



The Robbins Collection
and Research Center
in Religious and Civil Law

DIGEST
2021

Letter from the Director

The constraints created by the pandemic curtailed the Robbins Collection's daily pursuits and prevented us to resume most of our normal activities for one more year. Restrictions placed on international travel precluded the visits and the lectures planned for fellows and guests as well as the convening of the scheduled workshops.

Some of the changes introduced in the wake of the pandemic will become more permanent features of academic and research environments. How best to respond to these changes constitutes an exciting challenge. We will continue to do what we have always done with the development of the rare and non-rare collections of legal sources, the research fellowship and postdoctoral scholarship programs, and the convening of international workshops in the fields of religious law and civil law. We will also continue to expand online access to our legal material and explore new formats for sharing bibliographical data and scholarly references in both on-line and offline circumstances.

This issue of the Digest includes a new section with the reviews of books published by former and current Robbins Fellows. It complements the section on Robbins Fellows updates as it reflects the broad intellectual range of the Robbins's vibrant scholarly community.

Laurent Mayali
Lloyd M. Robbins Professor of Law
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AND RESEARCH CENTER IN
RELIGIOUS & CIVIL LAW

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Berkeley Law

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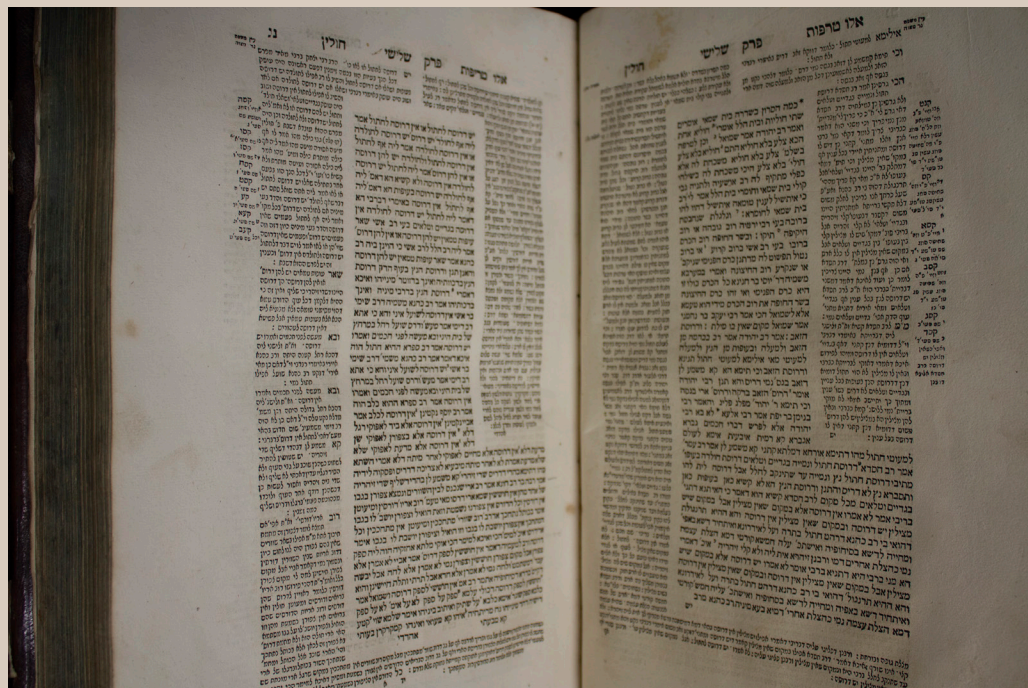
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Jewish Law at the Robbins Collection

The Robbins Collection has a substantial collection on Jewish law and legal history in addition to its holdings in civil law, the canon law of the Roman and Greek churches, the Church of England, and Islamic law. The Robbins Collection holds over 5,000 works of and about Jewish law that span five centuries, with particular strengths in Talmud, comparative law, responsa, marriage, divorce, dietary laws, and the writings of Maimonides.

With its roots in the Bible, Jewish law has governed much of the internal civil and religious life of Jewish communities throughout the world for centuries. It continues to be used to adjudicate internal disputes and to inform legal scholarship. Jewish law of the Common Era, like Jewish communities themselves, was widely disseminated. The Robbins Collection holdings in Jewish law reflects this wide geographic distribution, with books and manuscripts from the Mediterranean, Middle East, Europe, and the Americas.

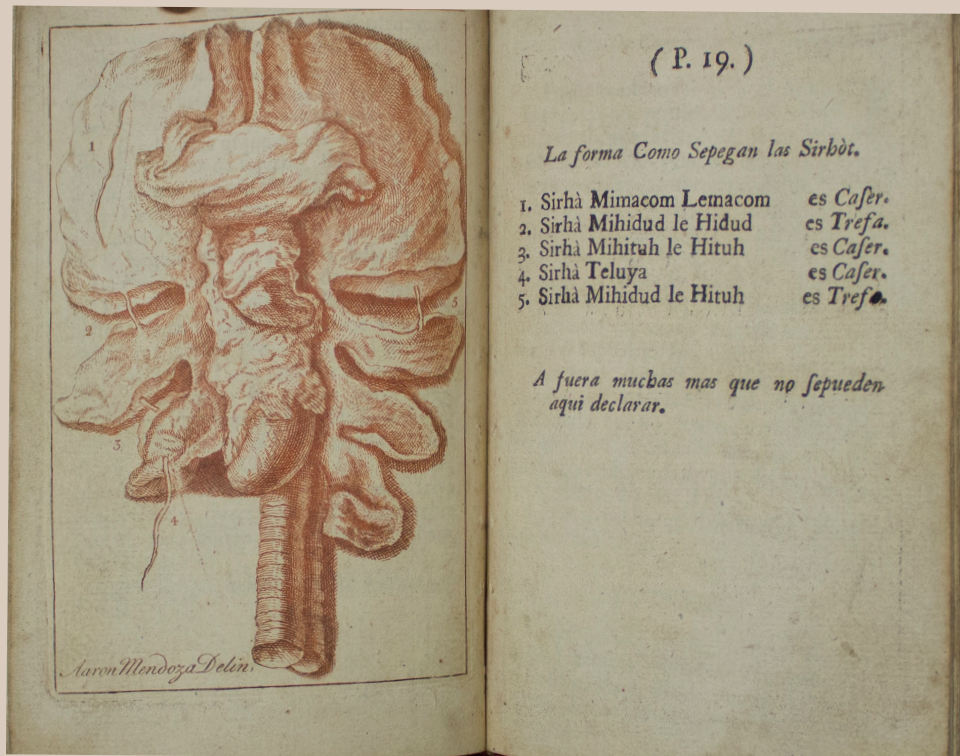
In order to expand our offerings of digital video exhibits, we have created a new exhibit showcasing a small portion of our holdings in Jewish law. Our digital video exhibits are intended as introductions to topics on legal history and are meant to emphasize the importance of primary sources. The books and manuscripts below are included in the exhibit and are representative of the Collection's Jewish law holdings. While the digital video exhibits are primarily intended for students at Berkeley Law, we share them on our social media platforms and video hosting services, and all of them are available to [watch online](#).



