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THE MAX PLANCK INSTITUTE FOR EUROPEAN LEGAL HISTORY

by
Robert A. Riegert*

*The Max Planck Institute for European Legal History was established in Frankfurt in 1964. Its size and organizational plan put the study of legal history on a new plane. This Article describes the organization and work of the Institute.***

The study of legal history, especially modern legal history, is important to the understanding and application of the present law. Legal institutions are, after all, the result of applying general legal principles to historical fact situations. The Max Planck Institute for the Study of European Legal History, established in Frankfurt, Germany in 1964, promises significant advancement in this area.

The Institute is designed for the study of European rather than German legal history. It is the position of the Institute that the legal history of any European country can be studied effectively only as a part of the legal history of Europe as a whole. From 1250 to 1800 Europe was, after all, to a considerable extent a single legal entity. There were the common sources of the *Corpus Juris* of Justinian and—for a while—the canon law. These sources served as the basis for university instruction, which was surprisingly similar throughout Europe. Communication was greatly facilitated by the common use of the Latin language. National boundaries and legal compartmentalization were much less rigid than today. For example, a book written by a Spanish judge in the middle of the seventeenth century had a decisive effect in shaping the German law of bankruptcy. Also, the *Institutionen Heineccius*, an introductory book by a German professor, was used in Italy, in Spain, and even in England.

The belief that the effective study of legal history in Europe requires

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The Max Planck Association, originally known as the Kaiser Wilhelm Association, was founded in Berlin in 1911. It is a private organization for the advancement of science which now receives between eighty per cent and ninety per cent of its funds from government sources. It maintains about fifty research institutes which are divided into three sections: a Biological-Medical Section, a Chemical-Physical-Technical Section, and an Arts and Social Sciences Section. As part of its Arts and Social Sciences Section the Max Planck Association maintains five institutes for legal studies. The oldest is the Institute for Foreign Public Law and International Law established in Berlin in 1924 and now in Heidelberg. Thereafter come the Institute for Foreign and International Private Law established in Berlin in 1926 and now in Hamburg; the Institute for European Legal History described in this paper; the Institute for Foreign and International Patent, Copyright, and Unfair Competition Law established in Munich in March 1966; and the Institute for Foreign and International Criminal Law established in Freiburg in July 1966.

This study of the Institute for Legal History is part of a larger study made with the assistance of a grant of the American Bar Foundation and covering all five of the Max Planck Association's institutes for legal research. The author plans to publish a monograph covering all of the legal institutes and the Association itself later this year.

the study of the legal history of all Europe is not new. What is new is that there is now a means of doing this effectively. The Frankfurt Institute has a library containing the most important literature from all of the countries of Europe; it has a large full-time highly qualified legal staff,¹ an efficient administrative staff, and will soon have a modern building with adequate office and library space. In such an atmosphere there is the prospect of fruitful research and high productivity.

The Institute has limited its activity to the "modern" history of private law—*i.e.*, history beginning with the revival in Europe of Roman law in the so-called renaissance of the twelfth century. It includes only as much procedural, public, and criminal law history as is necessary for an understanding of the private law. The Institute bridges to a considerable extent the gap between the historical schools in Germany, whose rivalry reached its peak around the turn of the last century, but which has since almost completely subsided. While one school stressed the historical study of that law which had its roots in Roman law, the other school stressed the study of law which was of pure German origin.

The Institute is at present principally engaged in one large project—that of researching the relevant statutes, jurisprudence and literature and constructing a one- or two-volume bibliographical manual or guide to the most important sources of modern European legal history. It is hoped that this bibliographical guide will not only serve as a basis for research of the Institute, but will also promote and aid historical research outside the Institute.

History. The Max Planck Institute in Frankfurt was founded as a completely new organization in 1964; it was not established as were comparable institutes in Munich and Freiburg, by converting a university institute. Nonetheless, it does have certain historical antecedents: its director and four other members of the Institute previously worked in the Frankfurt University Institute for Roman Law and the History of its Reception in Europe.² The continuity is indicated by the fact that the Max Planck Institute has taken over from the University Institute a project for the construction of a card index of the literature of the nineteenth and twentieth centuries dealing with Roman law of the Middle Ages.

