MAX-PLANCK-GESELLSCHAFT

**Max Planck Institute
for Social Anthropology**

Report 2014 – 2016

**Department
'Law & Anthropology'**

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'Law & Anthropology'

edited by Marie-Claire Foblets

Halle/Saale

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Max Planck Institute for Social Anthropology 2014–2016

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Department 'Law & Anthropology'

Foreword

This is the second report on the activities of the Department 'Law & Anthropology', which was founded in 2012 at the Max Planck Institute for Social Anthropology. The report covers the 2014–2016 period and is intended to offer an overview of all the work carried out during those three years.[1]

An abiding effort on our part, one that is reflected in the whole of this report and that will certainly occupy us in the years to come, is to achieve a balance between a research programme that gives priority to the development of a particular area of expertise and a broader orientation that includes other topics and interests that link the Department's areas of specialisation to wider considerations. Since the very beginnings of the Department in 2012, we have emphasised how important this balance is, especially as the Department is part of a scientific research institute generously supported by public funds and unparalleled in Europe. The discipline variously known as legal anthropology or the anthropology of law remains less well known than other subdisciplines of anthropology, and thus the resources available to researchers are often quite limited and arbitrarily disbursed, while competition for prestigious scientific grants is fierce. We have therefore sought deliberately to ensure a degree of diversification in the Department's activities, both in terms of the choice of topics studied and in conceptual and theoretical terms. In other words, we are seeking the golden mean between, on the one hand, the aim of developing a programme for the Department that focuses on its own thematic and methodological priorities and, on the other hand, the need to remain sufficiently open.

As regards the thematic and methodological priorities we set for ourselves at the time the Department was established, our medium-term objective is to pursue a research programme that is defined clearly enough as to be able to promote specialisation. Since 2012, our research activities have focused on questions of accommodating cultural, ethnic and religious diversity within the context of contemporary societies, with a particular – but not exclusive – interest in European societies. We are, of course, far from being the only ones to take an interest in these questions, as there are several research centres across Europe dedicated to them. The distinctive feature of our research programme is the commitment to bringing together legal scholars and anthropologists on one team and exploring the different ways in which

the two disciplines, each with its own perception of shared interests, can result in a richer, more sophisticated analysis of the dynamics that inform the way diverse cultural and religious groups live together in today's plural societies. In the following pages we discuss these considerations in greater detail; here it will suffice to refer to the research topics studied by the 11 doctoral students in the Department; the various seminars, workshops and conferences organised by the Department during the period under review; the collaborative projects under way, in particular those with the European Judicial Training Network and, more recently, the *Deutsche Richterakademie* (German Academy of Judges); and, finally, the database project of case law on cultural diversity that is currently in the preparatory stages (for details, see Part I of this report).

In our wish to work in a spirit of openness, the Department has hosted no fewer than 13 visiting researchers during the period covered by this report. In their time with us these scholars, coming from within and outside Europe, pursued work that fits clearly within the scope of our discipline, though representing a wider range of topics than the current areas of specialisation of the Department. To facilitate and continue encouraging this type of cross-fertilisation, the Department has set up a *Visiting Fellows Programme*. During the period under review, seven doctoral students and six postdoctoral and senior researchers visited the Department for shorter or longer periods of time and benefited from the infrastructure and support offered by the Department. In Part II we summarise briefly the activity reports submitted by each of these researchers (see *Visiting Research Fellows* in this volume). Their reports attest to the fact that their stay with us enabled them to advance substantially with their work as well as to absorb new ideas and draw inspiration from the Department's research programme and the wealth of resources in our library. Conversely, their visits significantly enrich the Department, with the guest researchers giving presentations of their work and, where possible, preparing a pre-publication (working paper) and contributing actively to the intellectual life of the Department through their participation in departmental seminars, workshops and conferences, and less formal discussions held during their stay. Given the success of this initiative, the Department envisages maintaining its *Visiting Fellows Programme* in the years to come.

The majority of the research projects described in this report are initiatives of the Department, which therefore bears academic responsibility for them. However, as several contributions to this report indicate, the Department has also been actively involved in collaborative projects with external scientific and/or funding partners. Such partnerships make it possible to situate the research supported by the Department within a broader context and to intensify the exchange of knowledge with other disciplines and institutions that share an interest in certain topics and/or problems, without necessarily approaching them from the same (anthropological) angle. These collaborative initiatives are in their infancy, and hence it would be premature in this triennial report to provide an evaluation of their results. Nevertheless, the expecta-

tions are clearly set out here, and it is already apparent that the various activities undertaken in conjunction with external partners considerably enhance the Department's scientific research programme – they allow for an expansion of the thematic range of the research being done and augment the interdisciplinary methodology that is at the heart of our work. This expansion of our activities has become all the more possible as our Department has been blessed, through the generosity of the Max Planck Society, with a brand new building in which to carry out our research activities. We moved into the building in December 2016 and officially inaugurated it with a gala celebration on 15 June 2017, in conjunction with the Department's 2017 annual conference, '(Re)designing justice for plural societies: accommodative practices put to the test'. I take it as a personal challenge to make sure that the Department fulfils its promise and lives up to the faith the Max Planck Society has put in us.

The new building for the Department 'Law & Anthropology', Max Planck Institute for Social Anthropology. (Photo: T. Meinicke, 2017)

A report such as this is not in itself a scientific document; moreover, it is governed by a set of rules specific to this genre of writing. The aim is to place a research programme in its wider context, inform readers about the main activities conducted during the period under review, and identify the links among them. The report does not go into great detail about each project, but presents the main lines and offers an overview; the details are to be found in the scientific publications to which the report makes reference. It should be noted with regard to the latter that these do

not coincide exactly with the 2014–2016 period for the very good reason that the calendar of academic publications necessarily lags behind the research activities of which they are the output. Be that as it may, we hope this document accomplishes what one can expect from such a report, and in particular that it will engage the curiosity of its readers and convince them of the interest and importance of the work undertaken by the researchers in the Department and those who have visited it during the period in question. We will feel that this report has reached its mark if it is able to demonstrate persuasively that law and anthropology, two distinct disciplines, stand to benefit from joining forces to gain an in-depth understanding of some of the burning issues that we face today, but without losing sight of their profound complexity.

Marie-Claire Foblets

Halle/Saale, June 2017

Part I: Research Programme

Marie-Claire Foblets

The Background: three thematic research priorities

The Department 'Law & Anthropology' commenced its activities in July 2012. I am pleased to have this second opportunity to detail the activities of the Department in the context of the triennial evaluation of the Institute (the first being the previous report). To ensure a clear understanding of the overview of activities for the reporting period (2014–2016), a brief preliminary word of explanation may be in order.

The Department aims to become a centre of excellence for the study of accommodating diversity in contemporary societies by combining an analysis of the relevant legal sources with ethnographic (or biographical) data that serve to contextualise the analysis and provide it with an empirical foundation. It seeks to do so by giving equal weight to an anthropologically informed understanding of the diversity of normative orders (often existing side by side within a single state system) and to the legal approach to this diversity. The latter approach includes the views of various legal practitioners (judges, lawyers, legal service providers, etc.) who, in their daily practice, encounter the phenomenon of 'internormativity' – situations where different normative logics come into contact (and often conflict) with one another – and the resulting need for state legal systems to accommodate this diversity.

The Department's research programme is intrinsically interdisciplinary, focusing neither exclusively on analyses of law and legal practices from an anthropological perspective nor on an understanding of anthropology from a strictly legal perspective; rather, the emphasis is on the *interaction* of the two disciplines as they encounter one another in concrete, day-to-day settings. One of the goals of the Department is to 'desegregate' the various approaches in order to make possible a true dialogue between disciplines and to investigate the extent to which this type of reflection combining different forms of expertise can open up new perspectives. This report presents the first results of our endeavour to bring jurists and anthropologists together to reflect on topics of shared interest.

By calling upon the input of researchers trained in law and those in anthropology (some are trained in both disciplines), the Department seeks to develop a critical perspective on issues that are becoming ever more important within the present context: changing loci of normative authority; processes that erode the state's influence; contrasts between law, which is generally territorial, and non-territorial communities (religious, ethnic, linguistic, etc.); new sources of tension between states and non-state actors; transnational (re)configurations of identity and accompanying practices, etc. These are all issues that often trigger debates about how to accommodate belonging and allegiances and create space for them in the contemporary plural setting. With a view to lending as much structure as possible to the research

agenda of the Department, it was necessary to lay down, at the outset, some thematic priorities for future work. During the 2014–2016 period, the Department continued working very explicitly on three of the four priorities that were already mentioned and prioritised in the previous report (March 2012–December 2013): (1) accommodating diversity, with a particular interest in the increased interconnectedness of law and religion; (2) awareness of and recourse to human rights in various settings; and (3) anthropological research and legal practice. The fourth priority that was mentioned in the previous report, namely, the comparison and comparability of concepts, procedures, institutions, practices, etc., within and across normative orders, has not been dropped, but is to be seen as a methodological component, in keeping with the anthropological approach. In their research activities and academic writings, members of the Department will invariably devote particular and systematic attention to the risks, causes and (possible) effects of 'false comparisons' in their analyses of empirical data and be critical in examining the processes of translation and comparison that can generate such distortions. By increasing sensitivity to issues of comparability and translation and by systematically drawing attention to the epistemological, linguistic and methodological difficulties that come with comparison and translation, the Department can work towards refining the study and the comparison of existing legal and judicial mechanisms and help identify normative thresholds (formal/informal; state/non-state; secular/religious; legal/illegal, etc.) in and among various settings. Anthropology has a key role to play in this regard.

For the purposes of this report, however, I have decided not to devote a separate section to issues of comparison and comparability and to focus instead on the first three priorities mentioned above, which also served to structure our previous activities report. The reason for keeping these three initial foci has to do with the need to plan in the medium to long term. It is my conviction that to guarantee a sufficiently specialised research output in the field of law and anthropology, we have much to gain by further developing a sustained interest in these three priorities and the ranges of questions that come with them. Moreover, all three priorities are meta-reflexive in nature. That is to say, they are situated at the level of reflection on the nature and aims of the work done by anthropologists interested in law and legal practice. They are also intrinsically linked to the scholarly research being done in recent years in the domain of law and anthropology. Given that the results of that research are often drawn upon for practical applications by political or judicial decision-makers, this presents a serious set of challenges to the discipline. No anthropologist today can afford to ignore the real or potential impact of the knowledge he or she disseminates through reports and publications, particularly when these appear to be of particular relevance, whether for the treatment of minorities, the protection of heritage or the resolution of land conflicts, to name but a few questions. To date, critical reflection on these implications is still far too infrequent. The Department, by means of targeted activities, seeks to contribute to closing that gap.

Priorities may of course shift over time as new scholarly activities unfold and the profile of the research unit evolves, but for this 2014–2016 reporting period, these priorities still allow us to present the activities that have constituted the very core of the research programme launched by the Department. The following section sets out briefly how, more concretely, each of the three priorities was given shape in the 2014–2016 period. In Part II of this report, we provide brief descriptions of the way in which the work of each researcher attached to the Department during the reporting period fit within these priorities.

As will become clear from the description of the individual projects, the Department welcomes research projects that are applied in nature, those with a more conceptual or theoretical emphasis, and projects taking an ethnographic or empirical approach. While I want all three sorts of approaches to feel at home in the Department, contributions that combine approaches are especially encouraged.

Accommodating Diversity in Contemporary Societies (with a particular interest in the increased interconnectedness of law and religion)

When the Department launched its new research programme in 2012, it inherited the rich legacy of the Project Group 'Legal Pluralism', which had developed a framework for the analysis of a significant set of issues related to legal pluralism. The Department has been fortunate to be able to build further on this legacy (see, in particular, the contributions of Keebet von Benda-Beckmann, Bert Turner, Martin Ramstedt and Larissa Vetters as outlined in Part II of this report). The present era is marked by an impressive multiplication of identities, affiliations and allegiances – religious, linguistic, ethnic, regional, transnational, etc. This reality is irreversibly transforming societies. An accurate understanding of the variety of responsive legal frameworks that allow for accommodation of this new state of affairs has, therefore, remained a central theme of the Department's research programme.

At the same time, however, one of the principal reasons for establishing a new Department was to make it possible to broaden the scope of activities, to include other emphases and to set up longer-term research projects. The focus has shifted slightly and now embraces several new settings, with priority given to Europe. Several projects and activities reported in this volume (Katayoun Alidadi, Beate Backe, Jonathan Bernaerts, Harika Dauth, Judith Eggers, Hatem Elliesie, Lucia Fröbel, Markus Klank, Jogchum Vrielink and myself), as well as three of the four Research Groups, adopt a predominantly European focus, but their reach and relevance are by no means limited to Europe. Our emphasis on the accommodation of diversity in Europe remains inherently international, as such diversity comes about as a result of the entry into European countries of immigrants, refugees, guest workers, etc., from other parts of the world. The situations studied are often the consequence of globalisation and increased mobility across national borders, both of which occasion unprecedented contact between cultures, societies and communities.

The Department also supports research in a wide range of non-European countries, from Morocco, Botswana and South Sudan to Bolivia, India and Southeast Asia. In most cases the research includes international organisations (most notably the United Nations – see in particular the work of Maria Sapignoli) and international legal norms and instruments.

Central to the research programme of the Department is the endeavour to identify normative frameworks, judicial decisions (case law, including national and international), and practices that are appropriate for addressing normative plurality. By 'appropriate' we mean frameworks that seek a balance between the expectations of the individuals or groups to whom they apply and other interests that also need to be considered (human rights standards, the interests of other individuals and groups in society, constitutional constraints, etc.). These frameworks and the accompanying practices are studied not only through the careful collection of basic comparative data traced through the various types of legal documents (case law from various courts, legislation, legal opinions, expert reports, etc.) and the legal reasoning involved in these documents, but also through scrupulous ethnographic descriptions of particular practices and institutions. The empirical component of the research is an intrinsic part of the projects conducted within the Department's research programme. While law is traditionally understood as consisting of rules and regulations that prohibit or mandate certain courses of action, empirical research shows how *in practice* people or groups (whether religious, cultural or ethnic) live out their daily lives according to their own perceptions of the good life and the extent to which state laws appear to be of relevance to them (if at all).

Several researchers in the Department have been involved in the study of topics that touch upon the accommodation of diversity in contemporary society, including the coexistence of various faith-based or non-faith-based belief systems and practices and the interconnectedness of religion and state law(s). Their research reflects the recent resurgence of interest in religious phenomena among anthropologists and other social scientists more generally. Contemporary societies, especially in 'the West', have tended gradually to detach themselves from their religious pasts, leading to rapid secularisation among the younger generations in particular, which translates not only into the loss of religious practice, but also the loss of influence of formerly majority religions on civil society. On the other hand, we also see the resurgence of religion and belief, in part thanks to international migration and the success of certain 'new' religions. This strong contrast between rampant secularisation among a growing number of countries, especially in Europe, Canada and the Antipodes, and the importance that other countries and communities continue to attach – sometimes ostentatiously – to their beliefs and/or religious traditions, has in recent years given rise to intense public debates and tensions. In some cases, these affect internal social cohesion and the peaceful coexistence of disparate philosophical and religious communities within a given society. Religion or belief may indeed constitute a key source of identity for its adherents, and therefore it is important to ensure that it is

respected; this makes the debates all the more delicate and at the same time complex. In 'Western' legal thinking, religion and/or belief are usually approached from the perspective of individual freedom of thought, guaranteed as a fundamental human right. Ethnographic studies show, however, that this is not necessarily an approach that resonates with people's own perceptions of the situation. Focusing on individual freedom imposes 'Western' yardsticks and expresses a particular view of a person's belief, while at the same time neglecting the significance – actual or potential – of group identities and traditions.

In light of these developments and debates, which are at once political and legal in nature, it is not surprising that legal anthropologists take a particular interest in the role played by religion and/or certain beliefs in various contemporary contexts: at the international level, in the context of debates around constitutional reforms concerning religion (and its protection), as well as in the most varied environments, particularly where a religion or belief gives rise to tensions among several communities within a society. Research undertaken by several members of the Department during the reporting period seeks to take a dynamic approach to the interconnectedness of law and religion that leads to a rethinking of faith-based identities and their underlying assumptions. Ethnographic findings reveal internal diversity and challenge reified notions of religion and belief, showing that one of the effects of the multiplication of identities, affiliations and allegiances in the present era is that people tend to move away from homogeneous conceptions of religion and religious membership towards a conception of faith that is based on autonomy, choice and reason.

With the work of Hatem Elliesie, Dominik Müller, Katayoun Alidadi, Markus Klank, Sirin Knecht, Beate Backe, Ioan-Mihai Popa (associate), Imen Gallala-Arndt, Martin Ramstedt (associate) and myself, the Department has taken it to heart to assess, using empirical means, the multifarious new ways religion and belief are being conceptualised and how conceptions of faith that are based on autonomy, choice and reason coexist more or less easily with more traditional approaches to religion and belief. With the arrival in late 2016 of the Emmy Noether research group, led by Dominik Müller, which is conducting comparative research on aspects of the bureaucratisation of Islam in several countries (starting with ethnographic research in Southeast Asia but planning eventually to include Europe), the Department's research programme underwent considerable expansion, with an even more prominent focus on issues involving the interrelatedness of law and religion. Hatem Elliesie's *habilitation* project on Islamic ethics in Europe is yet another confirmation of this thematic prioritisation.

Awareness of Human Rights in Various Settings

Human rights have been another key topic in the research activities of the members of the Department during the 2014–2016 period. Nearly every researcher has had to deal, directly or indirectly, with one or another aspect of international human rights law. Some have chosen to take this as an explicit object of their study, while others have come across issues in human rights in the process of analysing their research data. This should, of course, come as no surprise. Over the past thirty years or so, human rights have exerted a steadily growing influence on traditional international law, to such an extent that state policies – whether they pertain to individuals or groups – as well as the activities of NGOs, multinational corporations and other non-state actors, are increasingly viewed through this lens.

Today, individual human rights are enshrined in law in most countries. The mainstream legal literature on human rights makes the case that (individual) human rights ought to benefit all. In reality, however, such an approach is misleading. Ethnographic studies explain in detail the many obstacles that may arise in the course of advancing this particular concept of human rights. One such obstacle is the fact that the notion of individual human rights, as protected by most existing international human rights treaties (with a few notable exceptions), is derived from specific historical circumstances that did not affect all human societies in the same way. As a result, their supposed universality is highly questionable. Anthropology shows that reality as lived by individuals and the groups they form cannot simply be reduced to an issue of whether international human rights law is violated or not. Instead, through ethnographic observation, anthropologists explore the degree to which the acceptance of pluralism within international human rights law can serve as a way to deal with diversity within and among societies.

Anthropological research thus sheds a different light on human rights. Starting out from a particular situation, it seeks to understand the extent to which human rights protections shape behaviours and expectations and whether they are intrinsically related to the specific worldviews of the actors involved and their positions with respect to state law, be it international, national or regional/local. In the research conducted at the Department, researchers are encouraged to pay due respect to the actors' representations and practices in the context of the situations they study; an accurate understanding in ethnographic terms of these representations and practices is thus given pride of place in the approach to each situation under investigation. In so doing, the Department's research programme seeks to contribute to the development of an ethnographically grounded understanding of the many ways human rights standards are being taken up, translated, resisted and transformed, and the implications of these engagements with human rights not only for the individuals and groups involved, but also for society at large. Scrupulous ethnographic work may help unravel the intricate dynamics at play between the generalising norma-

tive orientation of international human rights law and the values and identities of people in local contexts.

During the reporting period, researchers at the Department have been paying close attention to a number of human rights-related issues, including land rights (Maria Sapignoli), property rights (Bert Turner), fair trial (Kalindi Kokal; Annette Mehlhorn), freedom of association (Markus Klank), freedom of religion and belief (Hatem Elliesie, Katayoun Alidadi, Markus Klank, Sirin Knecht, Ioan-Mihai Popa, Beate Backe, Martin Ramstedt, Imen Gallala-Arndt and myself), political rights (Katrin Seidel, Maria Sapignoli and Philippe Gout), access to social housing (Lucia Fröbel), free movement of persons (Ian Kalman and Rika Dauth), protection of refugees (Dauth, Judith Eggers and Larissa Vetters) and language rights and minority protection (Jonathan Bernaerts). All of them must also, in one way or another, engage with the prohibition against discrimination, as it is one of the main legal mechanisms for the effective protection of each of the abovementioned freedoms and rights.

In May 2014 the Department convened a thematic conference that brought together diverse perspectives from legal practitioners (judges), ethnographers, and theorists addressing the issue of *personal autonomy* – defined as the fundamental human right of a person to make his or her own decisions on legal matters and on questions involving the choice of law(s) – in the context of present-day normative pluralism. The topic was chosen because it allows one to address and discuss two empirical observations that are particularly relevant to the Department's interest in human rights protection: first, not all societies and cultures value personal autonomy to the same degree; second, in societies where there is one dominant majority with several minorities, personal autonomy is often assessed in a way that conforms to the dominant law. For example, limitations placed on personal autonomy in the name of such 'human rights' as gender equality, fair trial, the interests of the child, physical integrity, etc. *in practice* often come down to denying individual actors the capacity to seek renewal and adaptation of certain traditions and practices from within their specific groups or communities. The paradox of using human rights insufficiently critically as the ultimate test is that it empties the principle of autonomy of much of its meaning and, in effect, obscures an accurate understanding of the effective exercise of individual agency.

The conference proceedings are being published in an edited volume bearing the title *Personal autonomy in plural societies: a principle and its paradoxes* (edited by Marie-Claire Foblets, Alison Renteln and Michele Graziadei; Routledge, in press). It contains 21 contributions that, taken together, offer a nuanced approach to the principle of autonomy in its concrete application. They address the following questions (among others): What tensions or contradictions exist between cultural traditions and the constraints of 'protective' state law, and how do people manage these tensions? What is the role of human rights standards in establishing the criteria for what constitutes valid autonomous action in law, and how accurately does that reflect the perception of the various communities? Can the principle of personal autonomy

also serve as the basis for justifying an individual's voluntary renunciation of the rights and freedoms guaranteed by state law and enshrined in human rights legislation in order to follow certain traditions or practices? What alternative understandings of agency and autonomy are there? To what degree can the principle of autonomy effectively serve as a coordinating mechanism within the context of inter-normativity in today's plural legal societies?

Participants of the Conference '(Not) Outside My Culture: the paradoxes of personal autonomy in a plural society'. (Photo: Max Planck Institute for Social Anthropology, 2014)

Human rights and their implementation in the most diverse contexts will necessarily continue to occupy a central place in the Department's activities via the work of its members and their publications as well as through the various forms of collaboration in which they engage. This topic is a core concern today and a key reference point insofar as it means examining particular situations and analysing them from a very specific legal point of view. Whether one looks at issues of protecting specific minorities (as in the work of Rika Dauth and Jonathan Bernaerts), constitutional questions and the participation of particular groups in the establishment of political structures (see, e.g., Katrin Seidel, Maria Sapignoli, Annette Mehlhorn), procedural questions more generally (e.g., Kalindi Kokal, Judith Eggers) or any other question relating to the protection of a specific fundamental liberty (e.g., Markus Klank, Lucia Fröbel, Hatem Elliesie), every study conducted by members of the Department, without exception, sooner or later comes up against questions involving human rights and their (more or less contested) application in contexts that are often difficult

and sometimes violent. The conference organised by the Department in June 2017 (see below) was a first opportunity for several of the Department's researchers to present their work, setting out in particular the extent to which their ethnographic data make it possible to see what role human rights instruments effectively play in concrete situations, and how these instruments can lead to solutions that meet the aspirations and representation of the various parties involved. Their papers will be published in the volume to come out of the conference.

Promoting Integration of Anthropological Research and Legal Practice

A third research priority being developed by the Department has been, from the outset and throughout, the promotion of the integration of anthropological research and legal practice. During the reporting period, the Department has continued working in a number of ways to promote an interdisciplinary rapprochement between anthropology and legal practice.

The call for ethnographic studies related to policy aims is not exactly new; in fact, it has a long and chequered history, starting with a period that some would rather not recall, namely the colonial era. The terms of the discussion, however, have changed in present-day contexts in which a wider range of parties are involved: not only governments, businesses and NGOs concerned with development and change, but also the communities concerned. Consultancy work represents an increasingly significant form of applied anthropology today.[2] As already mentioned in our previous report, this trend opens up an important set of challenges for the future of the relationship between law and anthropology.

I see two distinct challenges in this regard: one involves the added value of joint efforts, that is, when jurists and anthropologists work *together* to examine concrete situations, with a view to finding durable legal solutions; the other challenge concerns the many questions raised within anthropology itself by the notion of 'applied' anthropology. I will return to this later in the report, as there is certainly no unanimity within the discipline when it comes to the question of applying anthropological knowledge, raising as it does a number of problems both methodological and ethical in nature. Here I will distinguish between these two challenges, as they require different ways of proceeding.

To date, the Department has been active principally with regard to the first of these challenges. It has done so in three ways: first, it convened a series of three consecutive annual conferences (May 2015, June 2016 and June 2017), each addressing in a particular way the question of how legal practitioners (lawyers, magistrates, legislators, civil servants, etc.) and anthropologists can draw concretely on their expertise to reach creative solutions to (legal) problems that arise out of the

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[2] For a recent review of the literature on the issue: see Grillo, R. 2016. Anthropologists engaged with the law (and lawyers). *Antropologia Pubblica* 2(2): 3–24.

encounter between often seemingly irreconcilable normativities. Second, it set up a long-term collaboration with the European Network of Councils for the Judiciary (ENCJ),[3] and with the European Judicial Training Network[4] with the aim of creating a platform for European scientific experts, legal practitioners and judges who address questions revolving around cultural diversity and its accommodation in law. Third, it launched two database projects. As these initiatives are linked by their shared objective, namely, to contribute to setting up a lasting dialogue between judicial practice and anthropology with regard to questions involving the regulation of the way different cultures and communities coexist in today's diverse societies, a brief word of explanation about each of them is in order.

Participants of the conference 'Religious and Cultural Diversity in Four National Contexts'. (Photo: Max Planck Institute for Social Anthropology, 2015)

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[3] For more information on the ENCJ, see www.encj.eu/. As a member of ENCJ's executive board, Mrs Ria Mortier (Court of Cassation, Brussels) took on the task of accompanying the collaboration. I would like to take this opportunity to thank her for her support and dedication to the project.

[4] The European Judicial Training Network is the principal platform and promoter for the training and exchange of knowledge of the European judiciary. It represents the interests of more than 160,000 judges, prosecutors and judicial trainers throughout Europe (for more information, see www.ejtn.eu). I wish to thank Mr Wojciech Postulski, Secretary-General of the EJTN, for giving us the opportunity to present the research programme of the Department to the General Assembly of the EJTN at its meeting in The Hague in June 2015.

Three Conferences

The 2015 conference, 'Religious and cultural diversity in four national contexts', focused on the work of four national commissions (from Canada, Belgium, Great Britain and France) tasked with producing 'country reports' addressing the legal accommodation of minority practices and the integration of minority legal orders. The analyses concentrated on the experiences of the commission members, the official and public reception (including media treatment) of the reports and recommendations, policies that have resulted from these commissions, and the implementation of these policies.

Participants of the conference 'Anthropological Expertise in Legal Practice'. (Photo: Max Planck Institute for Social Anthropology, 2016)

A second conference, 'Anthropological expertise in legal practice', was convened in June 2016. It offered a platform to critically assess concrete experiences of close collaboration between legal practitioners and anthropologists in defending individual cases. The contributions – all case studies[5] – dealt with the roles of and relationships between anthropologists and legal professionals, the process of collaboration, its advantages and pitfalls, and some of the practical and methodological difficulties that inevitably accompany the provision of expert anthropological advice. Issues addressed in the course of the conference included the reasons that led practitioners (lawyers) to turn to an anthropologist and the extent to which the latter effectively helped them make better-informed decisions. The illustrations made clear how such interactions between anthropologists and legal professionals in many cases go far

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[5] Two types of cases in which anthropological expertise was called upon were discussed: (1) cases relating to indigenous peoples and communities; (2) cases involving the assessment of asylum applications.

beyond courts and litigation, into what might be called 'social justice activism'. They also entail close collaboration with the people – often subjects of violence and dispossession – with whom both lawyers and anthropologists happen to work in individual cases.

The June 2017 conference, '(Re)designing justice for plural societies: accommodative practices put to the test', was framed somewhat more broadly. It brought together people who in one way or another have engaged in a process leading to the elaboration of creative, innovative and, to a certain extent, sustainable solutions via accommodative laws or practices. The conference gave scholars from Europe and beyond, both anthropologists and lawyers, the opportunity to showcase their research and the relevance of their interdisciplinary approach for the topic at hand. The illustrations came from a variety of countries and covered a broad palette of topics such as untitled housing in Latin America, environmental protection in New Zealand, language minorities in Europe, private international law, religion under secular state law, requests for exceptions on religious grounds, and claims for recognition of collective rights.

All three conferences proved very successful in terms of interdisciplinary exchanges, offering participants a platform for sharing illustrations and helping them think methodologically about the practical implications of the collaboration between anthropologists and legal practitioners. In reflecting on the relationship between practitioners and experts, Maria Sapignoli, co-convener of the 2016 conference, invoked the concept of para-ethnography, introduced by Holmes and Marcus (2008), i.e., the idea that anthropologists can usefully develop or cultivate collaborative relationships with high-level experts in circumstances in which their different forms of knowledge (or 'epistemic communities') are brought together in a common venture based on a shared understanding of the ethnographic project and the collaborative production of knowledge. For Holmes and Marcus, this approach to ethnography is a reflexive practice oriented towards a collaborative understanding of the institutional world of the expert. One common feature of all three conferences was that the participants invariably took their discussions of the collaboration between anthropologists and legal practitioners beyond their immediate applied implications and used them as a starting point for thinking more methodologically and theoretically about how the concept of para-ethnography can usefully be applied to the collaborative relationships of anthropologists and lawyers. Conceived of in this way, we see a much wider range of situations and disputes in which anthropological and legal knowledge can usefully be brought together.

