

Teaching Experiences of Constitutional History in a Comparative Perspective – Germany

ULRIKE MÜßIG

1. *Introduction: Teaching Experiences, Content and Target Audiences*

Teaching Constitutional History started as «Europäische Verfassungsgeschichte» (European Constitutional History) in Passau 2000. At the heart of the nowadays well established lecture lie the specific European rationales of historic constitutionalization processes. The amended Study and Exam Regulations of the Law Faculty 2022 complemented this course by a second lecture on the Contemporary History of European Integration («Zeitgeschichte der Europäischen Integration») and further English taught courses on the «Rule and Legal Reasoning in the Western World with courses on Constitutional Discourse, Judiciary as Constituted Power, Comparative Constitutional Law post 1945, Common and Civil Law Methodology, English and American Common Law and Modern Law and Political Theory»¹. In addition, the author is in charge of an online programme

designed by her, “Klausurenkurs in der europäischen Rechtsgeschichte” (“exam questions with regard to European Legal History”, available to students outside Passau via the Virtual University of Bavaria (<https://www.vhb.org/>)²). The latter offers learning content from all fields of legal history (including the Roman Law) for the general audience of all Bavarian universities and also for the advanced level required for the first state law examination (the so-called “Schwerpunktbereich” = area of specialisation, in the following abbreviated with SP)³.

In the winter semester 2023/2024, the other Bavarian universities offer a variety of lectures, courses and seminars with reference to constitutional history, both in the general curriculum and in the specific curriculum of the area of specialisation. At Augsburg University the courses offered in the field of legal history cover constitutional history including references to general political science (SP IX, Prof. Dr. Matthias Rossi), Legal History I (Basics,

Prof. Dr. Christoph Becker), Legal History II (Roman Legal History and Roman Private Law, Prof. Dr. Phillip Hellwege), Historical Foundations of European Legal Systems (SP I, IX, Prof. Dr. Christoph Becker), Modern History of Criminal Law (SP IX, V, Prof. Dr. Arnd Koch), Older History of Criminal Law (SP IX, V, Prof. Dr. Arnd Koch) and Source Exegesis of Roman Law (Prof. Dr. Christoph Becker)⁴. Thus, within the Augsburg study programme constitutional history sits within the specialisation area studies. At Bayreuth University the courses taught in the field of legal history are as follows: Legal History, Constitutional History, SPB XI (including the seminar "Constitutional History of the Modern Era", the protagonist Prof. Dr. Bernd Kannowski being a renowned expert for human dignity)⁵. At the Friedrich Alexander University Erlangen-Nuremberg the courses offered in the field of legal history include German legal history (Chair of Civil Law, German and European Legal History), constitutional history (Chair of Canon Law, Constitutional and Administrative Law) and Roman legal history (Chair of Civil Law, Roman Law and Ancient Legal History)⁶. At the Ludwig Maximilians University Munich the courses provided in the field of legal history are announced as "German Legal History", SPB 1.1 Fundamentals of Law: Legal History (incl. seminars, no constitutional history expressively announced, but comprised as a matter of course), SPB 1.2 Fundamentals of Law: Philosophy of Law and Modern Legal History⁷. At Regensburg University philosophy of law is at the forefront of announcements offered, and the local doyen of legal history, Prof. Dr. Martin Löhnig, stands for an excellent teaching in constitutional history, especially in an international context.

In the summer semester 2023, the seminar "Contemporary Legal History" took place as part of the specialisation area, and legal history in its full richness including constitutional history was provided in the lecture programme⁸. At the Julius Maximilians University Würzburg, the university of my academic teacher Prof. Dr. Dr. hc. Dietmar Willoweit⁹, students have access to the full range of legal and constitutional history: Legal History I (German and European Legal and Constitutional History), Legal History II (European Civil Law Tradition), Foundations of the Law as a specialisation¹⁰. All Bavarian law faculties offer teaching in constitutional history; with a focus on the comparative range, Augsburg, Erlangen-Nürnberg, Passau and Würzburg seem to be ahead; this finding is concluded from the online listings of the last two semesters, and is in no way intended to make a statement regarding any standing of constitutional history in publications or academic activities outside of university teaching.

This might be due to the specific challenges of communicating the European context to a general or a more advanced, specialized audience. It is complex to explain what is the European aspect in different, past constitutionalization processes. Simple answers are not an option, as «[e]verything colossal and uniform is clearly un-European» (Oskar Halecki)¹¹. Rather, the diversity of levels of constitution-building processes appears to be specifically European compared to the developments of Byzantine, Mongolian, Ottoman or Great Russian neighbours. In Europe small countries, city-states or federative entities have been constitutional players producing normatively shaped ar-

eas of rule, next to empires and nations. Thus, the pluralistic rivalry of powers has always been the motor of power-forming structures, as well as a drive for the growth of single state powers¹²; any aspiration for hegemony was combatted, precluded or at least not permanent due to aristocratic and other competitors, be it the Habsburg world empire of the 16th century or the French hegemonic efforts under Louis XIV, be it the French revolutionary armies or the Napoleonic troops.

2. *Challenges of the European Context*

Analyzing the specific European rationales of past constitutionalization needs an etymological reconsideration of context in the original Latin sense of *contexere*: weave together, link, connect. Taking such an integral¹³ observing approach towards various, sometimes disparate historic developments corresponds to the hypothesis that the European context amounts to a certain kind of self-identification. Europe seems to be (only) the idea of those who feel European towards others. This idea, though, has no given reference; there is no precise geographical determination: Europe is a peninsula of the Eurasian landmass¹⁴. The eastern border lacks immutable realities, and its vagueness due to thought conventions becomes all the more painfully aware in the current Ukraine war¹⁵.

Taking such an integral observing approach (*contexere*) meets the response structures of law and constitutional formation. Domination and its constituted regulation never arise or exist in themselves. Rather, they evade any ontological absolutisation¹⁶

due to the immanent relatedness of human beings (towards other human beings, to materials, to the natural environment or to transcendental levels)¹⁷. Supplementing earlier research on the functionality of law as a language-bound instrument to shape a political sphere of rule¹⁸ or on the broad understanding of constitution formation beyond norm-related textuality¹⁹ further explanation is needed on the response structures of legal and constitutional formation²⁰. Law creation results from subjective entitlements, asserted or disputed in the case of conflict²¹; the decisive arguments amount to a web of legal customs according to the conceptual world of the historical contemporaries. Since law happens to be in language, a pragmatic linguistic approach²² is focused on the formative power of words; this addresses – far beyond the Brunner/Kosseleck interest in ‘key terms’²³ – the building of political spheres of rule through the determination of meanings, contextualisation and semantic networks of relationships. Due to the lack of literacy of the (historical) common man non-verbal communication about constituting a community by means of art and architecture is included in the lecture hall²⁴.

In doing so, teaching specific European rationales of historic constitutionalization processes is neither concerned with any relativistic Foucaultian scepticism towards institutionalized consistency of expressions nor with any phenomenological subjectivism as within the early *Annales* of Marc Bloch. Rather, the functional access to the protective rationales, the focus on conflict situations and conflicting interests²⁵ distinguishes the teaching of European Constitutional History from general expla-

nations about historic institutions, legal or social historian analyses and political comparisons of historical systems of government.

The following considerations on specific European rationales of historic constitutionalization processes start with the Basics of Europe as an Idea without given reference (III.), and deal with the European Commingling of Culture and Politics (IV.). Finally, an outlook onto the Impulses for the Future of Europe (V.) complete the deliberations on the specific challenges of teaching constitutional history on a comparative European scale.

3. *The Basics of Europe as an Idea without Given Reference*

The abduction of the beautiful Phoenician daughter from Sidon (today Lebanon) to Crete on the bull's back of Zeus is not only the legendary origin of the Minoan advanced civilisation. Rather, it alludes to a fundamental peculiarity of Europe as an idea of self-identification: Europe as an idea without given reference emerges in the reflection on its borders²⁶. As any 'structures of justification'²⁷ depend on the orientation towards the opposite it is not by chance that the so-called Europa saga happens to have its origins in a cultural clash with influences from outside (for Crete: from the Near East, the Levant and Africa).

All historic uses of European identification correspond with demarcation against the Non-Europeans. This will be illustrated in this article in accordance with various sources all over the centuries.

3.1 *Hellenising Identifications*

For the ancient Greeks, neither law nor Europe played a role. For those, who consider themselves to be Europeans, ancient Greece is associated with the emergence of writing, the Socratic questioning of self-awareness (*Gnōthi seautón*), the legal philosophical foundations by Plato and Aristotle, and the Herodotean, mythological exaltation of Greek freedom (*éleuthería*) in contrast to the Persian oppression. Through the mediation of Neoplatonism, Stoic philosophy and early medieval patristics these basics agglomerated into a specific European preference for individuality over any collective, and for freedom over any (constituted) state power. Nevertheless, it seems questionable whether this preference was only triggered in the Europe wide sympathy for the Greek struggle for freedom from Ottoman oppression in the 19th century.

3.1.1 *Cradle of European Writing*

It is true that the Minoans were the first Europeans who had known how to write, and the fabulous ride on the bull's back perpetuates the thereto related initiating impulses from the Near East. Of course, the exact routes remain to be research desiderata²⁸. For those interested in constitutional history, though, it is sufficient to understand how the Greek alphabet has developed from the Phoenician letters²⁹, and how the first has godfathered the Latin and the Cyrillic³⁰. Despite our present ignorance about the Minoan Linear A Crete is to be appreciated as the cradle of

European writing³¹. Most probably, it has been the Minoan abstraction of phonetic complexes³² away from the ideogrammatic correspondence of hieroglyphic characters³³ that contributed to the efficiency of European languages in developing legal terms. This may be studied from the earliest written statutes, like those of Gortyn 500 BC³⁴. Interestingly enough, it was the use of the Asia Minor Ionic alphabet (with its 24 characters) for the recording of legal texts in Athens in 403 BC that established a common Greek alphabet³⁵.

3.1.2 *Democratic Idealisation of the Polis*

Even if the Attic polis has little in common with today's representative democracies³⁶, the neoclassicist parliamentary style with its balanced proportions according to the golden ratio (*proportio divina*) is its architectural reminiscence all over Europe³⁷. The Greek concept of *democratia* (rule of the people) shows an early synonymy with *politeia* (constitution) as well as a conceptual proximity to *isonomia* (equality through law)³⁸. Its crucial goal is justice as the highest value, «represented by the state, in which the happiness of the individual is determined by the good of the whole»³⁹. In this the cave allegory (in the Platonic *Politeia*)⁴⁰, the charioteer metaphor (in the Platonic dialogue *Phaidros*)⁴¹ and the Aristotelean state forms theory⁴² concur – the latter including the Attic radical democratic distribution of offices according to lots and rotation⁴³.

The democratic idealisation of the *polis* includes a further basic narrative tradition: one's dignity lies in obeying the decisions

of the people's assembly (*ekklesia*) by one's own free will. This has been immortalised in the Platonic *Apology* by the Socratic decision in favour of the cup of hemlock and against flight. Often before his final sympathy for the Attic statutes Socrates has taken a stand for their legitimacy strength (*nomoi ischyroi*) due to practical reason (*phronēsis*)⁴⁴, contrary to the sophistical mockery of Attic 'statute making'. At the same time, the earliest relativisation of unjust law became discussed⁴⁵. Europeans owe to the Greek theatre not only the *próson* as the ethymological basis for the conceptualisation of the person⁴⁶ but also the «holy wrath»⁴⁷ of the *Antigone*.

To be very precise: The Greek antique has coined legal philosophy, but not European legal thinking. Ionian natural philosophy⁴⁸ reached rational scientific abstractions by looking for the primordial substance, from which the diversity of all sensually perceptible phenomena was to be derived in an explanatory manner. Law was not yet part of this. It had been only the Ciceronian natural law (*iustitia natura*), schooled on the Platonic and Stoic philosophy⁴⁹, that explained natural law as the ideas of justice common to all men (*consensus omnium*)⁵⁰, to be the inherent rationality (*ratio scripta*) of the classic Roman law, promoting thereby not only the antique Roman claim to govern the *Imperium Romanum*, but also the attractiveness of its medieval learned version for medieval emperors. Before the reception of the learned law any differentiation of law, from the 'inherently right' was unknown and inconceivable.

