

# Islam and Islamic Law in European Legal History

by Richard Potz

It has traditionally been assumed that the influence of Islam on Western jurisprudence was far less than on natural sciences, philosophy and even theology. Since the Middle Ages, the development of a jurisprudence increasingly emancipated from theology, and the separate development of the two learned laws (Roman law and Canon law) have been among those characteristics of occidental society which clearly delimit it from the Islamic World. Nevertheless, Europe has an Islamic legal history as well. The influences of Islam on European legal history were on the one hand territorial: in those parts of Europe which were at some time in their history under Islamic rule, and on the other hand factual, especially – due to economic interests – in commercial law. Furthermore, there is an ongoing academic debate whether theoretical-methodological concepts were adopted as well.

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## Introductory Remark

The relationship between Western Europe and Islam was for a long time determined by a fundamental religious and political antagonism. However, the large number of conflicts extending over a millennium – from the 8th to the 18th century – must not blind us to the fact that there were peaceful periods during which we find not only intensive trade relations but also transfers of ideas and legal institutions.

▲ 1

Whether in times of war or in times of peace, the relationship between Europe and Islam was undoubtedly determined by the fact that, until the end of the Ottoman Empire, Islam presented an unparalleled challenge for Western Europe, which had a noticeable influence on some areas of law in Europe: the confrontation with Islamic powers resulted in the development of an "international law" (see 2 below), and the introduction of some "minority regulations" was due to the presence of Muslim minorities (see 3 below). Over the course of centuries of peaceful as well as martial contacts, a not unimportant transfer of Islamic law to the West can be observed as well (see 4 below).

▲ 2

What these three areas of law have in common is that they first began to take shape during the Middle Ages, that their effect was felt well into modern times, and that they have regained importance in more recent times, this time with a different emphasis.

▲ 3

Currently the Islamic conception of international law is frequently regarded as presenting a contrast to the international law evolved in the European context. Together with attempts at diminishing the dominance of the latter, the former has

found increased interest over the past decades.<sup>1</sup>

▲4

As for the minority regulations, the immigration of Muslims into European states has become a much-noticed phenomenon over the last few decades, especially with regard to its legal consequences, and the relevant academic literature has grown to remarkable proportions. What becomes increasingly clear is that on the one hand the receiving European states are usually lacking any historical experience with Muslim minorities. The immigrating Muslims, on the other hand, have to get used to living as a minority in a democratic state under the rule of law where comprehensive religious freedom is guaranteed yet can be restricted by weighing the legal merits according to the principle of proportionality.

▲5

Regarding the current consideration accorded to Islam and Islamic law in the legislation of Western states, we must look at two aspects in particular. On the one hand there are some states (especially Canada and England) where it has been discussed for some time now if Islamic law, more particularly the instruments of conflict resolution based on it (Islamic law courts, Islamic mediation) should be recognised. Legal specialists, however, reject nearly unanimously the idea of a state's legal system encompassing a further, split legal system that would treat members of different religions according to their respective religious laws. This would not only constitute a historical setback, but also result in a number of practical problems which would be exceedingly hard to solve.<sup>2</sup>

▲6

On the other hand national legislation and legal practice have increasingly reacted to norms and customs which are seen – with or without justification – to be linked to Islam. Among these are the introduction of dress regulations, of the display of religious symbols in public, construction regulations and the formulation of specific criminal offences – alleged to be linked especially to religious or cultural norms – such as forced marriage, female genital mutilation, honour killings and terrorism.

▲7

## Islam as an External Factor in European Legal History

Islam has been an external factor in European legal history, influencing the development of international law, the implementation of "international" contract law and the law of trade relations.

