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Abstracts

Julian Krüper

Die Verfassung der Berliner Republik

Verfassungsrecht und Verfassungsrechtswissenschaft in zeitgeschichtlicher Perspektive

Contemporary constitutional history faces a methodological dilemma: Historiography traditionally calls for scientific dissociation, both temporal and individual, from its objects of research. Yet, changes in constitutional normativity are typically of an incremental nature and can best be studied through a close approach of the contemporaries. Given such a dilemma, this essay undertakes to analyze key features of constitutional law and science of the »Berlin Republic«. Its main thesis is that contemporary constitutional history in Germany can be seen as a »farewell to the interim«, which the »Bonn Republic« can be construed to have been.

Several leitmotifs can be identified: The concept of constitutional identity gains attention and influences the discourses implicitly and explicitly. Among them are debates about the scope of constitutional rights (human dignity, freedom of speech) as well as about the structure of the democratic and federal polity. Simultaneously, social change gives rise to fundamental constitutional questions such as religious pluralism or same-sex marriage.

At the same time, the science of German public law, both within the dimensions of constitutional and administrative law, undergoes a profound process of self-ascertainment. This process brings about a renaissance of fundamental research in the fields of constitutionalism and theory of state.

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Salvatore Cosentino

Ravenna from imperial residence to episcopal city: processes of centrality across empires

From Late Antiquity to the early Middle Ages, two basic factor shaped Ravenna's ability to influence a much more extensive space than its natural hinterland. The first was its establishment as an imperial residence the second was its location within the northern Adriatic basin, which had since Antiquity been a crossroads for peoples, trade and cultures. Just on the basis of the support it received from the imperial power, its episcopate was elevated to one of the most important sees of Italy. By means of the large international harbour of Classe, from the 5th to the 7th centuries the city imported products from around the entire Mediterranean. With the arrival of the Byzantine government, the ties between the port of Classe and the other Mediterranean export centres shifted by moving from West to East. Moreover, the relationship with Constantinople reaffirmed the political and ecclesiastical importance of Ravenna. As long as these ties remained strong, Ravenna retained a vital contact to the other maritime Mediterranean trade centres. The twilight of Byzantine rule did not cause the decline of the city, but rather a progressive turn of its ruling class toward the political scenario of the medieval West. By virtue of being the management centre of the *patrimonium beati Apollinaris*, the city remained wealthy and influential well beyond the 9th century. This was due both to the economic power of its archbishops and to their alliance with the Ottonians and then later with the Salian and Swabian emperors. The trajectories of the political centrality of Ravenna from Late Antiquity to the Middle Ages were, therefore, deeply influenced by the dynamic of successive empires, which, in one form or another, were all connected or attempted to reconnect to the memory of its Roman past.

■

Miriam Czock

Zentralität in der Peripherie: Kirchengebäude als Orte des »Sonderfriedens« in den frühmittelalterlichen *leges*

In the early middle ages, specific protective rights were granted, among others, to church buildings. While legal historians investigating the legal protection of church buildings up till now stressed the jurisdictional concept of a »higher peace«, cultural history has drawn attention to the concepts of sanctuary and immunity. Drawing upon sources spanning from the *Lex Salica* to the capitularies and canon law of the 9th century, the present article argues that peace, sanctuary and immunity are not to be understood as rooted in one concept, as is generally done, but rather they have to be understood as different legal concepts that only occasionally come together. Furthermore, I propose that the protection of church buildings is not an expression of taboo related to the sacral sphere of the king or the sacrality of the church building, but instead must be seen as rooted in a concept of honor that includes a spatial dimension and can be traced back to the motif of ›fear of God‹, but is ultimately guaranteed by law. The different concepts thus refer to the notion of churches not just as cult centres, but public protected areas, whose protection is part of a complex and comprehensive effort to restrict ›self-help‹. From the perspective of the issue of centrality and periphery, the example clearly shows that this opposition is completely dissolved because places were created, instituted through legal protection, even at the periphery.

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Luca Loschiavo

Was Rome still a Centre of Legal Culture between the 6th and 8th Centuries?

