2 Some Methodological Reflections

> "Ich selber wirken? Nein, ich will verstehen. Und wenn andere Menschen verstehen, im selben Sinne wie ich verstanden habe, dann gibt mir das eine Befriedigung, wie ein Heimatgefühl."
>
> Hannah Arendt (1964)[43]

2.1 Introduction

This study is concerned with comparative legal history about ways of thinking. But I would like to start by thinking about comparative legal history. This chapter is, accordingly, dedicated to some methodological reflections that are relevant for the analyses.

Comparative legal history is certainly not a new discipline,[44] but it has received increased attention over the last decades. In 2009, the European Society for Comparative Legal History was founded, and

43 Interview with Günter Gaus 28 October 1964, available at <https://www.youtube.com/watch?v=J9SyTEUi6Kw> (see 07:40) (accessed 7 September 2024).

44 Think for instance of Max Weber's comparative sociological-historical analyses in chapter VII of his *Economy and Society* (1921), see section 5.2 for more on Weber's legal sociology. For an introduction to the history of the discipline, see Kjell Å Modéer, 'Abandoning the Nationalist Framework: Comparative Legal History' in Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (eds), *The Oxford Handbook of European Legal History* (Oxford University Press 2018) 100; Aniceto Masferrer, Kjell Å. Modéer and Olivier Moréteau, 'The emergence of comparative legal history' in Olivier Moréteau, Aniceto Masferrer and Kjell Å. Modéer (eds), *Comparative Legal History* (Edward Elgar Publishing 2019) 1.

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the Society has been publishing a journal since 2013.[45] In addition, a handbook was launched in 2019.[46] Recently, a Finnish legal scholar has even went as far as proposing that legal history and comparative law ought to merge into one single discipline.[47] Broadly speaking, this historiographical turn can be understood as an attempt to challenge a legal paradigm that is seen by many as too nation state-centred, reflecting methodological trends in the disciplines of both comparative law and legal history.[48] All these trends are connected to various social and legal developments, often described as "globalization", "Europeanisation", "transnationalisation", or the like.

The fact that comparative legal history is a hybrid of three distinct disciplines, and taking into account the extensive methodological debates within the fields of legal theory, comparative law, and legal history respectively, approaching it might feel a bit like moving towards the three-headed Cerberus. But the die is cast, and my tactic for the wrestle with this terrifying animal will be to roll up my sleeves and confront one of the heads at a time. More concretely, I will in the following discuss some historical aspects of the thesis, then move over to some

45 For the background of the Society and the journal, see Seán Patrick Donlan and Aniceto Masferrer, 'Preface' (2013) 1 *Comparative Legal History* iii. See also Masferrer, Modéer, and Moréteau (2019) 3 (footnote 9).

46 Olivier Moréteau, Aniceto Masferrer and Kjell Å. Modéer (eds), *Comparative Legal History* (Edward Elgar Publishing 2019).

47 Heikki Pihlajamäki, 'Merging Comparative Law and Legal History: Towards an Integrated Discipline' (2018) 66 AM. J. COMP. L 733. Pihlajamäki's message was reportedly received with a certain reluctance by Finnish comparativists, see Jaakko Husa, 'Merging Comparative Law and Legal History? Thesis and Scepticism in Finland', IACL-AIDC Blog, 27 March 2019, available at <https://blog-iacl-aidc.org/2019-posts/2019/3/26/merging-comparative-law-and-legal-history-thesis-and-scepticism-in-finland> (accessed 7 September 2024).

48 See e.g. Donlan and Masferrer (2013); Modéer (2018). For trends in comparative law, see e.g. Mark van Hoecke, 'Methodology of Comparative Legal Research' (2015) *Law and Method* 1. For legal history, see Assaf Likhovski, 'The intellectual history of law' in Markus D. Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (Oxford University Press 2018) 151–169, 153; Thomas Duve, 'European Legal History – Concepts, Methods, Challenges' in Thomas Duve (ed), *Entanglements in Legal History: Conceptual Approaches* (Global Perspectives on Legal History, Max Planck Institute for European Legal History 2014) 29–66.