The work of the Max Planck Institute is complemented by that of the University Institute. Although both have the same director, they are completely separate. In addition to the Roman law of the Middle Ages, the University Institute does work in the Roman law of ancient times, which the Max Planck Institute does not. It also performs important teaching functions for the University.

Staff and Organization. The Institute's director, Helmut Coing, is its only Academic Member. The Institute has fourteen "Referenten" and six assistants or legal interns. It also has the part-time assistance of three pro-

¹ Fourteen full-time and nine part-time employees, as well as three professors of other universities who collaborate with it.

² Institut für römisches Recht und Rezeptionsgeschichte.

fessors of German universities located outside of Frankfurt. At the end of 1966 the Institute made a contract with a Spanish professor for special research in Spain, which would be difficult to do in Germany. It is probable that more contracts of this type will be made in the future.

Typically, about half of the "Referenten" begin their work with the Institute as assistants; the other half join the Institute after having completed their doctor's theses—usually in legal history—elsewhere. For the people who study in Frankfurt, selection is usually made on the basis of personal contact; for others, on the basis of their doctor's theses and the recommendations of their professors. Language ability as such is not stressed, as it is more or less an automatic prerequisite to historical legal knowledge.

The Institute is divided into departments, but is flexible in altering the number of members in the departments as needed. Departments have been established for the periods of the Middle Ages (1100-1550), Early Modern Times (1550-1700), The Enlightenment (1700-1800), The Nineteenth Century. Each of these departments is divided into three to five subdepartments.³ In addition there is a "Referent" for Russian law and a "Referent" for public law. Some of the "Referenten" have administrative duties in addition to their academic duties. Usually all of the members of the legal staff meet for about three hours one afternoon a month to discuss administrative and academic questions. One or more members of the Institute typically gives a short talk on some topic of interest to the Institute and a discussion follows. In addition there is considerable informal teamwork among the members of the Institute.

The Institute generally has two foreign professors each year for periods of about three months as its guests. As soon as the Institute acquires larger quarters it will also accept foreign students as guests.

The Institute has an academic advisory council of a type not found in other institutes.⁴ It consists of specialists from some of the world's leading universities—Paris, Rome, Madrid, Leyden, Antwerp, Oxford, and Yale.

The Institute's director, Helmut Coing, was born near Hanover in 1912. He was named assistant professor in Frankfurt in 1940 and full professor in 1948. He was chairman of the West German Rectors' Conference⁵ in 1956-1957, and chairman of the "Wissenschaftsrat" (the leading official West German organization for evaluating academic institutions) from 1958 to 1961. He specializes in the legal history of modern times, in private law, especially that dealing with economic problems, and in legal philosophy.

Activities of the Institute. During the next year or two about sixty per cent of the energies of the Institute will probably be spent in the compilation of a bibliographical manual. Articles, which will be published in a

³ E.g., Middle Ages: (a) Roman law (glossators); (b) Roman law (commentators); (c) canonists; (d) state institutions; and (e) legislation.

⁴ The other legal institutes have advisory boards (Kuratorien) which usually take special interest in the financial problems of the institutes. Such a board will probably also be established for the Frankfurt institute soon.

⁵ I.e., the "Conference of Presidents of West German Universities."

periodical the Institute is planning, and special monographs will constitute about fifteen per cent of the time each. Compilation of a card index to the literature of the Middle Ages dealing with Roman law will take about one-tenth of their time. The percentage of the energy of the Institute which will be expended on the training of students cannot yet be estimated.

The Bibliographical Manual. The Institute is engaged principally in one large project, the compilation of a one- (or possibly two-) volume bibliographical manual or guide to the sources and literature of comparative legal history. The work will contain extensive introductions to the leading source materials and literature, as well as general introductions to the various historical periods. It will itself be a reliable and extensive outline of the basic facts of legal history for the period it covers. It is not, however, thought of as a research project, but is intended to make the results of past research more easily available.

The mass of historical materials is so large and diversified that an individual research worker has little chance of working effectively in a larger area without the help of reliable guides and introductions of this type. Statutes, for example, played a different role in the legal system when they were passed, repealed and sometimes disregarded by the sovereign. The importance and function of the various collections of statutes will be indicated in the introductions to them. Earlier court decisions often did not contain the reasons for the decision. The manual will attempt to indicate how the reporter ascertained the reasons for the decisions and to give some idea of the reliability of his work.

