European legal culture – a building block for the future*

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I

Legal history does not provide a hand oracle of the future. Nobody believes any longer that studying the past leads to binding predictions for the future. Cicero's formula *Historia Magistra Vitae* has long since faded and only appears in speeches.[1] We can deduce nothing conclusive from history through the use of logic. Instead, history is an enigmatic "teacher", always new, with an uncertain course and open end. Yet we also know: all our knowledge comes from history, acquired bit by bit through experience, our "mother tongue", our relationships with others, and our morals and political convictions. We live from history when we cautiously feel our way into an uncertain future. This condition is our human and methodological paradox.

One of the most critical concerns for legal historians is the normative functioning of earlier societies. They ask about the permanent transfer of norms and their adaption to changing circumstances. So what are the older foundations on which Europe rests, and the consequences for its future internal configuration? What resonance space surrounds us, not only in the narrower Europe but in the entire Mediterranean region of antiquity, including what we call the "Middle East" or "Near East"? This resonance space is where our legal writing emerges. It is from here that the first systematic legal records relevant to us originate. European legal culture is based on the cultures from Babylon to Athens, but mainly it is based on Rome. Here I understand European legal culture to mean the sum of our collective ideas of right and wrong and all expectations and

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1 Reinhard Koselleck, "Historia Magistra Vitae. Über die Auflösung des Topos im Horizont neuzeitlich bewegter Geschichte", in Hermann Braun and Manfred Riedel (ed.) *Natur und Geschichte. Karl Löwith zum 70. Geburtstag* (Stuttgart: Kohlhammer, 1967) 196–219.

reactions to major and minor conflicts which have become self-evident and are to be solved through law.[2]

The new Europe that emerged after the Second World War was early on described as a mere "community of law". This meant both a shared space for human rights and a legal space for the economic community. The Declaration of Human Rights of the newly founded United Nations was followed by the European Declaration of Human Rights and the establishment of the Council of Europe with the Court of Justice in Strasbourg (1949). However, the vision of a "United States of Europe", as drafted by Churchill in 1946 (without England, of course), appeared at first to be immediately realisable only as an economic community. Over the decades, the perspective narrowed down to the law of the EEC to exchange goods and services, and later to the area of the common currency and the removal of internal European borders. After the Treaties of Maastricht, Amsterdam, Nice and Lisbon, this perspective gradually expanded from an economic to a political European Union in its present form. From the 1990s onwards, with the emergence of the Court of Human Rights in Strasbourg and the renewed focus on refugees, the human rights context of European law is once again becoming more prominent. In other words: We find before us a triple meaning of Europe, the economic area, the political union of the EU, and the legal space of human and civil rights. The fact that we can no longer distinguish one meaning from the other lies at the heart of the problem today.

To the old formula "Europe as a community of law" legal historians have added yet another. Since the 1950s, they have seen the unifying European element of this legal community primarily in Roman-Italian law of the Middle Ages and the early modern period. There had indeed been a shared culture of Roman law since the twelfth and thirteenth centuries (Italy, Spain, southern France, then Central Europe, including Poland, but excluding England). This so-called common law (*ius commune*) served as the basis of all Western European legal education well into the nineteenth century.[3] All national codes, the Code civil, the Austrian ABGB, the Italian, the German and the Swiss civil codes draw from this Roman legal substance, not to mention the many varied receptions, transfers or

2 See Stefan Kadelbach (ed.), *Europa als kulturelle Idee. Symposion für Claudio Magris* (Baden-Baden: Nomos, 2010) 71–81. The basic ideas of this text are also laid down there.

