planet will go on without us, albeit substantially altered by our lapsed presence. In this presentation, I want to provide an outline of how such a premise is formalised as scientific fact. I argue that the effort to formalise the Anthropocene as a geological unit unfolds as a juridical exercise. Geologists generate new categories of artefacts, such as the technofossil, in order to elicit accounts of human finitude and planetary dynamics from mundane artefacts of every-day life (the plastic bottle, the bones of genetically engineered chickens, the concrete foundations of buildings and transportation networks). They draw on the formalisation of previous geological units as precedent, according to which they structure their account of the Anthropocene, so as to encourage consensus within the geoscientific community. They engage a formal decision-making procedure, submitting their proposal for an Anthropocene unit to the judgement of their peers. What can law learn from an account of geoscience as a juridical affair? How can attempts to reassure ourselves that law has something to contribute to efforts to respond to ongoing ecological devastation be expanded by an account of geoscience as legal technique?



Tuesday 11 October 2022

Jessica Lai (Victoria University of Wellington), Intellectual Property and Natural Contracts

Climate change and environmental degradation are serious concerns with which the world is currently grappling. Green technologies exist, and are continually being developed, to allow for better use and management of natural resources, which could help to either reduce or reverse the human footprint. According to law and economics theory, intellectual property can be obtained over these technologies to increase their creation and commercialisation. The implementation of measures to fast-track the examination of patent applications for green technologies could also incentivise the development and diffusion of these technologies. Yet, this rhetoric has not turned into reality. This is perhaps unsurprising given that creators and intellectual property owners have commercial interests that are not necessarily best served by the diffusion of their technologies. In this paper, I explore whether the deeper problem is that intellectual property is premised on a social contract, which allows for commercial interests to trump sustainability, and whether intellectual property should also be theorised with a natural contract.



Donnerstag, 3. November 2022

Dimitrios Linardatos (Universität Liechtenstein), Die Kategorienfehler des Crowdfundingsrechts der EU

In Europa hat mit der seit dem 10. November 2021 geltenden Verordnung (EU) 2020/1503 erstmals eine Harmonisierung des sog. Crowdfunding-Marktes stattgefunden. Die Verordnung versteht sich als innovativer Baustein eines finanzmarktrechtlichen Binnenmarktes, der Vortrag zeigt jedoch, dass manche Verordnungsbestimmungen einer Kategorienverwechslung unterliegen – tatsächlich wäre es nämlich richtig gewesen, von einer Plattformregulierung mit bankrechtlichen Einschlägen auszugehen.

Donnerstag, 3. November 2022

Konstantina Papatou (Universität Liechtenstein), Crowdfunding – strafrechtliche Aspekte

Der Vortrag beleuchtet die strafrechtlichen Aspekte von Crowdfunding in zweierlei Hinsicht. Zum einen werden im Hauptteil des Vortrags exemplarisch die Strafbestimmungen im Entwurf eines Crowdfunding-Gesetzes (zur Durchführung der VO 2020/1503) für das Fürstentum Liechtenstein präsentiert. Eine zentrale Grundlagenfrage betrifft dabei insbesondere die Blankettstrafgesetze (Verweise auf EU-Recht). Interessant kann das Crowdfunding auch mit Blick auf das sog. internationale Strafrecht werden. Zum anderen wird aufgrund von Berichten höherer nationaler (etwa der schweizerischen KGGT) sowie internationaler Institutionen geschildert, wie Crowdfunding-Plattformen üblicherweise zur Begehung von Straftaten ausgenutzt werden, insbesondere von Geldwäscherei.



Dienstag, 6. Dezember 2022

Massimo Meccarelli (Università di Macerata), Die Gestaltung der Vergangenheit: Geschichte, Gedächtnis, Recht und das Problem des sozialen Zusammenhalts

Welches sind die sozialen und kulturellen Faktoren, die das Verhältnis zwischen Recht und sozialem Zusammenhalt bestimmen? Inwieweit können diese die Wirksamkeit des Rechts beeinflussen?

