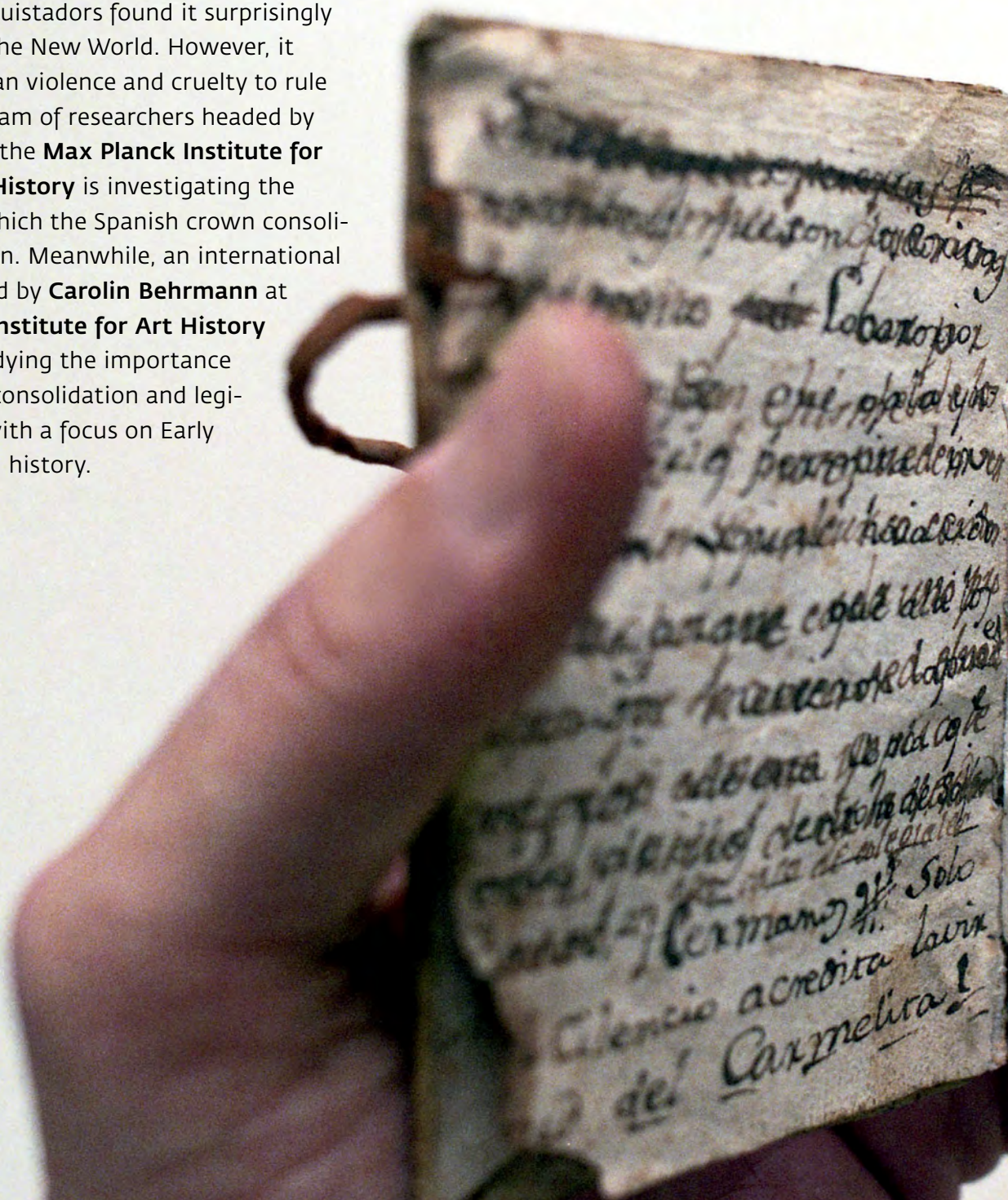


Ruling by the Book and the Cross

The Spanish Conquistadors found it surprisingly easy to conquer the New World. However, it required more than violence and cruelty to rule the territory. A team of researchers headed by **Thomas Duve** at the **Max Planck Institute for European Legal History** is investigating the media through which the Spanish crown consolidated its dominion. Meanwhile, an international research group led by **Carolin Behrmann** at the **Max Planck Institute for Art History** in Florence is studying the importance of images in the consolidation and legitimization of law with a focus on Early Modern European history.