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comparative aspects, and finally to some legal aspects.[49] Hopefully, then, I will be able to tame the animal and make him into a useful one, to paraphrase Oliver Wendell Holmes.[50]

2.2 The historical aspect: Understanding and interpreting legal pasts

In legal history, it is possible to distinguish between legal historical research where the objective is to use history for present purposes – history as "the handmaiden for contemporary law" –[51] and research that seeks an interpretation of a legal past.[52] A second, and closely related, distinction that I find useful is perhaps best presented by a quote from Hannah Arendt, whom stated the following in an interview, as a reply to a question from the interviewer: "Whether I want to achieve something myself? No, I want to understand."[53] This study aims to *interpret* and to *understand* legal pasts. Both of these aims call for some closer remarks.

To start with the latter, the emphasis on understanding, here in contrast to some sort of acting, is not to be understood in the sense that I claim to be something like an objective, impartial spectator. Quite to the contrary, I would emphasize that writing is a constructive act, as it involves "the selection, arrangement and interpretation of inform-

49 This disposition is to some extent inspired by Seán Patrick Donlan, 'Comparative? Legal? History? Crossing boundaries' in Olivier Moréteau, Aniceto Masferrer, and Kjell Å. Modéer (eds), *Comparative Legal History* (Edward Elgar Publishing 2019) 78. In terms of content, however, I discuss other aspects.

50 Oliver Wendell Holmes, 'The Path of the Law' (1897) 10 HARV. L. REV. 457, 469.

51 Dirk Heirbaut, 'Reading Past Legal Text – A Tale of Two Legal Histories. Some Personal Reflections on the Methodology of Legal History' in Dag Michalsen (ed), *Reading Past Legal Texts* (Oslo 2006) 91–112, 93.

52 Dag Michalsen, 'Methodological perspectives in comparative legal history: an analytical approach' in Olivier Moréteau, Aniceto Masferrer, and Kjell Å. Modéer (eds), *Comparative Legal History* (Edward Elgar Publishing 2019) 96, 100–101; Michael Stolleis, 'Rechtsgeschichte schreiben. Rekonstruktion, Erzählung, Fiktion?' in Michael Stolleis, *Ausgewählte Aufsätze und Beiträge,* Volume 2 (edited by Stefan Ruppert and Miloš Vec, Vittorio Klostermann 2011) 1083–1112, 1107.

53 Cfr. footnote 43 above.

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ation", and that it, furthermore, "produces meaning and is not just a mechanical operation."[54] My point is rather that it is not the task, or at least not the primary one, of the legal historian to seek to legitimize or delegitimize historical pasts. This is not to say that historical analyses should completely avoid normative assessments, but the point is that an overly moralizing approach runs the risk of turning the historian into a one-eyed cyclops. And a cautiousness in this regard becomes even more important when analysing, like this study does, pasts that are close to our own times and thereby also our own present-day discussions. Of course, the history one writes may have legitimizing or delegitimizing *effects*, for example relating to the status and the identity of a "school of thought", either historically or in a present-day context. But one has to distinguish between objectives and effects, and, as to the former, a regulative ideal of understanding, not acting, is a guiding principle of this work.

As to the second objective – to interpret a legal past instead of actualizing it for present-day purposes – a question arises pertaining to the relationship between present and past. In an article on the methods of legal history, the legal historian Dag Michalsen has pointed out that we are bound to the past of the present as there is no direct access to the present of the past.[55] Michalsen emphasizes that when we transform "the material of the legal past to a present interpretative account of the past, the use of meta-concepts of different kind is unavoidable". Such meta-concepts are what Michalsen refers to as "legal-historical representations". Together with the "past reality" and "the description of the sources or material of this past reality", these legal-historical representations constitute three different layers of historical references. For instance, a specific past reality is the fact that a certain Hans Kelsen sat down and wrote certain texts; these texts can be described

54 See Günter Frankenberg, *Comparative Constitutional Studies. Between Magic and Deceit* (Edward Elgar Publishing 2018) 86, who makes these points in regard to comparative constitutional law.

55 Dag Michalsen, 'The Nominalistic Argument in Interpreting Past Legal Texts' in Dag Michalsen (ed), *Reading Past Legal Texts* (Dreyers Forlag 2006) 134–157. The following quotes are taken from various places at 135–142.

