



**Augsburger Universitätsreden 45**

# **Zu Gast in Südafrika**

**Augsburger Vorträge**

**an der Randse Afrikaanse Universiteit**

# Augsburger Universitätsreden 45

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# **Zu Gast in Südafrika**

Reden und Vorträge  
anlässlich des Besuches  
einer Delegation der Universität Augsburg  
an der Randse Afrikaanse Universiteit  
am 5. März 2001

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## **Vorwort**

Prof. Dr. Dr. h.c. Helmut Koopmann

Am 10. 7. 2000 wurde von den Rektoren der Universität Augsburg und der Randse Afrikaanse Universiteit, Prof. Dr. Wilfried Bottke und Prof. Dr. J. C. van der Walt, ein Kooperationsvertrag unterzeichnet. Beide Universitäten beabsichtigen den Austausch von Dozenten und Studierenden, den regelmäßigen Austausch akademischer Informationen, Veröffentlichungen, Forschungsmaterialien und Unterrichtsmittel, die wechselseitige Veröffentlichung von Forschungsarbeiten sowie gemeinsame Lehrveranstaltungen, Symposien, Forschungskonferenzen und Vorträge. Im Rahmen dieser Vereinbarung besuchte eine kleine Gruppe deutscher Professoren in der Zeit vom 5. bis zum 10. März 2001 die südafrikanische Partneruniversität, um mit Vorträgen aus einzelnen Fakultäten die Augsburger Universität vorzustellen. Der folgende Band vereinigt die in Johannesburg gehaltenen Vorträge sowie Ansprachen der Rektoren.

## Begrüßung

Prof. Dr. J. C. van der Walt

Welcome: Augsburg Delegation  
Good morning, ladies and gentlemen  
Guten Morgen, meine Damen und Herren

Dear Prof Bottke and colleagues  
from the University of Augsburg!

It is for me personally, as well as for our University, a great honour and privilege to receive this delegation—not only in our country and city, but also here at RAU.

Your visit constitutes a very important phase in the process of developing our academic relationship and, hopefully, more than one programme of academic co-operation.

Where did it all start? The superficial answer is the visit I paid to your University last year and the signing there of a co-operative agreement. But, that agreement (couched in very general terms) and really signifying nothing more than a symbolic commitment and common intention to seek firmer academic relationships and co-operation, is not as such of decisive importance.

From a historical point of view the *conditio sine qua non* of our relationship, and the subsequent general agreement, and in many respects the *causa causans* of your visit here today, is the fairly long-standing relationship of co-operation between our Department of German and your department in Augsburg. I wish to pay particular tribute to colleagues Koopmann and Knobloch who initiated this and has kept their co-operation going on a very high

academic level. This excellent example, of international co-operation has, as far as we are concerned, added considerable academic value to our small department and to our University. And, now, we hope to see this beginning blossom into other constructive relationships and programmes.

These programmes can, of course, take a great number of forms. I personally believe in incremental development and my hope is that, after exploring our mutual academic foci and interests, that there will emerge perhaps student and staff exchange programmes as well as common research projects. Our two colleagues have set the tone and the precedent!

I do not believe that agreements between rectors or top managements are in themselves very productive. But, one must keep in mind that this agreement is the product of co-operation initiated on a personal and departmental level. It does not, so to speak, fall out of the blue sky! And your visit, and the discussions we will have, will certainly (I think and hope) lead to intense co-operation on all academic levels. It is really up to „faculty“ (as the Americans call it) to seize the opportunities of internationalisation and enrichment of students, staff and the University as a whole.

During my visit to your University, I was struck by the many structural similarities between our two Universities. I hope this will translate into real academic substance.

Prof. Bottke – you and your colleagues are more than welcome. We regard you not only as colleagues and academic partners, but as friends. And we hope you will enjoy your visit and the programme we have devised. Please relax and feel at home here at RAU!

Zum Schluss: unsere Universität schätzt ihre Beziehungen zu deutschen Universitäten und Kollegen. Und selbstverständlich sind wir sehr stolz auf unsere Beziehungen zu ihrer Universität. Herzlich willkommen! Und wir hoffen, dass die Verhältnisse zwischen unseren beiden Universitäten durch den Besuch verstärkt werden.

## Ansprache

Prof. Dr. T. R. Botha

Professor Koopmann  
and other representatives of the University of Augsburg,  
Prof van der Walt,  
Dr Ellis,  
ladies and gentlemen:

1. Nachdem Herr Professor van der Walt Sie bereits begrüßt hat, freue ich mich, Sie als Repräsentanten der Universität Augsburg an der RAU ebenfalls herzlich willkommen heißen zu dürfen. Ich hoffe, dass Sie das Zusammentreffen mit den Kollegen von der RAU als nützlich erfahren und dass Sie viele Möglichkeiten zur Kooperation entdecken werden. Gerne spreche ich all denjenigen, die den Grundstein zu diesem Kooperationsvertrag gelegt haben, meinen Dank aus – vor allem Herrn Professor Helmut Koopmann, Herrn Professor Klaus Köhnke, Herrn Professor Hans-Jörg Knobloch und den beiden Rektoren, Herrn Professor Wilfried Bottke und Herrn Professor JC van der Walt.

2. On behalf of RAU, I would like to reassure you that the exchange of academics and students will be supported by RAU, and that we look forward to our collaboration, especially regarding possible research collaboration and the joint publication of research results.

Even with regard to education, there are possibilities regarding mutual recognition of academic courses, which will facilitate interaction, especially at postgraduate level. RAU is currently developing multimodal and technology-aided educational programmes. We would like to learn from your experience in this regard.

Modern international electronic networks make it possible for us not only to establish direct contact with academics worldwide, but also to undertake joint computer-aided educational and research projects.

A significant number of academics at our University have already established strong ties with universities in Germany. Even in times of cultural and academic isolation for political reasons, the opportunity arose – with the assistance of academic organisations such as the Alexander von Humboldt Stiftung – for collaboration with German scientists. I can assure you that the South African academic community benefited tremendously from the exposure to the German academic community.

3. RAU consists of six faculties: Law, Education, Economic and Management Sciences, Natural Sciences, Engineering and Arts. The language policy of the University entails a parallel medium model. Lectures are offered in Afrikaans as well as in English. We have approximately 13 000 students on campus, of which 35% are postgraduate students. An additional 5 000 students are registered for courses offered on a limited contact-flexible mode of delivery basis. A further 12 000 students attend extracurricular courses at our University.

RAU strives for excellence in the fields of research, education and community development. As a developing country, we have the opportunity to integrate research and education with community development projects. The University is involved in many such projects.

Our Faculty of Law e.g. provides legal counselling services for underprivileged people from historically disadvantaged communities. A limited contact programme in paralegal studies is offered in order to promote an interest in legal questions in the developing South African society. This course was initiated in the context of a new democratic dispensation in our country. It may in future serve as a bridging course to obtain access to the Faculty of Law at RAU.

Another example of the integration of research, education and community development is the RAUCALL School. Nine years ago RAU established RAUCALL, a secondary school for talented youths mainly from Soweto, a large disadvantaged area adjacent to Johannesburg. In 2001, 43 of the RAUCALL matriculants registered as first year students at RAU. This school was established with the support of the Gauteng Department of Education and the private sector. Metlife (a prominent South African company) has donated generously to this project. The academic achievements of learners at RAUCALL have consistently been excellent and the large majority of these students enter institutions of higher education on completion of their school careers.

All the faculties of our University support similar community development initiatives. I am convinced that the integration of research, education and community development at RAU offers unique opportunities for collaboration with the University of Augsburg. Projects could be mutually identified, initiated and implemented in partnership.

I have no doubt in my mind that the collaboration between Augsburg University and RAU has the potential to be developed to the mutual advantage of both universities. The success of this collaboration depends ultimately on the finding of synergy between the academics of both institutions.

4. Im Namen der RAU versichere ich Ihnen, dass ich alles tun werde, um die Rahmenbedingungen für eine fruchtbare Zusammenarbeit zu schaffen. Ich danke Ihnen sehr dafür, dass Sie die weite Reise nicht gescheut haben, um unsere Universität zu besuchen, und hoffe, dass unsere Zusammenarbeit schon in naher Zukunft konkrete Ergebnisse zeitigen wird.

## **The University of Augsburg and its Role in a Changing Society**

Prof. Dr. Wilfried Bottke

### **I. Introduction to the University of Augsburg**

The University of Augsburg is now 30 years old. It belongs to a group of universities which were founded in the reform oriented, social/liberal climate prevailing in the State of Bavaria in the 70's; a climate which fostered the improvement of the educational infrastructure. The politicians of the time hoped that this quantitative expansion would counter the prophesy that an educational catastrophe was in the making and they wanted to respond to the notion circulating at the time, that education was a civil right. With this background, the University of Augsburg was founded in 1970, with barely 200 students in the fields of economics and the social sciences. It proclaimed to be a reform university, based on new concepts of teaching and learning. Today, with it's 12,000 students, it is considered to be a small to mid-sized university in Germany. It offers degree programs in all fields of the humanities, social, economic and natural sciences, with the exception of medicine. Seeing itself as a „reform university“ it has firmly established itself among the ranks of the older universities. The adaptability of it's charter to modern challenges and it's forward looking research and teaching is proof of its resilience to passing trends.

A brief overview of the most pertinent facts and figures will give you an idea of it's size:

a) The present winter semester 2000/1 has 11803 registered students, of which 55.6% (6562) are women.

b) This figure puts the University of Augsburg in sixth place out of the twelve universities in Bavaria.



c) The number of students, following an overall national trend, reached its peak in 1993/1994.

d) After a number of years of falling and then stabilizing enrolment, the numbers are now slightly on the increase. Foreign students make up 10% of the student population. With these 1179 foreign students, the University of Augsburg compares well with other national universities. This figure testifies to its international appeal.

e) The current 1181 staff makes it one of the largest employers of the region. This includes 144 professors and 492 academic staff members.

f) The budget for materials and staff amounts to approximately 132 million German Marks (figures for 1999).

g) More than 10% of this expenditure (approx. 15.5 million Marks) are currently covered by third party funds from various sources (among others, the Federal Government, the EU and the DFG [German Research Foundation]). The university's management is making an effort to increase the quota of third party funds beyond the current level and to achieve a continual increase of resources.

h) The growth into a comprehensive university took place in continuous and distinct stages. Today, the University of Augsburg has six faculties: a Faculty of Catholic Theology (1971); two Philosophical Faculties, one which concentrates on cognitive and educational studies, the other, on historical and philological disciplines; a Faculty of Law (1971) a Faculty of Economics and Social Science (1970) and, with increasing importance, a Faculty of Mathematics and Natural Science (1981)

Research and teaching at the University of Augsburg is based on three pillars: Social Sciences, Reform-oriented Teacher Training and Innovative Technologies. While the Social Sciences and Reform Oriented Teacher Training have been traditionally part of

the curriculum, innovative technologies, incorporated in the Mathematics / Natural Science Departments, have been given a particular boost through a science program in Bavaria called the „High-Tech-Offensive.“ Parallel to this expansion, the University of Augsburg is pursuing the goal of establishing new focal points or areas of concentration (in the USA known as Majors) by bundling all available resources allocated to individual faculties and by establishing interdisciplinary institutes.

## II. Universities and a Changing Society

I would like to now draw your attention to some selected areas in which changes in society and the activities of the university noticeably interact. It is important at the outset to note that German university charters guarantee their existence as autonomous institutions, whose mandate is to cultivate and develop scholarship through research, study and teaching. With this in mind, students and academics are selfdirecting, in that they set their own program of study and obligation to follow it. No rules are valid here, which would not also be rules of scholarship. On the other hand, and concurrently, it is the obligation of universities to prepare students for a professional life, which requires the application of academic knowledge and scientific methods. With this in mind, universities have to ensure that, in spite of their autonomy, their academic programs and research are attune to the demands of society and the economy.

The University of Augsburg, like every educational institution, was and is, subject to continual, sometimes unnoticeable, sometimes openly registered change. This manifested and continues to manifest itself partially in its dependence on progress in research, partially on its dependence on changes in the parameters of society, but always with regard to both. There are changes in the framework of Universities stemming from scientific progress which they themselves produce. Thus, the creation of new fields (Majors), rapid progress and the interdisciplinary networking of already existing fields make old academic parameters obsolete.

They require new subject combinations and forms of organization. In this case, universities have to try to reduce as much as possible the gap between rapidly advancing progress and their own attempts at reform.

In the process of social change, there are also changes in the framework of universities whose origins are external, be they of a political, cultural or economic nature. Particularly in knowledge oriented societies, the very changes with which the universities are confronted stem from the basic and applied research carried out within the institutions themselves. In this case, universities find themselves caught up in a circle of action and reaction and adaptation to an environment they themselves helped to create. The University of Augsburg, as any other university, has been and is, confronted with these, mostly subtle and continuous processes. They articulate themselves as innovations in basic civilizing techniques, in restructuring and modernizing economic structures, as well as changes in the world of work and a new definition of job profiles, etc. Universities, as institutions for the collection and dissemination of knowledge govern access to these fields. Universities, however, are under pressure to establish new courses of study and fields in response to changes in society.

The last 20 years have seen a leap in the quantity and quality of scientific and social changes. Even the most nonchalant among those who have been closely observing this progress, have been shaken out of their contemplative calm and organizers and managers of educational institutions are in an uproar. The rapid pace, within the last two decades, of scientific progress and dramatic social changes, particularly within OPEC countries, is unprecedented. It is even unprecedented within modern industrial societies which are based on the principle of continual scientific and economic innovation.

### III. The University of Augsburg within a Changing Society

To begin with the most recent developments: Within the last years informatics, environmental and material studies have become one

of the University of Augsburg's most high-profile fields of research and study. This expansion cannot in any way be compared to the addition of just any new areas of concentration, on the contrary, it indicates a precise reflection within the spectrum of its subjects of a profound process of changes in society.

The newly establish fields in the natural sciences and future oriented technologies within the University of Augsburg are the catalyst for numerous present processes of transition within the economy, culture and society. In any case, the industrially useful technique is based on the application of causal analytical processes in the fields of experimental natural sciences for the purpose of research and the production of goods and services. In the occidental tradition this is a process, which since the 18<sup>th</sup> century has encompassed all realms of society and affected them in a revolutionary way. Therefore, educational institutions which carry out their ongoing development and dissemination, form and reflect, in other words, changes in society.

#### 1. The Revolution of Media and Communications Technology

a) The scientific-technological change which has unleashed a third industrial revolution rests on the new discovery of communications media, data processing and information transfer with the aid of computers and the World Wide Web. As cross-cutting technology soon will encompass all forms of intellectual activity, expression of thought and social interaction, so too will electronic data processing, permeate in the same way academic fields, culture, economy, as well as endless individual worlds. Universities are challenged – all the more so, as it seems that private business are the driving force in this area to see to it that the current media revolution develops into something useful and beneficial for society as a whole. The University of Augsburg tries, within the limits of its possibilities, to participate formatively in this process by not only imparting practical knowledge of the new technologies and their applications, but also offering insight into their cultural importance and social implications.

b) The University of Augsburg trains a large number of computer specialists and in so doing fulfills the urgent and legitimate expectation of the political parties, the economy and the job market. The Applied Computer degree program – the newest full scale computer program in Bavaria – was launched with great success in the Wintersemester 2000/1. With its total of 340 beginning students it has leapt from zero to fourth place in Bavaria. The establishment of a diploma degree program and numerous Masters, as well as Bachelor degree programs („Computer and Electronic Commerce“ and „Financial Management“) are intended to impart a core competence which is independent of trends and cycles, as well as guarantees specialized market- specific qualifications.

The University of Augsburg also takes seriously the challenges and opportunities which computer technology offers the humanities. Therefore, the University of Augsburg is planning to offer, parallel to the computer Science Program, a degree program in „Media and Communications.“ It will familiarize students with the diverse ways in which new media technologies can be used and provide additional qualifications, which have become indispensable in professional fields, which up to now had been filled with graduates of the cultural sciences. Areas such as conception, design, illustration and production management in the creation of hypertext are gaining increasing importance in the job market. Multimedia-Database-Systems and virtual libraries are already now indispensable instruments for archives and the public availability of knowledge. In addition, new media technologies open up new interactive possibilities in the arts with a world wide public.

c) As a result, the philosophical faculty of the University of Augsburg has developed a major entitled „Modern Fields of Knowledge: Origins and Development of the European Information Culture,“ based on research on the cause and effect of the second communications revolution ascribed to the Gutenberg printing press. Here, within the framework of a historical paradigm we find a systematic analysis of previous stages of media history. An analysis which allows for an adaptation and understanding of the present process from a cultural perspective.

## 2. The Environment and New Materials

In the last few years the University of Augsburg has also adopted, in a variety of ways, the theme „The Environment and New Materials“ and has made it a focal point in teaching and research. Particularly with the theme „Environment“ a specific phenomenon of the advanced industrial society can be viewed. It is indicative of the process of collective and reflective consciousness about the results of scholarly and industrial progress with regard to the way man deals with nature. Here also we are dealing with a phenomenon which, within the past twenty years, has found its way into the scholarly agenda. When the ecological crisis became apparent, as a result of economic growth, „nature“ became the cause used by a broad social movement for building political will. The early 80's rediscovered what macroeconomics call the production factor, „land“. It is not made by man, but to be conserved and to be formed as part of his natural way of life.

