GLOBAL PERSPECTIVES
ON LEGAL HISTORY 1

THOMAS DUVE (ED.)

Entanglements in Legal History: Conceptual Approaches

Thomas Duve

European Legal History – Concepts, Methods, Challenges | 29–66

MAX PLANCK INSTITUTE
FOR EUROPEAN LEGAL HISTORY

ISBN 978-3-944773-00-1
ISSN 2196-9752

First published in 2014

Published by Max Planck Institute for European Legal History, Frankfurt am Main

Printed in Germany by epubli, Prinzessinnenstraße 20, 10969 Berlin
http://www.epubli.de

Max Planck Institute for European Legal History Open Access Publication
http://global.rg.mpg.de

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de

Cover photo by Christiane Birr, Frankfurt am Main
Cover design by Elmar Lixenfeld, Frankfurt am Main

Recommended citation:
Duve, Thomas (ed.) (2014), Entanglements in Legal History: Conceptual Approaches, Global Perspectives on Legal History, Max Planck Institute for European Legal History Open Access Publication, Frankfurt am Main, http://dx.doi.org/10.12946/gplh1

Thomas Duve

European Legal History – Concepts, Methods, Challenges*

For decades, we have learned from authors like Helmut Coing, Franz Wieacker, Harold Berman, Peter Stein, Manlio Bellomo, Paolo Prodi, – to name but a few – that one of Europe's major cultural achievements is its law, its unique legal culture. In Italian, Paolo Grossi's synthesis of European legal history is not incidentally called: *L'Europa del diritto*. The same concept of a 'legal tradition', the belief in the ongoing character of law, its capacity for growth over generations and centuries are seen as something uniquely Western. 'Europe', as it is emphasized today not least in intercultural dialogue, or 'the West' have produced a wide range of cultural achievements that spread around the world – the rule of law, human rights, the differentiation between the realms of law and religion, codification techniques, etc.[1] We promote these values, and we seek to enforce them worldwide by a range of usually non-military methods.

Yet, this historical self-reassurance has come under considerable pressure – not least through Global History, Postcolonial Studies, or Critical Legal Studies. Many participants in the intensive debates have argued that Europe cannot be understood in and of itself, as had been tried for a long time. European history, it is said, had not only been a history of freedom, equality,

* I have presented some initial thoughts on these questions in an extensive article published in German in the journal in *Rechtsgeschichte – Legal History (Rg)* in 2012, see Duve (2012). In a subsequent working paper, I have summed up and developed my arguments further and tried to sharpen some aspects, see Duve (2013). The working paper has been taken into account by some of the participants of a Colloquium 'European Legal History – Global Perspectives', held at the Max-Planck-Institute of European Legal History in September, 2013; see especially Ascheri (2014); Modéer (2014), McCarthy (2014). In the working paper Duve (2013), I announced in n. 2 a definite version to be published, including some of the results of the conference; this article is the announced version. For further references on many of the topics touched upon in this brief article, see Duve (2012).

1 See on this Coing (1968); Wieacker (1967), (1985), (1995); Berman (1983); Stein (1999); Bellomo (2005); Prodi (2003); Grossi (2009).

and fraternity, as many like to present it. But it was also a history of violence, oppression, exploitation, and disfranchisement of entire continents by European colonial rulers of formal or informal imperialism. Many things regarded as cultural achievements and extended into the world at large had ultimately been, so it is being said, only the attempt at universalizing European interests based on hegemonic ambition. The issue today should therefore no longer be an identificatory search for purported European values, but rather emancipation from one's own Eurocentric traditions, including analytical Eurocentrism. Europe, according to one of the most often cited watchwords, should be 'provincialized', its role in the world criticized and re-dimensioned. We should, as one author put it, not keep on writing our history as if 'good things are of Europe and bad things merely happen there'. We have to recognize also the 'darker sides' of the European legacy, and be more aware in our historical research that Europe would not be what it was and is without its colonial past, without its central role in the world and without the mechanisms of formal or informal domination established not least by law. Moreover, World History as well as our own would be written differently if we would not still be attached to European or national historiographical concepts and paradigms. Thus, global perspectives on European history are demanded, for the sake of historical justice, for the sake of a better historiography, and not least as a precondition for a global dialogue on justice.[2]

Even if we might not agree with all of these demands: The discipline of 'European Legal History' has to consider these challenges. We have to make a certain effort to deliberate on fundamental questions about how we want to write European Legal History. Questions need to be asked like: How do we define Europe? Why do we make a categorical distinction between 'Europe' and 'Non-Europe'? Does non-European (legal) history play a role in our texts and analysis? How can we integrate 'global perspectives' in a 'European Legal History'? What could be the methods of a European legal history in a global perspective? – The challenge is even bigger when we consider that our methods of analysing transnational legal history have been developed within this intellectual framework, heavily criticised today. Can we still use concepts, and methods, grounded in the conviction that Europe

2 See on this Dirlik (2002), Mazower (2005), De Baets (2007), Darwin (2009), Sachsenmaier (2011), Borgolte (2012), Iriye (2013).

was a unique legal space, characterized by a basic homogeneity, and clearly different from other areas? How did this vision, and its underlying assumptions, influence our historical reconstruction of 'entangled histories' within Europe, and between European and non-European areas, states, regions?

In this paper, I want to give a brief and critical introduction into the research traditions of European legal history, its foundational assumptions, and its methodological shortcomings. I am drawing on previous work, centred around the question whether and how a European legal history can be conceived today. I do so, because I believe that we need to develop our methods within a critical assessment of our traditions, and the path-dependencies resulting from our own discipline's history.

Three questions are at the centre of the following considerations: Which conception of Europe does 'European Legal History' hold; is it still valid for us today – and how can this tradition be combined with global perspectives on history, especially which conceptual and methodological tools would we need for a 'Legal history in a global perspective'?[3]

I shall proceed in six steps, combining a retrospective and prospective approach. First, I want to reconstruct the self-perception of the discipline of 'European Legal History' and ask for the concept of Europe that is underlying its research today (1). Due to the lack of deliberations on these conceptual questions in contemporary scholarship, I shall try to outline some important moments in the history of the formation of the discipline in post-war Europe (2) and ask for some of the intellectual foundations on which our concept of Europe has been based until today. In other words: I am dedicating myself in these parts to the history of legal historiography on Europe in an attempt to better understand the traditions, or path-dependencies, that guide our steps until today (3).

Having done so, I will look at some of the problems and analytical shortcomings of this tradition. I do not do so because everything that had been done would have been wrong; obviously, this is not the case. On the contrary, in our research, we are building on the important achievements of former generations of legal historians which, by the way, have envisioned a transnational history long before most general historical scholarship have discussed on 'Transnational History'. But it is perhaps even due to this very

3 See on this the introduction to this volume and the contributions in Rechtsgeschichte – Legal History 22 (2014) as well as Letto-Vanamo (2011); Cairns (2012); Duve (2014).

strong founding fathers and their concepts that we need to deliberate on where we can build on their work and where we should better not follow their paths. As a result of this survey, I state a still very powerful binary vision of 'European' and 'Non-European' legal histories and a need for renovation of methodological tools. Thus, we need to try to develop a methodologically reflected transnational history of law which is open for global perspectives and which is dedicating itself to Europe as a global region, as one important legal space, with open borders and many overlapping areas, and as a cultural reference for the world – but not as a preconceived spatial framework for research (4). Following these deliberations, in the final steps I shall present some ideas on how a regional focus on Europe and global perspectives can be combined. I add some brief comments on what could be important starting points for such a legal history of Europe in a transnational or global perspective, developed from a reflexive positionality. At least two of these starting points are intimately related to 'entanglements in legal history': the intention to consider legal history as a constant diachronic and synchronic process of 'translation', and the need to reflect upon the way we are conceiving our 'legal spaces' (5; 6).

1. The concept of 'Europe' in European Legal History

To begin with, let us look at the concept of 'Europe' in European legal history. How does the discipline define its subject, the '*European*' legal history? The survey raises some answers (a), but more questions (b).

a) Obviously, historians and other scholars from humanities have written entire libraries about the formation of Europe, the 'birth' of Europe, the rise and fall of the Occident, often seen as Europe and its north-Atlantic extensions, the West, and what Europe 'really' is. Still, none of these deliberations have lead to a definition, or even a certain consensus on how to define 'Europe' by certain characteristics.[4] Because even if within this broad literature, some authors still regard Europe as the embodiment

4 A survey with further references in Schmale (2010a), (2010b), see also Asbach (2007), (2011), Osterhammel (2004); Hiery (2007), Jaeger (2011). In the broader context of Global History, see Conrad / Randeria (2002); Conrad / Eckert (2007).

of certain values and traditions, continuing to adhere to a more or less essentialist idea of Europe, the vast majority of more recent scholarship employs precisely the opposite approach: For them, 'Europe' is nothing but the result of a constant process of self-definition, mainly derived from the encounter with a Non-European, mostly 'non-civilized' world during the European expansion, and more forcefully in 18th and 19th centuries. Thus, and due to the intense migrations and historical entanglements between European peripheries and their adjunct areas, the historical *Gestalt* of Europe dissolves. Consequently, research is being done on what has been called the 'Europeanization of Europe', i. e. the complex processes of identity-building, constructing institutional or symbolic frameworks, a discourse on being – or not – 'good Europeans' and what makes us different from others. In this context, attention has been paid, not least, to the meta-narratives which helped to create European unity, for example through the fusion of Roman and Jewish-Christian traditions in the late antique world, and the constant references to this 'legacy' in later periods. To put it briefly: Whereas for a long time 'Europe' seemed to be a historical 'reality', nowadays Europe has become, for most western scholars, an open space with flexible borders and pronounced processes of cultural exchange with other regions. It is seen as a cultural reference point for those living in or outside of Europe, a reference being used innocently by some and strategically by others.