3 Paul Koschaker, *Europa und das römische Recht*, 4th edition (München: Beck, 1966); Franz Wieacker, *Privatrechtsgeschichte der Neuzeit*, 2nd edition (Göttingen: Vandenhoeck u. Ruprecht, 1967).

translations Roman Law received in Japan, Turkey, South America, and South Africa.[4]

This common legal culture of private law, it was thought, especially in the 1960s, had to be rediscovered and revived for the current benefit of Europe. Indeed, one could imagine many similarities between the present and the High and Late Middle Ages. There were no national borders back then, just a dense network of power relations between secular and religious authorities. The educational landscape from southern Italy to England, from Portugal to Poland was freely "accessible". Academic goals, methodology, subjects of inquiry and the wandering life of scholars were uniform. They impacted the style of a self-confident legal profession, which from the 14th century onwards defined the legal landscape of local administrations in cities, fiefdoms and kingdoms, as well as courts. This Roman-Italian law, its concepts and topoi of interpretation overhauled and permeated the many and varied indigenous laws (commercial laws and customs, village laws, town laws, professional and ethical laws). Following Max Weber, this process was later dubbed "scientificisation" or "professionalization", to emphasise the contours of the history of science and the sociology of knowledge.[5]

These processes found reflection in the law of the Catholic Church. This canon law had been summarised around 1140 in Bologna in the form of legal code, which was now applicable to all Catholic Christians in the areas of marriage law, ecclesiastical property law, procedural law, canonical penalties, monastic law, and so on. This canon law – itself a kind of descendant of Roman law but developed further by the "juristic popes" – also shaped the lives of Europeans from Norway to Sicily, from Poland to Spain.[6] It formed a parallel European legal order, which strongly bracketed "Latin Europe", including England,[7] by the way, and also the Lutheran

4 With new perspectives and suggestions: Thomas Duve, "Ein fruchtbarer Gärungsprozess? Rechtsgeschichtswissenschaft in der Berliner Republik" in Thomas Duve und Stefan Ruppert (eds.) *Rechtswissenschaft in der Berliner Republik* (Berlin: Suhrkamp, 2018) 67–120; more wide-ranging Thomas Duve, "What is global legal history?" in *Comparative Legal History* Vol 8, 2020, 1–37.

5 Franz Wieacker, *Privatrechtsgeschichte der Neuzeit* 2nd edition (Göttingen: Vandenhoeck u. Ruprecht, 1967) 124ff; With very serious objections Peter Landau, "Wieackers Konzept einer neueren Privatrechtsgeschichte: Eine Bilanz nach 40 Jahren" in: Peter Landau (ed.), *Deutsche Rechtsgeschichte im Kontext Euro*pas (Badenweiler: Wissenschaftlicher Verlag, 2016) 411–433.

6 Christoph Link, *Kirchliche Rechtsgeschichte*, 2nd edition (München: Beck, 2010) 42ff.

7 Reinhard Zimmermann, Roman Law, Contemporary Law, European Law: The Civilian Tradition Today (Oxford: Oxford University Press, 2001).

and Calvinist churches. I say this because the Lutheran and Calvinist churches continued to build on this legal foundation. The church side of public life was also "juridified" and "made scientific". The individual was given a clearly defined legal position, and there were precise rules of procedure and principles of procedural justice.[8]

The complex European legal world of the *ius commune*, feudal law and canon law has been broken up since the eighteenth century with the emergence of nation-states. These states insisted on their sovereignty, built territorial administrations, created tax systems, developed trade balances and – last but not least – ordered their judiciary and legal system for the first time, including the new codifications. Europe was thus the great hope of the legal historians of the post-1945 era, a longing for the restoration of a private *ius commune*, whether through the history of law or comparative law. However, we can leave the aspect of private law aside here. It concerns the foundations of European comparative private law and legal harmonisation. Today, however, the dynamism of these activities no longer stems from the legacy of Roman law. Instead, it comes from the interests of achieving greater uniformity in economic and commercial law, whether to reduce internal costs or to acquire a stronger position on the world market.

II

The historical foundations of European constitutional law, the *ius publicum europaeum*, are also of great practical importance. Even the founder generation of Europe after the Second World War thought about a future "constitution of Europe". They certainly did not envisage a transnational unitary state but rather a federal structure that would guarantee collective security, peace and freedom.