Last year the University of Augsburg established a user center for material- and environmental research, as well as a research center for environmental expertise. These in turn have become a center for an interdisciplinary focus on environmental issues. All related university faculties, from environmental law to environmental economics, environmental management and environmental informatics, from environmental politics, to environmental education and environmental ethics, are involved in this area of concentration. This is a substantial contribution by the University to an interactive regional environmental network. Both these centers research and develop environmental friendly materials which are then passed on to interested firms in the region. As a service and training center for the newest technologies, the AMU is geared toward technology transfer in response to external commissions from industry and the economy. It forms the interface between basic research at the university, as well as various cooperative ventures, on the one hand and the concrete application of this research in industry within the Augsburg/Schwabian region, on the other. Concurrently AMU carries out research and development work commissioned by industry and other re-

search facilities. These activities support the region in dealing with widespread changes in its economic structure.

Supplemental to this, the University of Augsburg investigates socially relevant dimensions of environmental topics which go beyond their practical application. For example, the Institute for Environmental Law, within the Faculty of Law, researches the feasibility, as well as the forms, of legal conceptualization in which environmental problems can be dealt with nationally and internationally. At the same time, a newly established chair in the Department of Economics analyses models of long-term resource-saving budgeting at the industrial level.

### 3. Changes in the Professional and Working World

A fundamental aspect of the dramatic changes in society we are undergoing is the basis for the enormous dynamic of change found within the working world and the ever decreasing value of specialized knowledge. Both phenomenon are closely connect to the multi-media revolution. This not only demands that employees be able to deal easily with continuously updated hard- and software, but first and foremost requires always new procedures for saving, organizing and evaluating information and data. In the course of this, the transition from an industrial to a service and knowledge based society, the forms of defining a market economy are changed. Speed, quality and flexibility are the key qualifications required by the economy. The changes are characterized by a decentralized organization of work, flexible working relations, as well as higher and more comprehensive work demands. These processes of adaptation pose an enormous challenge for workers abilities. A need for a combination of technical, social and organizational abilities has developed. Traditional attitudes toward earning a livelihood are being replaced with new attitudes which require individual professional responsibility and an entrepreneurial spirit.

Universities have to respond quickly and decisively to these phenomena. The University of Augsburg strives both to improve the

quality of its professional curriculum, as well as the quantitative expansion of courses offered in areas of continuing and professional training. Today, Universities cannot consider their task of educating and training as complete once they have provided their students with a professional degree and sent them on their way out in the job market. It is more important that professionals be accompanied by the university throughout their professional lives in all lines of work. The enormous growing demand for additional qualifications and training can no longer be covered in-house for those professions who are dependent upon innovative research. This is where the universities play an important role. The future will bring a continuing relationship binding the students to their „alma mater“ Augsburg.

The University of Augsburg began already in the 80's, in view of the rapidly changing job market, to place great value and recognition on continuing education and training as being possibly *the* themes of higher education in the future. Here too, the university's Center for Continuing Education and Transfer of Knowledge (ZWW) play a leading role in the continuing education of executives. The ZWW offers continuing education programs in business, as well as the completely new types of qualifications required for new professions. No other comparative educational institution offers courses in areas such as Rating-Analysis, which allow medium sized companies to judge their soundness in view of their economic standing and prospects for the future. This special qualification of the University of Augsburg is unique within the nation. In addition, the ZWW initiates and supervises technology and transfer of knowledge projects, as well as applied research projects based on applied practices. It advises and supports entrepreneurs. Furthermore, it has developed new forms of study – such as, a partnership with the University of Pittsburgh's Executive Training MBA Program. This program has been in existence for the past three years and has received national acclaim. Alone a glance at the roster of cooperating partners (DaimlerChrysler, Siemens, Sun Microsystems) shows that the ZWW belongs to the forerunners in this field.

Worthy to note is the building up of applied informatics at the University of Augsburg which will make possible „tele-education and tele-continuing education“ possible at the University. The development of new information technology makes it possible to offer, via the new medium, training and continuing education courses. The University of Augsburg has to find its competitive edge in these areas, all the more so since the Center for Continuing Education and Transfer of Knowledge at the University of Augsburg does excellent work.

#### 4. Internationalization and Globalization

Another area of change in society to which Universities both actively and reactively participate is the increasing internationalization of economic, academic, political and cultural life. Transnational institutions are in the process of taking over all areas of competence and achievement previously dealt with by national institutions. The two engines for this movement are clearly the economy and knowledge. Knowledge, since the beginning of time, is a global undertaking. It is limited by national needs however, not losing its universal claim. The political upheaval of the last two decades – the end of the cold war, the dissolution of the blocs, the emergence of a world market for products, goods and services – on the one hand and the overcoming of time and space through the revolution of means of communication and transportation, on the other, have for the first time, in an almost unrestricted way, created the preconditions for this concept to become an institutional reality. The vision (originating from the universality of knowledge) of a community of students and researchers who can freely exchange their knowledge has come a few steps closer.

a) The University of Augsburg is making at the moment concerted efforts to make its curriculum compatible to common international structures and standards. Already existing and new to be introduced degree programs will be brought into line with internationally comprehensible and compatible systems. This will be carried out through its Bachelors and Masters Degree programs

and the establishment of a Credit-Point System. In the last few years already several such degree programs have been introduced. They break down the present bureaucratic barriers to the acceptance of qualifications and make possible an interchangeability of degree programs. More will follow soon. The University of Augsburg has just joined a newly founded accreditation agency which, through its establishment of quality standards and stamp of approval, will make the Masters and Bachelors degree programs transparent and interchangeable.

b) The University of Augsburg is thus intensifying its efforts to build up partnerships and cooperation with foreign universities in order to intensify the exchanges of students and lecturers. It is integrated in numerous European mobility networks through the so-called Socrates/Erasmus Agreement. This includes partnerships with the University of Pittsburgh (USA), Osijek (Croatia) Iasi (Romania) and Chabarowsk (Russia). Project oriented co-operative student and teacher exchange arrangements and agreements exist with a further thirty universities in China, France, Great Britain, Italy, Japan, Canada, Switzerland, The Czech Republic, Hungary, the USA and several Latin American countries. Concerted efforts will continue to be made to intensify contact with Eastern European countries and those outside Europe as well.

#### 5. The Role and Responsibility of the Cultural and Social Sciences

Reference has already been made to the important role, in the process of a changing society that the cultural and social sciences have played at the University of Augsburg. As already mentioned, efforts are being made to prepare graduates for the major changes taking place within traditional professional fields, and at the same time pre-prepare them for new opportunities which have opened up, by offering such degree programs as the planned Media and Communications Program.“ A projected „intercultural communications“ program is being developed in response to the growing need to understand and accept foreign ways of life. This

is in response to the internationalization of corporations, as well as the formation of supranational political institutions on a European and global scale.

The University of Augsburg however, also has a place for research and academic programs which are not primarily based on these new developments, but on the understanding of their origins and connections to the past. Social scientists are by their very nature diagnosticians, as well as therapists of modern social development. Some of them are involved in a major research project (a special research area of the University of Munich) which examines the structures of „a reflexive modernization.“ By this is meant the dissolution of the way of life and work unleashed by the double revolutions, the political and the industrial revolutions of the 18<sup>th</sup> and 19<sup>th</sup> centuries. On the other hand, the University of Augsburg is „daring“ with its „European cultural history“ degree program (one which is unique within Europe), to critically analyze those cultural traditions which determine the substrata of society. This the university carries out by analytically reaffirming the past and looking at future trends. These elements are all part and process of the aforementioned process of cultural development and are the only way in which it can be understood. In all these cases the University of Augsburg is outstanding in meeting the above mentioned challenges by becoming a sought after place for the objective reflection on society in all its complexity, thereby, supporting an open society in its search for identity throughout all it changes.

#### 6. Privatization and the Framework of the University

And finally, let me touch upon the framework of Germany universities in general and on the University of Augsburg in particular. Since the 1980's there has been much heated debate about the future of academic institutions. Influenced by the organization of American universities, which are seen as models of organization and under the banner of „privatization,“ politics and economics are more and more pushing universities to bow to market pres-

ures, to be more competitive and to look for new ways of financing, other than from tax monies. This challenge strikes at the core of the public and state financed status, which German universities take for granted.

Legal reforms have – at least in Bavaria – given the impetus for inter-university competition. The use of achievement and task parameters, as an instrument for the allocation of funds and as an instrument to strengthen their competitiveness, are now already available to universities. The creation of central capital funds, which allocates monies according to achievement criteria has become possible as well. Thus, the University of Augsburg finds itself on the path of taking responsibility for its own personnel management, financing and organization as well. The financial and organizational autonomy of the university has grown through an increase in the amount of third party funds and the private sector, through a more thorough evaluation of research and teaching and through a growing responsibility for personnel questions. Efforts are being made to achieve greater flexibility in the self administration of finances by breaking away from the old fashioned state system of book-keeping and introducing elements taken from commercial book-keeping. The possibilities of privately organized economic activities are also used (through the marketing of high quality continuing education). Basic reforms, such as the relaxation of civil service laws at the universities or the, notoriously contentious topic throughout Germany, of student fees, are beyond the decision making competence of a single university. These are issues subject to democratic opinion building processes which are accompanied by and subject to strong ideological positions in Germany.

In spite of this, the entire educational system of higher learning in Germany will never be able to be based on non-public funds, as is the case of elite private universities in the USA. In fact, universities should and must continue to take preventive measures to be more flexible and take charge of their financing. The growing gap in state financing certainly cannot be bridged in this way. It is neither realistic nor desirable to give up the basic principles of the

German Federal Republic which sees itself, anchored within the continental European tradition, as an intervening cultural state. A further retreat of the State from financing the academic sector, following the American or Thatcher model, would have unforeseeable consequences, as long as the private sector does not dramatically change its financial contribution.

The University of Augsburg can in the future rest assured that the core of its work will be safeguarded by Federal funding. Nevertheless it will seek out all possibilities for further financial support from the community while at the same time retaining its autonomy in teaching and research. Its efforts will continue to be oriented toward increasing „culturally sensitive learning“ in areas of research, study and teaching, proportionately according to its competence, thereby contributing to a „knowledge based society“, in which increasingly well trained graduates join the entire work force. Only in this manner can the preconditions for technological development and its social implications be successfully met.

## European and National Civil Law

Prof. Dr. Thomas Möllers

### I. The European Community in Unexplored Territory

#### 1. Lack of Identity as a Threat to Europe?

Voices questioning European integration and identity are understandably becoming louder.<sup>1</sup> The Euro introduced as a common currency in 1999 is becoming weaker; the Commission recently resigned en bloc amid accusations of nepotism, the European electorate declines to vote and stays away from the European parliament elections.<sup>2</sup> The Treaty of Nice failed to produce the desired European institutional reforms necessary for an expansion to the East, and the bazaar mentality again prevailed, as the Member States lost sight of the greater common interest in their continued defense of individual national advantage.<sup>3</sup>

Europe is at the crossroads. Recently the opinion was expressed that European integration would fail because without a distinctive history of their own, Europeans lack the fundamental consensus on which to build a common identity.<sup>4</sup> This weakness of identity threatens Europe from within.<sup>5</sup>

In South Africa, numerous peoples live together which occasionally fought each other in the past, which speak various languages and which each have a distinct cultural heritage. Therefore, the South African nation searches for its national identity. Possibly the following remarks may help to avoid certain mistakes in the integration of the South African peoples.

This study is concerned neither with the ultimate aim of the European Community, nor with the turn of the century dream,<sup>6</sup> a United States of Europe,<sup>7</sup> or with the concrete implementation of the union of states.<sup>8</sup> The question of the future route to European integration remains open and correspondingly difficult to answer.

My more modest purpose is to investigate the accuracy of the negative view that Europe is threatened by a lack of identity. As a first step (I.). I argue that neither aspirations of peace, nor economic freedom, nor a European legal community in its present condition can any longer by themselves justify the European integration process, but rather that bad European law is leading in a variety of ways to dissatisfaction. As a second step (II.), I differ with the opinion of *Weidenfeld*. Common tasks, paths of development and the shared goals of Europe, which justify further European integration, will be delineated. The third step (III.) is to show how European and national law must be further developed into a European legislative theory and methodology, so that better law at the European and national levels can be created on the basis of acceptance and European identity. The article ends with a consideration of the immense significance of communication and language (IV.).

This study explores European law at the European level and its relationship to the Member States. At the level of the Member States I will focus to Germany as a reference for monitoring. Germany shows, as under a magnifying glass very clearly that people are willing to support European Integration because of German history. But Germany also shows that there are still a lot of steps to be done before reaching a better European legal harmonization.

## 2. The Creation and Loss of Purpose in Europe

### Realizing the Vision of Peace

The desire for peace was the driving force behind the establishment of the Council of Europe and NATO half a century ago and of the European Economic Community with its six founding Member States almost a decade later. The ensuing fifty years and more of peace are without parallel for a continent on which the peoples of Europe fought countless battles throughout the centuries. Today's generation born into affluence no longer knows war, and peace between the European Member States hardly impresses any longer – on the contrary, peace is taken for granted.<sup>9</sup>

### The EC as an Economic Community

It is no accident that the EC was known as the European Economic Community until the Maastricht Treaty 1992, as the aspiration for peace was from the outset combined with economic freedom as one of the pillars of the EC Treaty. However, the idea of economic freedom *per se* for undertakings and citizens in Europe no longer provides a focus for identification. For businesses it has largely been realized over the last decade in the internal market without frontiers<sup>10</sup> and thus, like the idea of peace, is seen as given.<sup>11</sup>

### Law as the Engine of Integration?

#### • *Ius commune* and a European Civil Code

A final source of identity remains: the EC has always been seen as a „legal community“. Possessing no enforcement agencies, no police force or prosecution service of its own, the EC has to rely on its Member States for the application of European law.<sup>12</sup> *Walter Hallstein* characterizes EEC legislation as essentially promoting integration, ascribing to it a dynamic that to some extent is *self-fulfilling* dynamic.<sup>13</sup> This „spill over effect“ also is apparent in the introduction of the currency union, and hopes that economic



union inevitably will lead to political union. Jurists have added new variants of the idea of using law as an engine for European integration.<sup>14</sup>

Legal historians such as *Reinhard Zimmermann* and *Rolf Knütel*,<sup>15</sup> for example, have called for an overhaul, informed by Roman *ius commune*, of the systematic, conceptual, and historic intellectual bases of European law, which are buried under the debris of two centuries of national legal development.<sup>16</sup> Reference to Roman law would, however, disregard the last three centuries of legal development,<sup>17</sup> thereby ignoring modern currents such as consumer law or laws of equity, financial markets and competition.<sup>18</sup>

The alternative of utilising the integrative tendencies of law strikes a more modern note: work on a *European Civil Code*<sup>19</sup> as initiated by the European Parliament.<sup>20</sup> Nevertheless the prevailing view is that a European Civil Code will not rapidly replace the national codes of European states, but, rather, at best would constitute a model code amounting only to soft law.<sup>21</sup>

#### • Categories of European Law of Inferior Quality

It seems doubtful that law will be seen as creating a sense of purpose within the European integration process in view of the often inferior law created in the last decades on the European but as well on national level.

#### Deficiencies on the European Level:

On the European level, harmonization of laws between Member States according to a standard defined by the Economic Community was a priority for the first twenty years of its existence.<sup>22</sup> In recent years, partial rather than total harmonization has been emphasized increasingly.<sup>23</sup> This so-called minimum harmonization complicates legal matters not a little,<sup>24</sup> and at least three groups of cases may be identified.

– EC legislative procedures have for years been criticized as uneven and patchy.<sup>25</sup> Rather than treating a legal field such as the law of obligations as a whole, only aspects of the field are harmonized at the EC level thereby creating individual islands of harmonized law based on EC law, such as a directive in labor law dealing with the equal treatment for persons applying for a job. Opposed to this, there is no harmonization for the employment contract itself or the notice of termination of the employment contract. On the European level there is a lack of general concepts covering several legal fields.<sup>27</sup> Indeed, there is a real danger that these minimum harmonization measures frequently cause friction and conflict with non-harmonized national law.

– Apart from this, so-called *opening clauses* are highly problematic in that they allow the individual Member State to continue to apply stricter national law alongside law created by a Directive. Thus, European law does not replace earlier national law, but rather old national law continues to be valid and European law is introduced alongside it. In such cases, original and new law are of equal validity.