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in various ways, for instance by pointing out that they contain an idea about a certain "*Grundnorm*"; and a legal-historical representation could be that Kelsen was a "leading legal positivist from the Vienna School". Michalsen puts forward a "nominalistic argument" in regard to the formation of representations. This means, first, "that the collective entity" we make is a "linguistic construction [that] only synthesizes individual phenomena" and, second, that one should "question this construction as being the most apt (or interesting) of these descriptions which are carried out on the basis of the historical material." As such, the nominalistic argument is not an ontological position – something that would be impossible for Michalsen as he views conceptualization as an unavoidable part of legal historical research – but instead an epistemological strategy. In accordance with this theoretical position, I will discuss both the main temporal and the main material representations of this thesis with the nominalistic argument as a fundament.[56]

All historical research will necessarily operate with a timeframe – the overarching timeframe of this study is the period between ca. 1900 and 1930, which I also interchangeably refer to as "the first decades of the 20th century" or the like. The historian will explicitly or implicitly cluster certain events into a temporal entity, and this way of ordering and structuring the past will have an impact on the research itself and how it is presented, and thereby also on how we think about and understand the past. The importance of the temporal representation can be illustrated with an example that is relevant to this study. In German constitutional legal scholarship, the theoretical debates in the first half of the 20th century were, as we will see, at their most intense in the Weimar period. But the debates can be seen as a continuation and an intensification of an uneasiness that was already present in the writings of several authors in the decades before the First World War.[57] Whether, then, the debates are seen as a "1918–1933"-phenomenon or, as I try

56 This means that I use different types of representations than Michalsen, who discusses temporal-historical representations, subject representations, and connecting representations.

57 See Stefan Korioth, 'Erschütterungen des staatsrechtlichen Positivismus im ausgehenden Kaiserreich – Anmerkungen zu frühen Arbeiten von Carl Schmitt, Rudolf

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to do, as an "early 20th century"-phenomenon (of course giving due consideration to the Weimar context), will influence the conclusions drawn. With the latter approach, socio-economic factors such as industrialization becomes a more important context to take into account.[58] At this stage, I am only interested in the general methodological aspect. In this regard, the nominalistic argument is to stress that the temporal structuring is a historical representation, and moreover, that the writer and the reader alike should critically reflect on whether this representation is the most apt.

Another issue related to the temporal aspect, albeit not directly to temporal representations, is how the historian should deal with the privileged benefit of hindsight. There is a joke about how people in the 1920's and 1930's must have found it frightful and very gloomy indeed when they reflected upon the fact that they were living in an "interwar era". This reminds us of the importance of remembering that our "past of the present" is something different than the "present of the past". Michael Stolleis has, for instance, warned against considering the intellectual debates of the Weimar period as inevitably leading up to the Nazi period, and stressed that the debates "were carried on against an open horizon, where the flames of the holocaust were not (yet) glowing".[59] Implicit in this statement is a warning against what one might refer to as an over-determination of the past, where historical developments are seen as following strictly and by necessity from its past.[60] An under-determination of the past would, on the other hand,

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Smend und Erich Kaufmann' (1992) Vol. 117, No. 2 *AöR* 212 and more in detail in Chapter 3 below.

58 *Ibid.* 230.

59 Michael Stolleis, *A history of public law 1914–1945* (Thomas Dunlap tr, Oxford University Press 2004) 139. In a similar direction, Oliver F. R. Haardt and Christopher M. Clark, 'Die Weimarer Reichsverfassung als Moment in der Geschichte' in Horst Dreier and Christian Waldhoff (eds), *Das Wagnis der Demokratie. Eine Anatomie der Weimarer Reichsverfassung* (C. H. Beck 2018) 9–44, 13.

60 See Maksymilian Del Mar, 'Philosophical Analysis and Historical Inquiry: Theorizing Normativity, Law, and Legal Thought' in Markus D. Dubber and Christopher Tomlins (eds), *The Oxford Handbook of Legal History* (Oxford University Press 2018) 4, 10.

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be to look at the past as totally irrelevant to the posterior. The historian should search for a middle-ground here.