Das Recht ist ein wesentliches Instrument für den sozialen Zusammenhalt: Es kann ihn schützen, indem es bestimmte Entscheidungsspielräume der politischen Dialektik entzieht (man denke an die Verfassung als higher law, an die Grund- oder Menschenrechte usw.); es kann aber auch die Bedingung für seine Verwirklichung sein (man denke an die Übergangsgerechtigkeit als komplementäres Moment zur Neugründung einer Verfassungsordnung).

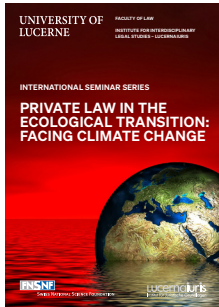
Gleichzeitig hängt die Wirksamkeit der juristischen Instrumente in hohem Maße von der Verbindung mit einer vorjuristischen Sinnbasis ab, die durch verschiedene Dimensionen des sozialen Gesamtsystems erzeugt wird; eine ist die diskursive Dimension der Gestaltung der Vergangenheit. Mit anderen Worten: Das Problem des sozialen Zusammenhalts, das das Recht zu lösen vorgibt, hängt von den Zeiterfahrungen ab, die in der Gesellschaft koexistieren. Auf diesen spezifischen Aspekt wird sich der Vortrag konzentrieren, indem er sich dem Problem aus der Perspektive der Rechtsgeschichte und der Rechtstheorie nähert.

Anhand einiger Beispiele von juristischen Übergangsphasen in der Zeitgeschichte, die mit einem Streit über das Verhältnis von Vergangenheit, Gegenwart und Zukunft verbunden waren, soll gezeigt werden, wie die nicht-permanente Zeit des Übergangs eine attributive Kraft auf das Recht ausübt, die seine Konfigurationen gerade im Hinblick auf seine Funktion, den sozialen Zusammenhalt zu unterstützen, prägt.

Anschließend werden einige Dynamiken der Vergangenheitsgestaltung untersucht, wobei insbesondere über die Bedeutung von «Geschichte schreiben» und «Erinnerung herstellen» nachgedacht wird. Ziel ist es, die möglichen Nutzungen der Vergangenheit (in einem konstruktiven und dekonstruktiven Sinne) im Hinblick auf das Problem des sozialen Zusammenhalts aufzuzeigen, die Relevanz der Erfahrungen der Vergangenheit für das Recht in der gegenwärtigen Phase zu hinterfragen und über den Beitrag nachzudenken, den die Rechtsgeschichte in dieser Hinsicht leisten kann.

PRIVATE LAW IN THE ECOLOGICAL TRANSITION: FACING CLIMATE CHANGE

Convenors: Malte-Christian Gruber, Michael Monterossi, Alessandro Drigo



The international seminar series Private Law in the Ecological Transition: Facing Climate Change was a joint initiative of lucernaiuris and the research team working on the SNSF-funded project Future Generations in Swiss and European Private Law. Over a period of five weeks, nine leading international scholars were invited to take part in a series of online discussions exploring current legal issues and challenges surrounding climate change and the protection of future generations.

PROGRAMME

Thursday 3 February 2022

- Randall S. Abate (Monmouth University), Climate Change and the Protection of Future Generations
- Ugo Mattei (Università degli Studi di Torino), Climate Change, Ecology and the Commons

Thursday 10 February 2022

- Andreas Gutmann (University of Bremen), Can Pacha Mama be a Legal Subject? Rights of Nature in Ecuador
- Michele Spanò (École des Hautes Études en Sciences Sociales), Representing the Multiple: Subjective Rights Facing Assemblages

Thursday 17 February 2022

- Gijs Van Dijck (Maastricht University), Tort Law Remedies and Climate Change Claims

Thursday 24 February 2022

- Annalisa Savaresi (University of Stirling), The Role of Human Rights in Climate Change Litigation
- Ottavio Quirico (University of New England), Environmental Human Rights and Fundamental Climate Rights: Implications

Thursday 3 March 2022

- Anna Beckers (Maastricht University), Climate Change and Global Supply Chains: Shaping Private Law for the Ecological Transition of Global Production
- Jan-Erik Schirmer (Humboldt University School of Law), Climate Litigation in Civil Courts: Can Judges Make Good Law?