Three distinct but complementary publications will come out of these conferences (two collective volumes and one special issue of a peer-reviewed journal), each of which seeks to address a gap in the literature by shedding light on the use of anthropological expertise in practice from the point of view of the anthropologist as well as of the decision-makers, and on the way in which anthropological insights may be incorporated into the judicial process and legal practice more generally. For exam-

ple, ethnographic expertise can improve the understanding of historical processes and inform policies for the future, particularly through conducting baseline studies (e.g., development policies, integration policies, policies of accommodation, etc.).

In the medium term, the objective is to produce a richly documented reflection based on concrete experience regarding ethnographic consultancy in the legal field, and incorporating these experiences into an unfolding research programme on the inclusion (or exclusion) of ethnography in the legal realm. There is no shortage of topics that lend themselves ideally to this sort of encounter: conflict resolution practices (restorative justice), property law and the elaboration of common property regimes, gender and citizenship, the nature of legal and social personality, restitution after civil conflict, the growing importance of Islamic law within the context of legal pluralism, the use of the cultural defence as a mitigating circumstance in criminal cases, etc.

Long-Term Collaboration with the European Network of Councils for the Judiciary (ENCJ) and the European Judicial Training Network (EJTN)

In September 2013, the European Network of Councils for the Judiciary (ENCJ) and the Department agreed to a programme of long-term collaboration. Since 2015 the collaboration has also involved the European Judicial Training Network (EJTN).[6] This cooperation starts from the observation that, given the increasing cultural, ethnic and religious diversity in European societies, the judiciary faces novel challenges in understanding a variety of cultural norms and values underlying litigants' behaviour. Of all the professionals called upon to make decisions on questions of accommodating religious and cultural diversity, it is judges who are most often faced with situations in which the law in force does not offer an adequate solution, yet they must nevertheless issue a ruling. Hence, drawing on their experience means effectively making a link between the Department's research programme and the daily practice of the law in the face of questions raised by cultural and religious diversity. Judicial institutions clearly are not the only source of information to which one must refer; normativity is at play wherever interactions take place, with or without recourse to formal law. Nevertheless, such institutions have gained extremely valuable experience that reveals both the limits of the law and, in some cases, the creativity with which some judges manage to find legal solutions.

As a first step, it was decided to carry out a survey among judges in ten European countries (more than 100 judges participated) in order to a) identify the main legal issues and challenges facing courts in Europe in relation to questions of cultural diversity; b) find out what techniques and tools are currently used to address these issues; and c) determine the conditions under which judges would welcome anthropological expertise as a means to better understand specific cultural and religious

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[6] See footnote 3 above.

practices and traditions they encounter in legal practice. The findings of the survey have been published in a special issue of the *International Journal of Law in Context*[7] and serve as the basis for two other initiatives to which the Department committed itself during the reporting period, namely the setting up of two databases as detailed below.

Database of Case Law and Legislation Related to
Accommodating Cultural Diversity

Research and experience over the years, and more recently the survey conducted among judges throughout Europe by the Department in collaboration with the ENCJ, revealed a need for a database specifically dedicated to legal sources that can provide insight into the possible interactions between state law and cultural or religious norms in a context of cultural and religious diversity (state law can in this context either enforce or restrict cultural and religious norms). This is a very ambitious and unprecedented project. I initially launched the idea of such a database in the negotiations with the Max Planck Society prior to the establishment of the Department, and it took more than three years to set this project in motion. To be able to envisage such a project and ensure its success, it was necessary first to set up the network of contacts, including practitioners (judges, in particular) and national correspondents for each country that will be included in the database. These contact persons need to be thoroughly familiar with the current legal issues if they are to take responsibility for certain topics and provide us at regular intervals with summaries of the pertinent legal documents. Over the medium term, the aim is to establish a database that will bring together, in a standardised and searchable format, cases collected from all over Europe detailing the legal reasoning that was followed when addressing claims (mainly by minorities) and the extent to which empirical evidence was used to reach the given outcome.[8] As far as possible, the database will also provide access to information on the context and the public discourse surrounding a particular issue, e.g., official statements of certain groups, media reports, etc.

   In the broadest terms, the database is intended to cover legal disputes between official (state) law and practices derived from non-state cultural norms and precepts, for example, indigenous or minority customs and traditions, rituals, and other expressions of religion or belief. It will contain landmark cases involving plural legal orders, human rights, minorities, discrimination, reasonable accommodation, and other practices that might be described as involving the 'autonomy of the person', such as bodily marking (including circumcision), the wearing of religious attire

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[7] Vetters, Larissa and Marie-Claire Foblets. 2016. 'Culture all around? Contextualizing anthropological expertise in European courtroom settings'. *International Journal of Law in Context* 12(3): 272–292.
[8] We may consider expanding the scope of the database beyond Europe at a later stage, but for now we are limiting it to Europe.

in public and in the workplace, etc. The database will also include local, national, transnational and international legislation, regulations and policy directives that touch on minority rights and the accommodation of religious and cultural diversity and/or that concern a conflict between state law and various cultural/religious norms, laws, codes or practices. It will provide a retrospective view, giving the necessary historical background to the legal cases and policies relating to these issues, and will be updated regularly so that it remains relevant. This will be managed by an international network of contributors and correspondents who will keep us informed of published cases and the status of cases in progress, and provide summaries of unpublished cases.

The database's interface language will be English, and case summaries will be provided in English (for cases that are in a non-mainstream language, the MPI will outsource the translation of the summary). Cases and legislation will be presented in the original language and in English. The database will offer a number of different search possibilities, including a free search, several searchable fields (e.g., geographical region, level of jurisdiction, legal citations, etc.), and the option to filter the search (by keyword, country, court, year, specific human right, etc.). This is indubitably a very long-term project, but will constitute a research instrument that is unparalleled in Europe, one that will make it possible to gain insight, through concrete illustrations, into how law in the various European countries responds to the new reality of a plural society and what reasonings are used to devise legal solutions to specific situations. The database will make it possible both to compare countries and to identify specific trends emerging beyond the limits of domestic legal orders. During the reporting period, we held several meetings (in Halle, Berlin and Brussels) which allowed us to develop the concept in greater detail (such as the searchable fields, filters, and functionality). We are now sufficiently far advanced in the preparations to be able to launch the systematic collection of data in early 2018. Coordination of the project will be entrusted to a scientific project manager whose task will be to instruct the contributors and correspondents, determine the timetable to be followed, and ensure that the information they are asked to provide (published cases/laws and the status of cases in progress and summaries of unpublished cases) is presented in the prescribed format.

A number of issues are still under discussion, including the following: Should the database be selective (landmark and representative cases, examples of 'good' or 'bad' practices) or should it strive for comprehensive coverage of all cases? To what extent should the contributors or correspondents, as curators of the database, intervene with their own commentaries? To what degree should links to secondary material (commentaries on the laws and cases, case notes) be provided? How should cases be followed up? Should there be links to subsequent cases and/or legislation that have used or invoked a specific case? A forthcoming working meeting is planned, to be held as soon as the position of coordinator has been filled (the job will be advertised in summer 2017).

Database of Anthropologists Throughout Europe and their Expertise

The idea of a database of *anthropologists throughout Europe and their expertise* was prompted by the results of the abovementioned ENCJ survey. Several judges noted that, while it has become very common for them to draw upon the services of experts in various fields such as ballistics, psychiatry, public health, urban planning and construction, it is less usual to draw upon experts in the domain of social or cultural anthropology.[9] Following a meeting with Thomas Hylland Eriksen, the Chair of the European Association of Social Anthropologists (EASA), the idea was submitted for discussion to the executive board of EASA and met with great enthusiasm. We have since been working on a proposal, together with members of Eriksen's team, to be submitted for the board's approval, and it is our hope that it will be launched at the next EASA meeting (scheduled for Summer 2018). Such a database combines two distinct but complementary objectives. *The first objective* is to give greater visibility to the discipline of social and cultural anthropology, both internally and for the world beyond the profession. Provided that it is well stocked with easily accessible information that is regularly updated, it will raise the profile of the discipline, serving in a sense as a 'scientific showcase' for anyone interested in research on the different topics studied by social and cultural anthropologists today. *The second objective*, which is closely linked to the first, is to make it easier for those anthropologists in Europe who are positively predisposed to making their expertise available to practitioners to be identified and contacted by people who may need their services. Whether they be legislators, clinicians, urban planners, educators or judges, they may on occasion be in search of additional information of the type that anthropologists can provide in order to take an informed position in a case before them.

In order to fulfil both of these objectives, however, a number of conditions need to be met relating, on the one hand, to the method to be followed in designing the instrument and, on the other hand, to the measures required for its maintenance over the medium and long terms. It is clear from the outset that a project aimed at establishing and launching a database of anthropological experts is very ambitious and,

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[9] This observation applies mainly to continental European countries, since in the US, Canada, Australia and, within Europe, in Great Britain, it is no longer unusual for anthropologists to be asked to serve as expert witnesses or consultants. They provide such services especially for issues relating to aboriginal/ indigenous peoples, land rights and other questions revolving around environmental protection and access to natural resources, development projects and, recently, also in relation to minorities of immigrant origin. If their expert testimony concerns criminal and/or indictable offences, then this may involve providing expert testimony in support of a 'cultural defence'. A court of law may call upon expert witnesses if the court deems it necessary to take into consideration specialist information about the cultural dimension of the behaviour under scrutiny. For some years now, anthropological experts have also been consulted in the evaluation of asylum applications. These requests are most often made at the initiative of the administrative or judicial authorities competent in this field, but occasionally it is the asylum seekers themselves who request the assistance of an expert on their culture or society.

if it is to be consulted regularly, must be designed in a highly professional manner. After several constructive meetings between September 2016 and May 2017, we reached agreement on a number of points. First, the current list of EASA members (more than 2000) will serve as the initial data set. Needless to say, it will be necessary to inform them in advance and request their cooperation. Over the long term the database should be conceived as an instrument that also allows anthropologists who are not members of EASA to have their expertise included. It is important to agree on what constitutes *sufficiently solid guarantees* for someone to qualify as an expert in an area (extensive field experience, previous consultancies and expert reports, academic qualifications, etc.). The database will also mention the expert's linguistic skills and provide information on whether the anthropologist is willing to serve as a consultant or expert witness and, if so, whether he or she imposes any restrictions (e.g., no testifying in court, no communications to the press or media, no work for political parties, etc.). The aim is to enable each anthropologist to indicate any reservations he or she may have in order to avoid misunderstandings. Expert witnessing and/or consultancy will be the sole responsibility of the individual anthropologist, and neither EASA nor the Max Planck Institute will be held responsible for the quality of the work carried out by the witness/consultant. A disclaimer will added to this effect. Some questions remain open: Should the database make reference to rules of professional ethics and, if so, which rules should be followed? Should there be guidelines concerning costs (whether mandatory or optional), or should this be left entirely to the discretion of each individual?

There is also another aspect to the challenge of setting up a database of experts, and that involves the various questions raised in anthropology regarding the prospect of making ethnographic data available for practical application, be that within a judicial, administrative, political or other context. Publications on this subject are numerous. One very critical strand of literature examines the use of anthropological expertise from epistemological and ontological perspectives and asks whether, given the potential for misunderstanding or misuse of their expertise and testimonies, anthropologists should get involved in such decision-making situations at all.[10] With this in mind, in addition to addressing the challenges involved in the collaboration between legal practitioners and anthropologists and devising lasting solutions to often complex and thorny problems, the Department aims to offer a unique setting

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[10] The literature on anthropological consultancy and the anthropologist as expert witness has been growing in recent years. For the most part, this literature comprises the work of anthropologists who offer their services either through oral testimony or written reports, and who then publish articles about their experiences. Often, such authors feel their advice has been misinterpreted, taken out of context, or simply ignored. They therefore use their writings as an opportunity to recommend more appropriate and efficacious use of anthropological or cultural experts and expertise (see Grillo, footnote 1 above). Less frequent are publications by those who have used the services of an anthropologist: the practitioners, clinicians, etc., who are the users or consumers of expertise. As they are generally not academics, they are less inclined to detail in writing the benefits or difficulties of drawing upon anthropological expertise.

where anthropologists from around the world who are engaged in various ways in government service or consultancy work more generally can come to reflect on their own experiences. In doing so, Halle can serve as a prominent forum for the individual reflection and critical discussion that are at the core of anthropological practice today, thereby helping to define the role of legal anthropologists who do consultancy work. Issues concerning the purposes, dilemmas, vicissitudes and conflicts, as well as the empirical findings and the ethical problems raised by consultancy work, are bound to arise ever more frequently, thus obliging consultants to address these dilemmas and such questions as: What is the anthropologist's position in the societies he or she studies? Is he or she a relatively detached observer or someone committed to a programme of action to address the socio-legal problems studied? How is the anthropologist's study altered by his or her commitment? These questions – which revolve around the positionality of the ethnographic consultant – highlight the ethical questions at stake in the practical application of anthropological expertise. There is a clear need for further development of rigorous professional guidelines, and the Department will make a strong case for the elaboration of such guidelines.

Meeting at the Harnack House in Berlin for the database of case law and legislation related to accommodating cultural diversity. (Photo: J. Vrielink, 2016)

Part II: Ongoing Research Activities at the Department 'Law & Anthropology'

Director

Marie-Claire Foblets

Religion & personal status laws; minority practices; accommodation; applied anthropology

Marie-Claire Foblets is Director of the Department 'Law & Anthropology' and Managing Director of the Max Planck Institute for Social Anthropology. Her first activity report, covering the period from July 2012 to December 2013, contained a number of details regarding activities under way at the time when she took up her post in Halle, including several teaching assignments at the Law Faculty of the Catholic University of Leuven, the supervision of six ongoing doctoral theses at that faculty (now all successfully completed, with five having also been defended),[11] as well as the coordination of the RELIGARE research project funded by the European Commission under its FP7 programme.[12] As a consequence, a significant portion of that report focused on activities that had been initiated in the recent past. This activity report, however, focuses first and foremost on the future. It offers an initial overview of the various activities and initiatives undertaken by Foblets with a view to delineating the Department's research programme. Since the majority of the activities listed here have not yet reached completion, it is too early to present definitive results. Unlike the first report, this second one thus adopts a forward-looking approach that refers to both medium- and longer-term future activities.

This overview of Foblets's scholarly activities is organised around three axes. The *first axis* has to do with the research Foblets herself has conducted that has resulted in scientific publications. The *second axis* concerns the launch of projects and working instruments that will yield tangible results over the medium or long term, that is, after this reporting period. The *third axis* comprises a number of opportunities the initiative for which was taken not by Foblets personally, but that were presented to her during the reporting period. There are four such scientific projects in which Foblets has agreed to be involved, set up in partnership with third-party teams and focusing on important current topics. In the case of two projects, the Department's role takes the form of providing logistical and academic support (see *Bureaucratisation of Islam* and *Migration and the Transformation of German Administrative*

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[11] Marleen Maes, Ursil Lelo di Makungu, Stijn Deklerck, Wim Vandewiele, Valérie Verbist and Toon Agten.

[12] 'Religious diversity and secular models in Europe: innovative approaches to law and policy' (RELIGARE), funded under the European Commission's 7th Framework Programme.

Law, pp. 99–103, this volume); for the other two projects, Foblets has agreed to take scientific responsibility (see *The Challenges of Migration beyond Integration* and *Minorities and Community Justice in Germany*, pp. 103–108, this volume).

First Axis: scientific research and publications

Of Foblets's own scientific publications and activities, two projects in particular deserve mention. They reflect most closely – each in its own genre – Foblets's scientific approach, namely, combining legal analysis with an anthropological view. Following up on her earlier research on the Moroccan Family Code (*Moudawana*) at the time of its introduction in 2004, in 2013 Foblets launched a project to assess the effects of this code in its first decade (2004–2015) on Moroccan citizens living in Europe. The project involved data gathering by a team of six research partners who conducted a comparative study of the way in which the provisions of the Code are applied by the Moroccan courts as well as by the administrations and courts of the five main European countries where Moroccan nationals reside today (France, Belgium, the Netherlands, Italy and Spain). In total more than 700 cases related to marriage, divorce and descent for Moroccan nationals living in Europe were collected and analysed on a comparative basis. The legal study was complemented by empirical data collected through field observations in three Moroccan consulates (Lille, Rotterdam and Antwerp) and semi-structured interviews with family judges in Morocco. This is the first research of this type and scope since the code entered into force more than ten years ago. The Code was praised when it was enacted, but a critical, comparative examination of its application in Europe remained to be done. A conference bringing together the researchers to discuss their findings was held in December 2016 at The Royal Academy of Sciences in Brussels. This conference also provided an opportunity to launch the book releasing the results of the research (M.-C. Foblets (ed.), *Le Code marocain de la famille en Europe. Bilan comparé de dix ans d'application*, La Charte Professional Publishing 2016, 719 p.).

Foblets's second major publication in the 2014–2016 period is her chapter 'The body as identity marker: circumcision of boys caught between contrasting views on the best interests of the child' (in M. Jänterä-Jareborg (ed.), *The child's interests in conflict: the intersection between society, family, faith and culture*, Intersentia 2016). The chapter addresses a question that is central to her research programme, namely, how to accommodate increasing diversity in the contemporary European context and what role anthropological knowledge can play in helping to understand practices that are considered controversial from a fundamental rights and liberties point of view. In the chapter Foblets focuses on the practice of circumcising infant and young boys, and on the stark opposition that this has recently brought to light between two contrasting interpretations of the interests of the child: one approach links these best interests to the incorporation of the child within the religion, tradition and group to which his parents (or one of them) belong; the other is a more individual

conception of those interests that would endow the child with the right to make his own decision as soon as he has attained the necessary maturity to do so. Foblets analyses three recent debates on the issue. The first of these debates led to a 2012 decision by a court in Cologne, Germany, that was widely discussed in the media for several weeks. It ended – provisionally – with a vote in the German Parliament for a legislative solution. The second debate was conducted at the Parliamentary Assembly of the Council of Europe (PACE); it resulted in the adoption of a resolution that called into question, as medically unjustified violations of children's physical integrity, a number of practices including, notably, the circumcision of young boys. Finally, in Israel, a judgment was handed down at the end of 2013 by a rabbinical court that sparked a public debate on the matter.

In her analysis, Foblets identifies a number of factors that help explain why it is so difficult to reconcile the different positions on what constitutes the best interests of the child when it comes to the practice of infant and young boys' circumcision. An examination of these factors indicates that an approach that goes beyond simply asserting that one group is right and the other wrong is needed. Foblets then explores the insights one may gain from anthropological knowledge of body-marking practices and of the cultural (including religious) meaning of such practices within particular contexts, and how such insights can contribute to analysing a debate as vehement as the one on boys' circumcision.

In the medium term, Foblets plans to publish a monograph comprising a number of analyses of cases similar to the one on male circumcision discussed above. The aim is to show, based on the case law developed over the past 30 years across Europe, how an in-depth anthropological analysis can help situate certain legally controversial practices and/or traditions in their historical and cultural contexts, thereby allowing them to be treated in a more nuanced manner and with greater perspicacity. In the upcoming years, Foblets plans to focus her research attention more intensively on this monograph, which will in a sense be the crystallisation of the role she sees for an anthropology in dialogue with legal scholarship in the quest for legal solutions suited to the reality of contemporary plural society in all its complexity.

Second Axis: research instruments and long-term projects

The possibility of designing work for the long term is a great privilege, but also demands that the necessary instruments for achieving long-term goals be made available. The Department has been able to benefit from the outset from the work done by the members of the Project Group 'Legal Pluralism' (1999–2012), especially its efforts to build up the Institute's library with a very rich collection of academic publications that are relevant to the Department's research programme. Naturally, this collection has to be continually updated. The Department has the budget needed

to make it possible to do so in relatively automatic fashion through the committee responsible for ordering publications placed on the basis of researchers' needs.[13]

For the specific purposes of the Department's research programme, however, and in particular with a view to promoting the integration of anthropological research and legal practice, Foblets has undertaken several more targeted initiatives to which Part I of this report refers. In particular, the aforementioned database of case law and legislation relating to the accommodation of cultural diversity is a long-term project that should in due course make it possible to follow developments in domestic law concerning the accommodation of diversity in the 28 Member States of the European Union.

During the reporting period, Foblets also set up a collaborative venture with the board of the European Network of the Councils of the Judiciary (ENCJ). More recently, she has also established contacts with the European Judicial Training Network. The idea underlying these initiatives is to develop working relationships that make it possible in the short and medium terms to set up a series of activities that engage in systematic dialogue between interested judicial authorities in Europe and experts in cultural diversity. During the period covered by this report, several meetings were organised, notably in Brussels in January 2015 at the premises of the ENCJ and in The Hague at the Peace Palace in June that same year (these are discussed in Part I above).

Still with a view to supporting her staff and planning in the long run, Foblets has started a book series bearing the name of the Department (*Law & Anthropology*), initially with Ashgate and now, since the purchase of Ashgate by Routledge, with Routledge.[14] The series will include monographs written by research fellows as well as edited volumes resulting from workshops and conferences sponsored by the Department. The aim is to create a high-profile, sustainable flagship series that will help establish a recognisable identity for the research unit. The series will not, however, be limited to scholars of or research produced by members of the Department. Foblets expects that as both the series and the Department develop distinct identities, the series will attract submissions from other prominent scholars and practitioners, including anthropologists who serve as expert witnesses in court cases and as consultants in various other legal proceedings (refugee hearings, immigration procedures, etc.), as well as legal practitioners who are working on related issues and who see the series as the most appropriate and (one hopes) prestigious venue for the dissemination of their research findings. All volumes in the series will emphasise empirical data. Thus far, two volumes are in press: *Personal autonomy in plural societies: a principle and its paradoxes* and *The trials and triumphs of teaching legal Anthropology: testimonies from around Europe*. Both volumes have been co-edited

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[13] Bertram Turner is the Department's representative on this committee and ensures that the necessary orders are placed in the areas relating to the activities of the Department.

[14] The series is managed by Brian Donahoe, the Department's Senior Scientific Editor.

by Foblets, the first with Michele Graziadei and Alison Dundes Renteln, the second with Anthony Bradney and Gordon Woodman. Foblets is also the lead author of the introductions to both volumes.

The *Personal autonomy* volume is discussed in some detail in Part I of this volume (see pp. 11–12). *The trials and triumphs of teaching legal anthropology* is the result of one of the very first initiatives taken by the Department. In late 2013, Foblets convened a meeting of colleagues from across Europe who teach legal anthropology, broadly conceived. The aim was twofold: first, to make it possible to gain a more concrete idea of the way in which faculties where legal anthropology part of the curriculum transmit the discipline to future generations; second, to examine more closely the developments within the discipline that reveal the particular needs for targeted scientific research and that could thus be placed on the programme of the Department as well, whether in the form of new research projects, future scientific meetings, collective publications, or hosting of researchers, to cite a few possibilities. The meeting most certainly attained its two objectives. More than thirty practising teachers from all over Europe, ranging from anthropologists teaching in anthropology departments and law schools to legal scholars incorporating anthropology into their law curricula and teaching fundamental aspects of legal thinking to anthropology students, responded to the invitation.

The volume addresses not only very practical concerns of how to create space for legal anthropology in both law and anthropology programmes and how to structure the teaching of legal anthropology, but also more conceptual issues such as the ethnographic examination of the 'culture' of legal institutions and systems of state laws and the comparative analysis of legal systems and legal cultures. Starting from an acknowledgement that the two disciplines appear to be at opposite ends of the academic spectrum and that practitioners of the two disciplines still regard one another with a degree of suspicion and prejudice, the contributions to this volume try to bridge the apparent epistemological and ontological gulf separating the disciplines. They do so by emphasising both the need for law students (i.e., future legal practitioners) to go beyond the standard approach to law based on state-centred positivism and open their eyes to the normative diversity that exists in all plural societies, and the need for anthropologists to have a solid foundation in law, legal practice, and legal procedure in order to deal more effectively and convincingly with a number of explicitly legal issues that are emerging as important concerns to anthropologists (e.g., indigenous peoples' rights and land claims; legal pluralism and 'informal justice'; issues of refugees, migration, citizenship and deportation; truth and reconciliation commissions and special courts; the right to and protection of natural resources, etc.). The volume also addresses the issue of teaching applied legal anthropology in order to prepare anthropologists to apply their expertise in legal settings as expert witnesses and consultants, as well as to promote the assessment and improvement of state laws and policies.

The presentations and discussions clearly revealed that this is a flourishing discipline that is interested in the study of crucial and often highly political issues of our era: the negative effects of globalisation for vulnerable populations, the intricacies of global governance, the impacts of climate change, forced migrations, etc. However, it also became clear that the discipline receives little support from the institutions where it is taught. Without exaggeration, one may venture a diagnosis that is relatively worrying: despite the great relevance and urgency of the topics on which the discipline focuses today and the added value that a legal anthropological approach brings to these subjects, professional prospects for graduates in this field are almost non-existent. This in turn makes it very difficult to raise the funds necessary to be able to undertake ambitious and high-quality scientific research.

Beyond the first two volumes listed above, Foblets is also planning an edited volume on illustrations of successful legal accommodation of minority practices, drawing upon experiences in various countries in Europe and beyond (based on the proceedings of the June 2017 conference; see p. 16). Another volume will examine how international migration transforms rural property dynamics at the local level and generates new concepts of property rights (to be based on the June 2019 conference proceedings).

Two other initiatives come under the heading of long-term measures set up with a view to giving support to the discipline, albeit in the broader sense, i.e., not limited to activities that fall within the research programme of the Department strictly speaking. One is an initiative to produce an *Oxford Handbook of Law and Anthropology*; the other is a website that is intended to accompany the *Teaching legal anthropology* volume.

The idea of an *Oxford Handbook of Law and Anthropology* was first discussed in 2015. It is envisaged as a groundbreaking collection of essays that will provide an original and forward-looking overview of the field. The volume's structure and thematic framework are the result of more than two years of drafting, modification and discussion that involved a wide range of colleagues, experts and potential contributors. The *Handbook* project is closely associated with the innovative research and interdisciplinary programme of the Department. The editorial board consists of the director of the Department (Marie-Claire Foblets), one senior postdoctoral researcher in the Department (Maria Sapignoli), and two members of the Department's international Consultative Committee (Mark Goodale and Olaf Zenker). As mentioned above, the Department has already embarked on a number of initiatives that are intended to expand the boundaries of the field of law and anthropology, particularly regarding collaboration among legal scholars, legal practitioners and anthropologists. The proposed *Handbook* builds on this vision by bringing together a diverse spectrum of contributors, each of whom is a recognised expert in the topic under consideration. The result will be a definitive volume of essays on law and anthropology, each of which will provide a survey of the current state of scholarly

debate and an original argument about the future direction of research in this dynamic and interdisciplinary field.

The formal proposal for the *Handbook* was received with great enthusiasm by the publisher. It should serve as a scholarly benchmark at a time when interest in legal anthropological research is both growing and becoming more diffuse. In this sense, the *Handbook* will organise these expansive research interests within a coherent collective narrative about how law and anthropology have related and should relate to each other as intersecting domains of inquiry that concern fundamental questions of dispute resolution, normative ordering, social organisation, and legal, political, and social identity. The need for such an overarching project has become even more pressing as lawyers and anthropologists collaborate with each other within an ever-increasing number of key spheres, including immigration and asylum processes, international justice forums, debates over cultural heritage, and the writing of new national constitutions, among many others. The *Handbook* will take critical stock of these various points of intersection in order to both document the wide range of collaborative work that is currently being done in the field and, just as important, reveal new avenues for further legal anthropological research and practice. At the same time, the *Handbook* will examine the ways in which theoretical and disciplinary conventions within law and anthropology can lead to different forms of engagement with socio-legal processes. The chief objective of the *Handbook* is to establish a new framework for the field of law and anthropology that both identifies and conceptualises its most promising areas of innovation and socio-legal relevance, while also acknowledging its points of tension, its open questions, and its areas of future development.

In order to support the project and facilitate its publication, the Department will devote its June 2018 annual meeting to the theme 'The future of law and anthropology'. The Institute will invite all the *Handbook*'s contributors to Halle for four days of panels, chapter presentations, outside commentary and discussion around the themes of the volume. Depending on the timing of approval by Oxford University Press, the event in Halle should take place during the period in which contributors are preparing their first drafts for the volume. The June 2018 conference will reinforce the eventual coherence of the *Handbook* at the same time that it showcases the importance of the project for the future of the field.

One last initiative that falls within the category of Foblets's long-term measures is the prospect of setting up a website that will serve as a complement to the publication of *The trials and triumphs of teaching legal anthropology*. The impetus behind this initiative was the shared sense that exchanges among teachers, such as those occasioned by the 'Teaching legal anthropology' workshop, should persist beyond the publication of a collective volume. With that in mind, Foblets proposed setting up a website, to be managed by the Department, that would give all interested lecturers the possibility to present and share the teaching materials they use in their teaching. The idea was received with great enthusiasm. The intention is to maintain the site

and update the content regularly so as to ensure that it reflects at all times the various kinds of teaching being offered in the discipline across Europe, indicating the broad lines and trends. By enabling exchanges among lecturers on how they pass the torch of the discipline to the generations of students they train, the site will offer the discipline in Europe a service that at present has no parallel.