This *duality* often has serious disadvantages. On the one hand, national and European law are applied alongside each other, leading to a laborious *double checking*. The result is that European law unnecessarily complicates the applicable law, making law expensive and impractical. Alternatively, new law based on European principles is completely ignored, because the older and „stricter“ national law continues to be applied. The *Product liability* Directive provides an example.<sup>26</sup> The university student learns to carry out a double check on numerous disputed questions of applicability.<sup>24</sup> In practice, however, the courts ignore the Product Liability Law (*ProdHaftG*),<sup>30</sup> because the BGH introduced quasi strict liability by means of easing the burden of proof as long ago as 1969,<sup>31</sup> and the Product Liability Law, by virtue of its retention element and the lack of non-economic damage, is less attractive than German tort law.<sup>32</sup>

– The list of negative examples should also include cases in which the European legislature permits *optional* clauses in a Directive. These optional clauses make it possible to choose between the laws of various jurisdictions. In this way, the European legislature has abandoned the opportunity to create harmonized European law. The Seventh Company Law Directive, for example, sought to harmonize the requirements of a company balance sheet.<sup>33</sup> European law requires in a general clause based on the *true and fair view principle*,<sup>34</sup> that the annual statement of accounts give a truly proportionate picture of the assets, finance and profit situation of the corporation. This transparency requirement is counteracted, however, by the fact that the Fourth Council Directive on the Annual Accounts of Certain Types of Companies, permits differing accounting principles.<sup>35</sup> In this way, optional balance sheet requirements laid down in numerous individual regulations, which are formally and substantively correct according to the official German accounting principles (GoB),<sup>36</sup> nevertheless do not necessarily reflect the actual financial position of a corporation. Undisclosed secret reserves are an example, which give the investor a misleading picture of the actual development of a business concern.<sup>37</sup> This can in no way be called modern European accounting law.<sup>38</sup>

#### Deficiencies on the National Level:

Deficiencies arise in the *implementation of European law* as well as in its creation by the European legislature. Germany, former model pupil of the EC, increasingly fails to implement European Directives properly.<sup>39</sup> Most prominent are the cases where Directives are not implemented within the relevant time, but even more disturbing are the cases where they are not implemented at all. Not infrequently, the national legislature is of the view that appropriate existing law makes further action unnecessary. As an example, the Directive on misleading advertising<sup>40</sup> was not transferred into the German Unfair Competition Code (Gesetz gegen den Unlauteren Wettbewerb – UWG), as the general clauses of §§ 1 and 3 UWG were considered adequate for the purpose.<sup>41</sup> According to the Federal Supreme Court judge *Joachim Bornkamm*,

the 1997 *Directive on comparative advertising*<sup>42</sup> required no implementing legislation as in several judgments the Federal Supreme Court had already deemed comparative advertising permissible.<sup>43</sup>

Such a view is problematic if only because it runs the risk that the applier of national law may fail entirely to perceive the European dimension of the „earlier“ norm. To the extent that the Directive creates individual rights and obligations, the ECJ requires the legal position to be sufficiently clarified so as to enable the beneficiary to be informed of his rights and to enforce them when necessary before national courts.<sup>44</sup> Court rulings are incapable of such clarification where they accommodate new European law in a modification of the earlier legal position. This is because the judiciary rule not on the basis of the complete normative text of Directives, but rather on the limited basis of the actual matter in dispute. Secondly, such a ruling is delivered only *inter partes* and, thirdly, in contrast to the Anglo-American stare-decisis-rule, continental decisions by judges lack a binding force and therefore can be changed by subsequent rulings.<sup>45</sup> The view expressed by the Supreme Court Judge therefore should be rejected. Consequently, in September 2000 the German lawmaker has insert a new § 2 into the Unfair Competition Code to implement the complete normative text of the directive.<sup>46</sup>

#### II. Common Tasks, Paths and Goals of the Peoples of Europe

This is a sobering picture. Is Europe about to fall into ruins and should steps towards further integration be refused?<sup>47</sup>

Certainly there is much to criticise, but we should be wary of painting too black a picture. Nonetheless Europe needs a clear vision of itself, as *Ernst-Wolfgang Bockenförde* recently stated.<sup>48</sup> But besides this integrative vision, the continued unification of Europe requires the recreation and regeneration of an intellectual and spiritual agreement<sup>49</sup> regarding common tasks, paths and goals; it must be borne along by a consensus of the European citizens.

## 1. Common Tasks of Europe

### Nation States Powerless in the Face of Globalisation

Nowadays common tasks arise less out of those necessities, as those 50 years ago, than out of the challenges with which the present generation sees itself confronted. Such challenges for the 21<sup>st</sup> century are manifold: globalization and internationalization leave in their wake numerous economic problems to be solved; the collapse of the *Hedge fund* disturbed the confidence of the capital markets;<sup>50</sup> the almost daily fusion of major undertakings results in conglomerates impervious to governmental control;<sup>51</sup> trade wars loom. Environmental destruction extends across national frontiers, as the nuclear catastrophe of *Chernobyl* so graphically demonstrated. Equally grave are the problems posed by crime, by migration, or by populations displaced in war.

### Subsidiarity in a Positive Sense

Nation states generally lack an appropriate range of policy instruments to overcome these irreversible supranational challenges. In some policy areas, such as that of environmental destruction, events render them relatively powerless. In others, such as employment law, with wages and the tax system, they seem to have no option but to engage in a ruinous downwards spiral. In yet other policy areas, such as the fight against crime, combating the causes gives way inexorably to an attempt merely to mitigate the consequences. In the face of such problems, some calls for a return to the nations irresistibly conjure the image of a small boy on a fairground carousel, furiously spinning the steering wheel of a colourful wooden car to make it turn. Europe is only called upon to act when the powers of Member States no longer are adequate to overcome the problems which they face.<sup>52</sup> Here the positive side of the subsidiarity principle justifies action on the European level. Instead of the negative,<sup>53</sup> we should emphasize the positive aspects of subsidiarity. Instead of bemoaning a creeping loss of competence by nation states to European institutions, the progressive material loss of nation state competence due to globa-

lization should be foregrounded. Regaining the power to act, although now on the European level, therefore constitutes, rather a growth of competence, albeit one available to us as a community.

## 2. A Common Path - European Legal Principles

Now that the tasks have been identified, the routes to further integration can be mapped out. As many of the mentioned tasks can only be solved by concerted action, Europe can be redefined as a *community of interests*.

### A Shared Past – Community of Interests

Numerous shared features derive from the firm foundation of a common legal tradition developed over the centuries. An essential element of the occidental legal tradition, for example, is the emancipation of the individual, his prominence as a focus of intellectual concern and of judicial theory. The tension between theories of individual freedom and altruistic duties is contained in all judicial thinking.<sup>54</sup> This development was achieved through the liberation of the individual from status by the contract.<sup>55</sup> A further legal field of considerable European consensus resides in the relationship of the individual to the State, the fundamental freedoms which, from origins in the Constitution of the United States<sup>56</sup> and the French Declaration of the Rights of Man,<sup>57</sup> went on to conquer the entire world.<sup>58</sup>

Ultimately, the European legal tradition is characterized by legalism; that is a monopoly of power by the State for purposes of formulation and development of law, which prevails over social regulatory systems such as religion, morality, custom and usage.<sup>59</sup> Under enlightened absolutism, the absolutist monarch tried to bind the judiciary by framing laws as precisely as possible. However, these laws bound not only the judge but also the ruler, protecting the citizen from an arbitrary abuse of power.<sup>60</sup> From this developed principles of *Rechtstaatlichkeit*, equivalent to the *rule of law*,<sup>61</sup> such as subjection to and the pre-eminence of law, the right to a trial and due process of law.

## A Shared Future – Europe as a Community of Assimilated Interests

Common interests derive from shared tasks and often they are rooted in historic consensus. Nevertheless the common interests must be further developed, adapted and modernized to meet to the challenges of the time. Here Europe develops from a community of interests to a community of assimilating interests.<sup>62</sup> Such assimilation of interests forms a set of common values based on fundamental rights as well as social and environmental elements of a European market economy.

### • The Fundamental Community Rights as a Common Set of Values

The common values of fundamental rights were derived by the ECJ from the „general principles“ of the common constitutional traditions of the Member States.<sup>63</sup> It is interesting to note that the ECJ has in the meantime further developed fundamental European rights to the point where they often afford the citizen greater legal protection than his basic rights within the individual Member State.<sup>64</sup> The European Court of Human Rights has also imposed stricter requirements for the timely provision of legal protection than the national courts, thus declaring legal procedures drawn out over years to be unlawful.<sup>65</sup> In procedural law, the ECJ repeatedly has emphasized that access to national courts must be guaranteed, thus limiting the procedural autonomy of Member States by means of this principle of effective legal protection.<sup>66</sup>

In November 2000 the Member States have adopted a European Charter of Fundamental Rights.<sup>67</sup> These charter summarizes and reinforces the common set of values. Consequently, the fundamental rights should be incorporated in the EC Treaty in the near future.<sup>68</sup>

### • The Social and Environmentally Benign Market Economy

Common interests include social elements of an environmentally benign market economy. Environmental pollution demands su-

pranational and international regulation. The EC Treaty rightly demands a high level of protection<sup>69</sup> and happily the EC has issued numerous Directives and Regulations on environmental protection.<sup>70</sup> A free market economy only can legitimate the European Community if it increases the prosperity of all. This idea has its roots in the occidental view of mankind marked by the Christian ideal of love for one's neighbor. The comfort and prosperity of the citizen is the ultimate guarantee of democracy. The merging of large undertakings means that European competition law is increasingly resorted to.<sup>71</sup> If national rulers distort competition through grants and subsidies in support of business concerns, only competition law on the European level will be effective.<sup>72</sup> As the intervention in the Boeing/McDonnell Merger dramatically made clear recently, instead of a national cartel authority, only the EC Commission acting at the supranational level can exercise a corrective influence.<sup>73</sup>

Consumer protection must be seen as a success in terms of the common assimilation of interests which the Commission has advanced in the last 20 years.<sup>74</sup> In this, European law is characterized by the „informed consumer“<sup>75</sup> who accepts responsibility for his own actions. Social elements of the EC Treaty are found in health protection<sup>76</sup> and most recently also in the title on employment.<sup>77</sup>

### The Creation of Identity through the Exclusion of Others

Aspects of a European identity are also revealed in the exclusion of others. This is true of fundamental rights as well as of our understanding of a market economy.

– All Member States are democratic and observe the fundamental rights. The Amsterdam Treaty called for the observance of democratic principles and fundamental rights for the Union and all Member States.<sup>78</sup> Thus, democracy and fundamental freedoms form a considerable common pillar of European law and European identity.<sup>79</sup> Consequently, a state applying for membership, as the EU Treaty states, can only join the European Union if it ob-

serves the fundamental rights.<sup>80</sup> Precisely this point distinguishes the Member States from numerous neighbor states of the European Union, which may not join the EU even if they wish to. The death penalty, expressly forbidden in the EU,<sup>81</sup> also reveals a system of values distinct from that of other nations or states such as Turkey, Oklahoma or Texas.

– Attitudes towards environmental protection also vary. This became clear when the EU assumed a pioneering role at international conferences in Rio, Berlin and Kyoto, while the USA and Japan were among the more conservative „go slower“.<sup>82</sup> In the USA, competition law is dominated by the *Chicago School* which sanctifies the free play of market forces, while consumer protection in the USA is markedly weaker than in Europe, and *Clinton* administration proposals for a rational health system ultimately were halted in their tracks.

### 3. A Common Goal

From tasks and shared paths, we turn to the purpose of Europe; here I mean not a future state structure,<sup>83</sup> but rather the future European perception of itself.

#### Supposed Alternatives – the USA as Superpower

Since the collapse of the *Warsaw Pact*, the division of the world into two blocs has become obsolete, and the USA remains the sole world power.<sup>84</sup> Europe stands at a parting of the ways and has to decide; it could subside comfortably into continued dependency on the USA. This would exact a high price, however, in one of three hardly attractive outcomes.

Either the USA dictates the direction and Europe willingly follows, surrendering itself increasingly to political, economic, cultural and legal dependence. Indeed twenty or thirty legal fields can easily be named in which German and European law has been Americanized in the last decades.<sup>85</sup>

Alternatively, the USA imposes its interests against European resistance. The extent of US political and legal dominance becomes clear when, for example, judgments of the International Court are ignored, pilots are freed and trade wars provoked in disputes over hormones.<sup>86</sup> Lastly, there is the possibility that the USA relinquishes the role of opinion leader on the supranational level in environmental affairs or competition law, for example, so that a legal vacuum persists on the national and international levels. None of these outcomes is satisfactory. Then „survival of the fittest“ is the prevailing law, as indicated by the lack of control over global undertakings.

None of these alternatives is satisfactory.

#### Europe as Opinion Leader – a Strong and Self-Confident Europe

Here the alternative presents itself! Following the collapse of the *Berlin Wall*, the Americans withdrew their troops on a large scale, demanding that Europe take more responsibility for its own security. Rather than lapsing into dependency, Europe should itself accept the challenge of addressing the urgent tasks of the future and of moulding the future. The first step has been taken with the EU Treaty and its modification by the Treaty of Amsterdam: The Common Foreign and Security Policy (CFSP) and the police and judicial cooperation in criminal matters (PJCC) re-engage the founding vision of peace<sup>87</sup> and constitute it anew, in that solutions are to be found for problems of tackling international crime and migration questions. But this extension can only be a *very first* step,<sup>88</sup> as the unsatisfactory role of the European Union in the Yugoslavian conflict demonstrated, whereby the European states effectively rendered to being superior satellites of the USA.<sup>89</sup> Supporting the democratisation process of the EU-neighbour states may be the most important future task of the EG.<sup>90</sup> The role model function undertaken by the Member States over the last 50 years should not be underestimated. Europe provides its own solution to „ethnic cleansing“ and the partition of states, namely the mutual tolerance of widely varied peoples,

groups and origins in one union of states, as well as a reconciliatory process which makes another war seem unlikely, if not actually impossible.

The aim must be a strong and self-confident Europe, able to go its own way without following outside dictates. Europe must recognise its own abilities and assume opinion leadership, or accept a secondary role. The 20<sup>th</sup> century was dominated by America; the 21<sup>st</sup> century has been assigned to Asia. Europe must actively structure the future if it is not to be counted among the losers of the 21<sup>st</sup> century. The expansion of competence can be used as a corresponding power to innovate in economic questions as well as in foreign policy.<sup>91</sup> The future of Europe requires the self-confidence and perception on the part of citizens and decision-makers that people are dependent upon each other: Just as the EC cannot exist without the Member States, so the Member States cannot structure the future and Europe without the EU.

### III. Elements of a European Legislative Theory and Legal Methods

In terms of the role of law in European integration, the inferior law mentioned above must be countered. German legal methods dates from the 60's and is founded in purely national law. A European legislative theory and legal methods is lacking to date. Here we can identify only selected aspects of a European legal method. In this way law will assume its guiding role.<sup>92</sup>

In this we may distinguish the European level (III.1.) and that of the nation (III.2.).

#### 1. Tasks on the European Level

Over 50% of all national laws, and some 80% of economic law now are derived from European law.<sup>93</sup> Three elements on the European level may be identified where there is scope for improvement.

### European Legislative Procedures

#### • Active Participation of Member States in Legislative Procedures

Until the recent past, the attitude was prevalent in Germany that Directives should only be actively engaged with once they were issued.<sup>94</sup> German participation often was purely defensive, because German administrative officials in Europe are obliged by a Federal decree to apply the subsidiarity principle; that is, to enquire whether European legislative provisions are not indispensable.<sup>95</sup> Contrast this with the French *étude d'impact juridique*,<sup>96</sup> which compels its administrative officials to prepare actively as a preliminary to a Directive, compiling lists of national norms to be amended and problematic aspects to be raised from a national perspective.<sup>97</sup> Such preparation at least creates a timely understanding of new European law, but often additionally forewarns of surprises in Council deliberations, making it possible for national representatives to promote their own law. Thus, the active participation of Member States in European legislative procedures is necessary.

#### • Overall Concepts Rather than Compromise Solutions

At the outset it was shown that many legal areas were harmonized but not comprehensively, and that this minimum harmonization leads to conflicts with national law. The aim must be to create better and simpler law.<sup>98</sup> This requires avoiding conflicts with national law by means of the comprehensive harmonization of a legal field.

That the Commission generally prepares legislative plans on a comparative law basis is not in doubt. But further to this comparative law work in the narrow sense, effective creation of legislation requires the development of a *theoretical optimal conflict resolution model*, as the ECJ had already practiced in the creation of Community fundamental rights.<sup>99</sup> Here economic considerations would be sensible,<sup>100</sup> which *inter alia* address the question of which competition disadvantages could be eliminated by means

of Europe-wide regulation.<sup>101</sup> Thus, in general, the comprehensive harmonization of a legal area is preferable to mere minimum harmonization, since it avoids conflicts with the national law.