Chasing the Manuscripts

What happened to the tremendous legacy of juridical knowledge left behind in Italy in the 6th century? Into what labyrinth did it plunge only to re-emerge after the silent age of the early Middle Ages into the light of day, and effectively come to shape the renewal of the jurisprudence at the beginning of the 12th century? One-and-a-half centuries after the fanciful writings of Hermann Fitting, legal historians are still looking for the answers to these questions. Considering the new information we have (especially coming from the paleographical research), this paper re-examines the existence as well as the activities of the school of Rome both during the Justinian Age and in the two centuries thereafter. The aim of this essay is to verify whether Rome, during the very early Middle Ages, continued to represent a centre of juridical culture. According to the hypothesis developed in this contribution, Rome – at that time – not only played a very important role with regard to the material conservation of the Justinian's *libri legales*, but also in the initial establishment of the new (i. e., Justinian) imperial law in the West and creation of its image as a significant juridical centre. The absence of such a centre as well as its wide-spread image would truly make the Bolognese *renovatio* appear ›miraculous‹ and very difficult to explain.

After Justinian, the 7th and 8th centuries can truly be characterised as ›silent‹ in the history of Roman law in the West. However, by studying the medieval manuscript tradition, in particular, that of the *Institutiones* and the *Novellae*, we can gather together a series of elements helping us to clarify the situation. Also quite useful is an examination of the manuscript tradition of the *Collatio legum*

Mosaicarum et Romanarum. Through the spread and use of these Late Antique works, we can see how – in conjunction with the actions of the papacy – Rome, toward the end of the 8th century, returned to being a centre of world politics and – given that law follows politics – of the legal culture.

■

Roman Deutinger

Recht und Raum in den Anfängen der karolingischen Reform

Zu den fränkischen Synoden 742–762

The article analyzes the concepts of space found in the decrees of the early Carolingian synods, especially their new spatial concept of ecclesiastical hierarchy. The synods, driven forward by the papal legate St. Boniface and the Carolingian rulers themselves, aimed to confine episcopal authority to the boundaries of the dioceses and to abolish all roaming bishops, to re-establish church provinces with metropolites at their head and to gather all bishops together at annual meetings, thereby building up a virtual community of the clergy in the whole *regnum Francorum*. The success of these efforts is not easy to judge, but seems to have been limited to the northern and eastern parts of the Frankish realm. This is demonstrated by the manuscript tradition of the decrees and by the fact that it was primarily bishops from the north and the east who attended the reform synods. Only in these regions did »space in law« transform into »law in space«.

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Wolfram Brandes

Apostel Andreas vs. Apostel Petrus?

Rechtsräume und Apostolizität

Contrary to what was previously considered to be the case, the emergence of the legend that the apostle Andreas had founded the Church of Byzantium, or rather of Constantinople, can – at the very earliest – be dated back to the closing of the 8th century (therefore, not to the 7th century, or even earlier, as has so often been claimed). The apostle Andreas (equated with the Byzantine Church) was conceived as the counterpart to the apostle Peter, upon whom, according to Matthew 16:18, the Roman Church rests. An analogue to the apostolic foundation of »Roman legal space« was created for the Eastern Church. Almost all of the texts extensively treating the so-called Andreas legend stem from the first half of the 9th century. This, of course, raises the question about the historical causes. These are seen as part of a general trend toward »apostolic foundation« of various archbishoprics in the western Mediterranean world (and in France as well). In particular in southern Italy and Sicily, whose bishoprics were subjected to the rule of the patriarchy of Constantinople after the mid-8th century, a »race« began to be elevated to archbishopric (which till then had not existed in the region). A further impulse that shaped the legend of Andreas very likely has to do with the coronation of Charlemagne as emperor (Christmas 800) – where the head of the Roman church, making use of the apostolic legitimation of sovereignty, could even appoint an emperor. After the 9th century in Byzantium, reference to the legend was much less common. Most likely, this had to do with the realisation that the historicity of the legend was simply too fragile to serve as a serious and substantial argument when dealing with the papacy (at least since the 11th century).