However, the picture is different when looking at the more recent literature on European Legal History.[5] Here we barely find any consideration of the problems of defining Europe, or about the constructivist nature of this concept, and its function as a cultural reference point. In most presentations, 'Europe' is simply presumed, usually implicitly, often by reference to its alleged birth in the Middle Ages, and at times by allusion to its contemporary political makeup. Europe, so the widely read *European Legal History* (*Europäische Rechtsgeschichte*) by German legal historian Hans Hattenhauer states, is "*not a geographic, but a historically evolved concept.*"[6] The lack of a conceptual framework for 'European' legal history is rarely expressed as openly as by Uwe Wesel: "*Europe is a geographic space with cultural and political specificity. As regards geography, we can for the time being start with*

5 Hattenhauer (1997), (2004); Schlosser (2012); Bellomo (2005); Grossi (2009); Wesel (2005), (2010); Wieacker (1967), (1985).

6 Hattenhauer (2004), n. 2339.

the present", he writes laconically in his *History of Law in Europe* (*Geschichte des Rechts in Europa*).[7] This way of defining the space of research is close to what some observers call the 'Container-concept' of European history: Just put inside what fits in a predefined space, leaving aside and cutting off ties with what does not fit in.

Obviously, there are references to Europe's flexible borders, to the many grey areas in the picture we are painting, and even warnings against employing essentialist conceptions of Europe. Some, like A. M. Hespanha, speak of the 'European legal culture', an approach that dissolves the description of certain characteristics from their geographical space.[8] Paolo Grossi begins his book *L'Europa del diritto* (2007) with some clarifying remarks on false understandings of Europe, and then concentrates on describing how the geographically defined space 'Europe' was transformed into an area of emergence of legal concepts and practices that later were to become a cultural reference. But despite these views, it seems as if in a more general discourse on 'European Legal Culture', territorially defined spaces are imposing their suggestive force on our images of Europe.

When looked at in more detail, it becomes clear that, in factual terms, a genuinely *'European'* legal history is not – and cannot be – written in a single book. Instead, today we have many legal histories within the space called Europe. In a certain way, the 'Europe' of the books is the stage on which different scenes of the history of law of the western continent are presented. This is already the case given the regional confinement of the books: At some point after the first chapters on Antiquity and the Middle Ages, the perspective usually narrows down to a national level. Many regions are left out: England, Eastern Europe, Scandinavia, Southern, and South-Eastern Europe, they all appear to be 'special cases'. The work usually focuses on the regions already presented in Franz Wieacker's famed image of the torch,[9] i. e. Italy, Belgium, the Netherlands, France, Germany, by the way more or less the same circumscription of the territories we find in Savigny's *History of roman law in the Middle Ages*.

This concentration on a core is all too understandable – to proceed otherwise would be simply impossible in a single work. Only a few authors,

7 Wesel (2010), 3, 11–12.
8 Hespanha (2002)
9 Wieacker (1967), 169.

such as A. M. Hespanha, state explicitly that they are writing a history of '*Europa Continental Centro-Occidental*'. And the temptation to declare the few scenes presented as 'European' and hence somehow representative after all is always present. In the end usually some cultural achievements remain which are proven for a core region and characterized as typically 'European', not least because they form the basis of our contemporary system and thought.

In addition to these general outlines, there are some structural characterizations of 'European legal history'. Recourse is, for example, often taken to 'unity and diversity' as a characteristic feature of European legal history – precisely the *in varietate concordia* is the official motto of the EU. This interplay of unity and diversity in legal history, so characteristic for Europe, has generated, as Reinhard Zimmermann states, "*a scholarly education based on the same sources which permit a rational cross-border discussion and let the different forms of ius commune appear as variations on one and the same theme.*"[10]

b) Of course, all this is correct. And no one would deny that over centuries there has been an intense communication within the space that we call 'Europe'; no one would deny that this intense communication and a series of other factors lead to great cultural achievements, a depth in reasoning about right and wrong and the formation of a stabilized society by rules and institutions, etc. We should and we will keep on doing research on this and often end up doing legal history within the core spaces of the formation of what is being called 'European legal culture'.

However, the problem is not so much the unavoidable and sometimes very productive reductionism of such arguments about 'the characteristics' of European law. The real problem is that most definitions, like many other descriptions, do not achieve what one would expect of a definition: which is to not simply state what *belongs* to the entity analyzed, but also what *does not* belong to it. In other words: Can we not also apply many of the observations made with regard to Europe to other regions – 'unity and diversity', 'a rational cross-border discussion', 'variations on one and the same theme'? And do all parts of Europe really fit the bill to the same degree? Is there not a closer proximity between some parts of Europe and 'Non-Europe' as

10 Zimmermann (2002), 252–253.

between different European regions, for example due to confessional differences, or colonial relationships? And can we really understand 'Europe' as a legal space without considering the imperial dimensions which went far beyond the borders of the continent?

Apart from this, turning to the reference to Europe as the continent that brought us all the cultural and legal achievements, we would have to ask whether it is really fair to draw a purely positive balance, as we usually do. Didn't we proclaim freedom and equality in our realms, and practice racism and discrimination in other parts of our empires? Didn't we pay the bills for our cultural achievements with what we took from those we regarded as 'uncivilized'? Has the same Europe as a continent of freedom not also been the continent of mass-murdering, world-wars, colonialism? Can we separate one from another, cultural achievements from incredible cruelties? -

For these and many other reasons, it must be of special interest to open us for the interaction between imperial centres in Europe and their peripheries. We need to learn more about what once has been called by German Historian W. Reinhard the 'dialectical disappearance of Europe in its expansion'.[11] Many important studies have been published in the last years on these phenomena of reproduction, transplant, adaptation of normativity designed in some places in Western Europe or in the Empires of Western Europe on a global scale.[12] Today, there can be no doubt that a closed concept of Europe as a physical space cannot be maintained as a fruitful analytical category. If we understand that 'Europe' has to be seen as a cultural reference point, the use of this reference will not be restricted to a certain geographical area, less in the age of European expansion. On the contrary, it was important especially outside of Europe.

Yet despite these queries, the specificity of Europe and hence also the possibility of demarcating it from other spaces is generally taken as a given by many legal historians. Consequently, there are still many texts which create the impression that things must evidently be different outside of Europe. In some accounts of European legal history, non-European areas therefore only exist as the 'other' – as a sphere of influence, diffusion or *Wirkungsgeschichte*, as a space for the reception of European legal thought, as

11 Reinhard (2010), 41.

12 See on this the contributions in Rg 22 (2014); for a more systematic perspective, see for example Seckelmann (2013); Amstutz (2013).

an example for the 'not-yet'. This perspective also keeps yielding formulations to the effect that 'European law' had "*spread*" across the globe, that Roman law had "*conquered*" the world – a semantics likely to be employed quite innocently, but which does not only hide sometimes cruel realities, but, from the analytical point of view, reinforces the image of the unity of a European legal culture by juxtaposing 'in-' and 'outside'. In addition, as regards the inside, many differences within Europe are eliminated by internal differentiations (like 'core' and 'periphery'; exceptions, peculiarities, etc.). These differentiations stabilize the binary vision between 'Europe' or 'the West' – and the rest. The same happens, when the reception of 'the' European law is asserted, although usually the norms appropriated originated in Germany, France or Italy. One consequence of this postulation of 'Europe' and its juxtaposition to 'Non-Europe' are statements like those presented some years ago in a prestigious Journal of Comparative Private Law, under the heading '*Europe also includes Latin America*!'.[13] In this text, all regions that had been in contact with the Code Civil or other European civil codes were considered a part of the 'European Legal Families'. If we take a look at the intense transformation which law and legal thought have experienced while being reproduced in different contexts, for example in Latin America after the independencies, we can easily see that these definitions do not help us any further.[14]

That diffusionist statements about the 'Europeanization of the World' might not be politically correct today, is the least relevant objection to be levelled against them. What is more problematic is that they express a widespread analytical impotence as regards the global interconnections, entanglements and translation processes in the field of law and other forms of normativity. This is impotence not only detrimental for our own field, the legal historical research. But it is also a serious default, given that we are living in a world whose key feature in the field of law could precisely be the process of global reproduction of normative options with all the associated phenomena of 'hybridizations'. Thus, the key target of a transnationally renewed *General Jurisprudence* could and should be to deliberate on how this process can be analyzed and, eventually, even be shaped. Legal historians

13 Bucher (2004).

14 See on this for the American case especially Donlan, Parise, Andrés Santos and Zimmermann in this volume.

who have presented so many detailed studies of 'reception' and subsequently also of 'transfer' and 'transplant', could and should actually be experts for these synchronic and diachronic processes of translation of normative thought, of legal practices and institutions into different cultural contexts. We should be able to give an important contribution to these reflections. We should be those who succeed in bridging the often disconnected discourses between (transnational) legal scholarship on the one hand and social and cultural studies which have accumulated an enormous amount of expertise on analytical tools in this field on the other.[15] But is this what we really are: experts for the analysis of synchronic and diachronic processes of (cultural) translations in the field of normativity?

2. The *European movement* of the post-war period

We are not, at least until now. But why is this so? – Let us step back for a moment and ask ourselves why the concept of a 'European legal history' as a closed concept, assuming the congruence of its space with the physical space of the Western European Continent could establish itself so successfully, despite its apparent problems.

