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Introduction: Convivencia(s)

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Introduction: Convivencia(s)

How can members of different cultures, religions, and confessions live together peacefully? What rules of coexistence, interaction, and conflict regulation have these communities developed to enable this cohabitation? What role does law play in this? – This is not the first time such questions have been discussed. These questions gain a specific poignancy when it's not just about taste or cultural preferences but rather concerns an existential dimension like the religious sphere: for instance, when the immanent is observed from the perspective of transcendence. Even the smallest event can lead to major conflicts.

The way in which we think about such constellations and conflicts has its own history. The regulation of cohabitation – the rules or practices – we rely on is contingent. Yet, it has shaped the way in which we think and talk about this coexistence. And the history of this regulation itself becomes an argument – like how the specific historical eras of peace have been romanticized, or contrarily, how conflict is portrayed in an exaggerated fashion.

The perhaps most well-known European *topos* of such narratives of cohabitation is the *convivencia* of Jews, Christians, and Muslims on the Iberian Peninsula from the 8th until the turn of the 15th century. The term *convivencia* stands for a phase of cultural flourishing precisely because of its connection of different traditions. Some see in these centuries evidence for the «eccentric positionality of Europe» (Rémi Brague) and the constitutive contribution of non-Christian religions to European history – others emphasize the bloody end, the expulsion and forced conversion via the burgeoning, and expanding Roman Catholic Empire. Even in Portugal and Spain, during the time of nation building, this era was inscribed in their own imperial histories and their new hopes.

What is above all interesting from a legal-historical perspective is how the different normative orders coexisted and interacted, what institutions and practices governed this coexistence, what traces of this cultural diversity remained within

the legal system, and what significance do these historical experiences have for the later societal, political, and juridical discourses? The contributions in this *Focus* section are oriented toward such legal-historical epistemic interests. They emerged as part of an interdisciplinary discussion between the Max Planck Institutes for Art History, History of Science, Legal History and Social Anthropology (all part of the Max Planck Society) and David Nirenberg (University of Chicago). They are dedicated to selected aspects of the enormous field of research on *convivencia*, not last in a critical perspective on the legal historiographical tradition and the appropriation of historical experience in later contexts. Here, we are dealing with the history of the legal status of non-Christians in Canon law; the figure of the *dhimmī* in Islamic legal history; the traces of medieval Iberian legal diversity in early modern America; and the use of the conception of *convivencia* in the Spanish juridical discourse in the 19th and 20th centuries. At the end of the section, there is an art historical contribution, which also comments on the series of images found in this issue. An important achievement of this work is the bibliography concerning the treatment of non-Christians in the history of Canon law comprising ca. 1,200 titles (not printed here) and compiled by Christoph H. F. Meyer. It served as the basis of his observations about the research history and will be available open access in the Research Paper Series of the MPI, which has recently been expanded to include research materials (*subsidia et instrumenta*).¹

During the first months of research and encounters within these institutes, the semantic question was an inevitable multidisciplinary and multi-dimensional preoccupation: How does one understand *convivencia*? How do we proceed with our different approaches? Should we talk about *convivencia*, or of cohabitation, or merely of coexistence, perhaps tolerance? Therefore, the term had to be questioned. For legal history, the consciousness of the problem posed by semantic shifts was placed in

1 The bibliography will be published in autumn 2018 under this link: <https://ssrn.com/abstract=3206610>.

the service of a salutary scientific shift. *Histories of convivencia* should be observed neutrally, separated from contemporary legal, moral, and ethical values or projections. The studies by Raja Sakrani and Christoph Meyer insist particularly on the issue of a semantic shift from an Islamic and canonical point of view. Through four contributions on legal history and one on art history (the series of images), the reader is invited to think about and explore the subtlety, fluidity, limits, and even ambiguity of the concept and images that illustrate cross-cultural exchanges. Perhaps she/he will see that *convivencia* is sometimes less limited than cohabitation, less large and abstract than coexistence, less festive than conviviality, less severe and more spontaneous than tolerance, etc. Nevertheless, this is easier to decode only in the ›living‹ dimension of *convivencia*: Daily life in the markets and public spaces, intermarriage, festivities, rituals, and naturally, legal-religious interaction or distancing (Deardorff, Meyer, Sakrani). However, other historical contexts show that *convivencia* can offer a different conception that is less sophisticated on the level of the religious and socio-cultural sphere, but much more telling in the political and legal fields. In his critical study of the law of 2015 granting Spanish citizenship to ›Sephardic Jews with origins in Spain‹, Alfons Aragoneses attempts to illustrate just this. In the same vein, the transcultural artistic landscape of medieval Castile, the Mediterranean connections with the Iberian Peninsula, Africa or Asia, as well as mobility and transcultural dynamics in what art historians call the ›premodern period‹ have the advantage of bringing into play other methods of approaching the Iberian *convivencias* and their interactions with the rest of the world. More so than a concept that is difficult to grasp, or is religiously or ideologically charged, art and architecture are capable of showing us and speaking to us in a different way that transcends the complex normative ›canvas‹ of living together.