3.1.3 *Contrasting Greek Freedom with Persian Oppression*

Both Greek antiquity⁵¹ and contemporary discourses⁵² have known and know a clichéd contrasting of Greek freedom with Persian oppression, a kind of (idealised) understanding of freedom as a right to justification instead of any (barbaric)⁵³ subjection to rulers' commands. This was first found in Herodotus' account⁵⁴ of the Persian Wars (VII 102). Thus, it originates from the same century as the mentioned first writing of the city statutes, the premiere of *Antigone*, the beginnings of Ionian natural philosophy and the sophistic relativisation of democratic 'statutemaking' in the Attic *poleis*⁵⁵. Herodotus puts it into the mouth of Demaratos, a Greek serving in the Persian army, that freedom (*ἐλευθερία*) together with wisdom (*sophía*)⁵⁶ enabled the Greeks under Themistocles to win at Salamis⁵⁷, despite all the Persian technical superiority. None of the Near Eastern languages knows an equivalent for the Greek '*ἐλευθερία*'. And the etymological connection between «free» and «belonging to the people» also fits in with this: the Mycenaean Greek (=Linear B) *éleútheros* is originally related to Latin *liber* «free» and meant something like «belonging to the people» in the basic Indo-European language (where **h₁leyud^h* - is reconstructed)⁵⁸.

Not factuality, but the 'threatening other' seems to motivate the (European) identification pattern in favour of freedom. Herodotus' mythological-symptomatic reminder of the «incompatibility of the culture of the Occident with Eastern barbarism»⁵⁹ did not aim at any geographical factuality; all the more so, as the later causality claim of Thucydidean historiography

has still been unknown. Rather, the west coast of Asia Minor including the offshore Ionian islands and thus geographically Asia was the home of the Presocratics⁶⁰, who had been the very first with a rational desire for knowledge. And it is only from the Persian point of view that Herodotus equates Greece with Europe; for the Greeks⁶¹ themselves, a reference to Europe played no role, neither in Marathon, nor at Thermopylae, nor before Salamis.

3.2. *Rationality Mediated by the Latin Christianity (universitas christiana)*

3.2.1 *Christian Charge of the Frankish Empire*

Neither for Alexander the Great's empire nor for the Romans and their world empire Europe has been a reference point. It is only after the end of the Western Roman Empire that Europe reappears in the sources – again as a term of identification in a 'perceived' threat from the East: Islam had spread from Arabia (especially due to its cultural and scientific progressiveness) via the Maghreb to Spain⁶², and its expansionist urge beyond the Pyrenees encountered Francogallia, which had been Latin-Christian since Clovis' baptism in 496/98. In the defensive battle at Tours and Poitiers in 732, the Franks led by the Carolingian house-meier Charles Martell called themselves «Europeans», for the first time in the Latinized form «*Europaeenses*»⁶³. Nevertheless, one should be critically aware of retrospect⁶⁴ longings for a narrative of a world-historical victory over the 'enemies of Christianity'⁶⁵, – probably also to legitimise the Carolingian usurpation of



5th century BCE Greek red-figure pottery vase showing the myth of Europa and Zeus disguised as a bull (Tarquinia Archaeological Museum, Italy)

the Merovingian kingship. It hardly corresponds to the facts of military history that Christian Gaul would have been in danger of being overrun. Rather, the Christian hallmark of the emerging European *imperium occidentale* appears to be a well propagated justification, as it is the «superiority of the justification structure»⁶⁶, that makes an ideology. Therefore, some truth

lies in Hobbes' sarcasm that the «papacy is no other than the Ghost of the deceased Roman Empire sitting crowned upon the grave thereof»⁶⁷.

It is the reference to Europe that vests the Frankish emperors with a Christian 'charge'. When claiming the (Western) Roman imperial title, Charlemagne calls himself *pater Europae*. The imperial claim

to rule over the *gens latina* (or the *tota latinitas*) is formulated as «*Renovatio Imperii Romani*» in the circumscription of Charlemagne's seal. It was the reference to Rome and Latinity⁶⁸ that made the late antique idea of empire usable for the rise of the Frankish emperor⁶⁹. This early medieval European identification with the Latin ecclesia has nothing to do with the imperial-ecclesiastical *symphonia* of the Eastern Roman emperor. Rather, the integrating effect of Latinity can be exemplified by the difference of the *Slavia latina* from the *Slavia orthodoxa*: While Latin as written *lingua franca* provided access to the antique masterminds, the Roman legal terminology and standardizable hierarchizations⁷⁰, (Old) Church Slavonic was an archaic dialect of the Bulgarian Slavonic; though intelligible in all spoken Slavic languages⁷¹, it has never allowed any lordly standardizations, be it as a liturgical or legal language.

The 'propagandistic' Christian 'charge' can also be comprehended by the legitimizing integration of the Western emperorship into the Augustinian *ordinatio ad Unum*⁷²; it connects the Platonic primordial idea with the Christian creator God: philosophical universality met all-encompassing catholicism (in the original wording of *katholikós*: *katá* „according“ and (*hólos*) „total, complete“). Such a 'celestial orientation' towards the *civitas dei* included the very wordly claim to subordinate the class hierarchy⁷³ to the Frankish emperorship in the irrevocable sense of the Augustinian *ut non conturbaretur ordo*⁷⁴. The same is true for the designation of Charlemagne as *pater fidelium* in the double meaning of the Latin *fidelis* «loyal» (in the feudal sense) and «faithful» (in the religious sense)⁷⁵. Nevertheless, the religious-political unity⁷⁶ of

the early medieval *res publica christiana* has faced the fundamental duality between God and world⁷⁷, a salvatory individualism⁷⁸ and the upgrade of personhood to the image of God (*imago Dei*)-appreciation⁷⁹.

Additionally, there is no contradiction between faith and recognition in the (medieval scholastic) rationalism of the Latin Christian book religion⁸⁰, and the questioning of an argumentative theology⁸¹ makes the church (*ecclesia*) a *semper reformanda* one. The Thomasian unity of faith and knowledge (*fides et intellectus*)⁸², relying on the necessity of the general and the contingency of the individual⁸³, motivated a kind of 'learning mode'⁸⁴ within the Latin Christianity. This is not meant in a naïve trivialization of military atrocities in the name of the Christian faith. Rather, the expression 'learning mode' addresses the (typical European) legitimising reference back to fundamental traditions – in short: Jerusalem, Athens and Rome – and the therein comprised emancipatory potential of renaissances and reformations. From my point of view, European constitutional history owes a good amount of premodern individualism to the rationality of the medieval Latin Christian book theology⁸⁵, and it would be a tackling research project to extend the Jellinek thesis⁸⁶ far back beyond the enlightenment.

As already rooted in the mentioned dualism of heavenly and wordly realms (between imperial assets and God's ones)⁸⁷, the salvatory individualism⁸⁸ and the *imago dei*-sacralization of personhood, there seems to be a specific European trust in or readiness for secularisation⁸⁹. The idea of creation declared as *lógos* (Prologue to the Gospel of John) has always motivated a Christian demythologisation of the

world: nature is 'God's second book', to be directly 'revealed' in its experimental determinability⁹⁰. Even if the official church has been hostile to science and Gallilei's excommunication was only withdrawn in 1992, there is a major impact of Christianity to make European constitutional history profiting from a secularization or mathematization of natural law. Facing the Spanish conquests in South America, the masterminds in late Spanish scholasticism enforce an 'eccentric'⁹¹ argumentation of the Indians' 'just' defensive war against the Spanish *conquistaderos* (Vitoria, de Indis I/1, 1, 1), and Hugo Grotius' law of nations «*etiamsi deus non daretur*» (IBP Prol. 11) is based on the natural human freedom to act voluntarily according to the natural law, valid irrespective of God's existence⁹².

3.2.2 *The Church's Interest in Wordly Power Affairs and the Worldly Interest in Church's Affairs*

Beyond the decisive contribution to the European rational concept of justice⁹³, a further specific rationality of Latin Christianity can be observed from the papal approval of the legitimacy of the Carolingian rule: 'obedience' produced order, and it was in the literal sense here that it mattered (*oboedientia*, Latin deriving from listening *audire*). Namely, via a papal wisdom Pope Zacharias answered⁹⁴, that it is preferable to call the one who has the power (*potestas*) the king over the one with the mere royal title (*auctoritas*), «so that the order is not disturbed» (the Augustinian *ut non conturbaretur ordo*, De civitate Dei, l. 19, c. 13). Thus preventing the 751-coup to be inter-

preted as dangerous precedent, the papal wisdom legitimized the usurpatory replacement of the Merovingians by the Carolingian house magistrates (*majores domus*)⁹⁵ and made Pippin III (r. 751-768) king.

However, this event was so sensitive, as it meant, in fact, breaking one's oath of fidelity towards one's king, that Pippin needed an extra covenant with the divine, relying on the papal apostolic authority. He became the first Frankish king to receive a Pope's visit at his court 753, and to be anointed in St. Denis 754 for his help against the Lombard threat to the Byzantine exarchate. Even though such anointing rituals (*consecrationes*) had been in use in Visigothic Spain and Ireland, the particular redress to the Old testament allowed the contemporary imagination of a special Carolingian royal dignity as a 'New David' (*Novus David*).

The exchange of papal estates (*Patrimonium Petri*) for anointing might be too simplified⁹⁶. Yet, the formulaic reference to the origin of the Frankish kingship 'by God's grace' (*Dei gratia*) arose around the Frankish royal-papal alliance of interests. The Carolingians' recognition as the rightful Frankish kings was ennobled by their protective function for Rome (*Patricius Romanorum*), the Frankish church introduced the Roman liturgy instead of the Gallican one. The Frankish guarantee for the Papal States (so-called Pippine Donation) enabled the Roman emancipation from Eastern Rome. The alliance between the Frankish kingship (774 together with the Lombard crown) and the Papal Church amounted to a continuum in 'occidental' imperial politics: both the Latin Church and the Roman Empire are the decisive universal identities of Carolingian Europe⁹⁷, and their 'transfer'

via the *translatio imperii Romanorum* was only logical.

There are two remarkable traces of the Latin church's interference with worldly power structures, contributing to specific European rationales of Constitutional history: the political signature of Latin episcopal structures (infra 3.2.2.1) and top down standardizations via Latinity (infra 3.2.2.2). The latter's spread was fostered not only by the Papal rule via jurisdiction, but also by the Frankish kingship (Carolingian renaissance) on the basis of extending monasteries to academic learning centers.

3.2.2.1 Political Signature of Latin Episcopal Structures

Organizing Frankish rule between the Pyrenees and the Weser relied on the city-based episcopal structure of the Roman Church⁹⁸. The dioceses offered reference points for territorial competences, and the canonical adoption of the Roman *iurisdiction* for episcopal jurisdiction⁹⁹ took place at a time when the concept of 'border, frontier, frontière, frontera, frontiera' has still been completely unknown¹⁰⁰. In the old Roman centers, the office of bishop and the rule of the city coincided often under the influence of local nobility. It was exactly this continuity as an ancient provincial capital, whereby Reims (documented as a bishop's see since 314) has established itself as the baptismal site of the Merovingian king Clovis and as the coronation church of the French Capetian kings.

The singularity of the bishops' local seats within the Roman administrative tradition of the provinces with their suburbs (*civitates*) promoted not only the ecclesiastical terri-

torialization, but also fostered the special position of the Frankish and later German bishops, who increasingly exercised rule in a secular sense and finally became imperial princes. Thereby, the Frankish *regnum Europae* was distinguishable from its Celtic, Slavic, Scandinavian and Baltic neighbours, and the latter's connection to Europe around 1000 required Latin Christianisation.

3.2.2.2 Standardisation through Scientific, Legal and Liturgical Language

The Latinity of the Roman canonical church order provided the Carolingians with lordly standardisations, – be it the specifications for a uniform liturgical language (*unitas*)¹⁰¹, be it the regularity of the Gregorian chant (*cantus Romanus*) for the singing (*consonantia*)¹⁰².

In addition, general schools¹⁰³ became established at the cathedral chapters (787 *Epistula Litteris Colendis*)¹⁰⁴, to spread knowledge of antique and scripture-based Latinity (Carolingian Renaissance). This turned monasteries into cultural institutions, as at Fulda, Lorsch, Reichenau, St. Gall, Weißenburg and Murbach in Alsace. Thereby, the Frankish school system at monasteries and cathedral schools amounted to a nucleus of scholasticism. On the other hand the scholastic *credo ut intelligam*¹⁰⁵ strengthened the royal rule¹⁰⁶ and helped a great deal to consolidate the imperial patronage over the Church: Through privileges with immunity and later imperial immediacy, imperial abbeys were closely bound to the king's rule. The bishops were appointed with royal involvement. Abbots and bishops became appointed as vassals

and subjected to the (secular) oath of allegiance, imperial synods met under imperial presidency¹⁰⁷.

Though, rationality and willingness to learn never existed vis-à-vis the Judaism of Christ, and even nowadays Jewish influences on European constitutional history are still a research desideratum¹⁰⁸, even though the terminology of the so-called 'European Age of the Jews'¹⁰⁹ is well known. The Passau teaching and this essay do not offer more than some superficial sketches, though they hope to be essential and to trigger further attention.