Of course, we are used to accept the existence of certain disciplines. But it might be helpful to ask why it was 'Europe' that emerged as the main analytical framework of a transnational legal history in the continental tradition. Why, for example, didn't the European empires write the transnational legal histories of their imperial regions? Or: Why do we have a 'European' legal history and not, for example, one of trading regions? Or: one of linguistic or confessional areas? What is the criterion for organizing our legal historical scholarship within a territory denominated 'Europe'? – A short review of the discipline's history may give us an answer and permit us to recognize our path-dependency in this regard. Many stages on this path are well known, so I will highlight just a few key points.[16]

Looking at the self-description of the discipline, we arrive quickly at a book published in 1947 by the Roman law scholar Paul Koschaker: "*Europa*

15 See on this the introductory article in this volume as well as Duve (2014).
16 For a more comprehensive outline, see Duve (2012).

und das römische Recht" (Europe and the Roman Law).[17] Until today, it is seen as an important starting point for the formation of the discipline. It highlighted the founding role of Roman law for European legal culture, thus establishing a transnational discourse, contrasting it to the national, Germanic discourses of the past decades, in which some of the main actors of the legal historical European movement themselves had actively participated. Roman law which had been a subject of legal research and education for centuries was now presented to be an "*exponent of European culture*". When writing about 'Roman Law', like practically all legal historians of his time, Koschaker was thinking of private law. Inspired by Rome this private law had "*supplied a not inconsiderable building stone in the construction of the entity* […] *we call Europe today*". In Koschaker's analysis, which is strongly guided by Savigny, we very clearly find Europe as an entity formed by legal history – and simultaneously one that forms law.

Koschaker's 1947 assessment – an attempt at a fresh start which was not entirely unproblematic for a number of reasons[18] – found strong resonance in post-war Europe; the *Gedächtnisschrift L'Europa e il Diritto Romano* published in his honour in 1954 demonstrates this impressively. Only a few critical voices were heard, one of them by the Spanish legal philosopher and Roman Law scholar Alvaro D'Ors who criticized the 'Germanism' of this concept and advocated for a Christian universal law.[19] In subsequent years, intense research began into the history of law in Europe, based mainly on the works by writers from Germany and Italy. Many of them participated in the project *Ius Romanum Medii Aevi* (IRMAE) under the direction of Erich Genzmer, who in turn referred to precursors from the interwar period, for example Emil Seckel and others. Nearly all prestigious legal historians of that time were part of this project, also the young Franz Wieacker and Helmut Coing, disciple of the coordinator of the project, Erich Genzmer. In this 'New Savigny', called like this by Genzmer, in his introduction to the project, referring to Savigny's *History of the Roman Law during the Middle Ages*, it was attempted to carry forward legal history research in the spirit of Savigny, while also placing it in a decidedly European context: "*Savigny was certainly a good European, but limited by his conception of the emergence of law*

17 Koschaker (1947).
18 See the earlier book Koschaker (1938); on Koschaker also Giaro (2001).
19 D'Ors (1954).

from the 'Volksgeist' (popular spirit). Since then, we have clearly recognised the need to investigate history, including legal history, in European perspective," Erich Genzmer wrote in the introductory volume of this European project in 1961.[20]

Today we understand more clearly that there was a strong national imprint on this 'European' movement of post-war decades. In the field of legal history it can be clearly derived from a remark by Erich Genzmer, continuing the just cited phrase. There he concluded, quoting one of the big authorities of his time, Ernst Robert Curtius, who had published a highly influential work on the European Literature in the middle ages (*Europäische Literatur und lateinisches Mittelalter*, 1948): "*To borrow a phrase from E. R. Curtius*: *No modern national history can be comprehensible unless viewed as a partial process of European history*". In other words: The European perspective was needed to better understand national history, and the latter continued to be the dominant and guiding perspective. Just as for Curtius and Genzmer, for the post-war generation of jurists, Europe was the *transnational* framework into which, now that political nationalisms had collapsed, legal historians placed their national legal history, associated in many ways with the ideas of *Abendland*, dating from the interwar period and thereafter.[21]

This very complex heritage now fused with the political European movement, itself a response to the immediate past that drew heavily on law. Because despite its economic motives, its political intentions as well as its cultural hopes, many politicians and actors of the European integration process posited law to a very special degree as the key bearer of European unification. Convinced Europeans like Walter Hallstein, first President of the EEC Commission (and a good friend of the Max-Planck-Institute's founder Helmut Coing), regarded law as a central instrument of their political project. Europe was even defined as a 'community of law' (*Rechtsgemeinschaft*) and the new European law, itself a 'culture product', should lend expression to a cultural unity which was assumed to have something like a historical 'existence'. Following this perspective, it was the EU that became the definite form of this long-evolving formation of a European identity, blocked by nationalism for more than 150 years. The "*unity of the continent*", Hallstein wrote in 1969, had "*never entirely expired during a*

20 Genzmer (1961).
21 See on this environment Dingel (2010).

thousand years", describing European integration as "*an organic process which translates a structural unity already existing in nuce in culture, economics and political consciousness for a long time into a definitive political form*".[22] Law thereby was by no means considered as a technical, dry, or instrumental matter – as one might tend to expect today. The language employed by Hallstein and his contemporaries, makes it clear that there were greater dimensions at stake: "*The community is a creation* ['Schöpfung'] *of law. That is the decidedly new development which marks it out from previous attempts to unite Europe. The method employed is neither violence nor subjection but a spiritual, a cultural force: law. The majesty of law is to create what blood and iron could not achieve for centuries.*"[23]

These sentences about Europe resonate – apart from many other things – with a lot of German history; but that is not our subject here. Neither is the history of the European integration process, and the policy of uniting Europe through private law. All this would require a more in-depth analysis. However, I would like to return to the history of the discipline and summarize five aspects which appear to me especially important to its further development:

a) The first refers to the gradual **shift in the time horizon** of legal history research that had taken place.

Since the aim was to understand one's respective *national histories* through a European perspective, scholars felt the need to extend the research program of the *New Savigny* to the threshold of the emergence of 'national' laws. We can see this from the same IRMAE project, where a fifth section was added to Savigny's original program: „*The influences of Roman law and its science on canon law and national law until the end of the 15th century.*" Later works by Helmut Coing and many other scholars of his own and subsequent generations (for example, Raoul van Caenegem, Peter Stein, Manlio Bellomo, Reinhard Zimmermann, Randall Lesaffer, to cite but a few) extended the studies successively up to the period of codification, i. e. the heyday of juridical nationalism and beyond.

This had several important consequences. One is that the development presented was, indeed, in a way teleological – from the origins of learned

22 Hallstein (1969), 14.
23 Hallstein (1969), 33.

law to the nation, and then Europe. In other words: having started and concentrated their work on medieval legal history, Europeans extended the time period of their observations, covering the modern era until the nineteenth century legal systems of Europe.

b) A second and related observation refers to the **unchanged territorial scope**. In contrast to the gradual shift in the temporal framework, the spatial dimension remained stable. This also had important consequences: European expansion, which began to influence dramatically European history since the end of the fifteenth century and made Europe a world economic and political centre for centuries, as well as the associated changes in the conditions of communication and their impact on law, remained entirely unconsidered in this European legal history. The history of European law, reaching until the nineteenth century, was still being written in the same spatial framework that had been drawn by Savigny for the Middle Ages. Even if it was extended to non-European areas, as in the case of Reinhard Zimmermann and his intense work on *Mixed Jurisdictions*, or Sandro Schipani, on Latin America, it followed a preconception of somehow divided areas whose systems were colliding and focused on the presence or transformations of learned law and its products in other areas of the world.

c) Thirdly, the perspective of all scholarship was geared towards **unity and uniformity**, if only due to the circumstances of the time – we refer only to Hallstein's statement. It was unity and uniformity which one believed had existed at some point and had then been lost – and that had now to be regained by European unification. Thus, legal historical research was not so much interested in the divergences but rather in the convergences, and the factors that caused and stimulated this convergence. European Legal History became, at least in its beginnings, a history of unification and harmonization of law, later a history of how divergences could be integrated.

d) Fourthly, the choice of Savigny's program as the starting point for European Legal History implied the takeover of what subsequent generations considered to be (or made out of, or selected from) Historical School's **concept of law**.

This is not the place to judge on whether, how and to what extent Savigny's concept of law was transformed by later scholarship and how this related to

later 19th century state-building and positivism. Because at the time of the formation of the discipline after WW II, refering to 'Savigny's legacy' automatically meant to concentrate on learned law from the secular realm. This permitted writing legal history from the 12th to the 19th century as a history of something like a 'scientification', a 'transformation of law through science' ('*Verwissenschaftlichung*'). In this path, scholars from the field of legal history privileged civil law, written law and law of the jurists. Thus, they concentrated on one very important, but still just *one* part of the normative universe that we can observe in history. Due to this, European Legal History was conceived by many legal scholars as a history of dogmatic innovations, institutions and ideas in the geographical (and also, for some: cultural) core of the continent. In a certain contrast to what Savigny had always demanded, not too much attention was paid to the cultural backgrounds of this law, its use in practice, its implementation, and its relation and interaction with other forms of normative thought and practices. There was hardly any attention being paid to normativity stemming from the realm of religion, whose marginalization in our legal historical perspective is another consequence of the overwhelming influence of (later) 19th centuries' intellectual legacy.