The main *material* representation of this study is that different texts and scholars are identified as belonging to different directions, movements, or trends, and that these are given certain labels. The most general representation is the basic frame of the entire work: that in Germany and the United States, a number of legal thinkers had something in common by way of thematising "law" and "life". Important to stress here is that within this broad frame, the divergence and heterogeneity among different writers was considerable, something I will also try to show. Still, with the overarching narrative and the structure, I *do* cluster a number of singular phenomena into broad categories, and this gives rise to the question about what these categories should be labelled. This has been one of the most challenging parts of the work. In the literature, one frequently meets concepts like "anti-positivism", "anti-formalism", and other alternatives.[61] There are a number of problems with terms like these, first and foremost connected to the choice of a strategy for determining the terminology. One strategy could be to employ the concepts the authors used to criticize others and describe themselves. If so, "formalism" and "anti-formalism" seems out of place in the American context, as it was an *ex post* construct, primarily from the 1970's.[62] But if this strategy is chosen, a follow-up question is whether it should be applied when an author or a movement misconstrued their opponents, or, in extreme cases, even when their terminology was blatantly fraudulent (think of the denigration of adversaries by using the terms "*entartete*" or "Jewish" legal thinking). A second strategy could be to follow the accepted terminology of the sci-

61 In the various primary and secondary sources I have used, which includes theoretical writings more connected to private law as well, I have, in addition to the ones mentioned, found at least the following terms: "naturalism", "jurisprudence of interests", "jurisprudence of purposes", "jurisprudence of balancing", "free law", "natural law", "realism", "legal realism", "revolt against classical/orthodox legal thought", "pragmatism", "legal pragmatism", "sociological jurisprudence", "functional jurisprudence", and "(socio)-teleological jurisprudence".

62 See Tamanaha (2010) 59 f.

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entific community, if a consensus exists. This would have the advantage that one more easily partakes in an already existing academic discourse, but on the other side, one potentially runs the risk of reproducing questionable interpretations. A third strategy could be to apply clearly defined concepts based on specific criteria, i.e. more of a definitory strategy. No matter which strategy is employed, the concepts one uses are in no way "neutral" – they give certain associations, and they are charged with historiographical layers. The most obvious illustration is that no one wants to be called a formalist.[63]

My strategy can be described as the gazelle's method: I try to run away from the problem. In more practical terms, I will on the whole avoid the most generalizing labels and instead use more neutral words like "critics" and so on, which in the context of this study should be clear enough. When I use terms like "positivism/anti-positivism", "formalism/anti-formalism", and so on, it refers to concepts used by the authors I analyse. The idea behind this choice, which fits well with the nominalism I have advanced, is that I want to get beyond the broad concepts and pay more attention to the underlying and concrete issues. Furthermore, it is also connected to the already mentioned heterogeneity of the authors I am studying, where general categorizations will easily become too crude.

2.3 The comparative aspect: Analogical comparisons and actual influences

In addition to the distinctions made above, it is also possible – when turning to the comparative aspect – to make an analytical distinction between comparative legal history strictly speaking and legal history concerned with legal transfers. By the former category, I refer to the activity of exploring analogous similarities or differences between two or more legal systems. By the latter, I mean the activity of exploring

63 See on this e.g. Haferkamp (2018) 928; Frederick Schauer, 'Formalism' (1988) 97 YALE L.J. 509, 509–510.

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actual influences between two or more legal systems.[64] These two different categories of comparative legal historical research are, first, purely analytical. Second, they are not mutually exclusive: it is possible to do both at the same time; but nor are they dependent on each other: it is possible to employ only one of them. Third, they are not exhaustive of possible distinctions that one could make.

As I will explain in more detail below, past legal texts must be understood in constructed contexts. In this perspective, legal transfers and the influence from another legal system is no more than one potential context among others. This transnational aspect of law is well known to legal historians today.[65] When the historian constructs a context, he or she has to select from what is in theory an infinite range of different factors, and there can be no *a priori* determination of whether the transnational context offers an explanatory power that justifies its inclusion in a historical study. To stress the transnational aspect of law should, first and foremost, serve as an eye-opener for the legal historian; a reminder to look for legal transfers and influences from other legal systems. As the legal historian Heikki Pihlajamäki puts it, "[s]ometimes, perhaps, the comparative context will show less in the final research report than in some other cases, but the context should always be there."[66] For the developments in legal thinking I am exploring in this thesis, the transnational context, and more specifically the transfers from and influence of German legal scholarship in the United States, has been pointed out and studied by several authors.[67] At

64 See similarly Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Hart Publishing 2014) 57, who distinguishes between genealogical and analogical comparison. When I prefer the term "actual influences" instead of "genealogy", it is because the idea of a genealogy back to a third "anterior phenomenon" responsible for the appearance of two phenomena (Samuel) might be too crude in some instances.

