Law

by Martin Otto

The medieval mind was unable to differentiate between temporal and spiritual law. Law was conceived as a unitary precept with a religious-metaphysical foundation. The history of modern law can therefore largely be written as an account of its secularization and de-sacralization, accompanied by the growing importance of Roman law and theories of natural law. The modern state is founded on an entirely non-religious legal corpus, which plays a new role in legitimizing the state. These changes to the laws and legal system entailed a change in the education and responsibilities of jurists; university-based legal training gained new significance. The universities, the European colonization of America and the French Revolution became the pace-makers in the cultural transfer of law.

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Introduction

Modern law is characterized by doubt. Doubt about the medieval conception of law in terms of its legitimacy, contents and its validity. The theologically-driven conception of the world prevalent in the Middle Ages with its theologically-grounded metaphysical conception of law was first called into question by a number of developments dating from the mid-fifteenth century. The rejection of the Roman Catholic Church's claim to provide salvation using legal mechanisms[1]

and the destruction by the Reformation of the unity of sacral and temporal law (not only in the reformed churches) necessitated a radical reform of Catholic law. The erosion of Papal authority following the dawn of the "Confessional Age" was further accelerated by the actions of the remaining Catholic temporal princes. The long confessional wars, often begun before 1450 (such as the First Hussite War 1419–1436 and the Second Hussite War, 1468–1471) cast significant doubt on the religious source of law. The necessity for a new source of law moved many to make recourse to Roman law, which had never completely fallen out of use in Europe, adapting it for "modern use" (from the Latin *usus modernus*). The state sought to establish the legal system on natural law and there were also a number of attempts to reach legal codifications, an undertaking soon interrupted by the onset of fresh revolutions.

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The history of pre-1806 Germany is often written as the age of the *Alte Reich* ("old empire"), an institution often viewed as being weak and an unsuitable state.[2] Even though modern research has presented the imperial institutions such as a the Aulic Council (*Reichshofrat*) and Imperial Chamber Court (*Reichskammergericht*) in a more positive light, it remains clear that the constitutional settlement of the old empire foresaw a number of sources of law. As a result of the situation in the old empire laws which were not tied to borders or authorities such as *ius commune* (*Gemeines Recht*) or natural law were especially important.

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Influenced by the philosophy of Immanuel Kant (1724–1804) (➔ Media Link #ad), the legal system underwent a profound methodological change around 1800. The parallel existence of natural law and statute law was increasingly cast into doubt. Law, by now conceived of as "positive law," received a historical foundation. The legal sciences were now seen as a branch of the liberal arts or humanities. 1850 saw the prestige and influence of the German legal scientists reach its zenith.

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At the same time, the history of early modern law is a story of its progressive secularization and its loss of intrinsic value. The growth of religious doubt gave added impetus to the growth of positive law, regardless of its content.[3] Law was no longer to bring human salvation, merely establish temporal peace and the "good policy" of a just and peaceful commonwealth. For this, the modern state required the learned law of trained lawyers.[4]

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The concept of "law"

The term *Recht* ("law") was coined in the 8th century by the nominalization of the adjective "reht" (right, straight, correct)[5] and described a divinely intended order[6] which established mankind in estates, each with their given rights and obligations.[7] There was no division between divine and secular law, as every order was the product of divine will and was seen as being immutable in its established form.[8] As a consequence, laws were discovered, not developed.[9] Written codifications were initially not understood in a normative fashion; such an understanding was first developed by the Bologna school and in the development of lawyer-led proceedings, which was then transmitted to the French and German-speaking lands. Based on this, the understanding of law as a "Zustand, da etwas recht, und dasjenige, was recht ist" (a "state in which something is just; that which is just") is to be found in the dictionaries compiled by Johann Christoph Adelung (1732–1806) (➔ Media Link #ae) [10] and Johann Heinrich Campe (1746–1818) (➔ Media Link #af).[11] A second understanding defines law as "ein Gesetz, oder vielmehr den Begriff vieler Gesetze als wenn man sagt: das Bürgerliche Recht, das Canonische Recht"[12] ("a law or much rather a term such as civil law or canon law which bundles a number of laws"). A third modern definition sees law as the "Eigenschaft einer Person, welche eine freie Macht zu etwas hat"[13] ("characteristic of a person with the free power to do something)".

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Law and morality

A rudimentary differentiation between law and morality had been established in antiquity, made possible by the independent existence of the legal sciences and philosophy. Christian charity promoted this distinction.[14] The early modern period was dominated by the widespread acceptance of the possibility, indeed necessity of legislating to prescribe public

morality and piety. The Reformation, which often resulted in the unity of temporal and spiritual government, often served to promote this conception. The wars of religion in the 16th century and the subsequent emergence of the idea of tolerance within the structures of a modern state, however, put an end to this conception. Samuel von Pufendorf (1632–1694) (➔ Media Link #ag) differentiated between perfect and imperfect obligations whereas Christian Thomasius (1655–1728) (➔ Media Link #ah) established a systematic differentiation between law and morality. The state can only penalize and compel external actions. Inner actions are not enforceable: the counterpart to the natural *iustum* was the philosophical *honestum*.[15] Despite the widespread recognition enjoyed by the distinction between morality and legality, a third norm, *decorum* did not gain acceptance. Immanuel Kant also differentiated between morality and legality: legal actions, which are in accordance with moral law, are ethical.[16]

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The current state of research

Legal historians have yet to submit a comprehensive investigation of the concept "law". The majority of treatments investigate individual epochs or shorter periods. A study for the modern period has yet to be written.[17] All previous attempts to establish an exact definition of "law" have reached no generally accepted agreement. Regardless of the positivity of law as exhibited in judgements or laws, law is an "intellectual reality."[18] Entirely dependent on human intellectual perception, law is transmitted by this time-bound perception and finds its reality in the objectivizations of human consciousness. As a result, law cannot be determined independently of the subjective conceptions of it as developed by a number of individuals in a particular culture or epoch. In essence, the "subjectivity" and "objectivity" of the term "law" are imparted mutually and do not contradict each other. The humanities have not only played a role regarding the content of the term "law"; a universally valid and timeless conception of law, which is not empty, assumes the existence of a universal concurrence in the human consciousness regarding law. Cultural transfers also act to change and alter law, for instance through the emergence of a Romanic conception of law in a state with an oral legal tradition. This inevitably results in conflicts, such as that between the Romanic and Germanic law in German-speaking states.

