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Abstracts

Aspects of confessional orientation among Reformed jurists

The most recent research on confessionalization has focused on the structural parallels between denominations during the early modern period. However, the urgent question of whether or not individual denominations had an impact on culture in different degrees and forms, demands further investigation. In the field of legal science, there are only minor differences detectable in the works of Reformed and Lutheran jurists, while those between Protestant and Catholic-Tridentine scholars are considerably more significant. Catholic-Tridentine jurists, for instance, refused to acknowledge the agreements of the Peace of Augsburg, which banned legal enforcement against heretics (*Ketzerrecht*) and enhanced the rights and competence of the political authority in religious affairs. Lutheran and Reformed jurists, on the other hand, promoted the separate rights and competence of the temporal government. Reformed jurists, in particular, rejected canon law as a problematic confusion of law and theology. Instead, legal systems and reasoning in the Reformed tradition were grounded and built upon Roman law and permanent recta ratio recourses, which were seen as consistent with the genuine biblical religion that was threatened by papal superstitions. Altogether law faculties played a substantial role in the development of modern Protestant universities in the Holy Roman Empire. Similar developments were delayed on the Catholic side by the Jesuits' devaluation of legal studies which concentrated on civil law.

Christoph Strohm

Lutheran unenforceability of belief and the juridification of natural law
Besold's thesis of freedom of conscience and the raison d'état and natural law of his time

How did the Lutheran law professor and rector of Tubingen University argue that the law of nature protected the conscience of subjects in matters of the private exercise of religion? Besold's argument is analysed against the context of the contemporary debate in the Empire and the changing role of the ›law of nature‹ in legal argument.

Robert von Friedeburg

Group Portrait with a Lady: »The Court of Brabant's Minter Guild« by Maarten de Vos (1594)

This article analyzes a painting by Maarten de Vos (1532–1603), the most distinguished Flemish painter before the Baroque period. Although relatively unknown among jurists, its legal iconography is remarkable. It combines a portrait of the members of a guild court and a highly elaborated allegory of justice: a Iustitia among Moses, Iustinianus, Numa Pompilius and Lycurgus. First, the painting is described according to the art-historical literature, which is mainly in Dutch. The critical comment which follows focuses on the identification of Lycurgus. In contrast to the other three ancient legislators, Lycurgus cannot be identified by an extract from a legal source but only by a depiction of animals. Until now, therefore, the view has prevailed that the representation is about Pliny the Elder and his »Naturalis Historia«. Contrary to this view, the article tries to demonstrate that the depiction of animals (a dog is eating from a bowl, another is hunting a deer) refers to a parable which Lycurgus, as handed down by Plutarch, had invented to illustrate the political importance of education. Other visualizations of this parable by Caesar B. van Everdingen, Otto van Veen and Jan Saenredam are consulted for the purpose of comparison. Finally, the painting of de Vos is put into the tradition of Iustitia-allegories and group portraits, especially in Holland, Italy and France.

Erk Volkmar Heyen

Images of Democracy in the Early Modern Period

From the early 17th century, academic political theory in the German universities discussed at length the classical topic of democracy. The treatment of this issue shows two main characteristics. On the one hand democracy was judged in a quite negative way; on the other hand some authors presented it as a form of mixed con-

stitution, which required a plurality of elements within the commonwealth. This interpretation changed during the course of the 17th century, as natural and international law developed into leading academic disciplines. Democracy was now understood as the original form of the sovereign state, and in the 18th century it was conceived as a historical phase that preceded the foundation of the state and which required a corresponding new field of knowledge.

Merio Scattola

Aspects of civic culture in early modern times

Participation is an essential indicator of civic culture in early modern times. The characteristic components are active and passive involvement in governance, in political action, communication, and information. This thesis concerns the Holy Roman Empire as an example of participation in the early modern period. Accordingly, the political proceedings of the Imperial Diet, the participatory activity of the subjects, and the possibility of achieving political information will be discussed.

For the understanding of the Holy Roman Empire and its political structure, »consensus« is one of the keywords. The early modern politician was in need of the ability to bring about a compromise and required considerable expertise in current politics. Subjects were able to participate by petitions, which addressed the Emperor or the Estates. These contained, for example, economic, social or legal questions and thus brought them to the appropriate political committee. In this manner a direct communication between ruler and subjects took place, the growth of which was a sign of the cumulative communication in the Holy Roman Empire. In addition, the possibility of participation implied the need of better information about political processes and activities.

The civic culture of early modern times was shaped by »consensus«, compromise, competence and communication as expressions of political participation.

Helmut Neuhaus

Industrialization as a federal responsibility

Industrialization in legal history has hitherto often been regarded as part of the history of private law and economic legal history. However, the role of the state in this process is still unclear: What concrete measures were taken by the state in order to promote industry and trade? What kind of normative and legal instruments did the state apply in order to encourage economic growth? The following article tries to find answers to these questions in the sources of general public law between 1815 and 1848. Taking the kingdom of Saxony as an example, it can be observed that the models developed in public law theory were also widely implemented in public practice before 1848.

Louis Pahlow

State economic support for businesses
National economic shaping of doctrines of state administration

A wide conception of state administration would also include the science of economics. With the triumphal progress of the doctrine of Adam Smith from the end of the 18th century this part of state administration also came within the sphere of influence of the national economy. This formed a theoretical partial discipline, which subsumed the determinants of the development of wealth. This theoretical part, the pure theory of political economy, contained those principles which should determine the practical part, the practice of economics. On the other hand, the theory of political economy considered practice in the process of the drafting of economic postulates. Both partial disciplines interacted and influenced the doctrines of state administration.

This process will be described by means of writers influenced by the work of Adam Smith (Sartorius, Kraus, Lüder, Soden, Jakob, Lotz, Rau) and using the example of governmental financial support for private enterprises. All these authors shared the doctrine of the absence of state intervention. But the state was nevertheless considered responsible for the prosperity of the country and had to intervene if private means failed and if the public welfare was to be protected. Based on these assumptions, criteria for the justification of state assistance were developed.

Financial support was acceptable as sponsorship for innovation, as temporary aid in times of crisis and as an instrument of socio-political stabilization. The same types of financial aid were practiced by government.

In the administration of states based on the rule of law (Robert von Mohl), national-economic and judicial principles moved in the same direction. The justifications of financial aid were concordant with the economic justifications. Thus the shaping of the national economy took on a juridical character.

Peter Collin

The State as Conceptual and Visual Representation

The article reconstructs the visual representations of the state beginning with the frontispiece of Thomas Hobbes' Leviathan and its variations in »The Elements of Law«. While Hobbes' visual strategy is informed by a distrust of language, Michel Foucault departs from both this distrust as well as the fixation on sovereignty. His deconstruction of the representation paves the way for a democratic aesthetics. The need for symbols of political domination in the post-monarchic era is illustrated by three examples: the symbolizations of national unity, the parliamentary seating arrangements and the domed Berlin Reichstag as the architectural embodiment of the republican promise of transparency.

After this visit to the museum of modernity's pictures the text reintroduces the concept of the modern state. Hobbes' composite structure of the Leviathan reappears under the guise of a farewell to pre-constitutional composite concepts, such as a state under the rule of law, federal state or constitutional state.

Günter Frankenberg