Actual practice makes clear that the horse trading with its numerous compromises should not necessarily govern European legislative procedures. Several examples demonstrate that optimal law can also be achieved by elevating the *law of a single jurisdiction to be the European standard*. The Product Liability Directive of 1985 is based on the US-American model;<sup>102</sup> European competition law<sup>103</sup> or the Commercial Agents Directive<sup>104</sup> were largely influenced by German law. European legal institutions look to French law with the *Advocates General*<sup>105</sup> or the Environmental Information Directive<sup>106</sup> while the Environmental Audit Regulation<sup>107</sup> or parts of the Investment Services Directive<sup>108</sup> follow English law.<sup>109</sup>

#### • Transparency of European Legislation for Citizens

Preliminary work at the *European University Institute*,<sup>110</sup> *green papers*<sup>111</sup> and *white papers*,<sup>112</sup> and *action programs*<sup>113</sup> or also the deliberations of the *Lando Commission*<sup>114</sup> are often known only to the specialist. The European Parliament should intervene in legislative procedures earlier and more actively than hitherto, and should *publicise* them so as to create more transparency and understanding of such plans.<sup>115</sup> Here, considerations of the principle of subsidiarity already mentioned should be used positively to demonstrate to citizens why the European level is more suited to achieving the purpose of a Directive in view of its scope or effects.<sup>116</sup>

Finally transparency during negotiations should also be maximized to prevent Council deliberations from degenerating into secret proceedings.<sup>117</sup> Openness is a fundamental common European legal principle<sup>118</sup> functioning together with legitimacy, rationality and information to promote acceptance among the people through participation and control.<sup>119</sup>

## Legal methods for European Courts

The ECJ can also make a contribution to the task of creating better law, when it applies and interprets European law. The President of the European Court of Justice, *Rodríguez Iglesias*, recently emphasized the extensive comparative law work which is undertaken before a court judgment is delivered.<sup>120</sup> We have seen, for example how the ECJ referred to the common legal tradition of Member States in the introduction of the fundamental community rights.<sup>121</sup> Normally such comparative law exercises are undertaken but not included in the text of a judgment. This is a pity: for if important substantive legal questions are to be consistently solved between Member States, *discourse on comparative law aspects* would not only decide the legal problem in the individual Member State, but would also provide a future aid to interpretation for other Member States. Future proceedings would thereby to a degree be rendered obsolete. The ECJ could emphasize common aspects and link the decisive legal problem with the legal traditions of Member States. With such analysis of comparative law, the European Courts could enhance the *acceptance* of European law and also provide a role-model for national courts.<sup>122</sup>

### 2. The Role of Member States in the Implementation and Application of European Law

National legislatures and courts can also contribute to the creation of good quality European law.

#### European Legislative Theory of National Legislatures

##### • Harmonization of Non-existent National Law

While German legal reasoning and legal methods is still seen too much as a theory of legal application for the judiciary; what is needed is a legislative theory which benefits the legislature in the enactment of laws.<sup>123</sup> The aim must be to so combine new law with previous national law that better new law results. The national legislatures should also see clear and simple law as yielding a com-

petitive advantage, while European law should be an opportunity to overhaul accumulations of old law. For this a readiness to concern oneself with unfamiliar or foreign established enactments is needed. This requires an intensive consideration of the purposes of a Directive and thereby the normative aims of individual regulations. Only after such analysis can the legislature address the questions of the extent and point in the national law at which the European Directive can be introduced.

Harmonization of law is relatively straightforward when original European law is to be implemented and *corresponding national law does not yet exist*. Interestingly, in these cases the new European law is frequently expressly welcomed, perhaps because the main work no longer falls to the national legislature. The constitutions of Spain, Portugal and Greece, for example, recently were aligned with the fundamental rights of the EC and neighboring countries.<sup>124</sup>

#### • Harmonization of Developed National Legal Structures

– The introduction of newly enacted European Directives which clash with developed national legal structures normally involves more work. Harmonization now has to be effected in two opposite directions: a first step is to implement the Directive into national law. This alone often seems somewhat problematic as, e.g., the German legislature seldom can resist the temptation to improve the wording of the Directive, as, for example, where only remunerated services fall under the *Haustürwiderrufsgesetz* (*Haustür-WG*),<sup>125</sup> in contrast to the EC Directive<sup>126</sup> which is seen to be implemented by this law. Problems of interpretation which then arise are of our own making.<sup>127</sup>

In a second step, and this often is overlooked, the legislature has to check the extent to which the law *not corresponding to the Directive* may be adapted to the Directive. The coexistence of national and European law, and i.e., largely identical law, is harmful, as the current juxtaposition of national and European product liability law makes clear.<sup>128</sup> With the introduction of § 611a BGB, it

was necessary to consider § 253 BGB. Thus, a right to compensation for non-economic damage was rejected as alien to the system<sup>129</sup> and resort was had three times to the ECJ for a clarification of the legal position. There still has been no adequate discussion of whether consumer law directives implemented into German law should be integrated into the BGB or not.<sup>130</sup> At present the consumer directives have been implemented by special laws and are quite separate from the BGB. Why this is so or has to be so is not revealed to the applier of the law. In civil law, the directive on consumer goods will massively change the articles of the German Civil Code, and there is a similar position with the directive on delayed payment in commercial trading.<sup>132</sup>

Ultimately, wide-ranging discussion will be needed on how to integrate the Directive into German civil law. Harmonization of laws, which complicates the legal position and re-nationalises European law, leads to dissatisfaction with the system and is not worthy of the term harmonization. The need for action is thus evident. The opportunity to modernise antiquated laws should remain open and vigorous new law should be created. The view that a pluralistic industrial society of opposing interests is no longer amenable to extensive codification strikes me as too pessimistic<sup>133</sup>. Italy<sup>134</sup>, the Netherlands<sup>135</sup> and Switzerland<sup>136</sup> have shown with their „*Gesetzbüchern*“ that civil codes with consumer law elements are possible even in democracies. That this is possible in Germany too, is indicated by the recent „Europeanisation“ of the cartel law<sup>137</sup> and the transport law<sup>138</sup> in harmonization with European law. If one recognizes that the Sale of Goods Directive is in many areas almost identical to the results of the reformed law of obligations,<sup>139</sup> there is every hope that the German legislature will summon the necessary reforming zeal for an overhaul of the BGB. In the meantime, the German Federal Government has started to make plans for a complete review of German contract law.<sup>140</sup> In principle, these proposals are to be welcomed. The draft bill is supposed to be adopted by the end of 2001.<sup>141</sup>



Judicial reasoning serves to integrate a decision plausibly into the existing system of laws. Such theoretical justification should enhance the persuasiveness of the particular decision. It should not, however, become an obstacle or a burden to those applying the law. Courts in France<sup>142</sup> and England<sup>143</sup> are prepared to examine and modify their theoretical understanding of law and its application. German legal reasoning must also take account of the need to adapt to the requirements of European law. The aim should be a harmonization of methods and techniques of the individual legal system.<sup>144</sup>

• The Obligation to Justify National Judgments

Jurists have to persuade. Just as the legislature has to justify norms in laying down law, so the courts should exercise persuasion in their judgments so as to achieve higher public acceptance. In the past French court decisions often consisted of one cryptic sentence expressing an abstract proposition, and were hardly suited to persuading the parties to an action.<sup>145</sup> In the meantime current French decisions are expressed more precisely. Moreover, in England judges have begun to interpret statutes „teleologically“ rather than adhering to the judicial „literal rule“. <sup>146</sup> German constitutional decisions can be as long as 100 pages and not infrequently confuse as much as they clarify. In civil law too, there is a tendency to hide behind verbosity rather than openly expressing the economic interests of the parties.<sup>148</sup> Here one can certainly learn from the Anglo-American style of judgement, which often addresses problems and interests in plain language.<sup>149</sup>

• Interpretation of Laws

The *Savignian* interpretive canon is widespread in continental Europe, whereas Anglo-American jurisdictions traditionally are characterized by a case oriented approach. However, the difference between techniques of legal application and judicial theory in Anglo-American and continental law is becoming less marked.<sup>150</sup>

– Only too often judges are unaware where national law derives from European law.<sup>151</sup> The German jurist is still relatively unfamiliar with „Directive-conform“ methods of interpretation;<sup>152</sup> the extent to which development of law in conformity with a Directive is permissible and necessary remains an open question, and one which arises in connection with compensation claims under § 611a BGB<sup>153</sup> or the remuneration of guarantors of a surety under § 1 HaustürWG.<sup>154</sup>

– Up to the present day, discussions of comparative law are rare in German federal court decisions, because the judges generally lack the requisite knowledge of foreign law.<sup>155</sup> In substantive terms, the willingness to adopt foreign law is only seen at Supreme Court level only where precedents in German law have not yet been developed; that is, where judge-made law leads into unfamiliar territory.<sup>156</sup> This *corresponds* to an astounding degree with the readiness of national legislatures only to adopt European law unreservedly where it does not collide with established enactments and practices.<sup>157</sup>

Former Federal Supreme Court President, *Walter Odersky*, has long called for more emphasis on *interpretation informed by comparative law* in the courts.<sup>158</sup> Here too there is scope for further development of German theoretical judgments.<sup>159</sup> Over and above present verdict delivery, there is a need for a substantive examination of foreign law when construing EC directives. This is especially so when the courts of other Member States issue decisions which interpret already implemented law.<sup>160</sup> A comparative approach would also seem to be appropriate when a jurisdiction wishes to deviate from its preconceptions and previous legal outlook, thereby developing law.<sup>161</sup> In practice, courts should be empowered by the legislature to consult outside comparative law experts, as is already permissible under § 293 Civil Procedure Code (Zivilprozessordnung = ZPO) for international private law matters.

When one considers that a comparative approach to interpretation is an everyday practice of Swiss and Austrian judges<sup>162</sup> and that

comparative law is also utilized in England, then the persuasive power gained from the common values of several Member States should be used as a source of legal perception in judgments, thereby enhancing the acceptance of law.

#### IV. Arguably the Most Important Component – Language as a Means of Understanding

##### 1. Precondition for an Integrated Europe – Language as a Means of Understanding

###### The Mother Tongue as an Expression of Identity

Communication still has to be improved. Language is the means of communication; language supports culture; the identity of a Member State is defined not least by the spoken language of its citizens. The languages of Europe are the expression of its cultural plurality. There is no such entity as the European people,<sup>164</sup> so it is understandable that the EU<sup>165</sup> and EC<sup>166</sup> Treaties emphasize the national identities of the Member States. This multiplicity is thoroughly positive; indeed, pluralism is an essential component of the whole European identity<sup>167</sup> and thus perhaps the first guarantee of a stable democracy, comparable to the Swiss or US-American models.<sup>168</sup>

###### Understanding, Identity and Homeland

On the other hand, those who attempt to make themselves understood as Europeans in Japan immediately see how helpless they are; without language, they revert to gesticulating helplessness. Communication within Europe requires dialogue in one language. Communication creates mutual comprehension, because we understand each other. Language can transcend national frontiers. The reconciliation process between German, French, Austrian, Italian or Spanish people may be seen as largely complete<sup>169</sup> perhaps because of the many warm, informal contacts between private individuals. In this situation the people(s) of Europe are growing together, and when German retirees settle permanently

in *Tuscany* or on *Majorca*, then „home“ no longer necessarily is associated with the town or country of one's birth. Through such understanding, the official dialogue over the future path of Europe could be conducted by the peoples of Europe, an indispensable development for its further democratization. A European historical consciousness is needed which emphasizes a higher order of commonality besides the national histories.<sup>170</sup> From this collective consciousness the long-awaited discussion on the integration of Europe can commence,<sup>171</sup> so that the broadly European, *political public life* is made reality.<sup>172</sup> If this were achieved, European identity will take on form; an exchange of ideas would bear fruit, and the future path of Europe become more certain.

###### Babylon – Foreign and Second Languages

However, the welter of languages in Brussels, which resembles a present-day Babylon<sup>173</sup> is in need of reform. It is best to concentrate on a few official languages; thus, in practice French and English have become the working languages of Brussels. Foreign languages are increasingly taken as a given among the young. In Member States like the Netherlands or in Scandinavia films have long been screened unsynchronized with the original soundtrack and subtitles. As a rule Swedes or the Dutch have a much better command of English than the German, who can usually manage only small talk. A unified European language cannot and should not replace the spoken languages of Europe, but a stronger presence of English or French in the media is to be desired<sup>174</sup> to make it a language of communication, thus more than merely a „foreign“ language.<sup>175</sup>

##### 2. The Legal System and Language

###### Europeanization of Legal Education

Only when the linguistic preconditions are met will it be time for European law schools and a thorough Europeanization of legal education, as called for by leading scholars<sup>176</sup> and the European Parliament.<sup>177</sup>

In the natural sciences, such as medicine or physics, English is used in research almost to the exclusion of other languages. Congresses in Germany are conducted in English as a matter of course; the most important journals are published in English and are read world-wide. Not to publish in English is to be outside the world-wide *community* and therefore overlooked. For German jurists this is unfamiliar territory, and the widespread use of English is often expressly rejected.<sup>178</sup> This has disadvantages which have not yet been adequately recognized. Thus the exchange of ideas between jurists in different Member States is limited. In *teaching*, Dutch and Swedish universities are also ahead of the field. Although English is not a mother tongue in Sweden or the Netherlands, legal instruction in several subjects is conducted in English,<sup>179</sup> undoubtedly an advantage in the face of international competition to establish the best academic institutions and attract the best students. In Germany, substantive instruction conducted in English is also now feasible, in that English is advantageous in subsequent professional work.<sup>180</sup> Not infrequently, German jurists working on the European level in the Parliament, the Commission and in the courts complain of the marked lack of persuasiveness of a translated contribution to proceedings compared to an original speech. There is a comparable situation in the legal departments of large business concerns or international legal firms.<sup>181</sup> As English acquired in German schools is insufficient for the demands of everyday international work, competent interactive language skills have to be developed at university. Thus apart from the period spent abroad, the foreign language training of German jurists should be supplemented with English-language lectures. Most important are lectures in *Comparative law*, in *International law* and *European law*.<sup>182</sup> English lectures on international economic law, including company, cartel, or capital market law would also seem to be sensible.<sup>183</sup>

#### Language as a Means of Harmonizing Judicial Styles of Thought

Established European legal concepts have to be uniformly understood and applied.<sup>184</sup> This creates the opportunity for intellectual legal unity.<sup>185</sup> The *mere harmonization of text is futile*.<sup>186</sup> The

renationalization of European or international law can only be prevented<sup>187</sup> by the harmonization of starkly different judicial styles of thought. If English were to be more commonly used, the readiness would increase to engage with foreign styles of thought rather than clinging to the familiar national thought style.<sup>188</sup> The necessary European methodology could become a reality.

#### V. Summary

1. This contribution was intended to show that concepts of peace, the economy and law are no longer of themselves an adequate basis for a process of European unification. The legislative process in particular is no easy matter on the European level,<sup>189</sup> indeed poor quality European law, but also differing legal styles militate against a single European legal culture.

2. No mention has been made of a European federal state, a European constitution or the European millennium dream, but rather the conscious focus has been on the next steps towards European integration to be taken in the coming decades, and on the numerous urgent problems facing us in the future. Globalization increasingly limits the unilateral sphere of action of individual Member States. It is already apparent that Member States can only solve urgent tasks in the future through concerted action on the European level. In the face of globalization, such a *positive reversal of the Subsidiarity principle* leads to a strengthening of the individual Member State competence. It is important to emphasize that the increased competence can only be exercised collectively.

Europe has numerous common interests which have been developed between the nations over the centuries. Examples for these interests are the *common constitutional principles* which help form a European identity<sup>190</sup> beyond the level of legal technicality.<sup>191</sup> It is even more important, however, for the Member States to adopt a common approach to future tasks on the European level. This is especially true for *environmental and social aspects* of a European market economy. This consensus on values within

Europe is not found in the USA. Foreign and security policies must be addressed more energetically. Europe must assume opinion leadership if it is to structure the tasks of the future.

3. Political tasks will be implemented through law. Here a *European legislative theory and methodology is needed*, which not only regulates the many questions of cooperation in European legislation, but also provides clarity in the implementation and application of European law at the national level. Here more attention should be paid to the quality of implementing legislation at the national level; courts should interpret legislation in line with Directives and employ a comparative approach. Common European law must be improved so as to increase acceptance by the citizen.

4. All this requires inter-personal communication and understanding. Only through understanding can public dialogue on the future path of Europe, so necessary for a greater democratization of Europe, take place between European peoples. The confusion of languages should be reduced; a second language should be chosen which promotes understanding. The aim should be to combine the advantages of varied judicial styles, such as case law technique and the continental-European methodology so as to further develop a distinctively European legislative theory and methodology.

When the various German states combined economically under the *Zollverein*, it did not lead to the German state. This came about when *Otto von Bismarck* enthused the population with the idea of a German empire.<sup>192</sup> Until today we have doubted the existence of a European identity because the national states of Europe have demarcated themselves from each other, defining themselves exclusively in terms of their own pasts, their own memories, aspirations and experience.<sup>193</sup>

However, this is not the only way to create an identity. The integration of Member States in Europe requires a vision,<sup>194</sup> an inspiring idea which will lead Europe into the new millennium. In the

latest version of the EU Treaty the Preamble speaks of „... reinforcing the European *identity* and its independence in order to promote peace, security and progress in Europe and the world“.<sup>195</sup> This sentence encapsulates the entire programme for a unified Europe. The European identity which builds upon commonality is future oriented. What is required is a desire for understanding and the common determination to accept the challenges.<sup>196</sup>

Europe has to decide whether it will continue in dependence on America or whether it is to solve the problems of the future with its own ideas, which are often more original than those of Asia or the USA. Europe should assume opinion leadership with confidence, so as to contribute on the supranational level to politics and the creation of law concerning fundamental freedoms, environmental protection, the social market economy or consumer protection. Europe has to recognise these future tasks, which are to be tackled and resolved in the final analysis because of a common interest in the future – this is the *European identity*.<sup>197</sup>

5. Certainly, South Africa cannot afford to have eleven different official languages in the future. An intercultural dialogue will only be possible on the basis of one or two languages. The English language as second language is more widespread than in the Member States of the European Union – in this respect, South Africa has progressed further than the European Union.