This might seem stunning, because if there is one special feature of Historical School's thought it might be seen in its deep understanding of the evolutionary character of law. Founding fathers of sociological jurisprudence like the actually highly reappraised Eugen Ehrlich are deeply indebted with Historical School's thought, despite of their heavy criticism on Savigny. Sociological jurisprudence at the beginning of 20th century drew heavily on legal history. But due to the complex history of differentiation in legal science around 1900 there turned out to be a divide between those scholars who paid attention to law as part of a broader social phenomena on one hand and those who concentrated on the history of institutions and juridical dogmatic, on the other. Without being too schematic, scholars favouring the former merged to the new sociology of law whereas European legal history is a fruit from the latter branch, leading away from sociological, cultural and evolutionary perspectives.

By the way, since late 19th century, even many canon lawyers had adopted a number of the patterns established in Historical School and its subsequent transformations, such as the finally emerging positivist concept of law, the nearly exclusive concentration on medieval sources, the marginalizing of moral theology, the leaving aside of symbolic dimensions and other forms of

normativity, considering them 'non-juridical' and thus not worth studying. Notwithstanding the object of their research, the 'Catholic' Canon Law that claimed universality and had virtually global dimensions, the vast majority of legal historians dedicated to history of Canon Law also shared the general indifference towards non-European areas, underestimating their importance for the history of Canon Law and normative thought and practices. There was no sensibility towards the necessity of defining analytical concepts and themes of interest for a history of Canon Law as part of a broad field of religious normativity and not from a purely European point of view.

e) Fifth, European legal history emerged from a tradition built on the Historical School with its concentration on the **dogmatic of civil law** and its later transformation to a constructive jurisprudence that was directed towards working on a civil code. This observation seems obvious, but the fact is never the less remarkable, because it directed the efforts of later scholars towards civil law dogmatic, institutions, codifications. It made us concentrate on one aspect of legal history, marginalizing other fields as history of public law, criminal law, etc.

3. Methodological foundations of European legal history: Weber and Toynbee?

However, it would simplistic to explain the concentration of European legal history on the continent simply by the path-dependence of a scientific community which started from a (too) narrow concept of law, circumscribed to a too narrow territory, proceeded teleologically through the centuries to the nation state and then ended up in the European integration, supplemented by a habitual Eurocentrism, perhaps also some political opportunism in the years of starting the political project of European integration.

There is also a methodological and theoretical background for shaping 'Europe' as a somehow autonomous field of study. Let me just point out two of the presumably most influential 'founding fathers' of European legal history as a discipline, Helmut Coing and Franz Wieacker, both of German origin. Both had, indeed, considered their concept of a European (Coing) or 'European-occidental' (Wieacker) legal history very thoroughly.

a) This applies, first of all, to Franz Wieacker. In his highly influential work *History of Private Law in Europe* (*Privatrechtsgeschichte der Neuzeit*, 1952, 2nd ed. 1967), translated into more than ten languages, we can see clearly how Wieacker had internalized basic methodological and historical assumptions of Max Weber. If we compare the 'types of legal thought' in Weber – "*practical, empirical, casuistic and close to life*" versus "*theoretical, systematic, generalising, abstract*" – we find in them, indeed, a basic pattern of Wieacker's historic narrative. We even find the tragic element, deriving from the loss of proximity of law to life already during the late imperial period of Roman law and then the increasingly strong permeation of law by rationally trained specialized expertise, in an impressive parallel in both authors. This does not astonish, considering the strong influence from the same authors in the field of legal history that both, Weber and Wieacker, had been processing: Weber in the intense legal historical work of his early years and his reception of Hermann Kantorowicz or Fritz Pringsheim; and Wieacker, as a young scholar working on fields very much related to Max Weber's initial research, reading Weber much earlier and more intensively than many of his contemporaries, and subjected to the same intellectual influences coming from the field of Roman law as Weber.

Wieacker's concept of Europe very clearly expresses this influence of Weber's thought about the Occident. For Wieacker, Europe was the bearer of a comprehensive rationalization process which distinguished this continent from other world regions categorically – in, indeed, a tragic manner. In a key passage of his second edition (which was massively de-Germanized compared to the first edition in this point), we find a panorama that could also have been written by Weber: "*The glossators first learned from the great Roman jurists the art not to decide the vital conflicts of human life under the spell of irrational life habits or violence, but by intellectual discussion of the autonomous juridical problem and under a general rule derived from it. This new tenet of the jurist juridified and rationalised public life in Europe for ever; it ensured that, of all cultures in the world, Europe's became the only legalistic one. By finding a rational principle which replaced the violent settlement of human conflicts at least within states, jurisprudence created one of the essential preconditions for the growth of material culture, especially the art of administration, the rational economic society and even the technical domination of nature in the modern era.*"[24]

24 Wieacker (1995), 45.

Many years later Wieacker stressed three features as characteristic of the "*European-occidental*" legal culture in a lecture in Helsinki: personalism, legalism, intellectualism – themselves to be explained, as he stated, by three "*European*" phenomena. Precisely by their "*continuous interaction*" they constitute the specific character of 'occidental' legal culture.[25] Wieacker therefore defines Europe – in entirely Weberian mould – by an ensemble of ideal types which is juxtaposed consciously and categorically to other cultures. In Wieacker, as in Weber, we therefore find a construction based on many premises of a cultural unity demarcated sharply from others and largely contiguous with a geographic territory in whose centre Europe is located. Consequently, much of the criticism about the Weberian Occidentalism can and should be applied to Wieacker's construction of 'Europe' as an ideal type that (as so often also in Weber) shifted from an ideal type to more 'essentialist' ways of being.

To sum up: Through Wieacker there was a strong impact of Weberian thought – or of the schools of thought which nurtured Weber and Wieacker – on the conceptual framework of European Legal history. Wieacker's conviction that it was the same 'rationalization' of law which had led to the tragic loss of proximity of law to life made him place the history of learned law into the centre of the picture he painted of European legal history. In a way, it was precisely his profound understanding of the indissolubility of law from society and life, and his despair about the lost connection between law and life in the occidental tradition that made him write his legal history as a legal history of learned law.[26]

b) The second conceptualization of a European legal history, which is perhaps even more closely associated internationally with the idea of 'European Legal History', is that by Helmut Coing, founding director of the Max Planck Institute for European Legal History in Frankfurt am Main. It is very different from the Wieacker-Weberian concept, but lead to some similar consequences. Less concentrated on the history of learned law as a

25 Wieacker (1985), 185–189.

26 On Wieacker see the contribution of Kroppenberg/Lindner in this volume as well as the contributions in Behrends/Schumann (2010), especially Dilcher (2010). Recently, Winkler (2014) has worked out in depth the motives and influences on Wieacker.

way of conceiving law, Coing wrote a history of institutions and dogmatic as the results of this particular European way of conceiving law.[27]

The defining experience for Coing was probably his reading of the already named Ernst Robert Curtius, to whom Coing's mentor Genzmer had referred in the introduction to IRMAE. Curtius' '*Europäische Literatur und lateinisches Mittelalter*' (European Literature and the Late Middle Ages) which he had already started to write in 1932 shattered by the "*self-surrender of German culture*" and which was printed in 1948, had impressed Coing for a range of reasons. It may thus also have been the reading of Curtius that suggested to Coing the reading of Arnold Toynbee who became pivotal to Coing's foundation of European private law history. For Curtius, Toynbee's theory of history – "*the greatest achievement in historical thought of our time*"[28] – was the conceptual foundation of his history of literature, and in a review of Curtius, Coing wrote that it was urgently to be desired that a legal history could at some point be placed beside his history of literature.[29]

Fifteen years later, the time had arrived and in 1967 Coing published a programmatic opening essay in the Institute's new journal *Ius Commune* entitled: *Die europäische Privatrechtsgeschichte der neueren Zeit als einheitliches Forschungsgebiet* (European Private Law History of the Modern Era as a Uniform Field of Study).[30] In this article, Coing took Toynbee's criteria for an "*intelligible field of study*" and examind whether the History of Private Law in Europe fulfilled Toynbee's criteria. The result was positive, also because Coing defined *intelligible fields of study* as those areas of historical development which are 'largely intelligible in and out of itself'. In the end, what Coing called an '*einheitliches Forschungsgebiet*' in the title of his programmatic article, was nothing but an '*intelligible field of study*'.

Toynbee's definition was especially convincing to Coing, due to his own legal philosophical beliefs. Because Coing had a distinct conviction in natural law-tradition that made him hope to be able to recognize through historical work certain universal values, a metaphysical background underlying also Toynbee's cultural morphology. In the case of Coing, this ontological foundation might also have had certain consequences for the

27 See on this extensively Duve (2012).
28 Curtius (1963 [1948]), 16.
29 Coing (1982 [1952]).
30 Coing (1967).

lack of attention to the spatial dimension of legal history: Because if you believe in the existence of 'universals', they might be more visible in some parts of the world than others, but they will, sooner or later, appear everywhere; and if you wish to have something like a privileged observatory, you just have to take a look at the learned law.

For our purpose, it might be sufficient to highlight, with a certain generalization, that if Wieacker took Weber as his methodological starting point, for Coing it was his (by the way: very peculiar, and only partial) reading of Toynbee. Both theoretical foundations made them see Europe as a space that had created a legal culture categorically different from the rest of the world. Obviously, Weber and Toynbee were not the only theoretical fundaments European legal historical scholarship relied upon, and it has to be asked how big the differences were between what Wieacker and Coing read and what Weber and Toynbee meant; still, both proved to be influential for two highly influential authors, whose works are still being read and translated all over the world.

4. Problems, analytical costs and wasted opportunities

Let us now return to the present. Can we still build on this tradition, its methodological foundations and the concepts established on their grounds?