3.2.3 *Jewish Distinctiveness due to a Focus on Religious Identity and Specific Settlements*

The Jewish religion is older than any constitutional processes in Europe, and significant influences are hard to spot, as Hebrew law contrary to canon law has never cared about the concurrence with or legitimization of worldly ruling¹¹⁰. Rather due to its divine revelation, Hebrew law has always been eager to remain true to itself and kept away from 'statal business'. However, it is shortsighted to settle for an exclusive Christian authorship for European legal terms and constitutional thinking. It was a mixture of salvation ideas by prophetic Judaism and Christian narratives that made up the empires' sequence according to the Second Epistle to the Thessalonians (the Pantocrator Christ overcoming the Roman Empire)¹¹¹, which served as a narrative to legitimize the Carolingian emperorship. In addition, there is an obvious contribution by the Mishnah (2nd till 3rd century CE=AC)¹¹² to 'sanctify' human individuality by like-

ness, even though the ideas of the true essence of being human differ widely¹¹³.

As a unique religious community with international trade contacts, good language skills and medical talents¹¹⁴, the Jews live under various legal ideas based directly on God's Word (*Halacha*=the path to follow)¹¹⁵ and various interpretations¹¹⁶, independent from secular statehood¹¹⁷. The diaspora- or even more exile-situation hands down a kind of 'apocalyptic mentality', be it the perceived intimidation of religious identity¹¹⁸, be it the exposure to foreign domination¹¹⁹. Early medieval crusades have fostered Christian revenge fantasies for a 'murderer' God¹²⁰, and the historic rise of the money economy¹²¹ witnessed resentments against the so-called usury and interest transactions by Jews.

Their settlement via economic privileges has always been an essential factor for the 'segregation' of Jewish communities¹²². Privileging by the king meant immediate royal protection – by jurisdiction and royal ban e.g. in the later Hohenstaufen chancery. There was also the well established practice to include the Jews in land peace regulations (*Landfriedensregelungen*). Thus, settlement by privileging resulted in a network of competing protective powers. As long as their balance was preserved (and even if pitted against each other) the Jewish communities could gain advantages, which often motivated envy. When the balance broke down, persecution or expulsion happened, and any rationality as argued for in the previous sections seems to have been forgotten.

Putting the analyzed European identification patterns in a nutshell, a specific European swap of levels becomes obvious: mixing cultural and political levels and

'selling' cultural matches as political accommodations. The linguistic abstractness of Latin, still nowadays the common root of many European languages, left enough space for this. The formative influence of standardizing constitutional notions resulted significantly out of its distinctiveness from the oral naming of practical realities. Beyond the liturgical, literary and scientific standardization (*supra*) there is a special constitutional impact of this 'linguistic gap'. No other constitutionally coherent area apart from Europe has been embossed in such a way by the difference between a learned written language and the orally spoken uniform dialects. This might be one reason for a specific European 'confusion' to take cultural concordance as a substitute for political unification.

4. *The European Commingling of Culture and Politics*

At Charlemagne's court, Europe was the cultural label for the Christian Frankish dominion between the Rhineland and northern Italy, and denominated a vast incoherent domain as different from its pagan neighbours, but also from Byzantium and from the Christendom¹²³ as a whole. Interestingly enough, the 1951 map of the original Coal and Steel Community corresponds pretty closely to the areas of the Carolingian 'Empire'. No historian would be ready to reformulate the previous sentence by using the term 'borders' of the Carolingian Empire, as it has been tied together by and onto the person of Charles. Significantly, it is the name of Charles that has entered the Slavic languages as the generic term for 'king, rul-

er' via the assumed Common Slavic *korlj*¹²⁴. The ruler's person as political programme is not uncommon to medieval constitutional thinking, but for the Frankish Carolingian Empire a further observation seems justified: according to the Carolingian sources it is quite likely, that the universal identities Holy and Roman left no room (and no need) for any further supra-regional connotation of the Frankish claim to rule. This assumption can be examined by means of the following arguments: The instrumentalization of the ancient educational canon for the renaissance of the Roman imperial idea made the *translatio* not only a unity of thought, but motivated 'thought' unity; the medieval canon *ordinabiliter habitum* met the Augustinian *ordinatio ad unum*¹²⁵. This combination resulted in a standardized definitory framework for organizing rule, – abstract from the concrete everyday realities; thereby, kingship amounted conceptually to an autocracy, when (and even if) the Merovingians «in Latin European post-Roman societies ... [were still] multi-rulers rather than autocrats»¹²⁶.

The linguistic abstractness to derivate *regnum* from royal autocracy was owed to the fact that Latin is the patristic and the scholastic language, as well as the legalized means of communication by the papal legal church (via the decretals). At the very same time when the synonymy of Latin writing with rational, abstract, nuanced and strictly logical expression has started¹²⁷, the Carolingian minuscule – still present today in Times New Roman -(font) – has offered the appropriate tool to provide every monastery with an authentic copy of the Rule of St. Benedict.

This difference or even more distinctiveness of written Latin from local dialects

and indigenous languages is a European peculiarity, especially in regard to the constitutional naming¹²⁸. Only from the 6th century onwards, there emerges a vulgar oral Latin variant, coincidentally with the *leges barbarorum* of the Migration Period. Interestingly and from my point of view not by chance, Frankish Latin writing amounted to a bulwark against the regional differentiation of spoken vulgar Latin in the times between the *Lex Salica* (511) and the Aachen Capitular (811) – or roughly between the Merovingian royal baptism in 498 and the Carolingian imperial coronation in 800. It is therefore no surprise, that only from the 9th century the earliest uses of French¹²⁹, Spanish, Catalan, Portuguese, Romanian, can be traced¹³⁰.

Additionally, in later centuries the cultural unity on the basis of the Latin *lingua franca* prevailed. It remained the learned language at the first universities Bologna, Oxford and Paris, and still half a millennium later than those medieval foundations Latin frames legal arguments and debates, even though the *usus modernus* produced the first vernacular lectures for the prospective *iusperiti*. Also, scientific classics (Copernicus 1543¹³¹, Galilei 1610¹³², Kepler 1619¹³³, Bacon 1620¹³⁴, Newton 1687¹³⁵) and further mathematical works of later centuries (Euler 1744/46¹³⁶, Gauss 1801¹³⁷) addressed their readers in Latin.

Even if today's Europeans have nothing to do with Christianity or the France of the Vth Republic has even elevated laicism (*laïcité*) to a constitutional principle¹³⁸, the (Latin) linguistic contexts¹³⁹ of Catholic Christianity run by the Papal Church remain the historic fundamentals that have enabled the adoption of late antique structures of rule and law in the Roman-Germanic

synthesis of the Franks¹⁴⁰. This integration effect of Latinity¹⁴¹ has borrowed from its coexistence with and difference from the spoken colloquial languages, which shape the world of experience and the immediate reality of life of the contemporaries; it enabled cultural unity without political subjugation¹⁴². This might be regarded as a specific strength, but it also comprises the pitfall of 'covering' political diversity up to and including pettiness with scientifically shaped legal-cultural unity. Therefore, «Shallow Europe» (Umberto Eco, *La Stampa* 2012)¹⁴³, takes cultural unity already for a granted political unity, all too familiar with Eco's pointed statement that «we are European by culture... we must remember that it is culture, not war, that forges our identity». In my point of view, it is exactly the commingling of culture and politics, that the contemporary integration process of the European Union, oscillating between a federal union and united European states, still 'suffers' from.

The commingling of culture and politics might be owed to Europe's origin as an idea (of self-identification) without given (political) reference (*supra*). This can be observed in the centuries, following the Carolingian integration of medieval Europe. After the Carolingians, the term 'Europe' lost its identification function¹⁴⁴. It was not until the fall of Constantinople in 1453 that 'Europe' as the 'signal word' against the 'danger from the East' was back in *vogue*. Enea Silvio Piccolomini, the later Pope Pius II, projected the cultural level of identification¹⁴⁵ onto the spiritual-religious unity of Christianity; in his speech at the Frankfurt Turks' Day in 1454, he used this bracket between cultural and religious unity as if «Europe, fatherland, our

own house, our abode»¹⁴⁶ were a political dominion. This crossing of cultural and political levels sprouted a wide variety of blossoms. Listening to Schiller's inaugural lecture in Jena (1789)¹⁴⁷, the cultural claim to «bring the light» to other peoples, as the Enlightenment metaphor implies, was the breeding ground for political exploitation via colonisation. The *Sturm und Drang* had only known the nation, the fatherland. The latter also applies to Napoleon, the 19th century 'choreographer' of Europe: France (but not Europe) was the decisive political factor in asserting his imperial claims. The lacking political idea of Europe also accompanied the 'legal-cultural European imprint' on the constitutional making of America. It was the familiarity of the *founding* fathers with European antiquity that has shaped the representative form of the republic in the union of initially 13 states¹⁴⁸. Their educated bourgeois caution towards the people as sovereign caused the 'almost hidden' reference to popular sovereignty in the initial wording of the 1787 text, balanced with the (learned) trust in a meritocracy of judges and representatives, which also permeates the *federalist papers* penned by Alexander Hamilton, James Madison and John Jay under the common pseudonym "Publius". The worldwide 'triumphal march' of freedom and democracy, associated with «the old continent» (Goethe *Tame Xenia*)¹⁴⁹ since the Herodotean narratives of the Persian wars, left Europe between French revolutionary turmoil, monarchical sovereignty and longings for safety, varieties of co-determination (also including aristocratic brotherhood like in the Polish May Constitution of 1791), or the Kantian republicanism, to which the French credo of freedom through participation in the *volonté générale*

together with the explosive power of the triad «liberty, equality, fraternity» sounded monstrous. These uncertainties of the '*Zeitenwende*/turn of time' between the late 18th and the early 19th centuries triggered the romantic movement; and for its German protagonists Novalis¹⁵⁰ and Schlegel¹⁵¹ it was the *topos* of a European Christian Occident that became revived, without any concrete political conclusions in the sources of the 19th century.

5. *Outlook: Impulses for the Future of Europe*

Only after the National Socialist reign of terror, the world war traumas and the division by the Iron Curtain does Europe become a political idea in which the impulse to unite for reconciliation and peace among the peoples manifests itself. What unites the Europeans, who until 1989 were the Western, Eastern, Southern and Northern Europeans? For some, the Herodotus motif, danger from the East, plays an important role, for others the romantic motif of the Christian Occident. In the political processes themselves, however, the Enlightenment tradition prevails¹⁵². The states that have joined together in the European and Atlantic associations demand from each other the recognition of human rights, the rule of law, democracy and a competition-oriented but anti-monopolistic market economy. Since 1989, however, the situation has changed fundamentally. The East Central European and Eastern European countries have joined the Atlantic and European associations. Beyond the logic of European legal Art. 7 procedures or budget blockades, the core issue is a self-defini-

tion of the Europeans. For this, a Western European re-labelling of former socialist countries cannot suffice. This only feeds ethnicism and nationalisms or a post-communist decadence bashing of the so-called Western world, in which anti-modern resentments combine with post-communist nostalgia and ecclesiastical claims to property preservation; what else unites us as Europeans?

This essay is an attempt to answer this from the perspective of constitutional history. It might come to an end by highlighting the overall aim of teaching constitutional history in a comparative perspective: To contribute to the self-awareness of young Europeans and their responsibility within a 'new' world. By 'responsibility' (literally: how to respond to the world) I mean the tolerance of ambiguity as the essential teaching topic⁵³.

This leads us back to the starting point of hellenising identifications and their trias of writing, democracy and liberty: Legally translating human dignity's essence

into respectfulness for the individuality of others to the others' condition builds on the 'tolerance of ambiguity'⁵⁴, which bars democracies from totalitarian degenerations⁵⁵. Any tolerating of intolerance would undermine any critical rationalism in open societies⁵⁶. This is all the more urgent as there is no immunity of democracies against totalitarian distortions⁵⁷. Dignity's legal practicability can be established via the 'right to justification'⁵⁸ also offering a modern translation of the constitutive cliché of European freedom (contrasted to Chinese, Russian oppression). Such a categorical right to justification reminds us of the Socratean trust in the practical reason (*phronêsis*), and it is also the essence of statehood respecting its people as being its author, rather than treating them merely as the 'means of the state'. Civic self-mastery as the indispensable prerequisite for the functional efficacy of dignity for legitimization and legality is a major goal of teaching European constitutional history.

¹ <https://www.jura.uni-passau.de/muessig/schwerpunktbereiche/schwerpunktbereich-ii/ausgestaltung-und-pruefungen> (accessed on 13/11/2023); <https://www.jura.uni-passau.de/studium/studienangebote/zusatzqualifikationen/vorlesungsverzeichnis> (accessed on 09/11/2023).

² <https://kurse.vhb.org/VHB-PORTAL/kursprogramm/kursprogramm.jsp> (accessed on 14/11/2023).