## Notes

An earlier version of this text is published in the *American Journal of Comparative Law* (2000).

<sup>1</sup> See very recently Essay-Competition in 4 *COLUMBIA J.EUR.L.* 491 (1998); Cappelletti/Seccombe/Weiler, *Forces and Potential for a European Identity* (1986); Ward, In Search of a European Identity, 57 *MOD.L.REV.* 315 (1994).

<sup>2</sup> The turnout for the European Parliament elections was 50 % in Germany and only some 25 % in Great Britain, *Frankfurter Allgemeine Zeitung* (FAZ), June 16, 1999, p. 1.

<sup>3</sup> For a critical view of Agenda 2000 s. FAZ, March 27, 1999, p. 1; Weidenfeld, FAZ, May 12, 1999, p. 11, Hausmann, FAZ January 16, 2001.

<sup>4</sup> von Simson, 'Was heißt in einer europäischen Verfassung „Das Volk“?' *EUR* 3 (1995), also Böckenförde, 'Welchen Weg geht Europa?' Speech held at CARL FRIEDRICH VON SIEMENS STIFTUNG, (1997), pp. 39.

<sup>5</sup> Weidenfeld, 'Die Bedrohung Europas' FAZ, May 12, 1999, p. 11.

<sup>6</sup> See recently Oppermann, 'Der europäische Traum zur Jahrhundertwende' *JZ* 317 (1999).

<sup>7</sup> See „We must build a kind of United States of Europe.“, Churchill, 'The Sinews of Peace' *Post War Speeches*, (ed. W.S. Churchill), 198(1949).

<sup>8</sup> Judgment of the Bundesverfassungsgericht, the German Federal Constitutional Court, (BVerfG), dec. of 12.10.1993, to be found in the reports (= BVerfGE) BVerfGE 89, 155 [185], CMLR 57 (1994) = *NEUE JURISTISCHE WOCHENSCHRIFT* (NJW) 1993, p. 3047 = *JURISTENZEITUNG* (JZ); 1110 (1993) = *Maastricht*, on this, Di Fabio, 'Was der Staatenverbund leisten kann', FAZ, April 6, 1999, p. 11.

<sup>9</sup> Also Schwarze, 'Das schwierige Geschäft mit Europa und seinem Recht' *JZ* 1097 (1998): „Europa leidet mit anderen Worten auch daran, dass es uns zu selbstverständlich geworden ist“; also Kohl, 'Europa auf dem Weg zur politischen Union' in Konrad-Adenauer-Stiftung (ed.), *Europa auf dem Weg zur politischen Union*, 18 (1993), „Es geht jetzt, wenn wir über die politische Einigung Europas reden, um viele wichtige Dinge, aber es geht vor allem um die Frage von Krieg und Frieden, um eine dauerhafte Friedens- und Freiheitsordnung für ganz Europa.“

<sup>10</sup> Art. 14 (ex-Art. 7a) TEC (Treaty of the European Community).

<sup>11</sup> Witness deregulation in utility sectors; See Issing, *Europa: Politische Union durch gemeinsames Geld?* 7 (1995).

<sup>12</sup> As desired by the Member States, see Hirsch, 'Europäischer Gerichtshof und Bundesverfassungsgericht - Kooperation oder Konfrontation?' *NJW* 2463 (1996).

<sup>13</sup> Even though he neither was calling for a blind automatism, see Hallstein, 'Angleichung des Privat- und Prozeßrechts in der EWG', *RABELSZ* 28, 228 (1964); See also Haas, *The Uniting of Europe* 301 (1968).

<sup>14</sup> Already calling for European law to further a common identity: Kramer, 'Europäische Privatrechtsvereinheitlichung' *JBL* 487 (1988); Drob-nig, 'Ein Vertragsrecht für Europa' in *Festschrift Steindorff* 1141 et seq. (1990).

<sup>15</sup> See Coing, *Europäisches Privatrecht*, 2<sup>nd</sup> vol. (1985/89); Zimmermann, *Law of Obligations* (1990); Zimmermann, 'Civil Code and Civil Law' 63 *COLUMBIA J.EUR.L.* 91 (1994); Knütel, 'Rechtseinheit in Europa und römisches Recht', *ZEUP* 248 (1994).

<sup>16</sup> Zimmermann, „Heard melodies are sweet, but those unheard are sweeter.“, *ACP* 193 171, 173 (1993); in agreement Baldus/Wacke, 'Frankfurt locuta, Europa finita' *ZNR* 283 (1995).

<sup>17</sup> Critical of Zimmermann/Wiegand, 'Back to the future' 12 *RJ* 277(1993); Kübler, 'Traumpfad oder Holzweg eines gemeinsamen Europas' 12 *RJ* 307 (1993); Caroni, 'Der Schiffbruch der Geschichtlichkeit' *ZNR* 85 (1994).

<sup>18</sup> Wiegand, 12 *RJ* 281 (1993), at p. 281 emphasizes traffic law; dealt with in more detail in Chap. III below.

<sup>19</sup> Lando/Beale, *Principles of European Contract Law*, Part 1 (1995); Basedow, 'A common contract law for the common market' 33 *CML REV.* 1169 (1996); Bussani/Mattei, 'The Common Core Approach to European Private Law' *COLUMBIA J.EUR.L.* 339 (1997).

<sup>20</sup> European Parliament resolution of 26 May 1989, *OJ* 1989 C 158, 400 = *RABELSZ* 56 (1992), pp. 320 = *ZEUP* 1993, pp. 613; also European Parliament resolution of 6 May 1994, *OJ* 1994 C 205, 518 = *ZEUP* 1995, pp. 669 = *EUZW* 1994, pp. 612.

<sup>21</sup> Haager Symposium of February 28, 1997, „Towards a European Civil Code“; see also Tilmann, 'Towards a European Civil Code' *ZEUP* 595 (1997); Hartkamp/Hesselink/Hondius/Joustra/Perron (eds.), *Towards a European Civil Code*, 2<sup>nd</sup> ed. (1998).

<sup>22</sup> Oppermann, *Europarecht* 2<sup>nd</sup> ed. (1999), para. 1200 et seq.

<sup>23</sup> Also termed *minimum harmonization*.

<sup>24</sup> Mertens, 'Nichtlegislatorische Rechtsvereinheitlichung durch transnationales Wirtschaftsrecht und Rechtsbegriff' 56 *RABELSZ* 222 (1992).

<sup>25</sup> So Kötz, 'Gemeineuropäisches Zivilrecht' in *Festschrift Zweigert* (1981), pp. 481; also 'Rechtsvereinheitlichung – Nutzen, Kosten, Methoden, Ziele' 50 *RABELSZ* 1 (1986); similarly, Coing *NJW* 937 (1990); Hommelhoff, 'Zivilrecht unter dem Einfluß der Rechtsangleichung' 192 *ACP* 102 (1992); Taupitz *Europäische Privatrechtsvereinheitlichung heute und morgen* 45 (1992); Blaurock, 'Europäisches Privatrecht' *JZ* 270 (1994).

<sup>26</sup> Council Directive 76/207/ECC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. OJ 1976, L 39, 40. In Germany implemented by § 611a of the German Civil Code (Bürgerliches Gesetzbuch - BGB).

<sup>27</sup> Kötz, 'Gemeineuropäisches Zivilrecht' in *Festschrift Zweigert* (1981); Remien, 'Ansätze für ein Europäisches Vertragsrecht' 87 ZVGLRWISS 105(1988); also 'Über den Stil des europäischen Privatrechts - Versuch einer Analyse und Prognose' 60 RABELSZ 1(1996).

<sup>28</sup> The opening clause is contained in Art. 13 Council Directive 85/374/ECC of 25.7.1985 on the approximation of the laws, regulations and administrative Provisions of the Member States concerning liability for defective products, OJ 1985 L 210, 29. Council Directives you find under <http://www.europa.eu.int>. A list of important directives of civil law one can find in English, French and German under <http://www.jura.uni-augsburg.de/moellers>.

<sup>29</sup> Thus, e.g., restitution of „Weiterfresserschaden“ according to § 1 ProdHaftG (Produkthaftungsgesetz) is highly debated, see on this Cahn, in *Münchener Kommentar*, 3<sup>rd</sup> ed. (1997), § 1 ProdHaftG para. 10.

<sup>30</sup> BGH 19.11.1991, BGHZ 116, 104 = NJW 1039 (1992); BGH 9.5.1995, BGHZ 129, 353, 364 = NJW 2162 (1995); BGH 26.5.1998, BGHZ 139, 43, 46 = JZ 50 (1999). S. for more details Möllers, JZ 24 ff. (1999); Möllers, VersR 1177 ff. (2000). In contrast a.A. Foerste, in: *Produkthaftungshandbuch*, 2. Aufl. 1999, § 91.

<sup>31</sup> Federal Supreme Court (Bundesgerichtshof = BGH), dec. of 26.11.1968, BGHZ 51, 91 = NJW 1969, p. 269 with annotations by Diederichsen = JZ (1969), p. 387 with annotations by Deutsch - *Hühnerpest*.

<sup>32</sup> In the meantime non-economic claims has been called for at the 62<sup>nd</sup> Deutsche Juristen Tag (DJT); see individual decisions in NJW 117 (1999); see also *Referententwurf eines Zweiten Gesetzes zur Änderung schadensersatzrechtlicher Vorschriften*, BT-Dr. 13/10435; also Deutsch, 'Über die Zukunft des Schmerzensgeldes' ZRP 291 (1998).

<sup>33</sup> Fourth Council Directive 78/660/EEC of 25.7.1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ 1978 L 222, 11; also Seventh Council Directive 83/349/EEC of 13.6.1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts, OJ 1983 L 193, 1; implemented in Germany by means of the *Bilanzrichtliniengesetz* v. 19.12.1985, BGBl. I 2355, in §§ 242, 264 *et seq.* Handelsgesetzbuch (HGB); on this Assmann/Buck, 'Europäisches Kapitalmarktrecht' EWS 120 (1990).

<sup>34</sup> § 264 (2)(1) BGB; See Baumbach/Hopt, *HGB*, 29<sup>th</sup> ed. (1995), § 264 para. 9; Morck, in Koller/Roth/Morck (eds.), *HGB* (1996), § 264 para. 6; on its origins in s. 149 ss. 1 Companies Act 1948 see Alsheimer, 'Das den

tatsächlichen Verhältnissen entsprechende Bild der Vermögens-, Finanz- und Ertragslage. Angelsächsische Rechtstradition und deutsches Bilanzrecht' RIW 645 (1992).

<sup>35</sup> Grund, 'Internationale Entwicklung und Bilanzrecht - Reform oder Resignation?' DB 1293(1996); the care principle in Art. 31 (1) lit. c Consolidated Accounts Regulation *supra* n. 33.

<sup>36</sup> Baumbach/Hopt *supra* n. 34, § 243 para. 5.

<sup>37</sup> Critically Baumbach/Hopt, *supra* n. 34, § 253 para. 28; Moxter, *Bilanzlehre*, vol. 2 (1986), pp. 75; Budde, 'Bilanzrecht und Kapitalmarkt', in *Festschrift Moxter* 48 (1994); Kübler, 'Institutioneller Gläubigerschutz oder Kapitalmarkttransparenz?, Rechtsvergleichende Überlegungen zu den „stillen Reserven“' 159 ZHR 560 (1995).

<sup>38</sup> On the attempt of the International Accounting Standards Committee (IASC), to supplement the fourth and seventh EC-Directive, see Clausen, 'Glosse: So mußte es kommen: Über die Situation des deutschen Rechnungslegungsrechts' AG 278 (1993); Havermann, 'Bilanzrecht und Kapitalmarkt', in *Festschrift Moxter*, 656 at 668 *et seq.* (1994).

<sup>39</sup> The FRG was prosecuted before the ECJ in 19 cases in 1997; also 35 reasoned statements and 121 warnings, see also the evidence given by Schwarze JZ 1998, pp. 1077; France failed to implement the *Product Liability Directive* (s. n. 28), and was sanctioned by the ECJ, C-291/91, dec. of 13.1.1993, (1993) ECR I-1 - *Commission v. France*.

<sup>40</sup> Council Directive 84/450/EEC of 10.9.1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States on misleading advertising, OJ 1984 L 250, 17.

<sup>41</sup> Pointing at the opening clause of Art. 7 of the Directive, Baumbach/Hofermehl, *UWG*, 19<sup>th</sup> ed. (1996), Einl., para 25; Schricker, 'Die europäische Angleichung des Rechts des unlauteren Wettbewerbs' GRUR Int. 771 (1990); Lindacher, in *Großkommentar UWG*, 5<sup>th</sup> supplement (1992), § 3 para. 13; more careful on this, Köhler, 'Irreführungsrichtlinie und deutsches Wettbewerbsrecht' GRUR Int. 396 (1994); emphasizing the conformity of § 1 UWG (Gesetz gegen den unlauteren Wettbewerb) with the Directive.

<sup>42</sup> Directive 97/55/EC of European Parliament and of the Council of 6.10.1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, OJ 1997 L 290, 18.

<sup>43</sup> BGH, dec. of 5.2.1998, BGHZ 138, 55 = NJW (1998), p. 2208 = EuZW (1998), p. 474 - *Testpreisangebot*; BGH, dec. of 23.4.1998, NJW (1998), p. 3561 - *Preisvergleichsliste II*; on the correction of the ruling, Leible/Sosnitza, 'Richtlinienkonforme Auslegung vor Ablauf der Umsetzungsfrist und vergleichende Werbung' NJW 2507 (1998); see also the previous Austrian ruling OGH 26.6.1990, GRUR Int. 225 (1991).

<sup>44</sup> ECJ, 29/84, dec. of 23.5.1985, (1985) ECR 1661 – German hospital personnel; s. also ECJ, 217/97, dec. of 9.9.1999, (1999), – Commission/Germany, (1999) ECR I 5087 (34) = NVwZ (1999) 1209.

<sup>45</sup> Larenz, *Methodenlehre der Rechtswissenschaft*, 6<sup>th</sup> ed. 431 (1991); Köhler, 'Gesetzesauslegung und 'gefestigte höchstrichterliche Rechtsprechung'' JR 45 (1984).

<sup>46</sup> § 2 UWG in the version of 1.9.2000, BGBl. I 1374.

<sup>47</sup> Among numerous politicians Cass, 'The word that saves Maastricht?', The principle of subsidiarity and the division of powers within the EC' 29, CMLREV. 1079 *et seq.* (1992).

<sup>48</sup> Böckenförde *supra* n. 4, at 48; similarly Adam, 'Wo eine Wille, gibt es viele Wege. Die Diskussion über die künftige Gestalt Europas muß konkreter werden' FAZ, December 5, 1995, p. 16/17; also Shonfield, *Europe: Journey to an Unknown Destination* (1973).

<sup>49</sup> Meyer-Cording, 'Die europäische Union als geistiger Entwicklungsprozeß' in *Festschrift Müller-Armack* 307 (1961).

<sup>50</sup> See for example British government demands for global bank supervision by a committee or G-10 Secretariate to extension of the committee of Basel, FAZ, October 2, 1998, p. 16; also Wolgast, 'Die Finanzkrise verlangt nach einer globalen Bankenaufsicht', FAZ October 3, 1998, p. 18.

<sup>51</sup> See the Daimler-Chrysler merger.

<sup>52</sup> Similarly Art. 5 (2) (ex-Art. 3b para. 2) TEC, „...insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of scale or effects of the proposed action, be better achieved by the Community“.

<sup>53</sup> On negative aspects of the subsidiarity principle and further reading see Armin von Bogdandy/Martin Nettesheim in Grabitz/Hilf; *Kommentar zur Europäischen Union*, Looseleaf Collection (updated in 1998), Art. 3b para. 19 *et seq.*; A.G. Toth, 'The Principle of Subsidiarity in the Maastricht Treaty' 29 CMLREV. 1079 *et seq.* (1992).

<sup>54</sup> Wieacker, in Behrends/Diesselhorst/Voss, *Römisches Recht in der europäischen Tradition*, 358; also Coing, *Europäisches Privatrecht*, vol. 1 (1985), pp. 7; also, 'Die Bedeutung der Europäischen Rechtsgeschichte für die Rechtsvergleichung', 32 RabelsZ 32, 11 (1968).

<sup>55</sup> Sir Henry Maine, *Ancient Law* (1864), p. 165.

<sup>56</sup> The Constitution of the United States of America of July 4, 1776.

<sup>57</sup> *Déclaration des Droits de l'Homme et du Citoyen* of August 26, 1789.

<sup>58</sup> On the historical development see Oestreich, *Geschichte der Menschenrechte und Grundfreiheiten im Umriß*, 2<sup>nd</sup> ed. (1978); it is unnecessary to distinguish between Americanisation or an independently European basic rights based in the French Enlightenment, cf. Schnur (ed.), *Zur Geschichte der Erklärung der Menschenrechte* (1994).

<sup>59</sup> Wieacker, *supra* n. 52, *ibid.* at 360; Schulze, 'Gemeinsames Privatrecht und Rechtsgeschichte', in Müller-Graff (ed.) *Gemeinsames Privatrecht in der europäischen Gemeinschaft* 73 (1993).