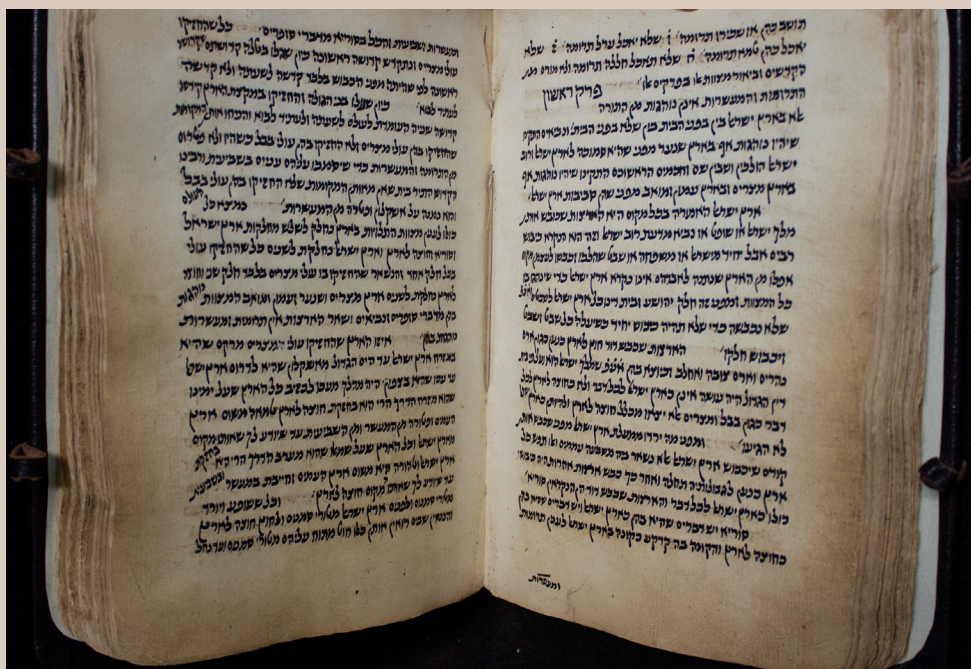
BM499 1713 Folio

This copy of the Babylonian Talmud was published in Amsterdam in 1713. It includes commentaries by the rabbi Solomon ben Isaac (Rashi) and Asher ben Jehiel, as well as Moses ben Maimon (Maimonides) commentary on the *Mishna*.

The Robbins Collection holds several copies of the *Shulḥan ʿarukh*, as well as an early edition of *Sefer Bedek ha-bayit* (emendations and additions to the *Shulḥan ʿarukh*) and *She'elot u-teshuvot ve-shitotav* (responsa, or written decisions and rulings made by Jewish legal authorities).



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Robbins MS 286

The *Hilkhot nedarim* was copied in Yemen during the sixteenth-century. It includes selections from the *Mishneh Torah*, including Books 6.2, 6.4, 7.2, 7.7 on oaths, donations to the temple, the Sabbath year, charity, tithes, and gifts to the poor. Maimonides' *Hilkhot matnot ʿaniyim* was the first attempt to collect and codify rabbinic teaching on charity.

Jewish Law for the Digital Age

Annual Lecture in Jewish Law, Thought, and Identity

This year's Robbins Collection Lecture in Jewish Law, Thought, and Identity, "Jewish Law for the Digital Age," marked 12 years of collaboration between the Robbins Collection and the Helen Diller Institute for Jewish Law and Israel Studies (formerly the Berkeley Institute for Jewish Law and Israel Studies) and the 10 year anniversary of the Institute.

One doesn't have to look very hard to find examples of how our privacy has been steadily eroding over the past few decades. Our phones and their applications are tracking our locations, movements, entertainment habits, and more, all to be collected and sold in commercial data sets. Professor Kenneth Bamberger, the Rosalind and Arthur Gilbert Foundation Professor of Law at Berkeley Law, and Professor Ariel Evan Mayse, Assistant Professor of Religious Studies at Stanford University discussed how Jewish law can provide a new way to talk and think about privacy rights in the 21st century. "The Jewish legal tradition predates liberal traditions and certain concepts of the individual," observed Professor Bamberger, "allowing us to think about privacy as a community endeavor."

Drawing upon millennia of Jewish legal tradition, Professors Bamberger and Mayse aim to make Jewish law a part of today's legal resources. They identified five pillars of Jewish privacy law that could make significant contributions to modern privacy discussions: Jewish law has historically viewed privacy as an element of good society, protected through the idea of reciprocal duties as a community, rather than an individual right; therefore violating privacy law can be considered harmful even if no specific individual or person's rights were broken; Jewish law rejects technological determinism and an individual cannot waive their own personal privacy (like many modern consumers



Professor Ariel Evan Mayse

currently do when we consent to online agreements); Finally, Jewish law recognizes that privacy and anonymity can also constitute a tool of oppression, and some information, when kept private, can cause harm. Rules on privacy are found in diverse historical Jewish legal sources, including writings by Maimonides and Nachmanides, and the *Sefer Kinyan* (Book of Acquisitions) from the Mishneh Torah, which contains *Hilchot Shcheinim* (the laws of living as neighbors) where the rules of *hezek reiyah* (virtual trespass) are found. Professor Mayse suggested that, "The goal is to think with these sources of Jewish law, allowing this thick tradition to enrich our modern thinking as well as challenge our mindsets. The fact that much of Jewish law predates our current situation of sweeping systematic surveillance affords us a window into a different matrix of values and traditions."

Robbins JSD Fellowship Program Attracts New Talent



From L to R: Alex Huang, Silvia Fregoni, Sylvia Lu, Ella Padon-Corren, Mahwish Moazzam, and Luis Barroso da Graca.

On a sunny Berkeley afternoon in October 2021, Robbins Collection J.S.D. Fellows mingled with law school faculty and staff from both the Advanced Degree Program and the Robbins Collection. Though two separate cohorts of Fellows joined the event, hosted by the Robbins Collection, the reception marked the first in-person welcome for both groups, due to the pandemic, and provided a valued opportunity for conviviality.