Handy and practical:
Handbooks such as this
prayer book helped
priests and friars bring
Christianity to the New
World and, at the same
time, establish the new
system of law.



TEXT **MICHAELA HUTTERER**

The year is 1552, and Portuguese printer João de Barreira is lifting the leaves of a book from his printing press in Coimbra. One thousand pages in easily handled octavo, which he will later bind in modest goatskin. The first page proclaims it to be a “Manual de Confessores y Penitentes.” The author of this Manual for Confessors and Penitents was Martín de Azpilcueta, one of the leading canon lawyers and moral theologians of the age. Azpilcueta, or Dr. Navarro, as he is known on account of his origins, was a man of clarity and learning, an adherent of late scholasticism, member of the highly respected school of Salamanca and a recognized authority throughout Europe. Over 50 of his works are concerned with Catholic canon law, moral theology, criminal law and economic theories – large-format books for academic use.

What moved this professor of canon law to disseminate his knowledge for practical use, and in paperback format at that? Could he have had any idea that this very work would become one of the most important sources of advice on day-to-day legal matters – in Spain and across the Atlantic, in the New World?

BESTSELLER IN THE NEW WORLD

"Few if any books in the second half of the 16th century were printed, translated and compiled more often than Azpilcueta's handbook for confessors," says Thomas Duve, Director at the Max Planck Institute for European Legal History in Frankfurt. "And few, if any, were more widely disseminated in the New

» The clerics in the New World were skilled at integrating indigenous beliefs and contexts into the Catholic faith.



David Rex Galindo, Otto Danwerth, Manuela Bragagnolo and project leader Thomas Duve (from left) are investigating the role of simple clerics in consolidating Spanish dominion in Central and South America.

World.” In other words, it was a best-seller. Duve’s team, comprising Manuela Bragagnolo, Otto Danwerth and David Rex Galindo, have so far found more than 80 editions in archives and libraries in South and Central America and in Europe. Working in cooperation with a collaborative research center in Frankfurt, the scientists are focused on the issue of how, after the conquest, the Spanish crown managed to instruct its overseas subjects to adhere to European norms. How did they impose the law in their area of occupation? Which legal sources and which media were material in implementing codes of conduct in this way?

Investigations into the production, ownership and circulation of books show that scribes, officials, priests and bishops preferred to consult slim compendia rather than wordy volumes. In

the New World monasteries and offices of the 16th and 17th centuries, the few official legislative texts were far outnumbered by summaries, commentaries, breviaries and so-called epitomes: excerpts from important works of moral theology and canon law were often compressed into tabular form.

For Thomas Duve’s group, these “pragmatic” texts and the approaches of the pragmatici, or semi-scholars, that were based on them are particularly exciting. “As legal historians, we are keen to understand how a relatively small group of invaders was able to dominate broad areas with highly developed populations – quite apart from how we would view such activities from today’s perspective. To do this, we must consider all kinds of evidence that can give us insights into day-to-day life and its legal problems,”

says Duve, explaining his research approach. He is reconstructing the means by which a new normative order was able to develop. The team is interested not just in the sophisticated literature of law, but also in works to which little value has generally been attached in traditional legal history research. Works that become accessible as important sources only with the aid of import documents, inventories of book owners and library lists. These records date from the time shortly after the eminently infamous conquistadors Hernán Cortés and Francisco Pizarro had overthrown the empires of the Aztecs and Incas. The former centers of power were destroyed and Spanish cities and settlements built upon their ruined walls. In 1573, King Philip II of Spain issued what amounted to an urbanization program entitled “*Ordenanzas de descubrimiento, nueva población y pacificación de las Indias*”. By this time there were already 250 towns and cities in existence. It was the rural areas that presented difficulties. How did a common code of conduct, adhered to by both settlers and indigenous people, come to be established in border areas, where there were few, if any, official guardians of law and order?