³ <https://www.jura.uni-passau.de/muessig/schwerpunktbereiche> (accessed on 14/11/2023).

⁴ <https://www.uni-augsburg.de/>

<de/studium/organisation-beratung/vorlesungsverzeichnis/lehrveranstaltungen-juristische-fakultat/> (accessed on 09/11/2023).

⁵ https://www.jura.uni-bayreuth.de/pool/dokumente/studienplaene/Studienverlaufsplan_WS_2022_23.pdf (accessed on 9/11/2023).

⁶ https://campo.fau.de/qisserver/pages/cm/extra/coursecatalog/showCourseCatalog.xhtml?_flowId=showCourseCatalog-flow&_flowExecutionKey=e1s1 (accessed on 9/11/2023).

⁷ <https://lsf.verwaltung.uni-muenchen.de/qisserver/rds?state=tree&search=1&trex=step&root120232=681010%7C674090%7C669729%7C673071%7C681066%7C684100&P.vx=kurz> (accessed on 9/11/2023).

https://campusportal.uni-regensburg.de/qisserver/pages/cm/extra/coursecatalog/showCourseCatalog.xhtml?_flowId=showCourseCatalog-flow&_flowExecutionKey=e1s1 (accessed on 9/11/2023).

⁸ https://campusportal.uni-regensburg.de/qisserver/pages/cm/extra/coursecatalog/showCourseCatalog.xhtml?_flowId=showCourseCatalog-flow&_flowExecutionKey=e1s1 (accessed on 9/11/2023).

⁹ (1936-2023). This article is dedicated to him in gratitude and honourable remembrance.

¹⁰ <https://wuestudy.zv.uni-wuerenchen.de/qisserver/rds?state=tree&search=1&trex=step&root120232=681010%7C674090%7C669729%7C673071%7C681066%7C684100&P.vx=kurz>

zburg.de/qisserver/pages/startFlow.xhtml?_flowId=show-CourseCatalog-flow&_flowExecutionKey=e2s1 (accessed on 9/11/2023). See also the Bavarian State Ministry of Science and the Arts, <https://www.stmwk.bayern.de/wissenschaftler/hochschulen/universitaeten.html> (accessed on 9/11/2023).

¹¹ O. Halecki, *Europa - Grenzen und Gliederung seiner Geschichte*, Darmstadt, Gentner, 1957, p. 6. The quotation continues: «and this is the secret of all the refinement and peculiarity of European civilisation. At the same time, it is the deepest reason for the development of local autonomies and for the importance of small countries, even city-states, in European history and especially in the comparative history of individual cultural contributions to a common legacy». (English paraphras. transl. mine, as all subsequent non English quotes, if not indicated otherwise).

¹² Instead of many cf. W. Reinhard, *Geschichte der Staatsgewalt, Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart*, München, Beck, 1999, p. 25.

¹³ Cf. «integral conceptions of European history» (B. Jussen, *Einleitung*, in: idem (ed.), *Die Macht des Königs. Herrschaft in Europa vom Frühmittelalter bis in die Neuzeit*, München, Beck, 2005, p. XII).

¹⁴ Therefore there is a deliberate farewell to any Western centrism, when lecturing European Constitutional History.

¹⁵ The first world map by Hekataios from the end of the 6th century BC shows a southern Asia and a northern Europe; this is coincident with the Homeric 'Hymn to Apollo', which distinguishes a 'Europe' from the 'Peloponnese and from the islands in the sea' (Homer, *Hymne an Apoll*, in: A. Weiher (ed.), *Homerische Hymnen*, 6th ed., München/Zürich, Artemis, 1989, p. 49). Most probable

is the synonymous use of «Europe» for Greece from the centre to the Bosphorus. For Hekataios cf. Ch. Schubert, *Konstruktionsprinzipien des Weltbildes: Die Hippokratische Schrift De aeribus und die Suche nach der Mitte der Welt*, in «Medizinhistorisches Journal», n. 35.3/4, 2000, p. 201 ff., 202.

¹⁶ This, however, would be the inherent consequence of the concepts by Hobbes, Bodin and Schmitt, (still followed today: instead of many H. Bredekamp, *Bild Recht Zeit, Ein Plädoyer für die Neugewinnung von Distanz*, ed. by H. Meier, München, Siemens Stiftung, 2021, p. 14 ff). Against such an absolutized approach cf. already the research programme of the Advanced Grant ReConFort, infra note 19 and the last manuscript of Dietmar Willoweit, *Rechtsdenken. Zwischen innergesellschaftlicher Rechtsbildung und hoheitlicher Rechtssetzung*, ed. by Steffen Schlinker on the basis of the author's nearly completed manuscript, Baden-Baden, Nomos, 2024.

¹⁷ Cf. the nostri-Anapher by Manetti (U. Müßig, *Drafting Dignity*, in «Journal of Constitutional History / Giornale di Storia Costituzionale», n. 44/II, 2022, pp. 157 ff., 159).

¹⁸ U. Müßig, *Reason and Fairness, Constituting Justice in Europe*, Leiden, Brill, 2019, p. 27 ff. idem, *Recht und Justizhoheit, Der gesetzliche Richter im historischen Vergleich von der Kanonistik bis zur Europäischen Menschenrechtskonvention, unter besonderer Berücksichtigung der Rechtsentwicklung in Deutschland, England und Frankreich. Schriften zur Europäischen Rechts- und Verfassungsgeschichte*, vol. 44, 2nd, corrected and supplemented edition, Berlin, Duncker & Humblot, 2009, pp. 36-38.

¹⁹ Cf. ReConFort, Reconsidering Constitutional Formation, ERC-AG-SH6 - Advanced Grant No. 339529, and [https://link.springer.com/book/10.1007/978-3-319-42405-7](https://link.springer.com/book/10.1007/978-3-319-42405-7;);

<https://link.springer.com/book/10.1007/978-3-319-73037-0>.

²⁰ Cf. H. Rosa, *Resonanz. Eine Soziologie der Weltbeziehung*, 4. ed., Berlin, Suhrkamp, 2020, pp. 52 ff., 144 ff., 365, 381 ff., 435 ff., 747 ff.

²¹ D. Willoweit, S. Schlinker, *Deutsche Verfassungsgeschichte. Vom Frankenreich bis zur Wiedervereinigung Deutschlands*, 8th ed., München, Beck, 2019, § 1 II 2, Rn. 6. Fundamentally D. Willoweit, *Gerechtigkeit und Recht. Zur Unterscheidung zweier Grundbegriffe der Jurisprudenz*, BayAkademieWiss, München, 2018; also: <https://publikationen.badw.de/de/044876905/pdf/CC%20BY> (accessed on 25/7/2023); idem, *Art. Recht, Handwörterbuch zur deutschen Rechtsgeschichte (=HRG)*, 2nd ed., col. 1079-1084.

²² Vgl. D. Busse, W. Teubert, *Ist Diskurs ein sprachwissenschaftliches Objekt? Zur Methodenfrage der historischen Semantik*, in D. Busse, F. Hermanns, W. Teubert (eds.), *Begriffsgeschichte und Diskursgeschichte. Methodenfragen und Forschungsergebnisse der historischen Semantik*, Westdeutscher Verlag, Opladen 1994, pp. 10 ff.

²³ D. Busse, *Historische Semantik, Analyse eines Programmes*, Stuttgart, Klett-Cotta, 1987, p. 65 ff. is already critical of the approach of the Geschichtliche Grundbegriffe edited by O. Brunner, W. Conze and R. Koselleck ed. (*Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, vol. 1-8/2, Stuttgart, Klett-Cotta, 1972-1997). On decontextualisation, recontextualisation, narrative formation, see also G.W. Most, *Preface*, in Id. (ed.), *Aporemata. Kritische Studien zur Philologiegeschichte*, vol. 5, Göttingen, Vandenhoeck & Ruprecht, 2001, p. VII (VIII).

²⁴ Cf. e.g. Müßig, *Drafting Dignity*, cit.

²⁵ Ivi, n. 18.

²⁶ Cf. Homer, *Iliad*, XIV, pp. 231-322 (With introduction, commentary, and facing-page translation by

S. Pulleyn, Oxford, OUP, 2020); Ovid, *Metamorphoses*, II pp. 833–875 (Translation by A.D. Melville, *Oxford's World's Classics*, Oxford, OUP, 2009). The topicality, facing the unresolved challenges of rescuing refugees in the Mediterranean sea, could not be greater.

²⁷ In the sense of the structure ontology by H. Rombach, *Struktur-ontologie, Eine Phänomenologie der Freiheit*, 2nd ed. Freiburg/Munich, Alber, 1988, p. 345 ff., p. 362 f. (=Die Grenzen des europäischen Denkens, in: Nachwort zur 2nd edition). Furthermore p. 366: «Structural ontology has set out to give a 'phenomenology of freedom'. By this is meant that the free character of human existence does not appear merely as a metaphysical assertion, a postulate or quite simply a positing, but proves itself in a very concrete form, namely as the only appropriate relation of structures to structures. ... Liberty is the 'causal nexus' in the structural context». I.e. reaction is possible as «free response» (ivi). Cf. also p. 330: «Freedom is the ultimate essence of being».

²⁸ Around 1100 BC, the Phoenicians developed the alphabetic script, by assigning a character to each spoken sound, which were only consonants (like modern Arabic and Hebrew). According to Adelheid Schlott Greek emerged from a reinterpretation of the Phoenician consonants Alef He Jod Ajin Waw in a e i o u-vowels (A. Schlott, *Schrift und Schreiber im Alten Ägypten*, München, Beck, 1989, p. 19–22; this reference is owed to my former colleague Ulrich Manthe, who is kindly thanked for it). This seems plausible, due to the rather arbitrary distribution of vowels in, for example, the modern German alphabet. Similarly H.J. Störig, *Abenteuer Sprache. Ein Streifzug durch die Sprachen der Erde*, München, dtv, 2002, p. 93 f. Differently K.-Th. Zauzich, the Egyptologist emeritus of Würzburg, who as-

sumes a derivation of the Greek alphabet from the hieratic script; although he concedes adherence to the Phoenician idea of deriving the letters from the hieratic ones, he assumes that the Greek script developed independently from the Phoenician alphabet (Hieroglyphen mit Geheimnis. Neue Erkenntnisse zur Entstehung unseres Alphabets, Darmstadt, Zabern, 2015).

²⁹ Be it 16 Phoenician letters (Pliny the Elder, *Naturalis Historia* VII, 56, 192: ...in *Graeciam attulisse e Phoenice Cadmum sedecim numero* ... <https://www.oxfordscholarly-editions.com>) or 17 (Isidore, *origines* (lat.=*Ethymologiae*, translated by M.L. Wallis, Oxford Classical Library, Reprint Oxford, OUP, 1957), Book I, chap. III, 6: *Cadmus Agenoris filius Graecas litteras a Phoenice in Graeciam decem et septem primus attulit*), which Kadmos, Europe's brother, is said to have brought with him in search of his sister. Cf. also Herodotus, *Histories*, vol. 1: Books I–V, 5th ed., Zurich, Hildesheim, 1995, V 58, p. 697; Tacitus, P. Cornelius, *Annalen*, 3rd edition, Stuttgart, Teubner, 2013, XI 14, p. 320.

³⁰ The oldest form of Slavonic that can be grasped by research, Church Slavonic, spoken in the 11th century, has been preserved within the liturgical language of the Orthodox Church.

³¹ Even though their linear script A has not been deciphered to this day and probably ends in 1500 BC, it has not been reused until Homer's Iliad in 800 BC. Homer's language belongs to the Ionian language group, to which Attic also belongs, the language of the Athenians; the latter gained supralocal impact due to the political and cultural rise of antique Athens. The subsequent Macedonian kings and the Diadochi made Attic their official and court language; thereby in the age of Hellenism, it amounted to the common language of the eastern Mediterranean and of the New Testament.

³² In contrast to the principle of word writing, in which each word corresponds to a pictorial sign, the meaning of the sign is linked to a phonetic complex; the combination of characters as phonetic signs, without regard to the original meaning of the signs (principle of *rebus*) is suitable for the (logographic) reproduction of words.

³³ Notwithstanding the fascination for the Phaistos Disc, a clay disc with hieroglyphics as the earliest evidence of letterpress printing (almost 3000 years before Gutenberg).

³⁴ Ancient saga tradition locates the begetting of Minos in Gortyn, the site of the oldest tablets of the law carved in stone in Greek script (around 500 BC). Today, twelve of the 20 tablets are preserved, consisting of a total of 42 stone blocks. The text of the law has a total of about 17 000 letters. The writing runs alternately from left to right and then mirror-inverted from right to left. The civil and criminal laws decreed on it formed the inheritance and family, divorce and criminal law of the city-state 2500 years ago.