The building blocks for this novel architecture could only be taken from a set of basic rules or principles of European public law.[9] The basic principles of European public law had developed over centuries and had now spread to other parts of the world. They have been transformed – as is usual in the transfer of law – and they have adapted to different

8 Iole Fargnoli and Stefan Rebenich (eds.), *Das Vermächtnis der Römer: Römisches Recht in Europa* (Bern: Haupt, 2012).

9 Armin von Bogdandy, Pedro Cruz Villalón and Peter M. Huber (eds.), *Handbuch Ius Publicum Europaeum*, Vol. I-VI (Heidelberg, CF Müller, 2007–2016).

social conditions. In some cases, they have even changed their form and function. They are also still on the move in Europe and must be continuously adapted to new challenges, learned by new generations and tested in crises. But they give us a secure basic foundation.

1. This includes international law (*ius gentium europaeum*), which rose throughout Europe in the early modern period (sixteenth-eighteenth century). It made use of its ancient and medieval sources. Still, it was now modern in two ways: It first accompanied and "juridified" the conquest of the "whole" world (America, Asia, Africa) by the Spanish and Portuguese, the Dutch, the French and the English. It is undoubtedly the law of the conquerors, first euphemistically called "law of nations" and later "international law". However, it is becoming more and more universal through trial and error, wars and peace agreements. Since the sixteenth century, the *ius gentium europaeum* has been a source of hope for regulating intergovernmental issues in "war and peace". It consists of contract law or of internationally recognised fundamental principles which have gradually developed and consolidated.

2. At the same time, natural law, which is closely intertwined with international law, served as the rational theory of law for all communities in these European states. Out of natural law gradually developed an *ius publicum universale*.[10] This *ius publicum universale* offered the possibility of constructing relations of domination within a state, above all through the invention of the fictitious contract of domination and subjugation.[11] It made it possible to define the rights and duties of both the ruler and the subjects. The emerging modern state became a legal entity with its distinct borders and sovereignty. This legal structure could now also be described in a terminology that extended to both Christians and pagans. His propositions would apply, Grotius said, even "if one wickedly conceded that there was no God".[12] These propositions thus came to be known as *ius naturale*.

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10 Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, *Vol. I, 1600 – 1800* (München: Beck, 1988) 291ff.

11 Harro Höpfl and Martyn Thompson, "The History of Contract as a Motif in Political Thought", in *American Historical Review* vol. 84, nr.4, 1979, 919–944.

12 Regarding Etiamsi daremus see Hugo Grotius, *De Iure Belli ac Pacis*, 1625, Prolegomena 11, see Hasso Hofmann, "Hugo Grotius" in Michael Stolleis (ed.), *Staatsdenker in der Frühen Neuzeit*, 3rd edition (München: Beck, 1995) 71; L. Besselink, "The Impious Hypothesis Revisited" *Grotiana* 9 (1988) 3–63. There is broad agreement that the formula is of medieval origin and that, in Grotius' view, it does not have the meaning of a secularisation of natural law which he later claimed. See Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to Scottish Enlightenment* (Cambridge: Cambridge University Press, 1966).

Natural law shapes the fundamental lines of European constitutional thinking. It drew from the store of antiquity, above all from the "Politics" of Aristotle. This incomparably mighty work has since the Middle Ages been the source of repeated reflections. It has also provided the categories when thinking about the "state". For example: how does the state come into being and how can it be legitimised, what is the best constitution, what does "sovereignty" mean and who is the bearer of state power, what are its ties, who has the right to legislate, who is allowed to levy taxes and for what purpose?

This debate was European and non-confessional. It achieved what was to prove central to the pan-European consciousness: an understanding of the basic tenets of scientific policy, of the legal basis of legitimate rule and its limitation by higher norms, including the (of course highly controversial) right of resistance against the illegitimate ruler.[13]

This process gave rise to the modern catalogues of fundamental rights. These rights all flesh out "distances" and limits of state power.[14] The constitutional movement of the eighteenth and nineteenth centuries would have been inconceivable without this legal obligation towards the authorities, which to a certain extent became a matter of course. Without the doctrine of the *respublica mixta* and the practice of the phrase "*rex regnat, sed non gubernat*" since the sixteenth century, the separation of government and administration, and thus the modern doctrine of the separation of powers, would not have been accepted. Without the centuries-long practice of cooperative self-government and the basic idea of a social contract, there would be no modern democracy.[15] That the people should be the supreme source of legitimacy was formulated by Marsilius of Padua in the