Third Axis: research partnerships on relevant topics

On four occasions during the reporting period, Foblets was offered the opportunity to involve the Department actively in projects and collaborative initiatives that involve external scientific and/or financial partners. Two of the projects come with full external funding, and the Department has agreed to host and to offer the scientific support requested by the project leaders. One of these is the project titled 'Migration and the transformation of German administrative law: an ethnographic study of state–migrant interactions in administrative courts', for which Larissa Vetters obtained funding from the Thyssen Foundation and which she is coordinating with the Department's support (see *Research Groups*, this volume). In addition, the Department is offering its support to the project led by Dominik Müller, who in 2016 obtained the funding necessary to enable him to lead, with great autonomy, an Emmy Noether Research Group for five years on the topic 'The bureaucratisation of Islam and its socio-legal dimensions in Southeast Asia' (see *Research Groups*, this volume). One of Müller's goals is to eventually move closer to the research topics that are the focus of the Department, in particular to explore the possibilities of carrying out systematic comparisons between the bureaucratisation of Islam in the countries on which the Emmy Noether Group focuses (Malaysia, Indonesia, Philippines, Singapore) and the way in which Islam in Europe is slowly but surely beginning to be bureaucratised. Such comparisons are unprecedented in legal anthropology and would clearly open up a vast field of research oriented towards the future, especially as everything suggests that, in the years to come, Islam will continue to gain importance in Europe.

The two group leaders consulted with Foblets throughout the process of preparing their applications to ensure that the projects would be consistent with the aims and approaches of the Department's research programme. Such projects significantly enrich the work of the Department by expanding the thematic scope and complementing the fields of interest covered by the Department's own researchers. Foblets will continue to be actively involved in supporting such projects if and when other opportunities present themselves in the months and years to come, provided, of course, that the infrastructure of the Department allows it (the new building offers space for 40 researchers at most) and ensuring that the Department's schedule of activities is not overloaded.

With regard to the other two projects, the Department has committed itself to investing jointly in the scientific coordination of the projects and bearing the costs

incurred. The first, titled 'The challenges of migration beyond integration', engages the Department in intense collaboration with other Max Planck Institutes; the second, with the provisional title 'Minority communities and dispute resolution in Germany: an empirical comparative investigation', also involves other partners. Here the aims of these two initiatives are outlined; as both are just now getting under way, the results of the two projects will be presented in our next report.

The Challenges of Migration beyond Integration (WiMi)

In autumn 2015, Martin Stratmann, President of the Max Planck Society (MPG), called for a collective, cross-institutional initiative to be launched on the topic of migration and integration. The idea behind the call was to encourage interested MPIs to join forces in a collaborative venture with a view to conducting interdisciplinary, cutting-edge fundamental research in relation to the 2015 refugee situation in Germany. Foblets took the lead in developing a framework idea for such an interdisciplinary collaboration and, ultimately, in coordinating a funding proposal to be submitted to the Office of the President of the MPG. She has been supported in this task by Ayelet Shachar (Director, MPI for the Study of Religious and Ethnic Diversity) and a small working group consisting of Anne Menzel (trained in political science, with expertise in peace and conflict studies and Sierra Leone), Luc Leboeuf (trained in law, with expertise in asylum and migration law) and Alexander Hassler (student assistant, student in law).

WiMi brings together migration researchers from a broad variety of disciplines: law, demography, public health, economics, social anthropology, political science sociology, and history. It is investigating exclusion from the perspectives of a number of different actors at the level of state agencies (the European Union, the receiving nation-states, the countries of origin), non-governmental actors, as well as the migrants themselves. For a more detailed description of the WiMi programme, see pp. 103–106.

Minority Communities and Dispute Resolution in Germany:
an empirical comparative investigation

The last project to be mentioned here came to Foblets by way of a request from Judge Klaus-Dieter Schromek of the *Oberlandesgericht* (Higher Regional Court) of Bremen (in autumn 2015) and subsequently (early 2016), through him, from the *Deutsche Richterakademie* (German Academy of Judges). The project concerns the issue of what is referred to as 'alternative' justice or, in German, *Paralleljustiz* ('parallel justice'). The phenomenon is not new, and anthropologists have long been interested in the various ways in which individuals or groups in society seek to resolve their conflicts. These methods are studied under the general rubric of 'alternative dispute resolution' (ADR), whose mechanisms offer an alternative framework

to the state's judicial apparatus. In Europe today, certain forms of alternative justice that do not fall under the control of the state's judicial authorities are perceived as a significant risk to the protection offered to every legal subject in domestic positive law. This is particularly true of mechanisms developed within communities of non-European origin who have arrived on the continent via successive migratory flows since the post-war period. In Germany a number of studies have addressed this perceived risk, but the knowledge of the field, and especially of the empirical reality, is lacking. As discussed later in this report (see under *Research Groups*), the project, provisionally titled 'Minority communities and dispute resolution in Germany: an empirical comparative investigation', will examine the phenomenon known in the German context as *religiös geprägte Paralleljustiz* ('religiously informed parallel justice').[15] This term is meant to encompass common forms of unofficial dispute resolution that are perceived as disregarding, avoiding or countering the standards of state law. However, this understanding of the concept of 'parallel justice' will deliberately not be applied in the research project because in the German-language literature it connotes a countermodel that is in conflict with the state's orderly jurisdiction. The proposed research project, on the contrary, takes a fresh approach to that discourse, one that sees these dispute resolution mechanisms as a form of 'complementary justice'.

The goal of the research is to ensure a balanced view of the largely unknown judicial or quasi-judicial daily practices of members of various cultural and religious groups living in Germany. By taking a broadly defined ethnographic approach, the aim is to gain a better understanding of the negotiation and dispute settlement processes that recently arrived communities in Germany resort to in order to maintain control over their own normative systems. Awareness of these processes can, in turn, help researchers and policy makers assess how these communities identify themselves *legally*.

The scientific leadership and coordination of the project will be provided by the Department (Foblets and Elliesie) in cooperation with the Max Planck Institute for Foreign and International Criminal Law. For more details on the project, see pp. 107–108 below.

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[15] Wagner, Joachim (2012): *Richter ohne Gesetz: Islamische Paralleljustiz gefährdet unseren Rechtsstaat*, Berlin: Econ.

Senior and Postdoctoral Researchers (in order of seniority[16])

Bertram Turner (previously member of the Project Group 'Legal Pluralism')
Mobility and migration; property relations; human security;
supply-chain normativity; Morocco and Canada

As the Department's Senior Researcher, Bert Turner makes a point of keeping abreast of developments in the field of anthropology of law, its empirical, foundational and long-term research, as well as its theorising and future development. More specifically, during the 2014–2016 reporting period, Turner's own research focused on property rights (especially with respect to migration), science, knowledge regimes and technology (Law & STS), and issues related to human security. In addition, he continued pursuing his long-standing research interests in development, resource extraction and religion. All of these research topics run throughout the four long-term project 'layers' that structure Turner's research. The trajectories of these four interlayered projects are presented in more detail online at http://www.eth.mpg.de/turner. Here the underlying research themes are outlined, along with summaries of research findings and theoretical results that this interconnected research agenda has produced.

Main Research Themes

Mobility and Migration

Mobility and migration inform a number of legal dynamics, including such large-scale processes as the globalisation and transnationalisation of law, as well as processes of legal downscaling that manifest themselves in translocal normative discourses. Layers of normativity provide interfaces connecting migrants in their receiving countries with people who have remained in the country of origin. Turner focuses specifically on communities of Moroccan origin in Europe and Canada as they engage in dialogue on legal and religious topics with their counterparts in Morocco. Preliminary fieldwork in Vancouver in 2014 and 2015 and in Morocco in 2014, with additional short stays in 2015 and 2016, has given Turner the opportunity to collect ethnographic data on the legal interactions and translocal legal discourses regarding religious matters and changing notions of property between the immigrant and home communities. This entails analysis of economic initiatives of migrants back in the country of origin, including investments in real estate, small enterprises, and signature projects such as the establishment of charitable endowments and the construction of mosques; engagement in development initiatives with the aim of introducing international standards of nature conservation, environmental protection,

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[16] Seniority here refers to length of service at the Institute.

sustainability, human rights and gender equality to the country of origin; and negotiations regarding the care of and responsibility for remittances, inheritances, and other types of financial resources. A different strand of Turner's research employs the concept of 'supply-chain legal pluralism' (described below) to theorise the specific ways in which the mobility of people and goods interacts with flows of normativity. Yet another particularly interesting aspect of Turner's migration research is the mobility of religious experts who follow migrants and other mobile Moroccans to places in the global north.

Moroccan drum session at Joey's Cafe on the occasion of 'Italian Day', Vancouver, 14 June 2015. (Photo: B. Turner, 2015)

Property

The concept of property plays a central role in all of Turner's projects. This research theme clearly relates back to mobility and migration as noted above, especially with regard to issues of inheritance and other forms of property transfer between migrants and their home communities. Recent research has shed light on tremendous transformations in property relations and in conceptualisations of property more generally. One aspect of this trend that is particularly relevant for Turner's work is the emphasis on Islamic and gendered notions of property and sharing in dialogue with capitalism and neoliberal forms of dispossession. In this context, Turner investigates the legal protection of property and the rights to determine the use of property. Turner also engages with social theory on property, dispossession and extractive

industries, and the transformation of unprotected indigenous intellectual property into patented intellectual property rights (IPR) claims. Such transformations of property regimes go along with profit making, on the one hand, and dispossession and resource transformation on the other.

This aspect of Turner's work has led to publications on theorising property anthropologically and – regarding Turner's research on Moroccan argan oil production – on dispossession in relation to resource extraction politics in which law and technology are co-constitutive and materialise in the deprivation of access rights for the local population. Turner details his approach to the anthropological theory of property in a contribution to the handbook *Comparative Property Law* (2017), which he undertook at the behest of Marie-Claire Foblets. His chapter serves as the point of departure for his further research and more concrete studies of property regimes. Today, new challenges to the range of property claims include tensions between public and open access, between alienability and non-alienability, and between ethically acceptable and no longer acceptable use. Turner argues that property regulation by means of law may profit from an anthropological analysis of 'property in context', especially if the focus is directed towards the effects such regulation may entail for the ways humans envision the future in times of highly uncertain and contested property regimes. From that point of view, an anthropological approach has the potential to enhance the stability and sustainability of legal regulation.

The Moroccan community proudly displaying the Moroccan national flag and another flag with the words 'Atlas Lions' – the name of the Moroccan national football team – on the occasion of 'Italian Day' in Vancouver, 14 June 2015. (Photo: B. Turner, 2015)

Law, Science, Technology and Knowledge Regimes

Turner combines a science-and-technology-studies (STS) approach to technoscience and knowledge regimes with the anthropology of law in two of his research fields: property and the setup of supply chains (including commodity-, value- and trace-ability chains and global production networks) and their specific legal pluralism. He investigates the intertwining and co-production of normative and technological strands in the politics of natural resource extraction on the example of the Moroccan argan forest and the global argan oil market. Turner's work reveals how the integration of a forest resource into the global economy by means of normative and technological appropriation is associated with the devolution of both risk and responsibility for the resource's conservation and sustainable extraction to local use-rights holders. All this is organised in the form of a supply chain. The intertwining of legal components that inform the performance of global supply chains goes beyond the normative entanglements that are addressed in conventional analyses of chain normativity.

Turner has identified three main avenues of technoscientific–legal coproduction that are of particular interest. One is the setup of argan oil production cooperatives; the second involves research on the molecular improvement of argan seeds with the intention of transforming argan into an optimised crop through the selection of genotypes; and the third involves efforts to identify molecular and genetic properties that can be used in industrial pharmaceutical and cosmetic production. The identification of properties and characteristics of argan through molecular and genetic research and knowledge production combines with legal strategies that legitimise the exploitation of local knowledge for the generation of protected scientific knowledge and allow for the marketing of the newly created products. Turner has published on these specific technoscientific–legal entanglements with regard to argan oil production and is now pursuing more theoretical, foundational research on Law & STS dynamics in general (see *Legal Pluralism* below).

Human Security

Turner is also engaged in research on human security, which he connects to Law & STS and to the role law plays in shaping the future. In this field, Turner's major task in the 2014–2016 reporting period was finalising and publishing the co-edited volume (with Günther Schlee) *On Retaliation* (Berghahn 2017), which he started when he was coordinator of the International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP). The impetus behind this initiative was the observation that the concept of retaliation has resurfaced in various discourses and scientific debates and has gained momentum in a variety of situations that, at first glance, do not appear to be connected. The book presents an inventory of approaches to 'retaliation' in selected disciplines and an overview of

the most recent theoretical innovations and research perspectives on the subject. It analyses recent developments without neglecting the historical context within which they unfold. In contrast to other prevailing models of retaliation, the contributions to this volume operate with basic assumptions: (1) concepts of retaliation inform individual as well as collective action; and (2) they often express multiple truths and follow more than a single logic.

In the field of human security, Turner's introductory and concluding chapters in the aforementioned volume on retaliation contribute to a theoretically nuanced, empirical understanding of the concept of retaliation. Turner derives the concept of retaliation from the overall notion of reciprocity, and ultimately defines retaliation as a human disposition to strive for a reactive balancing of conflicts and other situations perceived as unjust. Retaliation thus refers broadly to the full range of reactions to circumstances that are perceived to be deviant or socially transgressive. Retaliatory logics may inform the whole gamut of conflict resolution procedures, from consensual settlement through various forms of compensation to violent reprisal and escalation. Turner aims at a synthesis of the violence-generating and violence-avoiding potentials of retaliation. Accordingly, its social relevance may rather be seen in its potential to prevent one party from acquiring advantages through committing acts of social transgression and engaging in deviant behaviour. Ultimately, Turner's theoretical stance is directed towards an integrated approach to retaliation that helps to understand retaliation in its entanglement with mediation and institutionalised forms of protection.

With the handover of Turner's responsibilities within the IMPRS REMEP framework, his focus shifted towards the role of science and technology in human security politics and the latter's relation to human rights. Of particular interest are technologies of truth-making and the production of evidence in plural legal configurations. Turner's research in this field ranges from evidentiary practices in truth and reconciliation commissions (TRCs) to truth-making at the grassroots level.

Legal Pluralism

Turner authored the introduction to a special issue of the *Journal of Legal Pluralism and Unofficial Law* dedicated to the late Franz von Benda-Beckmann, co-director of the former Project Group 'Legal Pluralism' (the predecessor of the 'Law & Anthropology' Department). In that text, titled 'Exploring avenues of research in legal pluralism: forward-looking perspectives in the work of Franz von Benda-Beckmann', Turner details current and anticipated trends in research on legal pluralism ensuing from the rich legacy of Franz von Benda-Beckmann's *oeuvre*. This exploration of new horizons within the anthropological study of legal phenomena includes, in addition to the fields already addressed in this overview, development and religion, the relationship between law and anthropology, and the challenge of comparative analysis.

Another strand of Turner's theorising in legal pluralism contributes to the debate on truth, evidence, and intent in legal anthropology, all of which are related to human security (as discussed above). This topic is particularly important for legal anthropology because the assessment of intentionality, the provision of evidence and the search for truth all play crucial roles in local processes of social ordering. As discussed in legal anthropology, the notion of truth is connected to competing notions of evidence. The analysis of the intertwining of components that are rooted in different normative logics provides insight into the different ways that 'past facts' and the reconstruction of realities are intellectually and socially connected with procedural approaches. In the process, incommensurable notions of truth are co-produced. Turner scrutinises these hybrid forms of producing evidence and establishing the truth, showing that truth emerges not as an imposed absolute, but rather as a relative qualification reflecting multiple ontologies that are placed on an equal footing with other readings of 'the facts'. The three categories determining the facticity of a deviant act, i.e., intentionality, evidence, and truth, emerge as mutually co-constituting notions dependent upon their social environment.

In his research on 'supply chain legal pluralism', Turner aims to suggest an innovative approach to theorising complex legal entanglements by combining the analytical concept of legal pluralism in its global shape with STS-inspired theoretical models. In order to show how multi-layered supply chain normativity interacts with the variety of other-than-legal chain-specific registers, Turner introduces the concept of 'infrastructure' as it has been specified in STS. The concept of infrastructure allows him to outline what he calls 'supply-chain legal pluralism' and to ask how chain-specific normativity interacts with the wider plural legal configuration in which it is embedded. This helps us understand the emergence of chain normativity as a coproduction involving all infrastructural elements that exert normative power such as material technology, inventories of knowledge, institutions and organisations. Turner's application of the concept of supply-chain legal pluralism serves as a test of the approach and what it may entail for the analysis of law's involvement in the construction and maintenance of infrastructural designs aimed at the creation of new extraction schemes.

Multi-Scalar and Multi-Sited Ethnography

The overlap and intertwining of Turner's fields of research as outlined above constitute one axis of his epistemic enterprise. The other axis is more methodologically oriented; it reflects the spatiotemporal and scalar embedding of the research portfolio by combining research in immigrants' receiving countries with settings in their countries of origin, and connecting these with field research in places and situations of transnational law production – at the centres of global governance or wherever else such processes take place. Ethnographies of mobility, transnational transactions, supply chains, sites of technoscientific knowledge production and law-

making combine the grassroots level (households, village assemblies, cooperatives, woodlands, mosques, etc.) with tree nurseries, scientific laboratories, farmers' markets and supermarkets in the global North and with NGO headquarters, development organisations, governmental agencies, ministries, and multinational enterprises. In addition, emerging forms of information and communications technology (ICT) open up new spaces of interest that must be incorporated into the research design. The challenges posed by the increasing complexity of interconnected and multi-scalar empirical research demands an adaptation of practices of data collection and generation. At the methodological level, the generation of empirical data as a theoretically informed venture remains at the heart of the anthropological venture, particularly in legal anthropology. Turner continues to contribute to the development of the Department's methodological arsenal, paying particular attention to comparative methods.

Outlook on Future Research

The research topics presented above allow Turner to address a wide range of empirical challenges in the anthropology of law. His future research will take into account the increasing demand for cooperation between the social and legal sciences in addressing the challenges that technology and scientific knowledge production pose to people as they strive to design the future under conditions of multiple ontologies and uncertainty. Legal anthropology cannot avoid addressing the law's power to shape the future, to deal with uncertainty, to prevent and anticipate, to care for and hold responsible. Turner will keep up with these new developments and theorising in the anthropology of law and explore new research prospects.

Turner's work is embedded in international research cooperation within the Law, Organization, Science and Technology (LOST) Group (https://lost-research-group.org/), the Commission on Legal Pluralism (commission-on-legal-pluralism.com), and the various scientific and professional networks of which he is a member. He will continue to contribute to the interdisciplinary dialogue within the Department through his engagement with social and legal anthropological knowledge production and theorising based on empirical research, which has always been at the core of social anthropology and is ever more being recognised as an essential aspect of applied research throughout the social sciences and humanities.

Katrin Seidel
Constitution-making mechanisms; statehood negotiations; rule of law;
international interventions; South Sudan; Somaliland

Katrin Seidel joined the Department as a postdoctoral researcher in November 2012. Generally speaking, her research focuses on forms of heterogeneous statehood and governance in the Horn of Africa, and is concerned with the interdependent relationships between plural normative and judicial orders at different levels of regulation. Seidel's current research project, 'South Sudan's and Somaliland's constitutional geneses: a comparative analysis of post-conflict constitution-making processes in context', examines the various ways legal plurality is negotiated among interdependent institutional actors at the local, regional and international levels within the broader international 'rule-of-law' frameworks. Seidel intends to write her *Habilitation* thesis on the basis of this work.

A research assumption in Seidel's work is that the process of constitution making itself – as well as constitutional recognition of legal plurality,[17] particularly of so-called *non-state* normative orders – offers a way for government actors to expand their scope and influence relative to and at the expense of the manifold constellations of 'non-state' actors'.[18] These dynamics provide forums for negotiation among diverse actors and open up space for the continuous (re-)structuring of power relations. Seidel's work revolves around the following research questions:

- How, where and among whom do negotiations of different normative values take place?
- What are the institutional designs for the negotiation spaces where different and often conflicting legal perceptions and normative values interact?
- To what extent are plural normative realities reflected in state legal frameworks?
- How do state actors navigate existing complex legal pluralities and represent themselves in relation to them?

The process of state emergence in the Republic of South Sudan is a central concern of Seidel's postdoctoral research. South Sudan presents itself as a particularly relevant case not only because the constitution for the emerging state is a work still in process, but also because the very understanding of 'statehood' itself is under construction.

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[17] The process leading to state recognition entails conflict and accommodation between 'state identity' and the self-regulation claims of certain sub-groups within a given state.

[18] Seidel's approach is informed by research conducted for her PhD dissertation, 'State-recognised legal pluralism in Ethiopia: interdependent relationships between Islamic law and state law', which focused on the constitutional recognition of Islamic law and Sharia courts. In her thesis she assessed the potential for and challenges of integrating religious normative orders into a constitutional framework. The research contributed to a broader understanding of transformation processes (of legal concepts, procedures and practices) within the pluralistic normative legal order in Ethiopia.

Accordingly, the research focus on South Sudan is predominantly directed towards the following intertwined themes:

Constitutionalism in emerging South Sudan: Constitution making needs to be seen as part of internationalised 'post-conflict (re-)construction' efforts and has become a crucial normative tool of state formation within the context of broader 'rule-of-law' frameworks. In South Sudan, both the process of constitution making and the constitutional law already inscribed in the Transitional Constitution of 2011 have become very powerful normative instruments. In order to grasp these complex processes, Seidel investigates not only negotiations conducted by the many different South Sudanese actors, but also the overbearing influence of regional and international actors. The general question to be explored is: How much scope for actually negotiating South Sudanese statehood do international frames leave for the emerging state legal order and governance authorities?

State-recognised local law and dispute resolution mechanisms: Since the emerging state of South Sudan has to deal with existing local normative orders, another focus of the study is on *de jure* and *de facto* efforts to 'integrate' so-called customary law, including existing dispute resolution mechanisms, into the South Sudanese constitutional design and the judiciary. This entails analysing the interfaces of local and statutory legal thinking. The empirical data that Seidel has collected thus far suggest that the actual operation of South Sudan's legal and judicial systems on the ground challenges well-established legal categories such as the notion of 'customary law' and the distinction between criminal and civil law. With a view to studying these efforts empirically, Seidel had already conducted two periods of fieldwork (March–May 2013 and April–June 2015) in Juba and Rumbek (South Sudan) and in Addis Ababa (Ethiopia). Seidel plans to conduct follow-up fieldwork in 2017 and 2018 (if the troubled political situation allows her to do so).[19]

Seidel's observations indicate that the local legitimacy of state actors is still in the making, especially as the processes of defining spaces of actions and determining who is entitled to participate are still under negotiation. Moreover, constitution making generally takes place between national government actors and international actors within the normative frames of reference set by international actors. Despite efforts to present the process as 'locally owned', it actually undermines genuine local involvement because participation is prescribed according to external conditions. 'Local ownership' seems rather to be an expression of the end result, not of the process. During the actual process, 'ownership' is curtailed through 'shared ownership' and 'external supervision'. Only rarely are procedures developed to systematically analyse the impact of international interventions and examine international actors'

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[19] Methods of data collection include participant observation, semi-structured oral interviews and gathering of legal documents and information disseminated via newspapers and the local media. Methods of analysis include legal interpretation and techniques for comparing legal documents, critical-historical analysis of historical documents, content analysis of oral and written material, and discourse analysis.

own cultural biases that often lead to the oversimplification of social complexities. The rather 'state-centred' and 'top-down' approaches generally fail to take into account other powerful actors – including the fragmented military and traditional and religious authorities – and are not flexible enough to accommodate the 'emerging' nature of the state, where the constellations of political actors are in constant flux during negotiations.

The internal logic of these processes limits the opportunities to challenge and rethink the chosen path, with its predefined frames, models and instruments. This path dependency prevents those involved from asking such fundamental questions as which mode of 'rule-of-law' local actors aspire to. Accordingly, the international frameworks, templates and modules, as well as the contested issues already inscribed in South Sudan's Transitional Constitution, have become powerful weapons in the hands of a few dominant local political actors who have managed to appropriate the idea of 'local ownership' to legitimise their actions. Despite the efforts to restrict the political negotiation space, however, excluded civil society actors continue to push for a more inclusive constitution-making process so that they can have a seat at the bargaining table and at least try to realise the ideal of a constitution that genuinely reflects the will of the people.

In brief, Seidel's study indicates that top-down constitution making is navigated and patterned by constellations and practices of a small number of actors. The process, however, is contested by civil society actors who advocate bottom-up approaches. Through these tensions the space for negotiation is constantly being transformed in specific local settings. Seidel's research findings have already been published in a number of individual articles as well as in a special issue of the *Journal of Eastern African Studies* titled 'Emerging South Sudan: negotiating statehood' (2015), which was based on the 2013 MPI workshop 'Negotiating statehood in emerging South Sudan' (in collaboration with Timm Sureau, Department 'Integration and Conflict'; see Publications, this volume).

The massive influence of regional and international actors on post-war constitution making that Seidel's empirical data reveal led her to develop a comparative research project focusing more narrowly on the implications that different forms of internationalised constitution making have on the negotiations over ideas of statehood and (constitutional) legitimacy. Seidel received a fellowship from the Käte Hamburger Kolleg / Centre for Global Cooperation (KH-CGCR) to pursue this angle. In the course of the fellowship (September 2015–October 2016), Seidel compared two cases – South Sudan and Somaliland – to explore contrasting patterns of international involvement in constitution making. South Sudan is at one end of the spectrum, with strong international intervention in constitution making, while the Somaliland case falls at the other 'extreme', with virtually no international intervention. The research included fieldwork in Somaliland (October–November 2015) to investigate the history of Somalia's constitutional development and to trace back Somaliland's ten-year-long constitution-making process. More specifically, the study addressed

questions such as: How are international 'models' appropriated, adapted and transformed by the actors involved? What role does the process itself play with regard to dynamics of exclusion and inclusion at different stages of constitution making?

Preliminary research results show that the very process of making a constitution – in terms of participation and perceived legitimacy – matters a great deal. The study validates the widespread scepticism about how internationalised constitution making in war-torn settings is conducted. In Somaliland, the task of reaching a general consensus regarding the constitution – including negotiations over the governmental structure – was in the hands of local elites throughout the decade-long process. In South Sudan consensus production efforts have thus far been framed and guided by powerful international actors. Their dependence on internationally accepted templates, frameworks and models seems to prevent broader consensus on the mode of statehood, while local translations of international models seem to contradict the intended rule-of-law framework. What 'local actors' accept, adopt and appropriate from international 'tools' depends very much on the question of whether a particular 'offer' strengthens their own position. The South Sudanese case exemplifies how attempts to produce a constitution out of pre-defined international concepts and modules are misguided. The rather context insensitive, pre-determined international frames and instruments tend to produce quick yet unsustainable 'results'.

The study indicates that a locally driven and owned process – as in the case of Somaliland – supports the production of legitimacy of a constitution. Moreover, the existing tensions between the idea of 'local ownership' and 'external intervention' may open up space for renegotiations of normative perceptions. As many local 'rule-of-law' approaches and practices are often not very participatory beyond the political elites (for example, they tend to exclude women or 'minority' social groups), the hope is that negotiations among local and global actors regarding ideas of justice will encourage changes in exclusion and inclusion practices. A pre-condition for this seems to be a 'local-global meeting' through real communication on an equal footing. In light of the widespread practice of imposing pre-defined international intervention measures, the risk is that the aforementioned local–global tensions may narrow the space of negotiation and limit the willingness of local actors to reconsider their rejection of internationally prescribed ideas of justice or to forego the practice of appropriating international assistance simply to secure local power interests and positions. The process needs to be recognised as legitimate by local actors for any consensus building to occur and for the outcome to be accepted.

Some of the preliminary findings of this comparative study have been published in the KH-CGCR's Global Cooperation Research Paper Series. Moreover, the research results will constitute a major component of Seidel's current monograph project, provisionally titled *South Sudan's and Somaliland's constitutional geneses in the age of global legal pluralism*.

In the longer term, the aim is that Seidel's research, which is to result in a *Habilitation* project (Martin Luther University Halle-Wittenberg), will contribute to the

production of cross-cultural comparative knowledge on heterogeneous statehood, constitutionalism, and the potential and challenges of external legal interventions. Her observations in Ethiopia, South Sudan and Somaliland demonstrate that international 'legal standards' such as 'rule of law' and 'access to justice' are far from self-evident and unproblematic concepts. Her empirically based research critically questions and deconstructs well-established legal paradigms and underscores the need to fundamentally rethink legal categories and concepts such as the distinction between criminal and civil law and 'accommodating diversity' approaches. In so doing, Seidel's efforts enrich debates on the role and challenges of 'applied' legal anthropology.

Maria Sapignoli
Indigenous peoples; human rights; displacement; United Nations; Botswana

Maria Sapignoli joined the Department 'Law & Anthropology' as a postdoctoral researcher in January 2013. In the 2014–2016 reporting period, Sapignoli pursued three interrelated projects:

- 'Global and local impacts of the discourse on indigeneity: the transnational San social movement and the peoples of the Central Kalahari Game Reserve';
- 'The anthropology of global institutions'; and
- 'Exclusion, inclusion, and marginality: rights, responsibilities and indigenous peoples'.

In furthering these projects, Sapignoli has conducted research in Botswana and Namibia (June–August 2015) and at the annual meetings of the UN Permanent Forum on Indigenous Issues in New York (2014, 2015 and 2016).