The Robbins Collection J.S.D. Fellowship program is currently in its third year and already helping Berkeley Law compete with other highly-ranked law schools in attracting top J.S.D. students by providing full and partial tuition waivers. Class of 2023 recipients included: Ella Padon-Corren, Sylvia Lu, Silvia Fregoni, and Alex Huang. The program has since expanded and offered six Robbins J.S.D. Fellowships in the class of 2024 to: Luis Barroso da Graca, Shih-wei Chao, Gal Forer, Mahwish Moazzam, Eric Winkofsky, and Sharaban Tahura Zaman. Each J.S.D. Fellow arrives at Berkeley Law with impressive professional and educational achievements.

For instance, Zaman, an environmental lawyer and academic, serves as a legal advisor to the LDC (Least Developed Countries) Group to the Paris Agreement, and is a senior lecturer at North South University in Bangladesh. About the fellowship, she said, “In my J.S.D. dissertation I am assessing how climate laws under the Paris Agreement can be adapted and applied in a way that provides relevant guidance to facilitate the global energy transition. The Robbins J.S.D. Fellowship and comparative law study provide immense support in my studies, the research that has the potential to change the world and its dire crisis, like climate change.”

Other areas of research being pursued by J.S.D. Robbins Fellows include privacy, intellectual property, technology, and human rights. The J.S.D. program offers Berkeley Law’s most advanced law degree during which students must conduct independent research and write a dissertation. As a condition of the Robbins Fellowship, recipients must also conduct original research on civil or religious law topics.

As a part of her fellowship, Sylvia Lu is participating in a study of comparative legal responses to COVID-19. “I researched the role of Taiwan’s COVID-19 regulations and compliance systems in guiding people’s behaviors, integrating available resources, and motivating the development of artificial intelligence technologies to fight the novel disease,” she said.

“It is important to us to foster the research and education for our J.S.D. students who are working on comparisons between American common law and the civil law system internationally,” Director of the Robbins Collection and Research Center, Laurent Mayali, said. “Lloyd Robbins’ idea in establishing the collection was to create a place where scholars could solve the legal problems of today, and these students’ work will enhance the legacy of that vision.”

Book Reviews

The impressive breadth of intellectual work fostered at the Robbins Collection continues long after our scholars depart Berkeley. This space is dedicated to our intellectual community engaging with the recently published work of former Robbins Collection fellows. Our scholars span the globe and engage in diverse areas of study within the fields of religious and civil law. They also span generations; The Robbins Collection has been hosting research fellows for over thirty years and post-doctoral fellows for fourteen years.

Reviewer Biographies

David Johnston, QC, is a professor, scholar, practicing attorney, and law commissioner in Scotland. He has been a Senior Research Fellow at the Robbins Collection in 1996, 1998, and 2019.

Julio Gaitan is Professor of the Area of Constitutional Law and Director of the Internet and Society Center – ISUR – of the Universidad del Rosario in Bogota, Colombia. He has been a Senior Research Fellow at the Robbins Collection in 2006, 2013, and 2018.

Tyler Lange is Assistant Professor and Secretary of the Board of Regents at the University of Washington. He was a Postdoctoral Fellow at the Robbins Collection from 2011–2013.

Emmanuele Conte is Professor of Legal History at Roma Tre University in Rome, Italy. He has been a Senior Research Fellow at the Robbins Collection in 1990 and 1999.

Laurent Mayali is Director of the Robbins Collection and Research Center and the Lloyd M. Robbins Professor of Law at Berkeley Law.

In 2018 Dario Mantovani was appointed to a newly established chair of the law, culture, and society of ancient Rome at the Collège de France. This is his inaugural lecture.

It raises some fundamental and important issues. Since Roman law is both a legal system and an object of historical study, is a modern scholar of Roman law a lawyer or a historian? Professor Mantovani is attracted by neither alternative. His answer is “jurist historian”: that captures what he sees as the most appropriate approach to the study of Roman law: to see it in the context of the society which created it, reflected upon it, practised it, and to some extent preserved it in the ancient texts.

Roman law as literature is another key theme. As Professor Mantovani points out, this is an aspect of Roman legal writing which is almost always ignored. Yet he is surely right to draw attention to the beautiful craftsmanship of Roman juristic writing, its precision, economy and logic, and the way in which the Roman jurists transform the untidy realities of Roman life into simplicity and order. There is another aspect to the theme of law as literature. It is to ask who in antiquity actually read juristic writing and when. Addressing that question allows Professor Mantovani to draw on the results of the [REDHIS research project](#) which he directed (and whose publication is anticipated fairly soon). This research shows that the notion, currently still widespread, that use of and interest in classical juristic writing essentially died out after the third century CE is simply wrong. There are too many examples of copies of classical juristic works surviving from late antiquity to make that a plausible conclusion.

Professor Mantovani confesses that he is no believ-

er in the *Corpus iuris* as a force contributing to European unity. He prefers to emphasize the fact that Roman law, and Roman culture more generally, are present in so many and such varied national traditions. That can and does create a shared interest in exploring a common past. Indeed, the Centre for Studies and Research on Ancient Rights “CEDANT” program on the laws of antiquity which Professor Mantovani set up at the university of Pavia is a good example of this common interest in practice.

The lecture ranges widely in time and place and is enlivened by some intriguing examples.

One theme is the value of Roman law as a resource for construction of institutional concepts in the West. That is neatly illustrated by the example of the canonist Évrart de Trémaugon who, when consulted in 1373 about the law of succession to the throne of France, resorted to the rules of Roman private law for the answer. Another recurring theme is the jurist as a creative figure and as a participant in the wider culture of Rome. Here the example is a text (D. 21.2.44) from the late Republic jurist Alfenus, a friend of Horace and Catullus. It leads Professor Mantovani from Alfenus’s metaphor of the various parts of a ship as the limbs of a human body to Ovid’s image of a ship metamorphosing into a human body (*Met.* XIV 5448-

58) and so to argue that Roman juristic thought was immersed within wider Roman society and its culture. This is where this rewarding inaugural lecture ends, with the promise that in explorations of this kind Professor Mantovani will seek to understand, explain and animate the Roman juristic texts in their fullest historical and cultural context.