INKLUSION / EXKLUSION

Interdisziplinäre Tagung

Organisation: Klaus Mathis



Wovon bin ich Teil? Wovon distanziere ich 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 fand an der Universität Luzern die Tagung Inklusion – Exklusion statt. Das Ziel dieser Tagung war es, gesellschaftliche Phänomene und Mechanismen der Exklusion und Strategien der Inklusion theoretisch und anhand konkreter Fallbeispiele interdisziplinär zu analysieren, zu vergleichen und wegweisend zu diskutieren.

PROGRAMME

Freitag, 13. Mai 2022

- 09.00-09.15 Registrierung
09.15-09.25 Klaus Mathis (Universität Luzern), Begrüssung
- 09.30-10.30 Rudolf Stichweh (Universität Bonn), Inklusionsrevolutionen der Moderne und die Gegenstrukturen der Exklusion
11.30-12.00 Kaj Späth (ETH Zürich), Gerechtigkeit durch Exklusion?
- 13.30-14.00 Eric Dieth (Fachhochschule Graubünden), Die inklusive und exklusive Wirkung intellektueller Macht und Gewalt
14.00-14.30 Anna Schwermann (Universität Paderborn) Vom Spannungsfeld zum Spektrum. Begabungs- und Leistungsverständnisse von Eltern zwischen Inklusion und Exklusion
- 15.00-15.30 Filippo Contarini (Universität Luzern), «Inklusion/Exklusion» im Recht und die Soziologie des Fremden
15.30-16.0 Charlotte Sieber-Gasser (Universität Zürich), Verknüpfung zwischen Bürgerrecht und Wahl- und Stimmrecht in der Schweiz – Ansätze zur Überwindung der regulatorischen Widersprüche
- 17.00-19.00 Wissenschaft im Dialog mit Kunst VIDEO WINDOW präsentiert: Dias & Riedweg Videokunst zu Favelas in Rio de Janeiro, Künstlergespräch mit Mauricio Dias, Walter Riedweg und Daniel Speich Chassé, Universität Luzern

Samstag, 14. Mai 2022

- 09.15-09.45 Simone Zurbuchen (Universität Lausanne), Inklusion und Exklusion im Verhältnis zwischen Mensch und Tier
09.45-10.15 Markus Schärli (Universität Luzern), Exklusion durch Definition der Inklusion – Rechtssubjektivität und Grundrechte für Naturwesen
- 10.45-11.15 Britta-Marie Schenk und Marino Ferri (Universität Luzern), Jenseits von Inklusion und Exklusion? Historische Perspektiven auf Obdachlosigkeit in der Schweiz
11.15-11.45 Phil Baumann (Universität Luzern), Inklusion als Herausforderung der Grundversorgung
- 11.45-12.00 Klaus Mathis (Universität Luzern), Schlusswort

SOCIETAL CONSTITUTIONALISM: A THERAPY AGAINST EXCESSIVE SURPLUS PRESSURES?

International Workshop

Convenors: Malte-Christian Gruber, Vagias Karavas

Societal constitutionalism is a legal-sociological concept that has developed, and continues to develop, as a category for exploring constitutional patterns that evade the analytical and normative frameworks of modern, state-centred constitutionalism. Associated particularly with the pioneering work of Gunther Teubner, the concept has gained significant traction as a theoretical framework for addressing constitutional issues that arise outside the borders of the nation-state and the institutionalised world of politics – in the ‘private’ sectors of global society.

Celebrating Teubner’s work, the workshop was run as a hybrid event gathering established and emerging scholars from around the world for an afternoon of critical discussion and reflection. In particular, the workshop looked to elaborate new perspectives on the theoretical and practical potential of the concept of societal constitutionalism in relation to distinct contemporary challenges and concerns.