“The Church was of decisive importance,” explains legal historian Thomas Duve. It provided support for administrators and founded monasteries, churches and schools. Between 1511 and 1620, more than 30 dioceses were established. Without this support, the colonization process based on violence and force of law could not have survived. The number of clerics who journeyed to America in the 16th century, some 5,400, far exceeded the total of royal administrators.

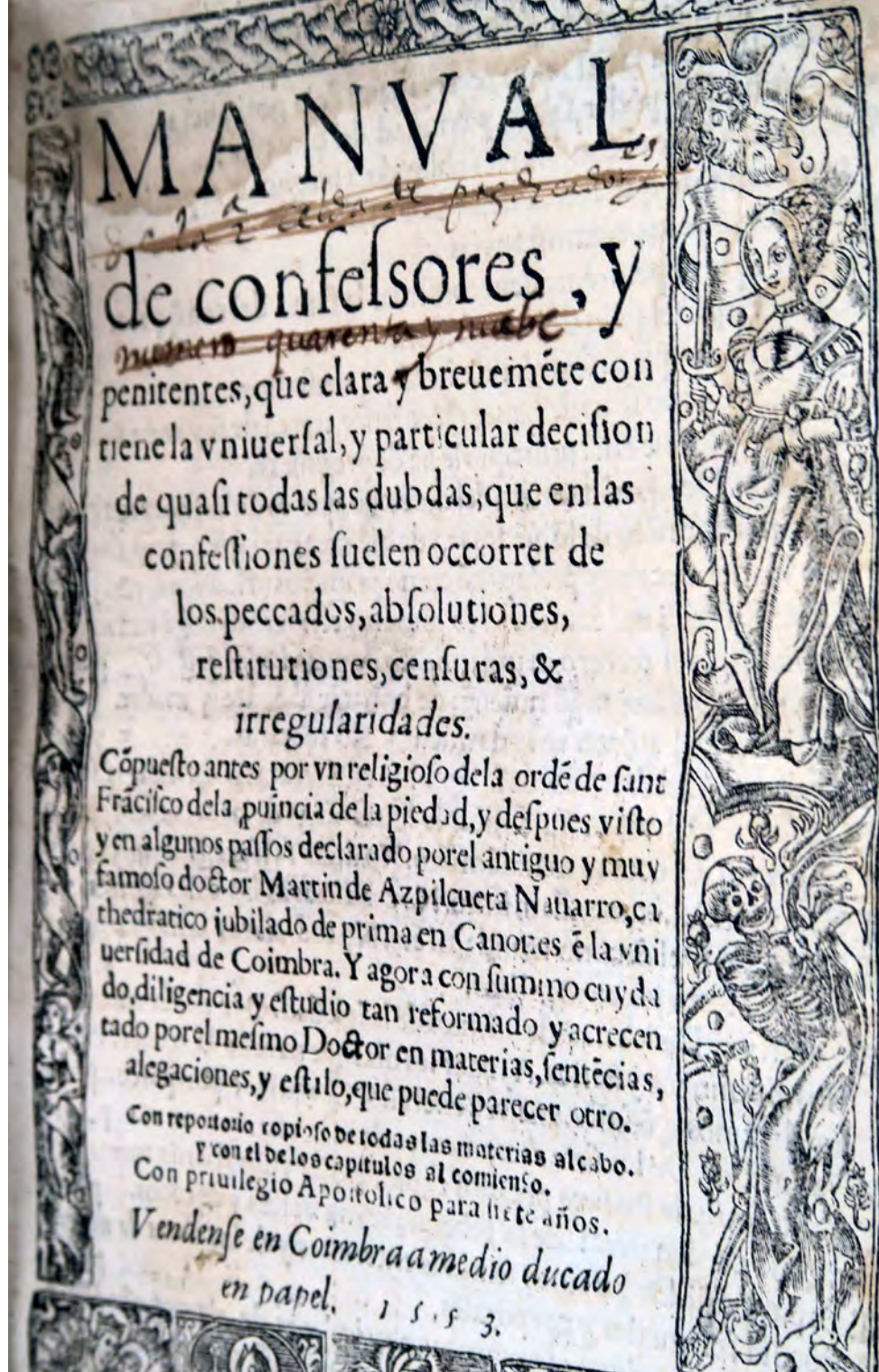
It was Franciscans, Dominicans and Jesuits who studied the regions and their people, learned the indigenous languages and thereby established the