—David Johnston, Edinburgh

LEÇONS INAUGURALES DU
Collège de France

Dario Mantovani

Droit, culture et société de la Rome antique

Collège de France | fayard

Alessia Di Stefano, «*Non potete impedirla dovete regolarla*» *Giustizia ed emigrazione in Italia: l'esperienza delle Commissioni arbitrali provinciali per l'emigrazione (1901-1913)*. Historia et Ius, Rome, 2020. 255pp.

Alessia Maria di Stefano, «Non potete impedirla, dovete regolarla». *Giustizia ed emigrazione in Italia: l'esperienza delle comissioni arbitrali provinciali per l'emigrazione (1901-1913)*, is monograph four of the Collana di Studi di Storia del diritto medievale e moderno Historia et Ius, published in Rome in 2020 by the Associazione Culturale.

In two chapters and a useful normative appendix, the researcher of the Dipartimento di Giurisprudenza dell'Università degli Studi di Catania explores with rigor and detail both the regulatory framework elaborated by the Italian legislator and the case law of the jurisdictional protection for the emigration of its citizens between the second half of the 19th century and the first half of the 20th. During this period tensions appear between the ordinary regulation of the private law and an emergent normative and institutional system routed to the protection of the migrant's rights during the *Grande Emigrazione* (the Great Migration), in the period between Italian unity and the rise of fascism, for the migrants who had their principal destinies in the United States, Argentina or Brazil, on the other side of the Atlantic.

Indeed, the text deals with the post-unitarian juridical experience, a period during which the fruits of the codification matrix's efforts to unify and harmonize the jurisdictional and administrative systems are confronted by the social and economic practices that outweighed the traditional private law approach. In this case, with the appearance of new subjects that the legislator seeks to protect from the typical contingencies of travel and the precarious conditions in which migrants had to depart.

Di Stefano's work frames the emergence of the legislation and the protective institutionality for migrants in the ambivalence of the post-unitarian juridical experience that, on one side, responds to the need to build

the concept of a nation, purpose for which the codification and the ordinary judicial institutionality constituted fundamental elements of the juridical rationality of the generalizer bourgeois model and, on the other hand, the necessity for special legislations such as the labor law or migration law, that seek to attend to particular situations ignored by the principles of the codification, in what became commonly known as the *social legislation*.

The juridical dimension of the private law embodied in the contractual logic of the autonomy of the will, and personified in the contractual autonomy, results confronted by a social dimension that express itself in the migration of the Italian citizen phenomenon and the difficulties that they found in their destination countries. It was precisely these difficulties that the Italian legislator tried to attend to with the creation of an institutionality and ad hoc procedures that seek to guarantee his migrants the special protection that neither general law nor ordinary administrative procedures did.

The unique migratory phenomenon of the Italians required the introduction of jurisdictional special bodies to guarantee, in particular, greater guardianship and protection to a category of people who were socially weak. Di Stefano's study pays particular attention to the analysis of the jurisdictional activity developed by the Provincial arbitral commissions from the moment of their creation in 1901 to their reform in 1913, period during which their activity was equally intense and fruitful in the resolution of controversies between migrants, mostly transoceanic, and the transporters.

The complexity of the migratory phenomenon and its praxis, as well as those of the regulatory fundamentals in the destination country, the migration practices in their different phases, the traditions of the migratory activity, the rules regarding maritime transport, as well as



ing to justice and equity”.

The emergency and juridical relevance of the migration phenomenon was also socially mediated by the tension between the conception as a shame for the populations that gave place to the phenomenon and the consideration of the migration as a producer of beneficial effects for both the countries of origin and those of arrival, in which the intellectual and economical life was nurtured. The definition of this tension influenced the configuration of the freedom to emigrate and the restrictions that were opposed.

The dynamic and the pressure of the rising migratory phenomenon on the legislation and the attempted containments since the *Public Security* law, in the second half of the 19th century, that sought to limit the freedom of movement of the subjects by making the migration harder and expensive, led to a gradual legislative turn towards the guardianship of those who decided to emigrate in search of better fortune, to protect them from contingencies as well as from abuses by transporters and promoting emigration agents. The legislation and the institutionality were transforming their police control approach over the migration phenomenon towards a view of it as a social phenomenon that required a guiding and effec-

the administrative procedures related to passport expedition, among others, that made the normative systematization harder, led the legislator to opt for a special judge who had the capacity of value even the extra-normative practices to guarantee the emigrant “a protection accord-

tively regulation protective of the migrants. This dynamic even led to the establishment of legal assistance offices for emigrants in the destination countries to facilitate their job placement.

The establishment of the provisional arbitration commissions for the emigration at the beginning of the 20th century meant the consolidation of the protective orientation for the migrants through a legislation, judicial institutions, and special procedures in which the decisions in equity guided by moral and social evaluations tempered the rigor demanded to the ordinary judges. The normal civilist rigor was giving to the hermetic demands of consideration of criteria based in social order evaluations.

Not without controversy in the institutional development, the protective legislation started imposing itself with the establishment, for example, of obligations in the emigrant vectors, more onerous than those attributed to the commerce and navigation vectors.

Alessia Maria di Stefano builds a complete and organized frame of the legislative, institutional, and jurisdictional response to the migratory Italian challenge in the critical moment of its raising as a massive phenomenon. She presents the success of the legislator when opting for the introduction of a special jurisdiction for migrants, subtracting them to the formalist rigors of the syllogistic reasoning model operated by ordinary judges and, instead, creating a scene of judicial protection that attended the specificity of the matter and the necessity for protection of subjects in weak situations and relationships. In this response to the necessity of protection of a kind of subject putted in situation of weakness, through the creation of equity judges, we can find one of the scenarios of the emergence of social legislation, in the horizon of the emergence of other special jurisdictions arisen in the epoch as a response to the necessity of taking into account asymmetries of power in social and juridical relationships that were invisible to the formal equality declared in the bourgeois law and operated by the ordinary judges.

—Julio Gaitan, Bogota

Marta Cerrito, *Pena negoziata e arbitrium iudicis: Le transazioni criminali nel Regnum Siciliae (secc. XII-XV)*. Bononia University Press, Bologna, 2020. 184pp.

It is interesting to review Marta Cerrito's study of criminal settlements (*transacciones de crimine/transazioni criminali*) in a liberal city on the western coast of the United States in the age of decriminalization and restorative justice, because the practice in question superficially accords with the goals of both movements in that it appears to move away from crime as a violation of an abstract legal order to crime as a harm to the social body requiring repair to injured parties. The historical context of her book is the history of criminal law and punishment in Europe, specifically in countries influenced by Roman civil law and more specifically in the kingdoms of Naples and Sicily in the last centuries of the Middle Ages.