PROGRAMME

Friday 24 June 2022

- | | |
|-------------|--|
| 16.00-16.10 | Malte-Christian Gruber (University of Lucerne) and Andreas Fischer-Lescano (University of Bremen), Welcome Remarks |
| 16.10-16.50 | Nofar Sheffi (University of New South Wales), We Accept: Bit-by-Bit Constitution |
| 16.50-17.30 | Atina Krajewska (University of Birmingham), Restoration of Gender Inequalities through Anti-Abortion Reforms: Can Teubner’s ‘Anonymous Matrix of Communications’ Help Feminists? |
| 17.45-18.30 | Reading Group Discussion of Gunther Teubner’s “The Constitution of Non-Monetary Surplus Values”
Impulse Remarks: Vagias Karavas (University of Lucerne) |
| 18.30-19.00 | Gunther Teubner (University of Frankfurt), Closing Notes |

FUTURITY NOW?

International Workshop

Convenors: Steven Howe and Desmond Manderson



It is not so long ago that Mark Fisher, in *Ghosts of My Life* (2013), pronounced the “slow cancellation of the future.” Riffing on a phrase of Franco ‘Bifo’ Berardi, Fisher identifies a cultural inertia that resides in a collective inability to “grasp and articulate the present.” The ubiquity of capitalism – and of a capitalist realism that presumes there is no alternative to the neoliberal global order – has, Fisher argues, given rise to a condition in which “life continues, but time has stopped.” The “slow cancellation of the future” thus becomes, in Fisher’s hands, a critical expression of this insidious creep that gradually but relentlessly corrodes the social imagination – and with it, the radical potential of the future. As Wendy Brown describes it, this loss of futurity and of forward momentum “makes the weight of the present very heavy: all mass, no velocity.” Or “in the terms of late modern speediness ... all speed, no direction.”

Is, then, the future over? Not quite. Indeed, there is no greater critical concern in the contemporary moment than the future, and recent years have seen a marked resurgence of thinking about futurity. Fired by the urgency of our current condition, writers, theorists, artists and activists have turned anew to consider the possibilities of the future, both as a subject of theorization and as an orientation for practice in the world.

Against this background, this year’s Critical Times workshop proposed an interdisciplinary conversation around the topic of “Futurity Now?” Over three days, a series of seminars explored critical and theoretical perspectives on the future “as time, as event, as condition, as an orientation to the oncoming” (Saint-Amour). Focusing on different contexts, and drawing on diverse theoretical literatures, the sessions looked to unpack such critical questions as:

- How can we reclaim futurity?
- Which practices, forms and strategies are available for making our present condition legible?
- What makes critique in “dark times” untimely and necessary? (Wendy Brown)
- Is there still a way of disentangling ourselves from the global order of capitalism and disarticulating the connections made by current forms of power?
- What alternative visions are possible for nurturing the desire for progressive change, for imagining law and politics otherwise?
- How might we cultivate a sense of the future that looks forward rather than back – “un avenir” that is, to speak with Derrida and Latour, “à-venir”?

PROGRAMME

Tuesday 6 September 2022

Can Law Control the Future? Or is it Just a Part of the Past?

Hosted by the Faculty of Law, University of Roma Tre

Convenors: Emanuele Conte and Fiona Macmillan

- Emanuele Conte (University of Roma Tre and École des Hautes Études en Sciences Sociales of Paris), Did Law Control the Future in the Past?
- Teresa Numerico (University of Roma Tre), Categorizing, Evaluating, Predicting: The Future as a Battlefield between Artificial Intelligence and Law
- Fiona Macmillan (Birkbeck University of London and University of Roma Tre), Back to the Future: Is There any Point at all in Protecting our Cultural Heritage?

Wednesday 7 September 2022

Colonial Legal Imaginaries / Southern Literary Futures

Hosted by the Centre for Law, Arts and Humanities, The Australian National University

Convenors: Desmond Manderson and Shane Chalmers

- Debolina Dutta (Jindal Global Law School), Cultivating a Postcolonial Literary Legal Imagination: On Translating Sunil Gangopadhyay's Beni Laskarer Mundu
- Christopher Gevers (University of KwaZulu-Natal), Land(s) beyond the White World
- Luis Gómez Romero (University of Wollongong), A World Where Many Worlds Fit: Utopia as Anti-Colonial Method and Practice in the Zapatista Tales of Subcomandante Galeano (formerly Marcos)
- Honni van Rijswijk (University of Technology Sydney), The Drover's Wife, The Legend of Molly Johnson: Leah Purcell's Truthful Reimagining of a Colonial Fetish

Thursday 8 September 2022

Organizing the Future (Or: How to Demand a Million More Years?)