Catholic faith with its values and rules of conduct. They transmitted the basic principles of coexistence – in the name of the Lord and on behalf of the king. According to a commentary on the “Siete Partidas,” the most important piece of legislation issued by the Spanish crown, the bishops were, under certain circumstances, permitted to dispense justice on worldly matters. “Citing the norms of the papal church of the middle ages, church representatives claimed jurisdiction over the indigenous population, who came under their protection in the same way as widows, orphans, the poor and the sick,” explains Duve.

RULES FOR PRICING AND FINANCIAL TRANSACTIONS

Clerics made the law – not just in provincial councils, but also through their booklets and manuals. “We suppose that this type of normative literature of theological provenance will have contributed decisively to the establishment of the structures of colonial dominance and the associated normative order and the constitution of spheres of law,” says Duve. In this way, a sphere of law arose in the New World that was based on Catholic Christian values and Old World values, and that refined them and quickly brought forth proper normative sources.

This may explain why Azpilcueta’s little handbook for confession was so popular. Ever in search of pragmatic literature, Otto Danwerth has made a detailed analysis: “It includes many topics that one would not expect in such a work.” There are norms covering various types of contract and reasonable prices. In his chapter on the 7th Commandment, “Thou shalt not steal,” Azpilcueta discusses questions of taxation and usury. Also aspects of marital, family and inheritance law can be found in the manual.



Bestseller: The Manual for Confessors and Penitents written by Martín de Azpilcueta, an influential 16th century expert on canon law, was one of the most important sources of advice on day-to-day legal matters.

Azpilcueta’s strength lies in his ability to explain complex legal contexts in a simple, true-to-life manner. “Clearly structured and in understandable terms, he offered solutions to the acute problems of economic life and financial transactions in the New World – such as emerged after the discovery of important silver mines in Zacatecas in Mexico and Potosí in Upper Peru,”

Danwerth explains. No wonder that many colonial representatives, from scribes to senior officials and from simple missionaries to bishops soon kept a copy on their shelves. In fact, Azpilcueta himself never set foot in America. But he gathered reports on the Spanish and Portuguese colonies from his students, acquaintances and his missionary nephew. >



Azpilcueta, however, wasn't the only one who knew how to pen comprehensible texts. Many writings, tracts and manuscripts appeared at that time, mostly aimed at bringing the faith to the indigenous "new Christians." The Franciscan Alonso de Molina, for example, who had learned Nahuatl, the language of the Aztecs, as a child on the streets of Mexico City, not only compiled the first dictionary to communicate with the indigenous population. He, too, wrote a handbook for confessors. De Molina, too, was writing for Spanish-speaking clerics, but he also offered them – and this is quite particular – translations into Nahuatl. And he included impressive illustrations that the priests could show to the Indians. Where language faltered, images assisted.

