



Max Planck Institute for Social Anthropology

Report 2014-2016

International Max Planck
Research School on
Retaliation, Mediation and
Punishment
(IMPRS REMEP)

Imprint

Max Planck Institute for Social Anthropology Report 2014–2016 International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP)

Edited by Timm Sureau

Cover photo: The wetland antelope atop this statue in Gambella city symbolizes the unity of the Gambella Region in Ethiopia. The figures below it – five women representing the region's indigenous groups (Anywaa, Nuer, Majang, Opo and Komo) – were unveiled on Nations, Nationalities and Peoples Day in 2015. But following ethnic violence in 2016, the ethnonyms corresponding to the female figures had to be removed. (Photo: M. Wassie, 2015)

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International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP)

Department 'Integration and Conflict' &

Department 'Law and Anthropology'

edited by Timm Sureau

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Introduction

Timm Sureau & REMEP1

The International Max Planck Research School 'Retaliation, Mediation and Punishment' (REMEP) is a research and teaching network of three Max Planck Institutes (MPI), namely, the MPI for European Legal History (Frankfurt), the MPI for Social Anthropology (Halle) and the MPI for Foreign and International Criminal Law (Freiburg). In Halle and Freiburg, professors from the respective universities participate as well. The disciplines represented in REMEP are law, anthropology and history. Research is mainly empirical and addresses questions common to these three disciplines as to how peace, social order and social control are negotiated, constructed, maintained, altered or re-gained. Retaliation, mediation and punishment are three fundamental options for establishing, changing and maintaining normative order. In line with this, researchers of the participating disciplines analyse, from their respective theoretical standpoints and with reference to their methodological canons, how actors in different institutions such as international organisations, states, churches, non-governmental organisations, local communities, families and neighbourhoods make use of retaliation, mediation and punishment.

For the partaking university graduates who wish to work towards a doctoral degree in social anthropology, law, or history, REMEP offers unique multi- and interdisciplinary training and research opportunities. Outside academia, REMEP's research agenda is particularly relevant for international organisations and stakeholders of policy reforms, as well as for journalists and advocacy groups. The doctoral research projects, with their various regional and thematic foci, provide in-depth knowledge about micro-level conflict dynamics and the restoration of order in areas affected by large-scale conflict. REMEP's spokesperson is Günther Schlee (MPI Halle), and the deputy spokesperson is Hans-Jörg Albrecht (MPI Freiburg). The executive committee consists of Keebet von Benda-Beckmann (MPI Halle), Thomas Duve (MPI Frankfurt), Marie-Claire Foblets (MPI Halle), Roland Hefendehl, Walter Perron (both University of Freiburg), Richard Rottenburg (Martin Luther University, Halle-Wittenberg), Ulrich Sieber (MPI Freiburg) and Bertram Turner (MPI Halle). Other members of the faculty include the local coordinators, Carolin Hillemanns (Freiburg) and Karl Härter (Frankfurt). From 2014 to 2016, Dominik Kohlhagen was the general coordinator, and in September 2016, Timm Sureau took over this position, which he will hold for the remaining three years of REMEP. A prolongation of REMEP is currently not planned, due largely to the retirement of several MPI directors.

¹ I would like to thank Faduma Abukar, Nadine Adam, John Eidson, Marie-Claire Foblets, Lucia Fröbel, Sirin Knecht, Dominik Kohlhagen, Christian Laheij, Kristin Magnucki, Bettina Mann, Ralph Orlowski, Günther Schlee, Mossa Wassie and others for their comments and sometimes substantial contributions. Parts of this Report are based on *REMEP: Retaliation, Mediation and Punishment: research agenda and projects* edited by Dominik Kohlhagen & REMEP (http://www.eth.mpg.de/pubs/series_fieldnotes/vol0012.html).

Academic Disciplines

Anthropologists and historians involved in REMEP study social integration and conflict, the social causes and consequences of crime, criminal behaviour, and the development and impact of laws. Alongside the anthropologists and historians, researchers of the fields of jurisprudence concentrate on the purpose, structure and application of criminal law and international criminal law as well as the history of social communication about law. By combining anthropology, history and jurisprudence in REMEP, members of the Research School aim to explain the significance of retaliation, mediation and punishment for social order in today's world. In this report, the focus lies on the anthropological work within REMEP. To establish the larger context within which this work is done, the contribution of the other participants will be reviewed briefly, before the focus is shifted to the work of the MPI for Social Anthropology and Institute for Social and Cultural Anthropology at the Martin Luther University Halle-Wittenberg (MLU).

Criminology and Criminal Law

Criminology aids in understanding how and to what extent criminal punishment contributes to social order and how order is established if formal systems of enforcement and justice fail or are not available. The discipline of criminal law contributes to explaining the normative concept of criminal punishment as well as its relation to retaliation and mediation. Scientific inquiries in the Research School by representatives of both disciplines cover the following topics:

- informal conflict regulation, its relation to criminal justice, and mediation in the criminal justice system;
- privatisation of criminal justice and (re-)privatisation of social control;
- exemptions to the prohibition of private violence;
- international criminal justice and its relationship to local justice;
- social environments that generate their own modes of social control, including organised crime, crime markets, urban environments and immigrant communities.

Legal History

Legal history contributes to understanding the development of a state-based, formal system of punitive control and criminal justice, the establishment of the monopoly on violence and modern punishment (including the role of communities in the construction of norms), the mediation and negotiation of conflicts, and the participation of the community in formalized punitive control. Scientific inquiries in REMEP in the field of legal history address the following issues:

• the participation and functions of communities in institutionalized, formalized, punitive control;

- the privatization of formal control, justice and punishment;
- processes of decision-making and negotiation;
- sanctuary and/or asylum as a resource of mediation and negotiation;
- religious deviance and the role of religious norms and institutions;
- the relationship between social sanctions and penal punishment;
- the use, function and mediation of violence.

Social Anthropology

Social anthropology contributes to understanding the social significance of retaliation, mediation and punishment in the interaction between different models of normative and institutional ordering that operate under various social and political conditions, including those of segmentary and acephalous societies. Scientific inquiries in REMEP by social anthropologists deal with the following:

- the legitimacy, procedure and embeddedness of retaliatory actions in state law, religious law and customary law;
- the role of retaliatory discourses and practices on the international level between nation-states or within states, whether supported by the state and/or religious authorities or directed against the state's legal system;
- the re-evaluation of local traditions and values as markers of identity and social belonging for particular social formations;
- the role of the retaliatory rhetoric of (for example) 'blood feuding' and of the recourse to violence;
- the variety of moralities of retaliation and the ethics of retaliatory action.