▲8

The first serious theoretical – and mostly theological – discussions of Islam in the West did not take place until the 10th century. The most important collection of ecclesiastical law, the *Decretum Gratiani* (1141),<sup>3</sup> included a letter by Pope Alexander II (d. 1073) (→ Media Link #ac) which emphasised the different treatment to be accorded the peaceful Jews on the one hand and the aggressive Muslims, who must be fought, on the other;<sup>4</sup> it did not, however contain any statements on the subjects of crusades and fighting the heathens.<sup>5</sup> The collections of decretals<sup>6</sup> which appeared from the end of the 12th century onwards would typically contain a separate section entitled "Concerning Jews and Saracens". For international relations it was important that decretal law included specific prohibitions for Christians to sell arms to Muslims. *Canon* 24 of the third Lateran Council (1179) threatens anyone who would provide the Saracens with weapons, iron and wood to build ships with excommunication. The fourth Lateran Council (1215) repeats this prohibition in *canon* 71, which contains a summary of papal crusade law. All these decretals and Synod rulings were finally collected in Pope Gregory IX's (ca. 1170–1241) (→ Media Link #ad) collection of decretals,<sup>7</sup> which was first promulgated in 1234 and included into the *Corpus Iuris Canonici*.<sup>8</sup> Consequently the canonists were forced to discuss external legal conditions in relations with Islamic powers in their commentaries.

▲9

Pope Innocent III's (1160–1216) (→ Media Link #ae) decretal *Quod super his*,<sup>9</sup> which dealt with the question of whether it was admissible to fulfil one's commitment to undertake a crusade in another way, without actually going on crusade, was to have particularly far-reaching consequences. It inspired Pope Innocent IV (ca. 1195–1254) (→ Media Link #af) to the most important legal discussion of this topic in the Middle Ages, based on two fundamental questions: "Is it permissible to attack countries belonging to those of different faith? And if it is permissible, for what reason is this

so?"<sup>10</sup> He began by stating that it is not allowed to the Pope nor to other Christians to simply take the dominions of those of different faith. All humans, including non-Christians, are legitimate bearers of dominion and property. These rights are theirs just like the sunshine which warms all humans. The only exception he allowed was the Holy Land, in particular Jerusalem, to which, in Innocent's view, the Pope had a legal claim which he bolstered by quoting several legal titles. This comparatively open concept stood in contrast to the strict position of the leading canonist Henricus de Segusio, called Hostiensis (ca. 1200–ca. 1270) (→ Media Link #ag), who maintained that without the legitimation of the Roman Church there could be no legitimate rule. This doctrine was later adopted by papalist authors of the Late Middle Ages.<sup>11</sup>

▲ 10

Generally speaking the majority of Christian theologians and jurists in the Middle Ages, as well as their Islamic colleagues, saw dominions of a different faith as potential contractual partners. Consequently the regulations of trade relationships with Islamic dominions have become part of European external legal history. Thus a Mediterranean trade law was developed within whose confines it was possible to use existing treaties with Byzantium as a basis, but which also incorporated influences of Islamic legal thought. This development was advanced by Venice in particular, which had already ended its restrictive trade policies towards Islamic dominions at the turn of the 11th century. Later, trade relations, in particular with Egypt, were expanded following the model of the treaties with Byzantium, despite the conflicts brought about by the Crusades.<sup>12</sup> Between the 14th and the 16th centuries, the expansion of the Ottoman Empire did threaten this Western maritime predominance to some degree, but trade relations continued even in this period.

▲ 11

After the defeat in the naval battle of Lepanto in 1571 the Ottoman Empire had to admit its limitations as a naval power, and as a consequence "international" contract law, on equal terms, flourished anew. One of the consequences of the peace agreement of 1573 was the foundation of the *Fondaco dei Turchi*, an establishment of Turkish merchants in Venice.<sup>13</sup>

▲ 12

The other side of the Mediterranean, the Iberian Peninsula, saw the emergence of a specific Christiano-Islamic contract practice, which pointed beyond Islamic scholarly law. In the field of international contract law it clarified the potential of Islamic law at the beginning of Modern Times: "Granada ist europäisch, weil Europa Teil eines noch nicht europäisch dominierten Weltsystems und Granada Teil Europas und Teil der arabisch-muslimischen Welt ist."<sup>14</sup>

▲ 13

The categories of relations with Islamic (i.e. non-Christian) powers set forth by Pope Innocent IV would later achieve well-nigh global importance in a different context. When the question of the legitimacy of Spanish conquests in America arose, the famous debates of Spanish jurists and theologians used nearly exclusively those arguments which mediaeval canonists had developed with reference to relations with the Islamic world. Francisco de Vitoria (1483–1546) (→ Media Link #ah), who was most important in evolving an international law for modern times, based his works on the teachings of Innocent IV. He expanded Innocent's doctrine and the idea of the legitimacy of non-Christian rule by deriving from it the idea of a community joining all humans together. At the same time, he set this community apart from the religious background and based it on a global, secular, community of law.