Global and Local Impacts of the Discourse on Indigeneity

One of the central themes of Sapignoli's work is the rights and identities of indigenous peoples, with a focus on the rights claims of the San peoples of southern Africa. In a period in which more and more indigenous peoples and minorities are making claims through formal legal processes, it is important to have a comprehensive understanding of the origins and consequences of legal activism. In fact, indigenous peoples are ever more frequently engaging in a variety of legal strategies in their pursuit of justice, a process that raises a number of significant questions: How do the influences of law go beyond legal disputes to produce new relationships and forms of expertise? In what ways might advocating for recognition actually lead to a redistribution of resources? Sapignoli's recent work considers these questions through a long-term ethnographic study of the Botswana government's much-publicised removal of the San and Bakgalagadi from the Central Kalahari

Game Reserve. The ethnography ranges from rural Botswana to the nation's High Court and the headquarters of several UN agencies, focusing on rights claimants, state authorities, NGOs, and UN officials as they act on the grievances of those who have been displaced. In offering a comprehensive discussion of the San people and their claims-making through formal institutions, Sapignoli maintains a consistent focus on the increased recourse to law and use of 'law talk' in response to the encroachments of the state and the opportunities inherent in new indigenous advocacy networks. A distinctive feature of this project is that it does not focus only on the claims-making processes or on the specific sites where claims take place (such as courts and international meetings), but also on parallel and interconnected forms of activism (publicity campaigns, protests, lobbying, etc.) and the implications these have for the everyday lives of rights claimants and the peoples they work for. Sapignoli pays particular attention to the period 'after judgment' – the negotiations and contestations that occur subsequent to the initial legal remedies. In particular, she explores how people practise, experience and translate notions of rights and justice after many years of engagement in legal struggles, activism and collaboration with lawyers and organisations, and how this impacts their sense of self as individuals and collectivities. The project also considers the ramifications of the Central Kalahari cases, which serve as templates for indigenous cases in other parts of the world. For this reason Sapignoli has expanded her research to include Namibia, focusing on the case of the San, who are engaged in a class action lawsuit against the government of Namibia. With its wide-ranging account of activism, her work contributes to debates in the fields of juridification, indigeneity and law in the everyday. The results of this project have been published in several book chapters and journal articles, the most recent being 'Bushmen in the law: evidence and identity in Botswana's High Court', forthcoming in *Political and Legal Anthropology Review (PoLAR)*.

   In the reporting period, and based on the same research, Sapignoli has recently submitted a manuscript to Cambridge University Press, titled *Hunting justice: development, law and activism in the Central Kalahari*. This book will add substance and detail to accounts of the growing influence of law and its embeddedness in local and international politics and societies. It is based on wide-ranging scholarship, addressing the rapidly expanding literatures in the fields of indigenous peoples' studies, political and legal anthropology, human rights, hunter-gatherer studies and international development. Sapignoli brings these diverse topics together in her discussion of how the San are 'subjects' of law (i.e., they are topics of legal definitions and debates), subjected to law as the state and its courts redefine who they are and what rights they can claim, and at the same time subjects of their own making as they reappropriate legal institutions and standards to assert their rights and represent their core collective values.

The Anthropology of Global Institutions

Moving beyond her Africa-based field research, Sapignoli has lately shifted towards the ethnography of globalised processes and the ways in which international institutions and the people populating them – state delegates, NGO representatives, civil servants, etc. – work and relate to indigenous peoples' rights, and how the latter contribute to institutional reform and the development of international policies and standards. She pays close attention to the global networks of indigenous peoples' movements, with a focus on the African region, and how indigenous representatives acquire and use expertise in international meetings. This has involved fieldwork in several UN agencies and international meetings and addresses questions regarding ethnographic method, collaboration, and dilemmas revolving around the positionality of the researcher in the field of policy making and implementation.

As part of this project Sapignoli organised (with Ronald Niezen) a workshop at McGill University in Montreal (April 2014) titled 'Palaces of hope: the anthropology of global institutions'. The workshop brought together key scholars working on the ethnographic study of global organisations. A co-edited volume, *Palaces of hope: the anthropology of global organizations* (Cambridge University Press 2017), resulted from the workshop. The central methodological premise of the book is that anthropology has in recent years taken on global organisations as a legitimate object of research, offering an opportunity to assemble in one volume a range of work by researchers who have entered the social worlds of the United Nations, its satellite agencies, and other multilateral institutions.

The research that has been completed in this field gives a human face to the UN and other world-reforming global organisations, revealing the experiences and moral commitments – infused with hopes, ideals and frustrations – behind the official findings and policy recommendations. This work reveals that global institutions are not monolithic or uniform, even though they are loosely connected by a common organisational network. They vary above all in their powers and forms of public engagement. Yet there are common threads that run through the studies included in *Palaces of hope*: the actions of global institutions in practice, everyday forms of hope and their frustrations, and the will to improve confronted with the realities of nationalism, neoliberalism and the structures of international power. The emerging literature assembled in this book offers new perspectives on topics of timeless interest: bureaucracy, international law, advocacy and, ultimately, justice. The knowledge developed through ethnographic methods offers a new perspective on global organisations that has the potential to go well beyond the discipline of anthropology to influence the ways these organisations are understood by UN experts, legal scholars, political scientists and policy makers.

Annual session of the UN Permanent Forum on Indigenous Issues. (Photo: M. Sapignoli, 2015)

Exclusion, Inclusion, and Marginality:
rights, responsibilities and indigenous peoples

As part of her work on indigeneity in Africa, Sapignoli also finalised a co-edited volume in Italian (with Robert Hitchcock and Gaetano Mangiameli), *La questione indigena in Africa* (Unicopli 2017). This volume addresses the implications of the use of 'indigeneity' – a highly contested identity category – as a legal and economic category in the African context. The range of cases presented in the volume reveals the complexity of the concept of indigeneity and contributes to the analysis of the effects (or lack thereof) of international law in regional and national contexts. This collection also considers the ways in which indigeneity is translated, redefined and embodied among diverse groups locally, nationally and internationally.

Finally, Sapignoli is working on a new book project with Robert Hitchcock, provisionally titled *People, parks, and power: the ethics of conservation-related resettlement*. She is also contributing to a special issue of a journal (co-edited with Marie-Claire Foblets) on anthropological expertise in legal practice, which compiles a number of cases in which lawyers and anthropologists have collaborated inside and outside the courtroom in dealing with the rights of indigenous peoples and asylum seekers.

Future Directions

At present, Sapignoli is in the process of developing two new projects, one a comparative project on the long-term effects of legal and political activism, particularly through the use of formal legal remedies, emphasising what is gained, what is lost and what the social consequences are when parties resort to the law to resolve their conflicts. The focus here will be on the potential to effect changes in the redistribution of wealth and economic opportunities, as well as in regimes of autonomy and recognition and whether this recognition leads to greater access to resources – the classic tension, in other words, between recognition and redistribution. The other planned project focuses on human rights, business and indigenous peoples and considers the impact business practices have on indigenous rights and the protection of lands and resources, reflecting on how indigenous business models, often presumed to be inherently sustainable, can contribute to the discussion of business and human rights.

During the reporting period, Sapignoli took two leaves of absence to pursue opportunities at McGill University in Montreal. In the first period (January–June 2015), she was affiliated with the Department of Anthropology, where she designed and taught two courses: an undergraduate course titled 'Social change in modern Africa' and a seminar (co-taught with Ronald Niezen), 'Indigenous peoples' rights and the anthropology of law'. This period at McGill was particularly important for the development of Sapignoli's teaching skills and for broadening her professional networks, both of which will serve her well in the future.

For the second period spent at McGill, from January to May 2016, Sapignoli was awarded an O'Brien Fellowship in Residence. She was as a visiting fellow at the Centre for Human Rights and Legal Pluralism in the Faculty of Law, where she shared her knowledge and experiences and learned a great deal from the other O'Brien Fellows as well as from the members of the Centre, the Faculty of Law, and the Department of Anthropology. She familiarised herself with indigenous peoples' rights in the Canadian context and particularly with the outcome of the Truth and Reconciliation Commission on Indian residential schools, with the hope of developing some comparative research on indigenous peoples' rights and business practices in the Canadian and African contexts.

Katayoun Alidadi

Religious diversity & accommodation; humanism/atheism; employment;
Europe; USA

Katayoun Alidadi was a postdoctoral research fellow in the 'Law & Anthropology'
Department from April 2015 to July 2017. During that time her work focused on
the theme of religious diversity, accommodation and participation in Europe and
North America. In general, the research and activities she engaged in built on her
expertise in legal protections for religious diversity, reasonable accommodation,
and the integration and participation of minorities in European and North American
societies,[20] and have sought to assess ways forward in the management of diversity
and pluralist identities in the West. The postdoctoral fellowship also allowed Alidadi
to expand her thematic and methodological expertise as she continues to search for
answers and insights in current and emerging topics of law and society.

The three interconnected objectives of Alidadi's postdoctoral mandate were as
follows: (1) to finalise and publish her first monograph, which builds on her PhD
thesis, and pursue peer-reviewed publications related to the theme of her research
programme; (2) to hone her skills in empirical and interdisciplinary research, in
particular by adopting legal anthropological methods and perspectives in a research
project conducted in the United States; and (3) to develop a project proposal to be
submitted for a prestigious research grant. Throughout her postdoctoral fellowship,
Alidadi's primary place of residence was the United States, but she came to Halle
at regular intervals, usually for periods of two to three weeks.

In retrospect, Alidadi's two-year fellowship at the MPI was instrumental in achiev-
ing the three objectives. This activities report highlights the progress that the fellow-
ship has enabled and facilitated, contextualises Alidadi's work in the 2014–2016
research period within her overall career trajectory, and stresses how her engage-
ment with the law and anthropology approach, especially with regard to questions
of religious diversity and the law, has enriched her work and perspective. In her
research, Alidadi engaged with concepts and frameworks (e.g., legal pluralism)
that are part of the legacy of legal anthropology and can offer renewed insights on
enduring debates related to law, religion, cultural diversity and society, especially as
they play out in the (super-)diverse realities of Europe and the United States today.

First, the fellowship allowed Alidadi to devote herself to her manuscript while
also providing numerous opportunities to submit papers for publication in collec-

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[20] Alidadi successfully defended her PhD thesis, *Faith, identity and participation in the workplace: a
comparative legal study on the role of religion and belief in individual labour relations and unemployment
benefits litigation*, in February 2015 at the Catholic University, Leuven, where Marie-Claire Foblets
was her supervisor. She was also a researcher in the European Commission funded RELIGARE project
(2010–2013; 'Religious diversity and secular models in Europe: innovative approaches to law and
policy'), and in that latter capacity was involved in a wide case law data collection effort and public
policy work.

tive volumes and peer-reviewed journals. Her monograph, *Religion, equality and employment in Europe: the case for reasonable accommodation* (Hart/Bloomsbury 2017), critically assesses and evaluates the legal protections for the religion or belief of employees in private-sector employment within a multi-layered European normative framework. In addition to examining the relevant case law of Europe's two supranational courts – the European Court of Human Rights and the Court of Justice of the EU – the study engages three European countries, namely, Belgium, the Netherlands and Britain, that exhibit both striking socio-legal commonalities and differences. These three different Western European legal cultures serve as in-depth country studies for Alidadi's thematically focused systematic comparison. Interactions between the applications of national-level and Europe-wide norms are also considered throughout. While showing important successes and potentials of the anti-discrimination law and human rights frameworks, the book also illustrates notable gaps and shortcomings in legal protection through case law examples. Building on the analysis, various ways forward are proposed for an inclusive Europe which accepts, respects and – where possible and reasonable – accommodates the religious and philosophical diversity of its citizens and inhabitants. One of these proposals focuses on the legal concept of reasonable accommodation, which has been the subject of much debate and controversy. With this book, Alidadi aims to make a constructive contribution to ongoing debates surrounding the sensitive and controversial issue of the accommodation of religion and belief in Europe in the domain of employment. Focusing on the relevant normative frameworks at both national and EU levels, Alidadi seeks to bridge disciplines by drawing insights from legal theory and empirical disciplines, in particular legal anthropology. The topicality of the issue has only increased since 14 March 2017, when the Court of Justice of the European Union issued two decisions (*Achbita; Micropole*) regarding the wearing of headscarves in the workplace setting (holding that a 'neutrality policy' is legitimate and can be justified if applied coherently and consistently for employees who have contact with customers).

One of the articles that Alidadi wrote during the 2014–2016 reporting period, 'Religion and unemployment benefits: comparing Belgium, the Netherlands and Great Britain' (*European Labour Law Journal* 8/1, 2017), complements the research presented in her monograph. It compares the role of religion in the adjudication of unemployment benefits in Belgium, the Netherlands and Great Britain, and addresses the question of what happens with unemployment benefits rights when employees are dismissed or resign because of a conflict between their religion and their job duties or expectations, in particular when the conflict is brought on by the wearing of religious dress. Alidadi's article makes an important contribution to the existing literature, especially as the role of religion in the adjudication of European unemployment disputes has thus far received very limited scholarly attention despite its significant consequences for many jobseekers and employees belonging to religious minorities.
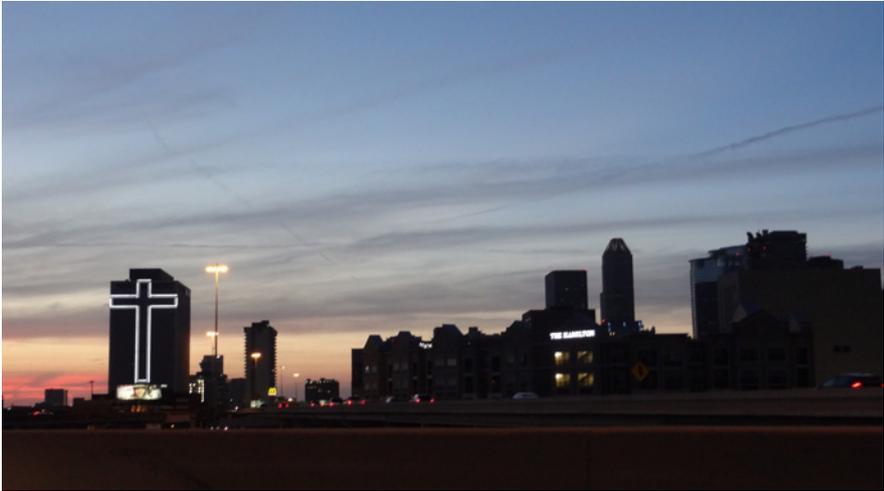
St. Joseph Professional Building, Houston, Texas. (Photo: K. Alidadi, 2017)

During the reporting period Alidadi collaborated with Marie-Claire Foblets on a number of projects, including co-editing a special issue of the *Oxford Journal of Law & Religion*. Still forthcoming (Routledge 2017) is a collective volume on the work done by expert commissions on religious and cultural diversity in the UK, France, Quebec and Belgium (based on the Department's 2015 annual conference), as well as a forthcoming contribution to a book on sovereignty and transnationalism coordinated by Carol Greenhouse.

The second objective of the fellowship was to allow Alidadi to explore and employ empirical methods and ethnographic techniques from the law and anthropology approach. For her empirical research project, Alidadi decided to study an overlooked ideological minority in the United States – she focused on the use and nonuse of legal tools and legal protection by atheists, humanists and other non-believers living in the American 'Bible belt', specifically, an organised secular community in Houston, Texas. Alidadi conducted the fieldwork from December 2015 to March 2016 in this 'community grounded in reason rather than revelation, celebrating the human experience as opposed to any deity'. While her research focused on only one such organised secular community – the first well-known organisation of its kind and one which has become a 'model' for formally established secular-humanist organisations – such social capital-building[21] communities of nonbelievers have sprung up in other cities

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[21] See Robert Putnam, *Bowling alone: the collapse and revival of American community*, 2000, p. 18. In *Bowling alone*, Putnam laments the civic decline brought about by disengagement in both secular and religious social capital-building communities, and proposes ways to reverse the trend. Organisations such as the one Alidadi studied could be seen as part of the 'burgeoning civic vitality', particularly as they are highly participatory and have considerable externalities (e.g., they benefit non-members through volunteer work).

throughout the United States in recent years. The community's model itself draws heavily on the organisational principles of US Protestant churches,[22] but maintains distinct features and has sparked considerable public and media interest. In fact, at the time of writing about a dozen other groups in various US and Canadian cities have set up or are in the process of setting up similar organisations based on the community's model. Alidadi presented her findings at the annual conference of the Society for the Scientific Study of Religion (SSSR) in Atlanta, Georgia in October 2016 and contributed to a collective journal article, 'Which law for which religion? Ethnographic enquiries into the limits of state law vis-à-vis lived religion' (*Rechts-philosophie* v.3, 2016), co-authored with Marie-Claire Foblets and several other members of the Department. Through her fieldwork Alidadi was able to grasp the perspectives of American 'nones' (atheists, humanists, agnostics, and religious non-affiliates) on a number of topics of American law and politics, as well as their (non) use of legal protection when faced with discriminatory treatment in the workplace.

Alidadi's third objective for her time with the Department – to apply for a major grant – was met by collaborating with Marie-Claire Foblets and the Department 'Law & Anthropology' to develop a major research proposal titled 'Conflict, co-existence and religious diversity governance in Europe: history, present and future' (acronym 'REDIVE') for the European Union's Horizon 2020 research programme.[23] This work was preceded by several meetings in 2015 and 2016, coordinated by Marie-Claire Foblets and convened at the Brussels office of the Max Planck Society, where brainstorming sessions and other discussions with existing partners and newly connected researchers from across Europe were held. The process of gathering a solid, experienced and interdisciplinary team led to an expansion of the cross-disciplinary network across Europe, with researchers working on legal history, peace and conflict studies, religious studies, political decision-making, political psychology, etc. The project aims to contribute building blocks leading to workable religious diversity governance in Europe in light of pressing societal challenges, including the integration of immigrants of various religions into the European project of 'living together' (*vivre ensemble*) with respect for all persons' human rights. To this end, the project team proposes to engage in the following activities:

- map the current religious, philosophical and spiritual landscape across Europe;
- investigate and compare historical and contemporary case studies involving religious conflict and persecution as well as tolerance, peaceful co-existence and peacebuilding, with particular attention to the role, potentials and limits of engaging religious communities and fostering civil society;

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[22] And perhaps for that reason it is sometimes referred to – in a tongue-in-cheek fashion – as an 'Atheist church'.

[23] At the time of writing, no decision on the proposal has yet been rendered. .

- advance future directions for legislation, jurisprudence, (education) policies and positive actions.

The project addresses questions such as: How have states, religious and secular communities, civil society and actors on the ground approached the realities of religious diversity in Europe historically and in the present? What lessons can be drawn from past experiences, internal dynamics and the interplay between them in shaping future policy directions? In addressing these questions, a multidisciplinary and transnational lens will be adopted to advance innovative theoretical and normative models that are based on the concept of social and normative pluralism. The expectation is that the project will result in a set of forward-looking tools – extending beyond the life of the project – to assist in formulating and implementing policies related to religious co-existence, particularly with regard to education and political participation. Partners include scholars from Austria, Belgium, Bosnia and Herzegovina, Germany, Italy, Poland, Spain, Sweden, Switzerland, the Netherlands and the UK. The experience of developing this project has taught Alidadi a great number of valuable lessons and skills, from how to contact potential consortium members and how to deal with and interpret calls for proposals to how to frame research questions, interdisciplinary methodologies and hypotheses in a convincing manner, as well as skills related to (time) management and coordination.

Finally, as Alidadi's postdoctoral fellowship was envisaged as a 'bridge' to other research and teaching opportunities, she took the opportunity to hone her teaching skills and gain additional pedagogical experience as an adjunct professor of law teaching a course on 'Conflict of laws' at the University of Houston Law Center. This teaching experience, combined with Alidadi's already extensive research experience and publications, rounded out her profile and helped her land a tenure-track position as Assistant Professor of Legal Studies in the Department of History and Social Sciences at Bryant University in Smithfield, Rhode Island, which she will take up in the fall of 2017. Alidadi will teach introductory and advanced courses in law and society, business law and human rights law. In this new position, which is embedded in a law-and-society-focused programme, Alidadi looks forward to integrating insights and interdisciplinary methodologies gained as a member of the 'Law & Anthropology' Department into her teaching and research.

Since a number of publications are in the pipeline, Alidadi will remain affiliated with the Department as a research associate for the foreseeable future. She will continue to serve the discipline by engaging in peer review and collaborative publications, including as an associate editor on the board of a new Brill quarterly short monograph series called *Comparative Discrimination Law*, of which Laura Carlson of Stockholm University is editor-in-chief. The first monograph in this series will be published by Brill in 2017 and will focus on comparative discrimination law in general, while subsequent volumes will address specific grounds of discrimination such as age and religion or specific remedies under antidiscrimination law.

Anne Menzel
Migration and exclusion; sexual violence; truth commissions; Sierre Leone

Anne Menzel joined the 'Law & Anthropology' Department in February 2016 on a short-term postdoctoral fellowship. She, along with two other members of the Department (student assistant Alexander Hassler and Luc Leboeuf), were tasked with developing an agenda for innovative multi- and interdisciplinary collaborative research combining the social sciences and legal studies in the context of the recent increase in migrants and refugees to Europe. Their efforts laid the groundwork for what would ultimately become the Max Planck Society-sponsored research framework 'The challenges of migration beyond integration' (see WiMi, this volume).

The first step in this process, for which Menzel took a leading role, was to map existing research on flight and migration. The team looked for trends, themes, commonly asked questions and, most importantly, gaps and blind spots in order to identify the most relevant terrain for a future research agenda by discovering those urgent questions that were *not* being asked. For her part of the mapping exercise Menzel focused specifically on social science research projects in Germany, as the sheer number of social science research projects on flight and migration made it impractical to broaden the survey out to the international research community.

On the basis of the mapping exercise Menzel, along with Marie-Claire Foblets, developed an idea for the overarching research theme. Her survey of the social science research revealed a pronounced focus on questions of 'integration' – whether it was achieved, how to achieve it, etc. – while there was a dearth of research on issues related to those who are not integrated. A research agenda focusing on the *challenges of migration beyond integration* would make it possible to take account of those refugees/migrants who never receive a chance to integrate or be integrated into a host country because they are detained, deported, or otherwise 'get stuck' somewhere along the way. This overarching theme would allow participating researchers to challenge citizenship, border and nation-state practices and imaginations that are structured along insider–outsider dichotomies. It would also open up space for research projects that focus on countries of origin and the 'root causes of flight' that have become new focal points for security-sector and development cooperation with the global South.

Menzel's work also contributed to the structure of the research initiative. Drawing on her previous experience working with two German Research Foundation (DFG) 'clusters of excellence', Menzel came up with the idea of modelling the network on the cluster idea: the research projects would be conducted within a common framework and guided by a broad common theme but, at the same time, would remain independent in the sense that contributing researchers would define their own projects in accordance with their own interests, expertise and disciplinary standards. This design was ultimately adopted for the WiMi research initiative.

Menzel is currently a postdoctoral researcher at the Center for Conflict Studies at Philipps University in Marburg, where she is involved in a comparative research project on redressing sexual violence in truth commissions. The combination of legal thinking and anthropological methods to which she was exposed in her time at the 'Law & Anthropology' Department is already paying dividends in her current project. For example, the legal research approach has helped her recognise the Truth and Reconciliation Commission in Sierra Leone as a deliberately non-judicial entity that was nonetheless, in many respects, dominated by (Western or Western-educated) lawyers and their ways of thinking and reasoning. The administrative and managerial skills that Menzel developed while working on the design of the WiMi project are also sure to prove useful in her future academic career.

Hatem Elliesie
Sharia; Islamic ethics; Muslim practices; law; Europe, esp. Germany

Hatem Elliesie joined the Department in April 2016. In the reporting period, he focused on developing his own research project (*Habilitation*) and also took a leading role in developing a project addressing the phenomenon commonly known under the term *Paralleljustiz* ('parallel justice'; see 'Minority communities and dispute resolution in Germany' under *Research Groups*). His *Habilitation* project, 'Sharia as a frame of reference in the European context: Islamic normativity and the ethical legitimation of everyday Muslim practices', is described in more detail below. In addition, Elliesie is taking a leading role in developing a training programme for the Department's doctoral candidates.

Elliesie's individual research project, which is intended to lead to his *Habilitation* thesis, examines the ongoing dynamics between Islamic normativity and the everyday realities of Muslims who have been socialised in three European countries: Germany, France and Great Britain. At the centre of the conceptual outline lies the question of how individual actors comprehend their own Islamic self-perceptions. Like most other religions and belief systems, the various Islamic denominations provide believers with ethical guidelines that mark the line between the good and the fair, on the one hand, and what is to be disapproved of or even prohibited, on the other. While 'ethics' and 'morals' are sometimes used interchangeably, for the purposes of this study Elliesie makes a clear distinction between the two: 'ethics' refers to rules provided by an external source, such as the principles espoused in a certain religion; 'morals' refer to an individual's own principles regarding what is 'right' and what is 'wrong'. Elliesie's project addresses the interdependence between Islamic principles and the practical approaches that Muslims socialised in a European setting take with regard to managing their daily lives in societies that are not predominately Muslim. Employing anthropological methods, Elliesie seeks to empirically investigate life practices in selected European settings in order to link them to what is subsumed under the *terminus technicus* 'Sharia' (*šarīʿa*). Sharia as

a normative matrix has a functional character; it provides a framework for evaluating human conduct. The matrix features a scale of qualifications of behaviour that goes from the obligatory (*wāǧib*) to the forbidden (*ḥarām*), not forbidden (*ḥalāl*), indifferent (*mubāḥ*), allowed (*ǧāʾiz*), recommended (*mandūb*, *mustaḥabb*), and finally reprehensible or disapproved (*makrūh*). These qualifications constitute the basic canon for the conduct of Muslims.

People's relationships to God (*ʿibādāt),* to other people (*muʿāmalāt*) and to the state (*aḥkām sulṭānīya*) should follow these guidelines and are therefore also important considerations in Elliesie's research.

Regarding *ʿibādāt*, of particular importance is ritual praxis in daily life (such as praying and fasting) and its connection to labour law provisions, aspects of school regulations, and the so-called Islamic bio-ethics (for example, issues revolving around religiously motivated circumcision and the use of alcohol-based medicine, as well as contested medical treatments such as organ transplantations, blood transfusions and *in vitro* fertilisation). Another potential research topic would be how Muslims understand Islamic burial rites and the pragmatic performance of such rites.

Under the *muʿāmalāt* classification, extrajudicial mediation and the application of Islamic law in the field of personal status are of particular relevance. Some marriage and divorce practices raise particularly thorny questions in Germany and other states in Europe. These matters are, however, treated differently in Great Britain, where Sharia councils play an increasingly important role. Another highly topical and potentially very productive area of investigation that falls under *muʿāmalāt* is the so-called *gender jihād*. Beate Backe, a PhD student, has been brought into the project to address this relatively recent phenomenon (see Backe, this report).

Finally, the relationships of Muslims to the European state in which they live are of interest from the point of view of *aḥkām sulṭānīya*. In this regard research into military service has great potential. A possible point of entry might be the Armed Forces Muslim Association in Great Britain. The debate over veiling practices in public service jobs could be another productive avenue to pursue.

The canon of conduct for Muslims discussed above is of a predominantly moral character and does not necessarily conform to what is considered binding or, on the contrary, forbidden under state law. In fact, most of those religious aspects of the individual's life in society are private; they are not, formally speaking, rules of behaviour that fall within the competence of any state authority unless they raise a concern for the public order or infringe upon binding law. The study of these individual moral values derived from Islamic normativity and the way they impact social practice are the focal points of Elliesie's project. He asks how Muslims in Germany, France and Great Britain are striving to reconcile their religion-based conduct with the sometimes conflicting norms of state law. The overall research goal is to assess the extent to which the specific *Religionsverfassungsrecht* (constitutional law on religion) has an impact on the actors in the respective countries.

The research project aims to deliver insights into what Muslims characterise as religious guidelines and the spectrum of practices that believers in the three countries consider legitimate and consistent with their religiously based ethics. On the basis of these insights, Elliesie hopes to be able to tackle the difficult task of classifying new epistemologies and hermeneutic approaches in Qur'anic exegesis within specific European frames of reference.[24]

In so doing, the research project will deliver novel insights into Muslims' life practices that the scholarly discourse on such issues as *fiqh al-aqallīyāt* (a concept within Islamic legal theory dealing with Muslim minorities), 'Euro-Islam', etc. – led by figures such as Tariq Ramadan, Yūsuf al-Qaraḍāwī and Bassam Tibi – has thus far failed to reveal. The current academic discourse does not sufficiently acknowledge the ongoing dynamics of everyday reality of Muslims in Europe, which are overshadowed by debates on Islamism, fundamentalism and the war on terror.[25] For instance, when the subject 'integration of Islam' or 'integration of Muslims' is raised, Muslims are treated as a homogeneous group, and Islam as a religion atrophies into a one-dimensional placeholder for the wide range of theological tenets, exegesis, attitudes, developments and other phenomena that actually constitute Islam as a religion. The result is that investigations into and analysis of knowledge production among Muslims and their religiously motivated conduct in daily life are systematically neglected in the research. Elliesie's project is designed to address this perceived imbalance in the current research and literature in Islamic studies.

Jogchum Vrielink
Freedom of speech; discrimination law; law & religion; legal anthropology; Belgium; EU

Jogchum Vrielink works on diversity, multiculturalism and discrimination law, combining legal anthropology with classical legal perspectives and approaches. As a postdoctoral research fellow in the Department 'Law and Anthropology' from April through October 2016, Vrielink was tasked with helping to assess the feasibility of creating a pan-European database of legal cases related to issues of cultural diversity throughout Europe (Vrielink himself focused on the Netherlands and Belgium). This entailed identifying and analysing legal rulings from the Netherlands and Belgium in two pre-existing databases – the database maintained by the Belgian

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[24] Here again, Beate Backe's 'gender jihad' approach plays an important role in the research project, as Muslim women's (re)interpretion of the Qur'an and Sunna may lead to a reassessment of their self-perceptions as Muslims, including the gendered dimension.