13 Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte. Ein Beitrag zur modernen Verfassungsgeschichte* (Berlin: Duncker & Humblot, 2016); Michael Stolleis, "Georg Jellineks Beitrag zur Entwicklung der Menschen- und Bürgerrechte" in Stanley L. Paulson and Martin Schulte (eds.), *Georg Jellinek – Beiträge zu Leben und Werk* (Tübingen: Mohr Siebeck, 2000) 103–116.

14 Christoph Link, *Herrschaftsordnung und Bürgerliche Freiheit. Grenzen der Staatsgewalt in der älteren deutschen Staatslehre* (Wien: Böhlau, 1979).

15 Kurt Kluxen, *Geschichte und Problematik des Parlamentarismus* (Frankfurt: Suhrkamp, 1983); Orazio Condorelli, Quod omnes tangit, debet ab omnibus approbari: Note sull'origine e sull'utilizzazione del principio tra medioevo e prima età moderne, in: Ius canonicum 53 (2013) 101–127; Peter Landau, "The Origin of the Regula iuris 'Quod omnes tangit' in the Anglo-Norman School of Canon Law during the Twelfth Century", in: Bulletin of Medieval Canon Law 32 (2015) 19–35 with further notes.

fourteenth century.[16] Even if these beginnings cannot be read in terms of the modern democratic principle and the sovereignty of the people, it is here that streams of thought take their origin, which later, in quite different contexts, were to become dominant and historically powerful.

3. The old European foundations include not only the sovereign's legal obligation but also his responsibility for just social order. Again and again, the rulers were inculcated by the "*Fürstenspiegel*" (mirror of princes), virtue teachings, theological-moral tracts or commentaries on Aristotelian politics to the effect that their task was the common good, the "good order" or "good policy". This is to say an order which not only guarantees security and formal rights but also seeks a balance between rich and poor (*potens et pauper*), disadvantaged and favoured, high and low.[17] Whether justified as a commandment of charity, a set of practical ethics or a calculation for maintaining power, protection and care were among the elementary tasks of the ruler and the corresponding authorities. Based on this pre-modern canon of duties, a "welfare state" developed in Europe, which is either factually impossible or unknown in other parts of the world in this form of sovereign redistribution. In the context of the Industrial Revolution and the "social question", this canon gained further momentum. It ultimately led to the development of various forms of coping with typical life risks and unforeseeable incursions into one's life.[18]

III

All these factors hold Europe together as a "community based on the rule of law". A long tradition of human and civil rights, the protection of the individual and her dignity against attacks of all kinds, the fundamental trust in an independent judiciary, which is now also extended to interpret and protect constitutional norms, should continue to hold Europe together in the future. This fundamental trust also includes the law of contracts (*pacta sunt servanda*) and civil dealings with others. The fundamental principle of the *pacta sunt servanda* is to behave not as a bourgeois but as a citoyen, who has a say in decisions of "his" community. And this "commu-

16 Marsilius von Padua, Defensor Pacis (1324), Teil I, Kap. XV, §§ 2,3.

17 Thomas Simon, "*Gute Policey: Ordnungsleitbilder und Zielvorstellungen politischen Handelns in der Frühen Neuzeit*" (Frankfurt: Vittorio Klostermann Verlag, 2004).

18 Hans Maier, *Historische Voraussetzungen des Sozialstaats in Deutschland*, (Heidelberg: CF Müller, 2002); Michael Stolleis, *Geschichte des Sozialrechts in Deutschland* (Stuttgart: Lucius 2003) 13ff.

nity" today is called not only *Heimat* (home)-community, federal state and state, but "Europe".

We are Europeans, whether we like it or not, we have developed our diverse cultures and languages from a common stock, we have fundamental convictions of law and justice within us (including, of course, the non-lawyers), we speak from European "experiences".