▲ 14

The arguments for the legal limitation of war against Islam and for the possibility of peaceful relations with Muslims evolved by ecclesiastical jurists of the Middle Ages had thus provided the material which would 300 years later lead to the development of modern European international law.

▲ 15

## The Muslims as a Minority in European Legal History

In the West Muslims were not only seen as an external military threat, but it was also necessary to address the problem of Muslims coming under the rule of Western-Christian dominions. Their existence posed a considerable legal challenge for both sides.

According to classical Islamic theory, when classifying such minorities one must assume that the world is divided into two parts: the "house of Islam" (*dār al-Islām*) and the non-Muslim part of the world which, with reference to the conditions in those days, is named "house of war" (*dār al-ḥarb*). All those countries where Islamic law was the basis of the state and the social order and whose inhabitants professed the Muslim faith were seen as "house of Islam". All other countries were seen as "house of war", where there was potential danger of conflict.

▲ 17

However, this division of the world could not be maintained consistently even as early as the Middle Ages. Consequently a third category was introduced by some Islamic jurists, which was known under the term *dār al-'ahd* ("house of treaty") or other, similar terms. If Muslims were able to live in safety in a certain country and to fulfil their religious duties unmolested (because of this it would be named *dār al-aman*), they would not be obliged to emigrate and it would not be permissible to call this country an enemy of Islam, even if non-Islamic law prevailed. According to the teachings of some scholars, in such a case it would even achieve the status of an Islamic territory.<sup>15</sup> This open concept was not, however, accepted by all schools of law.

▲ 18

Muslims, and their claim that Islam was the continuation of Biblical revelation, posed an entirely new challenge to Christian Europe.<sup>16</sup> In this Muslims were different from the Jews, to whom special status had been granted since late Antiquity as they were recognised as the people of the Old Testament. Despite this theological problem and the different military evaluation of both groups, at first the special laws for Jewish communities were applied analogously to Muslims.<sup>17</sup> Relevant decretals contain regulations of the sale of Christian slaves to Jews and Muslims and the prohibition of conferring public office on members of either religion. The fourth Lateran Council retained these regulations and added particular dress regulations for Jews and Saracens (*canon 68*).

▲ 19

In this way the laws for Jews, which were grounded in the personality principle<sup>18</sup> of Antiquity and the Middle Ages, came to have a lasting influence on the European law for Muslim minorities. In this context we must not overlook that Islamic law had developed a personality principle with religious reference which included specific regulations applying to the members of Book religions (*ahl al-kitāb*). In this way the latter became *dhimmī*: protected by law and tolerated, but at the same time discriminated against. Islamic minority laws not only influenced the regulations of Islam's own law pertaining to the Jews but also how Muslims were treated under Christian rule: When in 1091 the Normans had conquered Sicily and a large Muslim population came under Western-Christian rule, the *dhimmī* concept was largely adopted and applied to Jews and Muslims. In return for special taxes they were guaranteed the right to worship and internal autonomy by maintaining independent jurisdiction.

▲ 20

In Spain the military successes of James I of Aragon (1208–1276) (→ Media Link #ai) in particular resulted in an increasing number of Spanish Muslims being brought under Christian rule. In order to prevent the depopulation of the newly conquered areas, the remaining Muslims were not only treated tolerantly but James I even specifically encouraged Muslim settlement. This led to a "mirroring" of Islamic law. This tolerant approach allowed the Muslims to live their faith according to their traditions, only the public call to prayer was prohibited. It was explicitly forbidden to force Muslims to convert to Christianity.