<sup>60</sup> For an overview see Roxin, *Strafrecht, Allgemeiner Teil*, vol. 1, 2<sup>nd</sup> ed. (1994), § 5.III para. 14 - 16.

<sup>61</sup> Cf. Art. 6 (1) TEU.

<sup>62</sup> Börner, in *Festschrift Kegel* 381 (1977).

<sup>63</sup> ECJ, 4/73, dec. of 14.5.1974, (1974) ECR 491 = NJW (1975), p. 518 – Nold; see also ECJ, 29/69, dec. of 12 November 1969, (1969) ECR 419 – Stauder in an obiter dictum. See also Rengeling, *Grundrechtsschutz in der Europäischen Gemeinschaft* 223 and n. 172 (1993).

<sup>64</sup> Oppermann, *supra* n. 22, para. 483; ECJ, 120/73, dec. of 11.12.1973, (1973) ECR 1481 – two months' notice.

<sup>65</sup> Frowein/Peukert, *EMRK-Kommentar* (1985), Art. 6 para. 98 *et seq.* for further reading; Schmidt-Aßmann, 'Verfahrensgarantien im Bereich des öffentlichen Rechts' EuGRZ (1988), pp. 577, at p. 583. On legal protection as element of common constitutional tradition, ECJ, 222/86, dec. of 15.10.1987, (1987) ECR 4097 – Heylens.

<sup>66</sup> Iglesias, 'Zu den Grenzen der verfahrensrechtlichen Autonomie der Mitgliedstaaten bei der Anwendung des Gemeinschaftsrechts' EuGRZ 289 (1997); also, NJW 1 (1999); Kakouris, 'Do Member States Possess Judicial Procedural 'Autonomy'?' 34 CMLREV. 1389 (1997).

<sup>67</sup> <http://www.jura.uni-augsburg.de/moellers>.

<sup>68</sup> Weber, 'Die Europäische Grundrechtscharta – auf dem Wege zu einer europäischen Verfassung', NJW 537 (2000); Lenaerts, 'Respect For Fundamental Rights as a Constitutional Principle for the European Union', 6 COLUMBIA J.EUR.L. 1 (2000); Kay, 'The European Human Rights System as a System of Law', 6 COLUMBIA J.EUR.L. 55 (2000).

<sup>69</sup> Art. 6 und Art. 174 (2) (1) (ex-Art. 130r) TEC.

<sup>70</sup> For an overview Krämer, *Focus on European Environmental Law* (1992); Epiney, *Umweltrecht in der Europäischen Union* (1997); Epiney/Möllers, *Freier Warenverkehr und nationaler Umweltschutz* (1992); recently Rengeling (ed.), *Handbuch zum europäischen und deutschen Umweltrecht*, 2 vol. (1998).

<sup>71</sup> Recent cases for example the Decision of European Commission of 28.1.1998, OJ 1998 L 124, 60 – Volkswagen; Creutzig, 'Zum Fortbestand des selektiven und exklusiven Vertriebssystem der VW AG nach der Kartellentscheidung der Kommission' EuZW 293 (1998).

<sup>72</sup> Successfully corrected by the earlier Competition Commissioner Van Miert. However, competition law on the European level must to an ex-



tent be made more effective, see Wessling, 'Subsidiarity in Community Antitrust Law: Setting the Right Agenda' 22 ELR 35 (1997); Ehlermann, 'Reflections on a European Cartel Office' 32 CMLREV. 471, 478 (1995).

<sup>73</sup> See the Commission report on the application of competition law between EC and US- government in the time of January 1 until December 31, 1997, DAJV-Newsletter 1998, p. 104; Fiebig, 'The Extraterritorial Application of the European Merger Control Regulation' 5 COLUMBIA JEUR.L. 79 *et seq.* (1999); as European law is not always sufficient to counteract the disadvantageous consequences of dominant market position abuse, consideration has been given to a global cartel law, Fikentscher/Heinemann, 'Der „Draft International Antitrust Code“ - Initiative für ein Weltkartellrecht im Rahmen des GATT' WuW 97 (1994); Fikentscher/Drexler, 'Der Draft International Antitrust Code - Zur institutionellen Struktur eines künftigen Weltkartellrechts' RIW 93 (1994); Basedow, *Weltkartellrecht* (1998).

<sup>74</sup> See Art. 153 (ex-Art. 129a) TEC.

<sup>75</sup> For example ECJ, C-373/90, dec. of 16.1.1992, (1992) ECR I-131 = EuZW (1993), 544 – *Nissan*; see also the opinion of General Advocate Giuseppe Tesauro, p. 145. Recently Niemöller, *Das Verbraucherleitbild in der Rechtsprechung des BGH und des EuGH*, Diss. Augsburg (1999).

<sup>76</sup> Art. 152 (ex-Art. 129) TEC.

<sup>77</sup> Title VIII (ex- Title VIa) = Arts. 125 TEC.

<sup>78</sup> Art. 7 TEU.

<sup>79</sup> The members of the Council of Europe acceded to the European Convention on Human Rights as early as 1950, see Oppermann, *supra* n. 22, para. 15.

<sup>80</sup> Art. 49 TEU.

<sup>81</sup> Art. 6 (ex -Art. F) (2) and the Protocol No. 6 (Abolishment of the Death Penalty) to the European Convention for the Protection of Human Rights and Fundamental Freedoms, about the Abolishment of the Death Penalty, 28 April, 1983, implementation for Germany is to be found in BGBl. 1983 II, p. 662, amended by protocol No. 11, 5 November 1994, as for Germany: BGBl. 1995 II, p. 578. On US-American law see Rasnic, 'The U.S. Constitution: Supreme Court Decisions and Capital Punishment' DAJV-Newsletters 101 (1999).

<sup>82</sup> The FRG and EU called for stricter reduction of CO<sub>2</sub>-emissions than the USA and Japan, see on that Bail, 'Das Klimaschutzregime nach Kyoto' EuZW 457 (1998).

On the previous conferences in Rio de Janeiro and Berlin see Bundesministerium für Umwelt (BMU) (ed.), *Konferenz der Vereinten Nationen für Umwelt und Entwicklung im Juni 1992 in Rio de Janeiro - Dokumente, Agenda 21*; Findley/Farber, *Cases and Materials on Environmental Law* 4<sup>th</sup> ed., 1995, p. 22; Müller Kraenner, 'Wie geht's weiter nach der

Berliner Klimakonferenz?' in *Jahrbuch Ökologie* 1996 at 43 (1995); An overview of international agreements is to be found in the Internet at <http://www.law.ecel.uwa.edu.au/intlaw/environment.html>.

<sup>83</sup> See *supra* n. 6 *et seq.*

<sup>84</sup> Brzeinski, *Die einzige Weltmacht* (1997).

<sup>85</sup> For example product liability, insolvency, capital market and company laws; see Wiegand, 'The Reception of the American Law in Europe' 39 AM.J.COMPL. 229 (1991).

<sup>86</sup> Eggers, 'Die Entscheidung des WTO Appellate Bodys im Hormonfall', EuZW 147 (1998). Further examples are to be found in Czempel, 'Die USA und Westeuropa: Asymmetrie, Interdependenz, Kooperation' in Knapp/Krell (eds.) *Einführung in die internationale Politik*, 3<sup>rd</sup> ed. (1993), p. 85; FAZ, May 5, 1999, p. 13.

<sup>87</sup> Earlier called: co-operation in the fields of justice and home affairs (CJHA)

<sup>88</sup> See Böckenförde, *supra* n. 4, 27, for further discussion, *ibid.* n. 29.

<sup>89</sup> Oppermann, JZ 325 (1999).

<sup>90</sup> For the Near and Middle East see Steinbach/Hacke, 'Auf ewig der Juniorpartner Amerikas?' FAZ, May 15, 1999, p. 11, for the Balkans see Vollmer, 'Der Tag danach' FAZ, May 11, 12 (1999).

<sup>91</sup> Oppermann, JZ 325 (1999).

<sup>92</sup> Concerning Thon's *Imperativentheorie* cf. Thon, *Rechtsnorm und subjektives Recht* (1878); Fikentscher, *Methoden des Rechts*, vol. 4 (1977), 150; Engisch, *Einführung in die Rechtswissenschaft*, 8<sup>th</sup> ed. 200 (1983); Llewellyn, 'The Normative, the Legal, and the Law-Jobs' 49 Yale L.F. 1355 (1939/40); Möllers, 'Die Rolle der Verhaltensforschung für das Umweltrecht - Ein Beitrag zur Berücksichtigung menschlicher Verhaltensweisen bei der Steuerung umweltgerechten Verhaltens durch Aufklärung und Rechtszwang' in *Festschrift Wolfgang Fikentscher* 144 (1998).

<sup>93</sup> According to statistics of BVerfG, dec. of 12.10.1993, BVERFGE 89, 155, at p. 172 = NJW (1993), p. 3047 – Maastricht; Odersky, 'Rechtsfragen zur Anwendung von Recht der Europäischen Gemeinschaft im Mitgliedsstaat' ZEuP 485 (1998); cited by the BVerfG, Jacques Delors, in a speech hold before the European Parliament on July 4, 1988, Bull. EC 1988 No. 7/8, p. 124, said that in ten years 80% of economic, tax and social laws would be Community law.

<sup>94</sup> See Remien, 60 RabelsZ 13 (1996). In the meantime the readiness to discuss directive drafts in legal journals is increasing.

<sup>95</sup> Negative aspects of subsidiarity emphasized in *Handbuch zur Vorbereitung von Rechts- und Verwaltungsvorschriften* 20.12.1991, BAnz. 1992, Beilage 52, 14.3.1992.



<sup>96</sup> Besides that French elite institutions such as ENA and École polytechnique produce excellent administrative officials for EC institutions each year; See Remien, 60 *RabelsZ* 12 (1996).

<sup>97</sup> 'Circulaire relative aux relations entre les administrations françaises et les institutions de l'Union européenne', OJ (21/03/1994) p. 4783 Annex IV: *Aspects juridiques*.

<sup>98</sup> The Commission has now recognized this goal and produced guidelines, see the initiative „Better Lawmaking“, Bull. E.U. 1/2-1996, 1.10.11. also Bull. E.U. 11-1995, 1.9.2; Entschließung zur Transparenz des Gemeinschaftsrechts und der Notwendigkeit seiner Kodifizierung OJ 1994 C 205, 514; on this Enriquez, 'The Policymaker's Perspective on Administrative and Regulatory Reform in Europe' 4 *COLUMBIA J.EUR.L.* 617, 624 (1998); Timmersmann, 'How Can One Improve the Quality of Community Legislation', 34 *CMLREV.* 1229 *et seq.* (1997); Bieber/Amr-arelle, 'Simplification of European Law', 5 *COLUMBIA J.EUR.L.* 15 *et seq.* (1999).

<sup>99</sup> See above Chap. II.2.b.

<sup>100</sup> Eidenmüller, *Effizienz als Rechtsprinzip* (1995).

<sup>101</sup> See copyright for artists under draft directive OJ 1996 C 178, 16, Schmidtchen/Kobolt/Kirstein, 'Rechtsvereinheitlichung beim „droit de suite“?' in *Festschrift Fikentscher* 774 (1998).

<sup>102</sup> Pfeifer, *Produktfehler oder Fehlverhalten des Produzenten, Das neue Produkthaftungsrecht in Deutschland, den USA und nach der EG-Richtlinie* (1987), pp. 118; criticism of the directive is to be found in Schwartz, 'Product Liability and Medical Malpractice in Comparative Context' in Huber/Litan (eds.), *The Liability Maze, The Impact of Liability Law on Safety and Innovation* (1995), pp. 28; s. also *supra* n. 28.

<sup>103</sup> Gerber, 'Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the „New“ Europe' 41 *AM.J.COMPL.* 25 (1994).

<sup>104</sup> Council Directive 86/653/ECC of 18.12.1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, OJ 1986 L 382, 17. A number of states had already followed German law, see Baumbach/Hopt, *supra* n. 34, § 84 para. 2.

<sup>105</sup> Borgsmidt, 'The Advocate General at the European Court: A Comparative Study' 13 *Eur.L.Rev.* 106 (1988).

<sup>106</sup> Council Directive 90/313/ECC of 7.6.1990 on the freedom of access to information on the environment, OJ 1990 L 158, 56; cf. Burmeister/Winter, 'Akteneinsicht in der Bundesrepublik' in Gerd Winter (ed.) *Öffentlichkeit von Umweltinformationen, Europäische und nordamerikanische Rechte und Erfahrungen* (1990).

<sup>107</sup> Cf. Council Regulation 1836/93/ECC of 29.6.1993, allowing voluntary participation by companies in the industrial sector in a community eco-

management and audit Scheme, OJ 1993 L 168, 1.

<sup>108</sup> Council Directive 93/22/EEC of 10.5.1993 on investment services in the securities field, OJ 1993 L 141, 27.

<sup>109</sup> Koller, in Assmann/Schneider (eds.), *WpHG*, 2<sup>nd</sup> ed. (1999), § 31 para. 81. Further examples in Hopt, 'Company law in the European Union: Harmonization and/or Subsidiarity, 1 *INTERNATIONAL & COMP.CORPORATE L.J.*, 41 (1999); Remien, 60 *RABELSZ* 7 (1996).

<sup>110</sup> See for example Buxbaum/Hopt, *Legal Harmonization and the Business Enterprise – Corporate and Capital Market Law Harmonization Policy in Europe and the USA* (1988); Eckard Reh binder/Richard Stewart, *Environmental Protection Policy* (1985).

<sup>111</sup> Green Papers are communications published by the Commission on a specific policy area. In some cases they provide an impetus for subsequent legislation. White Papers are documents containing proposals for Community action in a specific area. They often follow a Green Paper published to launch a consultation process at European level. While Green Papers set out a range of ideas presented for public discussion and debate, White Papers contain an official set of proposals in specific policy areas and are used as vehicles for their development; see, e.g., Green Paper on remedying environmental damage COM (93) 47 = OJ 1993 C 149, 12.

<sup>112</sup> See, e.g., 'Completing the Internal Market', White Paper from the Commission to the European Council of 28-29 June 1985, COM (85) 310.

<sup>113</sup> On Environment Protection see 5<sup>th</sup> Action program, OJ 1993 C 328, 1 = COM (95) 647.

<sup>114</sup> See above note 19.

<sup>115</sup> Critical of previous procedures Oppetit, 'Droit commun et droit européen' in *L'internationalisation du droit, Mélanges en l'honneur de Yvon Loussouarn* 313 (1994), 'le droit européen apparaît essentiellement non pas comme un mode de pensée, mais comme un ensemble de normes, qui traduit parfaitement l'esprit despotisme éclairé et qui révèle une volonté d'organisation de la vie des peuples européens en termes purement quantitatifs et en fonction de critères exclusivement matériels'.

<sup>116</sup> In this context the harmonization requirement must be detailed. For consumer law 'Editorial Comments' 34 *CML Rev.* 207, 211 (1996).

<sup>117</sup> Thus Everling, 'Rechtsvereinheitlichung durch Richterrecht in der Europäischen Gemeinschaft' 50 *RabelsZ* 194 (1986); Taupitz, *Europäische Privatrechtsvereinheitlichung heute und morgen* 60 (1992); von Bogdandy/Ehlermann, 'Consolidation of the European Treaties: feasibility, costs, and benefits' 33 *CMLRev.* pp. 1107 (1996); Gormley (ed.), *Introduction to the Law of the European Communities*, 3<sup>rd</sup> ed. 1380 (1998).

<sup>118</sup> CFI, T-194/94, dec. of 19.10.1995, (1995) ECR II-2765 = *EuZW* (1996), pp. 152 with annotations by Christoph Sobotta – *John Carvel*; ECJ, C-

58/94, dec. of 30.4.1996, (1996) ECR I-2169 = EuZW (1996), pp. 499, 501 – *Access to Council documents*; Kahl, 'Das Transparenzdefizit im Rechtsetzungsprozeß der EU' ZG 227 (1996).

<sup>119</sup> Recently on these individual principles Kahl, *supra* n.118 at 233; Dreher, 'Transparenz und Publizität bei Ratsentscheidungen' EuZW 491 (1996).

<sup>120</sup> Iglesias, NJW 1 (1999).

<sup>121</sup> See above note 63 *et sec.*

<sup>122</sup> For the comparative law aspects see Bochart, in Lenz (ed.) *EG-Vertrag, Kommentar* (1994), Art. 164 para. 24; Remien, 60 RabelsZ 28 (1996); For the lack of comparative law considerations Daig, 'Zur Rechtsvergleichung und Methodenlehre im Europäischen Gemeinschaftsrechts' in *Festschrift Zweigert* 395, 412 (1981).

<sup>123</sup> Dale, *Legislative Drafting. A New Approach. A Comparative Study of Methods in France, Germany, Sweden, United Kingdom* (1977); Karpen/Delnoy (eds.), *Contributions to the Methodology of the Creation of Written Law* (1996); Karpen/Wenz (eds.), *National Legislation in the European Framework* (1998).