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Legal families

Law stands in relation to it geographical extent. Comparative legal studies differentiates between a number of legal families (➔ Media Link #aj),[19] that of a "Roman legal family (➔ Media Link #ak)" characterized by the influence of the Napoleonic Code, a "German legal family (➔ Media Link #al)" (influenced by the German [BGB], Austrian [ABGB] and Swiss [ZGB] legal codes), an "Anglo-American legal family" (Common Law) and a "Nordic legal family"[20] (Scandinavia). This classification also includes extra-European legal families among them the Islamic legal family (➔ Media Link #ao), immediately adjacent to Europe.

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These geographically determined classifications are subject to qualification; in 1450 the Islamic legal family still comprised parts of Spain, but had yet to reach Constantinople. Moreover, processes of cultural transfer mean that a number of legal families can exist side by side. The jurisdiction of German municipal statutes reached far into Russia and Roman law played an important part in Poland where, as in Scandinavia, a number of German municipal statutes were valid. The modern period saw the reception of the BGB in Japan (➔ Media Link #ap) and the Swiss ZGB in Turkey, both members of other legal families.

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The legal families do not describe the validity of all forms of law. For instance, canon law or Islamic law theorists claim a global validity. Other legal areas, such as Jewish law are universally valid but only apply to a limited circle of persons. The same is true for tribal laws with a partially normative quality such as that of the Sinti and Roma.[21] Moreover, some courts in the common law family (England) also applied Roman law. This article has already pointed to the parallel existence of various legal families resulting from cultural transfers.

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Epochs

Archaic societies do not differentiate between law, morality and justice. The Middle Ages also maintained such a "value-centred" conception of law[22] which mainatained its influence until around 1650. The political commentator Dietrich Reinkingk (1590–1664) (➔ Media Link #aq) expressed such sentiments in his argument that law should concentrate more on "was die Gerechtigkeit verlangt, als was die Macht befiehlt"[23] ("what justice requires rather than that which power prescribes"). Early modern man-made law was natural law which had been subjected to a specific fashioning; both shared a particular disposability and accuracy. This conception of law lost all substance after 1550. Writing in 1576, Jean Bodin (1529–1596) (➔ Media Link #ar) termed law the *odre du souverain*.[24] More radical in his outlook was Thomas Hobbes (1588–1679) (➔ Media Link #as), who called the "civil lawes" as "nothing else but the commands of him who hath the chiefe authority in the city."[25] Similar definitions are found in German-speaking Europe: Pufendorf defined laws as *decreta summi imperantis civilis*[26] and Kant as "was aus dem Willen des Gesetzgebers hervorgeht"[27] ("what proceeds from the will of a legislator"). This period did not see any exact measure of differentiation between law and justice.[28]

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A new epoch in legal philosophy dawned with the re-evaluation of natural law. If natural law was still seen as having a divine origin in 1650, it was now derived from reason.[29] Christian Wolff (1679–1754) (➔ Media Link #at) saw the foundation of natural law as provided by the "Wesen und in der Natur des Menschen"[30] ("nature and essence of mankind"). The advent of the Enlightenment saw the birth of a dualistic conception of law; law was broken down into a positive law with a human origin and a natural law derived from reason. After 1800, the German Historical School attempted to return to a unitary conception of law. Friedrich Carl von Savigny (1779–1861) (➔ Media Link #av) reduced law to an "organically grown" positive law, the expression of a "national spirit" (*Volksgeist*). The German Historical School established what is probably the largest and most well-known school of German law to be diffused throughout the world (especially in Scandinavia), transmitted by international visitors to German universities. The legal challenges of nascent industrial society were already to be seen after 1850 but remained without methodological consequences for the German Historical School. Legal innovations which emerged as a reaction to industrialization (➔ Media Link #aw) often came from outside Roman law, affecting personal rights or intellectual property rights.

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Legitimation

In 1450, law was still established on a metaphysical foundation, taking its source as Christian revelation. Nevertheless, university-based jurists were able to make the distinction between divine and human law.[31] Although state-legitimated law increased in significance, many law-making princes continued to assume divine legitimation. With the advance of the Enlightenment however, the precepts of rationality increasingly displaced the Christian origin of law. The growing number of codifications made no reference to God, preferring instead to justify their work in terms of the "common best" (§ 3 *Codex Maximilianeus Bavaricus Civilis*) or "reason" (§ 16 ABGB).[32] In the course of the 19th century, modern legal history was made with the establishment of positive law as the sole source of law.[33] The legitimacy of this law was taken from its putative origin: it was perceived to have grown organically from the (latent) "national spirit".

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Categories

Objective law – subjective rights

Law can refer to both an objective legal order or an entitlement, a subjective right. This double meaning is common to many European languages, (French: *droit,* Italian: *diritto,* Spanish: *derecho,* Dutch: *wet*), but not the Scandinavian languages (Danish: *ret* and *lov*, Swedish: *rätt* and *lag*) or English (*right* and *law*) and with it, the entire area of common law. Subjective law is a central part of modern legal thinking. As the antonym to objective law, the totality of a legal order, it refers to the individually existing and enforceable legal position.

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Subjective law

Subjective law is a modern conception entirely alien to ancient Roman law. It was the medieval glossators (authors of commentaries on the ancient Roman law) who made the first attempt to emphasize the personal rights regarding property. Medieval law was also unfamiliar with the subjective law. Those concluding a purchase contract were obliged to keep their word yet this did not furnish the other party with an enforceable claim. Cultural transfer had especial significance for subjective law. The clash of canon law and *ius commune* (*Gemeines Recht)* with the late scholastic natural rights theory of the early modern period led to the development of substantial legal positions. Hugo Grotius (1583–1645) (➔ Media Link #ay) was the first to use the expression *ius* for *qualitas moralis personae competens ad aliquid iuste habendum vel agendum*[34] i.e. natural individual rights.[35] If Grotius saw individual rights as being restricted by legal obligations, Thomas Hobbes radicalized this conception:[36] "naturally every man has a right to everything."[37] Samuel Pufendorf defined subjective rights as the moral ability to exercise authority over persons and goods or the ability to demand actions or objects from others. Enlightenment natural law accorded a stronger weighting to subjective rights than obligations.[38] Indeed, the history of law since the 18th century is largely one of the assertion of individual rights over the claims of the state.[39] Kant even understood subjective rights as being the product of individual freedom.[40] The General State Laws for the Prussian State (*preußische Allgemeine Landrecht ALR*) used such terminology in its definition of the "person" as someone "[der] gewisse Rechte in der bürgerlichen Gesellschaft genießt"[41] ("enjoying certain rights in civil society"). Writing in 1797, Christian Friedrich von Glück (1755–1831) (➔ Media Link #az) differentiated between the two meanings of *ius* as both law and a capacity or ability (*Vermögen*) to do something as defined by a law.[42] Pandectists such as Georg Friedrich Puchta (1796–1846) (➔ Media Link #b0), a representative of this particular approach to Roman law involving collections of case law (*pandects*), devised a system of private law as a system of subjective rights. Carl Friedrich von Gerber (1823–1891) (➔ Media Link #b1) integrated subjective law into German jurisprudence.[43] Savigny, who conceived private law as a system of legal relationships, described subjective law as "die der einzelnen Person zustehenden Macht, ein Gebiet, wo ihr Wille herrscht, und, mit unserer Zustimmung, herrscht"[44]("the power open to an individual, the area where their will rules and does so with our assent").In the mid-19th century, subjective law moved into the centre of systematic legal thought.[45] If Savigny accorded precedence to legal relationships, Bernhard Windscheid (1817–1892) (➔ Media Link #b2) described subjective law as "von der Rechtsordnung verliehene Willensmacht"[46] ("power of volition conferred by the legal system") and established it as the key term in differentiating between individual and state spheres of action.