The practice, long seen as a survival of the putatively "Germanic" provisions of Lombard law for the private settlement of crimes, has a clear basis in Roman and canon law. Cerrito's first chapter traces how commentators on Roman law interpreted Cod. 2.4.18, permitting the settlement of non-capital crimes, in light of the *senatusconsultum Turpillianum*, penalizing the withdrawal of accusations, so as to deprive an accuser who had settled of future rights to accuse. Roman practice involved compensation to the harmed party, not to the judge. Canon law also provided for criminal settlement (*pactiones de crimine* or *amicabiles compositiones*), in accordance with Gospel (e.g. 1 Cor. 6) and canonical principles (D. 90 c.7: "*Studendum est episcopis, ut dissidentes fratres, sive clericos, sive laicos, ad pacem magis quam ad iudicium exhortentur.*"). It did this almost unwillingly, because its perspective was oriented towards the problem of sin, and resisted "equating a sin to a matter of private agreement (*iuris privatorum*)" (30). As Bernard of Parma stated: "according to the canons, every crime is public" (32). Innocent IV thus argued that anyone who agreed to settle would be treated as if he had confessed to the crime in question (31). For these reasons, settlement was not permitted, except by permission of the judge. This is how Cerrito identifies canonical practice as the model of Frederick II's legislation, which was judge-directed and

whose fruits went to the fisc.

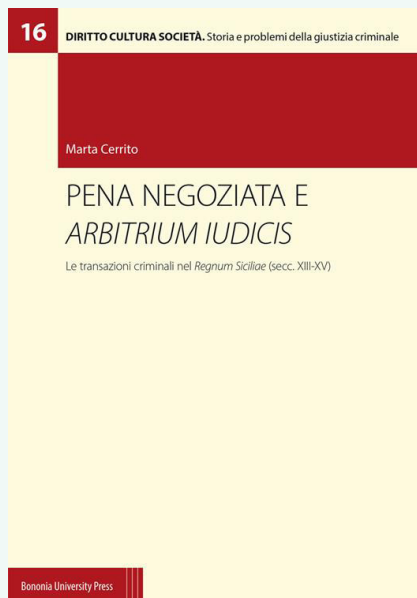
Her second chapter focuses on positive law, treating developments in the kingdom of Naples from the issuance of the *Liber Augustalis* in 1231 to that of the *Ritus magnae vicariae curiae* in 1446. While Frederick II's legislation "made penal law a matter for public authority," the Hohenstaufen's Angevin successors issued letters of arbitration that allowed particular barons to permit criminal settlements in certain cases, a capacity reserved to the sovereign in Frederick's legislation. While these were originally exceptional, Neapolitan jurists generalized their provisions, displacing "the center of gravity of the administration of justice" from the sovereign to local judges (65). The third chapter traces developments in Sicily, where in 1443 and 1457 Alfonso the Magnanimous conceded "*imperio mero e misto cum gladii potestati*" to the barons (80), aligning practices in Naples and Sicily. This outcome, which reconciled the public interest that crimes be punished, the interest of the victim to obtain justice, the interest of the accused to redeem himself, and the interest of the baron or judge claiming the fine as his due (82), reallocated fines from the king's fisc to the baron's feudal revenue.

Cerrito's final chapter brings forth her conclusions by examining jurists' "practical solutions" to the "theoretical problems" of criminal settlements. This is where she can show how the "the new procedural model, [which] is the fruit of the joint efforts of doctrine and legislation, especially in canon law," allowed summary, extraordinary procedure to become the default criminal procedure (86ff). Even criminal settlements, which look like private agreements between parties, in fact came at the instance of the judge, and could result from summary procedure. As noted, criminal settlement, "conceived from the beginning as one tool in the hands of public authority" (92), could be transferred to subjects without diminishing royal power (93 n.40). The "judge's discretion (*arbitrium iudicis*)" in fact magnified royal authority. Yet as jurists explored restricting criminal settlements, they made revealing

limitations. The sixteenth-century jurist Mario Muta determined that a mortally wounded victim who later died could not settle with his attacker, because two laws of sixteenth-century viceroys required the attacker to settle with all the victim's affines, to the fourth degree, in order to pre-empt rights to accuse (100)! Whether this resembles restorative justice or vain attempts to pacify vendettas and inextinguishable debts of honor is a matter of taste. When, by the sixteenth century, jurists came to agree that the fines from criminal settlements belonged to barons as "fruits of the fief" (117) and not to the king's fisc, efforts to limit the barons' power had to be subtle. This is why Cerrito ends with an analysis of a sixteenth-century ruling of the *Magnae vicariae curiae*, included as an appendix, invalidating a settlement made without the consent of the injured parties (141-5).

Cerrito's slender book, endowed with comprehensive footnotes, is an excellent example of how the *ius commune* worked. It takes up the challenge of recent legal historians to understand the law "as a complex comprehending legislation and judicial and doctrinal interpretation, [...] not just an instrument of representation but above all of modifying historical socioeconomic structures" (13) without quite satisfying it. Demonstrating how the practice of criminal settlements resulting from the application of interpretations of Roman, canon, and local legislation shaped socioeconomic structures in Southern Italy would require more than analysis of a single judicial opinion. That task would, however, have made an elegant study rather thicker, and perhaps exceeded the remit of a strictly legal history. Yet historians not working in faculties of law might still read the book to be reminded what they might have learned from Claude Gauvard and others, *pace* Foucault and his ilk, that the complement to rare and spectacular corporal and capital punishments is mercy and grace, whether through pardon or mandated settlement and the commutation of penalties. Like God, like the king, the judge's discretion operated through mercy as much as bloody vengeance. What is interesting about the example of the kingdoms of Naples and Sicily is that their early modern history inverts that of much of continental Europe: just as monarchs elsewhere, notably in France, sought to reclaim control of baronial criminal justice, the absentee monarchs of Southern Italy largely relinquished control to their barons. What might appear to have been a model of restorative justice enacting Christian models of non-judicial settlement actually dispersed royal grace to self-interested baronial judges.

—Tyler Lange, *Seattle*



Julius Kirshner, *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts*.
University of Toronto Press, Toronto, 2020. 896pp.

Julius Kirshner and Osvaldo Cavallar have published a remarkable piece of work. They offer an overview of the late medieval theory and practice of law in Italy, offering a large selection of original texts in English translation, whose use will become a primary reference for future scholarship. The texts are ordered in 6 sections, each of which is divided into chapters, and each chapter presents the English translation of a medieval text, introduced by a short but dense explanation and bibliography. The sections deal with the teaching and learning (1) and the legal professions (2); civil and criminal procedure (3), some cases concerning crimes (4), personal status like serfdom, citizenship, the legal condition of women and Jews (5), and family matters (6).