[25] Although this ongoing discourse reflects only a very limited view, it is this view that is picked up and blown out of proportion by a large part of the research community and in media representations and public opinion. It would appear that even within academic circles, the general topic of Muslims in Europe is increasingly politicised, a trend that is clearly linked to migration into the 'geo-cultural space' of Europe. This kind of politicised research on Muslims and Islam risks losing sight of the religion itself.

equality body Unia (www.unia.be) and the database of the Dutch judicial system (www.rechtspraak.nl) – and assessing the design, usefulness and user-friendliness of the databases. On the basis of Vrielink's and other participants' analyses, it was determined that the database project is indeed feasible and will move forward (for more details on the database project, see pp. 18–20).

Vrielink has published widely in national and international journals and edited volumes on such varied topics as law and religious diversity, sexual orientation and homophobia, gender discrimination and sexism, disability and accessibility, blasphemy and religious hatred, equality bodies and NHRIs (National human rights institutions), human dignity and the law, burqa bans, and discrimination and/or racism within political parties. During the reporting period, Vrielink also published a number of chapters and articles on, among other topics, hate speech, religion, anti-terrorism, the (second) Geert Wilders hate speech trial, the new anti-terrorist legislation in Belgium, and the gender quota in academia (see Publications for details).

By the time Vrielink left Max Planck Institute, he had gained expertise in areas that would become central to his subsequent appointments. He was appointed head of the Department for Diversity and Equal Opportunities for the city of Leuven, Belgium, and he is a part-time professor at Université Saint-Louis in Brussels, where he teaches seminars on law and religion and on legal theory.

Imen Gallala-Arndt
Interfaith marriages; family law; Israel; Lebanon; Tunisia

Imen Gallala-Arndt was a post-doctoral research fellow in the Department 'Law & Anthropology' from April 2016 to April 2017. During that time she focused on developing her manuscript, provisionally titled *Interfaith marriages in Israel, Lebanon and Tunisia: an illustration of the tension between religious law and state law*, which is to be submitted to the University of Erlangen in partial fulfilment of the requirements for her *Habilitation* degree. Gallala-Arndt developed the main structure of the manuscript while she was a research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg. During her year in Halle she benefitted greatly from the Department's roots in both law and anthropology, further elaborating the analytical framework of her project and arriving at new conclusions.

Gallala-Arndt's research is based on a comparative analysis of the status of inter-religious marriages in three countries of the MENA region (Middle East and North Africa): Israel, Lebanon and Tunisia. Gallala-Arndt focuses on that region because there the constitutional status of a given religion has a legal impact in the field of family law and, more specifically, on the legal validity of interfaith marriages. The underlying research question deals with the normative competition between the state and religion about the regulation of marriage.

For the sake of the analysis the three states are classified according to two criteria: (1) whether the society is pluriconfessional and, if so, whether the pluriconfes-

sionality is legally recognised or not; and (2) whether there is a legally recognised 'dominant' (or state) religion. Israel and Lebanon are both pluriconfessional societies and the multiconfessionality is legally recognised; however, in Lebanon all recognised religions are treated equally, while in Israel Judaism has a privileged position in the legal order. Tunisia has a clear Muslim majority (so for the purposes of this study is not considered pluriconfessional), and Islam is considered the state religion.

Before examining the status of interfaith marriages in the current laws and praxis of the three states, Gallala-Arndt follows the evolution of this status in the histories of Islam, Christianity and Judaism. The three religions appear to have followed similar trajectories on this matter. In their early periods, religious laws were rather open to marriages with non-believers or followers of other faiths. This openness was replaced by prohibitive regimes. For instance, Judaism allowed marriages to all non-Jews except Canaanites. Then, after the Babylonian exile, Ezra extended the prohibition to all non-Jews. Currently all monotheistic religions are moving towards permitting these marriages. These trends, however, are not of the same intensity and scope in the three religions.

Gallala-Arndt's analysis indicates that the status of interfaith marriages in the three religions depends on two elements: the definition of marriage and its purpose, on the one hand, and the status of the non-believer on the other hand. A change in one of these elements leads to a change in the status of interreligious marriages. For instance, the Orthodox Church prohibits the marriage of an Orthodox person to a non-baptised person. This prohibition is based both on the definition of marriage as a sacrament and the Orthodox understanding that the goal of marriage is primarily spiritual, namely, for the spouses to mutually support one another in their efforts to attain salvation through Jesus Christ. Clearly, this purpose becomes moot if one of the spouses is not Christian. The situation is, however, changing. For instance, since the 1990s there has been a new trend in the Orthodox Church to consider marriages between Orthodox believers and non-Christians valid, relying on a new interpretation of 1 Corinthians 7:14, 'For the unbelieving husband has been sanctified through his wife, and the unbelieving wife has been sanctified through her believing husband. Otherwise your children would be unclean, but as it is, they are holy.' Present-day rulings from the Orthodox Patriarch confirm this trend as they move away from the former canonical practice of excommunicating Orthodox believers who marry non-Christians.

Gallala-Arndt observed that the status of interfaith marriages in the religious laws is consistent with others norms in the system of religious laws, but that the state legal regimes in the three countries are not necessarily consistent with the religious laws. Although the states are sovereign, they are also members of the international community; as such, they all aspire to international political legitimacy by following the human rights standards inscribed in international instruments and in their constitutions. Gallala-Arndt believes that this inconsistency leads to the ambiguity that characterises the legal regimes of interfaith marriages. For example, in Israel

it is forbidden to perform interfaith marriages; nevertheless, the Israeli Supreme Court, renowned for its secularising case law, affirmed that the legal effects of marriages validly performed abroad remain valid in Israel. This case law gives interfaith couples a way to circumvent the prohibition against concluding interfaith marriages in Israel.

Concerning the main question of whether the status of religion in the legal order influences the status of interfaith marriages, Gallala-Arndt concludes that the answer is positive only if the marriages are performed or intended to be performed in these states. Interfaith marriages concluded abroad escape to a certain extent the influence of the religious prohibition.

After critically analysing the possibilities that each of the three states involved in the comparative analysis give to interfaith couples to circumvent the prohibition, Gallala-Arndt concludes that none is really satisfying. Her conversations with research fellows and guests of the Department, especially those also conducting research on the same countries, helped her develop some recommendations to improve the situation. For example, Gallala-Arndt suggests that the introduction of certain clauses in the interfaith marriage contract, such as those dealing with child custody and succession matters, could be an appropriate technique to avoid the shortcomings related to the ambiguous and thus precarious status of interfaith marriages in Israel, Lebanon and Tunisia.

Luc Leboeuf
European migration law; mechanisms of exclusion;
international courts (CJEU, ECtHR); Europe

Luc Leboeuf initially joined the Department in 2016 to take part in drafting the proposal for the research project 'The challenges of migration beyond integration', a multi-institutional research framework devoted to the study of the exclusion of migrants in Europe (see WiMi, this volume). With Anne Menzel and Alexander Hassler, and under the direction of Marie-Claire Foblets, he participated in the background research for the proposal, which included mapping existing research projects on migration in Germany and throughout Europe (see also Menzel, this volume). Now that the project has been funded, Leboeuf has been brought on as a postdoctoral researcher to work within the framework of WiMi.

Leboeuf works on international and European migration law, mainly on legal standards pertaining to present-day migration patterns in Europe and their implementation by national courts, as well as on the interplay between the international, European and national legal orders. He views these dynamics through the lens of the concrete enforcement of migration law by European (the Court of Justice of the European Union and the European Court of Human Rights) and national courts. The aim is that, through a focus on concrete applications of the sometimes incoherent and often exceptionally complex legal instruments regulating migration and the way

these instruments are interpreted in the case law, Leboeuf's work will shed a new light on the limits and the lacunae of European migration policies.

Within the framework of WiMi, Leboeuf's main task is to study and follow the most recent developments in the institutional, legal and regulatory mechanisms of migrant exclusion in the context of fragmented international migration law in Europe. The idea is to engender a multidisciplinary understanding of the exclusionary thrust with respect to migrants coming from non-EU countries. To that end, his participation in WiMi is committed to assessing the legal consequences as well as the main historical aspects of exclusionary legislative frameworks. Leboeuf emphasises the tenets of international law governing the selection process that determines which migrants will be accorded the right to enter Europe and stay in the territory and which will not, how the conditions for excluding or including migrants are produced, and the differential uses of international law by various decision makers. Through the combination of legal and anthropological tools he reflects beyond the strictly dogmatic content of the law to examine its concrete application as well.

Leboeuf's project will last for three years. Planned deliverables include a monograph and various common publications and workshops to be organised with the other researchers involved in the WiMi research framework.

Armando Guevara Gil, Professor of Law at Pontificia Universidad Católica del Perú (PUCP) in Lima and frequent guest of the Department, delivers the inaugural lecture at the Department's first annual retreat in Dresden, May 2014. (Photo: B. Turner, 2014)

PhD Candidates

Beate Backe
Islam and gender; ijtihād*; Germany*

Beate Backe's initial project, *'"*Yemeni conditions" in law? Islamic law, customary law and Western law in conflict', was designed to analyse locally prevailing forums and mechanisms of state and non-state dispute resolution in Taʿiz, Yemen, with a particular focus on women's opportunities and strategies to resolve daily conflicts and disputes against the backdrop of prevailing legal, religious and social norms.

Due to security concerns, however, Backe was not able to pursue fieldwork in Yemen as planned, and has since developed a new project titled 'Muslim women's *ijtihād* in Germany', which is part of another project within the Department, 'Sharia as a frame of reference in the European context: Islamic normativity and the ethical legitimation of everyday Muslim practices' (see Elliesie, this volume). Backe's new project explores the role that *ijtihād* plays in the lives of (Sunni) Muslim women who have been socialised in Germany as they endeavour to apply Islamic norms in a Western society. *Ijtihād*, literally 'effort', refers to the process of forming personal opinions regarding a certain case or norm by applying analogical conclusions (*qiyās*) in accordance with the Qurʾān and *sunna* (the behaviour and sayings of the prophet Muḥammad). By using discourse analysis to explore conflict resolution negotiations and strategies, Backe aims to describe the Muslim women's search for answers that correspond to Islamic norms and allow them to realise a way of life in accordance with *sharīʿa*. Furthermore, the project is intended to show (1) the extent to which socio-religious changes take place by means of *ijtihād*, and (2) which source(s) (in the Qurʾān and *sunna* and/or legal scholars [*ulamā*, sg. ʿ*ālim*]) are considered legitimate and authoritative and, therefore, provide appropriate direction for one's way of life. By giving in-depth insight into a way of thinking and reasoning that is often difficult to access for persons not belonging to the Muslim community, the project will be of particular relevance at a time when a large number of Muslim men and women have immigrated to Germany and have to (re)negotiate their way of life in a new (Western) society.

Jonathan Bernaerts
Minorities and administrative language rights; Germany and Belgium

Jonathan Bernaerts's doctoral research project, 'Language rights, policies and practices in linguistically diverse societies', deals with the interactions between administrative authorities and persons belonging to language minorities, whether legally recognised or not. This topic is contentious in several countries and is particularly relevant in linguistically diverse societies. The research focuses on the Sorbian minority and Turkish speakers in Germany, as well as on French and Turkish speakers

in the Dutch language area of Belgium. The goal is to ascertain whether, despite obvious differences in historical and sociolinguistic context, any general lessons of broader applicability can be drawn from an empirical approach to interactions between administrative services and speakers of non-majoritarian languages. This research provides an insider's perspective – from the point of view of both administrative authorities and persons with a home language different from the dominant or official language of the area in which they reside – on how the relevant actors deal with linguistic diversity in administrative settings.

The research project examines perspectives on the administrative language and current practices within the legal framework. Views on the administrative language often entail a balancing act – on both sides – between the importance of asserting the majoritarian language, on the one hand, and, on the other hand, the right to use legally protected minority languages in the public sphere *as well as* the need to facilitate communication of practical information in other (non-legally protected) languages.

The core of this research is its ethnographic accounts of interactions between street-level bureaucrats (Lipsky 1980; Hertogh 2010) and non-majoritarian language residents. As such, it shows how ideas and legal norms involved in these interactions are negotiated in practice. This aspect of the project also examines the needs that the involved actors identify, such as linguistic needs on the ground and the need for (further) juridification (through individual or collective rights) of language use within administrative settings.

Bilingual sign in German and Sorbian at a local administration office in Lausitz, Germany. (Photo: J. Bernaerts, 2016)

To date, the discussion on the right to use minority languages in administrative interactions has mainly been framed in terms of protection of so-called 'old' minorities. This research shows that the context of these interactions today is characterised by broader linguistic diversity, leading to other linguistic and legal challenges. Furthermore, they take place in situations of normative complexity in which history and location as well as service provision goals have an impact on local language policies. Despite established regulations, the management of space (Dubois 2010) can at times offer the civil servant a degree of *de facto* discretion (Evans 2010), opening up the possibility to deviate from the applicable norms.

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Harika Dauth
Romani studies; immigration; asylum; borders; anthropology of the state; critical security studies; feminist theory

Harika Dauth's doctoral research project, 'Testimonies of the "citizen's other"', explores the impact of European migration management and German residence law on migrant and refugee families, focusing predominantly on the everyday lives of five Roma and Ashkali families who have migrated from Eastern Europe to Germany. Their homes and their stopovers along the migration route, specifically in Kosovo, Macedonia, France and Germany, are the central sites of her fieldwork. The research is informed by, among others, Roma, Ashkali, and other European and non-European immigrants, lawyers, policy advisers, human rights activists, legal counsels and mediators, travel agents, border patrol officers and asylum judges.

Contextualising the families' migrations spatially and temporally, the research project discloses various modes of 'illegality' that generations of Roma and Ashkali have had to face in their 'home' and 'host' countries, resulting in forced migration, racial profiling and deportations. Dauth emphasises the historical continuity of the Roma's status and of the state's practices of 'irregularising' immigrants, justified by Germany and the EU in the present context as necessary to combat 'false' asylum applications, 'welfare tourism' and 'mobile threats'.

Dauth questions the widespread notion that the Roma, as the largest transnational minority of European origin, are in need of protection. This image is in fact at odds with national immigration policies that construct a 'Roma problem' not as a human rights issue, but rather as a security issue or a socio-economic problem. The findings of the research thus far indicate that the link between immigration and security is not predetermined and inevitable; it is, rather, constructed. In the analytical part of the research, Dauth will document how this link is made in the case of European Roma migrants. She will also address questions such as: What securitisation processes, technologies and terms are activated within European regimes of migration, citizenship and border control? To what extent do these regimes magnify the distinctions between EU citizens and 'other' Europeans? Does Europe's 'largest ethnic minority' benefit from the 'Europeanisation' of security, the freedom of movement, access to the job market and minority protection?

Whether one can stay, move freely and work depends on a complex set of modes of inclusion and exclusion involving citizenship entitlements and access to social and political rights, legal aid, and state and social welfare services. The project aims to assess how measures and legal rules enacted by sovereign states are implemented and to what extent this contributes to catalysing fears among Europe's populations, not only juridically and geographically, but also to a large extent bio-politically. Given the ambivalent attitude demonstrated by the EU member states and the EU at large towards its Western Balkan accession candidates, it is instructive to see how the treatment of Roma from this region reflects the EU's perception of the post-socialist countries as insufficiently progressive and democratic, and therefore not eligible to be fully part of the EU heartland.

Judith Marie Eggers
Unaccompanied minor asylum seekers; legal guardianship; Germany

Judith Marie Eggers's doctoral project is being carried out in the framework of the larger research project 'Migration and the transformation of German administrative law' (see pp. 109–114). Focusing on the situation in Berlin, Eggers analyses evolving and interconnected webs of relations between unaccompanied minor asylum seekers and the German state that are mediated by state actors and in part enacted by lay persons and / or legal professionals through the instrument of legal guardianship. This project aims to make an important contribution to ongoing academic, public and political debates around the socio-legal accommodation of young migrants / refugees by investigating how legal knowledge is conveyed and socially produced in interactions and relations among the various actors involved in the process of accommodating these youngsters. As such, the research is particularly topical in the context of current immigration into Europe. By drawing on core legal instruments upon which the German administration bases its practices and juxtaposing them with concepts taken from anthropology (e.g., the notion of 'relatedness' taken

from new kinship studies), Eggers aims to develop a distinctively interdisciplinary methodological approach for conceptualising the legally formalised relationship of guardianship. She follows up concrete cases, carrying out ethnographic research in a variety of socio-legal settings in Berlin, including a local aid organisation for young (unaccompanied) migrants, the youth welfare office, and the administrative court in Berlin, as well as among lay persons and legal professionals taking over legal guardianship of young migrants and, of course, the young migrants themselves. In doing so, Eggers employs innovative approaches within migration research that empirically focus on state practices and central institutions of the state in order to analyse the impact of migratory dynamics on institutional practices and vice versa. At the more conceptual level, Eggers's analysis aims to reflect on how recourse to the instrument of legal guardianship in the case young unaccompanied refugees in Germany challenges the notion of the 'legal subject' and the individual rights-based approach of administrative law.

Lucia Fröbel
International migration and access to housing; discrimination; Italy

Lucia Fröbel is a doctoral candidate in the Department and within the International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP). Her PhD project, 'Some mercy and few rights: migrants in the Catholic city', is an ethnography of sustainable coexistence and housing practices in the mid-sized northern Italian city of Bergamo near the Swiss border. Her starting point is an ongoing conflict related to indiscriminate evictions in a district characterised by high rates of international migration. Fröbel aims to shift the focus from a confined analysis of migration dynamics to the broader challenge these dynamics pose to self-representations, local tensions and power relations already existing in the area prior to the arrival of migrants. To this purpose, Fröbel analyses the role that Roman Catholic institutions (as embodied in members of the local diocese and lay persons) play in shaping migration management in this Italian city. The practices addressed in the study relate mainly to the issue of housing and the use of other buildings for social, political and (inter)religious purposes. Other welfare resources and the local implementation of the national asylum policy are also addressed in the research project.

The Bergamo region is a rich province with a largely industry-based economy nestled within the densely populated north-eastern part of Italy. The economic crisis of the last ten years has taken a heavy toll on the province and contributed to the loss of legitimacy that confronts most state officials and authorities. As a result, responsibility for implementing public policies has been outsourced to Catholic associations, especially in the underdeveloped area of services for migrants and asylum seekers. The historical presence and exceptional social and legal status of the Roman Catholic Church in the local context has made it possible for the diocese

to assume the role of mediator and regulator between the local Catholic population and migrants with other religious affiliations. Fröbel argues that the apparent empowerment that these processes have bestowed upon the web of Catholic associations and institutions does not necessarily serve everyone equally. It reinforces the assumption that implicitly equates 'Italian citizen' with 'Catholic' in many public and private discourses, thereby leading to discrimination against non-Catholic immigrants. This arrangement to a large extent works not only against the doctrinal principles of social justice and the long-standing effort on the part of Catholics to establish a 'third way' between liberalism and socialism, but also against the many people within the Catholic web of associations who are committed to assisting needy persons regardless of their religious backgrounds. The diocese's historic role as mediator and controller of governmental practices, especially when it comes to economically and politically marginalised migrant groups, contributes to two main deleterious dynamics. First, it fails to restrain – and can even be said to encourage – the negligence of local administrations and the predatory cooperation between public and private actors. Second, it undergirds the legitimacy of a socio-economic hierarchy that oppresses ethnic and religious minorities.

Markus Klank
Religious diversity; law & religion; Jehovah's Witnesses; Twelve Tribes; Germany

In his doctoral thesis, 'The German state and the legal treatment of so-called *Sekten* (cults)', Markus Klank analyses the legal situation of religious minorities in Germany that are labelled as 'sects' or 'cults' (German: *Sekten*) in public discourse. Klank is interested in how these groups challenge the notion of state neutrality towards religion(s) and the scope of religious freedom rights through an increasing number of legal claims. What are the impacts and consequences for the concerned religions and for the legal framework? Is there room for accommodation, transformation or adaptation on either or both sides? And where are the limits of the law?

Klank's research focuses on case studies related to two millenarian Christian communities in Germany. The first is the Jehovah's Witnesses, who have already fought several legal battles to expand the scope of their religious autonomy under state law. The case studies include the Jehovah's Witnesses' 27-year-long legal battle to gain official recognition as a privileged 'corporate body under public law' (*Körperschaft des öffentlichen Rechts*), the legal discourses revolving around the refusal of blood transfusions, and claims for exemption from compulsory educational materials in the school curriculum.

The second group is the Twelve Tribes community, which has thus far received little attention from researchers. Members of the group live together in agricultural communes, model their lives on those of early Christians, and hold property in common. Apart from a struggle with German authorities about home-schooling in 2003 that was settled when the Twelve Tribes got permission to run their own

(extraordinary) schools, the group remained more or less under the radar. That all changed in 2013, when German police raided the two German communities and took all 40 children into child protective custody after their religiously based spanking practices became public. As a result of this development, all Twelve Tribes members left Germany in 2016.

Situated at the intersection of law, anthropology and religious studies, Klank's research combines the concepts of religious accommodation, legal pluralism and religious non-conformism to analyse ethnographic data gathered through participant observation, courtroom ethnography, and interviews with believers. He also supplements the empirical findings with analyses of court decisions and other official documents. The study points out how stereotypes about cults still influence executive, judicial and legislative procedures, especially at the lower institutional levels. At the higher levels, tensions arise more as an effect of secularisation policies and a focus on individual rights, most notably, the high priority given by state institutions to the idea of the 'best interests of the child'. Klank's ethnographic study also sheds light on the question of why one group, the Jehovah's Witnesses, has been able to establish itself as a recognised religion while the other, the Twelve Tribes, has not, leading to a perception of religious oppression and, ultimately, the felt need to leave Germany permanently. The resources and strategies these religious groups can or cannot use to navigate through legal discourses become very important factors in the analysis of these dynamics.

Sirin Knecht
Women's rights; international development; transnational NGOs; gender justice; Lebanon

Sirin Knecht's research project, 'Advocating human rights under conditions of religious legal pluralism: the example of NGOs in Beirut, Lebanon', falls within the framework of the International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP). The project focuses on the implementation of human rights and how such notions of global standards have been tailored and reshaped by rights-oriented NGOs' initiatives geared towards effecting changes in the law in Lebanon. Knecht's fieldsite is Beirut, the capital of Lebanon. Lebanon shares borders with Syria and Israel, both of whom have fraught relationships with Lebanon due to regional conflicts and histories of occupation. The security situation and its strategic location as a transit zone between Europe and Asia within the Middle East explains Beirut's position as a regional hub for international agencies and organisations. Some of these organisations supply services to approximately two million Syrian refugees (in addition to the existing population of Palestinian refugees who have lived in camps for decades).

Efforts to mobilise, appropriate and translate international law into local legal and cultural frameworks involve a wide range of civil society and international

development networks and actors. Knecht's research focuses on local women's organisations engaged in raising awareness of and advocating for women's rights and initiating capacity-building projects. Such projects are often transformed into public campaigns aiming at changes in public policy and family laws. NGOs, however, face challenges and restrictions at both the legal and the policy levels when it comes to women's affairs. Their initiatives to promote gender justice and women's rights collide with societal (patriarchal) norms inspired and regulated by religious laws. Lebanon is a consociational state with eighteen officially recognised religious denominations, each having its own set of family laws. The Lebanese constitution transfers the full legal competence over family matters, including judicial competence, to the religious communities. This plurality of coexisting and conflicting legal and normative orders challenges efforts to establish gender justice, especially in the absence of a unified civil law regulating family affairs.

Knecht's research combines an analysis of normative plurality – viewed as a component of culture – with an examination of the ways in which Lebanese society responds to it. Methodologically, her study is informed by social network analysis and socio-legal research on (international) institutional organisations and translation models. Knecht analyses expert knowledge, network relations and family matters with regard to such factors as political and international (humanitarian) power, social order, and legal and confessional plurality. Questions of morality and ethics in development and peace building are also addressed.

This ethnographic study of law, rights and social order in the context of development and international policies contributes to a better understanding of how knowledge is generated and disseminated in an international development setting. It critically analyses technocratic approaches of international development initiatives that attempt to impose uniform ideas and templates onto culturally diverse contexts. As such, it should contribute to critical perspectives on NGOs and how they engage in local struggles to propagate gender justice and equality in a multi-confessional state in a conflict-ridden and constantly changing socio-political setting.

Kalindi Kokal
Legal pluralism; non-state dispute-processing mechanisms; rural India

Kalindi Kokal's dissertation project, 'Renditions of balance: (unspoken) dialogues with state law in dispute processing in rural India', explores the manner in which non-state forums and actors in the sphere of dispute processing engage with state law and its regulatory systems. The relationship between the Indian state and non-state forums of dispute processing and the actors involved therein has never been clearly defined. On the one hand, socio-legal and human rights activists use public interest litigation and media-based campaigns to challenge the legitimacy of non-state dispute processing forums because they are believed to obstruct the efficient dissemination of state law and pose harmful barriers to the effective securement of

rights and, therefore, of justice. On the other hand, the very existence of non-state actors in dispute processing has been perceived by activists, lawyers and legal scholars in India as an indication of the failure of the state judiciary. Kokal's research is situated in the context of these dynamics.

Kokal focuses on two rural communities in India – a fishermen's community in western Maharashtra and an agrarian community in Uttarakhand – in order to observe the complex processes of 'centralisation of law' (Solanki 2011) in India. The two communities were selected for the similarities in their socio-economic circumstances and contrasts in their locations, levels of education and proximity to state forums of dispute processing. These similarities and differences provide rich parameters for comparison in light of the broader research question. The two communities also offer the researcher an opportunity to observe a variety of non-state dispute processing mechanisms.

On the basis of empirical data collected via the methods of participant observation and open-ended qualitative interviews, Kokal concludes that state law is translated through mechanisms of resistance and embracement, such as appropriation, adapta-

Meeting of a caste-based forum that carries out administrative and dispute-processing functions in the fishermen's village of Gonjhé. (Photo: K. Kokal, 2016)

tion and interpretation. These translation mechanisms emerge in the course of dispute processing by individuals themselves, by non-state forums and actors such as caste *pancāyat*s (village councils), 'barefoot lawyers', priest-magicians, spirits and deities. Kokal proposes that, in the sphere of dispute processing, the nature of engagement of non-state forums and actors with state law and its systems can be understood only through an examination of the extent and manner in which the 'postulational values' (Chiba 1984) underlying a community's sense of order and those underscoring state law compete or coincide with one another. These empirical findings contribute to an understanding of the manner in which different 'legal cultures' (Geertz 2000; Merry 2012, 70) coexist, engage with and influence one another.

Kokal will defend her doctoral thesis at the Law Faculty of the Martin Luther University Halle-Wittenberg on 5 July 2017.

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Annette Mehlhorn
Emancipatory constitutionalism; law and social change; plurinationality; Bolivia

In her doctoral project, Annette Mehlhorn explores the negotiation, potential and problems of legal pluralism in Bolivia. Legal Pluralism is now one of the foundational principles of Bolivia, which upon passage of the new constitution in 2009 officially changed its name from the Republic of Bolivia to the Plurinational State of Bolivia. The 2009 constitution breaks with legal monism, giving the same hierarchical status to the indigenous justice system (*Justicia Indígena Originaria Campesina* – JIOC) as to the ordinary justice system (*Justicia Ordinaria*), which is modelled on Western legal systems. The Bolivian Constitution became known as one of the most radical examples of Latin American 'emancipatory constitutionalism', which for many constitutes an important tool for radical social change. Questioning the very nature of the nation-state and law itself, emancipatory constitutionalism leads to a new and important debate about the relationship between law and social change.

Mehlhorn's research is based on eighteen months of ethnographic fieldwork, during which she collaborated with a small activist organisation and an Aymara community in the Bolivian highlands. It analyses how the JIOC is (re-)constructed and how the community's 'own' norms are debated within the discursive and legal horizon of the new constitution. The work describes the complex dynamics through which law becomes a contested terrain for the construction of norms and knowledge, as well as for homogenising state-building efforts and resistance to them.

The research sheds light on the hegemonic and anti-hegemonic tendencies within the Bolivian *proceso de cambio* ('process of change') that crystalise in the area of legal pluralism. Going beyond the Bolivian context, it draws on both the Anglophone and the Latin American literature to contribute to theoretical questions related to law and social change.

During the 2014–2016 reporting period, Mehlhorn took a six-month leave of absence to participate in the foundation of Universidad Indígena Campesina Santa Ana, an indigenous university in the Bolivian highlands. In the process she had the opportunity to be in close contact with the community's legal authorities, which allowed her to gain valuable insights that have informed her research. Just as importantly, the commitment of time and effort was a way for her to give something back to the community and its members in return for all they did for her.

Mareike Riedel
Law; religion; identity; Judaism; circumcision; eruv*; Australia; Germany*

Mareike Riedel was a doctoral candidate in the 'Law & Anthropology' Department from January 2014 through January 2016. She is currently completing her studies at the Centre for International Governance and Justice (CIGJ) within the Australian National University's College of Asia & the Pacific in Canberra. In her research, Riedel explores encounters between Jewish law and state law. Her project departs from a purely rights-based approach and is grounded in an understanding of law that decentres the state and takes seriously the subject-centred and social nature of law creation. Drawing on the concept of critical legal pluralism and socio-legal theories on legal subjectivity, she examines the role of identity and subjectivity in present-day encounters between Jewish religious practice and state law. Two case studies are at the heart of this research project: (1) the conflict over an *eruv* (a Jewish religious space that facilitates the observance of the Sabbath [*Shabbat*]) in a suburb of Sydney (Australia); and (2) the controversy over the practice of male circumcision in Germany.