To understand social order, the Institute for Social and Cultural Anthropology at the MLU Halle-Wittenberg focuses on contemporary developments related to new forms of globalization and localization, and hence on the emergence of a world society with transnational networks and all-embracing forms of mediatisation. These developments raise new questions about old anthropological issues such as universalism and difference. The challenge of exposing the blind spots of Euro-American cultures by learning about other cultures is part of this contemporary process. Attempts at de-escalating conflicts and catastrophes inside and outside of Euro-America need to find a balance between interventions (necessarily based on universal standards) in intolerable developments, on one hand, and the hegemony that might be perpetuated by these interventions, on the other. From a methodological point of view, social anthropology, as practised at the Institute for Social and Cultural Anthropology, belongs to the qualitative and interpretive social and cultural sciences. Within the group of disciplines represented in REMEP, it sets itself apart via its central theoretical question: How is it possible to translate inaccessible alienity into intelligible alterity (from alius to alter) without losing the difference in the process of doing so? The skilled processing of this paradox is the business of social anthropology.

Of the three professors at the Institute for Social and Cultural Anthropology, one, namely, Richard Rottenburg, is a REMEP faculty member. He contextualizes law in the wider field of 'Law, Organization, Science and Technology' (LOST), which is also the title of a research network² that he initiated.

Members of the MPI for Social Anthropology concentrate on the comparative analysis of contemporary social organisation and change with a view to anthropological theory building. Two of the three departments of the Institute participate in REMEP, namely, the Department 'Law & Anthropology' (Foblets), and the Department 'Integration and Conflict' (Schlee). Extensive fieldwork is an essential part of all research projects.

The MPI for Social Anthropology is embedded in an international research network. Since its founding in 1999 and especially after 2002, when the neighbouring university institute was founded, Halle has become the largest centre of anthropological competence and research in Europe. For many years now, the MLU Halle-Wittenberg and the MPI for Social Anthropology have collaborated in a series of research projects on the basis of a broad cooperative agreement.

Research projects of REMEP members in the Department 'Integration and Conflict' at the MPI for Social Anthropology often involve conflict analysis in settings where people with segmentary forms of social organisation, such as clan or tribal structures, interact with the state. In the Department 'Law and Anthropology', REMEP members address the topic of retaliation, particularly in processes of conflict regulation within and beyond state normative systems and in connection with transnationalism, religion and migration.

The MPI for Social Anthropology and the MLU Halle-Wittenberg also cooperate closely in the Graduate School 'Society and Culture in Motion' and the 'Centre for Interdisciplinary Area Studies – Middle East, Africa, Asia' (ZIRS). This includes the participation of the directors and senior staff in lecturing. Since 2010 the institutions have jointly organised a post-graduate course in social anthropology open to all PhD candidates. It is in this culture of exchange that the REMEP conferences, seminars, and winter and summer schools have taken place; and, at these events, REMEP members have worked together with others at the MPI and the university who have contributed to their success. That is, REMEP PhD students in Halle are fully integrated into different research units at the MPI and the Institute for Social and Cultural Anthropology of the MLU; but they have also developed a strong internal cohesion and their own REMEP identity, which allows for participation in an academic culture of comparative and interconnected research.

² See also https://lost-research-group.org/

Retrospect

2014

Conference 'On Mediation'

After the first international conference 'On Retaliation' in 2011 (see the MPI report of 2010–2011 and comments below on REMEP activities in the year 2017), the second REMEP conference was held between 4 and 8 February 2014 at the MPI for European Legal History with a focus on the concept of mediation. Invited experts and REMEP members drew on the basic concepts of their respective disciplines in articulating theoretical and empirical approaches and presenting recent research and case studies on mediation.

One of the main aims of the conference was to encourage interdisciplinary dialogue on a subject that is intensely debated within different disciplines, often without citation across disciplinary boundaries. Overcoming such disciplinary isolationism is central to REMEP's mission. Starting from the basic problem of the complex interrelations between retaliation, punishment and mediation, conference participants explored the variety of actors, groups and conflicting parties resorting to mediation or acting as mediators in different constellations, ranging from states, central political and judicial authorities, global governance institutions and transnational organisations to nongovernmental regional actors, ethnic or religious communities, kinship groups, and local groups and diasporic, expatriate or migrant groups. Within this broad field, one specific aim was to analyse the role and function of mediation with regard to the interdependencies, overlaps, tensions and collisions between acephalous societies (characterized by the absence of a central political authority) or areas of limited governance, on one hand, and nation states and central authorities, on the other. The absence of an overarching government and of central law enforcement agencies is something acephalous tribes share with our international system, so there are similarities and differences in the logic of interaction of retaliation, mediation and punishment from one scalar position, or level, to another, from the local to the global, and from one form of governance to another, be it informal or formal.

The conference presenters discussed a variety of scenarios related to social and economic conflicts, cultural diversity and diverging normative orders, violence, crime and international conflicts. The use of mediation was examined in situations ranging from alternative dispute resolution in egalitarian societies to conflict management procedures in (post) conflict societies, which, in the various examples, were often embedded in plural normative configurations. Several presentations demonstrated the ways in which mediation can influence retaliation, punishment or formal legal procedures; or they showed how retaliation, mediation and punishment may stand in a complementary or contradictory relation to one another. In Europe, from the early modern period until today, authorities have attempted to regulate media-

tion procedures by law, or they have adopted certain aspects of mediation into legal systems. Other contributors showed that (private) parties not only resort to mediation but also use retaliation or the legal system to regulate conflicts, taking advantage of their abilities to manoeuver within or among these repertoires, especially under conditions of normative pluralism or cultural diversity.

As an outcome, the conference showed that mediation, understood both as a concept and as a practice of conflict management and dispute resolution, refers to institutional and normative hybridity as well as to plural normative configurations such as local or customary law, religious law, private or criminal law, and supranational norms. Most of the conference presentations will be published in a volume edited by Karl Härter, Carolin Hillemanns and Günther Schlee.



REMEP-members during the conference 'On Mediation' in Frankfurt. (Photo: O. Danwerth, 2014)

Summer University

A REMEP Summer University took place at the MPI in Halle from 30 June to 5 July 2014. The programme included three days of research project presentations, a day-long workshop on 'Translating between legal cultures', led by Martin Ramstedt, and two days of training in public speaking, academic writing, ethics and the anonymisation of data, and conceptual notions of brokerage and translation.