³⁵ The research challenge of the interdependency of the genesis of antique urban statutes and the emergence of the arbitrary determinability of the connection between written characters and designated reality (linguistic arbitrariness) reaches far beyond the adequate teaching niveau (of legal history), but appears to be a promising interdisciplinary desideratum.

³⁶ The Greek *pólis* understood itself primarily personalistically, not territorially.

³⁷ Echoes of the Parthenon Temple on the Athenian Acropolis can be found, for example, in the Austrian Parliament designed by the architect Theophil Hansen or in the Palais Bourbon of the French Assemblée Nationale conceptualized by Lorenzo Giardini and Jules Hardouin-Hansart. See also

- L.-M. Weischede, *Parlamentskunst - Zur Staatsästhetik freierlicher Demokratie*, GRW (=Grundlagen der Rechtswissenschaft, ed. by U. Müßig, M. Auer, H. Dreier), Vol. 43, Tübingen, Mohr Siebeck, 2022.
- ³⁸ The Aristotelian *zōon politikón*, man as being related to the statutes of the *pólis* (as opposed to the shortened mistranslation 'political being'), fits in with this.
- ³⁹ H. Pleticha, O. Schönberger, *Die Griechen. Ein Lexikon zur Geschichte des klassischen Griechenlands*, Bergisch Gladbach, Lübbe, 1984, Art. *Plato*, p. 356.
- ⁴⁰ *Politeia*, *Der Staat*, Siebtes Buch, 514a ff., griechisch-deutsch, translated by R. Rufener, ed. by Th.A. Szlezák, Düsseldorf, dtv, 2000 (Tusculum), p. 566 ff.
- ⁴¹ Socrates' second speech (22-38) begins with the essence of the soul (its immortality, representing the principle of all movement, due to the fact that it [the soul] always moves of its own accord). The following image of the unequal steeds of the soul, ch. 25, is followed in chapters 26-28 by the actual charioteer metaphor (Phaidros, ed. and translated by W. Buchwald, München 1964 (Tusculum), p. 60 ff. Decisive is the quote at 253d, p. 79: «As in the beginning of this myth we divided each soul threefold, into two horse-shaped entities and into the third, that of the steer, so shall it be to us even now».
- ⁴² According to the Nicomachean Ethics, political action is an object of ethics; the political production of constitutional rules enables good action. The standard of good action is efficiency (*arētē*; translation as virtue, top form), whereby moral efficiency lies in middle between excess and deficiency (2nd book, 5, 1106a (Greek-German transl. by O. Gigon, ed. by R. Nickel, Düsseldorf, dtv, 2007, p. 71) (Tusculum). The honour (*timē*), associated with a public office, is the standard of magnanimity (*megalopsychia*) and amounts to external dimension of happiness through setting an example for other citizens (4th book, 7, 1123b, p. 159 (Tusculum). The fifth book of the Nicomachean Ethics (1129a ff., p. 187 (Tusculum) is dedicated to the justice.
- ⁴³ The basis of the democratic form of government is 'freedom' (Aristotle, *Politics*, 6th book 1317a line 40-1317b line 29, dtv-classic-edition, transl. and ed. by O. Gigon, Zürich/Munich 1971, p. 202 f.).
- ⁴⁴ Within practical reason (*phronēsis*) lies the strong (*ischyrós*), invincible knowledge that following the laws (*nómoi*), i.e. the perfection, enables not only 'right' but 'virtuous' action.
- ⁴⁵ This also includes the Aristotelian opposition of what is just by nature and what is just by virtue of statute, as well as the Platonic idea of *dikaíosyne*, when each of the three ranks in the *poleis*/three parts of the soul follow their natural virtue (*arētē*; *Politeia* 435a), up to the Thomasian Cicero-adaptation that what contradicts natural law cannot be declared just by positive human law (*Summa Theologica* I/II q. 94a5; q. 9 a2, vol. 13, Die deutsche *Thomas-Ausgabe*, Heidelberg Graz, Kerle, 1977; *Summa Theologica*, II/II q. 57a2ad2, vol. 18, idem, Heidelberg München, Kerle, 1953.
- ⁴⁶ Müßig, *Drafting Dignity* cit., p. 159.
- ⁴⁷ H. Hofmann, *Rechtsphilosophie*, 4th ed., Stuttgart, Teubner, 2008, p. 6, 72 ff. Cf. Sophocles, *Antigone* Z. 452 ff, in the translation by W. Kuchenmüller, Stuttgart, Reclam, 1957, p. 24: «Your command, the mortal one, did not seem so great to me, that it could surpass the unwritten commandments of God, the heavenly ones.» Her 'pious sacrilege' was, according to Sophocles' tragedy, the tragic opposition of nature and law. (Hofmann, *ibid.*, p. 80 f.).
- ⁴⁸ First and foremost the Milesians Thales (ca. 624-547 BC), Anaximander (ca. 610-550 BC) and Anaximenes (ca. 575-525 BC). While Thales (water) and Anaximenes (air) assumed a material primordial substance from which all other elements were to arise through condensation and dilution, Anaximander assumed an imperishable unlimitedness as an abstract explanatory principle (cf. von K. Fritz, *pre-Socratic philosophy*, Encyclopaedia Britannica, <https://www.britannica.com/biography/Alcidamas>, accessed on 27/7/2023).
- ⁴⁹ *De legibus* I 42f. (Leipzig, Goerenz, 1809, BSB A.lat.b. 498-1; *De legibus/Paradoxa Stoicorum. Über die Gesetze/Stoische Paradoxien*, lateinisch und deutsch, Tusculum, 3rd ed., München, dtv, 2004, p. 46). *De legibus* reads like a counterpart to Plato's «*Nómoi*», and at the same time as an indispensable supplement to Cicero's six books on the state (*De re publica*). Nature is to be recognised as the real source of right statutes and well-understood positive law – this is radically new compared to the traditional *populus legem iubet* (the Roman people, after all, are not nature). If the Roman people, at the request of the official, command the statute, and thus positive Roman law is based on the totality of the Roman consensus, nothing yet distinguishes Roman law from a *ius proprium*. Only the congruence between the statute command of the Roman people and the law command of nature (as ideas common to all men), undertaken for the first time by Cicero, makes Roman law a *ius commune* in the literal sense.
- ⁵⁰ *De re publica* III 22: «Est quidem uera lex recta ratio, naturae congruens, diffusa in omnes», Cicero, Marcus Tullius, *De re publica quae supersunt*, ed. A. Maio, Tübingen/Stuttgart, Cotta, 1822, p. 251, available at: <https://www.digitale-sammlungen.de/de/view/bsb10244658?page=310.311>, (accessed on 29/7/2023); or Cicero, *Disputes in Tusculum* I 30 («*omni autem in*

- re consensu omnium gentium, lex natura putanda est», p. 14; «Quid si omnium consensu, natura vox est», p. 16). Cicero, Marcus Tullius, *Tusculanarum Quaestionum Libri Quinque*, ed. Joann. Caspari Bencard, Dillingen, 1685, p. 14, 16 (BSB A. lat. B. 537d; <https://www.digitale-sammlungen.de/view/bsb10244635?page=.1>).
- ⁵¹ In Cornelius Nepos' biography of Themistocles (school edition by Fr. Maier, *Cornelius Nepos: Berühmte Männer*, series 'Antike und Gegenwart', Bamberg, Buchners, 2004) this contrast becomes explicit: «Sic unius viri prudentia Graecia liberata est Europaeque succubuit Asia» (Them. 5.3). The Greeks had been victorious at Salamis, but the danger posed by Xerxes and the Persians remained still very present. Themistocles had the cunning to send another messenger to Xerxes to tell him that the Greeks intended to destroy the bridge over the Hellespont on which the Persians had entered Europe. Xerxes, believing in Themistocles' words, retreated to Asia with all his troops.
- ⁵² E.g. Manfred Fuhrmann, «Europe [...] is always an antithesis to Asia in Herodotus.» (*Zur Geschichte einer kulturellen und politischen Idee*, Konstanz, Univ. Verl., 1986, p. 20).
- ⁵³ The original linguistic meaning *bárbaroi*, as antonym towards the *politēs*, the citizens of the Greek city states, can be traced back even in Linear B.
- ⁵⁴ On the excellence (*arētē*) as a connecting line between the Thermopylae narrative (Herodotus, Persian Wars) and Antigone's (and also Electra's) acting according to higher values cf. F. Egermann, *Herodotus - Sophocles. Hohe Arete*, in: *Herodot, Eine Auswahl aus der neueren Forschung*, ed. by W. Marg, Darmstadt, WB, 1962, p. 249 ff. Ivi for the friendship between Herodotus and Sophocles.
- ⁵⁵ This list could be continued endlessly: Aeschylus' Persians as one of the oldest surviving plays was first performed in the 5th century BC (Therein, the Greeks are introduced to the Persians with the words: «Servants of no man are they, subject to no man.»); Pre-Socratics and Socrates himself appeared on the scene in this 5th century BC. Hippocrates founded a school for physicians on the island of Kos. The temples of the Acropolis were rebuilt (with the new Parthenon for Pallas Athena), and Pericles shaped the Athenian democracy.
- ⁵⁶ Wisdom through love for and practice of science, art, literature and rhetoric. Western music is also based on the number-mystical tonal system of Greek antiquity.
- ⁵⁷ Cf. also W. von Kaulbach, *Die Seeschlacht bei Salamis*, Munich, Stiftung Maximilianeum, 1862/4.
- ⁵⁸ In the basic Indo-European language, one reconstructs **h₁ leydh^h*. These include ahd. *Liut* (plural *Liuti* "people"), Anglo-Saxon *liēod*, Lithuanian *liáudis* "common people" (cf. D. Nestle, *Eleutheria*, Part I: *The Greeks*, Tübingen, Niemeyer, 1967, p. 6 f.). Whether this connection has been preserved in Herodotean-classical Greek has not been handed down.
- ⁵⁹ M. Gigante, *Herodot der erste Historiker des Abendlandes*, in W. Marg (ed.), *Herodotus, Wege der Forschung*, Vol. XXVI, Wissenschaftliche Buchgesellschaft, Darmstadt 1982, pp. 259 ff., 262.
- ⁶⁰ Modern summary for all those who before Socrates (470 to 399 BC.) sought to know what existence is about and what is the real, irrespective of the differences between the Ionian thinkers and the school of Pythagoras.
- ⁶¹ And only the technical superiority of the Persians welds 'the Greeks' together.
- ⁶² After the first landing in Spain in 710, the Visigoths were defeated in 711; in 719, the Arabs occupied the entire Iberian peninsula, except for Asturias in northwestern Spain, and founded the Caliphate of al-Andalus (756 to 1014) with its capital in Cordoba, as well as the Nasrid Caliphate of Granada (until 1492).
- ⁶³ Cf. the contemporary Anonymus of Cordoba: «*Europaenses in suas se laeti recipiunt patrias*» (Quoted according to Fr. Maier, *Europa – ein übergreifender Bildungsauftrag, Was der Unterricht der klassischen Sprachen dazu beitragen kann und soll*, in «Forum classicum», n. 1, 2023, pp. 11–18, 14).
- ⁶⁴ Significantly through the retrospective of the Charlemagne biographer Einhard almost 90 years later.
- ⁶⁵ Exemplarily J. Fischer, *Oriens-Occidens-Europa: Begriff und Gedanke. Europa in der späten Antike und im frühen Mittelalter*, Wiesbaden, Steiner, 1957, p. 31.
- ⁶⁶ N. Luhmann, *Wahrheit und Ideologie*, in: H.-J. Lieber (ed.), *Ideologie-Wissenschaft-Gesellschaft*, Darmstadt, WB, 1970, p. 35 ff.
- ⁶⁷ Th. Hobbes, *Leviathan or, The Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil* part 4, chap. 47, in: *The English Works of Thomas Hobbes*, ed. by W. Molesworth, vol. III, London, 1839, Reprint Aalen, Scientia, 1962, p. 697 f.
- ⁶⁸ N. H. Trunte, *Slavia Latina. An Introduction to the History of the Slavonic Languages and Cultures of East Central Europe*, Munich/Berlin, Peter Lang, 2012, p. 54.
- ⁶⁹ Europa becomes the «name of that one civitas Dei of which Charlemagne had become the head [with his coronation as emperor on 25 December 800]» (Fischer, *Oriens-Occidens-Europa* cit., p. 77). The Frankish emperors secured the European cohesion of various peoples (*regnum Europae*) as an area of Christendom, if necessary also with violence against Saxons, Huns and Avars. Later it would be the Christianisation of Great Moravia, Bulgaria, Bohemia, Poland, Hungary and the Kievan Rus that could shift the borders of Latin Christendom. Differentiating on the Jewish tradition of the Novus David Reinhard, *Geschichte der*

Staatsgewalt, cit., p. 39.