In both cases Riedel explores how competing visions of religious subjectivity, identity, religion and community have been constructed, contested and negotiated with regard to the use of public space and practices of the body. She pays particular attention to how actors invoke and interpret law and legal meaning to understand and use the Janus-faced nature of law for the negotiation of difference. On the one

hand, law can be a tool of domination that marginalises non-Christian religious subjectivities as the 'other' and imposes a privatised notion of religion that is grounded in particular Christian experiences. On the other hand, law can empower religious minorities by providing a rich repository of legal tools, mechanisms and strategies to actively resist these tendencies. Paying attention to the Jewish experience of the politics of 'religious difference', Riedel examines the ways in which a religious minority successfully and skilfully negotiates a more plural vision of state law in order to accommodate their religious practices. Moreover, this study of the Jewish experience serves as an example of how historical Christian attitudes towards Jews continue to impact visions of secular law and subtly permeate today's encounters between religious minorities and the state.

Sajjad Safaei
Perception of forms of violence; beheadings; ISIS

In the epoch often described as 'the Age of Human Rights', not all human rights violations are given equal weight and urgency. While certain violations barely invoke a proverbial yawn, others appear far more deserving of the humanitarian gaze, and may even leave a lasting mark on 'civilised' inter- and intra-state relations. A glaring instance of this lack of proportionality is the televised beheadings by the 'Islamic State in Iraq and Syria' (ISIS), which have evoked dread and disgust in the West. This practice is adduced as indisputable proof of the group's barbarity and the threat it poses to civilisation.

On reflection, it is not obvious why this form of violence is more egregious than other widely practised 'civilised' modes of killing and harm (e.g., lethal injection). This disparity in the urgency and prioritisation given to different forms of assault on the human body animate the overarching research questions of Safaei's multidisciplinary project. In seeking to tease out the standards whereby a practice is deemed either 'civilised' or 'barbaric', Safaei's project shows to what extent these standards are moral, rational, persuasive, emotional or arbitrary. The theoretical framework that guides this research is drawn from Norbert Elias's *The Civilising Process.* The empirical thrust is derived from various sources, including policy documents, media reporting, public opinion polls, contemporary and historico-philosophical debates surrounding penal practices, human rights reports and personal accounts. By shedding light on the logic that guides the attitudes towards different forms of violence, this project accounts for the noticeable selectivity and bias that often characterises humanitarian concerns.

Associates

Keebet von Benda-Beckmann
Legal pluralism; globalisation; social security; migration;
Indonesia and the Netherlands

Keebet von Benda-Beckmann was, along with Franz von Benda-Beckmann, co-founder and director of the Project Group 'Legal Pluralism', which operated at the Max Planck Institute from 2000 to 2012 and was the precursor to the 'Law & Anthropology' Department. Over the course of the past few years, the Project Group has gradually brought its activities to a conclusion. The results of the conference that explored the 'temporalities of law' were published in a special issue of the *Journal of Legal Pluralism* (v. 46/1, 2014, co-edited with Martin Ramstedt and Melanie Wiber). This was the last of a series of conferences and publications focusing on fundamental issues of legal pluralism, starting with property relations, followed by mobility, religion, governance, space and time. The aim was always to further the theoretical insights in the subject at stake, with a keen eye for the practical implications for the actors that are confronted with the issues in their daily lives.

The work of the research group 'Local state and social security in rural Hungary, Romania and Serbia', funded by the Volkswagen Foundation and coordinated by Benda-Beckmann and Tatjana Thelen, also came to an end. André Thiemann and Mihai Popa, who had worked in this research group under the supervision of the two coordinators, successfully defended their dissertations (see Popa, Thiemann, this volume).

Benda-Beckmann remains an associate of the Department, in which capacity she continues to write and present on topics of longstanding interest, including social security in plural legal contexts, time and law, and globalisation, which has become a major dimension of legal pluralism. In a number of talks and publications during the 2014–2016 reporting period, Benda-Beckmann demonstrated how transnational communities of migrants stretch circles of solidarity, thereby changing their contents. Notions and practices of care and support change in response to the new social and political environments, causing friction between those who have emigrated and those who have stayed behind. These new conceptions also have profound implications for the personhood of the members of such communities. Benda-Beckmann's participation in the research programme 'Rethinking kinship and politics' at the Centre for Interdisciplinary Research (ZiF) in Bielefeld allows her to pursue her long-term interests in property and in care and support. She has also been working with Bertram Turner, the Department's Senior Researcher, on an essay about the anthropological background of global legal pluralism.

Benda-Beckmann is a founding member of the International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP). She continues to serve as a member of the principal faculty and steering committee of REMEP and

engages in its activities, attending several summer and winter schools during the reporting period to discuss the work of PhD students and provide advice and mentoring. As a member of the Board of Trustees of the Law and Society Association, Benda-Beckmann attended the annual meetings in New Orleans (2016) and Seattle (2015). In September 2015 she participated in the first international conference of the Asian Law and Society Association in Singapore, an exciting new organisation that for the first time brought together scholars from East and Southeast Asia. The association includes socio-legal scholars and legal anthropologists, as well as more policy-oriented scholars. Issues related to legal pluralism are high on the agenda.

The trip to Singapore gave Benda-Beckmann an opportunity to visit Indonesia, her principal fieldsite throughout her long career, to discuss the translation into Indonesian of the volume *Political and legal transformations of an Indonesian polity* (Cambridge 2013, co-authored with Franz von Benda-Beckmann) and to find an Indonesian publisher. Since Indonesia is once again restructuring local government, this book is attracting great interest from policy makers. One of the major challenges of such a venture is translating legal terms and concepts from both customary and Indonesian state law that derive from the Indonesian, Minangkabau, Dutch and English languages. Though fundamentally a problem for anthropology in general, such translation issues are especially relevant for policy makers and legal practitioners.

Mihai Popa
Religion; European Court of Human Rights; citizenship; welfare; Romania

Mihai Popa first came to the MPI as a doctoral candidate in the Project Group 'Legal Pluralism' within the framework of the Volkswagen Foundation-funded research group 'Local state and social security in rural Hungary, Romania and Serbia' (co-ordinated by Keebet von Benda-Backmann and Tatjana Thelen). In the 2014–2016 reporting period he was primarily occupied with completing his doctoral dissertation, which he successfully defended in June 2016. His ethnography of local-level welfare provision in Romania in the aftermath of socialism, titled 'Between institutions and hearts: dynamics of need, redistribution and social security in a village in Northern Dobruja', invokes local religious norms and meanings to explain how neighbours, relatives and state bureaucrats redistributed livelihood resources on an everyday basis. On the basis of his fieldwork and in collaboration with Ştefan Dorondel (Popa's colleague from the Volkswagen project), Popa published a comparative analysis of welfare distribution in two rural localities, which came out in *Social Analysis* in 2014.

In January 2015 Popa commenced research on religious pluralism in Romania within the ERC-funded project 'Directions in religious pluralism in Europe: examining grassroots mobilisations in the shadow of European Court of Human Rights religious freedom jurisprudence' (*GRASSROOTSMOBILISE*), coordinated by Effie Fokas and in which Marie-Claire Foblets is also involved. This project, based at the Hellenic Foundation for European and Foreign Policy in Athens, has allowed Popa

to continue pursuing his interest in the role of religion in social life and also helped expand his knowledge in the field of law. More specifically, he has been analysing the state of religious freedom in Romania in order to understand the possible role played by the European Court of Human Rights (hereinafter ECtHR) in shaping religion–state and interreligious relations.

The data Popa has generated within the framework of the *GRASSROOTS-MOBILISE* project form the basis of two recent research papers (both co-authored with Liviu Andreescu). The first, provisionally titled 'Contesting the place of religion in education in post-communist Romania: strategic uses of the ECtHR and its case law', concerns the ECtHR's role in disputes over the place of religion in public education in Romania. It is currently being revised for publication in the journal *Politics and Religion*. The second co-authored paper, 'Laws, courts, and the legitimacy of religious communities: a socio-legal outlook over religious majority-minority relations in Romania', examines present-day interreligious conflicts in Romania and their relation to the legal status of religious communities. Popa is also developing a chapter with the working title 'Who looks to Strasbourg for religious freedom? The relevance of the European Court of Human Rights for religious minorities in Romania', which is being prepared for an edited volume devoted to understanding the impact of the ECtHR on the legal status of religious minorities in different national contexts.

Popa is currently a visiting research fellow at the Centre for Citizenship, Social Pluralism and Religious Diversity at the University of Potsdam, where he is analysing his own data on grassroots initiatives to clarify the constitutional definitions of 'marriage' and the 'family' (in the wake of recent ECtHR decisions regarding the legal protection of same-sex couples). Popa is also working towards transforming his doctoral dissertation into a book and intends to begin working on a second monograph based on his postdoctoral research.

Martin Ramstedt

Anthropology of law and religion; Buddhism; Islam; cultural translation; travelling law; Indonesia

Martin Ramstedt has been a research associate in the 'Law & Anthropology' Department since leaving the Department at the end of February 2014 to take up consecutive research fellowships, first at the Käte Hamburger Center for Advanced Study in the Humanities 'Law as Culture' at Bonn University (Germany), then at the Royal Netherlands Institute for Southeast Asian and Caribbean Studies (Leiden, The Netherlands), and finally at the Humanities Centre of Advanced Studies 'Multiple Secularities – Beyond the West, Beyond Modernities' at Leipzig University (Germany).

Ramstedt's research activities while an associate of the Department include the publication of *Temporalities of law*, a special issue of the *Journal of Legal Pluralism* (2014, v. 46/1, co-edited with Keebet von Benda-Beckmann and Melanie Wiber).

The special issue is based on a workshop that Ramstedt co-convened with Franz and Keebet von Benda-Beckmann in 2013, and includes Ramstedt's own contribution. Three further publications resulting from Ramstedt's previous research as a member of the Project Group 'Legal Pluralism' also came out during the reporting period (see Publications for details on these and all of Ramstedt's publications mentioned below).

While he was a member of the Department 'Law & Anthropology', Ramstedt became interested in cultural translation and travelling law. He continued to pursue this interest as a fellow at the Käte Hamburger Center for Advanced Study in the Humanities 'Law as Culture', publishing another article in a special issue of the journal *Translation and Translanguaging in Multilingual Contexts* (2017, v. 3/1). Ramstedt's research on the cultural translation of Buddhism into different European normativities, which he also developed during his time as researcher at the Department, resulted in a co-authored report solicited by the German Buddhist Union and the Khyentse Foundation.

The bulk of Ramstedt's time as a research associate of the Department, however, was spent on writing and teaching in the field of law and anthropology. With a view to strengthening and diversifying his academic profile, he accepted Marie-Claire Foblets's offer to represent the Department in the capacity of Visiting Professor at the Oñati International Institute for the Sociology of Law in Spain, where he taught the course on law and anthropology from 2013 to 2017. During that period he also continued to mentor a doctoral student in the Department (Markus Klank) and regularly participated in the annual departmental retreats. Ramstedt's teaching activities, combined with his research expertise in the intersecting fields of law, religion and politics, resulted in two more publications, one – at the behest of Marie-Claire Foblets – in the *Routledge handbook of law and religion* (2015), the second in the edited volume *Religious rules, state law, and normative pluralism: a comparative overview* (Springer 2016).

Finally, Ramstedt, along with Katrin Seidel, participated in an outreach project at the Evangelische Akademie Loccum that led to a publication on the limits of normative pluralism.

André Thiemann
Commodity chains; post-socialism; relational analysis; space and place; the state; Serbia

André Thiemann is an expert on the political, legal, social and economic dynamics of post-Yugoslav Serbia. He first joined the MPI in 2009 as a member of the Volkswagen Foundation-funded research group 'Local state and social security in rural Hungary, Romania and Serbia' within the Project Group 'Legal Pluralism'. He worked under Keebet von Benda-Beckmann, the former director of the Project Group 'Legal Pluralism', and Tatjana Thelen, who is now University Professor of

Methods in the Social Sciences at the University of Vienna. He wrote up his dissertation, 'State relations: local state and social security in central Serbia' in the 2014–2016 reporting period while with the 'Law & Anthropology' Department and defended it in June 2016 with highest honours (*summa cum laude*). Using a relational approach along the four axes of embeddedness, boundary work, relational modalities and strategic selectivity, Thiemann delineates the concrete, complex processes of state construction, reproduction and transformation to address central legal-anthropological questions at the intersection of political economy and social security. His ethnographic work examines local state relations and practices (welfare, care, social security) in a region of central Serbia that is characterised by both rural and urban communities, and concludes that the local state is not bounded but is, rather, a grounded, complex network of relations at various levels, ranging from the sub-local to the transnational. Thiemann's relational approach addresses the state through a whole range of everyday practices of local state actors in conjunction with citizens' demands for corresponding infrastructure. It also offers insights into material promises, hopes for the future, and people's (dis)trust with respect to the state, as welfare and care embody the dialectics of inclusion and exclusion, belonging, and shifting solidarities.

During the reporting period, Thiemann also published a conference report with Tabea Häberlein at *H-Soz-Kult*; participated in the MPI conference 'Beyond the global care chain: boundaries, institutions and ethics of care'; published a peer-reviewed journal article entitled '"It was the least painful to go into greenhouse production": the moral appreciation of social security in post-socialist Serbia', in *Contemporary Southeastern Europe*; and co-authored a peer-reviewed article (with Tatjana Thelen and Duška Roth), 'State kinning and kinning the state in Serbian elder care programs', in *Social Analysis*. He presented papers in Halle, Hamburg, Regensburg, Vienna, London, Milano, and Bielefeld; and co-convened the panel 'Works that matter (not): valuing productivity through and against the market', at the 2016 annual meeting of the European Association of Social Anthropology (EASA) in Milan. As a member of the interdisciplinary DFG (German Research Society) Research Network 'Social welfare and health care in Eastern and south-eastern Europe during the long twentieth century' from 2012 to 2015, he contributed a chapter titled 'Underimplementing the law: social work, bureaucratic error, and the politics of distribution in postsocialist Serbia' to a jointly edited volume (in press). Another article is under review at the *Bulletin of the Institute of Ethnography SASA* for a special issue on the state.

Thiemann is currently a fellow at the ZIF Research Group 'Kinship and politics: rethinking a conceptual split and its epistemological implications in the social sciences' at Bielefeld University. In October 2017 he will begin a new research project on the transnational anthropology of the raspberry commodity chain at the Institute for Advanced Study, Central European University, Budapest.

Larissa Vetters
State transformation; relational anthropology; Germany; Bosnia; Herzegovina

In her research activities Larissa Vetters combines empirically grounded, ethnographic investigations of state transformation with a more theoretically oriented exploration of the function(s) of law in the realm of executive state power. In recent years and as a result of her work first in the Project Group 'Legal Pluralism' and then in the Department 'Law & Anthropology', Vetters's focus on public administration and state transformation has come to encompass broader issues of sociolegal transformation in situations that are shaped, in one way or another, by the dynamics of globalisation.

Based on fieldwork in Mostar, Bosnia and Herzegovina, from 2005 to 2007, Vetters's dissertation investigated the effects of international intervention and state-building on local processes of self-government and perceptions of Bosnian statehood (Vetters, forthcoming 2017). At the same time, Vetters collaborated with the team members of the Volkswagen Foundation-funded project 'Local state and social security in rural Hungary, Romania and Serbia', headed by Tatjana Thelen and Keebet von Benda-Beckmann (see also Benda-Beckmann, Popa, Thiemann, this volume), which resulted in the development of an ethnographically grounded relational perspective of the state expressed in a series of comparative articles (see Institute's Report 2012–2013 and Thelen, Vetters and Benda-Beckmann 2014). In 2014, Vetters participated in the analysis of a survey on cultural diversity and judiciary practice jointly initiated by Marie-Claire Foblets and the European Network of Councils for the Judiciary (see also Foblets, this volume). As part of a larger attempt to create a platform for European scientists, legal practitioners and judges who address questions revolving around cultural diversity and its accommodation in law, the survey aimed to (1) identify the main legal issues and challenges courts in Europe are faced with in relation to questions of cultural diversity; (2) find out what techniques and tools are currently used by judges to address these issues; and (3) identify which tools are of most help to judges in their daily practice. The analysis of survey data and in-depth discussions with some of the participating judges led to a theoretical and methodological reflection on the role of anthropological knowledge and research in legal practice and a call for collaborative courtroom ethnography with judges (Vetters and Foblets 2016).

Drawing on these previous projects, Vetters recently developed an interest in German administrative justice, particularly in migrants' encounters with German administrative law. Vetters joined the Law and Society Institute at the Law Faculty of Humboldt University in Berlin in February 2015 as research coordinator and post-doctoral researcher, but has remained associated with the Department and – starting in November 2015, when funding was granted by the Fritz Thyssen Foundation – began to head the collaborative research project 'Migration and the transformation

of German administrative law: an ethnographic study of state–migrant interactions in administrative courts' (see under 'Research Groups' below).

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Olaf Zenker
Legal pluralism; rule of law; sentiments of justice; land rights; expertise; Africa; Europe

Olaf Zenker is a political and legal anthropologist who has been an associate of the 'Law & Anthropology' Department since 2015, but whose relationship to the Max Planck Institute goes much further back. Zenker was trained at the MPI (Department 'Integration and Conflict) and received his PhD from the Martin Luther University in 2008. He is currently a tenured professor at the University of Fribourg in Switzerland. Prior to accepting the position in Fribourg in 2017, Zenker held professional positions at the University of Bern, the University of Cologne and the Freie Universität Berlin (FUB). For the last several years he has been working on a long-term project entitled 'Land restitution and the moral modernity of the new South African state', which looks at the current land restitution process in South Africa as an exemplary site where the moral modernity of the post-apartheid state is contested, renegotiated and made. He was also part of the team at FUB that set up a new Collaborative Research Centre (SFB) of the *Deutsche Forschungsgemeinschaft* (DFG) on 'Affective societies'. Since 2015 Zenker has also been principal investigator of a four-year project, 'Sentiments of justice and transitional justice: affective transculturality in proceedings before the International Criminal Court', which is based on fieldwork in The Hague and northern Uganda and uses the ongoing trial against Dominic Ongwen (LRA) as a means to investigate the affective–emotional legitimacy of conflicting normative orders.

In recent years Zenker has contributed regularly to many of the Department's activities. His participated in the Department's 2014 annual conference, 'The paradoxes of personal autonomy in a plural society'. His contribution, 'Why the individual must be defended ~ seemingly against all anthropological odds', will appear in the forthcoming volume *Personal autonomy in plural societies: a principle and its*

paradoxes (Routledge). He was also invited to give a talk on the use of anthropological expertise in the Joint Institutes' Colloquium of the MPI and the Institute of Social and Cultural Anthropology at the Martin Luther University during the winter semester 2014/2015. His presentation, 'Anthropology on trial: exploring the laws of anthropological expertise', was subsequently published in 2016 as one of four articles in a themed section on anthropological expertise in the legal sphere in the *International Journal of Law in Context*.

Zenker became of member of the 'Law & Anthropology' Department's Consultative Committee in 2014. This appointment has made it possible to formalise some of the various pre-existing collaborations that he has had over the years with Marie-Claire Foblets and members of the Department. For example, along with Marie-Claire Foblets, he co-supervises Sirin Knecht, a PhD candidate based at the International Max Planck Research School on Retaliation, Mediation and Punishment (REMEP). He has also served as a discussant of various ongoing PhD projects at the departmental retreats in Dresden (May 2014, January 2017) and in Wittenberg (January 2016). For the latter occasion, Marie-Claire Foblets invited Zenker to give a talk on 'Current concerns in political and legal anthropology: new prospects for research in Berlin', which pointed out the complementarities between the research interests of the Department and his own research group in Berlin. Last but not least, evolving out of these multiple forms of cooperation, Zenker has been working with Marie-Claire Foblets and Mark Goodale on a proposal for a new *Oxford Handbook of Law and Anthropology*, which the editors have submitted to Oxford University Press for review (see pp. 28–29).

Palestinians from a refugee camp near Tyre, Lebanon, posing for a selfie with the Mediterranean Sea in the background. (Photo: S. Knecht, 2016)

Visiting Fellows Programme

Since its inception, the Department has tried to support the discipline beyond the confines of the Institute in a number of ways. One of the principal instruments for doing so is the Department's Visiting Fellows Programme, through which the Department hosts scholars from all of the world for stays of anywhere from one week to one year. The Programme provides the Department with the necessary flexibility to be able to extend invitations on an ad hoc basis to eminent scholars who are conducting research that is relevant to the Department's interests.

The Programme is a way for the Department to share its resources and extend the reach of the Law & Anthropology research agenda. Just as importantly, the researchers who come to the Department through this Programme constitute a vital source of new ideas and insights, thereby enriching and adding to the diversity of the Department.

As part of the Visiting Fellows Programme, the Department has also inaugurated a more formal dissertation write-up fellowship, granting – on a competitive basis – four six-month fellowships per year to promising and highly motivated PhD candidates who are nearing the completion of their dissertations. As this programme kicked off only in 2017, the results of the first cohorts will not appear until the Department's next report. However, before the programme was formally inaugurated, the Department hosted a number of PhD candidates for extended periods of time, several of whom either completed their dissertations or made significant progress while they were with us (see Burai, Gout, Kalman, Ledvinka, Raza, Steyn below).

Below we present the research results of scholars who visited the Department for periods of more than two months in the 2014–2016 reporting period.

Tobias Berger
Translation; rule of law; anthropology of international organisations;
village courts; Bangladesh

Tobias Berger spent three months (fall 2015) at the Department 'Law & Anthropology' to work on his monograph, entitled *Global norms and local courts – translating 'the rule of law' in Bangladesh* (forthcoming with Oxford University Press in September 2017). Based on four successive rounds of field research in Bangladesh between 2011 and 2016, Berger's monograph focuses on transnational influences in rural, non-state justice institutions. In particular, it investigates the ways in which both transnational liberal notions of 'the rule of law' and local patterns of conflict resolution are transformed in the context of various projects involving local village courts funded by international donor agencies. This dual transformation is captured through the concept of *translation*. He argues that global norms change in the process of translation, but only if their meaning changes in ways that are intelligible to people within a specific context will the social and political dynamics of the context

change as well. Such translations do not follow linear trajectories from 'the global' to 'the local'. Instead, they unfold in a recursive back-and-forth movement between different actors in different contexts. During his time as a visiting scholar at the Department, Berger was able to refine key arguments of his forthcoming book through the multidisciplinary exchanges the Institute facilitated between anthropologists, legal scholars, and other social scientists, as well as the regular discussions with external visitors in the contexts of colloquia and seminars. He also participated in the regular 'work-in-progress' seminars in the Department 'Law & Anthropology', where he presented his work.

A second project – on the anthropology of international organisations – also began to take shape during his time at the Max Planck Institute. The chapter he drafted there, entitled 'Global village courts – international organizations and the bureaucratization of non-state justice institutions in the Global South', was published in the volume *Palaces of hope: the anthropology of global organizations*, edited by Maria Sapignoli and Ronald Niezen (Cambridge University Press 2017).

The two research projects that Berger pursued while he was in Halle have served as a springboard for his subsequent professional development. He first joined the Institute for the Human Sciences in Vienna as a Junior Visiting Fellow, and has since been appointed Junior Professor for the Transnational Politics of the Global South at the Otto-Suhr Institute for Political Science, Free University, Berlin (as of April 2017).

Petra Burai
Corruption; limits of law; human rights; normative pluralism; Hungary

Petra Burai spent 12 months as a visiting scholar at the 'Law & Anthropology' Department, during which time she worked towards finalising her dissertation, 'Facing and overcoming the limitations of anti-corruption legislation', which she defended with highest honours (*summa cum laude*) at the Eötvös Loránd University, Budapest, in 2016. For her dissertation's originality, coherence of findings, and academic and social importance, Burai received the *Pro Dissertatione Iuridica Excellentissima Award* from the Hungarian Academy of Sciences' Institute for Legal Studies.

Burai's research focuses on the impact and limitations of anti-corruption regulations at the international, national and personal levels, as well as their influence on the implementation of human rights. Corruption denotes conflicting moral attitudes and interests. It also implies the failure of the rule of law and, consequently, of the implementation of human rights, and thereby entrenches and deepens inequalities within societies. Consequently, anti-corruption regulations are becoming more diverse and stricter, but legal practice and anthropological studies have shown that even carefully planned policies and legislation become ineffective or even counterproductive if decision makers disregard social realities and the diversity of norms that inform everyday life. While much is known about how laws and policies are

created, significantly less academic and political attention has been paid to the success or failure of their implementation.

Burai analyses how social and legal norms, power relations and arguments about financial benefits mutually influence one another and the social perception and efficacy of anti-corruption regulations in general. In addition to the legal analysis of the relations between international anti-corruption policies and the relevant case law of human rights tribunals, Burai has paid particular attention to the social, legal, political, economic and cultural changes in Hungary that concern core values and norms. Her empirical work examines the 'anthropology of corruption and law' through the lives of elderly Hungarian people and their experiences connected to corruption in the healthcare and education systems, as well as their attitudes to the relevant legal regulations and the authorities concerned. The in-depth life histories she has gathered of the research participants' personal strategies for coping paint a unique picture of several decades of political and legal history.

On the basis of the conceptual framework offered by legal anthropology, Burai reached a number of conclusions concerning the incapacity of the law – and of the state more generally – to address corruption and ways to overcome these limitations.

In Hungary there is a high level of mistrust of the law and the authorities entrusted with its enforcement. This attitude seems to be historically persistent, leading to resignation and a sense that things are not likely to change. Such mistrust and resignation, coupled with constantly changing 'official' norms, lead individuals to seek out stability and reliability in norms, traditions and personal relationships outside the scope of the law and to prefer non-transparent, non-accountable, extra-legal solutions to their problems. Moreover, if law and official state power are merely perceived as obstacles to social goods and opportunities such as education and healthcare, new opaque ways develop to secure 'back-door' access to them. These solutions generally fall under the rubric of 'corruption'. In such situations the general tolerance of the abuse of power for 'the right goals' increases, and law loses its authority in the emerging moral pluralism. Social tolerance for and even acceptance of such acts remains persistent despite radical changes in the political regime.

On the one hand, the state can silently tolerate or even officially consent to social norms and traditions that contradict legal regulations. On the other hand, the state and the legal system can deliberately act against the social tradition of informal payments and try to impose social change and reforms. To do so, however, it must be able to prove that the benefits of the measures outweigh the gains offered by corruption. Anti-corruption laws can turn into much resisted 'anti-corruptionism' – as is the current situation – because society has much to lose if the possibility to exercise one's personal agency to pursue success by accessing certain extra-legal opportunities is abruptly taken away. Any efforts to enact and enforce anti-corruption laws can only succeed if they are implemented gradually.

Law should provide the most evident and tangible measures that promote social cooperation. Improvements in general living conditions, access to education, social

and healthcare services, or simply the chance to get by must outweigh the costs of foregoing the opportunities corruption opens up. If the potential stakeholders do not (1) see the social and individual rewards of the measures as beneficial enough to make them 'buy in', and (2) trust the government and its bodies designated to carry out the regulations, they will continue to trust in the prohibited exchanges beyond state control.

The time Burai spent at the MPI contributed significantly to her research, inspiring her to look past the boundaries of law and to see problems in their full complexity. In her future work she intends to go beyond the Hungarian context to introduce the relevance of legal anthropology for finding solutions to the challenges and tensions facing Central and Eastern European countries, societies and legal systems.

Philippe Gout
International law; peacebuilding; customary legal orders; legal pluralism; Sudan

Philippe Gout is working towards his doctorate in international law at the Institute of Higher International Studies (Paris 2 Panthéon-Assas University). In the 2014–2016 reporting period he was a frequent visitor to the Institute and the Department. His dissertation project, 'Legal orders in motion: Sudanese customary laws in international peacebuilding', investigates the permanence and transformation of legal phenomena at the local level within the framework of international peacebuilding in the Sudan. Drawing on the critique of the neoliberal turn in the *realist* theory of international law (Dezalay and Garth 2002; Slaughter 2004), Gout deconstructs the peacebuilding model from a legal perspective. The UN conceptualised this model of intervention during the 1990s in the Agenda for Peace and the Supplement to the Agenda for Peace. The African Union also theorised its own similar peacebuilding concept in its 2005 Post-Conflict Reconstruction and Development Policy. In these documents, the peacebuilding model goes far beyond traditional UN peacekeeping and peacemaking missions by diversifying activities in order to create a sustainable peace and address root causes of systemic armed conflicts. Gout analyses it as a technology of state reconstruction devoid of the concept of sovereignty. The peacebuilding model diverts the international legal system away from its original legal subject – namely, the Westphalian 'state' model – and towards diversified sets of actors, procedures, institutions and normative bodies. On the basis of these observations, Gout has developed a restrictive, critical and formalist understanding of legal pluralism to identify a limited number of *sui generis* vernacular legal orders in the Darfur, South Kordofan and Blue Nile regions of Sudan.

After a total of 24 months of fieldwork (2012–2016), Gout has identified and conceptualised a set of constitutive legal components of these customary legal orders, including (1) 'primary rules' (Hart 1961: 74), which are the legal norms regulating various facets of social life (property law, marriage and inheritance regimes, criminal law, tax law and administrative law); (2) 'secondary rules', which

set up the conditions for the enactment of these 'primary rules' (Hart 1961: 76); (3) specific legal procedures (applications and summons before traditional leaders, arbitral litigation for inter-communal disputes, enactment of decisions resulting from such proceedings, etc.) evidencing the existence and the unitary structure of these 'secondary rules'; and 4) legal authorities in charge of these legal procedures and operating on the basis of *ratione loci* and *personae* jurisdictions, indicating the existence of an institutional apparatus peculiar to a customary legal order. In Darfur the institution of *dar* serves as the territorial basis and limit to the jurisdiction of the multi-ethnic vernacular legal orders. Within these limits, the legal orders rely on their own administrative and adjudicative bodies (such as the *Judiyya*, a long-standing inter-communal arbitration institution in Darfur) to decide upon disputed and contested vernacular 'primary rules'. Gout identifies similar legal dynamics in the states of South Kordofan and Blue Nile.