I believe we cannot. Without being able to address all objections to these conceptions of a 'European-occidental' or 'European' legal history, or to relate the entire discipline's history here, I wish to comment on some problems and costs of having simply continued along this path, initiated after WW II by Coing and Wieacker together with European colleagues and their respective schools.

a) The gradual shift in the time horizon without modifications of the spatial dimension (see on this 2a, b) and the preconception that Europe could be understood in and out of itself (see on this 3) has led, first of all, to a **spatial framework of research which is simply inadequate** for many epochs and many subject matters of research in the legal history of Europe; not for all of them – but for many.

There are, of course, many research questions which might be dealt with sufficiently within the local, national, or even regional European space. Still,

many of them could benefit in some way or the other from global perspectives, integrating comparative approaches or concepts stemming from other research traditions. But this is not the point here. Because obviously there are many fields of research for which it is simply impossible to lack perspectives that transcend Europe, or might even be 'global'.

Let us just think of the early modern empires and their non-European territories.[31] They were of eminent importance to the development of cultural formations within the whole world. They transcend, cross and dissect the boundaries of Europe. Looking, for example, at the Spanish monarchy, we can find far greater legal historical proximity between Mexico, Madrid, and Manila in many fields than, let us say, between Madrid and Merseburg. European legal history, however, treats Madrid virtually as a European periphery. If we add the Portuguese crown which laid a network across the coastal regions of four continents with its trading posts, the intermeshing of European and non-European regions becomes even clearer – right up to the fact that confounds all categories, namely that, following Napoleon's assault on Portugal, the Portuguese crown transferred its political centre to what later became the empire of Brazil.

But even leaving aside this historical episode, continuous cultural translation processes took place in all trade centres and along trade and sea route lines. The 'printing revolution' and the changes in communication techniques, migration and all other factors that transformed the modern world, lead to a dramatic change in the material conditions of judging, lawmaking or exercising legal scholarship and profession all over the world: Normative thought and practices from one part of Europe were now imitated, reproduced or newly created under very different conditions in many parts of the world; conditions which were at times perhaps even more similar to those in a city in Europe than to those in, for example, rural regions on the same continent.

Or take as an example the normative thought developed within the School of Salamanca. Obviously, this intellectual movement and its huge impact on later European legal history could not be understood without its global dimensions. Today we understand, not least because of M. Koskenniemi's work, that critical questions have to be asked about, for example, the

31 See on this the contributions in this volume and, for example, Hespanha (2013), Benton/Ross (2013).

role the School of Salamanca played in the establishment of the world-order, and how later traditions of international law built on these foundations.[32]

In brief: If we want to reconstruct the legal history of certain European regions, or even intellectual movements that influenced Europe as a whole, we cannot do so without taking account of the imperial territories of European monarchies, and we cannot do so without looking at later 'informal imperialism' either. We cannot ignore the changing significance of space for scholarship, due to the transformations in the conditions for communication in 'modern' world, expanding the realm of 'European' law beyond the continent, and making it possible to chose 'Europe' as a cultural reference even far beyond the borders of the continent.

b) A priori determination of space (3) and the paradigmatic idea of 'unity' and 'uniformity' (2c), however, not only yield a territory that is inappropriate in a number of aspects for historical research. It also **distracts us from the fundamental question of how we should actually define legal spaces**, or in other words how we can map today's and the past's world of law.

Again, even a cursory look at early modern empires shows that it may indeed not be useful to abide by territorial concepts of space in our research, usually even guided by the ordering of the world into homogenous areas which originate in the world of the fictitious authority of nation states. Would other frames of reference, like point grids, for example of *global cities*, settlement centres, and mission stations, or even networks with nodes in the harbour and trading cities perhaps not be more adequate frameworks for research? Do we have to concentrate on secular civil law to (re)construct our traditions? Or could other frames of reference which are no longer defined by territory but by types guide our research? Our 'container-concept' of legal history in Europe saves us from asking ourselves these productive questions – by the way questions which might be seen as pivotal for today's general jurisprudence concentrated on law in a diverse and global world.

c) Continued adherence to the narrow concept of law later generations isolated from the German Historical School's initially very broad theories

32 Koskenniemi (2001), (2011).

about law (2d) leads to **a reductionist concept of law** and makes us exclude a whole range of normative dimensions in our own history.

The focus on secular learned law and ultimately on the history of legal scholarship has turned out to marginalize and finally exclude all other forms of normativities from our historiography. Just think of the overwhelming importance of Moral Theology, as a normative order that might have been much more forceful in certain historical settings than any kind of 'state law'; or of other modes of normativity that tended to guide people's perceptions of right and wrong, good and bad. We have cut these non-juridical spheres off from our legal historian's world view for a long time.

This is bad for our own historiographical work, because we have reconstructed only a small part of the normative universe, taking it as a whole. But it also impedes us fruitful comparison with other regions. Because if we take the special concept of law as secular learned law and its later products (codifications) as a starting point for legal historical studies, we obviously can only state that this specialty of certain European legal histories might not be found to the same extent in other legal cultures. This is not really a remarkable finding: Outside, the world is different. We will perhaps see their 'diffusion' in other areas, but would not really understand too much about their real significance because we often lack knowledge about the normative universe these parts of the law were integrated. But these other spheres often are basically non-juridical, or at least not 'secular-learned-law'. Thus, we are not used to analyzing them, do not even consider them as relevant, and leave them out. The result is a disproportionate picture of 'reception' of 'European law' all over the world, which sometimes has been reinforced by non-European legal historians keen to discover and perhaps even emphasize 'European' elements in their own legal traditions, due to the positive connotation this gave to their own history in a time when being part of 'European legal culture' was presented as being part of the 'civilized nations'.

Overcoming this narrow concept of law and searching for a conceptual framework that permits us to compare legal histories not from the European categories, but from a shared '*tertium comparationis*', would not only render comparative studies more fruitful. More attention for the non-juridical or non-learned secular-law world is also interesting for another reason: European legal history offers a lot of insights into the complex constellations between different layers of normativity, stemming from secular and religious authorities, a key issue in today's scholarship. But this heritage of normative

pluralism has not been sufficiently introduced into the general debates on our historical past. If there is one important message in Postcolonial studies, or Global History, for Legal history, it lies in this emancipation from the nationally or regionally bound analytical categories which constrain our research.

d) The narrow concept of law we adopted as the underlying concept of European legal history, the focus on unity (2c, d) and the assumptions underlying this (3) also mean that we construct a **distorted image of European legal history** by looking at factors about whose real historical importance we know little about. Take the often discussed 'circulation of juridical knowledge' as an example. It is, of course, important to know which institutions of learned law tradition existed in which laws, and which books circulated. This has given and will give us important insights into the formation of different legal spaces within Europe. We should not weaken in our efforts to know about this. But we also have to ask whether the knowledge stored in them – usually 'expert knowledge' – was really activated. By whom, when and in which way? In which context, and interplay with other normative orders?

e) The concentration on Europe – and perhaps also the strong 'German' imprint on European Legal History – (3) as well as the reductionist concept of law (2c) and the concentration on civil law and dogmatic jurisprudence (2e) lead to a certain **intellectual isolationism** because they made us loose connection with the ongoing debates on Postcolonial perspectives of European history and enshrined us in Eurocentric perspectives.

This has cut us off from innovative methodological debates. For a long time, we have reconstructed our discipline's histories without taking into account the functionality of law for early modern or modern imperialism. It also endangers us to construct our ideas of Europe on ideas about non-European worlds which are outdated and do not respond to the results of advanced scholarship. It prevents us from applying fruitful analytical categories taken from the debates going on in other areas, and reinforces Eurocentric perspectives with all their intellectual constraints and political costs. The certain isolation from these discourses might be especially strong in the case of German scholarly traditions, due to the fact that German legal historical tradition has never been very much exposed to the necessity of

dealing with Germany's colonial past. Italian, Portuguese, Spanish and other legal histories have integrated these perspectives into their national historiographies, yet this did not have too many consequences on a 'European' level.

f) The predetermination of a largely closed space focused on the continent, the concentration on similarities and uniformity and on dogmatic jurisprudence, leaving aside the reflection on the evolution of law (3, 2d, e) also **divert us from legal theoretical discourses on how to construct legitimacy** in a world marked by globalization.

Let us think of the intensive debates about the historical process of the universalization of norms, as a means of European interests, and the subsequent 'Europeanization of the world' which is being discussed intensely, especially in intercultural dialogue. Today, legal theory is intensely debating the existence of a 'universal code of legality', about historically formed 'levels of law', about processes of sedimentation in a multi-levelled world of law. But are these views on the preconditions of the emergence of a 'global law' convincing? Can we speak of processes of 'sedimentation'? What ideas of historical communication about law lie beyond these models? – If we confine our work to the history of law on the continent, and do not enter into reconstructing the processes of global communication about normativity, we will not be able to participate in these discourses.

g) The predetermination of a largely closed space focused on the continent, the concentration on similarities and on uniformity, the diffusionist tendencies, some underlying philosophical ideas about universals and the exclusive concentration on dogmatic (2d, 3) **distract us from searching for adequate methods for reconstructing intercultural encounters or global knowledge creation in the field of normativity.** How do we capture and analyze them?