Hosted by the Institute for Interdisciplinary Legal Studies – *lucernaiuris* and the Institute for International Law and the Humanities, University of Melbourne

Convenors: Steven Howe and Laura Petersen

- Jonas Staal (artist), Organizing the Future (Or: How to Demand a Million More Years?)
With responses from Tim Lindgren (University of Melbourne) and Carey Young (artist and Slade School of Fine Art)

Recordings of the workshop sessions are available online.

The Futurity Now? Workshop took place as part of the project Critical Times: Law, Humanities & Critique, 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*
- *Faculty of Law, University of Hong Kong*

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

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.

2022 FELLOWS



Lisa Stuckey

Curating Weak Law: Think Tanks, Task Forces, and Tribunals in the Twenty-First Century

Dr. Lisa Stuckey is a researcher in contemporary arts, media, and cultural studies. Her monograph *Forensische Verfahren in den zeitgenössischen Künsten: Forensic Architecture und andere Fallanalysen* (Berlin: De Gruyter, 2022) is based on her doctoral thesis, for which she received the Austrian State Prize Award of Excellence. The study addresses recent entanglements of arts and jurisdiction in tribunalized contexts in the wake of institutional critique and conflicting evidence procedures between forensics, media aesthetics, and poetic architectures of theories.

In her postdoctoral project *Curating Weak Law* Lisa Stuckey studies think tanks, task forces, and tribunals of the twenty-first century through the perspective of curatorial theory. Functioning as compensatory infrastructures during or after moments of disruption, these intermediary actors may have the power to act, but often operate on levels of counseling, preparation, recommendation, serious play, or putting to the test — on levels of ‘weak law’, one could argue. While commonly regarded as deficient, this research project pursues the thesis that precisely in weakness alternatives to normative hegemonies emerge.



Cristiano Moita

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

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.

RESEARCH PROJECTS

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.

Imagining Justice: Law, Politics and Popular Visual Culture in Weimar Germany (SNSF Project)

Steven Howe, Laura Petersen, Jandra Böttger

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.

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 Bundesrichterinnen 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.

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 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 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.

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

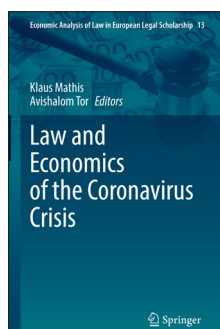
Suad Salihu

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



Klaus Mathis and Avishalom Tor (eds.), *Law and Economics of the Coronavirus Crisis. Economic Analysis of Law in European Scholarship*, vol. 13. Cham/Heidelberg/New York/Dordrecht/London: Springer, 2022

The coronavirus pandemic struck unexpectedly, posing unprecedented challenges around the world. At the same time, this crisis also offers a unique opportunity for reflection, research, and insight regarding this and similar global and domestic crises. There is much to be learned from analysing the effects of the crisis. It provides a chance for a fresh scholarly examination of important aspects of legal regulation, policymaking, and more. This volume pursues these questions from a broad range of Law and Economics perspectives and is divided into two parts. The first part examines the immediate impact of and responses to the coronavirus crisis, while the second explores the future possibilities that scholarly analysis of this crisis can offer.

As to the immediate impact and responses, questions of compliance with regulations and safety measures, nudging and decision-making with regard to the coronavirus crisis are examined from the perspective of behavioural economics. In addition, the short- and long-term effects of various emergency policy responses on contract law are studied. Current issues and challenges like the regulation of internet platforms, excessive pricing, the right to adequate food, risk and loss allocation, as well as remote learning and examinations, which have been impacted, brought about, complicated or aggravated by the coronavirus crisis, are analysed in depth. Lastly, future possibilities in the areas of data access rights, economic instability and the balance between political-economic interests and social interests, patenting, food labels and open data are illustrated.