Carolin Behrmann of the Institute for Art History of the Max Planck Society in Florence analyzes the importance of images in and for the legal process in a broader frame. "The law in its entirety can't be communicated in words alone, it also requires objects, symbols and artifacts," explains the head of the research group "Nomos of Images. Manifestation and Iconology of Law." Together with an international group of PhD students, she investigates images that helped make manifest legal reasoning and practice from the late Middle Ages through to the 21st century.

Her research into image and symbol theory within Spanish late scholasticism of the 16th century considers the importance of image-based theology and addresses questions similar to those posed by the legal historians in Frankfurt. However, the timeframe of the "Nomos of Images" project is not restricted to the early modern era. Behrmann regards images associated with

Group Leader Carolin Behrmann and Felix Jäger, a PhD student on her team, inspect a selection of photographs from the collection of the Institute for Art History in Florence.

» From the Middle Ages, a visual language established itself to express norms that the public could “read” – through allusion and allegory, without words.

legal meaning as “visual constitutions” that are gaining momentum today. She is interested in their use in the course of history through to the present day – not least in order to heighten the general awareness of their legal associations: “There is a long tradition of using images to explain laws and prohibitions,” says the project leader.

Beyond the confines of time and culture, her group is studying how moral and normative connotations have been communicated. Their interests range from classical works of art such as depictions of the Last Judgment displayed in courtrooms to modest and less visible signs in the public sphere. For example, engravings on the walls of medieval houses often reflect the standard dimensions of bricks or goods and thus pictorialize commercial law.

PUNISHMENT MUST BE VISIBLE

Equally important is the analysis of the places where justice is acted out: “There is evidence of legal motifs in public buildings and courtrooms dating back to the 13th century,” says Carolin Behrmann. Biblical themes were popular. “The image of Doubting Thomas who laid his finger in Jesus’ wounds was a popular motif in civil courts,” explains the art historian, pointing to the “Mercanzia,” the court of the five great Florentine guilds. The visual appeal to every judge acting in that court was to come as close to the truth as possible! Biblical kings served as “*exemplum iustitiae*,” among them King Solomon, who appears in the courtroom of the Palazzo Comunale in Lucignano, Arezzo.

But also the downside of legal judgment and power were depicted. The walls of the Palazzo Pubblico in Siena confront images of ideal government with the image of tyranny: the frescoes by Ambrogio Lorenzetti dating from 1338 warn against bad judges



A warning to judges: The 1338 fresco by Ambrogio Lorenzetti in Siena's Palazzo Pubblico depicts Tyranny as the devil enthroned, surrounded by the vices avarice, arrogance and vanity.

and unjust dominion. Tyranny is represented as the devil enthroned, surrounded by the vices avarice, arrogance and vanity. On the other wall there are figurations of good governance with the virtues justice, courage, moderation and wisdom, in company with peace and magnanimity.

Another aspect of the Nomos project's research is the advancement of knowledge of the law: Which were the evidentiary processes applied, and how were they supported by visual argument? Behrmann touches on the broad area of torture, the martyrdom of Christian saints, and not least the historic importance of the visibility of punishment that plays a significant role yet today.

Breaches of the law were often turned into a public spectacle. “Forms of public humiliation that shamed a

person in a manner for all to see, in an undignified posture, embarrassing garments, disfiguring costume, with distorted facial features or bearing an insulting message, are among the reputation- and honor-based punishments imposed by pre-modern European criminal law,” explains Behrmann.

The forms and formats of humiliation varied widely from one era to another: rings and chains still remain attached to pillars and house fronts in busy squares as reminders of former pillories. Humiliation and deterrence might also be enforced by the crude iron mask of shame, or scold's bridle, and the coat of shame, a barrel-like structure of wooden staves that the delinquent was forced to wear. Although highly controversial, shaming sanctions that depend on the public display



Mexico's national saint María de Guadalupe features some important Aztec elements, such as the blue mantle worn by the former indigenous ruling class. The downcast sickle moon at her feet represents the vanquished snake god Quetzalcoatl.

of the offender can still be found today, a formal judicial sanction in criminal law (for instance in the US).