History of science has given us important insights into the mechanism of 'global knowledge creation' which could be fruitfully applied or adapted to the field of legal scholarship and the transmission of juridical knowledge.[33] Today, many jurists attempt to understand the processes of the emergence of normative orders by mechanisms of reproduction, normative

33 Renn (2014).

entanglements, hybridization, *méttissage* etc.[34] Legal historians find here a rich field for research and also an important task of contributing to the basic research in law, if they were willing to engage in a research that privileges these perspectives, working towards an epistemology of law in the process of global cultural translation. Again: To do so, we have to open the field of observation, and obviously, seek a well-balanced interdisciplinary approach that does not consider 'law' as something categorically different from other fields of cultural production, but as one *modus* of normativity.

h) Finally, the tradition of European legal history has tended to reduce the legacy of Historical School to its functionality for the dogmatic of Civil law, its history and institutions, and their results in the codification movements of 19th and 20th century, **losing the connection with the meta-discourse on the evolution of law** (see 2e).

But in this fundamental reasoning on the evolution of normativity is an important heritage of Historical School and subsequent jurisprudence, like sociology of law. Obviously, reflection on why the law became the way it was had been continued also by those who worked on European legal history. But as far as I can see, most of them limited themselves to explaining the historicity of law and the possibility of drawing normative conclusions from empirical studies relying on their respective legal philosophical convictions, stemming from natural law traditions, phenomenology, neo-kantianism, etc. During large parts of 20th century, most legal historians were simply convinced that 'somehow' time had an impact on the emergence of good solutions for practical juridical problems, but did not work on the theory why this might be the case. They wrote on the '*Volksgeist*' and what Savigny might have meant with this, but very few legal historical scholars working in the field of European legal history have entered into a 'meta-discourse' on how to think about 'evolution of law' once the underlying ontological beliefs of Historical School and many of its followers were shattered. In a way, Helmut Coing did so in his legal-philosophical work, but he is merely applying his natural-law philosophy. Some of those who gave incentives to this meta-discourse – such as 'early' Uwe Wesel, or former Frankfurt Max-Planck-Institute's director Marie Theres Fögen – were even passionately

34 See on this especially Donlan in this volume; also Donlan (2015), Amstutz (2013).

opposed to what had become the leading tendencies of 'European legal history'. Unfortunately, the result has not been a constructive debate, but merely a closure of European legal history towards these postulates, and vice versa. Today, we are facing the necessity and also the possibility of entering into a more calm reflection on the logics of historical transformation.

5. Legal spaces, multinormativity, translation and conflict – starting points for a European legal history in a global perspective

This leads me to the question on how we can respond to this situation of great challenges and opportunities for legal historical research outlined above – and the parallel need for methodological and conceptual innovations.

I advocate for a *Legal History in a Global Perspective* which does not deny its positionality, which should cultivate regional expertise and traditions and has to be carried out in structures that respect disciplinary logics. It does not have to be *European,* but it will need its starting point in a certain area which would, in our case, naturally be Europe (a). This (*European*) *Legal History in a Global Perspective* should reflect on some basic categories of its method. It could do so by reflecting on some core questions, as starting points. These starting points are, obviously, not exhaustive and deliberately chosen to counterbalance some shortcomings of our research tradition analysed above. They are not 'groundbreaking' new, either. On the contrary, they address central preoccupations of current debates in social science, cultural studies, and transnational jurisprudence. Thus, they may help to integrate legal historian's research into the interdisciplinary and virtually global discourse on normativity that is emerging, linking legal historical research with other disciplines' knowledge, stimulating interdisciplinary exchange and creating channels of communication (b).

a) In view of the high analytical costs and the lost opportunities outlined above, we have to leave the path of *a priori* presumption of a geographic area for our transnational research. Instead, we should seek to develop a legal history oriented towards (in the widest sense) transnational spaces, which can also result in the determination of respectively flexible, even fluid legal areas. The potential area of such a legal history would and should ultimately be global.

But, to prevent a common misunderstanding: This does *not* imply to write a Universal or World history of law. This would be something completely different. 'Global perspectives' mean to envision a legal history that is able to establish new perspectives, either through opening for different analytical concepts or by fusing them with the own tradition, by tracing worldwide entanglements or by designing comparative frameworks which can shed light on unexpected parallel historical evolutions.

Obviously, there are some fields where 'global perspectives' are indispensible and others where they might not be so fruitful. Definitely, the history of early modern empires, the Catholic Church and their normative ideas and practices, or phenomena like, for example, the School of Salamanca are fields that need to integrate global perspectives. Not less the history of the 'Europeanization of Europe', the history of international law, the history of globalization of law, the history of labour law, the history of industrial law, the history of commercial law, the formation of scholarly communities and their practices, the history of codification in 19th century … All these can benefit from or cannot be written without global perspectives. Still, this is only a random selection of potential topics, some of them now being studied more forcefully.

Such a legal history in global perspective will always need to have, as a basic condition, a clearly disciplinary framework. Without this, it cannot respond to the disciplinary logics, resulting in a loss of quality. Interdisciplinary communication needs disciplinary knowledge, and we should insist on this. At the same time, a European legal history in global perspective will rely heavily on research carried out in area studies, like those on 'Latin America', 'Africa', or 'Asia'. These Area Studies and the regional specialization of disciplines like 'European Legal History' are indispensable for studying a region worthwhile to be studied as such, for example as the result of a historical process of regional integration, like in the case of Europe. Regional expertise is also necessary as an institutional framework for producing the essential historical, philological or other expertise and providing it to those who do comparative or global research. Regional expertise thus creates the preconditions for a fruitful disciplinary, but also for transnational, transregional or even 'global' research. It also contributes to cultivating certain research traditions stemming from the specific cultural background. The latter seems a very important point to me: In an age of globalization of research, and of a certain tendency to impose and adopt Anglo-American

scholarly practices, it is ever more important to preserve and cultivate different canons and concepts, to safeguard and promote epistemic plurality.

To sum up: We need reflexive positionality, disciplinary frameworks, scholarly expertise on areas, and open-mindedness for global perspectives. What we do not need – and this has been the case for too long – is intellectual isolationism.

b) But what are the concepts we need to reflect upon? – Four aspects seem of special importance to me.

(1) A first and crucial starting point is to gain more clarity about the problem of the formation of **'Legal Spaces'**.

These have to be the result, not the constraint of our research.[35] Legal spaces can thereby only be dimensioned by reference to the respective historical phenomenon and must accordingly be designed flexibly. They may – as in the case of the Spanish monarchy, for example – be bound to imperial regions. But they may also – as in the case of Canon Law and the normative thought of moral theological provenance in early modern period – extend across political borders. No less complex are legal spaces which did not form because of imperial interconnection, but through a specific, often coincidental or temporary exchange – for example in the field of certain trading networks which generate rules for the traffic of goods, or of discourse communities which are observable in Europe in the nineteenth and twentieth century, between southern European and Latin American countries or in other regions. It should be a particularly important task for legal history research to reflect on this formation of legal spaces connected with increasingly intensive communication processes, investigate different area concepts and make them productive for legal history. By doing so, we cannot only acquire greater knowledge about specific historical formations, but also about the increasingly important regionalization processes of normativity, about appropriation and imitation and about the integration of local and non-local normativity. These are fundamental concerns also for contemporary jurisprudence.

(2) A second starting point is that we need critical reflection on the concept of 'law' that we are employing in order to structure our analysis. As

35 See on this Sachsenmaier (2010a), (2010b); Benda-Beckmann/Benda-Beckmann (2009b), Bavinck (2009).

mentioned above, it is quite useless to compare legal traditions taking our own past's concepts and applying them to other areas, leading us to the conclusion that outside world is different. We need 'transcultural' analytical concepts of normativity. **'Multinormativity'** could serve as an appropriate term for these attempts at understanding law in the environment of other *modes* of normativity not structured by our idea of law.

How can we generate this 'transcultural' or even 'transepochal' conceptual framework? We will find it neither in a religious, philosophical nor in a juridical definition, nor in endless debates about 'the' concept of law in certain historical periods. What we need is an empirical approach that is not developed from the perspective of (western, learned or whatever) law, but apt for intercultural communication on normativity.[36]

In recent studies on transnational law, there has been a growing sensibility for the necessity of giving up the ultimately law-focused epistemological mechanism still at work. The need to do so has been pointed out for a long time by ethnology and sociology. Since decades, different ways of approaching legal pluralism are being debated with a wide array of suggestions on how to create categories. Several recent attempts at empirical-phenomenological and non-conclusive descriptions in the field of normativity, characterized by a certain distance from 'legal pluralism' seem especially inspiring.

(3) Looking at transnational contexts, we need a methodology which permits us to better understand and reconstruct the processes of (re)production of normativity. We need this not only for global historical perspectives in imperial areas but also for purely local legal history studies in any location. I suggest opening us for the method discussed and developed under the label of **'Cultural Translation'**.[37]

In transnational legal scholarship, processes of appropriation and acculturation of normativity in areas different from those where the normativity generated have usually been discussed as 'reception', 'transplants' or 'transfers'. These three terms have considerable premises and are usually also polysemous. Above all, they are not operational: They promise explanations, but only provide descriptions. They also have lost nearly completely contact

36 See on this broad field Twining (2009), Tamanaha (2010); Berman (2009), (2012); Donlan (2015).

37 See on this concept Burke (2007), (2009a), (2009b), (2012); Bassnett (1998).

with the professional analysis of comparable processes in cultural studies. In the intense debates on cultural transfer during recent decades a number of approaches were developed that could prove to be very fruitful for legal history. At the moment, there is even an inflation of concepts: hybridity, *métissage*, appropriation, to name but a few. But the name is less important than the heuristic potential, and few of them will survive.