As large as this project is, it is still not large enough to attempt to record all the relevant works of the period. Instead it can aim only at bringing together the most important works of the time. Work on the manual was begun with a twenty-eight-page summary of its contents, which was prepared by Professor Coing in 1964. This summary served to clarify thinking on the project and serves as a guide for those working on it.⁶

⁶ The far-ranging scope of the manual is best indicated by its tentative table of contents:

- I. General Introduction
- II. Origin and Spread of Roman and Canon Law (c. 1100-1550)
 - (1) General introduction
 - (2) The legal faculties and their courses
 - (3) The Middle Age literature concerning Roman law
 - (4) The origin of the canonical legal collection
 - (5) The canonical literature
 - (6) The organization of the legal affairs of the church of the Middle Ages
 - (7) The basic institutions of the state and the functions of the educated jurists
 - (8) The legislation of the late Middle Ages under the influence of the educated law
- III. The "Modern Pandecten" Period (Die Seit des usus modernus pandectorum) (c. 1550-1700)
 - (1) General introduction
 - (2) The academic faculties and works
 - (a) The development of the faculties
 - (b) The literature of the "modern pandecten" period
 - (c) The systematic and the antique literature
 - (3) The basic institutions of the state, the legislation and judicature
 - (4) The church law, its position and literature
- IV. The Enlightenment (c. 1700-1815)
 - (1) General introduction
 - (2) Natural law

The manual will contain the most important background information necessary as a basis for research in modern legal history. It will include: a general summary of the intellectual, political, and economic basis of "modern" legal history; information on the development of the various law faculties and their teaching programs; information concerning the professional and social positions held by educated jurists of the times; the major tendencies of the legal literature and its principal divisions, including basic information on the leading works and authors; a summary of the political and administrative organization of Europe's most important countries; a listing of collections of statutes and case reports, and of places where they can be found; and probably some important legal documents from earlier times.

The work will be limited to private law in the broader sense, including commercial, copyright, and patent law, as well as conflict of laws. It will also deal briefly with legal institutions which were once of great importance, but which are no longer in existence (*e.g.*, feudalism). Constitutional and administrative law will be included only to the extent that it is relevant to private law. Only the most important source materials of civil procedure and criminal law will be listed, except where they have a direct effect upon the private law—*e.g.*, the criminal protection of honor or parts of the law of evidence.

Coverage will begin around 1100 with the rediscovery and spread of Roman law in Europe. The work will be divided into periods in the same way that the Institute is divided into departments. The first period will contain the history of the rediscovery and spread of Roman law in Europe. The second period, the "modern" use of Roman law (*usus modernus*, c. 1550-1700), describes the modern use of the pandects, which had by that time lost considerable ground to the laws of the local communities. The third period, the enlightenment, (c. 1700-1815) is, according to the Institute's description, characterized by the fact that reason replaces blind worship of the antiquarian and that this change affected the approach to legal problems as well. The fourth and final period, present times (since 1815), is characterized by the prevalent social and economic changes, but above all, by the development of the various national laws.

The work will emphasize the countries of Middle and Western Europe.⁷ The Scandinavian countries, Russia, the Balkans, and the Baltic countries,

(3) The literature concerning Roman and positive law and the judicature of the individual states

(4) Legislation and codification in the individual states

(5) Social criticism

V. Present Times (since c. 1815)

(1) General introduction

(2) Literature, legislation and judicature in

(a) The French legal sphere

(b) The German legal sphere

(c) Scandinavia

(d) Russia

(e) Balkans

(f) England.

⁷ According to present-day boundaries these include Belgium, Czechoslovakia, Germany, France, Great Britain, Holland, Hungary, Ireland, Italy, Poland, Portugal, Switzerland, and Spain.

are to be dealt with to the extent that their development is connected with that of Middle or Western Europe. Major English developments are to be indicated only by bibliographical references, except where there is contact with continental development,⁸ or where English developments parallel those of the continent.⁹

The members of the Institute are proceeding with the work on the manual by reading the literature which may be relevant and making card indexes for their personal use. Sometimes books must be sent for from other libraries, and photocopies made of parts which may be important. Intermediate reports are read and discussed at monthly meetings referred to above. Thus each member has an opportunity to hear the reactions and suggestions of the other members. This teamwork speeds progress and improves the quality of the work done.