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Caspar Ehlers

Jihad oder Parusieverzögerung?

Zur heilsgeschichtlichen Bedeutung eines Raumes außerhalb des Römischen Reiches

This essay's guiding thesis assumes that the Christianization of the Saxons as well as the spatial and legal integration of Saxony into the Frankish realm during the late 8th and 9th centuries was facilitated by the ordering or arrangement of space according to Roman models. These spatial orderings were accompanied and reinforced by historical and eschatological interpretations as well as, were implemented by the, more or less, voluntary acceptance of the new order by the Saxon nobility, who recognized the opportunities associated with the active integration into the Frankish system. Both the meaning of this process and the terms used to describe it are treated in this essay. On the one hand, in order to interpret these events and processes, it is useful – if not necessary – to take a look at the spread of Christianity within the territories of the former Roman Empire up till 800 (i. e., Charlemagne's coronation as Imperator Augustus), for this development appears to serve as the constructive basis for Charles's (and that of his contemporaries) interpretation of the course of history. On the other, it is just as important to compare the interpretations of these events (including contemporary perspectives) in order to do justice to the historical significance of Saxony's integration into the Frankish realm as the successful successor to the Roman Empire.While this contribution primarily treats the historical sources, the title of this essay was decidedly inspired by more contemporary studies: Hans-Dietrich Kahl's work on the escalation of the Saxon wars, Yitzhak Hen's analysis »Charlemagne's jihad« (2006), as well as several other equally influential contemporary works focusing on the eschatological meaning of the year 800 as well as on the continuity of the Roman Empire as a force delaying the Parousia of Christ in the theological debate since the Ascension Day almost two millennia ago.

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Wilfried Hartmann

Synoden schaffen Räume: Metropolen, Diözesen und Pfarreien in den Synodalkanones des 9. Jahrhunderts

This study on »space in canon law« investigates the concepts of *provincial*, diocesis and parrocchia in the synodal decisions and the capitularies of bishops in the ninth century. The space of *provincia* was not precisely determined at the end of this age. Perhaps not even the provincial council is differentiated from a diocesan synod. The space of the diocese in the ninth century is best known by the trip of visitation that the bishops had undertaken since late Antiquity. In his capitularies, the bishop speaks to all members of his diocese, clergy and laity, and he provides them precepts and prohibitions. The new significance of the diocese is also made clear by the prohibition of transmigration and transfer of bishops from one diocese to another, which gained new importance during the ninth century. The subdivision of a diocese into several districts of deans can already be found in the middle of this age. The smallest format of space in the canon law was the *parrocchia*, the parish. We must be careful in using this term, because it often also means bishopric or diocese. The parish was defined as the space where only one priest has the right to hold his office. Since the ninth century, parish and diocese are very precisely defined as particular spaces. Bishop Theodulf of Orléans (798–818) and archbishop Hincmar of Reims (845–882) made numerous remarks in their capitularies about the formation of diocese and parish.

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Cristina Nogueira da Silva

A dimensão imperial do espaço jurídico português. Formas de imaginar a pluralidade nos espaços ultramarinos, séculos XIX e XX

When the Portuguese Civil Code of 1867 was enforced in colonial territories, the right to be judged according to their »customs and law« (*usos e costumes*) was recognized for a large set of indigenous groups. Both decisions – the application of the Civil Code and the recognition of indigenous customs – reflected an existing tension between principles of unity and diversity in what concerned Portuguese legal order Overseas. In this article, I examine the role played by this tension in the judicial theories of Portuguese law teachers, colonial legislators, governors, judges and officers. By looking at their lessons, reports and memoires, as well as at the laws enacted, I identify their changing thoughts about the role of legal pluralism and its practices in the civilizational improvement of indigenous individuals and societies. In the closing pages of my contribution, I pay special attention to the changes that occurred in the late 19th and early 20th centuries, when an indigenous system (*indigenato*) was first conceptualized and then enforced in Portuguese African colonies.