The series of images featured in this issue of *Rechtsgeschichte – Legal History* shows in particular the intense processes of hybridization and the creative power of encounters with other cultures. Elena Paulino Montero and Vera-Simone Schulz expand on this in their contribution. Many of their observations on changes in the methodology of research on art history could also be applied, *mutatis mutandis*, to legal history. The beauty embodied in an object, cloth, or building can travel

more easily and espouse a foreign geographic and cultural context. Here, the contribution by the two art historians becomes even more fascinating in the sense that it not only opens up a new conceptual lens for us, but it also reveals tension and exchange between different disciplines within this issue. The example of Abū Ishāq al-Sāhīlī from Andalusia, who would become King Mansa Musa's architect and design the great mosque of Timbuktu, is testament to the great capacity of Islamic architecture – particularly that of mosques – to espouse local traditions (including style and construction material). When thinking of other examples of mosques constructed in Asia or in India, in the form of a temple, for instance, one gains a better understanding of this strong tendency towards architectural hybridization. The Mamluk metal trays (Fig. 8), on the other hand, prompt an entirely different type of debate. ›Scholars argued (...) that the inlay technique might have flourished in the Islamic world so much because of the religious disapproval of gold and silver vessels according to Muslim *hadith*.‹ However, according to Islamic *sīra*, this is not an *authentic hadith* but a *sunna* (to be understood in this case as the behavior) of the Prophet Muhammed, who preferred to wear silver instead of gold. Suddenly, the comparison to the study of the status of *dhimmi* in Islamic law, which shows the complexity of legal-religious sources and the problematic usage of *hadith* (Sakrani), allows these texts to enter into dialogue with one another. This is also the case for Meyer's contribution, which converses with Sakrani's, and Sakrani's piece converses with Deardorff's and Aragoneses's texts.

The experience of *multiple convivencias* on the Iberian Peninsula in itself compresses the entire density and complexity of the human experiences of living together: religious, ethnic, linguistic, artistic, cultural plurality, etc. In short, it condenses humanity itself: always being an *Other* to someone. The density of this issue – both historical and contemporary – is no less complex. Among the three *foci* in this issue of *Rechtsgeschichte – Legal History*, it is perhaps this one that ignites the most current debates in fields ranging from science to the arts to politics, for example, when considering how to deal with immigrants, refugees as well as homo- and transsexuals. The burning topicality of the normative framework of living together in pluricultural and multiconfessional societies is undeniable: resistance, negotiation, or compromise

in the political, confessional, legal, or cultural spheres.

How can we profit from the historical concept of *convivencia* for current debates on minorities and *Otherness*? – Historically, the division within Christianity and the emergence of European states in the 16th century continuously weakened religious minorities and placed them in difficult situations. One need not mention the medieval fight against heretics or the expulsion of Jews, Muslims, Marranos, and Moriscos from the Iberian Peninsula and Southern Italy. The genocide of Native Americans took place in an almost concomitant way. The Jewish question also followed during the 19th and 20th centuries in Europe. Moreover, the decolonization movement and the end of the 20th century were accompanied by debates that have continued to arouse passions on the place of Islam and Muslims in Europe, religious, and identity expression in public spaces and, of course, the possibility of living together that is dreamt of as much as it is contested.

At the center of this *Focus* stand the Iberian Peninsula and (by extension) Europe. But the perspectives of these contributions are far from Eurocentric. The transcultural circulation of this experience within Latin America, the Maghreb, the Ottoman Empire, and elsewhere certainly deserves study and understanding itself. These multiple facets bear witness to the implementation of a very diverse normative arsenal: Policies involving legal transplants, normative hybridity, management, repression, integration and exclusion (Deardorff, Aragoneses, Sakrani).

Max Deardorff demonstrates both the continuity and transformation in normative social structures after the period of forced conversion ending in 1502. Both in Castile and in the Americas, the role of customs in the administration of justice – with its ramifications on the Islamic, or rather hybrid, influence – has continued to play a major part. Despite the forced conversion of indigenous peoples and the implanting of jurisdictional elements and Castilian laws, practice demonstrates the creation and/or preservation of space for local accommodation, customs, paralegal bodies, etc. for a sort of *Iberian convivencia* transformed within the colonies. In his study, Alfons Aragoneses, in turn,

concentrates on the evolution of *convivencia* discourses in the 19th and 20th centuries, while also explaining the reasons for the reappearance of *filosefardismo* in the 2015 law and the political-historical and ideological usage of *convivencia* to legitimize national discourse on the Spanish narrative identity.

Essentially, the political-legal functionalization of the medieval Iberian past and its »tres culturas« – which inevitably turn *convivencia* into a warhorse – has become not only a scholarly issue but a very contemporary »battle« about the pasts of the one and the *Other* – the vanquishers and the vanquished – concerning individual and collective memory, the future of living together, or mutual exclusion. The part of this issue dedicated to the history of Islamic law and the legal status of *dhimmī* is essential. Concerning the scientific dimension that allows one to elucidate the legal basis of Islamic *dhimma*, which rendered possible the experience of *convivencia*, this contribution attempts to both call upon Islam to reflect on and reconsider its dogmas, past, and rapport with the *Other* and take into account the historical narcissistic injury of the expulsion from al-Andalus.

Rechtsgeschichte – *Legal History* thereby contributes to the history of Islamic law legitimately finding its place and entering into a fruitful dialog with other disciplines so as to advance research on topics that remained taboo or unknown for a long time. The objective of this *Focus*, and of its authors, is to contribute to a better understanding of the normative mechanisms of the *convivencias* in the hope that this will enable meditation on the *Self* and the *Other*. One can indeed learn from the *multiple convivencias*, and it is *all the better* if one thereby learns not to suppress the *Other* and her/his differences, be curious about her/him, and if possible attain conviviality in the most profoundly human properties! What is certain, however, is that a *modern-day convivencia* cannot be realized simply by way of past models. It exists in the »here and now«. One must, therefore, remain constantly open to changes and unforeseen events that may arise in the future.