Conference 'Surviving Genocide'

In December 2014, the IMPRS REMEP hosted the international conference on 'Surviving Genocide' at the MPI for Social Anthropology in Halle. One of the coorganisers was the REMEP doctoral student Fazil Moradi. The aim of the conference was to scrutinize the internationally acknowledged ways of dealing with acts of genocide after the fact and to discuss modes of representation that transform the ways in which the survivors suffer, cope and make claims. Central questions were the limits of transitional justice mechanisms and punishment, the way mediation and reconciliation commissions reposition question about the past, and diverse forms of expression, beyond mediation and reconciliation commissions, for making the unspeakable representable.



Speaker joins the conference 'Surviving Genocide' via video. (Photo: MPI for Social Anthropology, 2014)

The invited speakers included not only social anthropologists and legal scholars engaged in genocide studies and in the anthropology of violence, law and justice but also artists and scholars from disciplines such as art history and the philosophy of art. They were asked to inquire into the representation of acts of genocide and into experiences of such acts in the arts, mass media, law and epistemology. The focus was on the translation of acts of genocide into diverse visual and verbal forms of expression. These forms of expression included poetry, painting, drawing, photography, film, music, literature, memoirs, archival records, museum displays, scholarship,

testimony, law and the discreet legal proceedings at national or international courts dealing with the aftermath of acts of genocide.

Important themes of conference papers and discussions included the following: the ramifications of globally circulating modes of representing genocide; power and gender relations; aspects of social insecurity; dominant political and historical narratives; the ambiguities and the limits of representing genocide; ways of silencing and excluding victims or witnesses of genocide (who speaks about acts of genocide and who is silenced); and memorialization. The conference demonstrated the utility of adopting an interdisciplinary approach to the topic, showing that such an approach can contribute to more comprehensive and ethical ways of understanding the complexity, the long lasting effects and the transformation of the experience or perception of acts of genocide. The conference presentations have been published in a volume edited by Fazil Moradi, Maria Six-Hohenbalken and Ralph Buchenhorst.³

Conference 'Transatlantic Dialogue on Surveillance Methods'

From 18 to 19 December 2014, the conference 'Transatlantic Dialogue on Surveillance Methods' took place at the MPI for Foreign and International Criminal Law in Freiburg. It was organised in cooperation with the Washington and Lee University School of Law. Participants discussed the developments of 'big data' analytics and its implication for law and policy. Due to the predictive capacities of this technology, based on statistical methods, those employing it pretend to give a preview of the future. 'Big data' analysis has already had an impact on governmentality and, possibly, on international human rights law, crime control and privacy.

2015

Summer University

A REMEP Summer University took place from 11 to 16 September 2015 in Bad Hersfeld, Germany. During this event, PhD students presented their progress reports and research agendas, and they discussed these among themselves and with their professors. The Summer University also featured workshops on special topics. One, entitled 'Law and Anthropology: Complementarities and Contradictions', was organised by Marie-Claire Foblets and took place with the participation of Olaf Zenker from the Free University of Berlin. A second workshop was organised by Christine Preiser, a REMEP doctoral candidate, on the topic of 'Research Ethics and Research Participants'.

³ Moradi, F., M. Six-Hohenbalken and R. Buchenhorst (eds.). 2017. *Memory and genocide: on what remains and the possibility of representation.* London: Routledge.

2016

REMEP In-Field Exchange

Report by Christian Laheij

On 4 April 2016, the Department 'Integration and Conflict' of the MPI for Social Anthropology organised a workshop in Nairobi, Kenya, for Departmental PhD students in REMEP who are conducting research on the Horn of Africa. The workshop lasted four days and was followed by a round trip to the field sites of Departmental research fellow Christian Laheij in northern Mozambique and Departmental PhD student Christian Straube on the Copperbelt in Zambia. Afterwards, all participants returned to their respective field sites to continue their research. The roundtrip is described in the report of the Department 'Integration and Conflict'. The following gives a brief overview of the meeting in Nairobi and the individual fieldwork projects discussed during that meeting. This, in turn, serves to showcase current research of REMEP students on identity, difference, integration and conflict, which are central topics in the research agenda of the Department 'Integration and Conflict'.

Meeting in Nairobi

The REMEP workshop in Nairobi was organised by Dominik Kohlhagen, who was at that time coordinator of REMEP. It took place at the research centre of the British Institute in Eastern Africa (BIEA) with a programme featuring progress reports and discussions by workshop participants, as well as academic exchange with staff and students from the BIEA. There were two opportunities for outreach and public engagement: a visit to the United Nations Campus where PhD students presented their work to researchers from the Global Land Tool Network and the Somalia and Sudan country teams of UN Habitat, and a meeting with Horn of Africa analysts of the International Crisis Group. REMEP students Faduma Abukar Mursal, Nadine Rea Intisar Adam and Mossa Hamid Wassie participated, as did Günther Schlee and Christian Laheij. Among the various themes discussed were ways of conceptualising dynamic interrelations among categories of identification, the activation of such categories in social action and the choices actors make in this regard.

The discussion of Wassie's project provides a clear example. His research focuses on group relations and conflict dynamics in the Gambella region. This region is located in southwest Ethiopia where it borders, to the east and south, the Ethiopian regional states of Oromia and Southern Region, and, to the west, Jonglei and the Upper Nile State of South Sudan. For the past century, political relations in Gambella have been structured by a conflict between Anywaa and so-called Highlanders or *Degenya*. The latter two terms refer collectively to Amhara, Kambata, Tigre and other ethnic groups from the central parts of Ethiopia. Their arrival to Gambella —

first to extract tribute and raid slaves, later as governors and tax collectors, and in the 1980s as settlers in the resettlement programme of Ethiopia's *Derg* regime – has been a source of resentment among Anywaa. The Anywaa, who regard themselves as first-comers to the region, control over 70 percent of the available land but feel politically marginalised by the country's central government. This resentment has led to protests and, at times, violence. In recent years, however, the conflict between the two groups has acquired a new dimension, as conflicts in South Sudan continue to spill across the border, and an increasing number of Nuer have sought refuge in Gambella, to the point where they now constitute the region's largest ethnic group. In previous work of the Department, Dereje Feyissa⁴ has analysed how this development has affected Anywaa-Nuer relations. Wassie asks instead what the implications are for relations of amity and enmity between Anywaa and Highlanders.