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Human rights and civil rights

Related to the conception of subjective rights is that of inborn or inalienable rights, found for example, in the German Enlightenment.[47] The end of the confessional civil war in England saw the development of the concept of the inborn rights "of every Englishman" including that of the freedom of belief. Transported to America by the Pilgrim Fathers, this notion was given first contractual and then constitutional expression (Constitution of the Commonwealth of Virginia, 1776; United States Bill of Rights, 1789). Also given positive expression were the basic rights established in the French Revolution (➔ Media Link #b3), especially in the Declaration of Human and Civil Rights of 1791. These declarations were seen as merely the positivization of inborn rights and as such, the basic rights were conceived of and expressed within the terminology of natural rights. The basic rights contained in the various French declarations were transferred into the territories subject to French domination and were incorporated in a number of constitutional documents (Spain, the Netherlands, France, Belgium and the German states) during the course of the first half of the 19th century. Nevertheless, these documents were not grounded in natural rights, but were derived from the person of the monarch. One constitution which did draw its legitimacy from a non-regal source was the revolutionary constitution of 1849 drafted by the German national assembly meeting in the Paulskirche in Frankfurt am Main. Although ratified by a number of German states, this proved to be only a temporary measure and the constitution was never fully instated.[48]

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Subjective public rights

One early attempt to establish a subjective right against the state, or indeed any other third party is the "vested right" *(iura quaesita)*.[49] However, the term relates to the acquisition and not the content of the right and can be applied to rights established between princes and subjects, to rights derived from privileges or individual rights such as property. "Vested rights" were those acquired as the result of human action aimed at achieving this end. The vested right was a special right of the society of estates, established to limit state interference. Christian Wolff used the expression "ius acquisitum".[50] "Natural freedom" did not number amongst the vested rights. This was located entirely outside the

sphere of state authority, and according to popular conception, existed only in a stateless state of nature and thus did not constitute any legally binding claim. Despite being subject to academic debate, it remained without any influence on the legislation and adjudication until well after 1800. The Prussian ALR from 1794 saw the amalgamation of natural and vested freedoms. The *Aufoperungsanspruch* (a claim to compensation following infringement of property rights suffered in the course of legal state actions) established in §§ 74, 75 of the introduction to the ALR established a provision which can be viewed as an early form of legally standardized public subjective rights.[51] The abolition of *Kameraljustiz* (the jurisdiction of administrative and not the justice authorities, established in Prussia since 1782) in Prussia (1808) saw the transfer of jurisdiction over compensation claims to the general courts. Nevertheless, subjective public rights were first realized after 1850, especially through the administrative dogmatics of Otto Mayer (1846–1924) (➔ Media Link #b4) who worked successfully towards transferring French legal concepts into the German-speaking countries.

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Written and unwritten law

The division established in Roman law between *ius scriptum* and *ius non scriptum* continued until well into the modern age.[52] *Ius non scriptum* referred to privately established norms (customary law). The modern period saw a decline in the importance attached to the form of transmission, as customary law was increasingly being recorded.[53] The use of unwritten legal rules in a trial was usual, and in cases such as the use of legal adjuncts drawn from Roman law, they were taken as being universally familiar despite not being recorded. Unwritten laws included the *consuetudo* (legal customs) or the Roman-canonic *communis opinio*. The transition between the two was fluid; an Imperial Chamber Court process from 1675 referred to a conciliar practice (i.e. a procedural innovation) as a "gemeiner teutscher und alter lübischer Brauch" ("common German and old Lubecker practice").[54] Differentiation between customary law and municipal law remained virtually impossible right up to the reform of municipal statutes. The subsidiary validity of unwritten law can be proven for the entire duration of the modern period. The Prussian ALR expressly standardized the subsidiary validity of common law. In those states without codified civil law, unwritten law acquired great significance. The German universities maintained this legal unity after 1806 with lectures focussing on a number of unwritten laws including *ius commune* (*Gemeines Recht*), German private law or the general German state law.[55] The dominance of judicial law within the sphere of common law made it impossible to separate written and unwritten law.

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Primary and subsidiary law

One principal of the jurisdictional hierarchy of law was that a smaller unit of law overrode the prescriptions of a higher law: municipal law took precedence over state law.[56] This hierarchy of norms also constituted a barrier to cultural transfer. Customary law took precedence over Roman law. Early natural law did not envisage such a clash between natural law and formal law because all law was held as being reasonable and just. The emergence of a dualistic relationship between natural law and positive law was addressed by the establishment of a subsidiary application of natural law in the case of a clash – even if certain authors sought to conceal this development.[57] The Enlightenment saw the rise of hostility amongst natural law theorists towards the unsystematic foreign (Latin) law. The end of the 18th century witnessed the development of a number of codifications of rationalist natural law as part of a wider move towards systematization. The Prussian ALR was now subsidiarily valid in relation to other sources of law. *Ius commune* (*Gemeines Recht*) retained subsidiary validity in the majority of German states, often until the BGB came into force in 1900. The question regarding the subsidiary validity of legal norms was also raised following the emergence of federalism theory in 1800 and in the relation of state law to federal law. The principle that federal law takes precedence over state law established itself as a binding convention and was established in a number of constitutional documents, including the constitution of the USA and the constitution drafted in the Paulskirche (§ 66; as far as imperial law does not expressly specify "only a subsidiary validity") as well as the Swiss constitution of 1849.[58] As such, these cases also constitute examples of the cultural transfer of constitutional regulations.