In this way, the law established a visual language that the public could “read” – through allusion and allegory, without words. Subject, composition and arrangement were no accident in the 16th and 17th centuries, they were intentional. “In the early modern era we see a flood of laws passed and new codes of conduct derived from moral theology, which again had to find a universally comprehensible form,” says Behrmann. And just as a plethora of legal epitomes and compilations of major legal works emerged at this time, so too the works of art of the Baroque provided a vivid clarity – in Europe and the New World.

Churches and administrative buildings in the New World were designed on the principle of *docere, delectare, movere* – they should teach, delight and move. Spanish painters travelled to the colonies to decorate the blank walls of buildings both sacred and sec-

ular. Splendor and opulence mattered, as an alternative to the richly bedecked Inca, Aztec and Mayan temples and cities. Visual imagery was harnessed in the form of detailed depictions of martyrdom and opulent images of the Virgin Mary, which were soon to acquire a style of their own.

Indigenous beliefs were skillfully integrated, a particularly good example being the depictions of Mexico's national saint, the Virgin of Guadalupe. This image of Mary is not only venerated in churches, but remains to this day ubiquitous in Mexican daily life. According to legend, in December 1531, Mary appeared to a Chichimecan baptized under the name Juan Diego, asking that a church should be built on the stones of a former Aztec temple dedicated to the mother goddess Tonantzin. The Bishop didn't believe him. Only when roses bloomed in mid-winter and he recognized the image of Mary on Juan Diego's coat did he have the church built, unleashing a wave of conversions that culminated in mass, as well as forced, baptisms. Did it really happen, or was it just suc-

cessful PR by a bishop who sought to replace the colorful, polytheistic beliefs of the indigenous population with the Virgin Mary? Either is possible.

Art and legal historians are agreed that a mission powered by the sword alone wouldn't have brought about a permanent conversion to Christianity. “The Church at that time took on an important role as intermediary and translator in the transatlantic clash of civilizations,” explains Thomas Duve, adding: “The Spanish and indigenous elites didn't live in isolation, they interacted.” Franciscans and Jesuits studied the indigenous peoples' customs, traditions and concepts of law. And they were skilled at what experts term “cultural translation”: the ability to integrate indigenous beliefs and contexts into the Catholic faith, not only in the interests of education, but also to afford the necessary scope for reinterpretation.

In this way clerics and artists whose names are scarcely known today influenced the reality of life in the New World at least to the same extent as the famed conquerors. Their handbooks and art works still stand as evidence. ◀

TO THE POINT

- Catholic friars and priests played a major role in establishing Spanish dominion in South and Central America.
- In doing so, the clerics preferred condensed texts rather than the full official versions of laws.
- The Spanish legal system was transmitted alongside the Christian faith, with the Church skillfully integrating and reinterpreting indigenous traditions.
- Laws and prohibitions were also explained with the aid of imagery – in the New World as in Europe, using biblical scenes or symbolic depictions of vice and virtue.

GLOSSARY

Allegory: The description of a subject in the guise of another subject. The portrayal of abstract characteristics in human form, such as the depiction of justice as a woman with her eyes blindfolded and holding a balance in her hand.

Epitome or breviary: An extract or simplified précis of a more extensive work.

Indigenous: Born in or native to a certain territory. The term is used, for example, in connection with peoples, languages and traditions.

Conquistadors: The Spanish conquerors of Central and South America in the 16th and 17th centuries.

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Saturn

Impressionen
aus dem Reich der Ringe





GRÖSSTELESKOPE
Die Laser-Tricks der
Astronomen



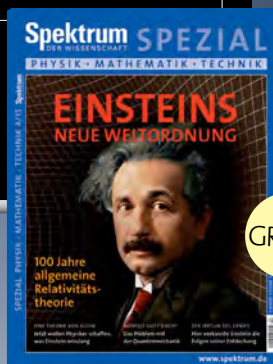
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