▲ 21

At the beginning of the 14th century we still find some degree of this tolerant approach in the *Leyes de Moros*, which regulated the legal position of Muslim subjects in Christian empires; however, at the same time the restrictive measures increased. Although tolerance towards Muslims became increasingly curtailed after the conquest of Granada in 1492, Spain retained a Muslim minority until the 17th century.

▲ 22

The last – and indirect – example of the influence of the Islamic minority laws on early modern European legal history

can be seen in the privileges Emperor Leopold I (1640–1705) (→ Media Link #aj) granted to orthodox emigrants from the Ottoman Empire in 1690.<sup>19</sup> According to the Islamic *dhimmī* concept, the Serbian Patriarch and his bishops were the heads of the emigrating people. In negotiations with the Emperor they succeeded in obtaining the same rights which they had enjoyed as heads of their people in the Ottoman Empire. As a consequence orthodox "Konfessionsnationen"<sup>20</sup> (confessional nations) – comparable to the *dhimmī* concept – were able to establish themselves in the Habsburg Empire, on which the autonomous administration of the Military Frontier (*Krajina*) was partly based until 1881.<sup>21</sup>

▲ 23

The problem of the legal status of Muslim minorities reappears in the context of the "third Islamic wave"<sup>22</sup> during the 20th and 21st centuries, this time within a different legal framework. The unusual factor in this context is that nowadays Muslims do not arrive in non-Muslim states as displaced persons or victims of military expansion but rather as a result of voluntary emigration, which means that they will stay permanently rather than temporarily under non-Muslim rule. When evaluating this kind of minority situation, many Islamic scholars of recent times have gone beyond the traditional concept of the "house of treaty" and developed a separate "law of minorities" (*fiqh al-aqalliyāt*) to regulate life within the rule of law in democracies.<sup>23</sup>

▲ 24

## Islamic Law in European Legal History

The third area of historical interaction between Western and Islamic law we should like to look at is the transfer of Islamic law to the West. This subject has long been discussed against the backdrop of trade relations in the Middle Ages (1) and within the context of Sicilian and Spanish legal history (2). In recent years the question has emerged of whether Islam also acted as intermediary between Antiquity and the European Middle Ages in the field of law (3) and to what degree there was a specific Islamic influence on English common law (4).

▲ 25

When studying all these contacts from the point of view of the transfer of laws – in both directions – we must beware of diffuse exaggerations which assume that any similarities between legal institutions are always the result of reception or adoption processes. However, given the complex connections in Mediterranean and Middle-Eastern legal history, we must not go to the other extreme of an isolated-evolutionist concept, either.<sup>24</sup>

▲ 26

## Trade Relations in the Middle Ages

Trade relations in the Middle Ages resulted in adoptions in the fields of property and trade law. The Mediterranean maritime law of the Antiquity, which had grown out of the synthesis of Graeco-Roman traditions and their Byzantine successors, experienced some growth and re-shaping due to the dominance of Muslim merchants around the Mediterranean during the 9th to the 11th centuries.<sup>25</sup> However, with the hegemony of European powers in the Mediterranean from the 13th century onwards, trade and its legal framework came increasingly under Christian control. Out of all this grew a mosaic of theoretical concepts, trade practices and regularly renewed contract law, which was spread all over Europe since the late Middle Ages and determined the further history of naval law until the present day.

▲ 27

If we turn our attention to the Islamic influence in this development, we notice from the very first a number of terms used in the terminology of trade, particularly prominent examples being arsenal, magazine, tariff and sensal (a broker employed during auctions), but also traffico/traffic and dogana/douane.<sup>26</sup> Arab *funduq*, the word from which *fondaco*, the establishment of foreign merchants, is derived, has its own roots in Greek *pandocheion*,<sup>27</sup> which only goes to show the continuity in Mediterranean trade and naval law. A further fundamental Islamic contribution may well be found in commercial working methods based on written documentation and archiving.<sup>28</sup>

▲ 28

We will now focus on two examples of this legal transfer. The first one is the "aval", whose Arab origins are uncon-

tested. This was originally an informal system of transfer (*hawāla*) based on trust, seen during the Middle Ages as an institution of Islamic law allowing money to be transferred quickly and cheaply. More recently the *hawāla* has experienced a remarkable renaissance, with migrants transferring money to their home countries; it is also mentioned frequently in connection with illegal money transfers.<sup>29</sup>

▲ 29

In European law, *avallo* was first taken to mean a guarantee on a bill of exchange, nowadays it refers to the guarantees and securities undertaken by a credit institution on behalf of its clients in respect of a third party.