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Formal and material law

The differentiation between formal and material law first came with the legal rationalism of the 19th century. Such a division was entirely alien to Roman law: the *actio* provided both grounds for legal action and acted as its formula.[59] The

"action-based conception" of Roman law was gradually replaced by a system in which "formal" procedural law was accorded an auxiliary role to "material" law. The process regulations were prescriptions aiming at the enforcement of the "correct" law. Other languages also developed this polarity: the French differentiating between *droit formel* / *droit matériel* and the English between the adjective law and substantive law.[60] The object of regulation of formal law, process and procedural law is considerably older; Roman procedural law was preserved in canon law and its cultural transfer preserved its influence in the codes of procedure employed in the Imperial Chamber and Aulic Council. The Saxon law, in which procedural law was influenced rather by German than by Roman law, also exercised considerable influence. A civil law based on claims as conceived of and enforced by the German Historical School facilitated the division between material and formal law,[61] something which has been maintained into present times. Critics of this development query the desirability of preserving early 19th century legal conceptions.[62]

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Public law – criminal law – private law

The early modern period was still characterized by the medieval conception of the unity of the legal order. Any division into different legal areas represented merely a functional differentiation. Following the Roman distinction between *ius privatum* and *ius publicum*, the 16th century saw the establishment of something called "public law." Established for educational and systematic reasons, the action did not intend to create anything approaching a bifurcated legal system[63] but rather developed from the increasing antagonism between the monarchical state and civil society. The increasing separation of political action from religious affiliation necessitated a systematization of the legal norms related to the state. The end of the 18th century saw the replacement of the term "constitutional law" (*Staatsrecht*) with the term "public law."[64] The Prussian ALR worked on the basis of a unitary law and contained regulations from both legal spheres. After 1800, the dichotomy of *ius publicum* and *ius privatum* entered a new philosophical climate[65] in which private law was transformed into the regulatory mechanism of a state-free sphere.[66] Savigny divided law into "zwey Gebiete, das Staatsrecht und das Privatrecht. Das erste hat zum Gegenstand den Staat, das heißt die organische Erscheinung des Volkes; das zweyte die Gesamtheit der Rechtsverhältnisse, welche den einzelnen Menschen umgeben"[67] ("two areas: constitutional law and private law. The first deals with the state, i.e. the organic appearance of a people, whereas the second deals with the totality of the legal relationships surrounding the individual"). He also noted the existence of "transitions and relationships" between the two areas of law. Common law systems are entirely unfamiliar with the division between the two areas of law. Criminal law is also classified as falling under public law, even if this area of legal practice underwent a different development at an early stage, becoming an independent academic discipline around 1800.[68]

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Sources of law

The early modern state passed laws in a number of forms including decrees, laws, *Policeyordnungen* (early modern legal sources of a criminal and civil law nature, dispensed to promote the "good order"), valedictions, municipal statutes and state laws; each term implied specific characteristics. The number of potential legislators was just as high: the empire, spiritual and temporal territories, courts and universities. Added to this were *ius commune* (*Gemeines Recht*) and unwritten law, i.e. varieties of customary law. The jurisdiction and validity of these legal norms were not always clear and early modern legal scholars identified their primary task as that of bringing order to this plurality of legal sources. In addition to the simultaneous validity of statute law, *ius commune* (*Gemeines Recht*) and canon law came the unresolved claims of a number of municipal, state and further special laws. Recent research into this question speaks of an inconceivably complicated legal pluralism.[69] Only a legal scholar understanding legal application as the hermeneutics of the transcendental and who still shared the medieval notions of the divine source of law was able to deal with this normative provision in anything approaching an appropriate fashion.[70] The problem of competing legal sources of varying rank claiming an identical jurisdiction was reduced in the course of the 19th century with the decline in significance of natural law.[71] Positive law soon became the only recognized source of law, the first time this had ever happened in modern legal history. The German Historical School conceived of positive law as an organic, unitary rational historical product: all law began as customary law, and customary law had ceased to be popular law, having long been transformed into juridical law.[72] The final renunciation of this conception came first with the BGB in 1900.

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The hierarchy of norms

Norms have been issued on various levels of authority since the beginning of modernity. Their issue had increased dramatically since the late Middle Ages. Indeed, authors such as Martin Luther (1483–1546) (➔ Media Link #b5) complained of a surfeit of laws. The early modern state saw itself as a norm-setting state,[73] accorded itself divine legitimation. Early modern princes claimed the right to pass laws. Imperial law, territorial law and municipal statutes were established in parallel to each other.[74] *Ius commune* (*Gemeines Recht*), conceived of as imperial law, assumed a secondary position behind municipal and state law. The Age of Absolutism saw legislation become a royal monopoly and the monarch did not recognize any source of temporal law other than his own will. The right anchored in the Prussian General State Laws to issue "Gesetze und Polizeiverordnungen" ("laws and edicts"") (Prussian ALR II 13, 6), was a monarchical prerogative in many territories.[75] In keeping with this new spirit, many absolutist states attempted to codify and systematize the sum of legal provisions in their state, thereby establishing them as the sole source of law. The result was the great number of legal codifications established in the 18th century such as the Prussian ALR, conceived in order to summarize the totality of the legal order. The development of constitutional monarchies brought a new significance to the hierarchy of norms and the laws promulgated with the co-operation of the various estates developed into a bulwark against state omnipotence[76] especially in view of the development of statutory reservations. Despite the 19th century development of executive prescriptions as a competitor to law,[77] law retained its position at the top of the hierarchy of norms, something expressed by the incorporation of the legality of the administration in various constitutions. However, it was only at the end of the 19th century that the constitution assumed its current position at the top of hierarchy of norms.[78] Cultural transfers also influenced the course of constitutional law: European liberals held the Belgian constitution of 1831 and the Spanish constitution of 1812 ("the constitution of Cádiz") as examples to be emulated, to the extent that parts of them were adopted word-for-word.

