

The Young Legal Historians.

Methodological changes within Germanist legal historiography during the interwar period

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Abstract

How do scholarly topics and issues evolve? No academic reflection can immediately and directly turn to any part of the “real life” it wishes to investigate. Instead, by raising a scholarly question and identifying the issues to be elucidated – linguistically and intellectually – the inquiry constitutes both a phenomenon and an aspect of the given “reality” at which it takes aim. Inevitably, all topics and problems of research in the humanities originate from a specific socio-historical background, and they evolve in accord with the corresponding values and reasoning. Thus, a history of research can be depicted as a history of problems and the associated perceptions that may arise and shift over time. This is the point of departure from which the present habilitation thesis explores the change in the categories and methodology within German legal historiography in the interwar period 1918-1939.

Between 1880 and 1930, the humanities went through a fundamental change that can be observed on an international level. This upending process of reorientation can be described by the notion of a *second, reflexive modernization*, meaning the expansion of a new kind of self-reflective style in scholarly research that generally used to be associated with the rise of Neo-Kantian philosophy. But the sources of this change can also be allocated to industrialization and the formation of mass society, a process that took place in the German case only from 1860 onwards. In the long run, they prompted a new academic field, the discipline of sociology. In fact, both facets complemented rather than excluded one another. This can be seen when looking at the most famous answer to this process of reorientation from within German legal scholarship, the so-called Free Law movement.

However, within the German intellectual world of the time, the very change was marked by another characteristic. For in Germany the historical paradigm had dominated public and academic life in a particularly deep way: it had driven and defined the achievement of national unification up to 1871, and glorified it later on. Meanwhile, towards the end of the 19th century the awakening of modern society and the cataclysmic boost of German technical-industrial acceleration led to a broad, all-embracing discussion among scholars and the learned public, a debate that used to be described as a *crisis of historicism*: since the lessons learned from the past, on the one hand, and the horizons of future expectations, on the other, seemed to increasingly diverge from each other, historical knowledge saw a dramatic loss of significance as a pattern of orientation. In the German thinking of the early 20th century, this met with countless comments and reactions, at times sharp and radical ones. Several analytical attempts were made to frame and overcome the dilemma of historicism theoretically, each from a different angle, by authors such as Max Weber, Ernst Troeltsch, Friedrich Meinecke and others. On a less sophisticated level, in the democratic years after 1918 a widespread wave of antihistorical polemics were carried out in newspapers and pamphlets. This transition period profoundly shaped the grounds of today’s historical scholarship. Compellingly, Otto Gerhard Oexle terms it as the pivotal or axial age of

humanities, alluding to the metaphor of “Sattelzeit” first coined by Reinhart Koselleck with reference to the so-called *first modernity* between 1750 and 1850.

During the German interwar period, the discipline of legal history was likewise marked by a particularly committed quest for new methodologies and new beginnings. At the same time, an obvious generational change, almost a rupture, took place among the so-called Germanist Legal Historians. Similar to several reform projects in the early 20th century, a large number of rather unexperienced newcomers considered themselves emphatically as *young* and felt in opposition to the established, apparently all-dominating generation of scholars which represented the world of their fathers. This habilitation thesis focuses exclusively on this strand of the history of scholarship; it does not cover the so-called Romanist Legal Historians, even though the scholarly discourse on the history of Roman law that took place during this period could be dealt with fruitfully from the same angle. Yet until 1918 the Germanist Legal Historians had shared in the collective myths regarding German national history in a much more extensive manner than the Romanists. Correspondingly, they not only experienced the breakdown of German glory and the collapse of the monarchy as a trauma, they were also impacted by the *crisis of historicism* in a much more severe and symptomatic way.

The study departs from an analysis of the scholarly discourse; it therefore relies on the survey of most scholarly publications of that time – whether specialists’ articles or comprehensive monographs – and tries to follow the main routes of the former historiographical discourse. At the same time, it also rests on a wide review of numerous personal estates and the correspondence they encompass. However, it does not offer a *histoire totale des recherches*. Instead, the work tries to do justice to the scholars themselves by revealing their specific impetus and meeting their ideological concerns. The critical stimuli reflected in the German legal historiography of the early 20th century are illustrated by tracing the following questions: how did the protagonists perceive their era’s changes; in which concepts did they set out the duties as well as the promise of their discipline; and what currents of thought originated in this period – and why did this come to pass?

The study comprises three chapters. After an introduction of the topic and a brief outline of the adopted approach, occurring in the first two chapters, the thesis concisely examines the two most successful pioneers of the aforementioned change, first Franz Beyerle (1885-1977) and then Heinrich Mitteis (1889-1952). An account of their scholarly reorientation projects is given in accord with the guiding questions of the study. In a third chapter, and on a rather structural level, the study then identifies the methodological patterns and new discourse with which Legal Historians were confronting the complex changes of modernity. In a loose reference to Justus Wilhelm Hedemann, the escape from juridical formalism can be understood as a common feature that proved to have a huge impact on the shifting scholarly discourse. Finally, in a concluding and more general summary, the wider settings of this evolution and its entanglement with the above-mentioned *crisis of historicism* are detailed and evaluated.