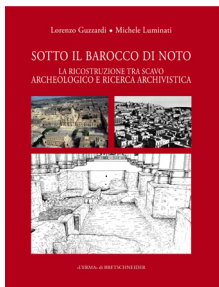


Michele Luminati, Francesca Brunet, Paola Mastrolia und Stefano Solimano (Hrsg.), *Costruire, trasformare, controllare. Legal transfer e gestione dello spazio nel primo Ottocento*. Bellinzona: Edizioni Casagrande, 2022

I saggi qui raccolti – che attingono dalla storia del diritto e delle istituzioni, dell'arte e dell'urbanistica, della geografia e della cartografia, dalla storia economica e sociale – propongono una riflessione sui rapporti centro-periferia, sull'ibridazione tra culture, sull'adattamento di modelli "esterni" nella definizione, costruzione e controllo dello spazio urbano, rurale e statale.

Oggetto di tale indagine interdisciplinare sono principalmente la città di Milano, la regione lombarda e l'area del Canton Ticino tra la fine del Settecento e i primi decenni dell'Ottocento: periodo segnato da importanti transizioni politico-giuridiche, durante le quali da un lato gli sforzi delle autorità statali furono volti a dare applicazione a nuovi riferimenti legislativi per l'organizzazione spaziale e territoriale, dall'altro emersero fenomeni di resistenza e opposizione agli stessi.

Contributi di: Marco Bernasconi, Francesca Brunet, Valentina De Santi, Michele Fedrighini, Romain Iliou, Marco Marcacci, Paola Mastrolia, Simona Mori, Emanuele Pagano, Manolo Pellegrini, Marco Polli, Amos Speranza, Stefania Ventra



Michele Luminati und Lorenzo Guzzardi, *Sotto il Barocco di Noto. La ricostruzione tra scavo archeologico e ricerca archivistica*. Rom/Bristol: L'Erma di Bretschneider, 2022.

Una ricerca inedita e una metodologia innovativa, “un libro senza modelli” (Corrado Stajano): un archeologo e uno storico hanno lavorato per anni a stretto contatto, tra scavo e archivio, riportando alla luce una Noto nascosta, dimenticata e in parte inglobata dall’edilizia monumentale della capitale del barocco siciliano. Il volume costringe ad una rilettura radicale della genesi di Noto barocca, ripercorrendo a ritroso, fino alle preistoria, le vicende del territorio sul quale sorge la città e mettendo poi in evidenza le complesse vicende della ricostruzione urbanistico-architettonica, politica e socio-economica. Procedendo per singole tipologie edilizie sono state inoltre analizzate le varie fasi di costruzione di alcuni dei più importanti complessi edilizi della città. Per la prima volta sono rese visibili le numerose stratificazioni e trasformazioni che hanno condizionato lo straordinario esito finale della ricostruzione di Noto.



Steven Howe and Laura Petersen (eds.), *Law and Art in the Aftermath*. Special Issue of *Pólemos: Journal of Law, Literature and Culture* 16 (2) (2022)

Aftermath is a “peculiar concept” (Frank Möller). Frequently invoked, in both popular and academic discourse, it is rarely theorised, or even explicitly considered. What is the aftermath? Where is it? When does it begin, when does it end? What comes after the aftermath – what endures and what passes, what is transformed and what emerges new? Does all life carry the “taint of aftermath” (Joseph O’Neill)? Are we ever not, in some sense, in the aftermath?

The contributions in this special issue revisit the idea of aftermath as it relates to critical matters of law, justice and jurisprudence. They pose new questions of the concept, and look again at what it means to be in the aftermath – legally, politically and experientially. At the same time, they offer fresh takes on the resonances of law and art as they move alongside, through and against one another across distinct legal, political and critical aftermaths.

Featuring contributions by: Eliza Garnsey, Paul Gough, Steven Howe, Connal Parsley, Clotilde Pégorier, Laura Petersen and Lars Waldorf.