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Canon law

The legislative power of the medieval Church extended far beyond ecclesiastical matters. The increase of Church government by worldly princes since the dawn of the late Middle Ages (e.g. through the Vienna Concordat of 1448) increased the scope for temporal rulers to exercise Church power through various forms of patronage such as the proprietary church. Despite the intentions of its proponents, the Reformation served only to accentuate this trend and the formation of a reformed canon law proved itself to be more than difficult. Indeed, many reformers adopted an ambiguous position regarding canon law; Martin Luther publicly burnt a copy of the *Codex Iuris Canonici* in 1520.[79] Luther's doctrine of the two kingdoms which inferred that the Church should have its own autonomous order, soon became the major influence in Protestantism, yet initially remained entirely utopian. Indeed, the Protestant German territories were forced to make recourse to their princes, established by Luther as extraordinary bishops (*Notbischöfe*), a development which hindered the establishment of an independent, reformed system of canon law. Reformed theologians such as Ulrich Zwingli (1484–1531) (➔ Media Link #b6) in Zurich and John Calvin (1509–1564) (➔ Media Link #b7) in Geneva outlined their conception of the Church as predominantly autonomous body, independent of the worldly magistrates.[80] In 1566, the Roman Catholic Church called a canon law review commission (*Correctores Romani*)[81] which brought unity to a disparate tradition and adapted it to changed legal conceptions. The official revision of the *Corpus Iuris Canonici* was published in 1582 and remained in force until 1918. Received far beyond the confines of the Catholic Church, an important edition of the CIC was published by the Protestant canon lawyer Justus Henning Böhmer (1674–1749) (➔ Media Link #b8).[82] Another attempt to revise the CIC in the 17th century eventually failed. Nevertheless, the doctrine of natural law did not remain without influence on canon law, and there were attempts in both the Protestant and Catholic Churches to establish a "natural canon law".[83] The same applied to Protestant constitutionalism; the Rhenish-Westphalian Church Ordinance of 1835 fettered the Protestant Bishop *pro tempore* (i.e. the king as the head of the Church) and can be regarded as the expression of *Vormärz* sentiment in the ecclesiastical sphere. Prussia exhibited similar tendencies in 1847, introducing the Prussian General Synod as a Church parliament.[84] Catholic canon law in the first half of the 19th century also focussed on reaching legally-binding agreements (concordats) with individual states, serving to demarcate canon and temporal law.

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Roman law / ius commune (Gemeines Recht)

The Roman *Corpus Iuris Civilis*, albeit in a watered down form and with a Hellenistic touch, constituted the law of the Byzantine sphere of influence in Europe (the Balkans) until the fall of Constantinople in 1453.[85] Roman law also provided the foundation for the development of law in the rest of Europe (with the exception of England) in the form of the commentaries and glosses on it. In view of this development, the reception of Roman law in the 13th century constitutes the most important case of cultural transfer of law. Roman law had been taught in universities since the Middle Ages, from where it was incorporated into local court practice. This tradition was continued in the early modern period; legally educated humanists such as Philipp Melanchthon (1497–1560) (➔ Media Link #b9) worked to disseminate this "heathen" Roman law. Together with canon law and local customary law, these sources provided the basis of the *ius commune* (*Gemeines Recht*).[86] Under the *usus modernus*, Roman law did not replace individual particular laws and instead entered into a synthesis with them, producing something not restricted by territorial borders. Such a practice accorded with the contemporary need for a unitary system of law. The procedural order of the Imperial Chamber Court (1495) declared *ius commune* (*Gemeines Recht*) as subsidiarily applicable.[87] During the Enlightenment, *ius commune* (*Gemeines Recht*) was viewed as unsystematic and to be considered only when it was held as being "rational." The 18th century codifications, designed to replace and even repeal sections of the *ius commune* (*Gemeines Recht*) nevertheless adopted many of its prescriptions, while replacing others.

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It was the German Historical School which accorded Roman law a new significance. Savigny even identified it as the ultimate embodiment of Western legal thought standing on a par with the "spirit of the nation" (*Volksgeist*). It is important to note however, that this estimation did not apply to the "received" law, but a "pure" Roman law unembellished by the glossators and post-glossators. The study of the "pure" Roman law was established as pandectics, a subject attracting considerable attention in German universities in the 1850s. Moreover, the attention which it received from visiting scholars to German universities ensured its cultural transfer to other legal spheres. The study of *ius commune* (*Gemeines Recht*) at German universities also enjoyed popularity. *Ius commune* (*Gemeines Recht*) had a certain level of validity in a number of regions before the introduction of the BGB in 1900, which exhibited a greater influence of the pandectic school of law.

▲26

Customary law

The dawn of the early modern period saw the application of customary law in accordance with the provisions of canon and learned law. Although generally accepted in its applicability, its origins were a matter of controversy (one theory of it's origin was through *tacitus consensus populi*). The procedural regulations of the Imperial Chamber Court obliged observation of "redlichen, erbarn und leidlichen Ordnungen, Statuten und Gewohnhaiten" ("fair, honest, and tolerable regulations, statutes and customs"). As these regulations were restricted in their territorial applicability (*consuetudines terrae*),[88] they acted to strengthen the particularistic states against imperial jurisdiction. Certain state laws such as the *Württembergische Landrecht* (1555) sought to abrogate customary law.[89] The absolutist state viewed it with mistrust due to the almost uncontrollable nature of its development, whilst enlightened jurists doubted its rationality. Some codifications even made the attempt to prevent the establishment of customary law by statutory prohibition.[90] The Prussian ALR permitted the application of customary law to close the gaps left by certain laws only as a temporary measure; the Austrian ABGB allowed it only in a very few expressly stipulated cases. The German Historical School recognized customary law as a source of law, setting it at the pinnacle of the legal hierachy.[91] Georg Friedrich Puchta even equated it with the "national spirit" (*Volksgeist*), yet the position accorded to customary law by the German Historical School was an idealized one, amounting to a "Gewohnheitsrecht ohne Gewohnheit"[92] ("customary law without custom"); it was not to be developed through practice *(usus)*, but by legal scholars. Puchta's understanding of customary law appeared to confirm the picture of a conceptionally-led form of jurisprudence far-removed from any notion of praxis.[93]