Anywaa village (left) and Highlander village (right) in Abobo. (Photos: M. Wassie, 2015 and 2016)

In his presentation in Nairobi, Wassie described the various methods he used for data collection, including participant observation in settings such as *qat* and coffee ceremonies, and during the organisation of the Ethiopian Nations, Nationalities and Peoples Day. He claimed that there is indeed a certain rapprochement between Anywaa and Highlanders, as actors of both groups realign their ethnic identifications to highlight their common features and heritage, while casting Nuer as outsiders. However, if this conclusion appears to suggest that the situation in Gambella is a classic case of two groups emphasising their commonalities and broadening their criteria for inclusion in the face of threats posed by a third group, one of Wassie's key findings was that the issue is more complicated. Anywaa and Highlanders do not constitute unified or undifferentiated categories of identification. In the case of Highlanders, their collective identity is cross-cut by inter-ethnic differences in place of origin, religion and, importantly, class. For example, landless farmers from

⁴ Feyissa, D. 2011. *Playing different games: the paradox of Anywaa and Nuer identification strategies in the Gambella Region, Ethiopia*. Oxford: Berghahn.

Central Ethiopia who were forced to resettle in Gambella by the *Derg* regime three decades ago have little in common with recently arrived businessmen coming to the region from the capital to invest in large-scale agriculture. Similarly, the establishment of the Gambella Peoples' Regional State in 1993, in the context of the new Ethiopian constitution based on ethnic federalism, has resulted in the emergence of a new Anywaa elite of state officials and government workers. Members of this elite owe their positions, at least in part, to their identifications as Anywaa; but their identification with the state simultaneously sets them apart from other Anywaa. It is at precisely at the intersection of these various categories of identification, Wassie demonstrates, that cooperation and competition between Anywaa and Highlanders takes shape. His work thus cautions us against taking collective identities for granted, and calls attention to the strategies people employ in bringing different aspects of their identities to the fore.

Identifications with the state also featured centrally in Abukar Mursal's presentation. But whereas Wassie's project is primarily concerned with what, following Glick-Schiller⁵, could be called "pathways of incorporation", Abukar Mursal's work addresses more explicitly questions regarding the costs and benefits⁶ and affects involved in identification processes. Her research is set in Mogadishu, Somalia, where she studies local understandings and processes of state formation, with shorter fieldwork periods in Baidabo, Adabo, Kismayo and Hargeysa for reasons of comparison. Ever since the Somali president, Mohamed Siad Barre, was deposed and civil war broke out in 1991, Somalia has been considered, both in the social science literature and in policy discourses, a paradigmatic case of state collapse. Such perceptions were reinforced in the first decade of the 2000s when consecutive interim administrations failed to impose themselves on the country. The establishment of a central government in 2012 has since brought a modicum of stability, at least to Mogadishu where reconstruction efforts are presently in full swing. But, as evinced by frequent attacks, the balance remains precarious, and Abukar Mursal asks how, in this context, people negotiate their relationships with the state.

During the workshop, Abukar Mursal explained her choice to concentrate her research on businesspeople and their role in Somalia's state formation process. Studying their interactions with state institutions in the domains of security provision, taxation and employment allows her, she argued, to explore tensions between state

⁵ Glick-Schiller, N. 1990. "Everywhere we go, we are in danger": Ti Manno and the emergence of a Haitian transnational identity. *American Ethnologist* 17(2): 329–347. See also Glick-Schiller, N., A. Çağlar and T. C. Guldbrandsen. 2006. Beyond the ethnic lens: locality, globality, and born-again incorporation. *American Ethnologist* 33(4): 612–633.

⁶ Schlee, G. 2004. Taking sides and constructing identities: reflections on conflict theory. *Journal of the Royal Anthropological Institute* 10(1): 135–156.

images and state practices⁷. Abukar Mursal thereby uncovered a seeming paradox: while businesspeople working in settings as diverse as public markets and the Port of Mogadishu aspire to the state and are keen to see it succeed, they simultaneously oppose and feel hostile towards many of its instantiations and forms. Navigating such feelings of ambivalence is an everyday challenge for her interlocutors which can have serious consequences: one of Abukar Mursal's case studies describes the roll-out of an official decree instructing market vendors to display government flags on their store fronts, which, however, the vendors thought could put them in Al-Shabaab's line of fire. Intriguingly, it emerged from her research that religion provides one of the key arenas in which people negotiate and contest their commitments. For instance, Abukar Mursal accompanied shop owners to gatherings of Sufi Brotherhoods where they, in petitioning God for a better government, expressed their support for the state. This finding is important, because there is a tendency in research on Somalia to treat religious identifications and identifications with the state as mutually exclusive, as the former are attributed solely to followers of insurgency movements such as Al-Shabaab. Just as Wassie found in the case of Ethiopia, the situation in Somalia turns out to be more complicated in Abukar Mursal's analysis: relations between categories of identification are not fixed, but subject to realignment, reframing and reinterpretation, depending on people's situations, circumstances and motives8.

Adam was the third PhD student to present her work at the REMEP workshop in Nairobi. While the other two projects focus on *categories* of identification and their interrelations, hers foregrounds *modes* of identification, or the ways in which people engage with collective identities and the supporting ideologies. Conducting fieldwork in the Sudanese capital of Khartoum, the town of El Obeid in North Kordofan, and among Sudanese artists in Nairobi, Kenya, she studies art and its role in portraying, maintaining, questioning, and criticising the existing social and political order. Sudan has a rich history of socially engaged art. For example, in Dafur, poetry and music have long been used by female singers such as the Hakamat to transmit local values, influence judicial proceedings, and extol virtues of bravery and honour in conflict situations.⁹ And, in the capital, the 1960s saw the establishment of the modernist art

⁷ See Migdal, J. S. 1988. *Strong societies and weak states: state-society relations and state capabilities in the Third World.* Princeton: Princeton University Press. See also Migdal, J. S. and K. Schlichte. 2005. Rethinking the state. In: K. Schlichte (ed.). *The dynamics of states: the formation and crises of state domination.* Aldershot: Ashgate, pp. 1–40. And see also Thelen, T., L. Vetters, and K. von Benda-Beckmann. 2014. Introduction to stategraphy: toward a relational approach to the anthropology of the state. *Social Analysis* (58)3: 1–19.

⁸ See Eidson, J. R., D. Feyissa, V. Fuest, M. V. Hoehne, B. Nieswand, G. Schlee and O. Zenker. 2017. From identification to framing and alignment: a new approach to the comparative analysis of collective identities. *Current Anthropology* 58(3). See also Schlee, G. 1989. *Identities on the move: clanship and pastoralism in northern Kenya*. Manchester: Manchester University Press.