Our grandmothers and grandfathers, our parents and we have made these experiences: two terrible world wars, which have indeed been "German wars", quite independently of the question of guilt, the crimes committed by humanity in the twentieth century, above all the (still incomprehensible) Shoa, alongside the crimes of Stalinism, the expulsions, the suffering of the civilian population, of whatever nationality, language or origin. These were the "experiences" from which one thing was learned: Never again war! Never again racism! Never again violence!

The consequences of these experiences were: reconciliation, as far as possible, within Europe, peace and freedom, economic cooperation, the removal of barriers, the introduction of a common currency, and finally, the gradual establishment of a European constitution with institutions in Brussels, Strasbourg, Luxembourg and Frankfurt and the permanent growth of a European legal order.

This legal order, driven on the one hand by the institutions in Brussels and Strasbourg, and on the other reinforced and given priority by the European Court of Justice in Luxembourg, has now become a vast normative superstructure. Some see this legal order as a progression towards an "ever further integration" (as hoped for in the EU Treaty). In contrast, others increasingly deride it as a straitjacket limiting national sovereignty.

For years we have felt that there is no smooth path to ever further integration. The grumbling of the various oppositions is unmistakable. Let us recall the struggles in Ireland, the unresolved problem of Catalonia in Spain, Scotland's hopes for independence and the confusion surrounding "Brexit". Greece thought of leaving the Eurozone during the financial crisis, and toyed with the idea of a complete "Grexit". In France, the anti-Europeans became increasingly loud and threatening, and they have by no means disappeared. In Germany, a minority dares to call for a "Dexit" in all seriousness or to provoke. Flights into delusions of "Reich citizenship" or racist "identity" have also emerged. In Poland, Hungary, and other former Eastern Bloc states, displeasure with Brussels is growing, even though they have received and continue to receive much support from the EU. Others, such as the Balkan states (Northern Macedonia, Albania), are desperate to join the EU because they hope it will provide protection and economic prosperity.

Let us stay with the problems for a moment – although I would prefer to spread a rosy glimmer of hope and dawn rather than a sunset.

We all know how different the understanding of the state is, even in core Europe. England has always looked at the continent from a distance. They always had reservations, remained independent, more committed to the Commonwealth than Europe. With all its peculiarities, England's system of government has consistently ruled out the possibility of a problem-free integration into Europe.[19] Today we see it every day. Since the Middle Ages, France has developed into a central state, decisively since Louis XIV. France formed its Third Estate, the bourgeoisie, into a "nation". To this day, France has also gone its way, strongly oriented towards a centrally ruled state economy. Italy, Spain, and Portugal also have their own histories and have drawn their consequences from fascism, Franqism, and Salazarism. In the Netherlands, Belgium, Norway, Sweden, and Denmark, we find parliamentary governments with monarchies, with which they have generally fared well as civil societies. But even there, the populist, right-wing, anti-European bacillus has taken hold.

So we have ancient and different "histories" in Europe, different understandings of state and constitution. Linked to this, we also find a different understanding of economics. We feel the tensions in the assessment of the ECB's monetary policy, in the question of "liability union" for ailing banks, in European economic policy towards the now aggressively operating USA, and towards China and Russia, each with their own massive interests.

Within the institutional structure of the EU, differences begin already with the question of whether there is a common European constitution. Those who closely bind the normative concept of a constitution to a state and a people may deny the existence or legitimacy of a European constitution.[20] However, those who see a constitution as the highest-ranking normative framework of a political actor with its own institutions have no difficulty with it. Europe has everything a constitution needs: a constitutional text (EU Treaty, Charter of Fundamental Rights), and its own institutions (legislative, executive, judiciary). They may be partially weak, but they are nevertheless functional. The Holy Roman Empire before

19 Felix Meinel, "Wer im Ausnahmezustand entscheidet, ist nicht souverän. Mehrheiten dringend gesucht: Das Urteil des Supreme Court verschärft den Grundkonflikt im britischen Verfassungsrecht", in *Frankfurter Allgemeine Zeitung* (Frankfurt), 26 September 2019.