▲27

The rule of law

Continuing the legislative practices of the Middle Ages, in addition to laws, early modern states issued a number of privileges, mandates and edicts, registered much customary law and promulgated a number of *constitutio pacis.* The 15th and 16th centuries also saw the development of countless systems of state law.[94] Princes sought to underscore their claim to power through comprehensive legislative activity.[95] The absolutist system sought to establish the will of the

ruler as the sole source of law,[96] which then assumed a central position in this undertaking. For their part, the estates (especially during the French Revolution) attempted to obtain a role in the legislative process, taking the English settlement as a model. Montesquieu (1689–1755) (➔ Media Link #ba), who had travelled extensively in England, called for the division of legislative and executive power. Constitutionalism established law making as the most important function of the representative body and certain laws, such as the budget, were accorded a special status. The separation of legislative and executive power was also anchored in a number of constitutions, first in the American Constitution of 1787 ("All legislative Power herein granted shall be vested in a Congress of the United States", article I section 1 US Constitution), but the executive retained a legislative function in the shape of its right to issues decrees and ordinances.[97] Those regulations not requiring parliamentary assent soon developed into an important government tool in constitutional states. Conflicts between the legislative and executive were not restricted to monarchical states, but also existed in the USA.[98] The first indications of the development of a conception of the "rule of law" are to be found at the end of the 18th century. The constitution of the state of Massachusetts (1780) called for a "government of laws, not of men." After Kant's call for the state to act "[im] Zustand größter Übereinstimmung mit den Rechtsprinzipien" "[with] the greatest harmony between its constitution and the principles of right,"[99] he and his supporters came to be known as the "school of the rule of law doctrine."[100] Advocates of a state dominated by the rule of law sought to restrict the state to the role of guarantor of law and order (the night-watchman state). This conception represented the combination of the political economy of Adam Smith (1723–1790) (➔ Media Link #bb), the *liberté* of the French Revolution and the political programme of constitutionalism.[101] For Constitutional Liberals it belonged "wesentlich zu einem rechtlichen Staate, dass das Oberhaupt unter Gesetzen steht"[102] ("a legal state was characterized by the binding nature of law for both its rulers and leaders"). The term *Rechtsstaat* ("rule of law") was developed in 1832 by the Tubingen constitutional scholar Robert von Mohl (1799–1875) (➔ Media Link #bc).[103] Mohl, who associated the rule of law with the participatory principle (public welfare) rejected any putative antagonism between the police state and the rule of law as "fatuous."[104] If the rule of law began as a key demand of liberal constitutionalism, Conservatives also sought to reclaim the concept for their own ends. In 1847, Friedrich Julius Stahl (1802–1861) (➔ Media Link #bd) proceeded from the assumption of a formal conception of the rule of law: "Mit dem Charakter des Rechtsstaates ist überhaupt nur die Unverbrüchlichkeit der gesetzlichen Ordnung gegeben, nicht aber ihr Inhalt."[105] ("The character of the rule of law establishes only the staunch nature of the legal order, but not its content.")

▲28

Codifications

The term codification – meaning a conclusive and complete set of regulations for a particular area of law contained in a single legal code[106] – was developed by Jeremy Bentham (1748–1832) (➔ Media Link #be).[107] [108] Codifications were seen as satisfying the requirement of an absolutist state for unitary legislation and their development was fostered by the sceptical attitude of natural law towards the unsystematic and foreign Roman law/*ius commune* (*Gemeines Recht*) and the uncontrollable nature of customary law. In contrast, the codifications were intended to be grounded in reason, which entailed composing them in a contemporary and vernacular language.[109] Many years of preparation saw the development of the *Codex Maximilianeus Bavaricus Civilis* in Bavaria (1756),[110] the *Allgemeine Landrecht für die Preußischen Staaten* (1792–1794),[111] the *Code Civil* in France (1804),[112] and the Austrian *Allgemeine Bürgerliche Gesetzbuch* (1812).[113] The French *Code Civil* was of especial significance for the cultural transfer of law as the Napoleonic occupation imposed the new legal code in many of its satellite states such as the Kingdom of Westphalia or Baden, which introduced a German translation (*Badisches Landrecht*) in 1806.[114] This was followed by codifications of criminal law, such as that introduced in Bavaria in the 1750s.[115] France also acted as the source of cultural transfer in the area of procedural law, although individual items of these codifications (e.g. the jury court) were adopted from England.[116] Nevertheless, no codification succeeded in ordering all areas of law in anything approaching a conclusive fashion.[117] The politically-motivated call for a general German constitution made by the Heidelberg civil lawyer Anton Friedrich Thibaut (1772–1840) (➔ Media Link #bf), resulted in the codification debate with Savigny who maintained that the time was unripe for such a step. Many representatives of the German Historical School including Carl Friedrich von Gerber, rejected a codification. The comprehensive codification of civil law, criminal law and procedural law had to wait until the unification of Germany in 1871.[118]

▲29

Privileges

Labelled "Recht des Einzelnen"[119] ("the right of the individual") by Savigny, a privilege was aimed not at an imprecise

group of persons, but a single individual or a clearly defined group of persons.[120] In terms of content, privileges were partially determined according to formal criteria (the form of acquisition) and also following criteria regarding content, especially individual laws.[121] The granting of a privilege generated a new legal validity which although hereditary, could also be revoked under certain circumstances. A privilege could be granted by the Emperor or territorial prince, a seigneur or a municipal council. The incidence of their granting increased during the course of the early modern period, including the privilege granted to printers designed to restrict reprints. The privileges of the individual estates were often developed into corporative constitutions but were partially rescinded during the period of absolutism. The deputies of the revolutionary French National Convention saw that privileges violated the principle of civic equality and revoked them in 1789. Despite its status as a European landmark event, this development was however restricted to France.[122] Privileges generally decreased in significance during the course of the 19th century, to be replaced by the award of general legal titles in accordance with legally regulated procedures such as that established and regulated by patent law or commercial legal protection.[123] Privileges can be regarded as a functional forerunner of the administrative act.