65 See e.g. Thomas Duve, 'Entanglements in Legal History. Introductory Remarks' in Thomas Duve (ed), *Entanglements in Legal History: Conceptual Approaches* (Global Perspectives on Legal History, Max Planck Institute for European Legal History 2014) 3–25, 4.

66 Heikki Pihlajamäki, 'Comparative Contexts in Legal History: are we all comparatists now?' (2015) No. 70 *Seqüência (Florianópolis)* 57, 70.

67 See footnote 34 above.

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this point, I will confine myself to note that I consider this context as a relevant one, and that it will to some extent be part of the analyses in the following chapters.

Moving over, then, to the category of comparative legal history strictly speaking and its focus on structural similarities and differences from an analogical point of view, the principal merit of this aspect is that it opens up a space for deeper reflection. The comparison can be of value in itself, but it can also have instrumental value by making it easier to test hypotheses about historical developments within one legal system. A hypothesis can be, for instance, that in legal system A, the phenomenon a_1 had a strong influence on the emergence of phenomenon a_2. If, then, there is a structurally equivalent b_1 in legal system B, the hypothesis can be tested by asking whether there was also a structurally equivalent b_2. Alternatively, one can start by observing b_2, and then ask whether b_1 was present. The results of exercises like these are, in one sense, modest; the concrete historical situatedness of each legal system means that one cannot establish 'proof' even by a 'falsification', in the terminology of Karl Popper. Moreover, the more complex the phenomena that are investigated becomes, the more cautiousness is called for in terms of claiming that a_1/b_1 and a_2/b_2 are in fact structurally similar. But still, hypotheses might be strengthened or weakened, and, at the very least, this way of thinking makes it easier to question one's own (or others') assumptions.

To illustrate this, I will make use of an example that is relevant in our context. In the United States, the courts had competence to conduct judicial review of the constitutionality of legislation in the period that is analysed. Conversely, this was not the case in Germany, at least not to the same extent.[68] I will not, at this point, go substantially

68 In Imperial Germany, there were no rights provisions at all in the constitution. Moreover, the courts were not competent to conduct substantial constitutional review of legislation ("*materielles Prüfungsrecht*"), see Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789. Band III: Bismarck und das Reich* (3rd edn, W. Kohlhammer 1988) 1058–1059. The Weimar Constitution had an extensive part on constitutional rights (see section 3.3.3 below). These provisions had some impact, but an inconsiderable one compared to the situation in the United States

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into the discussion about the importance of constitutional review as an explanatory factor. The point here is only that if one presupposes that constitutional review was an important factor that shaped the theoretical debates in American constitutional scholarship, the lack of constitutional review in Germany encourages a second thought and a search for alternative hypotheses. An alternative approach could be to ask: given the fact that it was no such review in Germany, could it be that the structural differences between German theoretical debates and the corresponding debates in the United States are greater than first assumed? Or if not, could it be that there was perhaps a functional equivalent to constitutional review in the German legal system that has been overlooked? Or yet another variant: if one finds structural differences between the American and the German debates, constitutional review might be an explanatory factor for the difference. Once again, my claim is not that exercises like these can establish any 'proof', and they should be employed very carefully and with due regard to the unique contexts of each legal system.

There is one specific circumstance that in particular merits a comparative approach to the present study. The developments I am studying have been the object of intense debates among legal scholars and historians in the respective legal systems. This is not surprising, given that the developments touch upon fundamental issues such as the concept of law, the role of norms in judicial decision-making, the tasks and methods of legal scholarship, and the relationship between constitutional law and politics. But precisely because very fundamental issues are involved, there is a certain risk that the historical interpretations tend to get "politicized" (in lack of a better word and therefore put in quotation marks). The American historiography related to late 19th century legal thinking is illustrative. In a book from 1998, for instance,

(and Germany under the current Basic Law (*Grundgesetz*)). The *Staatsgerichtshof* was set up to decide constitutional disputes, but its jurisdiction was limited to organizational matters. See Horst Dreier, 'Grundrechtsrepublik Weimar' in Horst Dreier and Christian Waldhoff (eds), *Das Wagnis der Demokratie. Eine Anatomie der Weimarer Reichsverfassung* (C. H. Beck 2018) 175–194; Stolleis (2004) 96; Gusy (2018) 70.