The selected texts range from 1140 ca. (Martinus Gosia) to 1510 ca. (Guicciardini). The six introductory chapters deliver a thorough insight to every considered issue, and summarize the necessary information about the translated texts.

Chapter 21 on criminal procedure, for example, takes some 80 pages: 54 pages take the first English translation of 14 chapters of the famous “*Tractatus de maleficiis*,” (tract on crimes), written by the judge Albertus Gandinus around 1300 and critically edited by Hermann Kantorowicz in 1907; 7 pages are filled with a clearly organised bibliography; the rest is a careful introduction to criminal law and criminal procedure of the late medieval Italian cities, as it is described by Gandinus, a jurist who acted as a judge, traveling from city to city to serve as a high magistrate for the local governments. The tract he wrote is based on his personal practical experience but displays very technical legal reasoning. It is a perfect example of the new role played by jurisprudence in a time of extraordinary change and renewal of political and cultural life. The rich Italian cities were slipping from the original republicanism to seignorial governments; the increasingly strong central powers used criminal law and procedure to attack and eventually get rid of political opponents, as happened in the famous case of Dante in Italy. However, Gandinus’ text shows how this political process did not stop the construction of a complex procedural system, that inevitably set limits to the political powers. Respecting legal rules did not stop the hegemonical process, but at the same time it allowed for the birth of the idea of criminal procedure as a limit to public power, a barrier to protect the citizen from arbitrary use of public force.

This is true not only for criminal law and procedure. The legal culture that developed in Italy and elsewhere in Europe during the period considered by this book laid the ground for the later development of a mentality based on the definition of public powers and the parallel assessment of the rights of individuals and communities. Some scholars have just focussed on the second element, emphasising the late-medieval definition of the subjective rights of individuals, or the pluralism of the local powers, and the communitarianism of a society that has been defined as “stateless.” The historians quoted at the very beginning of this book have introduced the successful image of medieval law as “a law without a state.” But this is only part of the picture. The autonomy of cities and corporations was part of the process of definition of the State: the same legal culture that set procedures protecting the individuals, and even the definition of a right of resistance of the citizen against the unjust oppression exercised by the public powers, provided also the central power with good legal arguments for justifying the increasing centralisation of powers.

For each of the 45 chapters, the authors also offer a careful bibliography, that is by no means limited to articles and books published in English. A look at this bibliography gives a lively image of a very international field of knowledge, as the research on *ius commune* actually is. The authors seem to suggest to their readers that it is impossible to deal seriously with these matters without access to German, French, Spanish and Italian specialized literature.

They also warn readers that these 78 translated texts are no more than a drop in the ocean of the legal writings of the age of the *ius commune*. These translations are like an appetizer: if you want to enjoy the full meal of medieval legal reasoning, you need to read the original Latin texts, knowing that medieval, scholastic Latin is not as difficult as classical Latin.

Hence, this book is an open door. It will drive students and young scholars of history to care more for the law, and hopefully also some student or scholar of law to care more about the history of the late Middle Ages, when theory and practice created a number of legal abstractions still in use today.

—Emanuele Conte, Rome

Claudia Storti, *Economia e Politica vs Libertà. Questioni di diritto sulla tratta atlantica degli schiavi nel XIX secolo*. Giappichelli, Torino, 2020. 187pp.

Slavery is an indelible stain on the history of humankind. Its widespread practice in diverse societies did not confer it any legitimacy nor did it make it less unforgivable. Claudia Storti's book reminds us that, for several centuries, the legal systems of various European nations justified the unjustifiable while legalizing the international slave trade for economic and political reasons that were rooted in racism and bigotry. She chooses to focus her study on the North Atlantic slave trade and its legal representation in the social and political debate on slavery from the 16th to the 19th century. In doing so, she is careful to distinguish the legal concept of slavery from the justification of the slave trade. The book comprises fourteen chapters. They are structured in a tripartite division that covers the period extending from the Middle Ages to the nineteenth century. Rather than providing a chronicle of each and every historical step in a linear narrative, Storti identifies meaningful events that illustrate, within each period, the correlation between the political representation et economic rationalization of the slave trade with their legal justification. The economic and political history of the North Atlantic slave trade is well known. Numerous historical studies, on both sides of the ocean, have detailed its trading patterns and documented their fateful consequences for the lives and death of millions of persons. But, with the exception of a few famous 19th century judicial decisions, the legal arguments used in the debate in favor or against the slave trade have received scant attention. One of the strengths of this book is to recognize the role of legal arguments in promoting a fictional account of justice that can be adapted from one period to another.

Part one deals with the medieval and early modern interpretations of the law of nations (*ius gentium*) as the foundation of slavery's legal status. It traces the development of this legal doctrine back to the medieval jurists' teachings on Roman law and the definition of the *ius gentium* as the normative system that resulted from people's diverse interactions. According to this theory, the enslavement of captured enemies was the direct consequence of legal wars. The opinion that slavery was a condition mitigating the harsh treatment of prisoners of war effectively contributed to its representation as a lesser evil. It also solved the problem created by the contradiction with a natural law conception of freedom and equality that was initially common to all humankind. People were born free



in the law of nature but could be legally enslaved according to the *ius gentium* that was interpreted as a set of rational and fundamental principles above the laws of various kingdoms and local governments. By the end of the Middle Ages, this doctrine conceded a few exceptions for the wars between Christian nations.

They did not challenge, however, the legal status of slavery as the socially accepted expression of a servile condition. The rare concerns for the more humane treatment of slaves did not go as far as demanding the abolition of slavery. In matters of war, slavery was the rule and not the exception. Storti shows how things began to change in the 16th century. The economic competition between states in the development of international trade redefined the role of the *ius gentium* as a new international legal order. The separation of slavery from war emerged with the expansion of the colonial conquests on the American and African continents. These changes did not bring any improvement to the conditions of the slaves despite some concerns voiced by the religious authorities. They furthered instead the racist perception of the enslaved individuals as inferior beings while colonial wars turned into genocides with the decimation of the local population in the newly conquered territories.