Progress up to now has, therefore, consisted principally of collecting materials. The writing which has been done has been more or less of an experimental nature to set the pattern for the main writing. It is the thought in the Institute that once the final writing begins, it will progress rapidly, so that the first draft of the manuscript will be completed in 1968. The present plan is to compress the material into one volume, but there is also talk about the possibility of two volumes.

Monographs. The Institute plans to publish monographs in the series "Research in the Modern History of Private Law." The manuscript for the first volume of this series is already complete. It deals with the concept of equity or justice in the writings of the great Middle Age jurist Baldus.

Articles. The Institute is about to begin the publication of a periodical with the title *Ius Commune. Veröffentlichung des Max-Planck-Instituts für europäische Rechtsgeschichte*. It will contain articles and reports of interest to European legal historians. A number of the articles will probably be written in connection with other work which is being done in the Institute, such as the work on the bibliographical manual.

Card Index to the Literature of the Middle Ages. A project for the construction of a card index of the literature of the nineteenth and twentieth centuries dealing with the Roman law of the Middle Ages was, as previously stated, taken over from the University Institute. It now contains about 7,000 titles, which are filed according to author and subject. Probably less than half of these titles will be listed in the manual.

The Library. The success of the Institute will depend to a considerable extent on the quality of its library. When the Institute was founded, the University made it a generous gift of about 3,000 volumes—mostly German, Italian and French works printed in the sixteenth through the eighteenth centuries, which had originally been collected by a Berlin attorney. Some of these books are reprints of works written as early as the thirteenth century. Since 1964 the library has been purchasing books at the rate of

⁸ E.g., the adoption in England of commercial law in the form which it had been given by the Italian universities.

⁹ E.g., corporation or patent law.

5,000 per year, and subscribes to forty periodicals. It now has 19,000 volumes, of which about 3,500 are folio volumes printed before 1800. It has no handwritten manuscripts. Most of its work with manuscripts is done from microfilms. It has substantial collections from almost all countries in Europe, but its German, English, French, and Italian collections are its best.

Books are ordered by the "Referent" responsible for the legal area involved according to guidelines set by the director. Special approval of the director is only necessary for particularly expensive acquisitions.¹⁰ The library is headed by a librarian, but the books are classified by a "Referent."

The library has an author catalogue and a good subject catalogue. Only two groups of books are organized on a European basis, those of the Roman law and those of the canon law. The rest are classified on a national basis.

One reason that historical research has been particularly difficult up to now is that it was usually necessary in order to secure the text of a foreign statute or of a foreign decision to borrow the book from a foreign library through a somewhat slow-working inter-library loan system. Sometimes it was necessary to take a trip, for example to a Spanish library. The Institute is assembling a library which should make basic legal research for all parts of Europe possible without the use of borrowed books. No such library has previously existed in Germany,¹¹ and the only such library of which the director has knowledge is that of the Harvard Law School.

Finances. The budget of the Institute for 1967 was about 650,000 West German marks, of which a little less than two-thirds went for salaries. About 100,000 West German marks were spent for acquisition of books, and about 20,000 for the maintenance of the library. Most of the balance was spent on the general expenses of the Institute.

Conclusion. The hard core of the method which has led to the phenomenal successes of natural science in modern times is thought by many to be simply an insistence on getting down to the facts—with whatever expenditure and by whatever method is called for in the particular situation. A change of emphasis from theoretical speculation to empirical research may well be silently taking place in the law today.¹² The Max Planck Institute for European Legal History in Frankfurt is admirably suited for getting at the real facts which make up the history of the civil law in Europe and for acquainting us with whatever lessons are to be learned from that history.

¹⁰ Old law books have until recently been less expensive on the German market than one would think. It was often possible to purchase legal treatises of the sixteenth century in folio format in good condition for around 100 West German marks (about \$25).

¹¹ Other good libraries for legal history in the vicinity are in Wolfenbüttel (Germany) and in Basel.

¹² See, for example, Armstrong, *Administration of Criminal Justice: The American Bar Foundation Project*, 54 A.B.A.J. 261 (1968), in which Mr. Armstrong observes that the method of empirical research and analysis used in the project is relatively new and has been particularly productive.