20 So vor allem Dieter Grimm, *Die Zukunft der Verfassung II: Auswirkungen von Europäisierung und Globalisierung* (Berlin: Suhrkamp, 2012).

1806 also had an elaborate "constitution", which some were astonished by and even considered "monstrous". The Habsburg multi-ethnic state, the Russian Empire until 1917 and the Ottoman Empire each had their own "constitutions".[21]

Europe certainly does not have a relatively homogeneous European "peoples", no common language. It also forms an ensemble of economically "strong" and "weak" nations. And there is no European public sphere in the strict sense. But it has grown together, not only through wars but through a culture that is more than a thousand years old, with every conceivable form of exchange and influence. Wherever you look, in religions, literature, the arts, music, philosophies or everyday life – purely national cultural spaces do not exist today and never existed in the past.[22] Like everything that claims "identity", purely national cultural spaces are fiction! Intellectual currents have diffused in all directions to productive effect. The same is true of the dense network of common European beliefs and traditions in law and constitution.

But this net has large holes or gaps. The collapse of the "Eastern bloc" was a liberation for the entire western edge of the Soviet Union, for the Baltic States, Poland and Hungary, Romania and Bulgaria. When these states joined the EU (no other solution seemed possible), the EU naturally imported new problems: the differences between rich and poor, although always present in the West, now took on a new dimension. The communist legacy had been transformed but not dissolved; the networks of relations remained the same, the mistrust of democratic procedures, the everyday coping through "contacts", which is to say through corruption. The EU has undoubtedly underestimated the difficulty of integrating new states with a different history and structure. These differences show in the continuation of the clientele system and large-scale tax avoidance. New member states have also struggled harder with tensions between agricultural areas, many of which are still pre-industrial and the aggressive forces of globalisation.

21 Jana Osterkamp, *Vielfalt Ordnen. Das föderale Europa der Habsburgermonarchie (Vormärz bis 1918)* (Göttingen: Vandenhoeck & Ruprecht, 2020).

22 Michael Stolleis, "Wegenetz durch die europäische Kulturlandschaft. Plädoyer für einen gemeinsamen Bildungskanon" in Ronald Grätz (ed.) *Kann Kultur Europa retten?* (Bonn, BPB, 2017) 57–62.

IV

What needs to be done at present, as I said, does not fall within the competence of the historian or legal historian. Nevertheless, the ordinary citizen can express his opinion. In the eighteenth century, the cautious expression used for this was "unprejudiced doubts!"

1. Almost all commentators believe that Brussels institutions have taken on too many subjects as "in need of regulation". A widespread feeling is that Brussels is covering Europe with a network of rules that could be left to either competition or national governments. These rules are added to the regulations already imposed by federal, state and local governments. In Germany rough estimate speak of 29,000 laws and regulations, excluding the DIN standards, which would make up a multiple of this.

As sensible and necessary so-called secondary European law is, for instance in the case of verifiable environmental damage (plastic waste) or dangers in cross-border transport (compulsory helmets, winter tyres, safety standards), it is essential to realise that the urge to regulate has gone too far. Brussels has paternalistically regulated EU citizens in the name of a common market, the harmonisation of living conditions, and health and energy savings. Examples of this are the famous Cucumber Bending Ordinance[23], which has now been abolished but is still practised by the trade, and the rules on banana clusters[24] (except Malta, where a tiny variety of bananas grow). A European ice-cream regulation also seems unnecessary, as does the harmonisation of legislation on jams, jellies, marmalades, and macaroons.[25] Nor do we need a Europe-wide reduction in the salt content of bread or protection against mould in French raw milk cheese.[26] There should be a vigorous transfer of powers back to the Member States in

23 GurkenVO Nr. 1677/88, abolished 2009.

24 BananenVO der EG Nr. 2257/94 v. 16. 9.1994.

25 In German law this can be found in the SpeiseeisVO v. 15. Juli 1933. Rejecting EU intervention early on was Franz Meyers as minister of the interior of NRW in the 127th session of the Bundesrat on 23 July 1954, where he criticised the "cookbook-like instructions for the production of these ice creams" and the "tendency towards full regulation". Today VO Nr. 1333/2008 Europaparlament und Rat v. 16.12.2008; Also see the German KonfitürenVO v. 23.10.2003, BGBl I, 2151 which bases itself on the EU directive.

