Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte

Rechts Rg geschichte

Rechtsgeschichte

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http://www.rg-rechtsgeschichte.de/rg12
Zitiervorschlag: Rechtsgeschichte Rg 12 (2008)

Rg 12 2008 250 – 251

Abstracts

Form and content in early modern legal books
Bridging the gap between material bibliography and the history of legal thought (p. 12)

According to common sense, a book is only a way of conveying communicative contents (namely, ideas): on their own, books cannot change or add anything to what authors think about what they want to communicate to readers. The most recent history of books produced a Copernican shift in such a simplistic view about the nature of these (un)faithful companions of writers and readers. Books – as objects, as material devices, with their specific features – do matter in intellectual maturation and dialogue. Their materiality – like page layout, typographical devices, graphics, format, even binding – does convey sense. The article tries to relate intellectual shifts in early modern legal theory to concrete changes in the physical format of law books. The article seeks to call into question the central position that traditional legal history usually gives to an individual ›author‹ – asking once again the disturbing question posed by Michel Foucault: ›What is an author?‹ – and challenges the concept of a merely intellectual evolution of new figures of legal discourse.

António Manuel Hespanha

Legal editing and the strange case of the Named Reports (15th–16th century) (p. 51)

The essay examines the relationship between the advent and diffusion of print in England and English legal literature with particular reference to the law reports. Since the last decades of the fifteenth century the Year Books were widely printed while, on the contrary, the Named Reports remained unpublished until the end of the sixteenth century. The article, through an analysis of the mode, time and characters of the diffusion of print in England, tries to understand why. If the late publication of the Named Reports could be partially explained by their extreme technicality and, at the same time, with the common lawyers' habit of compiling their own collections of cases privately for their own use, the very content of the collections – which generally referred to recent juridical matters, were in continual need of revision and updating, and were normally well known inside the small and exclusive circle of the common lawyers – probably made their printing inappropriate and unnecessary. With the development of the doctrine of *stare decisis* in the fifteenth and sixteenth centuries things would change: English lawyers started looking for authority in uniform and reliable printed texts, which consequently led English printers to publish the Named Reports in considerable numbers.

Dolores Freda

Fermat and the Delpoy affair (p. 74)

Sir Kenelm Digby, when living in Paris, served as mediator for the correspondence between the mathematicians John Wallis (Oxford) and Pierre de Fermat (Toulouse). In a letter of February 6, 1658 to Wallis, Digby claimed that Fermat as »supreme Judge in the sovereign Court of Parliament« of Toulouse had condemned a priest, who had abused his position, to be burned alive. What actually happened has remained in dispute until now. In this paper, I describe how I managed to solve the case, an important event in Fermat's life, in the archives and libraries of Toulouse.

Klaus Barner

From Italy to the Indies
A voyage of the ius commune (p. 102)

The reception of the ius commune in the Spanish Indies is a common image in legal discourse. Coming from Italy via Spain, the ius commune seemed both to transfer to Central and South America and to reproduce there a legal system based on a dialectical relationship between the general and the specific. This allowed legal historians to bring the radical diversity of the American world back within a spiritual unity and a common scientific and Christian legal tradition, and at the same time enabled them to substitute the previous narratives founded on the supremacy of the *derecho de Castilla*. The article reconstructs the stages of this transfer and deals with the discursive strategies used by legal historians to define the *derecho indiano* and describing its relationship with the ius commune and the *derecho castillano*.

Luigi Nuzzo

Class Boundaries: Control of migration in the 19th century (p. 125)

On the basis of an analysis of the legislation passed to control migration, passport formats and the practice of frontier controls, this paper argues that social rank – often directly tied to class of travel – remained a crucial category for migration control even in the liberal, bourgeois nineteenth century. It could rival nationality, ethnicity, or religion as a basis of inclusion or exclusion at borders. Even the First World War did not lead to a complete triumph of nationality or race over rank as a focus of migration control policies; some traditions established before 1914 continued into the twentieth century.

Andreas Fahrmeir

The contest for hegemony
Medico-juridical expertise in Italian criminal trials in the late nineteenth century (p. 139)

The Italian science of criminal law in the second half of the nineteenth century is closely linked with politics and with the construction of the new Italian liberal State. Criminal science is the privileged meeting point of political theory and the new social sciences in general. This theme is responsible for the orientation of a great part of historiography, reflecting a dichotomy between two Italian juridical schools: the Scuola liberale (Carrara, Lucchini) and the Scuola positiva (Ferri, Lombroso). Among the new social sciences, the »positive school« made use of psychiatry, statistics and criminal anthropology in order to discuss the approach to the criminal problem, constructing the figure of the »delinquent« to redefine the problems of liability and of the rationale of punishment.

In this framework the paper expounds the role of medical examinations in the criminal trial through the analyses of the leading criminal reviews and the legislation of the late nineteenth century. The debate, which started with the reform of the regulation of medical examinations, allows us to reconsider the dispute between doctors and jurists for supremacy over deviance and crime, emphasizing the transformation of the judge into a doctor and of the doctor into a judge.

Francesco Rotondo