Gout's research highlights the competition between international and Sudanese law to reshape the customary legal orders through the peacebuilding process. The components of these legal orders are sometimes assimilated by state or international law and lose their unique vernacular characteristics. Conversely, components of international and state law can be reproduced in the vernacular legal orders. In the process, some of these legal orders cease to exist while others are altered according to peacebuilding standards and on the basis of ethnic exclusionism, especially in south-east Darfur. In some parts of South Kordofan and Blue Nile, the exclusive territorial control by the rebel group SPLM-North (Sudan People's Liberation Army) reshapes the sources and components of the vernacular legal orders. In such conditions, the legal orders are able to access international law only through the prism of international humanitarian law.

Gout is now categorising and describing the consequences of these changes regarding responsibility in international law. By focusing on inter-order legal relations, Gout hopes to introduce applied anthropological methods, theories and insights to the discipline of international law.

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Leigh Llewellyn Graham
Women's education; gender and entrepreneurship; labour laws; Saudi Arabia; UAE

Leigh Llewellyn Graham was a visiting research fellow at the Department from February through April 2014. Graham's research is situated at the intersection of education, technology and power. She used her time at the Institute to reflect upon and analyse the ethnographic data she had collected for her doctoral research in the Middle East from 2009 to 2014, which revealed a high degree of autodidacticism and entrepreneurial behaviour among university women in Saudi Arabia. More specifically, she is interested in those moments and spaces in which women's online activity contributed to greater social engagement, economic ventures, and political empowerment, thereby moving them into new realms of knowledge and power. Such transitions into new realms of knowledge and power by marginalised groups are often socially and legally constructed as threats, transgressions or crimes, especially in highly conservative societies. This led Graham to look more closely at how law shapes the contours of people's lives and, conversely, how people's lives shape the contours of law. Graham is now in the process of writing a monograph, provisionally titled *Virgin territory: online minds, techno-bodies in motion, and the art of future-making in Saudi Arabia*, on the basis of her fieldwork material.

In the same year (2014), Graham also completed and defended her PhD dissertation, 'The "IT" girls of Arabia: cybercultured bodies, online education, and the networked lives of university women in Saudi Arabia', at Columbia University. In it, Graham portrays Saudi women as highly skilled, ambitious, and resourceful social actors who are able to assert agency in online and offline contexts. The study also highlights discrepancies between women's aspirations and the institutions and systems that regulate their opportunities – ultimately arguing for social, educational and legal reform in Saudi Arabia.

Given the extraordinary access to legal resources while at the Department 'Law & Anthropology', Graham expanded her research to include an analysis of labour laws in the United Arab Emirates (UAE). In April 2014, while in residence at the Institute, she was invited by the Sheikh Saud Bin Saqr Al Qasimi Foundation for Policy Research in Ras al Khaimah, UAE to give a lecture titled, 'Cupcakes & fighter jets: a comparative analysis of Saudi and Emirati women's education and employment practices', at the annual Gulf Comparative Education Society Conference. She originally looked at the UAE for comparative purposes to enhance her argument for legal reform in Saudi Arabia, but quickly realised that the comparative element could broaden the scope of her work and push her career in exciting new directions.

For instance, incorporating the UAE into her comparative analysis strengthened Graham's argument that, in ultra-conservative contexts such as Saudi Arabia, even when women entrepreneurs had access to training, capital, technical resources, opportunities and business prospects in the greater global supply chain through the Internet, their success in the workplace remains limited by antiquated legal statutes

that exclude them from the public sphere and perpetuate customs and practices that relegate them to domestic spaces and roles. Women in the UAE, however, experience this to a lesser degree because social norms there are less rigid, despite laws precluding them from participation in particular careers. Until these outdated laws themselves are abolished, the impediment to women's equal access that they represent will remain. For this reason, among others, it is crucial to include analyses of local legal frameworks and acknowledge their limits when engaging the overwhelmingly optimistic global rhetoric about advancements in women's entrepreneurship. Graham's findings are presented in an article, 'From the kitchen to the sky: comparative analysis of local values and legal limits of women's work in Saudi Arabia and the UAE' (currently under review at the *Journal of Middle East Women's Studies*).

In July 2015, Graham returned to the UAE as a grant writer to secure funding for a collaborative project involving the School of Education at the American University in Ras Al Khaimah and the Center for Teaching and Digital Media at Aarhus University in Denmark. The project team have been granted five years of funding to establish the Khadijah Center for the Study of Women's Entrepreneurship and Social Change. The Khadijah Center will be a cutting edge, praxis-based research facility located in Ras Al Khaimah, with an anticipated operational start in fall 2018. The Center will host visiting scholars with expertise in education, business, the social sciences, and law. The time Graham spent at the Department 'Law & Anthropology' inspired her to include legal scholars in this new endeavour.

Mônica Maria Gusmão Costa
Juvenile courts; sentencing; life histories of judges; Brazil; Germany; Portugal

Mônica Maria Gusmão Costa, an associate at the Programa de Pós-Graduação em Antropologia Cultural (PPGA) at Universidade Federal de Pernambuco, Brazil, visited the Institute from October 2016 to March 2017 in order to continue with her postdoctoral project, titled **'**Judgments of adolescents and juveniles in Brazil and Germany: subjectivities and social characteristics in the biographies of judges'**.** Gusmão Costa investigates judgments pertaining to adolescents and juveniles in juvenile courts in Brazil and Germany through the lens of judges' biographies. It connects the judges' life histories with their corresponding legal decisions, which can have a decisive and lasting impact on the futures of the adolescents and juveniles being judged.

Gusmão Costa's PhD thesis (2014) demonstrated a paradox of moralities when a judge, as a legitimate guarantor of legislation guided by the principle of the best interests of children and adolescents, commits adolescents to an inefficacious and often corrupt detention system for social and educational reintegration. Interviews with German judges and a visit to the Court of Berlin Tiergarten, where data on judgments in Germany were collected, allowed Gusmão Costa to undertake a comparison of the two systems, starting with the underlying categories of punishment.

Despite the cultural and social differences between the two countries and significant differences in how the respective judicial systems treat adolescent and juvenile issues, there were some interesting similarities. For example, there was a growing dissatisfaction in both countries with what the public at large perceived as the court system's excessively *lenient* treatment of adolescents and juveniles.

As a visiting scholar at the Department 'Law & Anthropology', Gusmão Costa participated in exchanges with other researchers working on similar themes in the context of workshops, seminars, retreats and informal meetings. She also benefitted greatly from the use of the Institute's library and from conferring with members of the Law Faculty at Martin Luther University Halle-Wittenberg. During this same period, Gusmão Costa made a side trip to Portugal, where she had the opportunity to conduct interviews at a juvenile court. This opened up the scope of her research, allowing her to include Portugal in the comparative framework. Gusmão Costa's comparative analysis of the three countries emphasises the differences in judges' subjective, moral criteria and legal sensibilities in the face of cultural diversity, and how these differences influence judicial decision making in the three national contexts.

Ian Kalman
Anthropology of borders; policing; indigeneity and sovereignty; frame analysis; Canada and US

Ian Kalman was a visiting researcher in the 'Law & Anthropology' Department from February 2014 until March 2015. His primary responsibility at the Institute was the completion of his doctoral thesis, 'Framing borders: indigenous difference at the Canada/US Border', which he successfully defended at McGill University in Montreal in 2016. The dissertation examines the diverse experiences of the US–Canada border by both border officers and residents of Akwesasne, an indigenous community whose territory straddles the borderline. It integrates micro-analytic approaches to social interaction (based on the work of, among others, Erving Goffman and Harold Garfinkel) with the broader concerns of legal anthropology – looking at the ways in which law is invoked, produced, contested and negotiated in face-to-face interactions.

While at the Institute, Kalman contributed a chapter to the volume *Personal autonomy in plural societies: a principle and its paradoxes* (edited by Marie-Claire Foblets, Michele Graziadei and Alison Renteln; Routledge 2017). Kalman's chapter, entitled 'That's not our culture: paradoxes of personal property in indigenous self-governance', examines both the ways in which the concept of 'paradox' is understood and employed in legal reasoning and the paradoxes inherent in indigenous self-governance. Drawing largely on Peter Fitzpatrick's argument that the law, as myth, seeks to reconcile paradoxes of its own creation, Kalman demonstrates how indigenous law similarly produces and reconciles paradox. Drawing on his own ethnographic accounts of self-governance initiatives in Akwesasne, he offers exam-

ples of how one indigenous community navigates these paradoxes in practice. This study of indigenous self-governance, which began through his work at the MPI, has formed the basis of Kalman's current post-doctoral fellowship in indigenous–local intergovernmental relations at the University of Western Ontario.

During his time at the Department Kalman also contributed to the Max Planck Institute's working paper series with a paper entitled, '"Don't blame me, it's just the computer telling me to do this": computer attribution and the discretionary authority of Canada Border Services Agency officers'. This paper examines the ways in which the tools individuals employ to present and maintain a positive self-image – what Erving Goffman calls 'face work' – are used by border officers. Drawing upon interviews with border officers and cross-border travellers, Kalman demonstrates the ways in which new enforcement technologies, particularly computer-generated searches, have altered how border officers conceptualise and employ their discretion. Whereas officers have lost discretionary flexibility in determining whom to stop, they have gained new opportunities to frame their stops as a decision made by the computer rather than by themselves.

Kalman was given the opportunity to follow up these ideas and expand them in new directions in a recently submitted contribution to *Anthropologica: The Journal of the Canadian Anthropology Society*. Susan Erikson, Professor of Anthropology at Simon Frasier University, read his working paper during a guest stay at the Max Planck Institute and suggested that he contribute to a volume she was working on entitled *Document/ation*. His article, 'Proofing exemption: documenting indigeneity at the Canada/US border', looks at the ways in which broader legal statutes and technological regimes translate into on-the-ground documentary practices between border officers and cross-border travellers. This paper focuses on the use, or non-use, of documentation technologies (IDs, passports, scanning technologies, etc.) by indigenous cross-border travellers. Kalman shows how proving one's status as indigenous in order to access the rights accorded an indigenous person often represents a significant and unexamined burden. While the ethnographic focus of the paper is on Akwesasne, it illustrates a broader challenge in indigenous rights and scholarship about indigenous rights, namely, the fact that having rights does not necessarily say anything about how one can access those rights. This contribution is in two ways the product of the MPI, firstly, as an extension of ideas Kalman began working with in Halle, and secondly because it was written at the encouragement of a former guest of the MPI who first encountered his work there.

Kalman has also recently published two book reviews related to law and anthropology. The first, of Audra Simpson's *Mohawk interruptus*, was written while Kalman was in Halle and was published in Cambridge University's *Journal of Comparative History*. The second, of Michael Asch's *On being here to stay*, was written for (and currently under review by) P*olitical and Legal Anthropology Review* (PoLAR). While it was written after Kalman had already left the MPI, his observations about Asch are derived from texts he first discovered during his time at the Institute.

The Department 'Law & Anthropology' offered Kalman space to articulate ideas that first formed during his doctoral fieldwork and to explore and develop new ideas. Seminars and presentations at the MPI have had a longstanding impact on his scholarship. For example, Kalman's exposure to continental theories of Islamic law and legal pluralism opened his eyes to similarities between the two bodies of law. Islamic law and indigenous law may appear, at first glance, disparate; indeed, there has been no serious scholarship trying to put them in dialogue with one another. Nevertheless, Kalman found that many of the theories explaining how Islamic law exists within state practices of legal pluralism and in the everyday lives of practitioners resonate with legal questions faced by indigenous peoples in North America. These theories helped Kalman develop a more anti-essentialist approach to the relationship between ideology and practice than he had found in North American literature on indigenous traditional legal practices.

This study of legal ideology in practice is part of Kalman's ongoing work to produce cultural training documents for Canadian border officers. He is also working with Christopher Alcantara, an expert on indigenous governance at the University of Western Ontario, to examine intergovernmental relationships between Akwesasne and the neighbouring city of Cornwall, Ontario.

Kalman is currently developing a monograph on Akwesasne and the border on the basis of his research, including research conducted in his time at the Department 'Law & Anthropology'.

Tomáš Ledvinka
Legal sodality; comitas gentium*; Leopold Pospisil; Czech Republic; Afghanistan*

Tomáš Ledvinka was a visiting researcher at the Department from May to October 2016. Prior to coming to the MPI, Ledvinka had just completed empirical research that included participant observation and discursive analysis of legal documents and interviews with 35 legal professionals on the actual treatment of legal 'exotics' (persons and laws from non-European legal cultures) by Czech authorities and legal experts in cases involving the application of foreign law. The objectives of the empirical research were to explore the local cognitive and formal practices of handling and understanding legal 'otherness', especially as textual representations of foreign legal systems transmitted from the country of origin into the context of the Czech justice system. Ledvinka's work offers an empirically founded analysis of how cognitive and comparative strategies in the application of foreign law have the effect of transforming legal dimensions of cultural identities, especially in the current context of mass migration.

During his time at the Department, Ledvinka developed three chapters of his dissertation, 'Archaic, traditional law and modern commercial law: a study of comparisons', which he submitted to the Doctoral Programme in Anthropology at the Charles University in Prague in spring 2017 and will defend later in the year. One

chapter analyses how the Czech courts handled an inheritance case in which the law of the Isle of Man (framed as the foreign law) was applied and compares it to an asylum trial, also in the Czech courts, where information on Yemeni law was framed as cultural evidence and used to probe the credibility of an asylum seeker's story of flight. A second chapter analyses *comitas gentium* (the comity of nations) as a ritualistic environment or stage where practical legal comparisons take place during the application of foreign law. In the third chapter, he concentrated on an intercultural transmission of legal systems from Afghanistan to the Czech legal framework as an empirical example of the modern treatment of legal 'otherness'.

Ledvinka's work highlights the need for comparative and translational perspectives in the application of foreign law. He demonstrates the systematic failure of modern legal authorities in Europe to recognise information indicative of legal sodalities (e.g., non-permanent inter-group legal authorities such as *jirga* and *shura* in the case of Afghanistan) in the representation of non-European legal systems in the European legal framework. More specifically, Ledvinka observes the partial loss of legal knowledge from the countries of origin as a consequence of its translation and transmission via legal documents and reports to European courts, leading to a corresponding transformation of crucial legal and cultural information. At a more theoretical level, Ledvinka conceptualises the application of foreign law as an element of ritualised inter-state relations based on the principle of *comitas gentium*, and shows how this ritualisation affects the cognition of legal otherness.

Ledvinka is currently working on the concept of legal modernity and the interaction between 'modern' and indigenous jurisdictions. He hopes to be able to apply the lessons learned from his research to the practical context of law in modernisation and humanitarian projects.

During his stay at the MPI, Ledvinka also finalised a systematic review of the work and influence of Leopold Pospisil in preparation for writing a monograph about the life of this renowned legal anthropologist.

Jacques Louis Matthee
Legal pluralism; culture; religion; crime; South Africa

Jacques Matthee received an Alexander von Humboldt Sponsorship for junior researchers, which allowed him to come to Halle from the North-West University in Potchefstroom, South Africa, to spend three months as a guest researcher at the Department (September–November 2016). During his stay, he was able to take advantage of the Institute's rich resources to further his current research, which focuses on the conflict between cultural and religious beliefs and practices and criminal law in multicultural and pluralistic societies.

Matthee arrived at the Institute with the aim of completing two articles, one dealing with a constitutional perspective on the cultural defence in criminal law, the other addressing the question of whether uniform legislation can adequately

accommodate the recognition and regulation of the myriad marital relationships present in a multicultural and pluralistic society such as South Africa. The time spent at the Institute not only allowed him to make significant progress towards completing these two projects, but also gave him the opportunity to reflect on and ultimately include a brief legal comparative analysis of each. Matthee has submitted the two projects for publication.

During his stay at the Institute Matthee was also able to complete reviews of two books, one dealing with issues that are emblematic of Islamic law in different jurisdictions, the other addressing the experiences and perspectives of Muslim women who wear the face veil in European countries. Both of these book reviews have since been published.

Matthee participated in other research-related activities, such as the work-in-progress seminars within the Department 'Law & Anthropology'. He was also given the opportunity to present one of his own research topics. These activities proved to be very fruitful in a number of ways: they provided him with valuable input into his own research and were conducive to fostering mutual research interests with other researchers at the Department and expanding his research network.

Matthee's time at the Institute was well spent. Not only were his research expectations met, but he also established future research and collaboration possibilities that are sure to prove indispensable as he settles into his new position as Senior Lecturer in the Department of Private Law at the University of the Free State in Bloemfontein, South Africa.

Christa Rautenbach
Legal pluralism; traditional justice and governance; cultural expertise; customary law; African constitutionalism; South Africa

For more than two decades, Christa Rautenbach has been conducting research on the practical aspects of legal pluralism in post-colonial South Africa and why it seems to be on the increase, a trend that contradicts the predictions made by legal scholars that the different legal systems in South Africa would 'fuse' to make a new South African law (Sachs 1990: 91). Her scholarly work, however, had been limited for the most part to South Africa and international law. Rautenbach took advantage of a three-month Alexander von Humboldt scholarship to come to the Law and Anthropology Department to pursue her research on legal pluralism (Sept.–Nov. 2016). She used her own research funding to add one month each at the beginning and the end of her visit (August and December 2016). The prime reasons for her visit to the Institute were to learn more about the Department's interdisciplinary and multidisciplinary approach and to use the library, which gave her access to literature not readily available to her otherwise.

In the South African context, the phenomenon of legal pluralism finds expression in the theory of the plural society. This theory was introduced by J.S. Furnivall (1939,

1956) in the context of Indonesia, a former Dutch colony. He defined the 'plural society' simply as 'comprising two or more elements or social orders which live side by side, yet without mingling, in one political unit'. The rulers and the ruled were from different racial groups and lived in separate communities, apart from one another. This observation remains relevant for the present-day South African society. Rautenbach argues that South Africa's mixed, pluralistic legal system is the legacy of its history of legal development.

Over the years the dynamics of the plural society in South Africa have changed, but the country remains just as diverse nevertheless. It is splintered along racial, linguistic, religious and cultural lines, a social reality that manifests itself in the plurality of laws. The meaning, origins and development of legal pluralism have been explored by many scholars, and the definition of the phenomenon is highly contested. In the South African context, Rautenbach (following Griffiths 1986) uses it to refer to the co-existence of various normative orders within one social order.

Rautenbach argues that in South Africa, the incidence of legal pluralism is on the increase. Narrowly interpreted legal pluralism usually refers to 'state-law pluralism' or 'weak pluralism'. This form of legal pluralism is born out of the idea of state centralism and thus the assumption that only the state has the power to make laws. A broader interpretation of the concept of legal pluralism, however, recognises the social realities of a diverse society in which members of certain communities function in accordance with their own legal norms, which are not necessarily recognised by the state. This form of plurality has been referred to as 'deep legal pluralism'. Rautenbach's research reflects on the prevalence of both manifestations of legal pluralism in the South African context – before, during and after colonialism – especially in light of a new constitution that guarantees equality before the law. For more than three hundred years, South Africa withstood all attempts to harmonise its laws, especially in the area of private law, and the demand for additional 'plurification' is not subsiding. Religious family laws, especially Muslim law, are some of the legal systems that are currently not recognised, but exist nonetheless. More and more legislation catering to South Africa's diversity is regularly promulgated, and the courts often endorse non-state law. Furthermore, the prominence of cultural diversity in the two consecutive constitutions (1993 and 1996) seems to have increased legal pluralism's stronghold on the South African legal order.

Over her five months as a guest of the Department, Rautenbach was able to use Halle as a base from which to participate in a number of international conferences and workshops. She was invited to serve as discussant in a roundtable discussion at the Workshop on Legal Pluralism in Personal Status Law (Georg August University Göttingen, Germany, October 2016). She also presented papers on mapping traditional leadership at the Fourth Stellenbosch Annual Seminar on Constitutionalism in Africa (South Africa, September 2016); on the role of cultural expertise in litigation in South Africa at the Inaugural Conference on Cultural Expertise in Socio-Legal Studies and History (Oxford, December 2016); and on living customary law in

litigation at the African Studies Association's 59th Annual Meeting (Washington D.C., December 2016). Rautenbach presented her research at the Martin Luther University Halle–Wittenberg and at departmental seminars at the MPI. She also used her time at the Institute to finalise a number of publications, including two entries in *Stellenbosch Handbooks in African Constitutional Law* (Oxford University Press, forthcoming), a chapter for the peer-reviewed book series *Studies in Law, Politics and Society* (Emerald, forthcoming), and an article in *Potchefstroom Electronic Law Journal* (under review).

Discussions are under way regarding future cooperation with the Department of Law & Anthropology in projects related to legal pluralism. Rautenbach's first step in that direction was to present a paper at the conference '(Re)designing justice for plural societies: accommodative practices put to the test' (June 2017) at the MPI for Social Anthropology in Halle. She has been invited by the Max Planck Institute for Comparative and International Private Law in Hamburg to join as country rapporteur for South Africa at the XXth International Congress of Comparative Law (Fukuoka, Japan, July 2018, with Marie-Claire Foblets as general co-rapporteur). She has also had discussions with various other scholars and guests at the Institute to collaborate on future publications. Rautenbach credits her time at the MPI with allowing her to forge new contacts and develop her international network. More importantly, it enabled her to expand her knowledge of legal anthropology's interdisciplinary approach and furthered her growth as a knowledgeable scholar of legal pluralism and its intricacies.

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Farrah Raza
Religious accommodation; secularisms; constitutions; Europe; UK; Germany

Farrah Raza was a guest of the Department 'Law & Anthropology' from October 2015 to February 2016. During that time she was working on completing her PhD thesis, titled 'Religious accommodation in secular democracies: a comparative perspective', which she is submitting at King's College London in autumn 2017. Supported by the Centre of European Law at King's, her dissertation examines how claims for accommodation of religious practices in Central and Western European democracies are negotiated through constitutional law, human rights law (the Euro-

pean Convention of Human Rights) and anti-discrimination law (European Union law). In particular, her research evaluates the justifications for religious accommodation and critically engages with its limits. Raza employs a case-study methodology that allows her to compare different standards of religious accommodation and constitutionalism in the UK, Germany and France. These case studies have become especially relevant in light of recent constitutional events in the UK.

She was introduced to anthropology and ethnographic methods at the New School in New York in 2015, where she participated in workshops on secularism led by Talal Asad. She then taught a course on 'Legal Systems of Africa & Asia' at the School of Oriental and African Studies. These experiences prompted Raza to delve deeper into how legal categories are constructed and to consider the use of ethnographic methods for her research.

While at the Department 'Law & Anthropology', Raza benefitted greatly from exposure to the ongoing research on religion and pluralism, which directly contributed to her chapter on religious accommodation in Germany and to questions concerning methodology. She presented her work-in-progress and further developed her ideas in departmental seminars where fellow doctoral students and experts presented their work for in-depth analysis and constructive feedback. While at the Department, Raza took full advantage not only of the academic environment, but also of the Institute's well-equipped library; she was able to complete two draft chapters of her thesis as well as a working paper. Raza was genuinely inspired by the work of her colleagues at the Department, as is evidenced by the fact that she has since completed a training course in ethnographic research methods. Currently, she is applying for funding to conduct fieldwork for one particular aspect of her thesis that will involve ethnographic research methods.

Elizabeth Steyn
Indigenous sacred sites; natural resource projects; Canada, USA, Australia, New Zealand

Elizabeth Steyn was a Visiting Research Fellow at the Department 'Law & Anthropology' for four months in early 2016. Her principal objectives were to immerse herself in the world of legal anthropology and to make significant progress on her doctoral thesis, 'At the intersection of tangible and intangible: constructing a framework for the protection of sacred Indigenous sites in the pursuit of natural research development projects' (University of Montreal). In both of these respects Steyn's stay greatly exceeded her expectations.

Steyn's dissertation is structured around three main components: legal anthropology/Indigenous theory, international law, and comparative law. She already had substantial training and experience in both international and comparative law before coming to Halle, but legal anthropology was an entirely foreign field to her.

During her time in Halle, Steyn engaged in all of the Department's activities: she presented her work at the Department's retreat in Wittenberg in January 2016, presented a different chapter at a departmental seminar, and submitted chapters for discussion at two of the Department's writing-up seminars. She met her goal of making progress on the dissertation, drafting 165 pages of her thesis while at the MPI. She also contributed to a collective journal article, 'Which law for which religion? Ethnographic enquiries into the limits of state law vis-à-vis lived religion' (*Rechtsphilosophie* v.3, 2016), co-authored with Marie-Claire Foblets and several other members of the Department.

Regarding the first objective, Steyn had hoped simply to open a doorway into the world of legal anthropology. In fact, her time at the Department influenced her thinking and, in turn, her thesis more profoundly than she could have imagined. Before coming to the Institute she had hoped to create a pan-dimensional framework for the protection of all sacred sites, but she quickly realised through her exposure to the more nuanced and context-sensitive approach of anthropology how truly unique each of the four jurisdictions included in her study is (the United States, Canada, New Zealand and Australia), and that there is no such thing as an 'archetypal' sacred site. These discoveries greatly impacted Steyn's methodology, and she is now constructing a context-sensitive legal framework for each of the four jurisdictions.

Steyn's stay at the MPI has had a long-term impact on her work and on her career trajectory, as is evidenced by the fact that she presented papers at two non-juridical conferences: the first to discuss her US case study at the 2017 Annual Conference of the American Association of Geographers (AAG) in Boston, and the second to present her Canadian case study at the 'Sacred site and mountain landscape' conference hosted by the International Society for the Study of Religion, Nature and Culture (ISSRNC) in April 2017.

Court building in the town of Inhassoro, Northern Inhassoro province, Mozambique. (Photo: E. Steyn, 2009).

Kyriaki Topidi
Public international law; EU law; religious rights; public education; EU

Kyriaki Topidi was a visiting fellow at the Department 'Law & Anthropology' from October 2016 to January 2017. During that period, she conducted research on normative conflicts in the exercise of religious rights in public education for her study, titled 'Religious diversity and legal empowerment in public education: a comparative study on forms of legal pluralism in schools', which formed part of a larger *habilitation* project, *The right to difference: religious diversity, public education and multicultural conflicts*. Methodologically, the work was grounded in comparative law, with the aim of combining methodological approaches from anthropology with constitutionalism and human rights, ultimately leading to more efficient management of religious diversity.

During her stay Topidi made excellent progress on her *habilitation*, drafting two of the case studies included in her broader project, writing up the theoretical framework and fine-tuning her conceptual understanding and application of legal pluralism within the broader discipline of law. Her time at the Department allowed her to take a more holistic approach to law as an instrument for social change, in keeping with the notion of 'law in action'. Her research project broadened in terms of the conceptualisation and understanding of the positionality of religious rights as entitlements, as markers of identity and as normative statements, which allowed her to interrogate the use and abuse of religious identity by a variety of actors involved and the wider consideration of agency and power in shaping normative realities.

At the same time, the project became more focused with regard to its consideration of key notions – secularism, legal pluralism and equality – as anchors for further analysis. Topidi has moved in the direction of greater interdisciplinarity and now pays more attention to multicultural contexts in her analysis. Since leaving Halle, and based in part on work she conducted in her time with the Department, she has published two edited volumes, *Religion as empowerment: global legal perspectives* (Routledge 2016, co-edited with Lauren Fielder) and *Maps of conflict – legal pluralism and human rights* (forthcoming with Routledge), with contributions on non-discrimination, religious liberty, and post-multiculturalism appearing in her own and other edited volumes as well as in peer-reviewed journals.

Research Groups

Emmy Noether Group: The Bureaucratisation of Islam and its Socio-Legal Dimensions in Southeast Asia

The Department 'Law & Anthropology' has the pleasure of hosting the Emmy Noether Research Group *The bureaucratisation of Islam and its socio-legal dimensions in Southeast Asia*, which is funded by the German Research Foundation and headed up by Dominik Müller. Prior to his arrival at the Institute in early 2017, Müller was a post-doctoral fellow at the Cluster of Excellence 'Formation of normative orders' at Goethe University Frankfurt (2012–2016). He received his PhD in 2012 from the same university with a thesis on Muslim youth politics and the rise of 'pop-Islamism' in Malaysia. During the post-doctoral period he also held visiting positions in Stanford, Oxford, Brunei and Singapore, where he worked on a new project on bureaucratised Islam and the dynamics of socio-legal change in the Sultanate of Brunei. In 2016, he transformed this project into a comparative endeavour when he established the Emmy Noether Group to study the bureaucratisation of Islam across the Southeast Asian region.

The Emmy Noether project starts from the observation that there is a large amount of literature on Islamic governance, law, and sharia politics in Southeast Asia, but few anthropological studies have engaged in these debates. While other disciplines have produced remarkable collaborative and comparative works, thus far there is no larger comparative or theory-producing anthropological work on the bureaucratisation of Islam that transcends country-specific case studies, neither in the Southeast Asian context nor beyond. Fine-grained ethnographic research in this field remains for the most part confined to singular country-, province-, institution- or movement-specific investigations. In most of these studies the bureaucratisation of Islam is presented in largely descriptive terms as an empirical fact or as background information, without further reflection or analysis on the phenomenon as a social process. This is regrettable, as there can be no doubt about the influential role that the modern nation-state plays in the politics of Islam in the region. Following the waves of Islamic resurgence, state-sponsored Islamic bureaucracies have become influential societal actors in Southeast Asia, particularly in countries where Muslim populations play a significant political role. The governments of Brunei, Indonesia, Malaysia and Singapore have in diverse ways empowered 'administrative' bodies to guide Islamic discourse through bureaucratisation strategies. Although their approaches, motivations and spheres of influence differ widely, they share the intention to formalise classificatory schemes of Islam and create rules for engaging in Islam-related public communication. The Junior Research Group will investigate the bureaucratisation of Islam and its socio-legal dimensions from an anthropological perspective, with a particular focus on the state's exercise of 'classificatory power' and its actual workings at the micro level.