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Municipal statutes

The imperial cities of the Holy Roman Empire enjoyed a relatively high level of autonomy and the first municipal statutes were developed in the 10th century following the Italian model. Municipal statutes, i.e. the valid laws of a town, regulated all areas of social interaction. Individual municipal legal families (Lübeck, Soest, and Magdeburg) represent a good example of the cultural transfer of law, exercising as they did, an influence far removed from the German-speaking areas, extending deep into Eastern Europe (e.g. Novgorod). The municipal statutes emerged from the Middle Ages almost unchanged; cautious alterations were made to adapt them to the new legal and territorial contexts of the 15th, 16th and 17th centuries. Indeed, this process involved a reception of Roman law.[124] Municipal jurisdiction was restricted in favour of territorial courts. The German Mediatization of 1803 abolished all imperial cities with the exceptions of Augsburg, Nuremberg, Bremen, Lübeck, Frankfurt am Main and Hamburg, which were then to lose this status in 1806. The congress of Vienna established Hamburg, Bremen and Frankfurt as sovereign federal states with their own bodies of law; in practice, their municipal statutes had been abolished. Individual provisions from the old statutes remained in force in family and inheritance law, but were eventually replaced by the BGB.[125]

▲31

State and polity edicts (*Policeyordnungen*)

As with municipal statutes, state law refers to the legal provisions valid in a particular territory. Such bodies of legislation enjoyed only subsidiary validity in towns. Just as with municipal statutes, the 16th and 17th centuries saw the reform of individual state laws with a concomitant reception of Roman law. After 1530, a number of comprehensive, or restricted (e.g. those relating to clothing regulations) edicts were issued in all territories and the empire, designed to form the foundation of a "good rule".[126] In territories, they were referred to as *Landesordnungen*.[127] Their issue constituted a reaction to current problems and established a more flexible source of law in addition to received law.[128] Almost the entire administrative effort of the 17th and first half of the 18th century was effected using such prescriptions, which have become identified with the *Polizeystaat* of absolutism. In 1749, Maria Theresa (1717–1780) (➔ Media Link #bg) ordered the "gänzliche Separation des Justizwesens von denen publicis und politicis"[129] ("complete separation of the dispensation of justice from that of the *publicis* and *politicis*") for all the Habsburg territories. This measure sought not to improve the legal protection for her subjects, but to avoid complicated wrangles over competence between the justice system and the police. The conception of inalienable human rights can also be understood as a reaction to the widely-understood concept of *policey*. After 1806, state law was replaced by the legislation of the individual states. *Policeyordnungen* can therefore be regarded as a functional forerunner of administrative law.[130]

▲32

Law enforcement

The comprehensive legislative activity of the early modern state is no indication of whether these laws were actually enforced. Apart from the demand for intensive monitoring and consistent sanctioning, 16th century political doctrine paid hardly any attention to the enforcement of norms and standards. 17th century political theory on the other hand, was characterized by a far more intensive discourse dealing with strategies of control, monitoring and sanctioning, which

however made no contribution to law enforcement.[131] Modern scholars assume that early modern laws must have enjoyed a considerable degree of success, arguing that the development of European states would otherwise be inexplicable.[132] Nevertheless, the sources have pointed to a situation in which early modern law did not command great obedience. Whether we can actually assume a widespread trend of non-compliance is questionable, as the available records make almost exclusive reference to infringements of the law. Early modern laws were also designed to portray rulers as figures of authority and assist them in attempts at self-representation.[133] Critics reproach those emphasizing the "symbolic" function of law for being overly-fixated with the difficulty of determining the "success" of a piece of legislation[134] and call for a more subtle and differentiated approach to assessing law enforcement. There is no evidence to support claims that laws performed an exclusively symbolic function – edicts were often carried by considerable public support.[135] Despite such considerations, it should be remembered that state-initiated legislation possessed a significance beyond its enforceability: for instance as a symbol of official state power.

▲33

Jurisprudence

Viewed in a simplified fashion, the history of modern legal sciences can be divided into three epochs. The first lasted from 1450–1650[136] and was strongly influenced by medieval practice. The cultural transfer of humanist thought brought methodological innovation to Germany, including the *mos gallicus* emanating from the University of Bourges. In an attempt to distance themselves from medieval jurisprudence (*mos italicus*), legal scholars called Latin legal sources into question and incorporated research conducted into their transmission in their exegis.[137] In essence, this represented an attempt to determine original Roman law.[138] Representatives of this approach included Andreas Alciatus (1492–1550) (➔ Media Link #bi) and Ulrich Zasius (1461–1535) (➔ Media Link #bj). Humanist jurisprudence was to be found primarily in the universities and corresponded with the humanist project of understanding ancient sources in their own terms without any consideration of their practical applicability. Very few representatives of the *mos gallicus* were to be found amongst legal practitioners. The *mos gallicus* developed into the *usus modernus pandectarum*[139] which was to dominate the legal sciences in the 17th and 18th centuries.[140] It was now possible for the first time to question the CIC: the practical reception of every doctrinal proposition now had to be proven. In this way, it was now possible to take local law into account (*Ius Romano-Germanicum*) and Roman law could also be applied to cases of local importance.[141] This *usus modernus* was considered as being the foundation of an independent German jurisprudence.[142] Although important in establishing the German legal sciences, it was not limited by any borders and was part of a pan-European epoch of legal sciences.[143]

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Closely connected to the Enlightenment was the second epoch (1650–1800), which can be referred to as the discovery of constructive reason and history,[144] the contents of which can be derived from the countless portrayals of natural law. A new element to this was its individualist character.[145] Law was grounded in free will, ranging from pre-social situations over small societies (marriage) to the state (the social contract). This exhibited a close interaction with received Roman law and its conception of a contract accorded with with Roman contractual theory. It altered the dogmatism of positive contract law and established the freedom of contract and testament on a new footing. The systems of natural law (Thomasius, Wolff) did not have any impact on positive law, even if the method of thinking in principles and hierarchies of terms remained dominant in the German legal scicences.[146] The first recorded use of the term "jurisprudence" is to be found at the end of the 18th century.[147] The legal concepts of the Enlightenment were displaced by the German Historical School around 1810, the dualistic concept of law being superceded by a unitary understanding.[148] Law is always positive law, developing not from the will of the legislator, but the "Sitte und Volksglaube, dann durch Jurisprudenz"[149] ("practices and faith of the people, then by jurisprudence"). Recognizable influences included that of Kant. Writing in his *Critique of Practical Reason*, he criticized the legal metaphysics of traditional natural law, pointing to the significance of context in all ethical decisions. Around 1810, all legal theorists referred in one way or another to Kant.[150] Savigny contrasted the existence of a historical and an ahistorical school of jurisprudence. As sentiments of justice do not evolve within laws, but rather organically within the "people," he saw that the only justifiable approach as an organic one. Jurisprudence thus became a historical science.[151] Law is determined by the historicity of the current law. The renunciation of natural law as a source of law represented a partial anticipation of legal positivism. Writing in 1846, August Ludwig Reyscher (1802–1880) (➔ Media Link #bk) referred to Savigny as a "positivist."[152] Jurisprudence was accorded the dignity of a social science, something it had not possessed in the philosophical-rational age.[153] Moreover, the first half of the 19th century was dominated by the dispute between the Germanic[154] and Romanic representatives of the German Historical School. Many representatives of Germanic legal sciences were active for the Liberal camp during the *Vormärz* period and the upheavals of the year 1848. The Romanic school eventually produced the pandectist

school of law, which after 1850 was subject to increasing mockery as an unrealistic "conceptual jurisprudence".

