

The state of projects

My research projects concern two interrelated areas. The first is addressed to legally salient transformations of political modernity, the second to legality and legal knowledge.

Self-government, the constitution as norm and solidarity

Over the past five years, my work has focussed mainly on transformations of three major political ideas. These ideas define, not by accident, the core of enlightenment's mission of emancipation. Thus, they concern humanity's exodus from bondage, tutelage and submission to false authority.

At least two of these ideas are deeply associated with the French revolution.

According to the first idea, the terms of political self-determination among free and equal citizens are to be defined by the association of citizens itself. In other words, what may claim authority over people is to be authored by them, instead of being a fruit of superior practical insight or the labour of administrative providence. This is the idea that rightful political authority is vested in a *constituent power*.

Concomitant with this idea is another one, according to which the constitution is not merely a statement of aspirations but, rather, a *public norm*. From this follows that it is also not the structural sedimentation of a stable equilibrium of social forces. The belief that the constitution has normative force is intrinsically related to the project of collective self-government. The continuity of the latter turns decisively on establishing the conditions under which constituted powers can be said to stay within their

proper bounds. As long as the constitution qua norm is adhered to, the people rule (and not some powerful group).

The third idea complements the equal liberty of citizens with the requirement that citizens take mutual interest in the freedom and well-being of compatriots. *Solidarity* extends beyond the protection rights. It encompasses collective efforts to elevate human life from the depressing shackles of necessity. So far, this project has been best epitomised by Western European types of social welfare states.

The late twentieth and the early twenty-first century have been witness to profound alterations of these ideas. The European integration process, in particular, has turned out to be the well-spring of innovation.

First, with the rise of transnational governance processes of governing lose their former mooring in constitutionally constituted self-determining collectivities. It would be premature to conclude that this implies the demise of constituent power. Rather, the concept can be reformulated from the life-perspective of career-oriented and competitive individuals. At any rate, this is what I have tried to argue in my book **Individualism**.

With regard to the third idea, factors such as transnational regime competition, disintegration of former social class structures and policies of social retrenchment have managed to push anti-discrimination law to the centre of the European social model. The ensuing transformation of solidarity and its assimilation to the market mentality of neoliberalism is the subject of my forthcoming study **Neoliberalism's Human Face**.

Finally, the transformation of constitutional normativity and its occasional assimilation to administrative ration-

ality can be observed, in particular, for processes that are often alleged to involve the extension of constitutionalism beyond the nation state. What one gets, mostly in the guise of high-sounding principles such as “proportionality” or “subsidiarity”, is a diffusion of constitutional normativity into managerial problem-solving practice. Moreover, multilevel regimes remit constitutional legality to its pre-normative mode in which it designates the recurrent challenge to accommodate the claims of participating entities. This reversion to old-fashioned ways of thinking about constitutions is frequently encountered in fancy (and fanciful) terms, such as “constitutional pluralism”. Upon closer inspection they turn out to be euphemisms for the impossibility to remain faithful to the emancipatory dimension of the constitutional project.

It needs to be conceded, however, that there are good reasons for extending the discipline of constitutional law beyond national bounds. For example, submitting the protection of fundamental rights to peer review by an international tribunal is perfectly consistent with the universalistic substance of modern constitutional law.

Separating, in this context, illusion from insight is the task of another project that is devoted to exploring the potential and limits of **Transnational Constitutional Law**.

Legal Philosophy

The constructivist enterprise that began in the 1990ies under the name “post-positivist” legal thought is finally ripe for a more systematic exposition. I would like to pursue the path—the new path—taken in my 2006 German book [Rechtliches Wissen](#) on legal knowledge further and to reconstruct the concept of law from the bottom up, that is, by exploring the conditions under which what

is law is authoritatively known in societies. Law comes into existence through the validation of legal knowledge claims. In practice we encounter such claims encumbered by the demands of money and power. The task of knowing the law is, thus understood, to overcome the distorted appearance through which the law nonetheless first comes into existence.

The constructive retrieval of law from such encumbrance presupposes a clear conception of the legal relationship. Formulating such a conception in turn involves a clarification of what it means to have rights. In modern societies where intense demands of integration are implemented in the form of internalised duties against oneself it is all too easily forgotten what it means to respect one another not as colleagues, team-players or collaborators but rather as the bearers of valid legal claims.