The project seeks to develop a conceptual understanding of the 'bureaucratisation of Islam' as a socio-legal phenomenon that far transcends the boundaries of its institutions. Focusing on diverse empirical contexts, the Research Group will scrutinise how the imposition of formalised schemes of Islam – a transformation of Islam into the 'language' of bureaucracy – has socio-legal consequences that penetrate deeply into public discourse and the everyday lives of various affected social actors. The bureaucratisation of Islam necessarily operates with characteristic forms, codes and procedures – a 'language' of bureaucracy. Bureaucratic language has been analysed anthropologically as a powerful instrument in the pursuit of various interests and as an unequally distributed resource. Actors must conform to bureaucratic categories and procedures and translate (if not 'squeeze') their causes into these codes. But changing forms cause changes at the level of meanings. The bureaucratisation of Islam similarly requires a transformative rewriting of Islam (which does not necessarily imply any loss or gain of authenticity) and simultaneously produces meanings that are unique to specific discursive arenas, most notably those of modern nation-states. The multifaceted nature of this rewriting makes it necessary to analyse power- and interest-oriented dimensions of bureaucratisation, as well as its hermeneutic aspects, in relation to one another.

With the intention of going beyond unidirectional cause-and-effect models that tend to overstate the power of official policies, the project also asks how the bureaucracies' classificatory practices and micro-politics of power resonate with social realities among the wider population and elicit active responses from social actors. Conceptually, the project is designed to treat the bureaucratisation of Islam not just descriptively as an empirical fact, but as a larger analytical phenomenon to be theorised in comparative perspective. Bureaucratisation will be addressed not only with regard to what it *does*, but also what it *is*, and how what it *is* affects what it *does* in the diverse empirical settings studied by the Emmy Noether Group's members. Grounded in long-term fieldwork with a focus on actors' perspectives and positioned in anthropological debates, the research conducted under the auspices of the project will generate a new, ethnographically grounded understanding of contemporary Islamic discourse in the context of state power in Southeast Asia, with implications beyond the region.

This conceptual framework will be addressed collaboratively by the Emmy Noether Group in different settings and with different research foci in five Southeast Asian countries. Three PhD students working under Müller's supervision – Fauwaz Abdul Aziz, Rosalia Engchuan and Timea Greta Biro – will conduct eleven months of anthropological fieldwork in the Philippines, Indonesia and Malaysia, respectively, whereas Müller will conduct fieldwork with state Islamic institutions in Brunei Darussalam and Singapore.

Fauwaz Abdul Aziz's PhD project, 'The bureaucratisation of Islam in a Christian majority state: an ethnography of the National Commission on Muslim Filipinos (NCMF)', will develop an ethnographic account of the principal government agency

that has been created to represent the Muslim minority population in the Philippines. Adopting the 'toolkit' of 'particularistic approaches' proposed by Josiah Heyman for the anthropological study of bureaucracies, Aziz's research examines the cleavages and internal hierarchies within the NCMF and the interface between NCMF bureaucrats and those in the wider state apparatus as well as in Muslim organisations. He will investigate the 'bureaucratic learning' and the 'thought work and processes' that members of the NCMF engage in on a daily basis in their professional lives, paying particular attention to the question of how neoliberalism and cultural forms of the market affect the 'inner life', organisational practices and wider discursive embeddedness of the NCMF.

Timea Greta Biro's PhD project, 'The bureaucratisation of *zakat*: an ethnography of the culture of giving in Malaysia', explores the controversies around the reconceptualisation of *zakat* as an instrument of welfare politics and poverty reduction in a socio-political context where *zakat* is legitimately enforced by the state. In the various discourses on *zakat* in present-day Malaysia – including *zakat* as religious obligation, as social duty, and as charitable act – an emphasis should be placed on the recipients of *zakat* and their interactions with the powerful Islamic state bureaucracy and its 'corporatised service providers', which have effectively monopolised *zakat* collection and distribution. Biro argues that the Malaysian state's bureaucratisation of *zakat* goes hand in hand with certain forms of knowledge production and disciplining mechanisms that are integral to the state's attempted exercise of classificatory power. She will address the question of how social actors respond to this bureaucratisation and to its accompanying processes of social control and meaning production, particularly in the urban and semi-urban areas of Selangor and the Federal Territories, where the state's corporatised *zakat* agencies have achieved skyrocketing growth rates in *zakat* collection and distribution.

Rosalia Engchuan's PhD project, 'Embodied debates over an Indonesian modernity: a enquiry into state-based bureaucratic censorship in contemporary Indonesia', focuses on reconceptualising calls for, protest against, and acts of state-based bureaucratic censorship in light of the apparent gap between the intentions behind censorship and its actual effects in a social reality where behaviours labeled 'deviant' exist and 'problematic' content is omnipresent. The project will shed light on the relationship between the 2008 Pornography Law (conceptualised as a formalisation of schemes of Islam), the activities of the Indonesian Censorship Board LSF (conceptualised as the translation of these schemes into the codes and procedures of bureaucracy), and its negotiations by filmmakers. Since the end of the New Order regime, Islamic voices that had been repressed during the New Order re-emerged, and institutions like the semi state-based Indonesian Ulama Council (MUI) increasingly intervened in public discourse to promote their visions of Islamic ideals. The Pornography Law was one such attempt to introduce Islamic-inspired laws at the national level. With the Pornography Law, which has become the legal basis for acts of film censorship, the MUI aims not only at controlling what is shown on

screens, but also to mobilise the mechanism of censorship in an attempt to shape Indonesian modernity.

As head of the research group, Müller will provide meta-conceptual guidance to these three sub-projects to ensure the generation of collective synergies. He will also make his own empirical contributions to the project with fieldwork in Brunei, following up on his earlier post-doctoral research in the country, as well as with additional fieldwork stays in Singapore.

Confiscated 'magic' cooking pot. Picture taken at an educational exhibition of 'objects leading to religious deviation', sponsored by the Ministry of Religious Affairs, Brunei Darussalam. (Photo: D. Müller, 2014)

In the context of Brunei, Müller will investigate the formation of 'a standardised state brand of Islam' alongside an official 'national ideology' known as *Melayu Islam Beraja* (Malay Islamic Monarchy, MIB)*,* and their complex relationship with parallel social and cultural changes in Brunei society that the bureaucracy seeks to control through various 'educational' measures and disciplining mechanisms. Müller's interlocutors include members of state Islamic agencies, members of educational institutions involved in the systematic propagation of Brunei's 'national ideology' MIB, and social actors who are affected by the state's Islamisation policies and react to them in various ways. On the analytical level, Müller will examine how the state bureaucracy's claim to 'classificatory power' and its related construction of a national

ideology are produced, creatively appropriated and at times subversively circumvented in the everyday lives of various state- and non-state actors, and the implications this has for the very conceptualisation of the 'state' and 'non-state' spheres in the context of Brunei. In the context of Singapore, Müller investigates how the central state-Islamic institution *Majlis Ugama Islam Singapore* (Islamic Religious Council of Singapore, MUIS) has to navigate between the demands of a decidedly secular semi-authoritarian government and an increasingly orthodox-oriented Muslim Malay minority population. Despite the close geographical, historical and cultural proximity to Brunei, there are far-reaching differences in bureaucratic knowledge production, 'educational' work and disciplining mechanisms between the Singaporean MUIS and the Bruneian MIB-state's institutions that are closely related to their institutional and discursive embeddedness. Müller will trace back how these contrasting trajectories of bureaucratisation have evolved and apply the combined functional and hermeneutic approaches described above in his analysis.

Finally, and parallel to the completion of all case studies, including the three PhD projects and an undergraduate project, the Research Group will seek to identify analytical 'family resemblances' in the bureaucratisation of Islam that the researchers hypothesise must exist, despite the enormous differences on the level of Islam-bureaucratic meaning production and their power-political contexts in the five countries. The goal of doing so is to conceptualise the 'bureaucratisation of Islam' from an anthropological perspective and contribute to theory building. Beyond its core focus on Southeast Asia, the group will also include transregional perspectives, particularly pertaining to the relationship between the state and Islam and related processes of religious bureaucratisation in Europe. The project is scheduled to be completed in 2021.

The Challenges of Migration beyond Integration (WiMi)

'The challenges of migration beyond integration' *(Wissenschaftsinitiative Migration,* WiMi) is a cross-institutional and interdisciplinary collaborative research framework led by Marie-Claire Foblets and Ayelet Shachar (Max Planck Institute for the Study of Religious and Ethnic Diversity, Göttingen), and coordinated by Zeynep Yanasmayan (Max Planck Institute for Social Anthropology, Halle/Saale). Upon receiving the mandate from the president of the Max Planck Society, six Max Planck Institutes (see below) have come together to design a common research programme that aims to engage the Max Planck Society in both scholarly and public debates about the current refugee situation in Germany. (The background to the research programme has already been laid out in the discussion of Foblets's activities earlier in the volume;)

An intensive round of preparations preceded the launching of the actual programme . A three-step approach was adopted, each step building on the preceding: (1) identifying major recently

completed and ongoing research projects on migration and integration in Germany and the EU (with a focus on the broad field of social and behavioural sciences, including law); (2) conducting a transversal and comparative analysis of these projects with the aim of identifying trends and common assumptions and, possibly, detecting hitherto under-researched themes and relevant blind spots; (3) based on the previous two steps, proposing an idea for a collaborative and interdisciplinary fundamental research project within the MPG.

On the basis of this preliminary research it became clear that most of the research projects in the EU (and particularly in Germany) dealing with the migration situation focused on questions of how best to *integrate* immigrants who had already been granted a legal status allowing them to stay in a given European country. Very little work, however, was being done on migrants who in the end are not given the opportunity or incentive to integrate into receiving countries. For this reason, the researchers participating in the WiMi initiative chose to focus on those who are *excluded*, not only in legal terms, but also in emotional and social terms. One of the principal aims of the project, therefore, is to provide in-depth studies of the various *mechanisms* that effectively exclude immigrants at the different stages of the migration process. The initial project proposal was submitted in December 2016 and approved shortly thereafter.

The individual projects within the research programme examine exclusion along five building blocks (actors, acts, reactions, moments and areas) which, taken together, inform a more comprehensive understanding of exclusion in the field of migration studies. Instead of viewing inclusion and exclusion as opposing elements of a binary pair, the project examines gradations and stratification that practices of exclusion create. It does so by following individuals through the different stages of the migration process from their initial decision to leave their country of origin to their arrival in the European Union and the legal statuses they go through until the moment a final decision (permission to stay, return to country of origin, etc.) has been reached and executed. People – 'the excluded', so to speak – are not all excluded to the same extent nor are they excluded all the time and in all fields of life. Rather, they have varying degrees of proximity to or distance from the actors of exclusion, depending on the situation at a particular moment in time. The WiMi project covers four such areas of exclusion: legal status, socio-economic conditions, health status, and access to and (trans)formation of emotional communities. The reason for this selection is twofold. First, the MPIs involved have accumulated extensive research experience in these domains, which will allow the researchers to make the most efficient use of the three-year time span and arrive more quickly at concrete research outcomes. Second, and more importantly, these areas are crucial for effective participation in social life and opportunities to pursue meaningful life choices. The WiMi project will open up a dialogue on the many diverse understandings of the concept of exclusion used in the different disciplines and will elaborate on their interdependencies and interactions.

In addition to contributing to the larger interdisciplinary research framework and its focus on exclusion in the field of migration studies, the individual projects will elaborate their own research questions and advance knowledge in their disciplines. Below is a list of the individual projects:

Max Planck Institute for Comparative Public Law and International Law (Heidelberg)

- *Decisions on exclusion and inclusion in the EU and beyond:* This project deals with the question of how the EU reacts to deficiencies in national asylum administrations, in particular systemic deficiencies and 'hotspots' at the EU external border. *(Principal Investigator: Armin von Bogdandy)*

Max Planck Institute for Demographic Research (Rostock)

- *Gender differences in health and mortality by ethnic background – a register-based study:* This project focuses on health and mortality among migrants in Denmark based on country of origin and gender in order to gain policy-relevant knowledge that will help design appropriate preventative strategies and maintain and improve the health of ethnic minorities in the host country. *(Principal Investigator: Anna Oksuzyan)*

- *Undocumented migrants and irregular workers in Germany: policy challenges and approaches 1950–2019:* This project aims to compile a variety of primary sources on the undocumented workers in Germany, ranging from immigration law to empirical data since the 1950s. *(Principal Investigator: Daniela Vono de Vilhena)*

- *Vanishing health advantage of migrants over time and across generations:* This project takes a longitudinal approach in order to study the social exclusion of migrants by comparing migrants and natives in terms of health in Italy, Finland and Sweden. *(Principal Investigator: Silvia Loi)*

Max Planck Institute for Human Development (Berlin)

- *Refugees and the creation of emotional communities':* These are two interlinked projects that analyse the far-reaching effects of political partition, migration and integration. The first involves India and Pakistan (partitioned in 1947); the second looks at the impact of the arrival of Germans from Central and Eastern Europe (from 1945 and later) on western regions of Germany. The first project will use archival sources in New Delhi to explore the emotional meanings attached to the physical boundary. The second will draw on archival documents, newspapers, literature and biographies to address the creation of long-term emotional commu-

nities that were expanded by newly arriving residents and the interaction between the new arrivals and the more established members of the community. *(Principal Investigators: Margrit Pernau and Benno Gammerl)*

Max Planck Institute for Social Anthropology (Halle/Saale)

- *Belonging nowhere or everywhere? Somali return migrants in East Africa'* (see Report of the Department 'Integration and Conflict, p. 3): This project will concentrate on Somali return migrants in Kenya and their connection to Europe, looking specifically to address the degree to which migration and exclusion processes are interwoven and whether these processes engender an opening or closing of the migrants' worldviews and lived practice. *(Principal Investigator: Tabea Scharrer)*

- *Migrants' exclusion in a fragmented, international, legal environment'* (see pp. 60–61): This project will study exclusion from a legal perspective and will focus on the rules of international law that govern the selection process that determines which migrants will be granted rights on the territory of a European state and which will not. *(Principal Investigator: Luc Leboeuf)*

Max Planck Institute for Social Law and Social Policy (Munich)

- *Lost potentials: the rights and lives of the excluded:* This project seeks to understand how legally constructed categories of exclusion result in integration and/ or marginalisation of migrants in other areas, with the help of legal analysis and quantitative data to be collected. *(Principal Investigators: Christian Hunkler, Julia Hagn and Romuald Méango)*

Max Planck Institute for the Study of Religious and Ethnic Diversity (Göttingen)

- *The inclusion–exclusion continuum: asylum seekers and the social implications of legal statuses and conditions in Germany:* This project seeks to use ethnographic methods to uncover asylum seekers' own understandings of legal statuses and how their understandings impact current experiences and future strategies. *(Principal Investigator: Miriam Schader)*

Minority Communities and Dispute Resolution in Germany:
an empirical comparative investigation (provisional title)

As mentioned above (pp. 31–32), in autumn 2015, Judge Klaus-Dieter Schromek of the *Oberlandesgericht* (Higher Regional Court) of Bremen contacted Marie-Claire Foblets with a request to discuss the possibilities of collaborating with the Department. He proposed an exploratory research project addressing the reluctance of certain minority communities living in Germany to rely upon state institutions in their search for justice. In November 2016 an initial proposal was presented to some 50 German judges within the framework of a training workshop, 'Right without law, justice without judges – the world of the shadow judiciary' (*Recht ohne Gesetz, Justiz ohne Richter – die Welt der Schattenjustiz*), organised by the *Deutsche Richterakademie* (German Academy of Judges). In order to ensure that the project would be able to draw on the necessary expertise, Foblets invited a number of colleagues to join in this venture: the Max Planck Institute for Foreign and International Criminal Law (Freiburg, directed by Ulrich Sieber and Hans-Joerg Albrecht); the Erlangen Centre for Islam and Law in Europe at the Friedrich-Alexander University in Erlangen-Nürnberg (directed by Mathias Rohe); and the Berlin Working Group on the State and Islam in Germany (directed by Peter Scholz, President of the Amtsgericht Charlottenburg, Berlin). The German Academy of Judges is also actively involved in the venture.

The research group is still being constituted, but the project calls for two or three postdoctoral research fellows, a coordinator, and perhaps a PhD student. The decision was made to work primarily with postdoctoral researchers who already have the requisite research experience, language skills and knowledge of the target communities in order to guarantee that the project will be able to generate solid empirical data and concrete results within the three-year project period. One or two doctoral positions are to be financed by the internal funds of the Max Planck Institute in Freiburg, and two other positions will be funded by the Department 'Law & Anthropology'. Two of these posts will be held by anthropologists or social scientists/criminologists, and one (or two) by a jurist familiar with the German legal order. The research group will be jointly headed up by Marie-Claire Foblets and Hatem Elliesie, a postdoctoral researcher in the Department who has the necessary skills, experience and expertise to be able to oversee the collective activities of the group (see Elliesie, this volume).

The group's task is to engage in ethnographic work on extra-judicial dispute resolution mechanisms among a number of communities living in Germany. Such mechanisms, generally speaking, are presumed to operate in ways that do not meet the requirements of German state law, yet very little research to date has focused specifically on them. The underlying presumption is that these communities are conflict ridden per se and oppressive to some of their own members. Thus far, with the

notable exception of the study conducted by Mathias Rohe and Mahmoud Jaraba,[26] none of the publications on the subject in Germany has taken an empirical approach. In order to fill this gap, empirical fieldwork data collection within the respective communities is needed. This will be the research group's primary task. Ultimately, the aim is to develop an analytical framework suitable to meet the demands of both the minority groups and the judiciary.

In their individual projects, the members of the research team will focus on Kurdish, Yezidi, Chechen, Lebanese and Vietnamese communities located in different parts of Germany, paying particular attention to how they settle disputes within their own communities. The research project is guided by the following questions:

- How do members of the communities deal with disagreements?
- What kind of procedural modes (adjunction, arbitration, mediation and negotiation) do they call upon to remedy situations of strife and conflict?
- What authorities are involved in the process of seeking a solution?
- Where and to what extent are competing and conflicting approaches at play, and does the community's 'own' response to a particular situation clash with the state's response? If so, on what particular points?

The research project fits into the Department's overall research agenda in terms of both the topic and the methodology it adopts. It focuses on the accommodation of some minority socio-legal practices under state law – in this case dispute resolution mechanisms among immigrant communities in Germany – by combining anthropology's intrinsic concern for the culturally embedded nature of normative orderings with legal theory and practice.

Following a period of preparatory reading and training in Halle, the members of the research team will conduct ethnographic field studies in the abovementioned minority communities in the state of Bremen and other German states (e.g., North Rhine-Westphalia, Lower Saxony, Bavaria, Berlin), and perhaps other parts of Germany. This will entail participant observation in courtroom proceedings, focus-group interviews and qualitative interviews with experts, supplemented by systematic content analysis of relevant documents. Following the period of fieldwork and data collection, the team will reconvene at the Institute in Halle to process the data and to come up with pragmatic, realistic and sustainable recommendations to be presented to members of the communities involved and to the German judiciary. Results will also be disseminated in the form of presentations at national and international workshops and conferences and in publications.

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[26] Mathias Rohe and Mahmoud Jaraba: *Paralleljustiz: Eine Studie im Auftrag des Landes Berlin, vertreten durch die Senatsverwaltung für Justiz und Verbraucherschutz*, Berlin 2015.

Migration and the Transformation of German Administrative Law:
an ethnographic study of state–migrant interactions in administrative courts

Against the backdrop of current patterns of migration and the by now well-established perception that Germany is a country of immigration, this project, funded by the Fritz Thyssen Foundation, asks how migration affects German administrative law. Administrative law is the legal realm that defines the form and content of state–citizen interactions in legal terms with the aim of enabling state actions (intended to further the common good) while simultaneously protecting the individual from undue state interference. The implementation of administrative law in practice plays a crucial role in (re-)producing both the *Rechtsstaat* (constitutional state) and the *Bürger* (citizen). The theoretical starting point of this project is the relationship between the state, on the one hand, and the migrant as a legal subject shaped by administrative regulations on the other. As an empirical starting point we follow cases in which migrants appeal to specialised administrative courts in the city of Berlin to challenge administrative decisions that negatively affect their lives. Two questions are of central concern:

• How do migrants as individual and collective actors use and mobilise legal protections offered by administrative law when they are affected by its regulations? And how do those who apply these regulations in administrative bodies and courts face the task of having to take migrants into account and integrating them as legal subjects?
• What are the consequences of these social practices (i.e., interactions and negotiations that take place during the disputing process) for German administrative law and for the participating actors' conceptions of the state under the rule of law? Are German administrative law and its basic ordering principle, the rule of law (*Rechtsstaatlichkeit*), transformed in the process and, if so, how?

The project's empirical approach follows a tradition of sociolegal research that conceives of legal order as 'an emergent feature of social relations' (Ewick and Silbey 1998: 17). It looks at how legal transformation occurs in and through social relations as a two-way process in which law changes those who use it while simultaneously being transformed in the course of its mobilisation. Such an approach was earlier developed and applied at the MPI with regard to the mobilisation of law 'against the state' in contexts of legal pluralism resulting from travelling norms (Eckert et al. 2012). A similar conceptual move has been advocated with regard to ethnographically studying state transformation by understanding the state as an emergent feature of social relations and by focusing on relational modalities, boundary work, and the social embeddedness of actors (Thelen, Vetters and Benda-Beckmann 2014). This research project combines these interests in legal order(s) and the state. By looking at administrative law as a core institution of contemporary German statehood and

asking whether and how migrants as social actors contribute to its transformation, the research team transfers debates on legal pluralism in postcolonial contexts to the centre of Europe and subscribes to an analytical shift in migration research that Nieswand (2016) describes as 'de-centering migration'.

The project is carried out by an interdisciplinary team of three researchers. Larissa Vetters, with a background in sociocultural anthropology and administrative sciences, acts as lead researcher. The other two researchers are Judith Eggers, a PhD candidate in sociocultural anthropology based at the Max Planck Institute, and Lisa Hahn, who is trained in legal studies and is based at the Humboldt University's Law and Society Institute in Berlin. Fieldwork is conducted in different settings in Berlin and interspersed with periods of data analysis and reflection. In the first step, the landscape of legal aid services in Berlin was surveyed, and migrants with a range of different formal legal statuses were interviewed to identify subfields of administrative law that are particularly relevant to migrants' biographies (in addition to asylum and immigration law, this now includes social law, youth welfare law, and trade and business regulations). With an eye towards these subfields, data are now being collected by means of participant observation, interviews and the analysis of written sources in four different settings, namely, migrants' households and organisations, law offices and legal aid organisations, administrative agencies, and administrative courts. To date, fieldwork has been conducted for approximately three months each in a law office and a legal aid organisation, as well as in the administrative court of Berlin. Data gathered by individual researchers are systematically combined and analysed in the framework of a joint database and regular team meetings. Particular attention is paid to, on the one hand, those moments of deviation from scripted roles and procedures in pre-defined situations (such as filing a claim with public authorities, lawyer–client interviews and court hearings) that might generate transformative dynamics[27] and, on the other hand, how disputes with public authorities evolve or do not evolve through various conflict phases.[28] In the later stages of the project, selected in-depth case studies will be prepared for those disputes for which data exist throughout all stages of the conflict (initial contact, decision to object to or claim an administrative act, hearing at the administrative court and its outcome) to further illuminate specific dynamics of legal transformation as encountered during fieldwork.

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[27] Our approach to such situations is influenced by ethnomethodological studies of courtroom interactions; see Travers and Manzo (1997), Dupret, Lynch and Berard (2015).

[28] Here we take inspiration from Felstiner, Abel and Sarat's classic notion of the emergence and transformation of disputes (1981), as well as the case study method in legal anthropology. For a discussion of how to integrate 'event' and 'process' into an ethnographic analysis, see Scheffer (2007).

Research Findings

At this stage, about midway through the project, the research team has generated several important empirical findings and conceptual insights. Empirically, the wide variety of legal statuses and their attendant gradations in rights that migrants are accorded by German immigration (i.e., administrative) law have been documented. The team has also mapped legal aid providers in Berlin and gathered rich data on how different forms of legal advice shape knowledge about legal status and procedural rights and influence the course of further action. A large and growing body of documentation of individual cases has been compiled, consisting of interviews, case files, field notes, protocols of observations at the administrative court of Berlin and court judgments.

On the conceptual side, a genuinely interdisciplinary understanding of theory building between the two poles of deductive doctrinal reasoning and inductive development of concepts based on ethnographic observation has taken shape in intensive team discussions and by recursively examining the collected data. Taking inspiration from the so-called *Neue Verwaltungsrechtswissenschaft* (a school of thought in administrative law scholarship that advocates an interdisciplinary opening) and its use of 'bridging concepts',[29] the researchers have developed four composite analytical concepts as a means to juxtapose prominent doctrinal notions underpinning public/administrative law with the empirical findings. While legal scholarship aims to incorporate 'extrajudicial knowledge' into the doctrinal manner of legal reasoning, the researchers are proceeding the other way around: they first employ these composite concepts as heuristic devices guiding their fieldwork, and then use their findings to reintroduce evidence of the socially constructed nature of administrative law into theoretical thinking about the premises of doctrinal reasoning. The four composite analytical concepts are *graduated citizenship*, *legal subjectivity*, *margins of interpretation* and *rule-of-law perceptions*.

- *Graduated citizenship* builds on the observation that while general administrative law is premised on the citizen as the counterpart of the state, migrants – as initially non-citizens – are accorded a whole range of legal statuses through specific regulations of immigration law and thus encounter the state from diverse and often shifting legal positions. The researchers bring this observation into dialogue with anthropological studies of citizenship (Glick-Schiller, Basch and Blanc-Szanton 1997, Caglar 2015) and empirically trace how a specific legal position (for example, a recognised refugee status or a residency permit for the

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[29] See Schuppert (1999), Augsberg (2013). However, Möllers (2002: 38–40) rightly argues that bridging concepts currently in use in doctrinal administrative law scholarship are mostly derived from larger social theory and frequently exhibit a misguided understanding of empirical work (*Empirie*).

purpose of employment) affects a person's course of interaction with German state authorities and the scope and content of judicial review of these interactions.

• The analytical concept *legal subjectivity* addresses the factors that shape a person's subjective understanding of rights and the assessment of whether he or she is able to successfully mobilise these rights. Empirically documenting the interplay of these factors (such as formal legal status, access to legal aid, levels of knowledge about applicable law in the country of immigration, as well as notions of law formed in the country of origin or through previous interactions with German authorities) generates a productive tension with the doctrinal concept of 'individual subjective rights' on which administrative law and the right to instigate legal proceedings against public authorities is built.

• *Margins of interpretation* captures, on the one hand, the specificities of procedural law and, within the limits thereof, legally prescribed room to manoeuvre (such as discretion and open legal standards) and, on the other hand, the actual organisational, collective and individual (formal and informal) practices of public officials, judges, lawyers, legal advisers and migrants. It is at the intersection of these two dimensions that the researchers expect to observe transformative dynamics taking place, while also being able to address the theoretical question of agency and structure in the transformation of sociolegal order.

• The concept *rule-of-law perceptions* turns the debate about 'thick' or 'thin' notions of rule of law and the impact of local legal culture that emerged in the context of rule-of-law promotion in the global South (Palombella and Walker 2009, Baxi 2004) back onto the German context by empirically asking how administrative law's core ordering principle of *Rechtsstaatlichkeit* is changing under conditions of an increasingly pluralising society. In the later stages of field research, the team intends to document a range of rule-of-law notions invoked in administrative justice procedures by the involved actors and to address the theoretical relevance of these notions for assessing not only the doctrinal articulation of rule of law, but also its actual practice as it is evolving in German administrative law through the confrontation with legal subjects who have different or contested legal statuses.

Working with these composite analytical concepts has led the team to reconsider the distinction between law on the books and law in action, and to challenge narrow definitions of legal consciousness that focus primarily on lay persons' perceptions of law. In place of that, the researchers apply a broad notion of legal knowledge and ask how such knowledge is produced and transformed in interactions among lay and professional actors in a variety of settings and fields of practice. This analytical move bridges the distinction between scholars', practitioners' and lay persons' understandings of law and opens the field of vision up to a broader range of transformative dynamics, from changes in doctrinal concepts, legislation, case law, and administrative directives interpreting a legal act to the actual implementation

practices of public institutions and processes of resignifying and reinterpreting legal knowledge among legal scholars, lawyers, bureaucrats, migrants and volunteers.

Law and Anthropology: new perspectives and outlook

The project contributes to interdisciplinary sociolegal research by bringing perspectives from the anthropology of the state, anthropology of migration and legal anthropology into a critical and reflexive dialogue with debates from doctrinal scholarship on the regulatory capacity of law in situations of state transformation. As such it is an integral part of the 'Law & Anthropology' Department's objective to enrich and deepen the dialogue between legal scholarship and anthropology, with a particular focus on the effects of migration on public law. With their methodological approach of composite analytical concepts in conjunction with a research design of alternating phases of data collection and analysis/reflection, the research team hopes to break new ground and demonstrate the benefits of reaching beyond established disciplinary knowledge formations.

The project's focus on webs of relations among different sets of actors and on the production of legal knowledge in these relational webs offers the potential to bridge the often assumed divide between anthropological research, professional legal practice and migrants' perceptions of law. In an 'anthropology at home', these fields of epistemic practice are no longer conceived as separate, but rather as dynamically interlinked, with the result that anthropological research becomes directly relevant to the sociolegal context it investigates, but also has to develop new sensibilities in dealing with this responsibility. To explore and reflect more thoroughly on the benefits and challenges of such an anthropological positioning towards a given (dominant) legal order is an important task for the future.

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Location of the Institute

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