⁹ Adam, N. R. I. 2016. Hakamat and peacebuilding 2004–2012. Égypte/*Monde Arabe* 14. Accessed via: https://ema.revues.org/3595 (21 February 2017).



Candy shop in Bakaara Market, Mogadishu. (Photo: F. Abukar Mursal, 2016)

movement called the Khartoum School, which sought to buttress Sudan's distinctive identity as a newly independent nation by developing a new visual vocabulary. But since the installation of Omar al-Bashir's Islamist regime in 1989, and with the government's suppression of civil society and on-going ethnic conflict and violence across the country, artists' room for expression has become severely restricted. It has been further limited by the recent downturn of Sudan's economy, which has reduced support for the arts, among other things, and led many Sudanese youth to migrate abroad in search of employment and a better life.

In her presentation in Nairobi, Adam analysed how artists work in this environment, and whether their engagement with the Sudanese state and society at large have been transformed as a result. Based on interviews, visits to exhibitions, and observations and video analysis of how youth theatre groups raise awareness and invite debate through performances (for example, about what it means to be male or female, or about everyday occurrences of harassment), she found that artists' coping strategies vary. Some Sudanese artists seem to have come to reject social and political involvement altogether, producing art 'for its own sake'. Others have reoriented themselves away from critically engaging with socio-political topics and the Sudanese nation state, catering to the tastes and preferences of international organisations and the capital's expatriot community. Adam observed that one factor structuring artists' choices in this regard is the specificity of their art form. Not every form of art lends itself equally well to the expression of social critique in the Suda-

nese context, with painters, for example, being less critical than practitioners of the performing arts. She relates this observation to the aforementioned history of Sudanese art, and the historical pre-eminence of poetry and music as media of social commentary. Her conclusion attests to the need for contextualisation. As has also been suggested by Donahoe and colleagues¹⁰, historical trajectories place limits on the variability of collective identities and people's attempts to redefine these.



An open-air art gallery in Khartoum. (Photo: N. Adam, 2016)

Workshops and Soft Skills

In late 2016, there were several small meetings of the PhD students of the MPI for Social Anthropology in Halle to discuss their writing and to help them make sense of their first ideas after returning from fieldwork. These meetings included a practical workshop on "Using Zotero", held by Timm Sureau, who became the new general coordinator of REMEP in September 2016.

¹⁰ Donahoe, B., J. Eidson, D. Feyissa, V. Fuest, M. V. Hoehne, B. Nieswand, G. Schlee and O. Zenker. 2009. *The formation and mobilization of collective identities in situations of conflict and integration.* Max Planck Institute for Social Anthropology Working Papers 116. Halle/Saale: Max Planck Institute for Social Anthropology.

2017

In early 2017, there was a meeting of REMEP participants from the MPI for Social Anthropology and the MLU Institute for Social and Cultural Anthropology in order to discuss the upcoming conference on punishment. During the Winter University in Neudietendorf in February 2017, there was a second meeting, during which PhD candidates and participants from all institutes were invited to provide input. This input is summarized in a special section with the subheading 'Prospects' below.

Winter University - Neudietendorf

The Winter University in Neudietendorf showed how the different projects of the PhD candidates interact with each other. Despite having different backgrounds and different research sites and topics, all of the graduate students address questions of the establishment, re-establishment, maintenance and alteration of social order. This common concern provided the basis for fruitful discussions during the Winter University. The main aim of this event was to reunite the students of the different MPIs, who had not met since 2015 (because REMEP lacked a coordinator during a transitional period).



Participants at the Winter University in Neudietendorf. (Photo: REMEP, 2017)

After a brief introduction by Timm Sureau, the first presentation by Veronika Claassen provided insight into another aspect of 'Retaliation, Mediation and Punishment': the cessation of punishment for actions that had previously been classified as offenses. Referring to her research on the recent partial legalisation of cannabis in Uruguay, Claassen explained that the legislation was intended to impede the drug cartels whose main income was generated by drug trafficking – especially, by the cannabis trade. By putting an end to the punishment and persecution of the production, possession and use of limited amounts of cannabis under specified conditions. the government partially undermined the drug trade and was able to help restore or stabilise social order – and also to increase tax revenues. In her presentation, Claassen described the slowly evolving process of growing legal, controlled cannabis and the societal changes it entails. Her main point was, however, that the state has stopped punishing people for growing and consuming cannabis, because punishment was ineffective and rarely had a positive effect on the people concerned. This conscious choice of the legislature to decriminalise cannabis is a clear example of the diverse possibilities of creating social order through punishment – or through abstaining from it.

In contrast to Claassen's presentation, that of Ester Earbin focused on the criminalization of violations of copyright law in Germany and the United States – i.e., the intended augmentation of punishment for a given offense. As Earbin explained, the so-called 'Copyright Wars' between the media-producing industry and Internet users who engage in streaming or copying music and films provides an example of companies that are trying to push the government to increase punishment. In an intermediate step, the government has taken conflicts that used to fall under public or civil law and re-assigned them to criminal law. Under the influence of ideologically motivated economic theories ('trickle down'), actors such as the Motion Picture Association of America have convinced American politicians that the criminalisation of copyright infringements is in the interest not only of the motion picture industry but also of the people the government is serving. This debate, as the catchy term "Copyright Wars" suggests, was highly mediatised.

The mediatisation of criminal law is an old phenomenon, as Raquel Sirotti could show with reference to preliminary data from her study of the relationship between courts, crimes, authorities, newspapers, and criminal law during the Brazilian First Republic (1889–1930). In the late nineteenth and early twentieth century, Brazil underwent fast and violent processes of institutional 'modernisation', which might more accurately be described as a process of *Staatswerdung* in the Weberian sense: becoming a state through the imposition of the kinds of rules that were originally imposed on people in Europe and that spread around the world during the colonial era.

With reference to yet another process that can be subsumed under the heading 'modernisation' or *Staatswerdung*, Mossa Wassie too reminded us that modernisation is a process that has to do not with modernity but with a certain idea of social order. During the Derg regime in Ethiopia (1974–1987), so-called Highlanders

from northern and central parts of the country were resettled in the south. In the process, a statist logic, which included cadastral maps and clear land boundaries, was imposed upon southern pastoralist-horticulturalists. With the establishment of clear boundaries, which were, formerly, less common, this policy increased local tensions and caused conflict.

