

Jean-Louis Thireau, Jus et Consuetudo. Recueil d'articles réunis en hommage, Paris (Classiques Garnier) 2020, 482 p. (Histoire du droit, 8), ISBN 978-2-406-09631-3, EUR 39,00.

rezensiert von | compte rendu rédigé par
Tzung-Mou Wu, Taipei

This book is part of the three editors' joint effort dedicated to Jean-Louis Thireau on the occasion of his retirement from University Paris 1 Panthéon-Sorbonne. For the same purpose, the editors have produced a special issue in the »Revue d'histoire des facultés de droit et de la culture juridique« as a *mélanges* or Festschrift¹.

Seventeen articles that Jean-Louis Thireau published between 1986 and 2011 are regrouped into four parts in this book. The first part (p. 13–172) contains five articles that address matrimonial and inheritance law issues in the *coutumes* of Western France, especially of the period between the tenth and the thirteenth century. It discusses the origins of forced heirship (*réserve héréditaire*) in the *coutumes* of Anjou and its neighboring areas (p. 13–58; originally published in 1986), the common-property-like practice in Anjou (p. 59–93; 1989), the resurgence of wills in the countries of Loire (p. 95–121; 1996), the courtesy tenure (p. 123–135; 2008), and, finally, the power to dispose of property and family protection (p. 137–172; 2009). There are also five articles in the second part (p. 175–303) under the title of »La doctrine«. They bear on scholarly, at least unofficial, treatment of law in the modern age. This part covers the inspirations that some sixteenth-century legal writings drew from Cicero's works (p. 175–210; 1987), the characterization of Guillaume de Lamoignon's »Recueil des arrêts« as an attempt to codify French national law (p. 211–228; 2004), the ways in which Robert-Joseph Pothier used the Roman law and the natural law (p. 229–251; 2006), Gabriel Bounyn's little-known treatise of bankruptcy law (p. 253–270; 2007), and three »unjustly forgotten« (p. 303) authors of some of France's earliest modern civil law treatises, to wit, Jean-Marie Ricard, Philippe de Renusson, and Denis Le Brun (p. 271–303; 2011). The third part (p. 307–396), titled »Roman law and national law«, includes four articles that, to different extents, discuss the reception (not *Rezeption*) of the civil law and its jurisprudence in French national law scholarship. This part looks into the trend to »merge the civil law into the national law« in late-sixteenth and seventeenth century (p. 307–340; 1999), the »Code civil«'s references to the civil law and to the national law (p. 341–357; 2005), the question of whether territorial *consuetudo* in



Herausgegeben vom Deutschen
Historischen Institut Paris |
publiée par l'Institut historique
allemand

¹ Anne Dobigny-Reverso, Xavier Prévost et Nicolas Warembourg (ed.), *Liber amicorum, Mélanges réunis en hommage au Professeur Jean-Louis Thireau*, Paris 2019 (Revue d'histoire des Facultés de droit et de la culture juridique, n° hors-série).

the sense of rule came into being in late-twelfth or the thirteenth century along with the revival of the legal scholarship (p. 359–372; 2006), and the making of an analytical framework for the national law (p. 373–396; 2010). The fourth part (p. 399–463) is the final and shortest one. Under the relatively vague title of »Droit, justice, cité«, it comprises three articles that deal with big institutions, namely, the monarchy, the lawyer, and the property. The first article in this part answers with nuances the question of whether or not there has been a monarchical absolutism in France (p. 399–420; 1997). The second one describes the roles that lawyers (*avocats*) used to play in the society of Old Regime France and explains why they became so influential that a few of them »coauthored« the »Code civil« (p. 421–440; 2004). The third article, also the last one of this book, delves into the all-time classical issue: the conception of property as provides article 544 of the »Code civil« (p. 441–463; 2005).

The editors deserve applause for making this book rather an instrument than a monument. An easier way to do this job is to have the articles they chose reprinted and put in chronological order. The editors did much more than that. A hopefully exhaustive list of Jean-Louis Thireau's scholarly writings (p. 465–472) and an index of names (p. 473–477) follow the articles. With these tools, this book may be worth consulting for occasional readers of legal history. With Thireau's publication list, one also sees what the editors have left out of this book. The reader may be interested in knowing that Thireau has also published on public law, penal law, procedure and judiciary, as well as legal education.

Moreover, this book reproduces seven »offline«, print articles that amount to 148 pages. There is at least one of them in each of the four parts. The editors could not have expected how much time and effort their work would save of those who suffer from pandemic-related library shutdown or service reduction.

However, this book would be more useful, were it free from technical defects in the footnotes. The cross-referencing in the whole book has gone wrong. The footnote number is to decrease by one when it is the object of a cross-reference. A footnote has been added to cite the original publication at the beginning of every article and thus caused the renumbering of the rest of the footnotes. Worse still, the page number or numbers in all the cross-references is, or are, of no use, and there is no easy solution to this problem. It seems that the reproduction of the selected articles had too much to do with machine, presumably some optical character recognition (OCR) technology. The machine used for this book may have enabled all the articles to be typeset in a uniform style. This certainly leads to a better reading experience than the conventional method of using scanned or photocopied images. If that is the case, the editors seem to have forgotten that there was still work to do.

That said, this book lives up to the editors' expectation to be a reliable guide for those who want to know more about legal history



Herausgegeben vom Deutschen
Historischen Institut Paris |
publiée par l'Institut historique
allemand



Publiziert unter | publiée sous
[CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)

(p. 7). This book facilitates the access to Jean-Louis Thireau's works in particular as well as to the history of French national law in general, on which the literature is limited. The reader is to expect, except for the first two articles of the fourth part, discussions by a law-department-based legal historian for his peers. To be more explicit, most of the selected articles tackle legal or jurisprudential questions. These articles also carry some baggage of their time. Non-French legal historical literature is seldom mentioned, and comparative discussions are brief, as is common among French university legal historians.



Herausgegeben vom Deutschen
Historischen Institut Paris |
publiée par l'Institut historique
allemand



Publiziert unter | publiée sous
[CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)