⁷⁰ Esp. via Papal Rule by Jurisdiction and Judicial Competence in Canon Law (Müßig, *Reason and Fairness*, cit., pp. 41 ff.) Cf. the Latin literature in the Slavia Latina in Trunte, supra n. 68, pp. 132 ff.

⁷¹ On Church Slavonic, fundamentally Trunte, *Slavia Latina*, cit., p. 82 f.

⁷² The orientation towards the One, i.e. towards salvation.

⁷³ According to Bishop Adalbero of Laon (d. 988), the three estates *oratores* (orators), *pugnatores* (warriors), *laboratores* (workers) are God-given (R. Lesaffer, *European Legal History, A Cultural and Political Perspective*, Cambridge, CUP, 2009, p. 168).

⁷⁴ In regard to *ordo* and *ordinabiliter habitum* Müßig, *Reason and Fairness*, cit., pp. 41 ff., 502 ff.

⁷⁵ J. Fleckenstein, Art. *Karl*, LexMA (=Lexikon des Mittelalters), Vol. V: Hiera-Mittel till Lukanien, München, Artemis und Winkler, 2002, col. 960 symptomatically mentions the Oath of Allegiance of 802, which combines the subjects' duties of loyalty with their religious duties to respect the 10 commandments.

⁷⁶ E. Ewig, *Zum christlichen Königsdanke im Frühmittelalter, in Spätantikes und Fränkisches Gallien - Gesammelte Schriften (1952-1973)*, ed. by H. Atsma, vol. 1, Zürich/München, Artemis, 1976, pp. 3-71, 40 ff. Cf. also E. Eichmann, *Die Kaiserkrönung im Abendland - Ein Beitrag zur Geistesgeschichte des Mittelalters mit besonderer Berücksichtigung des kirchlichen Rechts, der Liturgie und der Kirchenpolitik*, vol. 1, Würzburg, Echter, 1942, pp. 105 ff., 109 ff. with evaluations of 1 Sam 24,7 and 1 Sam 26,16 and the reference to the parallels between the consecration of a bishop and the consecration of an emperor. Cf. also C. Sieber-Lehmann, *Um 1079. Warum es für das Verhältnis von Papst und Kaiser kein erfolgreiches Denkmodell gab*, in Jussen (ed.), *Die Macht des Königs*, cit., pp. 150 ff.

⁷⁷ Cf. the parable of interest rates Mk 12,17: Render unto Caesar the things that are Caesar's, and unto God the things that are God's. The effect is anti-monistic, anti-centralist. Not even in the Papal State political polity and church are identical (P. Prodi, *Il sovrano pontefice. Un corpo e due anime: La monarchia papale nella prima età moderna*, in «Francia», n. 10, 1982, pp. 249-293).

⁷⁸ In the late medieval universal controversy, this was a strong nominalist argument: God does not love man, i.e. the genus, but Peter or Paul, i.e. individuals. Therefore, the individuals, not the genera, must be primarily real. Cf. also the See Genezareth narrative of the calling of the disciples: if you want to follow me, you shall not say goodbye at home.

⁷⁹ Exemplary for this is the innovative use of «sêle» by Heinrich von Morungen, who no longer equates it only with man's immortal share in God's spirit. Cf. his Minnelied 125, 24: «*der mir durch sêle min mitten in daz herze gie*» (quoted according to K. Lachmann, *Des Minnesangs Frühling* 30th ed., edited by K. von Kraus, Leipzig, Hirzel, 1950, p. 162; H. von Morungen, *Lieder (Mittelhochdeutsch, Neuhochdeutsch)*, text, translation, commentary by H. Tervooren, Stuttgart, Reclam, 2003, p. 34 (IV «*In sô höher swebender wunne*»)). A paraphrased translation would read: «which penetrated through my soul right into the heart». Cf. also the classification in H. Eggers, *Deutsche Sprachgeschichte*, vol. 1: *Das Althochdeutsche und das Mittelhochdeutsche*, Rowohlt's Enzyklopedie, Vol. 185, Reinbek near Hamburg, Rowohlt, 1966, p. 398. 398.

⁸⁰ U. Müßig, *Review of Josef Isensee, Hermeneutik. Studien über den Umgang der Jurisprudenz mit Normtexten im Vergleich zur biblischen Theologie und zur Literaturwissenschaft*, Frankfurt am Main 2023, in «Giornale di Storia costituzionale», n. 45/1, 2023, pp. 181-183.

⁸¹ Scholasticism, so often ridiculed, was probably less faithful to authority than usually assumed; since there were too many authorities they became necessarily questioned according to the method 'sic et non' or 'videtur quod ...' - 'sed contra'. Crucial for the constitutional history point of interest is the scholastic textual orientation, which neither rigidly canonised the late antique tradition, as happened in Eastern Rome/Byzantium and widely in the Orthodox Church, nor eliminated it, as did the Islamic world after its flowering on the Iberian peninsula.

⁸² In contrast, the Scotist voluntarism claims, that God as the initial cause of all being is free will. For Duns Scotus, the will directed towards the good is free. According to him the individual cannot be understood, but can be experienced (*experientia; haecceitas*). Scotus' criticism of the 'unity' of the scholastic world, the Thomasian primacy of being (*esse*) as the epitome of God, fits in with this. It has been only Ockham's proof in favour of nominalism that has finally overcome scholasticism, accepting that there is no exact *aequatio rei et intellectus*. General concepts-universals have no real counterpart. What really exists, is always a single, particular thing. For more details cf. *Legal Thinking between Art and Mathematics*, Macerata, eum, forthcoming.

⁸³ Summa I, q. 83, Resp. «*Homo agit iudicio ... ideo agit libero iudicio potens in diversa ferri. Ratio enim circa contingentia habet viam ad opposite*».

⁸⁴ Cf. also O. Köhler, *Abendland*, in H.R. Balz, R.P.C. Hanson, (eds.), *Theologische Realenzyklopädie*, Berlin u.a., De Gruyter, 1977, Vol. I: Aaron - Agende, pp. 17-42 (25). The notion 'learning mode' tries to express the Latin Christian speciality that faith is idealiter sensed and understood.

⁸⁵ Far before the Reformation of the 16th century.

- ⁸⁶ Cf. lately, A. Meier, *Die »Jellinek-These« vom religiösen Ursprung der Grundrechte*, Tübingen, Mohr Siebeck, 2023 (GRW, 47).
- ⁸⁷ Mk 12,17 and Mt 22, 21.
- ⁸⁸ Already in the calling of the disciples (Lk 5, 1-11).
- ⁸⁹ This lies at the heart of the ambiguous term 'learning mode'.
- ⁹⁰ Thus, for Hannah Arendt, the modern era begins with the discovery and use of the telescope by Galileo Galilei (as impressively confirmed by the 2020 Nobel Prize in Physics for the experimental detection of black holes; H. Arendt, *Vita Activa oder Vom tätigen Leben*, Stuttgart, Kohlhammer, 1960, p. 244). Cf. the exhibition «Rivoluzione Galileo» by the Fondazione Cassa di Risparmio di Padova e Rovigo, together with the Università degli Studi di Padova in 2017. Copernicus, Galilei, Kepler sought God's plan of creation with the help of mathematics. Newton, for example, has been a constant reader of his more than 30 editions of the Bible and saw no contradiction in it in relation to his mechanics equations.
- ⁹¹ Eccentric is used here in the double meaning off-centre (away from Madrid) and unusual (innovative and groundbreaking). [In regard to its own centre] lying outside the centre of the circle or pivot.
- ⁹² «Principia enim eius iuris... per se patent atque evidētia sunt, ferme ad modum eorum quae sensibus externis percipimus» (H. Grotius, Prolegomena 39, *De iure Belli ac Pacis, Libri Tres*, edition by B.J.A. De Kanter, T. Van Hetinga, Aalen, Reprint Scientia 1993 on the basis of the Leiden edition 1939, p. 20). See recently M. de Wilde, Hugo Grotius's *De societate publica cum infidelibus, Justifying overseas expansionism or religious toleration?*, in «TRG» (=Tijdschrift voor Rechtsgeschiedenis), n. 88, 2020, pp. 422-439.
- ⁹³ On the reasonable fairness of the *ordo iudiciarius* and the *ordinabili- ter habitum* of learned canon law, cf. Müßig, *Reason and Fairness*, cit., pp. 502 ff.
- ⁹⁴ Cf. on the request delivered by Burchard, Bishop of Würzburg, and Chaplain Fulrad P.E. Dutton (ed.), *Carolingian Civilization: a Reader*, Peterborough, Broadview, 1993; Lesaffer, *European Legal History*, cit., p. 130.
- ⁹⁵ The Carolingian house magistrates (*majores domus*) at the head of the royal court administration came from the Austrasian part of the empire on the Rhine, Moselle and middle Meuse, to which the economic centre began to shift at the end of the 7th century. From 720 onwards, Pippin II's illegitimate son Charles Martell ruled the entire Frankish kingdom as head of the household (*major domus*). In 725, he was also able to subdue the native duchy in Bavaria and to renew Frankish suzerainty in Alemannia in 730. Pippin III was the son of Charles Martel and father of Charlemagne. Historians have debated the origins of the anointing ritual (*consecratio*), which had already been in use in Visigothic Spain and Ireland. Pippin's most obvious source of inspiration, however, was the Old Testament itself (A. Angenedt, *Rex et Sacerdos. Zur Genese der Königssalbung*, in: N. Kamp, J. Wollasch (eds.), *Tradition als Historische Kraft. Interdisziplinäre Forschungen zur Geschichte des Früheren Mittelalters*, Berlin New York, de Gruyter, 1982, pp. 101-118, 109, <https://www.mgh-bibliothek.de/dokumente/a/a091523.pdf>, (accessed on 27.7.2023; Id., *Pippins Königserhebung und Salbung*, in M. Becher, J. Jörd (eds.), *Der Dynastiewechsel von 751: Vorgeschichte, Legitimationsstrategien und Erinnerung*, Münster, Scriptorium, 2004, pp. 179-208, 207.
- ⁹⁶ The patrimonium covers the area around Rome and the former Byzantine exarchate of Ravenna. In regard to the 'exchange'-connexus cf. F. Hartmann, *Nochmals zur sogenannten Pippinschen Schenkung und zu ihrer Erneuerung durch Karl den Grossen*, in «Francia - Forschungen zur westeuropäischen Geschichte», n. 37, 2010, pp. 25-47, 32.
- ⁹⁷ In a letter by the Anglo-Saxon priest Cathwulf in 775, there is a call to thank Charles because God had raised the king «to the honour of the glory of the Empire of Europe» (*in honorem gloriae regni Europae*).
- ⁹⁸ Cf. also Robert Bartlett's observation of the expansion of Latin Christianity on the basis of a multiplication of bishopric structures (*The Making of Europe, Conquest, Colonization, and Cultural Change, 950-1350*, Princeton, Princeton University Press, 1993, pp. 5 ff.).
- ⁹⁹ Cf. with further details Müßig, *Recht und Justizhoheit*, cit., p. 56-57.
- ¹⁰⁰ Interestingly, the German word «Grenze» (border) has etymological roots in the Polish, corresponding with the permanent struggles for spatial affiliation since the late 12th century (H.-J. Karp, *Grenzen in Ostmitteleuropa während des Mittelalters. Ein Beitrag zur Entstehungsgeschichte der Grenzlinie aus dem Grenzsaum* (Forschungen und Quellen zur Kirchen- und Kulturgeschichte Ostdeutschlands 9), Köln, Böhlau, 1972, p. 7 ff.).
- ¹⁰¹ On the importance of the liturgical language, cf. R. Picchio, *Letteratura della Slavia ortodossa (IX-XVIII sec.)*, Bari, Dedalo, 1991, pp. 13, 55-56 and Trunte, *Slavia Latina*, cit., pp. 45 ff.
- ¹⁰² Carolus Magnus Imperator: *Capitulare ecclesiasticum Anno 789*. PL 97, Col. 180. Quotation and German translation according to E. Kohlhaas, *Musik und Sprache im Gregorianischen Gesang*, Stuttgart, Steiner, 2001, p. 17.
- ¹⁰³ Cf. Alkuin's letters in: H.R. Loyn, J. Percival (eds.), *The Reign of Charlemagne, Documents on Carolingian Government and Administration*, Southampton, St. Martin's press, 1975, 119 ff.
- ¹⁰⁴ Cit. in *Monumenta Germaniae*