For legal history in the early modern and modern period, the concepts discussed under the heading of Cultural translation could be especially helpful. Even if one might be mistrusting the fashionable discourses promoting these perspectives, and even if one does not wish to regard all cultural production directly as a translation problem, it should be evident that, due to the linguistic constitution of our subject 'normativity', a professional approach is indispensable which takes the findings of linguistic and cultural studies seriously. This approach must even play a central role where the investigation of transcultural contexts is concerned. Looking at lawmaking, judging, or writing law books as a mode of translation (independently from the fact whether there is a translation from one language into the other, or whether it is just a translation by the person who is acting within the same language system) compels us to pay special attention to social practices, to knowledge and the concrete conditions of these translation processes. The analysis necessarily leads to the pragmatic and, above all, institutional contexts as well as to the mediality in which 'law' as a system of meaning is materialized. Thus, to focus on law as translation helps us to counterbalance the historical priority given to the 'object' of reception and to the 'sender'. Furthermore it replaces this sender-centrism by privileging the local conditions in the 'receiving' culture, i. e. the conditions of recreation of potentially global juridical knowledge under local conditions ('globalizations'). And it forces us to open our analysis to those methods that have been developed in cultural anthropology, linguistics, cultural studies and social sciences to understand the pragmatic contexts of human modes of producing meaningful symbols. Because obviously, 'Cultural Translation' is not limited to lingual translation.

(4) This leads us directly to the fourth point: Whenever possible, we should privilege a legal history that focuses on local practice, especially on **Conflict**.

There are many good reasons for this: First, we would try to counterbalance the longstanding privileging of normative options, always tending

to forget their selection in practice. Second, we would try to counterbalance the longstanding privileging of learned law, and be more aware of commonplace legal knowledge, trying to understand how categories of learned law formed the minds, ideas, concepts and practices, but look on them through the eyes of practice. Third, different procedures of conflict resolution often produce sources reaching far into everyday local life and provide us with the opportunity to observe the available normative options and their activation. Looking at conflicts thereby gives us the opportunity of discovering the *living law* and at the same time draws our attention to extra-legal framings, especially important for the formation of law, to the accumulated knowledge of the communication community, their implicit understandings, i. e. to many factors that have been identified as crucial elements for an analysis of law in sociological and legal anthropology, or in culturally sensitive legal theory.

6. Conclusion

To summarize, I believe that European legal history needs to deliberate on the way we construct the spatial framework for our research without denying our positionality. In a way, we need to de-Germanize research traditions, freeing ourselves in some aspects from constraints imposed by the tradition, heavily influenced by German authors and still following the paths of a scholarship whose intellectual categories are formed by patterns stemming from medievalist's concepts on legal history. Emancipating ourselves from these bonds also means distancing us from the idea that Europe is an evident spatial framework for our research. It is not ('Legal Spaces').

Within this endeavour we need to maintain disciplinary identities and their institutional frameworks, logics, revenue-systems etc. At the same time, we have to open for intra- and interdisciplinary discourse, introducing productive analytical tools into our research and starting a joint reflection on some basic categories of transnational jurisprudence. In this context, we need to find concepts and a vocabulary to address normative plurality ('Multinormativity'), we need to understand the communication about law as a continuous processes of cultural translation ('Translation') and it would be important to choose concrete conflicts as a starting point, whenever possible ('Conflict'). In the best case, we end up with a legal history that

combines local studies in different areas, analyzes them with concepts and a vocabulary apt for intercultural communication and tries to integrate its results into a global dialogue on normativity. Again, this does not mean to study everything and everywhere. Good 'Global history' is by no means *total* history, but the combination of local histories, open for global perspectives.

None of that is groundbreaking new. 'Global perspectives' have been introduced in legal history without naming it like this before. Still, writing legal history in a global perspective implies a certain change of habits, reflection on method and theory, and solid work on sources with the corresponding skills and knowledge in different areas. There is no Global History without local histories, and it might even prove that opening for global perspectives even strengthens the local dimension. Putting this in practice, we might make a humble contribution to the emerging field of Transnational General Jurisprudence, to fundamental studies on law, to Global History, and, not least, to a legal history focusing on Europe as a global region, with its treasure of juridical experiences to be salvaged. Because even if 'Europe' might be a cultural reference point, the normative orders that emerged in this space of communication were reality, as theory or as practice. This historical reality influences our way of conceiving normativity until today and might even offer important insights into the evolution of law for the globalized world. It might even be important for the emerging legal scholarship on Transnational law, deeply in need of tools for better understanding the entangled normative orders.

Bibliography

Amstutz, Marc (2013), Métissage: On the Form of Law in World Society, in: Zeitschrift für vergleichende Rechtswissenschaft 112, 336–360

Armitage, David (2007), The Declaration of Independence: A Global History, Cambridge

Asbach, Olaf (2007), Konstruktionen einer politischen Identität Europas. Dimensionen und Fallstricke eines Diskurses zwischen Wissenschaft und Politik, in: Baumgärtner, Ingrid, Claudia Brinker-von der Heide et al. (eds.), Nation – Europa – Welt. Identitätsentwürfe vom Mittelalter bis 1800, Frankfurt am Main, 281–295

Asbach, Olaf (2011), Europa – Vom Mythos zur Imagined Community? Zur historischen Semantik 'Europas' von der Antike bis ins 17. Jahrhundert, Hannover

Ascheri, Mario (2014), A final comment and request, in: Rechtsgeschichte – Legal History 22, 270–273, http://dx.doi.org/10.12946/rg22/270-273
Bassnett, Susan (1998), The Translation Turn in Cultural Studies, in: Bassnett, Susan, André Lefevre (eds.), Constructing Cultures. Essays on Literary Translation, Clevedon, 123–140
Bavinck, Maarten, Gordon R. Woodman (2009), Can There be Maps of Law?, in: Benda-Beckmann / Benda-Beckmann / Griffiths (2009a), 195–218
Behrends, Okko, Eva Schumann (eds.) (2010), Franz Wieacker. Historiker des modernen Privatrechts, Göttingen
Bellomo, Manlio (2005), Europäische Rechtseinheit. Grundlagen und System des Ius Commune, München
Benda-Beckmann, Franz von, Keebet von Benda-Beckmann, Anne Griffiths (eds.) (2009a), Spatializing Law. An Anthropological Geography of Law in Society, Farnham
Benda-Beckmann, Franz von, Keebet von Benda-Beckmann, Anne Griffiths (2009b), Space and Legal Pluralism: An Introduction, in: Benda-Beckmann / Benda-Beckmann / Griffiths (2009a), 1–29
Benton, Lauren, Richard R. Ross (2013), Legal Pluralism and Empires, 1500–1850, New York (NY)
Berman, Harold Joseph (1983), Law and Revolution. The Formation of the Western legal Tradition, Boston/MA
Berman, Paul Schiff (2009), The New Legal Pluralism, in: Annual Review of Law and Social Science 5, 225–242
Berman, Paul Schiff (2012), Global Legal Pluralism. A Jurisprudence of Law Beyond Borders, Cambridge
Borgolte, Michael (2012), Mittelalter in der größeren Welt. Eine europäische Kultur in globaler Perspektive, in: Historische Zeitschrift 295, 35–61
Bucher, Eugen (2004), Zu Europa gehört auch Lateinamerika!, in: Zeitschrift für Europäisches Privatrecht 3, 515–547
Burke, Peter (2007), Cultures of Translation in Early Modern Europe, in: Burke, Peter, Ronnie Po-Chia Hsia (eds.), Cultural Translation in Early Modern Europe, Cambridge, 7–38
Burke, Peter (2009a), Translating Knowledge, Translating Cultures, in: North, Michael (ed.), Kultureller Austausch. Bilanz und Perspektiven der Frühneuzeitforschung, Köln, 69–88
Burke, Peter (2009b), Cultural Hybridity, Cambridge
Burke, Peter (2012), Translating Turks, in: Burke, Martin J., Melvin Richter (eds.), Why Concepts Matter. Translating Social and Political Thought, Leiden, Boston, 141–152
Cairns, John W. (2012), Transnational and European Legal Histories: Problems and Paradigms. A Scottish perspective, Clio@Themis: Revue électronique d'histoire du droit 5, 1–13
Coing, Helmut (1967), Die europäische Privatrechtsgeschichte der neueren Zeit als einheitliches Forschungsgebiet, in: Ius Commune 1, 1–33

Coing, Helmut (1968), Festvortrag. Forschungsaufgaben des Instituts, in: Mitteilungen aus der Max-Planck-Gesellschaft zur Förderung der Wissenschaften 5, 338–356

Coing, Helmut (1982 [1952]), Rezension von Ernst Robert Curtius, Europäische Literatur und lateinisches Mittelalter, in: Simon, Dieter (ed.), Helmut Coing, Gesammelte Aufsätze zu Rechtsgeschichte, Rechtsphilosophie und Zivilrecht, 1947–1975, Frankfurt am Main, 120–123

Conrad, Sebastian, Shalini Randeria (2002), Einleitung. Geteilte Geschichten – Europa in einer postkolonialen Welt, in: Conrad, Sebastian, Shalini Randeria (eds.), Jenseits des Eurozentrismus. Postkoloniale Perspektiven in den Geschichts- und Kulturwissenschaften, Frankfurt am Main, 9–49

Conrad, Sebastian, Andreas Eckert (2007), Globalgeschichte, Globalisierung, multiple Modernen. Zur Geschichtsschreibung der modernen Welt, in: Conrad, Sebastian, Andreas Eckert et al. (eds.), Globalgeschichte. Theorien, Ansätze, Themen, Frankfurt am Main

Costa, Pietro (2013), Reading Postcolonial Studies: Some Tentative Suggestions for Legal Historians, in: ZNR 35, 272–282

Curtius, Ernst Robert (1963 [1948]), Europäische Literatur und Lateinisches Mittelalter, Bern