<sup>124</sup> Bieber, 'Die Europäisierung des Verfassungsrechts', in Kreuzer/Scheuing/Sieber (ed.), *Die Europäisierung der mitgliedstaatlichen Rechtsordnungen in der Europäischen Union* 81 *et seq.* (1997).

<sup>125</sup> See BGBl. I, p. 122.

<sup>126</sup> Council Directive 85/577/EEC of 20.12.1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ 1985 L 372, 31. Or on the Concepts „Information“ and „Fact“ in Council Directive 89/592/EEC of 13.11.1989 coordinating regulations on insider dealing, OJ 1989 L 1, 403 and in § 15 Wertpapierhandelsgesetz (WpHG) see Grundmann, 'EG-Richtlinien und nationales Recht' JZ (1996), pp. 274 at p. 284; also Möllers, 'Anlegerschutz durch Aktien- und Kapitalmarktrecht, Harmonisierungsmöglichkeiten nach geltendem und künftigem Recht', ZGR 334, 347 (1997).

<sup>127</sup> See BGH, dec. of 11.1.1996, IX.Senat, C-45/96, OJ 1996 C 96, 13 = NJW 930 (1996); with annotations Pfeiffer *ibid.*, p. 3297 = EuZW 220 (1996), – *request for preliminary ruling*: HaustürWG und Bürgschaft; EuGH, C-45/96, dec. of 17.3.1998, (1998) ECR I-1199, NJW 1298 (1998) = EuZW 252 (1998), w. ann. Micklitz - Dietzinger (*HaustürWG für Bürgschaften*).

<sup>128</sup> See above Chap. I.2.c); in contrast Hommelhoff, 'Teilkodifikation im Privatrecht - Bemerkung zum Produkthaftungsgesetz' in *Festschrift Rittner* (1991), pp. 165 at 183; Drexler, *Die wirtschaftliche Selbstbestimmung des Verbrauchers*, 76 (1999), that it made sense to enact the product liability law outside the BGB because the legislative process was not complete. Möllers, 'Nationale Produzentenhaftung oder Europäische Produkthaftung?', Zur Bindung der Rechtsprechung im Rahmen der de-

liktsrechtlichen Generalklausel an die Vorgaben des ProdHaftG und des ProdSG, VersR 1177 (2000).

<sup>129</sup> So the former prevailing opinion, see Wiese, 'Verbot der Benachteiligung wegen des Geschlechts bei der Begründung eines Arbeitsverhältnisses' JuS 357 (1990); Ehmann, in Erman, *BGB*, 9<sup>th</sup> ed. (1993), Anh. zu § 12 para. 372; Hanau, *ibid.*, § 611a Rdn. 16; Herrmann, 'Die Abschlußfreiheit - ein gefährdetes Prinzip', ZfA 19, 44 (1996); for a non-economic claim under § 823 para. 1, 847 BGB see Bundesarbeitsgericht (BAG) 14.3.1989, BAGE 61, 209 = NJW 67 (1990) = JZ 43 (1991) - § 611a and *personal injury* as a result of ECJ, 14/83, dec. of 10.4.1984, (1984) ECR 1891 – *von Colson und Kamann*; supporting the BAG judgment Beyer/Möllers, 'Europäisierung des Arbeitsrechts', JZ 24, 28 (1991); Iglesias/Riechenberg, 'On a directive conform construction of national law' in *Festschrift Everling* 1213, 1217 (1995), in support Hommelhoff, 192 AcP 71, 97 (1992).

<sup>130</sup> See Tonner, 'Die Rolle des Verbraucherrechts bei der Entwicklung eines europäischen Zivilrechts', JZ 533, 536 (1996); recently Ebel, 'Kodifikationsidee und zivilrechtliche Nebengesetze' ZRP 46 (1999).

<sup>131</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25.5.1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ 1999 L 171, 12; for the draft see Hondius, 'Kaufen ohne Risiko: Der europäische Richtlinienentwurf zum Verbraucherkau und zur Verbrauchergarantie' ZEuP 130 (1997); Schlechtriem, 'Verbraucherkauverträge - ein neuer Richtlinienentwurf' JZ 441 (1997).

<sup>132</sup> Schmidt-Kessel, 'Zahlungsverzug im Handelsverkehr – ein neuer Richtlinienentwurf', JZ 1135 (1998), and Möllers, 'Das Gesetz zur Beschleunigung fälliger Zahlungen und die Richtlinie zur Bekämpfung des Zahlungsverzugs im Geschäftsverkehr - Zugleich ein Beitrag zur Sinnhaftigkeit des Vorpreschens des deutschen Gesetzgebers', WM 2284 (2000).

<sup>133</sup> Kübler, 'Kodifikation und Demokratie', JZ 645-48 (1969); following this thought Hommelhoff, in *Festschrift Rittner* 165, 182 (1991); Drexler, *supra* n. 128, at 75.

<sup>134</sup> For the implementation of Council Directive 93/13/EEC of 5.4.1993 on unfair terms in consumer contracts, OJ 1993 L 95, 29 through Art. 1469 codice civile see, e.g., Micklitz/Brunetta d'Usseaux, 'Die Umsetzung der Richtlinie 93/13 in das italienische Recht', ZEuP 104 (1998); before a control could be based on Art. 1341 *et sec.* codice civile.

<sup>135</sup> For a survey see Drobnig, 'Das neue niederländische bürgerliche Gesetzbuch aus vergleichender und deutscher Sicht', Eur.Rev.P.L. 1, 171 (1993); Hartkamp, 'Einführung in das neue Niederländische Schuldrecht', 191 AcP 396 (1991).

<sup>136</sup> For the integration of credit sales and employment law into the law of obligations, see Art. 319 - 362 OR and Art. 226a - 228 OR.

<sup>137</sup> Sechstes Gesetzes zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen 8.5.1998, Bundesrat-Drucksache 418/98; Bechtold, 'Das neue Kartellgesetz', NJW 2769 (1998).

<sup>138</sup> Now its for the most part following the *Übereinkommen über den Beförderungsvertrag im internationalen Straßengüterverkehr* (CMR) 19.5.1956, BGBl. II 1961, S. 1119; see Basedow, 'Hundert Jahre Transportrecht: Vom Scheitern der Kodifikationsidee und ihrer Renaissance', 161 ZHR 186 (1997).

<sup>139</sup> On reform of the law of obligations (*Schuldrecht*) see Bundesministerium der Justiz (BMJ) (ed.), *Abschlußbericht der Kommission zur Überarbeitung des Schuldrechts* (1992); Roland, Medicus, Haas, Rabe in NJW 2377-2400 (1992); see also Resolutions of DJT, NJW 3083 (1994).

<sup>140</sup> The different draft bills of the Contract Law Modernization Act (*Schuldrechtsmodernisierungsgesetzes*) can be found under „http://www.bmj.bund.de“ and „http://jura.uni-augsburg.de/moellers“.

<sup>141</sup> Obviously, the time pressure arising from this schedule has led to numerous technical defects of the draft. Critical insofar Ernst/Zimmermann (ed.), *Zivilrechtswissenschaft und Schuldrechtsreform*, (2001); for an overview to the delayed payment see Möllers, WM 2284 (2000).

<sup>142</sup> Conseil d'Etat v. 28.2.1992, *Société Anonyme Rothmanns International v. Société Anonyme Philip Morris France*; *Société Arizona Tobacco Products v. Société Anonyme Philip Morris France* 30 CMLRev. 187 (1993); Tomlinson, 'Reception of community Law in France' 1 Columbia JEur.L. 183 (1995).

<sup>143</sup> Levitsky, 'The Europeanization of the British Legal Style' 42 Am.J.Com.L. 347, 351 (1994) for construction principles: „literal, contextual, historical and teleological or purposive“; Lewis, 'A Common Law Fortress Under attack: Is English Law Being Europeanized?' 2 Columbia JEur.L. 1 et sec. (1996); previously English law had no general principle of „good faith“. It is expected that such a principle will be developed in implementing the Unfair Terms Directive (n. 134).

<sup>144</sup> Thus Zweigert/Kötz, *Einführung in die Rechtsvergleichung*, 3<sup>rd</sup> ed. 265 (1996).

<sup>145</sup> Beginning with the wording „Attendu que“, examples are to be found in Everling, EuR 127, 132 (1994); Zweigert/Kötz, *supra* n. 144, at 121; Kötz, *Über den Stil höchstrichterlicher Entscheidungen* 7 (1973).

<sup>146</sup> S. § 1-102 Abs. 1 UCC; *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg* (1975) AC 591, 613; Bankowski/MacCormick, 'Statutory Interpreting in the United Kingdom' in MacCormick/Summers (eds.), *Interpreting Statutes. A Comparative Study* (1991) pp. 359 at 384. Still further *Calabresi*, *A Common Law For The Age Of*

*Statutes*, 1982, pp. 32 *et seq.*: Courts have the power to update statutes. For a fuller exposition see Zweigert/Kötz *supra* n. 144, p. 265 and *supra* n. 143.

<sup>147</sup> Hattenhauer, *Die Kritik des Zivilurteils* (1970), pp. 30, 62, 120; this applies for example to some passages of the Maastricht judgment; see BVerfG, dec. of 12.10.1993, BVerfGE 89, 155, at 188, 210 – *Maastricht*.

<sup>148</sup> See on the concept of „consumer expectations“ in tort law Möllers, *Rechtsgüterschutz im Umwelt- und Haftungsrecht* 255 (1996).

<sup>149</sup> Mimin, *Le style de jugements*, 4<sup>th</sup> ed. 255 (1978); Zweigert/Kötz *supra* n. 144, p. 121; see also Kötz, *supra* n. 145. In contrast to the anglo-american legal systems there is no comparable plain English movement in Germany.

<sup>150</sup> Even though differences in judicial understanding of the application of law should not be concealed, see Llewellyn, *The Bramble Bush* (1930); Dawson *The Oracles of the Law* (1968); Eser, *Grundsatz und Norm in der richterlichen Fortbildung des Privatrechts*, 4<sup>th</sup> ed. (1990); Gordley, 'Common law and civil law: eine überholte Unterscheidung' ZEuP 498 (1993).

<sup>151</sup> Basedow, 33 CMLRev. 1169, 1171 (1996).

<sup>152</sup> Also called principle of interpretation, cf. ECJ, 14/83, dec. of 10.4.1994, ECR 1984, 1891 (28) = NJW (1984) 2021 (23, 28) - von Colson u. Kamann; BVerfG, dec. of 8.4.1987, BVerfGE 75, 223, at 237f; Lutter, 'Die Auslegung angeglichenen Rechts', JZ 1992, pp. 593; Ehrlicke, 'Die richtlinienkonforme Auslegung und gemeinschaftsrechtskonforme Auslegung nationalen Rechts' 59 RabelsZ 598 (1995); Brechmann, *Die richtlinienkonforme Auslegung* (1994).

<sup>153</sup> On the scope of development of law see Möllers, EuR (1998), pp. 20, 44; as here Hergenröder, JZ 1172, 1176 (1997). The legislature has now incorporated the principles of the *Draehmpaehl-decision* of the ECJ, C-180/95, dec. of 22.4.1997, (1997) ECR I-2195, NJW 1839 (1997), JZ 1172 (1997), into a revised § 611a BGB, § 611a BGB amended 29.6.1998, BGBl. I. 1694.

<sup>154</sup> See *supra* n. 120. For further detail on that topic, see Möllers, 'Doppelte Rechtsfortbildung contra legem? Zur Umgestaltung des Bürgerlichen Gesetzbuches durch den EuGH und nationale Gerichte', EuR 20 (1998).

<sup>155</sup> On comparative law as a taught subject, see below IV.2.a).

<sup>156</sup> For example BVerfG, dec. of 14.5.1985, BVerfGE 69, 315, 343 – interpretation of the demonstration code; BGH, dec. of 5.3.1963, BGHZ 39, 124, 132 - non-economic claim after an abuse article; further cases BGH, dec. of 18.1.1983, BGHZ 86, 240 = NJW (1983), 1371 - wrongful life.

<sup>157</sup> See above III.2..

<sup>158</sup> Odersky, 'Harmonisierende Auslegung und europäische Rechtskultur'

ZEuP 1 (1994); in agreement von Bar, 'Vereinheitlichung und Angleichung von Deliktsrecht in der Europäischen Union' 35 ZfRV 221, 231 (1994).

<sup>159</sup> As on directive conform construction and development of law, German textbooks are silent on method-ology. According to Großfeld comparative law has no direct relevance, see Großfeld, 'Vom Beitrag der Rechtsvergleichung zum deutschen Recht' 184 AcP 289, 295 (1984).

<sup>160</sup> Lutter, JZ 593, 604 (1992).

<sup>161</sup> See for example BGH, dec. of 27.2.1992, BGHSt 38, 214 = NJW (1992), p. 1463 - unterlassene Beschuldigtenbelehrung entgegen § 136 (1) (2) StPO.

<sup>162</sup> For the comparative method see the Swiss example; Kramer, *Juristische Methodenlehre* 191 (1998); on Austrian law Bydliński, *Juristische Methodenlehre und Rechtsbegriff*, 2<sup>nd</sup> ed. 461 (1991); Posch, ZEuP 521 (1998).

<sup>163</sup> *Smith v. Littlewoods Organisation Ltd.* (1987) 1 All E.R. 710, 735f; *White v. Jones* (1995) 2 W.L.R. 187 with comparative law comments Lorenz, JZ 317 (1995); *Moore v. Piretta Ltd* (1999) 1 All ER 174.

<sup>164</sup> The TEU and the TEC speak of „peoples“ rather than „the people of Europe“ in both Preambles para. 5; von Simson, 'Was heißt in einer europäischen Verfassung „Das Volk“?' EuR 1,3 (1995); in agreement Böckenförde *supra* n. 4 at 39; Rittner, 'Das Gemeinschaftsprivatrecht und die europäische Integration' JZ 849, 856 (1995).

<sup>165</sup> Art. 6 para. 3 (ex-Art. F) TEU.

<sup>166</sup> According to Art. 151 (ex-128) TEU the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

<sup>167</sup> Legrand, 'Comparer' 48 Revue Internationale de Droit Comparé, 279, 307 (1996).

<sup>168</sup> Thus Stürner, 'Der hundertste Geburtstag des BGB', JZ 741, 752 (1996).

<sup>169</sup> Weiler, 'Journey to an Unknown Destination' 31 Journal of Common Market Studies 417 *et sec.* (1993).

<sup>170</sup> This means identifying historical differences such as varying perspectives on the „nation“ in France, „society“ in Britain, and the „Staat“ in Germany, see Allott, 'The crisis of European constitutionalism: Reflections on the Revolution in Europe' 34 CMLRev. 439, 444, 449 *et sec.* (1997).

<sup>171</sup> Allott, *ibid.* at 488; Weiler, 'Bread and Circus: The State of European Union', 4 Columbia J.Eur.L. 225 (1998).

<sup>172</sup> Pernice in Dreier (ed.) *Grundgesetz Kommentar* vol. 1 (1996), Art. 23 Rdn. 54. It would be helpful to initiate discussion on European basic

rights with the aim of further developing the basic rights canon and incorporating a catalogue of community basic rights in the next EC Treaty revision; see Declaration of the European Parliament about fundamental rights and basic freedoms of 12 April 1989, OJ 1989 C 120, 51; Toth 'The European Union and Human Rights: The Way Forward', 34 CMLRev. 491 (1997); Editorial comments, 'Union without constitution', 34 CMLRev. 1105, 1110 (1997).

<sup>173</sup> Bertelot, 'Babylone à Luxembourg, Jurilinguistique à la Cour de justice' in Ress/Will (ed.), *Vorträge und Berichte aus dem Europa Institut* 3 (1988).

<sup>174</sup> It would be helpful were English or American films to be screened with the original unsynchronized soundtrack and German subtitles. Up to now it is only possible to see them occasionally on a second sound channel; this does not mean neglecting European films contrary to the Television Directive.

<sup>175</sup> Language instruction in schools would be improved by an earlier start, see recently the proposal of Bavarian Culture Minister to teach English from the third grade.

<sup>176</sup> See, e.g., Kötz, 'Zehn Thesen zum Elend der deutschen Juristenausbildung' ZEuP 565 (1996); Stürner, 'Der hundertste Geburtstag des BGB', JZ 741 (1996); also 62<sup>nd</sup> DJT 1998 concerned with legal training, see von Münch, 'Juristenausbildung' NJW (1998), pp. 2324; also Böckenförde, 'Juristenausbildung – auf dem Weg ins Abseits', JZ 317 (1997); Schermers, 'Legal Education in Europe', 30 CMLRev. 9 *et sec.* (1990).

<sup>177</sup> European Parliament, resolution of 20 January 1995, 11<sup>th</sup> annual report No. 9, OJ 1995 C 43, 122, 124.

<sup>178</sup> Against English as a European legal language see Flessner, 'Rechtsvereinheitlichung durch Rechtswissenschaft und Juristenausbildung' 56 RABELSZ 243, 257 (1992); Remien, 'Illusion und Realität eines europäischen Privatrechts', JZ 277, 282 (1992), which do not consider the cultural embedding of the second language.

<sup>179</sup> For the Swedish University in Lund as partner university of Augsburg University see for example lectures on EC-Competition Law Procedure, EC-Court Procedure – Enforcement of Community Law; Free Movement of Goods and Environmental Law; these courses are also attended by Erasmus/Socrates students.