- Historica, Karoli Magni Capitularia*; A. Boretius, V. Krause; Volume 1; Hannoverae 1883 (<https://daten.digital-sammlungen.de/0000/bsb00000820/images/index.html?id=00000820&page=90>). Cf. on its understanding as a programmatic letter of Carolingian educational reform Th. Martin, *Bemerkungen zur Epistola de litteris colendis*, in: W. Heinemeyer (ed.), *Schriftgeschichte, Siegel- und Wapenkunde*, 31st vol., Köln, Böhlau, 1985, pp. 270 ff.
- ¹⁰⁵ Anselm of Canterbury, *Proslogion, Capitulum I*, Latin/German translation and annotations by R. Theis, Stuttgart, Reclam, 2005, p. 20: «*Neque enim quaero intelligere ut credam, sed credo ut intelligam*».
- ¹⁰⁶ H. Schilling, *Europa zwischen Krieg und Frieden*, in M-L. von Plessen (ed.), *Idee Europa, Entwürfe zum ewigen Frieden. Ordnungen und Utopien für die Gestaltung Europas von der pax romana zur Europäischen Union, eine Ausstellung als historische Topographie: Katalogbuch zur gleichnamigen Ausstellung des Deutschen Historischen Museums, Berlin, zur Neueröffnung der Ausstellungshalle von Ieoh Ming Pei, 25. Mai bis 25. August 2003*, Berlin, Henschel, 2003, pp. 23-32. Ecclesiastical forces were among the most important pillars of royal rule, especially since the Carolingians had built a court chapel.
- ¹⁰⁷ Thus, at the Council of Frankfurt in 794, Charles rejected the decisions of the 7th General Council of Nicaea.
- ¹⁰⁸ Prominent are the treatises by the Jewish legal historian Guido Kisch (*Forschungen zur Rechts- und Sozialgeschichte der Juden in Deutschland während des Mittelalters*, Sigmaringen, Thorbecke 1978; idem, *Ausgewählte Schriften*, vol I, Sigmaringen, Thorbecke, 1978, p. 13 and p. 237 f; Id., *The Jews in Medieval Germany: A Study of their Legal and Social Status*, Chicago, UCP, 1949). Particularly productive are the works of Dietmar Willoweit (*Vom Königs-*
- schutz zur Kammerknechtschaft. Anmerkungen zum Rechtsstatus der Juden im Hochmittelalter*, in Id., *Staatsbildung und Jurisprudenz. Spätmittelalter und frühe Neuzeit – Gesammelte Aufsätze 1974-2002*, Stockstadt a.M., Nomos, 2009, pp. 301*-319*). Cf. also F-J. Ziwes, *Studien zur Geschichte der Juden im mittleren Rheingebiet während des hohen und späten Mittelalters*, Hannover, Hahn, 1995. Lately, D. Forster, *Konfliktlösung im talmudischen Recht*, 43th Rechtshistorikertag Zürich 2022.
- ¹⁰⁹ F. Battenberg, *Das europäische Zeitalter der Juden. Zur Entwicklung einer Minderheit in der nicht-jüdischen Umwelt Europas*, Vol. 1, Darmstadt, WB, 2000, p. 6 following C. Roth, *The European Age in Jewish History*, in L. Finkelstein (ed.), *The Jews. Their History*, 4th ed. New York, Schocken, 1970, pp. 225-304; Cf. Raphael Straus on the occasion of founding the «Zeitschrift für die Geschichte der Juden in Deutschland», n. 1, 1929, in his programmatic essay *Forschungsmethode der jüdischen Geschichte* (p. 5): «Jewish cultural historians have often idealised the medieval Jew out of touch with reality, because the limits set by bourgeois facts were unclear to them. In contrast, Christian economic historians 'materialised' him because the facts of the Jewish-spiritual world remained foreign to them».
- ¹¹⁰ Regularly, Jewish communities enjoyed relatively extensive autonomy in legal matters.
- ¹¹¹ The lines 1-11 of the Second Epistle to the Thessalonians is directed towards the appearance of the Antichrist and his destruction. Therefore, it is widely assumed in research today that 2Thess is the writing of an unknown author who wrote under the pseudonym of the apostle. There has been much speculation in the history of the text's impact about the power able to restrain the Antichrist. The most probable interpretation is that of the
- Imperium Romanum, but a clear decoding of the enigmatic statements does not seem possible.
- ¹¹² According to Jewish tradition the earliest writing of the orally transmitted Torah from Sinai, probably compiled in the second century and with a final redaction from the 3rd century CE=AC. The name Mishnah comes from the Hebrew shanah =to repeat, to learn.
- ¹¹³ Unlike Christianity under Platonic influence (as the here mentioned Phaidros dialogue) Rabbinic Judaism does not think the soul to be separated from the body. Of course, the Jewish idea of grace does not need the redemptive death of the Messiah Jesus, but lies in the act of creation.
- ¹¹⁴ With his economic and social history of the Jews, Georg Martin Caro offers a profound European perspective (*Sozial- und Wirtschaftsgeschichte der Juden im Mittelalter und der Neuzeit*, Vol I: *Das frühere und das hohe Mittelalter* (reprographical reprint of the 2nd edition Frankfurt 1924), Vol II: *Das spätere Mittelalter* (reprographical reprint of the edition Frankfurt 1920), Hildesheim, Olms, 1964).
- ¹¹⁵ On *Halacha*, especially in view of the differences between Orthodox, Liberal and Conservative Judaism, cf. W. Homolka, *Das Jüdische Recht Eigenart und Entwicklung in der Geschichte*, «HFR» (=Humboldt Forum Recht), n. 17, 2009, pp. 250-282, 273 ff., <https://www.rewi.hu-berlin.de/de/lf/oe/hfr/deutsch/2009-17.pdf> (accessed on 17/7/2023).
- ¹¹⁶ The most important source is the Hebrew Bible, especially the Torah (=teaching, i.e. the five books of Moses). Therein, traditional Jewish legal conception recognizes 613 legal regulations (so-called *mitzwot*), which form the basis of all Jewish legal codifications, e.g. the so-called Book of the Covenant (Ex 20, 23-23, 19) or the Ten Commandments (Ex 20, 1-17 and Dt 5, 6-21). Other au-

thoritative sources of Jewish law are the prophets (e.g. 1 Sam 8; 1 Kings 21) and the hagiographers. In the post-biblical period, between the destruction of the Second Temple (70 CE=AC) and the conclusion of the Talmud (600 CE=AC), the classical sources *Mishnah*, *Tosefta*, the Palestinian and the Babylonian *Talmud* (=oral Torah) as well as the halakhic midrashim (=legal interpretation of the Hebrew Bible) emerged. In this regard, there seems to be a history of codification between the generations of *Taanaim* via *Amoraim* (200 CE=AC bis 500 CE=AC), which seems to have anticipated the development of the later *ius commune*. In addition, there is also a response literature comparable to the papal rescripts, which answers submissions questioning the Jewish law in a systematic way.

¹¹⁷ Jewish law here is not the law of a state, but of the people of Israel.

¹¹⁸ The Mainz pogrom of 27 May 1096, which took place during the Crusades, represents a major turning point in European Jewish history, as for the first time – in addition to the massacre – the Kiddush HaShem (suicide to preserve the name Jahwe, here to avoid compulsory baptism) was practised here, proving Jewish resistance within a Christian-dominated world; see also E. Haverkamp, *Martyrs in rivalry: the 1096 Jewish martyrs and the Theban legion*, in «Jewish History», n. 23, 2009, pp. 319–342, 320, <https://www.mgh-bibliothek.de/dokumente/b/b033556.pdf> (accessed on 28/7/2023).

¹¹⁹ Since the religious literature of ancient Judaism, reflecting the ongoing conflict of foreign powers with Jewish claims to self-domination and the latter's felt threat of their religious identity, a repertoire of 'apocalyptic' forms and motifs developed. They contain revelatory messages of a transcendent divine plan of salvation. The decisive difference be-

tween Jewish and early Christian apocalyptic is that for Christians salvation has already taken place, while the Jews still hope for it.

¹²⁰ Cf. O. Stobbe, *Juden in Deutschland während des Mittelalters in politischer, sozialer und rechtlicher Beziehung*, Braunschweig, Schwetschke, 1866, p. 103 (with note p. 234), where for the 10th and 11th centuries he contrasts the trading Jews and the "Germans" cultivating the fields, and in this context he sees the crusade pogroms of 1096 as being based not only on religious fanaticism but also on «national antipathy», p. 144, that «the Jew belongs to a foreign nationality and has his own special right». (<https://www.digitale-sammlungen.de/view/bsb10570854?page=,1>, accessed on 6/3/2023).

¹²¹ Instead of land- and soil-based economic forms of exchange.

¹²² Exemplary is the privileging of Jews in Speyer in September 1084 by Bishop Rüdiger Hutzmann: «*Cum ex Spirensi villa urbem facerem, putavi milies amplificare honorem loci nostri, si et iudeos colligerem.*» (J. Aronius, *Regesten zur Geschichte der Juden im fränkischen und deutschen Reiche bis zum Jahre 1273*, Berlin 1902, Reprint Hildesheim, Olms, 1970, no. 168, pp. 69–71; cit. also in S. Schiffmann, *Die Urkunden für die Juden in Speyer 1090 und Worms 1157*, in «Zeitschrift für die Geschichte der Juden in Deutschland», n. 2, 1930/31, pp. 28–39, 28 ff.). More extensively Willoweit, *Staatsbildung und Jurisprudenz*, cit., vol. 1, p. *305. The author of the *Annales Egmundani* took down a similar wording in the subsequent century: «In civitatibus orientalis Franciae circa Renum constitutis habundant synagogae ludeorum» (C.H. Pertz (ed.), *MGH (=Monumenta Germaniae Historica, Inde ab anno Christi quingentesimo usque ad annum millesimum et quingentesimum)*, Hannover, Scriptorum, vol. XVI, 1859, pp. 442, 458; [\[mgh.de/mgh_ss_16/index.htm#page/458/mode/iup\]\(https://www.mgh.de/mgh_ss_16/index.htm#page/458/mode/iup\), accessed on 28/7/2023\); cf. Aronius, *Regesten*, cit., no. 254, p. 115\).](https://www.</p>
</div>
<div data-bbox=)

¹²³ Christianity has never been exactly congruent with peninsular Europe. The Christianity known to Pope Stephen II (r. 752–757), when he crossed the Alps for the Frankish court in 753 was different from that in 1453, when the Turks battered the walls of Constantinople.

¹²⁴ Russian *korol*, Polish *król*, Czech *král* etc.

¹²⁵ There are four elements of the *ordinatio ad unum*: the necessity of rule due to the sinfulness of man, the unity of the ruling body through the unity of faith, the ideal of the *Civitas Dei*, and the God-giveness of worldly rule, cf. e.g. the opening words of Charlemagne's *Admonitio generalis*: «Unter der Herrschaft uneres Herrn Jesus Christus auf ewig. Ich, Karl, dank der Gnade und Barmherzigkeit Gottes König und Leiter des Frankenreichs, ergebener Verteidiger und demütiger Helfer der heiligen Kirche, entbiete sämtlichen Gliedern kirchlicher Huld und allen Würden weltlicher Macht in Christus, dem Herrn und ewigen Gott, den Gruß immerwährenden Friedens und Glücks.» Paraphrased translation mine: «Under the reign of our Lord Jesus Christ for ever. I, Charles, thanks to the grace and mercy of God, king and leader of the Frankish kingdom, devoted defender and humble helper of the holy church, greet all members of church favour and all dignities of worldly power in Christ, the Lord and eternal God, with perpetual peace and happiness» (H. Mordek, K. Zechiel-Eckes, M. Glatthaar (eds.), *Die Admonitio generalis Karls des Großen*, Hannover, Harrassowitz, 2012, p. 180, 181 (Monumenta Germaniae Historica (=MGH) Fontes vol. XVI). Cf. also Charlemagne's Augustinian preference (J. Fried, *Karl der Grosse. Gewalt und Glaube. Eine*