▲ 30

The second example is the *commenda* of Western law, which is frequently discussed as a possible candidate of Islamic legal transfer.<sup>30</sup> However, considering the lack of sources and the closely intertwined nature of Mediterranean trade, a definitive answer to this question is unlikely. We do, indeed, find that all the legal systems that have been influential in the Mediterranean since the days of Antiquity have evolved types of contract which aimed at balancing gain and risk between the investor and the executor of a commercial transaction, in particular in the field of naval law. Classical Roman law already knew a company agreement (*societas*) between the investor and the provider of the service for this purpose and in Roman naval law there was a specific kind of loan, the *foenus nauticum*, which allowed a higher rate of interest on the invested capital to balance the specific risks. During the High Middle Ages these types of contracts came under the scrutiny of the canonists. Since Canon law forbade the taking of interest, the teachings of the canonists were a major influence on the further development of these types of contracts.<sup>31</sup>

▲ 31

The *chreokoinonia*, a partnership between the investor and the master of the ship which is described in the Byzantine *Nomos nautikos*,<sup>32</sup> is obviously a continuation of classical Roman law as well; it ties the distribution of risk to the intended distribution of profit. In the Babylonian Talmud we find the Jewish *isqa*, which is characterised as being half loan, half trust agreement. Finally, Islamic law introduced the *qirad* to Mediterranean trade, which dates back to the pre-Islamic caravan contract between the investor and the caravan leader.

▲ 32

All these types of contract are very similar because of their economic function, but different in the details such as the distribution of profit or risk. There is no proof of direct transfers of laws, except – as Pryor has shown with most convincing arguments – in the case of the Roman *societas* which was the basis for the *chreokoinonia* which, in turn, was the basis for the *commenda*. Nevertheless, it is likely that due to the prevailing contract practice, the Islamic *qirad* also had some influence on the *commenda*,<sup>33</sup> this, however, is not documented by any sources.

▲ 33

## Sicily and Spain

Besides trade relationships, possible zones of contact where Islamic law could influence Western-European law during the Middle Ages were above all the Mediterranean countries conquered by the Arabs, i.e. Sicily and Spain. After the Christian re-conquest, Arab-Islamic administrative structures were adopted, especially in the field of finance. In Spanish, significantly, words of Arabic origin and legal meaning are found in particular in the fields of administration and taxes, such as customs office (*aduanas*), customs tariff (*arancel*) and mayor (*alcalde*).

▲ 34

After the Norman conquest of Sicily, not only were the administrative structures adopted but they developed into a whole new, specific, remarkable, mixed Arab-Norman law, whose influence on Norman England is being much discussed by scholars.<sup>34</sup> This transfer is ascribed primarily to the frequent exchange of "administrative staff" between Norman England and Norman Sicily.<sup>35</sup> As for al-Andalus, it is still not possible to definitively answer the question of the degree of influence exerted by Islamic law in Spain, despite a number of recent studies on the subject.

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The most important legal sources in Medieval Spain were, firstly, the Visigothic *Liber iudiciorum* (*Fuero juzgo*), recompiled and translated into Spanish under Alfonso X (1221–1284) (→ Media Link #ak), which contained family law, inheritance law, law of obligations, procedural law and criminal law, and secondly, the *Siete partidas*, which, based on the former, were the most important and comprehensive Mediaeval legal corpus in Europe.<sup>36</sup> There is no consensus among scholars as to how much influence Islamic law had on this compilation. While most European law historians see only minor influences, Boisard for instance emphasises the importance of Islamic law and Arabic terminology, especially with reference to the law of armed conflict contained in the second *partida*.<sup>37</sup>

