100 Years of Public Law: International, Transnational, Comparative

An Introduction to MPIL100

Philipp Glahé / Alexandra Kemmerer

Science often begins with a coincidence, and that is just as true for legal scholarship. Or, to be more precise: it begins with a moment of serendipity, that happy opportunity that enables and produces knowledge in the unintentional coincidence of constellation and event.[1] In the winter of 1924/25, such a stroke of luck occurred for international law scholarship. Viktor Bruns, Professor of Constitutional and International Law at the Friedrich Wilhelm University in Berlin since 1912, had, as his wife Marie later noted in her diary, 'often and carefully considered the plan for a German textbook on international law in recent years'. He read books and brochures, 'had Mrs. Wolff and legal assistants or students tell him about the contents of books so that he didn't have to read through everything himself'. However, he soon realised that it would take more than a few clever and hard-working employees to achieve the overall vision he had in mind. What was needed was an institute. A few weeks before Christmas, according to Marie Bruns, he casually let this idea slip into a conversation with Friedrich Glum, the Director General of the Kaiser Wilhelm Society, which had been founded in 1911. 'Glum immediately took it up very enthusiastically. "But that could be done very well", said the influential Prussian bureaucrat, a science manager avant la lettre; "last year our society was granted too much money. We can use the surplus for your institute. But we must act quickly, otherwise others will beat us to it with foolish endeavours. For example, an institute for theatre studies is being planned – what is the practical use of that?"'

If we can trust the zealous chronicler Marie Bruns, then this is how it all began on a winter's day in the mid, often romanticised, 'golden' years of the Weimar Republic. Of course, there were still some battles to be fought. Allies were needed in science and politics, and an effective *advance team*, led by Marguerite Wolff, 'housewife of the new institute' and simultaneously in

1 Parts of this text have also been published in our editorial Philipp Glahé and Alexandra Kemmerer, 'MPIL100 – Beginn einer Spurensuche' / 'MPIL100 – Beginnings of an Exploration', MPIL100, 11 November 2023, <https://mpil100.de/2023/11/mpil100-beginn-einer-spurensuche/>, last access 8 March 2024.

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charge of a legal research department. It took a founding group with a librarian, five assistants, and five secretaries to support Director Bruns in the institute's rooms in the Berlin Palace. But the 'Institute for Foreign Public Law and International Law', which was joined by a sister institute of private law in 1926, had become a reality – a first-class centre of legal expertise, well equipped with books, journals, documents, and bright minds. A centre for foundational research, a *think tank* for international law, an ivory tower, and an advocacy office.

The Max Planck Institute for Comparative Public Law and International Law (MPIL), which has been continuing the tradition of the Berlin foundation in Heidelberg since 1949, can now look back on 100 years of history. As an institution for foundational research in international law, European Union law, and comparative public law, the *Max Planck* has established a recognised epistemic brand name far beyond the German-speaking legal community. By analysing current legal problems, MPIL not only contributes to the theoretical development of law, but it also advises national, European, and international institutions. Throughout its history, the Institute and its staff have been involved in pioneering legal and political developments and have often made (legal) history themselves. Thus, there are ample reasons to commemorate and reflect on the historical development of the Institute and its contribution to academia and practice on the special occasion of its anniversary.

Indeed, as Sabino Cassese emphasised in his key note intervention inaugurating our centennial project MPIL100, 'a collective reflection on the history of the Max Planck Institute for Comparative Public Law and International Law is particularly important and useful – if we succeed in situating this reflection within the wider framework of the history of legal thought in the area of public law'.[2] In the past, history has always been a problem for the MPIL, a challenge, and often a matter of dissent.[3] Scholars have repeatedly studied aspects of the Institute's history. To date, however, a wide-ranging historiographical account has been lacking. A great deal remained unexplored and untold, much has been lost and suppressed, and many have been forgotten. The Institute's and its members' stance and attitude during the national socialist era in particular and the consistent proximity to political power throughout all system changes in general were concealed beneath the surface of excellent professionalism. The MPIL100 project aims to take these voids as an opportunity, as a starting point to identify and fill historical gaps, but

2 Sabino Cassese, 'Being a Trespasser', ZaöRV 84 (2024), 27-38 (27).

3 Philipp Glahé, 'History as a Problem? On the Historical Self-Perception of the Max Planck Institute for Comparative Public Law and International Law', ZaöRV 83 (2023), 565-578.

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also to stimulate further questions. With its seminar series '100 years of public law. International, Transnational, Comparative. The History of the Institute for Comparative Public Law and International Law 1924-2024' and the centennial blog <mpil100.de>, the project aims to facilitate an inclusive, dynamic, and interconnected form of multi-perspective historiography and its transmission.[4] Scholars from various disciplinary backgrounds and generations, established academics and seasoned practitioners, active and former members of the Institute, distant observers and dedicated alumni and alumnae have been invited to participate in an open conversation questioning existing narratives and interpretations of the Institute's work and history, drawing on a variety of disciplinary, regional, geopolitical, and legal-cultural perspectives.

Participants, contributors, and readers are encouraged to engage not only with the wealth of the Institute's academic publications, but also with a wide range of other sources that can shed light on its institutional histories and individual protagonists. During initial research, numerous previously unexplored documents were discovered which are now discussed and analysed. These documents encompass legal opinions bearing witness to the Institute's advisory activities for ministries, authorities, and courts, administrative files, letters and first-person documents such as Marie Bruns' diary entries and other autobiographical reflections by former members of the Institute, and a large number of photographs as well as early audio and film recordings.

Reflecting on an institution and its protagonists over time prompts and enables a discussion of today's actors and conditions of legal knowledge production. MPIL100 situates the Institute's current fields of research and its institutional culture in historical perspective, explores processes of canonisation, and questions established continuities and familiar narratives. The project provides also an opportunity to (re-)discover long arcs of disciplinary and institutional histories, disciplinary entanglements and collective memories, and closed pasts and open futures.

In Sabino Cassese, long-time friend and truly a mentor of the Institute, we have found a kindred spirit who intuitively understood and conveyed a core idea of MPIL100 much more sophisticated and more elegantly than we, the people in the machine room, could have done.

4 <www.mpil100.de>, last access 8 March 2024.

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