FURTHER PUBLICATIONS

PROF. VAGIAS KARAVAS

- Die Beste aller möglichen Welten. Gunther Teubners Theodizee. In: Zeitschrift für Rechtssoziologie 42.2. (2022), S. 212-242
- Somatic Jurisprudence: Re-Drawing the Boundaries of the Human Body in Biomedicine. In: Pólemos. Journal of Law, Literature and Culture 17 (1) (2023) [forthcoming]

DR. STEVEN HOWE

- Foreword: Law and Art in the Aftermath. In: Steven Howe and Laura Petersen (eds.), Law and Art in the Aftermath. Special Issue of Pólemos: Journal of Law, Literature and Culture 16 (2) (2022), 199-204 (with Laura Petersen)
- Just Violence? War, Law and Politics in Kleist's Die Hermannsschlacht and Shakespeare's Henry V. In: Jeffrey L. High et al. (eds.), Heinrich von Kleist: Literary and Philosophical Paradigms. Rochester 2022, pp. 30-51

PRESENTATIONS

PROF. VAGIAS KARAVAS

- Gunther Teubner's Theodicy
Workshop Societal Constitutionalism: A Therapy Against Excessive Surplus Pressures, University of Lucerne
- Ist das Schweizer Fortpflanzungsmedizingesetz noch zeitgemäss?
Vortragsabend der Reihe Podium Recht, UFL – Private Universität im Fürstentum Liechtenstein
- Biomedical Labour
Vortrag am Institut de droit de la santé, Université de Neuchâtel

PROF. MICHELE LUMINATI

- Spazialità e identità: la dimensione giuridica
Tagung: Spazialità e identità in Italia (1796-1943). Definizione e metodologia. Bibliotheca Hertziana, Max-Planck-Institut für Kunstgeschichte, Rom

PROF. KLAUS MATHIS

- Behavioural Economics in European Competition Law: From a More Economic to a More Realistic Approach
Interdisciplinary Research Methods in EU Law: Challenges and Opportunities, The London School of Economics and Political Science (LSE)

DR. STEVEN HOWE

- From Spectacle of Transparency to Judicial Panopticon: The Revolutionary Festival Revisited
Interdisciplinary Conference on Transparency, University of Basel
- "They'll Get Their Punishment, I Swear!" Revenge and (In)Justice in Fatih Akin's In the Fade
AIDEL Conference: Peace, War, Revenge and the Law, Università IULM, Milan

RÜYA TUNA TOPARLAK

- Criminalising Pornographic Deep Fakes: A Gender-Specific Inspection of Image-Based Sexual Abuse
Graduate Conference on Law and Technology, School of Law, Sciences Po, Paris
- Combined Approach to Transparency in Artificial Intelligence: How Law Could Support and Benefit from Explainable Decision-Making
2nd Annual Young Digital Law Conference, University of Hamburg

IV: COVER IMAGE

LAWRENCE ABU HAMDAN, THE WITNESS-MACHINE COMPLEX (2021)

The Witness-Machine Complex examines the role of translators and the electronic acoustic infrastructure deployed during the Nuremberg trials in 1945–46. Newly developed electronic audio technology enabled the live translation of the trial proceedings into Russian, French, German, and English, yet even though the translators' work was of great importance to the procedure, there are no intentional recordings of it. The translators were not featured in the filmed footage of the trial, either, yet their presence was captured by the flashing yellow and red lights built into the witness stand and the prosecutor's podium, which were used to slow down or pause the speed of the sound flowing into their headphones. When viewing footage in which the bulbs flash—instances of language in negotiation—it becomes evident that these moments have been removed from the transcripts, which make it seem as if the trial flowed seamlessly from voice to voice.

For his exhibition at Kunstverein Nürnberg, Abu Hamdan collected seven of these moments. In one example, a light flashes red to signal the order to repeat, derailing a witness's train of thought and causing a minute of silence, during which agents of the court plead and prompt the witness's speech to return, to no avail. In another, Nazi industrialist Walther Funk accelerates his speech and raises his voice in defiance while the translator jumps the light switch in contestation. When Marie Claude Vaillant-Couturier, a member of the French Resistance who was interred at Auschwitz for three years, is interrupted by the flashing light, she begins to speak in a slow staccato in which each syllable is overemphasized; her robotic performance, combined with the violence she describes, sounds dissonant and yet is perfectly tuned to the machine of justice.

