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Abstracts

Milan Kuhli

Power and Law in Enlightened Absolutism – Carl Gottlieb Svarez' Theoretical and Practical Approach

The term Enlightened Absolutism reflects a certain tension between its two components. This tension is in a way a continuation of the dichotomy between power on one hand and law on the other. The present paper shall provide an analysis of these two concepts from the perspective of Carl Gottlieb Svarez, who, in his position as a high-ranking Prussian civil servant and legal reformist, had unparalleled influence on the legislative history of the Prussian states towards the end of the 18th century. Working side-by-side with Johann Heinrich Casimir von Carmer, who held the post of Prussian minister of justice from 1779 to 1798, Svarez was able to make use of his talent for reforming and legislating. From 1780 to 1794 he

was primarily responsible for the elaboration of the codification of the Prussian private law – the »Allgemeines Landrecht für die Preußischen Staaten« in 1794. In the present paper, Svarez' approach to the relation between law and power shall be analysed on two different levels. Firstly, on a theoretical level, the reformist's thoughts and reflections as laid down in his numerous works, papers and memorandums, shall be discussed. Secondly, on a practical level, the question of the extent to which he implemented his ideas in Prussian legal reality shall be explored. ■

Thorsten Keiser

Between Status and Contract?

Coercion in Contractual Labour Relationships in Germany from the 16th to the 20th century

This contribution deals with unfree labour in Germany from the early modern age until the beginning of the 20th century. It presents the main conclusions of a book published in 2013 on this subject in German. Unfree labour is not identified in the first place with slavery or any other labour relationship based on status. Instead, this study aims at an analysis of freedom and coercion in contractual labour relationships. It will be argued that in Germany contractual labour relationships before 1800 were embedded in a legal system that strongly restricted contractual autonomy and aimed at the suppression of free labour markets. The scope of this legislation was to guarantee efficient labour performance, which was not only perceived as being in the personal interest of an employer, but as a fundamental element of the common good. After 1800 the system changed to more incentive-based legislation that established

freedom of contract for labour relations. Nevertheless, coercion in order to perform the contractual duties of a work contract remained important for many groups of workers, especially farmhands and industrial workers. The last criminal sanctions for breaches of labour contracts were only abolished in the revolution of 1919. This development shows the difficulties German law had in extending the principles of private law to workers. When a system of free labour was fully established, the issue of unemployment and economic problems, especially in the Weimar Republic, required a new system of protective rules. The history of free market based labour contracts in Germany was therefore very short, with state intervention shifting from control and coercion to social assistance. ■

Ignacio de la Rasilla del Moral

El estudio del Derecho internacional en el corto siglo XIX español

Oriented to provide a broad backdrop image of the cultivation of *ius-internationalist* studies in the Nineteenth Century Spain, the first part of this work revisits the suppression of studies of the Law of Peoples during the last part of the Eighteenth century and hints at some of its developments during the first third of the Nineteenth century before examining the establishment in the early 1840s of the first chairs of international law in Europe against the background of the independence of the Latin-American Republics and relates the development of Spanish international law production during the first half of the nineteenth century. The second part follows the character of the evolution of international legal studies in Spain until the year 1883 when chairs in Public International Law and Private International Law outside Madrid

were established in seven other Spanish universities. The third part reviews the – albeit short-lived – first specialized international law journal ever established in Spain, and examines how Spanish production in the field was fostered by the professionalization reform of 1883. This part also deals with the Salamanca School's parallel rediscovery in both Spain and Europe in the last third of the short Spanish nineteenth century. The impact that the revival of interest in Francisco de Vitoria had in providing Spanish international law academia with a quasi-national identity leads to some conclusions on its lasting legacy to the study of international law in the cradle of the first Empire in history on which the sun never set.



Wolfram Brandes

Taufe und soziale/politische Inklusion und Exklusion in Byzanz

The focus of the present article is not the development of the sacrament of baptism; this is the object of research of scholars of the history of liturgy. This article concerns some central aspects of the political and religious changes which are the result of regulation through norms of the canon and the civil law. Forced baptism (of the so-called heathens and of Jews) is of special interest. It is obvious that the oppression of the heathens (till the end of the 6th century) depended also on important social and political conflicts, which constitute the real background to this religious (but state organized) struggle. The fundamental changes in the Byzantine state and its church beginning in the 7th century with the expansion of the Islamic Arabs and the immigration of the

Slavs in the Balkans (especially Greece) and of Armenians in Asia Minor, created the need to develop measures to integrate these peoples into the Byzantine state and society. Special rules and formulas for the abjuration of the former creed as a *conditio sine qua non* for conversion to Christianity (which required baptism) were created. Another problem discussed in the article is the role of missionary work inside and outside the Byzantine state as an instrument of foreign policy. The Christianization of Bulgaria and the Kievan Rus' (the »baptism of Russia«) are remarkable achievements of Byzantine policy.