Additionally, the Ethiopian government has subjected local populations of southern Ethiopia to forced villagisation, which is a typical colonial tool that paves the way for land grabbing. After being settled in villages, the locals no longer inhabit the land; hence, the land becomes state property that can be sold. In recent years, the government of Ethiopia has sold 300,000 hectares of land to foreign investors engaging in commercial agriculture. As in the case of the criminalisation of copyright infringement in the U.S., the government justifies its policies with reference to a 'trickle-down' effect that will supposedly benefit the whole region.

The question of whether or not government policies are actually legal was the topic of Jorge Cabrera. He explored the limits of the legislative branch of government, showing that there is no simple correspondence between criminal law and administrative acts, which, after all, may be defective. Even when legislative decisions and the corresponding laws are quite clear, Cabrera explained, administrative acts may still diverge from legal strictures.

Acts of the administration may create tensions that cannot be easily resolved. Underlying this tension is the simple but fundamental question: "Whose justice?" - a question also raised by Bertram Turner in the discussion of Mossa Wassie's presentation. Answers to this question may be prejudiced by selecting particular terms in discourses on justice with regard to land rights. Terms such as 'African', 'first comers and late comers', 'indigeneity', 'humanitarian' and 'bread basket' may be used by various actors in particular situations to support local land rights, to take into account the rising population or to promote the economic interests of elites. All participants of the Winter University looked at the margins of social order – at places where social order is not taken for granted and is even contested. This served to emphasize the fact that social order, like retaliation, mediation and punishment, is a boundary concept that may be 'loaded' in variable ways by different disciplines. However, such understandings of boundary concepts' overlap to a significant degree, so that social scientists can agree that they correspond to underlying social phenomena. On the second to last day of the Winter University, Laila Scheuch and Raquel Sirotti organised a workshop on social order in which participants addressed the question of what social order is and how it can be analysed.

The concept of social order was also at the core of a presentation by Nina Glick-Schiller, a guest of the conference. With reference to her research on migration, she questioned the term 'social order', and asked whether a 'society' as such exists, and whether the terms 'social order', 'society' and 'nation state' are not part of hegemonic discourses that make us think in certain ways. Questioning some aspects of the above-mentioned REMEP-studies, she suggested that reliance on the notion of



Nina Glick-Schiller during the Winter University in Neudietendorf. (Photo: I. Eulenberger, 2017)

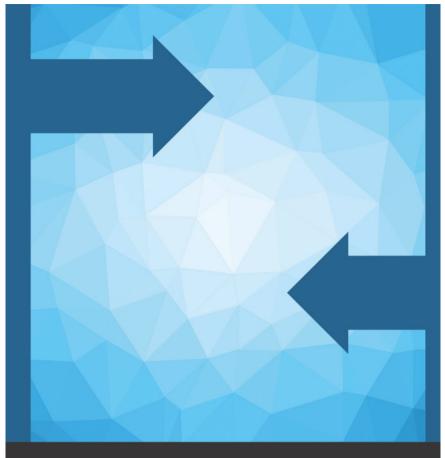
national boundaries amounts to the adoption of a hegemonic discourse in the very foundation of one's research. While, for practical reasons, it may be possible to transcend such boundaries only in particular situations, regrettably, the constraints of research within national boundaries conflates social science analyses with national thinking. She suggested instead a form of conjunctural analysis, i.e., an approach that transcends the idea of a national social order by taking into account the multiplicity of forces, tendencies and emergent developments at play in any given situation.

Introductory Courses

In March and April 2017, the new PhD candidates from all three MPIs attended introductory courses in Halle, Freiburg and Frankfurt. In this way, they learned about the different ways of working, thinking and teaching at each of the MPIs participating in REMEP.

The Publication On Retaliation

During the Winter University, Turner announced that the volume with chapters originating in presentations at the conference 'On retaliation' would soon appear. The volume was published by Berghahn Books in April 2017.



ON RETALIATION

EDITED BY
BERTRAM TURNER & GÜNTHER SCHLEE

TOWARDS AN INTERDISCIPLINARY
UNDERSTANDING OF A
BASIC HUMAN CONDITION

VOLUME 15 – INTEGRATION AND CONFLICT STUDIES

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ON RETALIATION

TOWARDS AN INTERDISCIPLINARY UNDERSTANDING OF A BASIC HUMAN CONDITION

EDITED BY BERTRAM TURNER AND GÜNTHER SCHLEE

On Retaliation is impressive, exciting and full of insight. It will be a valuable and widely referred to contribution to academic scholarship and to policy formation in an extremely critical area of national and global concern.

Andrew Arno, University of Hawai'i

Retaliation is associated with all forms of social and political organization, and retaliatory logics inform many different conflict resolution procedures from consensual settlement to compensation to violent escalations. This book derives a concept of retaliation from the overall notion of reciprocity, defining retaliation as the human disposition to strive for a reactive balancing of conflicts and injustices. *On Retaliation* presents a synthesized approach to both the violence-generating and violence-avoiding potentials of retaliation. Contributors to this volume touch upon the interaction between retaliation and violence, the state's monopoly on legitimate punishment and the factors of socio-political frameworks, religious interpretations and economic processes.

Bertram Turner is an anthropologist and a senior researcher in the Department of Law and Anthropology at the Max Planck Institute for Social Anthropology in Halle, Germany. He has conducted extended field research in the Middle East and North Africa, Germany and Canada and has held university teaching positions in Munich, Leipzig and Halle and has published widely on the anthropology of law, religion, conflict, morality, development and resource extraction.

Günther Schlee is one of the Founding Directors of the Max Planck Institute for Social Anthropology in Halle, Germany. He conducted fieldwork in Kenya, Ethiopia and Sudan, and was a guest lecturer in Padang (Sumatra) and at the Ecole des Hautes Etudes en Science Sociales in Paris. Currently, he is one of the spokespersons of the International Max Planck Research School on Retaliation, Mediation and Punishment.

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Prospects for 2017 and 2018

Several events are planned for late 2017 and 2018. In this section, two of them will be presented.

REMEP-Blog by Students

The idea to establish a REMEP blog was first articulated in 2016, and further plans were made at the Winter University in 2017. Hopefully, by the time this report is published, the REMEP blog will be up and running. The plan is to establish an editing team, to adopt measures to assure the regular release of texts, and to subject entries to (non-blind) peer review by REMEP-students.