▲ 36

We must, however, always be aware when discussing this question that Berber customary law is likely to have been more relevant in legal reality than classical Islamic law, as the former was better suited in many ways to the particular conditions prevailing in Spain. Consequently there were some specific legal institutions in Islamic Spain which had no analogy in the rest of the Islamic world. The doyen of Spanish legal history, Rafael Altamira (1866–1951) (→ Media Link #al), already pointed out examples in the areas of the leasing of land, irrigation regulations, agrarian consortia and in types of concubinage and marital property systems, which originate not in classical Islamic law but in Berber customary law.<sup>38</sup>

▲ 37

### The Corpus of Islamic Law and its Contribution to the Revolutionary Changes in Medieval European Law

Benjamin Jokisch (→ Media Link #am) recently not only proposed the theory of the reception of Justinian's concept of collecting and codification by the great Muslim law scholars of the 9th century, but he was also the first to propose the theory that this Islamic law together with its roots in Roman law and its Aristotelian methodology exerted some influence on the revolutionary changes in western law which began in the second half of the 11th century. However, the transfer of Roman-Byzantine law to Baghdad as well as its "re-import" into the occident will require many more studies in the future.<sup>39</sup>

▲ 38

### Islamic Influence on English Common Law

Some authors explain similarities between common law and Islamic law with processes of law adoption taking place in the second half of the 12th century, this, however, is hotly debated. John Makdisi (→ Media Link #an) goes furthest by explaining the characteristic traits of English common law throughout as the result of adaptations of the more highly developed Islamic law. The problem is exceedingly complex. There are no sources regarding the influence of Islamic law, but neither can such an influence be excluded, as there were indeed very close ties between Norman Sicily and England. The similarities between common law and Islamic law adduced by Makdisi are certainly remarkable. However, in most cases mentioned by this author they might also be explained as developments of indigenous customary law under the influence of the two "learned laws" (Roman law and Canon law). Thus the concept of the legal protection of possession, which was developed in Canon law from the 9th century onwards, and step by step became the action of trespass, might easily be seen as a precursor of the *Assize of Novel Disseisin* introduced by Henry II (1133–1189) (→ Media Link #ao) in 1166. One further example: in Canon Law the practice of concluding a contract with an informal "promise" is justified with quotes from the Bible and the Church Fathers and ultimately led to the principle *pacta sunt servanda*, which was directed against Roman contract law.

▲ 39

As an example of a separate, individual transfer of Islamic law academic studies frequently name the influence Islamic foundation law (*waqf*) had on the Trust in common law.<sup>40</sup> The argument is that at just the time when the Trust first appeared, an increase in contacts with Islamic law provided the opportunity to borrow from a parallel Islamic institution. However, the development of the common law Trust was primarily due to an acute practical problem requiring an adequate legal solution, namely the temporary assumption of the feudal rights and duties of absent crusaders. It is quite possible that the further development, especially during the 13th century, of the various forms and functions of a Trust, was modelled to some degree on Islamic foundation law. As with all the areas of legal transfer between European legal traditions and Islamic law, this subject still requires thorough interdisciplinary research.

▲ 40

## Appendix

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Notes

1. ^ Cf. esp. Kruse, *Islamische Völkerrechtslehre* 1979; Salem, *Islam* 1984; Pohl, *Islam* 1988.