Part two, examines the development of the slave trade in the North Atlantic and its consequences for the legal condition of the African slaves. The large-scale development of the slave trade was considered by the emerging sovereign states as an economic and political asset for the expansion of their colonial ambitions. Storti shows how basic commercial considerations further contributed to the classification of human beings as simple commodities whose condition and fate was regulated by national law. The States' strategic interests in reg-

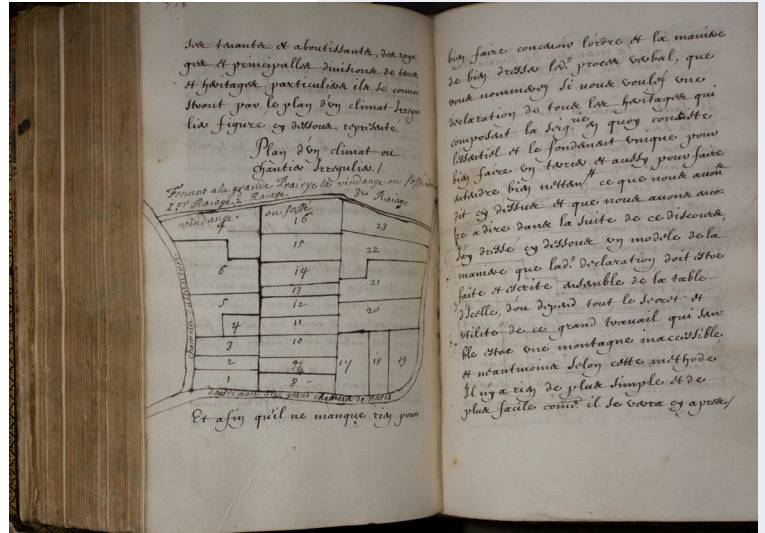
ulating the slave trade owed little to humanitarian reasons. It reflected instead, as with the promulgation of the “Code Noir” by the French king Louis XIV in 1685, the concerns of the colonial powers to achieve and maintain control over their subjects and the territory they inhabited. Ambiguous distinctions in the religious condemnation of the treatment of slaves did little to alter the status quo at a time when the Church and the colonial powers shared many common interests. At the risk of simplifying some of the political issues, Storti’s compelling remarks force us to reassess the role of law in shaping the political debate on the existence of slavery and the nature of the enslaved human beings. Here, like in other circumstances when people do not wish to face a revolting reality, the fiction of legal concepts and classifications created a convenient screen for dealing with sordid economic interests supported by public policies and their consequences on depriving the slaves of their human nature. By the end of the 18th century, medicine and philosophy challenged the monopoly of law and religion in the social perception of slavery. As diverse voices for the abolition of the slave trade grew stronger, the American and the French revolutions promoted an idealized vision of freedom as the innate expression of human nature, but these universal ideals eventually failed to end the slave trade.

Part three considers the opposition between sovereigntist and universalist interpretation of the international order in redefining slave trade as a form of piracy in the 19th century. Moral and philosophical arguments exchanged between the opponents and the advocates of slavery focused the international debate on the universal authority of natural law. At the same time, with the abolition of slavery, the courts faced the challenge of balancing the implementation of the principles of the *ius gentium* with the interests of the sovereign States. In the early 1820s, Justice Story’s and Chief Justice Marshall’s differing opinions in *la Jeune Eugénie* and the *Antilope* cases illustrated the political pragmatism and diplomatic reality of the international order that depended on the good will of the states. The definitive proscription of the slave trade required their participation in international treaties that imparted a positive law force to the ideas of human dignity and natural freedom. In this international context, bilateral and multilateral agreements criminalized the slave trade and redefined individual freedom from a natural condition into a right. However, Storti shows that the insertion of universal principles into positive law did not necessarily warrant their protection, nor did it insure their perennial influence on governments’ affairs. Her sobering comments on global constitutionalism as a panacea for a better world, offers a compelling example of these limitations when contemporary nations and their citizens are threatened by modern forms of slavery and human trafficking. If we cannot expect much from the lessons of history, as she provocatively observes, we should be cautious in embracing universal legal rules that promote in effect a distinct ideology and the fiction of a universal justice.

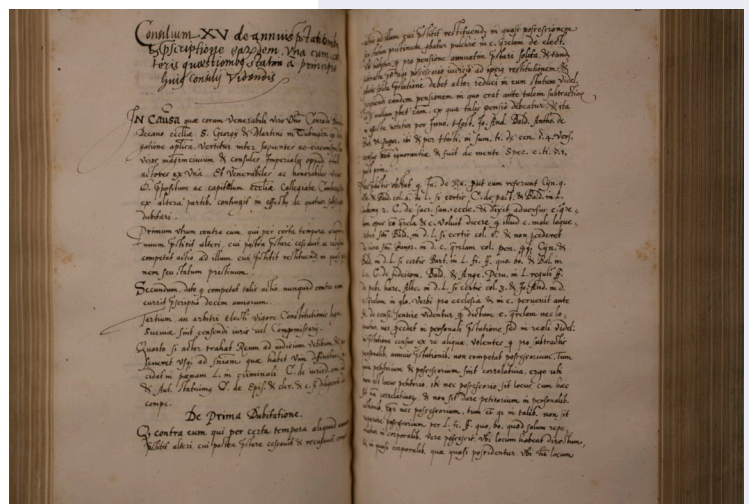
—Laurent Mayali, *Berkeley*

Selection of Recent Acquisitions

Originally a student of theology, Jean Boscager (1601-1687) turned toward the study of Roman law and later joined the faculty of law at Paris, where he wrote *Institution du droit romain et du droit français* in 1686. The *Institution*, as its title indicates, compared Roman law's answers to legal questions with those of French law. Robbins MS 327 contains a paraphrase of this work, possibly based on class notes, which was copied between 1686 and 1713, including chapters on law and justice, the civil law, Roman law, ecclesiastic law, and the origin and progress of French law. This manuscript also includes a treatise on land, as well as a precis on jurisprudence by one M. Bontemps, counselor of La Rochelle, a city in western France.



Copied sometime after 1585 in central Germany, Robbins MS 329 offers a window into law and legal practice in the Holy Roman Empire during the late sixteenth century. A compilation of consilia, forms, and legal briefings from the region around the cities of Bamberg and Würzburg during the mid- to late sixteenth century, it includes twenty consilia issued by Martinus Uranius Prenniger, a jurist and professor of law in Italy and Germany during the late fifteenth century, as well as summaries, responses, and arguments in legal disputes involving Wolf Woflskeel zu Reichenberg from the 1580s.