▲35

A state without law (early Socialism, Communism and Anarchism)

Any rejection of the existence of law would have been unconceivable to the medieval mind, amounting as it did, to a rejection of God. It was the "enthusiasts" (*Schwärmer*) of the radical Reformation (themselves living with the belief of the imminence of Christ's second coming) who first rejected traditional regulations and thus law. This includes all the social demands of Thomas Müntzer's (1489–1525) (➔ Media Link #bl) apocalyptic theology which spread in Central Germany (Allstedt and Mühlhausen) in 1524/1525 and which culminated in the Anabaptist state of Münster in 1534. Early Socialists active at the end of the 18th century such as François Noël Babeuf (1760–1797) (➔ Media Link #bm)[155] revived the demands of Müntzer and his followers, combining them with natural rights theories of inalienable human rights. Founding the *Societé des Égaux*, Babeuf claimed that "la nature a donné à chaque homme un droit égal à la jouissance des tous les biens"[156] ("Nature has given every man equal rights to enjoy all resources"). The utopian Socialist Henri de Saint-Simon (1760–1825) (➔ Media Link #bn) also continued some aspects of this movement; living with his followers in a commune in Paris, he rejected individual rights such as individual ownership.[157]

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The jurist Karl Marx (1818–1883) (➔ Media Link #bo) accorded especial significance to law. After starting as a supporter of the German Historical School, he finally arrived at a position which espoused the "class character of law". As the realization of Communism as outlined in the Communist Manifesto – written together with Friedrich Engels (1820–1895) (➔ Media Link #bp) in 1848 – was located firmly in the future, the present required a Marxist legal theory.[158] With its roots in the early Socialist movement and also separating state and society, Anarchism strives towards a state entirely free of any structures of authority, rejecting enforceable law in the process. The spectrum of anarchism ranges from the mutualism of the early Socialist Pierre-Joseph Proudhon (1809–1865) (➔ Media Link #bq) with his demand for the just division of property, up to the society of the "individual" founded by the solipsist Max Stirner (1806–1856) (➔ Media Link #br). As Anarchism rejects political programmes as authoritarian ideological strictures, very few conceptions of Anarchism have been developed[159] and no clear concept of law beyond the necessity of rejecting any binding laws.

▲37

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Appendix

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Translated by: Andrew Smith
Editor: Barbara Dölemeyer
Copy Editor: Lisa Landes

DDC: 340 [Info]

Citation

Otto, Martin: Law, in: European History Online (EGO), published by the Institute of European History (IEG), Mainz 2011-02-01. URL: http://www.ieg-ego.eu/ottom-2010-en URN: urn:nbn:de:0159-20101025349 [YYYY-MM-DD].

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  Charles de Secondat, Baron de la Brède et de Montesquieu (1689–1755)

Link #bb

- Adam Smith (1723–1790) VIAF (http://viaf.org/viaf/49231791) DNB (http://d-nb.info/gnd/118615033) ADB/NDB (http://www.deutsche-biographie.de/pnd118615033.html)

Link #bc

- Robert von Mohl (1799–1875) VIAF (http://viaf.org/viaf/54940612) DNB (http://d-nb.info/gnd/118583174) ADB/NDB (http://www.deutsche-biographie.de/pnd118583174.html)

Link #bd

- Friedrich Julius Stahl (1802–1861) VIAF (http://viaf.org/viaf/8180478) DNB (http://d-nb.info

/gnd/118616641) ADB/NDB (http://www.deutsche-biographie.de/pnd118616641.html)

Link #be

- Jeremy Bentham (1748–1832) VIAF (http://viaf.org/viaf/59078842) DNB (http://d-nb.info/gnd/118509187)

Link #bf

- Anton Friedrich Thibaut (1772–1840) VIAF (http://viaf.org/viaf/19740353) DNB (http://d-nb.info/gnd/118621874) ADB/NDB (http://www.deutsche-biographie.de/pnd118621874.html)

Link #bg

- Maria Theresa (1717–1780) VIAF (http://viaf.org/viaf/59876481) DNB (http://d-nb.info/gnd/118577867) ADB/NDB (http://www.deutsche-biographie.de/pnd118577867.html)

Link #bi

- Andreas Alciatus (1492–1550) VIAF (http://viaf.org/viaf/51699991) DNB (http://d-nb.info/gnd/118644432)

Link #bj

- Ulrich Zasius (1461–1535) VIAF (http://viaf.org/viaf/61645489) DNB (http://d-nb.info/gnd/118772295) ADB/NDB (http://www.deutsche-biographie.de/pnd118772295.html)

Link #bk

- August Ludwig Reyscher (1802–1880) VIAF (http://viaf.org/viaf/57410082) DNB (http://d-nb.info/gnd/11874478X)

Link #bl

- Thomas Müntzer (1489–1525) VIAF (http://viaf.org/viaf/17226919) DNB (http://d-nb.info/gnd/118585533) ADB/NDB (http://www.deutsche-biographie.de/pnd118585533.html)

Link #bm

- François Noël Babeuf (1760–1797) VIAF (http://viaf.org/viaf/59078391) DNB (http://d-nb.info/gnd/118505467)

Link #bn

- Henri de Saint-Simon (1760–1825) VIAF (http://viaf.org/viaf/102325741) DNB (http://d-nb.info/gnd/118604937)

Link #bo

- Karl Marx (1818–1883) VIAF (http://viaf.org/viaf/49228757) DNB (http://d-nb.info/gnd/118578537) ADB/NDB (http://www.deutsche-biographie.de/pnd118578537.html)

Link #bp

- Friedrich Engels (1820–1895) VIAF (http://viaf.org/viaf/68928644) DNB (http://d-nb.info/gnd/118530380) ADB/NDB (http://www.deutsche-biographie.de/pnd118530380.html)

Link #bq

- Pierre-Joseph Proudhon (1809–1865) VIAF (http://viaf.org/viaf/17228286) DNB (http://d-nb.info/gnd/118596780)

Link #br

- Max Stirner (1806–1856) VIAF (http://viaf.org/viaf/51780445) DNB (http://d-nb.info/gnd/118618261) ADB/NDB (http://www.deutsche-biographie.de/pnd118618261.html)