2. ^ Cf. esp. Rohe, *Recht* 2009, p. 340ff.
3. ^ The *Decretum Gratiani* was a collection of the sources of ecclesiastical law, a scholarly commentary and a scholastic textbook, all rolled into one. It evolved around 1140 from the teachings of the Bologna law school.
4. ^ C. 23, qu. 8, c. 11: *Dispar nimirum est Iudaeorum et Saracenorum causa. In illos enim qui Christianos persecuntur et ex urbibus et propriis sedibus pellunt iuste pugnantur; hii ubique servire parati sint*, cf. also: [http://geschichte.digitale-sammlungen.de/decretum-gratiani/kapitel/dc\\_chapter\\_2\\_2839](http://geschichte.digitale-sammlungen.de/decretum-gratiani/kapitel/dc_chapter_2_2839) [08/07/2011].
5. ^ Becker, *Stellung* 2009, p. 104.
6. ^ To begin with, papal decretals were written replies to questions arising within ecclesiastical law and ecclesiastical discipline. Their origins go back to late Antiquity, where they would be published by other bishops as well, in the style of the Emperors. From the middle of the 12th century onwards, and stimulated by the *Decretum Gratiani* and the blossoming of ecclesiastical jurisprudence in particular, the number of papal decretals increased dramatically. From the 1270s onwards, they were systematically collected and edited. The history of the collections of decretals is closely linked to the theoretical foundation of the papal assertion of the right to legislate.
7. ^ Decretal. Greg. V, Title 6: *De Iudaeis, Saracenis, et eorum servis*.
8. ^ The *Corpus Iuris Canonici* consists of six parts, the *Decretum Gratiani* and five collections of papal decretals. It remained the basis of Canon law until the first *Codex Iuris Canonici* came into force in 1918.
9. ^ Adopted into Decretal. Greg. III, Title 34, caput 8.
10. ^ Innocent IV, *Apparatus* 1514. On the analysis of the commentary see especially Muldoon, *Popes* 1979, pp. 6–15.
11. ^ Becker, *Stellung* 2009, pp. 109–112.
12. ^ Cardini, *Europa* 2000, p. 40f.
13. ^ *ibidem*, p. 247.
14. ^ Lohlker, *Völkerrecht* 2006, p. 144 ("Granada is European, because Europe is part of a world not yet under European domination and because Granada is part of Europe and part of the Arab-Islamic world", transl. by G.G.).
15. ^ Hagemann/Khoury, *Muslims* 1997, p. 119ff.
16. ^ Comprehensive description in Daniel, *Islam* 1993.
17. ^ Cf. esp. Muldoon, *Popes* 1979.
18. ^ The personality principle states that the laws which are relevant for a person depend on his or her ethnically or religiously determined origins.
19. ^ See Ploechl, *Orthodoxe Kirche* 1972; Turczynski, *Orthodoxe* 1985; Potz, *Donaumonarchie* 1994.
20. ^ Turczynski, *Konfession* 1976.
21. ^ Concerning the specific characteristics of the autonomous administration in the Military Frontier/Krajina cf. Amstadt, *Militärgrenze* 1969; Wagner, *Militärgrenze* 1987.
22. ^ Cardini, *Europa* 2000, p. 280.
23. ^ Cf. Lohlker, *Völkerrecht* 2006, p. 73f.
24. ^ Concerning this question cf. Liebesny, *Legal History* 1972, p. 38; Jokisch, *Imperial Law* 2007, p. 10ff.
25. ^ Cf. the overview in Lopez/Raymon, *Medieval Trade* 1990.
26. ^ Lieber, *Business Practices* 1968; Pryor, *Origins* 1977.
27. ^ *ibidem*, p. 237.
28. ^ *ibidem*, p. 231.
29. ^ Cf. Taube/Schramm, *Ordnungsprinzipien* 2002; Taube/Schramm, *Hawala* 2002.
30. ^ Udovitch, *Origins* 1962; Lieber, *Business Practises* 1968; Pryor, *Origins* 1977.
31. ^ Pryor, *Origins* 1977, p. 36f.
32. ^ This so-called "Rhodian Sea Law" is a collection of Justinian law and Mediterranean customary naval law compiled between AD 600 and 800, to which European naval law can be traced back in many cases.
33. ^ Pryor, *Origins* 1977, p. 36f.
34. ^ Cf. esp. Makdisi, *Origins* 1999, p. 1718ff.
35. ^ I should like to point out in particular the monograph by Caspar, *Roger II* 1904, which is still fundamental and deals with legislation, constitution and administration. Cf. esp. pp. 237–327.
36. ^ Cf. Coing, *Handbuch* 1973, esp. p. 295ff.
37. ^ Boisard, *Influence* 1980, p. 435.
38. ^ Altamira, *Historia* 1903.
39. ^ Cf. Potz, *Islamic Law* 2011.
40. ^ Badr, *Relation* 1978, p. 196; Cattani, *Law* 1955, pp. 213–218; Gaudiosi, *Influence* 1988, p. 1246f.

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