- Biographie*, Munich, Beck, 2013, pp. 45, 312 f.). The latter reference summarises the «Order of the Church, struggle against illiteracy, heresy and superstition, Christianisation of the people.»
- ¹²⁶ Jussen, *Einleitung*, in: idem (ed.), *Die Macht des Königs*, cit., p. XIX.
- ¹²⁷ At the same time, a proliferation of translations enriched the Latin vocabulary with numerous words from Greek and Arabic.
- ¹²⁸ «And of the act of taking possession that happens when you give a new name to what you find.», review by J. Kincaid, *SZ* (=Süddeutsche Zeitung, 5/6 December 2020, p. 22. In the scriptless Germanic-Celtic representationalism terms like sin, guilt, grace, forgiveness or mercy are completely unknown.
- ¹²⁹ On Vulgar Latin with references to the emergence of French, cf. C. Tagliavini, *Einführung in die romanische Philologie*, 2nd edition, Munich, UTB, 1998, pp. 158–207.
- ¹³⁰ Chapter 6 in Störig, *Abenteuer Sprache*, cit., pp. 145 ff. P. Swiggers, *La comparaison des langues romanes, du Moyen Âge jusqu'au milieu du 19^e siècle, Jalons des approches grammaticographiques et lexicographiques comparatives*, Tübingen, Niemeyer, 2005; E. Werner, *Zur Grammatikographie des Italienischen. Vom 15. bis 20. Jahrhundert*; M.Á. Esparza, H.-J. Niederehe, *Grundzüge einer Geschichte der spanischen Grammatikographie. Vom Mittelalter bis zur zweiten Hälfte des 20. Jahrhunderts*, in P. Schmitter (ed.), *Sprachtheorien der Neuzeit III/1*, part 1, 1.7–1.9, Tübingen, Narr, 2005, pp. 239–286, pp. 287–366, pp. 367 ff–398.
- ¹³¹ *De revolutionibus orbium coelestium 1543* (On the Revolutions of the Heavenly Spheres, transl. By A.M. Duncan, New York, Newton Abbot, 1976). Cf. in regard to Copernicus and his Italian contacts U. Müßig, *Kopernik and ReConFort: A Copernican Turn in Comparative Constitutional History?*, in «Journal of Constitutional History/
- Giornale di Storia Costituzionale», n. 37, 2019, pp. 5–24.
- ¹³² According to the *Sidereus Nuncius* (News of new stars), edited and introduced by H. Blumenberg, 2nd ed., Frankfurt am Main, Suhrkamp, 2002, Galileo published, among others the *Dialogo sopra i due massimi sistemi del mondo*, Florence 1632 (German: *Dialog über die beiden hauptsächlichsten Weltsysteme*, Leipzig, Teubner, 1891) and the *Discorsi e dimostrazioni matematiche intorno à due nuoue scienze*, Leiden 1638 (German: *Unterredung und mathematische Demonstrationen über zwei neue Wissenszweige die Mechanik und die Fallgesetze betreffend*, Leipzig, Teubner, 1890).
- ¹³³ *Mysterium cosmographicum*, Tübingen 1596; *Harmonices mundi libri V*, Linz 1619, <https://www.digitale-sammlungen.de/de/view/bsb10497369?page=5> (accessed on 28/7/2023).
- ¹³⁴ *Instauratio magna*, London 1620 (The Great Renewal).
- ¹³⁵ *Philosophiae naturalis principia mathematica* (Mathematical Foundations of Natural Philosophy).
- ¹³⁶ Among others, Methodus inveniendi lineas curvas maximi minimive proprietate gaudentes sive solutio problematis isoperimetrici latissimo sensu accepti, Lausanne/Genf 1744 (<https://www.digitale-sammlungen.de/de/view/bsb10053439?page=5>, accessed on 17/7/2023); *Introductio in analysin infinitorum*, vol 1, Lausanne 1748, <https://www.digitale-sammlungen.de/de/view/bsb10860438?page=2> (accessed on 17/7/2023); vol. 2, Lausanne 1748, <https://www.digitale-sammlungen.de/de/view/bsb10860439?page=6.7> (accessed on 28/7/2023); cf. also Eneström, Gustaf, *Verzeichnis der Schriften Leonhard Eulers*, 1st ed., Leipzig 1910, <https://archive.org/details/enestrom-test/mode/2up> (accessed on 28/7/2023).
- ¹³⁷ Among other titles *Disquisitiones*
- Arithmeticae* (English edition on the basis of the 2nd edition, ed. by E.C.J. Schering), Göttingen 1870, translated by A.A. Clarke (for the Yale University Press edition 1966), revised by W.C. Waterhouse with the help of C. Greither and A.W. Grootendorst, New York a.o., Springer, 1986.
- ¹³⁸ Fundamental J. März, *Zwischen Laizismus und Religionsfreiheit. Das Religionsverfassungsrecht der Dritten Französischen Republik im Vergleich mit der Weimarer Republik*, Berlin, Duncker & Humblot, 2021 (Schriften zur Rechtsgeschichte, vol. 197, also Diss. iur. Passau 2020, supervised by the author), with references in fn.22 (p. 4) to H-G. Franke, *Die Laizität als staatskirchenrechtliches Leitprinzip Frankreichs*, in *DÖV* (= Die Öffentliche Verwaltung) 2004, pp. 383–386, 383; P. Fiala, *Les termes de la laïcité. Différenciation morphologique et conflits sémantiques Mots 27* (juin 1991: *Laïc, laïque, laïcité*), pp. 41–57 (45, 50 ff. and 53 f.) with explanations of *laïcisme* understood as more militant and radical than *laïcité*, https://www.persee.fr/issue/mots_0243-6450_1991_num_27_1 (accessed on 17/7/2023).
- ¹³⁹ Contexts are understood in the original sense of the word as weaving together, braiding, linking; Voltaire: «Les paroles sont aux pensées ce que l'or est aux diamants: il est nécessaire pour les mettre en oeuvre, mais il en faut peu.» (*Le Sottisier*, avec une préface par L. Léouzon Le Duc, Paris, Diterbitkan, 1880, p. 60, <https://ia902702.us.archive.org/12/items/lesottisierdevo100volt/lesottisierdevo100volt.pdf>, accessed on 17/7/2023).
- ¹⁴⁰ Masterly on the Roman-Germanic clash in the Migration Lesaffer, *European Legal History*, cit., p. 125 ff.
- ¹⁴¹ The linguistic question of a *lingua franca* arises not only for Latin in the Western Roman Empire, but also for the Greek in the Hellenistic East, for French as the interna-

- tional language of diplomacy, and for German as an official language in the Habsburg multiethnic empire or for Sabir/Petit mauresque in the Levant trade between Venice and the Middle East.
- ¹⁴² P. Häberle, M. Kotzur, *Europäische Verfassungslehre*, 8th ed. Baden-Baden, Nomos, 2016, p. 131.
- ¹⁴³ C. Riotta, *Umberto Eco's "Shallow" Europe and dreams of a different sexual revolution*, 31 January 2012, <https://www.lastampa.it/esteri/la-stampa-in-english/2012/01/31/news/umberto-eco-s-shallow-europe-and-dreams-of-a-different-sexual-revolution-1.36509140/> (accessed on 20/7/2023).
- ¹⁴⁴ The Romance-Germanian-West Slavic-Hungarian Europe calls itself *Corpus Christianum*, the Christendom.
- ¹⁴⁵ «What loss, then, science has met with after the ignominious destruction of Greece, you can all observe, who know well that all Latin learning was fed from the sources of the Greeks.» (Nunc contrita delectaque Graecia quanta sit facta litterarum iactura, cuncti cognoscitis, qui Latinorum omnem doctrinam ex Graecorum fontibus derivatam non ignoratis), cit. according to Pius II, Oratio XIII, in: J.D. Mansi (ed.), *Pii II. P.M. Olim Aeneae Sylvii Piccolomini Senensis Orationes Politicae, Et Ecclesiasticae*, Luca, Ex typographia Philippi Mariae Benedini, 1755, pp. 263, 270, https://reader.digitale-sammlungen.de/de/fs1/object/display/bsb10686109_00312.html (accessed on 22/2/2021).
- ¹⁴⁶ «Now, however, we have been shaken and beaten in Europe, i.e. in the fatherland, in our own house, in our abode.» (Nunc vero in Europa, idest in patria, in domo propria, in sede nostra percussus caesique sumus), cit. according to Pius II, Oratio XIII, *ibid.*, p. 263 (263), https://reader.digitale-sammlungen.de/de/fs1/object/display/bsb10686109_00305.html (accessed on 22/2/2021).
- ¹⁴⁷ *Was heißt und zu welchem Ende studiert man Universalgeschichte?*, edited by V. Wahl on behalf of the Friedrich Schiller University Jena, <https://www.friedrich-schiller-archiv.de/historische-schriften/was-heisst-und-zu-welchem-ende-studiert-man-universalgeschichte/> (accessed on 2/2/2021).
- ¹⁴⁸ U. Müßig, *Republicanism and its 'gentle wings' (Ode to Joy). The Republican Dignity to be Governed, not Mastered as Founding Rational Legitimacy*, in *Giornale di Storia Costituzionale*, n. 41/I, 2021, pp. 117-176, 127, 134 f., 141.
- ¹⁴⁹ J.W. von Goethe, *Zahme Xenien: Den vereinigten Staaten*, in: idem (ed.), *Nachgelassene Werke*, vol. XVI, Stuttgart and Tübingen, Cotta, 1842, p. 96: «America, you are better off than Our continent, the old».
- ¹⁵⁰ German Romanticism (e.g. Novalis, *Friedrich von Hardenbergs Europa-Rede Die Christenheit oder Europa. Ein Fragment. Geschrieben im Jahre 1799*, in L. Tieck, F. Schlegel (eds.), *Novalis. Schriften*, 4th ed., Berlin, Reimer, 1826, vol. 1, pp. 187-208, https://www.deutschestextarchiv.de/book/view/novalis_christenheit_1826?p=9, accessed on 28/7/2023) developed a different awareness of Europe. Cf. H. Uerlings, »Eine freie Verbindung selbständiger, selbstbestimmter Wesen«. Friedrich von Hardenbergs (Novalis) Europa-Rede, in K. Armbrorst, W-F. Schäufele (eds.), *Der Wert »Europa« und die Geschichte. Auf dem Weg zu einem europäischen Geschichtsbewusstsein*, Mainz 2007-11-21 (Veröffentlichungen des Instituts für Europäische Geschichte Mainz, Beiheft online 2, https://www.ieg-mainz.de/uploads/ieg_supplements_pdf_5315d70dafdf/VIEG-Beiheft-online-2.pdf, accessed on 17/7/2023).
- ¹⁵¹ The brothers August Wilhelm and Friedrich Schlegel evoked the "Christian Occident", inspired by Novalis. Based on a concept of Europe based primarily on cultural traditions the countries united by their Romanesque, Germanic and Christian heritage form a single European cultural area in antinomy to an Orient or Oriental world conceived in Islamic terms and were to be nominated as "Christian Occident". The anti-reformation, anti-Enlightenment and, in view of the ideas of the French Revolution, also anti-democratic thrust on the topos "Christian Occident" can even nowadays be realized in Catholic journalism.
- ¹⁵² Cf. especially the Anglo-Saxon discussion: P. Burke, *Did Europe exist before 1700?*, in «History of Ideas», n. 1, 1980, pp. 21-29; J. Hale, *The Civilisation of Europe in the Renaissance*, London, Simon & Schuster, 1993, pp. 3-50; L. Wolff, *Inventing Eastern Europe: The Map of Civilization in the Mind of the Enlightenment*, Stanford, SUP, 1994; and the essays J.G.A. Pocock, *Some Europes in Their History*, in A. Pagden (ed.), *The Idea of Europe from Antiquity to the European Union*, Cambridge, CUP, 2002, pp. 55-71; W.Ch. Jordan, "Europe" in the Middle Ages, in: *ibid.*, pp. 72-92, both https://web.p.ebscohost.com/ehost/ebookviewer/ebook/bmx1YmtfXzEyMDQ4OV9fQU41?sid=424aee54-7ef2-453f-a0d5-f270d9d9c0fi@redis&vid=0&format=EB&lpid=lp_55&rid=0 (accessed on 28/7/2023).
- ¹⁵³ Adds another aspect to the understanding of the term 'learning mode'.
- ¹⁵⁴ Müßig, *Drafting Dignity*, cit., p. 17.
- ¹⁵⁵ Borrowing from Frenkel-Brunswik's title "The intolerance as an emotional and perceptual personality variable" (1949) = "Environmental Controls and the Impoverishment of Thought.", in: idem, *Selected Papers*, eds. N. Heiman, J. Grant. New York, International Universities Press, 1974, pp. 261-291 (=reprint from *Totalitarianism*, ed. C.J. Friedrich. Cambridge Mass, Harvard University Press, 1954, pp. 171, 202).
- ¹⁵⁶ K. Popper, *The Open Society and*

its *Enemies*. London, Routledge, [1945] 2012.

¹⁵⁷ H. Arendt, *Elemente und Ursprünge totaler Herrschaft: Antisemitismus, Imperialismus, Totalitarismus*. München, Piper, 1955; C. Lefort, *L'intervention démocratique, les limites de la domination totalitaire*, Paris, Éd. Fayard, 1981; *Die Frage der Demokratie*, in U. Rödel (Hg.), *Autonome Gesellschaft und libertäre Demokratie*, Frankfurt am Main, Suhrkamp, 1990, pp. 281-297.

¹⁵⁸ R. Forst, *The Justification of Human Rights and the Basic Right to Justification: A Reflexive Approach*, in «Ethics», n. 120, 2010, pp. 711-740. In fact, this corresponds to the Kantian ban of human beings' instrumentalisation (U. Müßig, *The Kantian Legal Turn of 'Republicanism': 'Rightfulness' by a Categorical Right to Justification*, in «Journal of Constitutional History / Giornale di Storia Costituzionale», n. 42/II, 2021, pp. 183-202, 193 ff.).