Fellows Updates

Claudia Storti

Claudia has published a new book, *Economia e politica vs libertà. Questioni di diritto sulla tratta atlantica degli schiavi nel XIX secolo* (Torino: Giappichelli, 2020). She also contributed a chapter, “Early Italian Scholars of *ius gentium*,” to *A History of International Law in Italy*, ed. by G. Bartolini (Oxford: Oxford University Press, 2020).

Alarico Barbagli

In 2020 Alarico became Associate Professor in the History of Medieval and Modern Law at the University “Magna Graecia” of Catanzaro, Department of Law, Economy and Sociology. He published an essay, “La fiducia come “patto” o contratto? Il dibattito nella letteratura giuridica umanistica (XVI-XVII secc.),” in *I rapporti fiduciari: temi e problemi*, ed. by A. Petrucci (Pisa: Giappichelli, 2020).

Emanuele Conte

Emanuele has created a podcast course, Legal History from a European Perspective, which is freely available worldwide. You can listen to a 6 minute introduction to the Podcast [here](#).

Luigi Nuzzo

Luigi has been appointed Director of the PhD Course on Law and Sustainability at the University of Salento. He has recently published *El lenguaje jurídico de la conquista. Estrategias de control en las Indias españolas*, (Mexico, D.F.: Tirant Lo Blanch, 2021). He has also published *Lawyers, Space and Subjects. Historical Perspectives on the Western Legal Tradition* (Lecce: Pensa Multimedia, 2020).

Christoph Paulus

Since 2019 Christoph has been an associated member of South Square in London and Of Counsel with White & Case in Berlin. In 2018 he published *Auf der Suche nach Unsterblichkeit: mentalitätsgeschichtliche, soziale und rechtliche Überlegungen zum römischen Testament* (Berlin: Berliner Wissenschafts-Verlag). In 2021, he co-edited, with Professor Pottow from Ann Arbor, *Bankruptcy’s Universal Pragmatist, Festschrift in Honor of Jay Westbrook*, (Michigan: Ann Arbor, 2021).

Gero Dolezalek

In 2020 Gero published an essay, “Change of Juridical Paradigms A.D. 1100–1300, Mirrored in Manuscripts Held in Tuscany,” in *Codex Studies*, 4 (2020). With Athol L. Murray, he published “Legal Argumentation and Citation of Jus Commune Sources in Pleadings in the Court of Session, 1549/1550,” in *Miscellany VIII*, ed. Mark Godfrey, The Stair Society, vol. 67 (Scotland: Edinburgh 2020).

Marta Cerrito

From 2019-2020, Marta Cerrito was a Visiting Scholar at Wolfson College at Oxford. In 2020 she published *Penza negoziata e arbitrium iudicis. Le transazioni criminali nel Regnum Siciliae (secc. XIII-XV)* (Bologna: Bononia University Press), reviewed above. In 2021 she became a research fellow in Legal History at the University of Palermo.

Stefan Stantchev

Stefan published an essay, “Formation and Refiguration of the Canon Law on Trade with Infidels (ca. 1200–ca. 1600),” in *Christianity and International Law*, eds. Pamela Slotte and John D. Haskell (Cambridge: CUP, 2021).

Joshua Tate

Joshua has a new book, *Power and Justice in Medieval England: The Law of Patronage and the Royal Courts*, forthcoming from Yale University Press. It will be published in April 2022, and is available for [pre-order](#).

Pablo Echeverri

Pablo is now working at the Office of International Affairs at the Financial Industry Regulatory Authority (FINRA). He has also published an article, “[The Last Grand Inquisitor](#)” in the *UMKC Law Review*. Vol. 88, No. 3, 2020.

Ernesto de Cristofaro

Ernesto has a new book, Alessandro Fontana, *Lezioni sulla sicurezza*, (Milano-Udine: Mimesis Edizioni, 2021).

Stefano Mannoni

Stefano has published two books. He is co-editor, with Giancinto della Cananea, of *Administrative Justice Fin de siècle: Early Judicial Standards of Administrative Conduct in Europe (1890–1910)* (Oxford: Oxford University Press, 2021). He also published *Sovranità.com. Potere pubblico e privato ai tempi del cyberspazio* (Napoli: Editoriali Scientifica, 2021).

The Digest is shared widely among our affiliated scholars and former fellows, and we would be pleased to include your professional updates. Please any new appointments or new jobs you’d like to announce, articles or books you’ve published recently, and research grants.

Email us at robbins@law.berkeley.edu to include your professional updates in the next Digest.

Corinne Leveleux-Teixeira

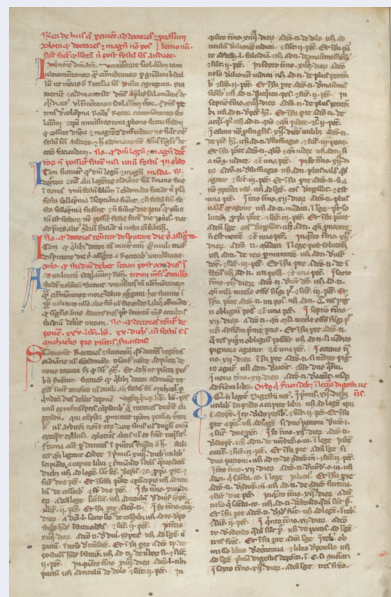


The Robbins Collection and Research Center is proud to announce that former Robbins Research Fellow Corinne Leveleux-Teixeira has been elected to the Legal Doctrines and Canonical Traditions chair at the École pratique des hautes études, one of France's most prestigious educational institutions. The chair was previously held by Laurent Mayali. She took the chair in August 2021. In addition to her election, she received a €30,000 grant from the Réseau National des Maisons des Sciences de l'Homme for her project, "Theoddisés, Theology and Law in the 12th century. Differences, interactions, singularities."

Leveleux-Teixeira is the second Robbins affiliated scholar recently elected to a chair at the prestigious university. Last year Lena Salaymeh, a Robbins post-doctoral fellow from 2012–2014, was elected to the chair in Sunni Islam at the École pratique des hautes études.

Robbins Collection Staff News

Robbins Reference Librarian, Jennifer Nelson, has recently completed a Latin to English translation of the earliest known statutes governing the Faculty of Law at the University of Bologna. These statutes are held at the Robbins Collection, as a part of Robbins MS 22, *De citationibus; Statuta Universitatis Bononiensis*. The first 23 folios of MS 22 contain a law tract by Bonaccorso degli Elisei, a doctor in law from the University of Bologna. The last two folios of MS 22 include the text of the statutes, presumably promulgated in 1252. The Robbins Collection will be releasing a digital video exhibit about the statutes in 2022.



Robbins MS 22, f. 23v

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