26 Michael Stolleis, "Freiheit und Unfreiheit durch Recht" (Theodor Heuss Gedächtnisvorlesung 2010), 28.

these areas. If there is an unavoidable need for European regulation, the instrument of the directive will suffice.[27]

2. At the same time, however, Europe must strengthen its powers if it wants to preserve its internal peace and gain weight in world politics. Just a few keywords: national armed forces must be brought together into a European army much more vigorously than in the past. A shared security and defence policy are advisable not only for political reasons but also (incidentally) for financial reasons.

The same applies to the fight against "normal" crime and terrorism, tax fraud, and tax avoidance – all phenomena which, as we know, do not respect national borders. But the steps taken so far in police and security policy are going in the right direction, for example with the European arrest warrant, the development of databases, and Europol.[28] The same applies to protecting the environment, where Europe should take over the "major tasks" and the member states should focus on an adaptation. Finally, to put an end to the examples, immigration can no longer be solved nationally either. Nobody seriously believes that the migration pressure from the Middle East and Africa will ease in the coming years. Suppose Europe fails to agree on a single line and a straightforward practice, which includes burden-sharing, immigration policy will become not only a permanent bone of contention but Europe's real fissure. Given the influx of asylum-seekers, war refugees, and economic migrants, a return to national action challenges the effectiveness of European solutions. We have heard it spoken into the microphones a thousand times, ineffective but correct: the immigration problem, as a permanent problem, can only be tackled at a European level. Europe is "our space", which we have only recently liberated from border controls, customs barriers, and exchange offices!

3) Of course, there are also crucial arguments for the preservation of partly sovereign nation-states. Thinking in national categories is historically powerful; it will remain so, indeed probably become even more vital, the more the dynamics of globalisation affect everyday life. People want to preserve homeland and origin, national language and dialects, regional characteristics, traditional celebrations, and holidays. Our attitude to life depends on this. To ignore this would be a grave political mistake. All planned steps towards EU integration must therefore be confronted with

27 "Europa: in Vielfalt geeint! aus dem Umfeld der Münchner Europa-Konferenz e.V", Frankfurter Allgemeine Zeitung (Frankfurt) 26. September 2019.

28 Manfred Baldus, *Transnationales Polizeirecht. Verfassungsrechtliche Grundlagen und einfache-gesetzliche Ausgestaltung polizeilicher Eingriffsbefugnisse in grenzüberschreitenden Sachverhalten* (Baden-Baden: Nomos, 2001).

the question: "What would happen if they were not implemented?" Often the answer would be: "Nothing to be alarmed about!"

Europe is an inescapable fact for all of us. Since ancient times we have been held captive by the myth of the princess abducted by Zeus and kept at the south coast of Crete. It is our destiny and living space. Wars and peace treaties have shaped and limited Europe. Paintings, writings, and thoughts produced the spirit of Europe. In Europe stand our museums and libraries with their treasures, our church towers and castles, our towns, and villages. Europe is where the intellectual foundations for the separation of powers, the rule of law, and democracy (including women's suffrage) were laid since Aristotle, Marsilius, Bodin, Hobbes, Locke, Kant, and Mill. It was here that human and civil rights were formulated and enforced in constitutions, adjudicated by truly independent judges. It was here that the welfare state as a guarantor of inner peace (paradoxically, with and against Karl Marx) emerged since the Industrial Revolution. Today we have Europe as a legally constituted community of states, cooperating both internally and externally, with open borders, a single currency, a common legal culture, and unique cultural wealth. Let us not give up on Europe but rather strengthen it with confidence. Let us be its citizens!