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Carlos Salinas Araneda

La formación de un espacio jurídico transnacional en el siglo XIX a partir del patronato indiano

The »patronato« rights, granted by the Holy See to Catholic Kings and which were naturally integrated into the rights of these latter to present candidates for ecclesiastic positions, gave origin to a normative space that was progressively and unilaterally expanded by the Spanish monarchy through diverse interventionist practices that, in as much its content as its basis, limited the Church's freedom. As part of their independence, this legal space was inherited by Latin American nations, among which was Chile, which constitutionally ratified it and attempted to obtain recognition by a concordat from the Holy See. As a response to the Chilean petition, the Holy See offered a solution that sought to overcome the »patronato indiano« which, upon not being accepted by Chile, was never signed into a concordat; however, it did serve as a model for the concordats signed with other Latin American nations. These concordats created a transnational normative order that were the starting point for modern concordat law.

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Mª Julia Solla Sastre

Ultramar excepcional

La construcción de un espacio jurídico para España y sus colonias, 1837–1898

This paper discusses the possibility of thinking the colonial ambit of 19th century Spain as a common legal space in which legal understandings and categories covering both the metropolis and colonies are shared. The consolidation of the American independences and the political redefinition of Spain, not to mention its imperial remnants would have led in appearance to a normative division of space between metropolis and colonies; one that allegedly would have introduced the European Spain into a liberal constitutionalism, while the American and Asiatic territories would have remained mired in the *Ancien régime*, thus giving rise in 1837 to the »special legislation« attributed to the Spanish Antilles and the Philippines. However, if the entirety of that space was contemplated not from the perspective of a legal system, but rather from a wider cultural and juridical point of view, then a shared understanding of the law both on the Peninsula and overseas would emerge which had the potential to explain how the metropolis conceived, through juridical instruments, the government of the colonies and, in turn, how they modulated the progressive establishment of the own Spain as a liberal state.

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Massimo Meccarelli

The Assumed Space: Pre-reflective Spatiality and Doctrinal Configurations in Juridical Experience

The purpose of this contribution is to analyse, by means of the legal-historical perspective, the relationship between the pre-reflections of space and the configurations of legal concepts and categories. Three examples of the interplay between doctrinal configurations and the spatial dimension within the context of three different historical periods will be illustrated: *given* space in the Middle Ages, *possible* space in the Modern Age and *decided* space in the Contemporary Age. From this basis, the essay considers the heuristic importance of such an analytical approach – mindful of the profiles of presupposition, such as the space assumption, underlying the conceptualisation of ideas – for a history attentive to the constraints of the theoretical sustainability of legal concepts.

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Jorge E. Traslosheros

Proceso judicial eclesiástico, seguido en la Audiencia del Arzobispado de México, contra unos gusanos «negros y larguillos». Año de 1653

Nota introductoria y documento

During the Middle Ages and Early Modern period, the secular and ecclesiastical courts opened proceedings against various animals including insect or rodent plagues, as well as against pigs, cows and the very diverse fauna in close proximity to humans in the course of their everyday activities. However, the secular and ecclesiastical trials followed very different aims. While the former criminally prosecuted the animals, the latter ascertained whether or not to excommunicate different plagues. This contribution treats an ecclesiastical trial, conducted in the »Audiencia« of the Archdiocese of Mexico City in the year 1653, against a plague of worms that attacked crops in the jurisdiction of Chapultepec and the Hacienda de los Morales. The author offers a complete transcription of the document preceded by an introductory study. We are confronted with a unique piece of legal literature in the history of the Roman Catholic Church, because very few trials of this nature were conducted and can be found in their entirety, whether in Europe or Spanish America. In fact, this is the first case in New Spain to be published and, most probably, the only one to be found in the ecclesiastical records of the Archbishopric or Mexico. It is always worth remembering that the jurists, theologians, judges and thinkers of Hispanic America in colonial times were very proactive in shaping the canonical Roman legal tradition of the Early Modernity; a legal tradition that was produced via the close working relationship on both sides of the Atlantic. Without taking this cooperation into consideration, our knowledge of the tradition will always be incomplete.

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