Preparations for the Conference 'On Punishment' (2018)

Timm Sureau with Lucia Fröbel and Sirin Knecht

Cruel as it may seem, the year 2017 is dedicated to preparing 'Punishment' – the last major REMEP conference, following 'On Retaliation' in 2011 and 'On Mediation' in 2014. The conference 'On Punishment' is planned for early 2018. Preparatory meetings with the REMEP faculty, coordinator and students – who will also help to set up of the conference – have already been held in Halle and Freiburg, and an organisational meeting took place during the Winter University in Neudietendorf as well. Below, some of the concepts and approaches than have been suggested for this conference are sketched briefly.

Penal Populism

Lucia Fröbel (formerly Facchini), a REMEP PhD candidate in the Department 'Law and Anthropology' at the MPI for Social Anthropology, uses the term penal populism in her analysis on international migration in Italy. The idea of penal populism, which originated in the Anglo-Saxon world in the late 1980s, turns the idea of the 'rule of law' on its head. First, it posits the weakening of foundational guarantees of the certainty, accessibility and applicability of the law and, thus, of the equality of everyone before the law. Second, it designates the tendency to emphasise not prevention (e.g., in the form of social programs) but repression. Third, penal populism refers to the redirection of the proportionality of punishment toward harsher penalties for juvenile and poverty-driven offences and toward the mitigation of sanctions against white-collar crimes.

Penal populism might lead to putative 'preventive policies' directed against minority groups, since its main objective is often political success among those who consider themselves to comprise the middle-class electorate. Insofar as those who

support penal populism are lenient with respect to certain kinds of 'upper-class' violations and aggressive toward targeted social groups or communities, the notion that "law and order [becomes] the cry of people who want to commit violence against others" seems to be confirmed.¹¹

Initially, the concept of penal populism was used by social scientists and criminologists to evaluate dynamics that characterise the evolution of penal codes and policies in Western societies. Fröbel uses this concept, in her analysis of a housing conflict in an industrial community, that is, she applies it to an extra-judicial context, showing, as Pratt and Miao put it, how penal populism is "flowing much deeper into mainstream society". ¹² In the conference 'On Punishment', the concept of penal populism might be used to analyse the following interconnected processes:

- a tendency toward the increasing discretionality of law, depending on the perceived characteristics of people residing in local administrative areas, which in turn leads to policies that deny the personal responsibility of individuals and mete out punishment based on territoriality. Thus, being punished can become a matter of living in the 'wrong' place.
- recurrence of spectacular measures such as raids by special forces among certain parts of the population
- a general loss of trust in 'experts' such as politicians and academics, caused, apparently, by the reluctance of local councils to discuss their strategies with citizens and by the ineffectiveness of academic engagement, which comes too late to be useful in the eyes of the people affected
- a tendency for discourses of crime to be based increasingly on perceptions of identity and difference, with all parties in conflicts self-fashioning themselves as victims. One becomes a victim through the fault "of wicked or irresponsible 'others'." ¹³ Stylising oneself as a victim not only 'immunises' one from suspicion of guilt but also serves to label those with whom one competes for welfare benefits as offenders. The perceived advantages, beyond the already mentioned impunity, consist in financial and symbolic compensation. ¹⁴ When those who compete forwelfare benefits employ such 'zero sum' strategies, mediation is removed or at least rendered ineffective as an option in conflict resolution.

The concept of penal populism might, therefore, play an important role in the planned conference 'On Punishment', since it helps to explain current (and past) developments in legislation and public administration.

¹¹ Pratt, J. 2007. *Penal populism: key ideas in criminology*. London, New York: Routledge, Taylor & Francis Group, p. 24.

¹² Pratt, J. and M. Miao. 2017. *Penal populism: the end of reason*. The Chinese University of Hong Kong Faculty of Law Research Paper No. 2017–02, https://ssrn.com/abstract=2903819, p.24.

¹³ Pratt, J. 2007. Penal populism: key ideas in criminology. London, New York: Routledge, Taylor & Francis Group, p. 137.

¹⁴ Giglioli, D. 2014. Critica della vittima: un esperimento con l'etica. Figure. Roma: Nottetempo.

A Gender and Feminist Perspective

During the Winter University, Sirin Knecht, another PhD student in the Department 'Law and Anthropology' at the MPI for Social Anthropology, presented her project on women's rights campaigns in Lebanon. Recently, a Lebanese NGO focusing on gender equality has been leading a campaign to abolish an article from the penal code that allows a rapist to avoid prosecution if he subsequently marries the victim.

When the proposal to abolish the article in question was presented to the Lebanese parliament by one of its members, it was referred for evaluation and discussion to the Justice and Administrative Committee. Besides lobbying among political parties and members of parliament for abolition of the article, NGO workers raised awareness through various public activities and surveys. The cause has gained attention in international, regional and national media and sparked public debate. After months of lobbying and advocacy by activists in the women's rights campaign, the amended bill passed in the parliamentary committee and, as of this writing, is set to be discussed in parliament.

In her research, Knecht focuses on the civil society actors who opposed the article and who thus advocated, however indirectly, the use of punishment as a way of maintaining or regaining social order.



Poster for an ongoing campaign in Beirut against child marriage. Activists advocate women's rights and the protection of children, specifically, raising the minimum age of a woman at marriage to 18 – a law that should apply to all recognized religious groups in Lebanon. (Photo: S. Knecht, 2016)

Generally, Knecht suggests taking into consideration the positions, ideas and approaches of 'Islamic feminism'. This, she argues, would help to adjust analysis of mediation, punishment and interventions (whether by local, national or international actors) to the religious diversity, conflict and post-conflict situations that characterise her field site. Islamic feminism is concerned not only with gender-related issues but also with general social change and with the ways in which public and private discourses and interventions shape and legitimate norms of social order and punishment.

In the discussion regarding the conference 'On Punishment', Knecht suggested that we could address how and to what extent civil society actors, community groups and informal networks can influence policies as well as (international) development aid, humanitarian programs and laws. She and others emphasised the relevance of transnationalism, civil society, elite formation and transnational justice for the analysis of local social orders and punishment.