Christoph H. F. Meyer

Taufe und Person im ersten Jahrtausend

Beobachtungen zu den christlichen Wurzeln einer Grundkategorie europäischen Rechtsdenkens

This article deals with a particular aspect of the relation between baptism and law in the early middle ages, a topic that has hardly been explored by historical research. The main focus of the paper is on the role of baptism at the beginning of a long development which led to the modern notion that every human being as a natural person is a subject of rights and obligations. The article approaches its subject from two different directions. First, on a theoretical and abstract level it raises the question to what extent there were points of departure towards the concept of a person in medieval Christian thinking. From this perspective *inter alia* two phenomena come into view: the character (*indelebilis*) as the basis for an inalienable status as a Christian and the role the soul as well as salvation played in law. The second part of this

paper consists of particular historical evidence. After some brief observations as regards the relation between Roman citizenship and Christian baptism in late Antiquity the article focuses on the legal status of the newborn infant in the secular law of the early Middle Ages. In this context one has to distinguish between a pre-Christian ›barbarian‹ legal tradition and norms of later Christian origin. In both traditions formal acts like the acceptance of the child and baptism played a major role. However, there are also differences which indicate general changes in the comprehension of what constitutes a human being from a legal point of view. ■

Richard Helmholz

Baptism in the Medieval Canon Law

The classical statements of the medieval canon law, Gratian's *Decretum* (ca. 1140) and the Gregorian Decretals (1234) both dealt with baptism. Although a 'theological' subject, baptism had worldly consequences and its correct performance was thought to require regulation. This article seeks to bring to light the character of the canon law's treatment of baptism by comparing its treatment with that it applied within the law of marriage, also a sacrament of the medieval church. It surveys and compares the verbal formulas used for both, the standards of legal finality applied to choices made by and for children, the effect of coercion upon the validity of both, the role of parents and the clergy in arranging for and performing the two sacraments, and the common problem of

dealing with legal uncertainty about each sacrament's performance and validity. It states the basic rules applied in each case. In all of these areas, the canonists sought to arrive at objective and workable standards, but they turn out to have been more willing to bend somewhat to the subjective expectations of the men and women involved in dealing with marriage than with baptism. The explanation for the differences seems to lie in the unequal value accorded to the two sacraments by the medieval church. Baptism lay at the centre of the church's mission in the world. Marriage did not. ■

Christiane Birr

Titulus ad regnum coelorum: Zur Taufe und ihren Wirkungen in der theologisch-juristischen Argumentation der Schule von Salamanca

In the Early Modern Period, Spain was arguably the European country with the widest experience of incorporating large groups of newly converted Christians into an all-Christian society, looking back on thousands of adult baptisms, brought about with and without coercion. The baptisms of Spanish Jews in the 15th century as well as those of muslims in the 16th century had given rise to many political, legal, religious, and theological questions. The Reformation in Europe and the mission experience in America added further dimensions to the problems of baptism, orthodoxy, and church membership.

This paper gives an overview over questions concerning adult baptism which Spanish theologians and canonists discussed against this rich historical background in the 16th century: the

necessity or rather the extent of pre-baptismal indoctrination, the voluntariness of baptism, and the roles baptism and faith played in defining who belonged to the church, and who was subjected to its jurisdiction. Consistently, the understanding of baptism as the »gate to the church« or »gate to the sacraments« was underlined. A valid baptism invested the individual with the undetachable status of belonging to the church which meant being subjected to Christian morals and ecclesiastical jurisdiction. Individual rights and full church membership, however, derived not from mere baptism, but required a combination of baptism, faith, and obedience. ■

Michael Sievernich

»Baptismus barbarorum« oder christliche Initiation in der Neuen Welt Amerika (16. Jahrhundert)

The contribution raises the question of baptism as Christian initiation in the context of early modern European expansion and mission of the New World America. Based on narrative reports as well as legally, canonistically and theologically normative sources of the 16th Century, with emphasis on the contemporary synods and scholarly disputes, the article unfolds three perspectives: A first discusses the ritual inclusion through baptism based on the different baptismal practices of the time and the controversies around the theological and canonistical minimum requirements; the second perspective focuses on the cognitive instruction of the neophytes, based on the pre-and postbaptismal instruction and the linguistic tools such as catechisms in indigenous languages; the

third perspective, finally, treats the multiple participation on the basis of the rights and obligations resulting from the acceptance of Christian faith. The multi-perspective view of the theory and practice of baptism in early modern Spanish America shows a complex context of a ritual, cognitive and participatory level, which was reflected in prescriptive and argumentative tracts. The multifaceted aim of baptism was the voluntary change of religion, associated with the theological, anthropological and legal recognition of the indigenous individual, even if the participation rights in the new status had to be obtained. ■

Wolfram Brandes

Die »Familie der Könige« im Mittelalter

Ein Diskussionsbeitrag zur Kritik eines vermeintlichen Erkenntnismodells

The concept of »family of kings« was created by Franz Dölger and was intended to explain the relations between states and powers during Late Antiquity and the Middle Ages in the sense of a juridical institution. This conception has been heavily criticized. First of all, the sources (of Late Antiquity and the Early Middle Ages) mentioned by Dölger in his famous article of 1940 have been the object of a new analysis – with a negative result. There is no real proof for Dölger’s »family of kings«. In the second part of the present article the circumstances of the creation of Dölger’s article

– the beginning of World War II, Nazi rule in Germany – and the involvement of Dölger himself in Nazi ideology and his connection to important Nazi institutions (like the »Amt Rosenberg«) are brought together. Dölger’s »family of kings«, according to the present author, is dependent on discussions about future German rule in South-East Europe. Accordingly, this concept should not be used to explain developments in Late Antiquity and the Middle Ages.

■