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the author divided it into "contemporary or progressive interpretations" (1910–1940), "liberal or neo-progressive interpretations" (1940–1970), and "revisionist interpretations" (since 1970).[69] In this situation, it can be particularly useful to employ the comparative perspective in order to get out of nationally entrenched interpretations that might be particularly bound up to certain ideological positions. If we in fact end up as cyclops – even though we tried to avoid precisely that – it might turn out to be a valuable compensation for our reduced sight that we chose to travel and see new places.

2.4 The legal aspect: Selection of texts and construction of contexts

This study centres around a number of legal scholars and their understandings of constitutional theory and methods. These ideas are sought understood against legal, political and social contexts. In both cases, a similar question arises: Which texts to focus on, and which contexts to pay most attention to?

As to the selection of authors and texts, a guiding principle has been to include a variety of scholars, in order to ensure a certain representativeness. At this point, the main strategy has been to consult the already existing research literature. It goes without saying that within the scope of a work of this nature, it has been impossible to give anything even close to a complete account of the theoretical developments. This is particularly the case for Germany.[70] Still, the analyses are intended to be representative of at least broad traits of the intellectual developments in both countries.

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69 William M. Wiecek, *The Lost World of Classical Legal Thought. Law and Ideology in America, 1886–1937* (Oxford University Press 1998) 254 f. (appendix). For other historiographies emphasizing the political aspect, see Tamanaha (2010) 60 f.; Rabban (2012) chapter XIV. For a recent article "in defense of progressive legal historiography", see Kalman (2018).

70 Two important figures that are absent in this study, and only mentioned in passing, are Georg Jellinek (1851–1911) and Hermann Heller (1891–1933). For overviews, see e.g. Stolleis (2001) Chapter 10 IV.2 and Stolleis (2004) 175 f.

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The texts one has selected must be understood in their contexts. Etymologically, this means that one tries to weave together (*contextere*) something. This 'something' that one tries to weave together is the text and its surroundings. These surroundings can, symbolically speaking, be represented as in a spatial relation to the text – we want to *under*stand, to '*Ver*stehen', to find out what lies *beneath* or *behind* the text, or even *between* the lines. But since there is practically no end to what surrounds a text, we have once again to make a selection, meaning that we have to construct the context. The selection of relevant contextual factors to study will depend on the research question but also on our more general ideas about what law is and which factors that influence production of norms, adjudication, developments in scholarly thinking, and, more generally, legal change. For the construction of relevant contexts, a distinction between an internal and an external context for the historical study of legal texts might be useful. The internal context consists of other parts of the legal system, while the external context is the more general historical conditions. I will, in the following, give a brief overview of the most important internal and external contextual factors that I will integrate in the coming chapters.

A first internal contextual factor for this study will be the constitutional law of the different legal systems. My focus lies in particular on the theoretical aspects of the texts, but as they relate to the field of constitutional law, the latter is an important context. Thus, it will be necessary to say something about the main structures of constitutional law in the different systems.

A second relevant internal context is theoretical debates taking place in other parts of the legal system, either as general theoretical works or connected to other legal fields. Often, at least historically, private law has been the most fertile ground for theoretical developments. This means that the constitutional scholars who discussed theoretical problems in their fields often relied upon and adapted more general debates. I will devote quite some space to this aspect in the following chapters.

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A third internal factor is one that has already been mentioned: the influence from other legal systems. In this study, it is primarily the intellectual influence from other systems that is of significance, and not the reception of specific rules or institutions.

Moving over to external factors, I regard, as I also mentioned in the introduction, the theoretical debates as being connected to broader socio-cultural historical developments. The debates cannot be understood as phenomena isolated from these external developments.[71] Consequently, I will to some extent include these general patterns in the analyses, and they will form the backdrop of the analyses in both Chapter 3 (section 3.2.1) and Chapter 4 (section 4.2.1).

71 See Michael Stolleis (2001), *Public Law 1800–1914* 1; Horwitz (1992), *The Transformation*.

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