Social Analysis of Punishment

Anthropologists approach punishment, mainly, by analysing all social relations and actors involved in the corresponding processes: the judge(s), the perpetrators, the victims, and the audience, including of course the media audience. The existence of an audience increases the likelihood of symbolic actions, wherein the proportionality of punishment is disregarded in favour of envisaged public consequences and their relevance to questions of power. The REMEP students Kaleb Tadele Kassa and Ameyu Godesso Roro provided vivid examples from Ethiopia, where the courts spared perpetrators who were high-ranking officials, finding surrogates to be punished instead, in order to demonstrate the state's legal capabilities. The purpose of punishing people who did not participate in a violent crime was to demonstrate the strength of the judicial system by reacting to and punishing violence. This proxy or replacement punishment allowed the courts to protect powerful actors who participated in the crime. It addressed a media audience that followed the rulings from afar and learned that someone was found guilty and would be punished. This supported the legitimacy of the state and portrayed the legal system as functional. Simultaneously, however, it creates disorder locally by pushing people who see their relatives being subjected to injustice to oppose the government, either within the legal framework or outside of it. In extreme cases such proxy punishments, or surrogate punishments, force people into armed rebellion. In cases such as those discussed by Ameyu Godesso Roro and Kaleb Tadele Kassa, in which one must distinguish between the perpetrators and the punished, a fifth kind of actor must be added to those listed above, so that the relevant categories include the judge, the perpetrator, the victim, the audience, and the punished. This is a game of power, as Ameyu Godesso Roro concluded, where legitimacy is produced through show-trials after the occurrence of violence and where not the perpetrator but someone who is been presented to the media as a perpetrator is convicted.

Theory, Legitimacy and History of Punishment

Filip Vojta suggested that we concentrate on theories on punishment and on the underlying semantics of punishment. In accord with other insights that were expressed during the Winter University, he advocated developing an analytical framework that encompasses micro, local, national, international and global influences — especially the challenges that emerge with the interaction of these levels.

As REMEP-participants have shown again and again, such challenges can be observed especially at the fringes of normativities. In such interstitial zones, legitimation is subject to intense scrutiny – for example, in the case of juvenile justice or justice with regard to long-term soldiers who were initially recruited as child soldiers and who, therefore, do not fit into the framework of criminal responsibility. Secular, religious, cultural and human rights discourses interact in such case and require a distinction among different types of criminality, e.g., individual and collective. Furthermore, these cases at the fringes of normativities call for alternatives to punishment, such as restorative justice.

In his case study of the trials that followed the wars during the dissolution of Yugoslavia, Vojta looked at practices of the imprisonment of perpetrators, who in some cases experienced privileged forms of incarceration in Sweden and even served their sentences in non-confinement. By shifting venues of persecution from local to UN-courts or the International Criminal Court, the accused managed to improve their situation during punishment. As some argued during the preparatory meeting for the conference 'On Punishment', this technique of venue shifting is also used by perpetrators in Islamic settings who evade punishment in this world by volunteering to submit to divine punishment in the next world. Evasion of punishment through discursive tricks, and reducing the severity of punishment through venue shifting, could, thus, serve as the focus for one part of the conference.

Günther Schlee reminded us that some very basic philosophical questions, which have been on the table for centuries, can hardly be avoided when discussing punishment. One of these is the question of free will. The more we know or believe we know about what shapes our behaviour, the more problematic the notion of free will becomes. If what we do is attributed to God, early socialization, our genes, or the morphology or physiology of our frontal cortex, we can externalize guilt to any of these agents. What remains of the 'self' after externalizing guilt to agencies beyond our control is another fundamental question, as is the question of who is to be punished for what, if wrongdoings cannot really be attributed to an actor endowed with personhood and free will. For some people, the consequence of such considerations is the replacement of punishment by therapy.

Another such fundamental question concerns the effects of morality, defined as 'soft' norms that are not armoured with sanctions. One may argue that the effects of relying exclusively on morality are deeply immoral, because whoever breaks a norm first has an advantage. To avoid this effect, the advantages that norm break-

ers, or 'free riders', have need to be compensated by disadvantages in the form of punishment or sanctions in forms ranging from raised eyebrows to life imprisonment or the death penalty. This is a standard argument in favour of punishment. While this is clear in principle, the turning point where these sanctions outweigh the gains made by violating a norm may be difficult to determine. The effects of punishment are difficult to gauge as well, as they may lead to 'reform' and reintegration or to stigmatization and exclusion. The relationship between the stated aims of punishment (deterrence, resocialization) and its actual effects seems to be unclear, but this is true for law in general. Legislators tend to believe that the effects of the laws they make reflect their intentions, and they rarely order actual measurement of these effects.

Interdisciplinary Approaches

In preparatory discussions for the conference 'On Punishment', there was broad agreement to include representatives of further fields of science. Some suggested including neuroscientists who work on understanding the relation between the brain and behaviour. Other possible participants might include evolutionary anthropologists working on the evolutionary effects of punishment. Political economists might contribute analyses of the costs and benefits of private prisons and home-confinement technologies. Last but not least, several participants suggested including a session on the evaluation of punishment and its actual, often unintended consequences.

Given this wealth of ideas, REMEP members are looking forward to the conference 'On Punishment' in 2018

Publications

This list also includes publications based on research done while at the MPI although the researchers are no longer with the Institute.

International Max Planck Research School on Retaliation, Mediation and Punishment (IMPRS REMEP)

Edited Volumes and Special Issues

Rottenburg, Richard, Sally Engle Merry, Sung-Joon Park and **Johanna Mugler** (eds.). 2015. *A world of indicators: the making of governmental knowledge through quantification*. Cambridge Studies in Law and Society. Cambridge: Cambridge University Press.

Chapters in Edited Volumes

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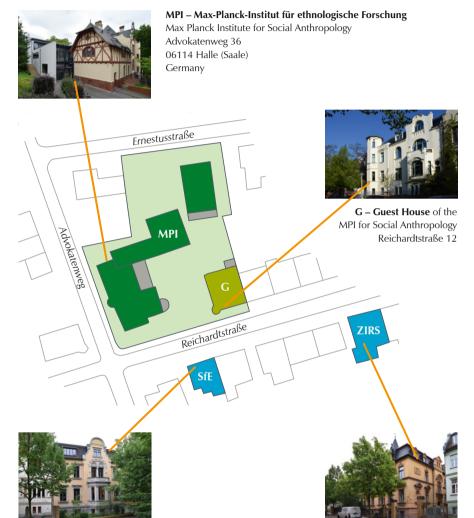
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Location of the Institute



SfE – Seminar für Ethnologie Institute for Social and Cultural Anthropology Martin Luther University Halle-Wittenberg Reichardtstraße 11

ZIRS – Zentrum für Interdisziplinäre Regionalstudien Centre for Interdisciplinary Area Studies Martin Luther University Halle-Wittenberg Reichardtstraße 6