Abu Hamdan then staged the collected moments in a scenography that invoked the infrastructure of the Nuremberg trials to historicize the now-inextricable relation between testimony and the technologies by which it is disseminated and distorted. His sound and light installation restages the effects of the interruptions and shows how new practices for listening to and recounting testimony were inaugurated at Nuremberg. The installation is a device to tell a history of the trials exclusively through their interruptions.

This work was commissioned and produced by Kunstverein Nürnberg, Germany (2021).

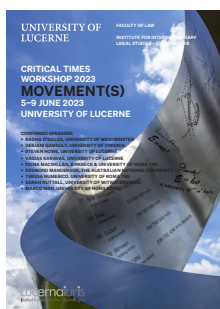
LAWRENCE ABU HAMDAN

Lawrence Abu Hamdan is a *Private Ear*, listening to, with and on behalf of people affected by corporate, state, and environmental violence. Abu Hamdan's work has been presented in the form of forensic reports, lectures and live performances, films, publications, and exhibitions all over the world. He received his PhD in 2017 and has held fellowships and professorships at the University of Chicago, the New School, New York and most recently at the Johannes Gutenberg University Mainz where he developed his research *AirPressure.info*.

Abu Hamdan's audio investigations have been used as evidence at the UK Asylum and Immigration Tribunal and been a key part of advocacy campaigns for organisations such as Amnesty International, Defence for Children International and Forensic Architecture. His projects that reflect on the political and cultural context of sound and listening have been presented at the 22nd Biennale of Sydney, the 58th Venice Biennale, the 11th Gwangju Biennale, the 13th and 14th Sharjah Biennial, Witte De With, Rotterdam, Tate Modern Tanks, Chisenhale Gallery, Hammer Museum L.A and the Portikus Frankfurt. These works are part of collections at Reina Sofia, MoMA, Guggenheim, Hamburger Bahnhof, Van AbbeMuseum, Centre Pompidou and Tate Modern. Abu Hamdan has been awarded the 2020 Toronto Biennial Audience Award, the 2019 Edvard Munch Art Award, the 2016 Nam June Paik Award for new media and in 2017 his film *Rubber Coated Steel* won the Tiger short film award at the Rotterdam International Film festival. For the 2019 Turner Prize Abu Hamdan, together with nominated artists Helen Cammock, Oscar Murillo and Tai Shani, formed a temporary collective in order to be jointly granted the award.

V: 2023 – A PREVIEW

CRITICAL TIMES WORKSHOP: MOVEMENT(S)



In June 2023, the latest in our series of Critical Times events will take place at the University of Lucerne. This year's workshop will take the form of a week-long research-led intensive that engages with contemporary questions around the lead theme of movement(s). Organised by a consortium of partner institutions from universities on five continents, the workshop will present an opportunity to think critically and creatively about the relations between im/mobilities and justice, about the entanglements of movement with questions of meaning and power, and about law's own patterns of motion – across multiple contexts, scales and situations.

Confirmed speakers: Radha D'Souza (University of Westminster), Debjani Ganguly (University of Virginia), Steven Howe (University of Lucerne), Vagias Karavas (University of Lucerne), Fiona Macmillan (Birkbeck and University of Roma Tre), Desmond Manderson (The Australian National University), Sarah Nuttall (University of Witwatersrand), Teresa Numerico (University of Roma Tre), Marco Wan (University of Hong Kong).

LAW AND THEORY WORKSHOP



The fortnightly workshop on contemporary issues in law and theory will return in early spring. The first session will revolve around the question of how law fosters inequality, and will focus on a series of readings from Katharina Pistor's 2021 book *The Code of Capital: How the Law Creates Wealth and Inequality*. The topic(s) of the second session will be confirmed during the spring semester.

VISITING FELLOWS 2023

We are delighted to announce the following two fellowships for 2023:



Cody Rei-Anderson

PhD candidate, Victoria University of Wellington

Copyright and Speculation: How Do We Value Creative Work?

Dates: May to July 2023



Péter Techet

Postdoc, University of Zurich and University of Freiburg

The Pure Theory of Law as Reaction and Reflection: A Historical Contextualisation of Hans Kelsen's Work as Constitutional Judge

Dates: September to November 2023

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.