Darwin, John (2009), Writing Global History (or Trying to), in: Österreichische Zeitschrift für Geschichtswissenschaften 20,2, 59–74

De Baets, Antoon (2007), Eurocentrism, in: Benjamin, Thomas (ed.), Encyclopedia of Western Colonialism since 1450, Detroit, 456–461

Dilcher, Gerhard (2010), Franz Wieacker als "Germanist". Mit einigen Bemerkungen zu seiner Beziehung zu Marx, Nietzsche und Max Weber, in: Behrends / Schumann (2010), 223–252

Dingel, Irene (2010), Der Abendlandgedanke im konfessionellen Spannungsfeld. Katholische und evangelische Verlautbarungen (um 1950/1960), in: Dingel, Irene, Matthias Schnettger (eds.), Auf dem Weg nach Europa. Deutungen, Visionen, Wirklichkeiten, Göttingen, 215–236

Dirlik, Alf (2002), History Without a Center? Reflections on Eurocentrism, in: Fuch, Eckhardt, Benedikt Stuchey (eds.), Across Cultural Borders. Historiography in Global Perspective, Oxford, 247–284

Donlan, Sean (2015), To Hybridity and Beyond: Reflections on Legal and Normative Complexity, in: Mattar, Mohamed Y., Vernon Valentine Palmer, Anna Koppel (eds), Mixed legal systems, East and West, Ashgate (UK) [forthcoming]

D'Ors, Alvaro (1954), Jus Europaeum?, in: L'Europa e il Diritto Romano. Studi in Memoria di Paolo Koschaker, I–II, vol. I, Milano, 447–476

Duve, Thomas (2012), Von der Europäischen Rechtsgeschichte zu einer Rechtsgeschichte Europas in globalhistorischer Perspektive, in: Rechtsgeschichte – Legal History 20 (2012), 18–71, http://dx.doi.org/10.12946/rg20/018-071

Duve, Thomas (2013), European Legal History – Global Perspectives. Working Paper for the Colloquium 'European Normativity – Global Historical Per-

spectives' (Max Planck Institute for European Legal History, September, 2nd – 4th, 2013, Max Planck Institute for European Legal History Research Paper Series, 2012–06, http://ssrn.com/abstract=2292666

Duve, Thomas (2014), German Legal History: National Traditions and Transnational Perspectives, in: Rechtsgeschichte – Legal History 22, 16–48, http://dx.doi.org/10.12946/rg22/016-048

Genzmer, Erich (1961), Einleitung, in: de Visscher, Fernand, Robert Feenstra et al. (eds.), Ius Romanum medii aevi/1: Praemittanda: Die Zeit vor Irnerius; 1 a/d, Mailand, 121–146

Giaro, Tomasz (2001), Der Troubador des Abendlandes. Paul Koschakers geistige Radiographie, in: Schröder, Horst, Dieter Simon (eds.), Rechtsgeschichtswissenschaft in Deutschland 1945 bis 1952, Frankfurt am Main, 31–76

Grossi, Paolo (2009), L'Europa del diritto, Milano

Hallstein, Walter (1969), Der unvollendete Bundesstaat. Europäische Erfahrungen und Erkenntnisse, Düsseldorf

Hattenhauer, Hans (1997), Europäische Rechtsgeschichte. Probleme und Aufgaben, in: Duchhardt, Heinz, Andreas Kunz (eds.), Europäische Geschichte als historiographisches Problem, Mainz, 173–182

Hattenhauer, Hans (2004), Europäische Rechtsgeschichte, 4 ed., Heidelberg

Hespanha, António Manuel (2002), Cultura Jurídica Europea. Síntesis de un milenio. Edición al cargo de A. Serrano González, Madrid

Hespanha, Antonio Manuel (2013), Uncommon laws. Laws in the extreme peripheries of an early modern Empire, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung 130, 180–204

Hiery, Hermann (2007), Die Europäisierung der Welt. Historische Probleme einer schwierigen Zuordnung, in: Jahrbuch für Europäische Überseegeschichte 7, 29–64

Iriye, Akira (2013), Global and transnational history: The past, present and future, Basingstoke

Jaeger, Friedrich (2011), Die europäische Moderne im Zeichen der Globalisierung, in: Jahrbuch für europäische Geschichte 12, 221–238

Koschaker, Paul (1938), Die Krise des römischen Rechts und die romanistische Rechtswissenschaft, München

Koschaker, Paul (1947), Europa und das römische Recht, München

Koskenniemi, Martti (2001), The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960, Cambridge

Koskenniemi, Martti (2011), The Political Theology of Law. The Scholastic Contribution, in: Fastenrath, Ulrich, Rudolf Geiger et al. (eds.), From Bilateralism to Community Interest. Essays in Honour of Bruno Simma, Oxford, 90–112

Letto-Vanamo, Pia (2011), Towards Global Legal History? Law, History and Culture, in: P. Andersen (ed.), Liber Amicorum Ditlev Tamm, Copenhagen, 311–320

Mazower, Mark (2005), Der dunkle Kontinent – Europa und der Totalitarismus, in: Joas, Hans, Klaus Wiegandt (eds.), Die kulturellen Werte Europas, Bonn, 367–385

McCarthy, Philip C. (2014), Globalizing Legal History, in: Rechtsgeschichte – Legal History 22, 283–291, http://dx.doi.org/10.12946/rg22/283-291

Modéer, Kjell Å. (2014), The Deep Structures of European Normativity in a Global Context, in: Rechtsgeschichte – Legal History 22, 275–281, http://dx.doi.org/10.12946/rg22/275-281

Osterhammel, Jürgen (2004), Europamodelle und imperiale Kontexte, in: Journal of Modern European History 1,2, 157–183

Prodi, Paolo (2003), Eine Geschichte der Gerechtigkeit. Vom Recht Gottes zum modernen Rechtsstaat, München

Reinhard, Wolfgang (2010), Kolonialgeschichtliche Probleme und kolonialhistorische Konzepte, in: Leonard, Jörn, Rolf G. Renner (eds.), Koloniale Vergangenheiten – (post-)imperiale Gegenwart, Berlin, 25–41

Renn, Jürgen (2014), The Globalization of Knowledge in History and its Normative Challenges, in: Rechtsgeschichte – Legal History 22, 52–60, http://dx.doi.org/10.12946/rg22/052-060

Sachsenmaier, Dominic (2010a), Conceptions of Space in Global History. A Brief Outlook on Research in the United States and China, in: Comparativ. Zeitschrift für Globalgeschichte und vergleichende Gesellschaftsforschung 6 (20), 80–92

Sachsenmaier, Dominic (2010b), European History and questions of historical space, in: Eberhard, Winfried, Christian Lübke (eds.), The Plurality of Europe. Identities and Spaces. Contribution made at an international conference Leipzig, 6–9 June 2007, Leipzig, 521–532

Sachsenmaier, Dominic (2011), Global perspectives on Global History. Theories and Approaches in a Connected World, Cambridge

Schlosser, Hans (2012), Neuere Europäische Rechtsgeschichte. Privat- und Strafrecht vom Mittelalter bis zur Moderne, München

Schmale, Wolfgang (2010a), Europäisierungen, in: Europäische Geschichte Online (EGO) / European History, European History (IEG), Mainz, http://www.ieg-ego.eu/schmalew-2010b-de

Schmale, Wolfgang (2010b), Europa: Kulturelle Referenz – Zitatensystem – Wertesystem, in: Europäische Geschichte Online (EGO) / European History, European History (IEG), Mainz, http://www.ieg-ego.eu/schmalew-2010-de

Seckelmann, Margrit (2013), Clotted History and Chemical Reactions – On the Possibility of Constitutional Transfer, in: Frankenberg, Günther (ed.), Order From Transfer. Comparative Constitutional Design and Legal Culture, Cheltenham, 36–55

Stein, Peter (1999), Roman Law in European History, Cambridge

Tamanaha, Brian Z. (2010), A Framework for Pluralistic Socio-Legal Arenas, in: Foblets, Marie-Claire, Jean-François Gaudreault-Desbiens et al. (eds.),

Cultural Diversity and the Law. State Responses from Around the World, Bruxelles, 381–401
Twining, William B. (2009), General Jurisprudence. Understanding Law from a Global Perspective, Cambridge
Wesel, Uwe (2005), Der Wille zur Schachtel. Was ist Europa?, in: Kiesow, Rainer M., Regina Ogorek et al. (eds.), Summa: Dieter Simon zum 70. Geburtstag, Frankfurt am Main, 601–608
Wesel, Uwe (2010), Geschichte des Rechts in Europa – Von den Griechen bis zum Vertrag von Lissabon, München
Wieacker, Franz (1967), Privatrechtsgeschichte der Neuzeit unter besonderer Berücksichtigung der deutschen Entwicklung, 2 ed., Göttingen
Wieacker, Franz (1985), Grundlagen der Rechtskultur, in: Jørgensen, Stig et al. (eds.), Tradition and Progress in Modern Legal Cultures. Tradition und Fortschritt in den modernen Rechtskulturen, Wiesbaden, 176–190
Wieacker, Franz (1995), A History of Private Law in Europe with particular reference to Germany, translated by Tony Weir, Oxford
Winkler, Viktor (2014), Der Kampf gegen die Rechtswissenschaft. Franz Wieackers 'Privatrechtsgeschichte der Neuzeit' und die deutsche Rechtswissenschaft des 20. Jahrhunderts, Hamburg
Zimmermann, Reinhard (2002), Europa und das römische Recht, in: Archiv für die civilistische Praxis 202, 243–316

Contents