<sup>180</sup> Thus the first private Law College aims at offering lectures in English, see *Hamburger Abendblatt*, June 19, 1999.

<sup>181</sup> The vacancy columns of the national newspapers reveal the demand for good, internationally minded lawyers; German law faculties have not reacted to this need, see Basedow, 'Juristen für den Binnenmarkt - Die Ausbildungsdiskussion im Lichte einer Arbeitsmarktanalyse' NJW 959 (1989).

## The modernization of modern society<sup>1</sup>

Prof. Dr. Christoph Lau

<sup>182</sup> Already attended by foreign post-graduate students. The factory of law has started at the University of Augsburg with such courses.

<sup>183</sup> English can also be used on the level of legal reasoning in the context of directive conform or comparative law deliberations, see above Chap. III.2.b).

<sup>184</sup> See recently Pernice, ZEuP 1 (1998); also Martiny, 'Babylon in Brüssel?', ZEuP 227 (1998).

<sup>185</sup> Puttfarcken, 'Droit commun législatif und die Einheit der Profession. Eine ketzerische Reflexion zur Rechtsvereinheitlichung', 45 RabelsZ 91 (1981); Flessner, 56 RABELSZ 243, 250 (1992).

<sup>186</sup> On sheer text harmonization on „law in the books“ Dreher, 'Kartellrechtsvielfalt oder Kartellrechtseinheit in Europa?', AG 437, 439 (1993); also, 'Wettbewerb oder Vereinheitlichung der Rechtsordnungen in Europa', JZ 105, 111 (1999); Rittner, 'Ein Gesetzbuch für Europa?' in *Festschrift Mestmäcker* 449, 453 (1996).

<sup>187</sup> On guarantors as unremunerated transaction, see *supra* n. 127.

<sup>188</sup> See *supra* n. 150, and Rittner, JZ 849, 853 (1995).

<sup>189</sup> Warning against this fact: Rittner, JZ (1995), pp. 849, 856 v. Walter Hallstein, 28 RABELSZ 228 (1964).

<sup>190</sup> *Supra* Chap. II.2.b)aa. See also Häberle, *Europäische Rechtskultur*, 37 (1994); agreeing with him also Iglesias, NJW 1, 9 (1999); see also Hirsch, 'Gemeinschaftsgrundrechte als Gestaltungsaufgabe', in: Kreutzer/Scheuing/Sieber (Hrsg.), *Europäischer Grundrechtsschutz*, 9 (1998).

<sup>191</sup> Kramer, JBl. 477, 487 (1988); Remien, 87 ZVglRwiss 117 (1988); Drobni, in *Festschrift Steindorff*, 1141, 1148 (1990).

<sup>192</sup> Allott, 'The Crisis of European Constitutionalism: Reflections on the Revolution in Europe', 34 CMLRev. 439, 444, 468f (1997).

<sup>193</sup> For the concept of people see *supra* n. 164.

<sup>194</sup> Thus Pescatore, 'The Doctrine of Direct Effect: An Infant Disease of Community Law' 8 Eur.L.Rev. 155, 157 (1983): „une certaine idée de l'Europe“ as an allusion to, De Gaulle: „une certaine idée de la France“.

<sup>195</sup> Preamble para. 10 TEU.

<sup>196</sup> Thus Flessner, 56 RABELSZ 243, 255 (1992).

<sup>197</sup> Cappelletti/Seccombe/Weiler, *Forces and Potential for a European Identity* (1986); Ward, 'In Search of a European Identity' 57 Mod. L.Rev. 315 et seq. (1994); see also Taylor, *Multiculturalism and „The Politics of Recognition“* 33 (1992).

In international sociology there is a general consensus that we are living in a period of change which might be compared with the industrial revolution. We are living in a network-society, an age of fluid, flexible capitalism. Old institutions, as the nation state and the nuclear family seem to dissolve. New information technologies enable the empowerment of financial market and economic and cultural globalism. Simultaneously uncertainties and ecological dangers increase and demonstrate the limits of technical control and safety.

There are several different interpretations of this rapid and fundamental change ranging from postmodern positions to postcolonialism and a radical neoliberalism. Our Research Group in Munich and Augsburg, including Ulrich Beck and other colleagues from different disciplines, is studying these processes from the perspective of reflexive modernization. In the following I will not refer to these empirical research projects but to our theoretical frame concept.

Reflexive modernization refers to a distinct phase of modernization: the modernization of modern society. When modernization reaches a certain stage it radicalizes itself. It begins to transform, for a second time, not only the key institutions but the very principles of society. To understand this social transformation requires a transformation of social theory.

The social structure of postwar order in western industrial societies should not be absolutized as if it were the end of social history. On the contrary, much of what they once presumed as ne-

cessary now looks contingent. The dominant 'container' model of society, which often identifies society with the nation state, presumes a number of interlocking social institutions.

Among them are: a reliable welfare state; political mass parties anchored in class culture; and a stable nuclear family consisting of a single breadwinner, his housewife, and their children. These institutions are supported by, and in turn support, a web of economic security woven of industrial regulation, full employment and life-long careers. And the entire arrangement is rendered intelligible to its members by a clarity of thought based on several clear distinctions: between society and nature; between established knowledge and mere belief, and between the members of society and outsiders.

Reflexive modernization throws all of these basic social principles into flux. In first modernity, or simple modern society, social change is conceived of as occurring within a stable system of coordinates.

Now - so our presumption - it is the system of coordinates that is changing. But what can 'modern society' mean if not industrial society, if not the nation state? What can modernization mean under such conditions?

Reflexive modernization is radicalized modernization in two senses. In the first place, where simple modernization undermines traditional society, reflexive modernization undermines modern society. In the second place, this process takes place through something we call meta-change. It not only changes the structures that govern change. Unlike traditional society, modern society is always, in all its forms, a society to which constant change is integral. But meta-change is qualitatively different. And the most important element of this is the crumbling of the ideals of certainty and controllability which once were central to the project of modernity. Boundaries and distinctions that once seemed based on essential differences have dissolved, and new boundaries have to be drawn provisionally and artificially, because that is the only sort of social distinction it is now possible to draw.

What are the premises of the primary type of modern society which are undergoing meta-change? By these premises we mean the bases of the explicit or implicit assumptions expressed on the actions and self-understanding of citizens, the goals of politics and the routines of social institutions, the absence of which leads to steering problems, legitimation problems and finally to problems of material maintenance. I will limit myself here to five important points.

1. First modern societies are more or less synonymous with the nation states. They are, although this is often overlooked, defined by territorial boundaries. Therefore, first modern society is always conceived as 'contained' in a national territory and all of its institutions have an integral relation to those of the nation state.

2. The primary type of modern societies distinguish themselves by a programmatic individualism. But this is crucially bounded on several sides by patterns of collective life that are reminiscent of pre-modern structures that determined one's status by birth. It is true that individuals in this society are free and equal and their associations are voluntary. But their freedom and equality is molded by social institutions - for example, the sexual division of labor - that are in many respects coercive.

3. Primary modern societies are what was once called in Europe 'full employment societies' - that is, societies in which unemployment is so low that it can be considered frictional. Status, consumption and social security all flow from participation in the economy, according to a model first propounded in the 18th century and finally realized in the 20th century.

4. Primary modern societies have a particular concept of nature founded on its exploitation. Nature appears as the fully controllable 'outside' of society and is conceived of as a neutral resource which can and must be made available without limitation. This is the prerequisite of an industrial dynamic of affluence which conceives its normal state as one of endless growth.

5. First modern societies unfold themselves on the basis of a scientifically defined concept of rationality, that emphasizes instrumental control. Rational progress is conceived as a process of demystification that can continue without limit. This implies a belief that scientization can eventually perfect the control of nature.

These premises of classical modern society are neither systematic nor complete. But it is possible on this basis to formulate some theses about how the changing structures of societies are affecting them. The same processes of modernization that made them first possible, and then necessary, have eventually rendered them impossible.

The likelihood that first modern society will be the end and culmination of social history is severely put in question by the following processes:

1. Globalization undermines the economic foundations of first modern society; and with it the idea of society as a nation state, this is because structural changes that are often referred to in shorthand as the 'vanishing of borders' have effects far beyond their immediate impact on economy. Globalization also has political and cultural dimensions which, by changing the relation between local and international, and between domestic and foreign, affect the very meaning of national borders, and, with that all the certainties upon which the nation-state society is based.

2. The result of the enforced process of individualization has been the erosion of several ascriptive patterns of collective life, each of which has gradually lost its legitimacy. But individualization has not been leading to a society of isolated singles. It is creating hitherto unknown social forms, while undermining several familiar ones that once lay at the institutional heart of modern society.

3. An important aspect of individualization has been the transformation of gender roles which, by changing the internal relations of families, and dissolving the sexual division of labor, affects the labor markets and the patterns of private life.

4. Flexible employment practices that appeared in the wake of the 'third industrial revolution' express in their chronic form a breakdown in the full employment society and perhaps even in the central significance of gainful employment. In the last two decades, under second modernity conditions, status, consumption and social security choices have become progressively independent of income, and thus of labor force participation.

5. Lastly we must add the political dynamic that is being set in motion through the perception of various elements of a global ecological crisis, which includes the perception of limited resources. The results of the instrumental relation to nature are making it more and more difficult to continue thinking of nature as a neutral and infinite source of resources. Nature is looking less like an outside that we can adapt to our purposes, and more like a part of society.

The meta-change of the structural conditions of modernity is not an intended change planned by revolutionary or utopian elites. And it is not reducible to technological developments alone. It is rather a result of a critical and complex mass of unintended side effects of modernization itself. The continued technical, economic, political and cultural development of global capitalism eventually revolutionizes its own social foundations. By unintended side effects - or more precisely - effects that were originally intended to be more narrow in their scope than they turned out to be, we mean everything that resulted from the boundary shattering force of market expansion, legal universalism and technical revolution - in short the process that Marx once celebrated as that by which 'everything solid melts into air'. Once modernization has been radicalized, it affects all spheres of society.

A good example for the politization of side effects is the manner in which the catastrophic risks of new technologies have caused institutional turbulence. The turbulence in turn has brought forth a global environmental politics that constitutes a new agent and process of transformation.

These unintended side effects (like this) disrupt the normal course of institutional decision making, undercut its rationales, and lead by such means in the direction of restructuring. They work so to speak like sands in the gears. But this also means that, by institutional definition, when they first appear they are ambiguous and incalculable. And it is this, that breeds new forms of politization. This is how the public perception of the BSE crisis led to the fastest passage of laws in the history of the German Republic. Overnight the production and provision of meat and bone meal was made illegal. It was as sudden as the coming down of the Berlin Wall which for decades everyone knew was impossible, until crowds knocked it over like a house of cards.

On this view conflicts between the definition of risk put forth by scientific experts lead to institutional legitimization deficits. Scientific reasoning can no longer solve such situations as it once did, because technical standards of safety are now confronted by the conviction that some things are in principal uncertain. The politization of side effects is then driven forward by the opposed interests of decision makers, profit makers and affected populations. Turbulence is caused in public discourse, by the public reflection on the technical promises of security. In the course of this process, a change in social priorities and expectations has taken place. Risks and expectations of catastrophe now dominate public debate before decisions are made.

However, it is not only unintended side effects that can cause institutional crises. There are other forms of meta-change which I will discuss in the following.

The first of these other mechanisms of meta-change may be called radicalized modernization: The principles of modern society were not until very recently applied to every sphere of social life. Parallel to the processes of marketization, rationalization and the increase of productivity was the re-invention of tradition and community structures. Primary modern society was set in a kind of countermodern bases that damped the dynamics of modernization.

The nuclear family, the non-market roles of woman, ascriptive modes of class assignment, and the nation state all performed social integration functions in primary modern society. All were originally beyond any need for justification. And all were eventually called into question by radicalized modernization, and have lost their taken for granted character. They have become experienced as variable, moldable, and as the product of free choice. And that has brought them under the continual pressure to justify their current form.

On the one hand, the multiplication of possible forms of community, and the dissolution of mechanisms that placed boundaries on peoples choices and assigned them social roles against their will, are continuations of the central and most valued process of modernization - and one which is cherished by countermodernists as well: the emancipation of the individual. On the other hand the loss of neo-traditional forms of community causes uncertainties in the socialisation process, which in turn causes deficits in social integration. Against these deficits are counterposed a large number of attempts to build new secondary forms of community, ranging from youth culture to fundamental ethnic groups. Reflexive modernity can be seen as a vast field of social experiment where, under pressure of globalization, various types of post-traditional social bonds and post-national imagined communities are being tried out in competition with each other. Whether this process will produce community group structures that can stabilize themselves without depending on an appeal to naturalness for their legitimacy, is still an empirically open question.

Another form of meta-change consists in questioning the cognitive basis of primary modernity: Rationalization, the process of increasing the rationality of action and thought, takes for granted the application of unquestioned criteria and assumptions. It is these which determine what, in a given case, in any already differentiated sphere of action or research, will count as rational. A key component of reflexive modernization is that this unquestioned basis of modernization is itself examined in terms of its rationality. This is part of why we characterize it as second order ra-



tionalization. In the course of this reflection on reflection, the assumptions that guaranteed the rationality of various subsystems lose their obviousness and persuasiveness. It becomes ever more clear that every given is in fact a choice, and that at the level of fundamental propositions, such starting points can only be normatively grounded. When applied rigorously, the modern principles of rational justification simply do not work all the way down to the ground.

To the extent that this erosion of the bases of certainty is going to be publicly recognized, space is opened up for alternative forms of knowledge to come into play, such as i.e. intuitive or tacit knowledge. In retrospect, these might always have been at work latently justifying actions and decisions. But they could not previously be used as public justifications. They were considered illegitimate as long as they could not be squared with the dominant scientific model of rationality.

The result of this sort of second order rationalization is a situation in which there no longer are 'one best way'-solutions, but rather several equally valid modes of justification that work equally well. Such a loosening up of the foundations of rationality could lead to a multitude of alternative optimization strategies.

In science, this process of putting foundations into question was mostly carried by the philosophy and sociology of science. This reflection on science reflection has demonstrated that the choice between alternate methods of solution does not flow by itself from scientific method. Instead it is generally derived from a variety of extra-scientific criteria, including public recognition, personal experience, aesthetic judgement, and the procedures that allocate money and resources. But in other fields, the same sort of meta-reflection is often undertaken internally, by the actors themselves. So, for example, the overcoming of a technical and one-sided functionalism was overthrown in architecture by architects themselves. A similar pluralization of perspectives has been described in all cultural fields by the theory of postmodernism. But reflection on fundamental principles can also be seen in

practical fields as diverse as organization theory, technical engineering and legal thought.

The classical paradigm of the primary type of modern society is that intellectual progress along a diversity of fronts will in the end yield a unified picture of the world, and furthermore one that evidences the universality of common principles. This model now stands refuted. This is the lesson that can be drawn from such disparate phenomena as the greenhouse effect, mad cow disease and the potential risks of financial markets. Each one sets off heated arguments among experts that typically can't be resolved by gathering additional knowledge, but instead by deepening, widening and multiplying themselves. New objects of investigation and new lines of research often turn up new risks and side effects, and in the process undermine not only the claims of rationality but also those of control.

Rather than focusing and resolving the crises, the established processes of 'crises resolution' set of new chain reactions - the loss of confidence, the collapse of markets, the struggle over assigning blame and the virtual abolition of borders - that further jam those mechanisms and set of even more turbulence.

In contradistinction to many postmodern positions, the perspective of reflexive modernization does not posit an arbitrary multiplicity as an ultimate fact. Such a situation can only maintain itself over the long run in cultural spheres that are free from the burden of decision-making. In general, where decisions must be made, where legitimacy is demanded and where responsibility must be assigned, procedures must be worked out and criteria must be agreed upon at least to the degree that better solutions can be distinguished from worse. Such reflexive practical knowledge is constantly revisable. It arises from diversity of sources and has foregone any pre-existing claims to certainty. But it offers a context-determined and temporally limited orientation for action that makes learning through experiences possible.

There is a last mechanism or form of reflexive modernization, perhaps the most important one: the dissolving of fundamental distinctions.

This topic relates mainly to the cognitive aspects of the side-effect theorem. Certain scientific and technical developments can create a situation in which some of the fundamental distinctions of modern society no longer hold true (Lau and Keller 2001). This is especially clear in the case of the boundary between nature and society. This division came into being in specific form with modern society and was for a long time a constitutive part of its institutional order. It seemed to be clear that there was a sphere of reality that was 'natural', and which could be distinguished from everything social and cultural. It limited the extent to which certain social arrangements had to answer for themselves.

Anything considered natural was relieved from the need to justify itself. It was self-legitimizing. But this ontological division can no longer maintain itself in the light of new technological developments. All institutions and systems of actions that functionally base themselves on 'natural definitions' like that between life and death, between health and sickness, or between risk and danger have been brought into difficulty by the growth of what Bruno Latour has called 'hybrids'. (Latour 2001)

First of all it is the progress of scientific knowledge which is transforming more and more natural phenomena into non-intended consequences of human action and into issues of conflict about accountability and responsibility. In this sense scientification leads necessarily to a risk society, to the discovery of more and more risks and dangers, which are both, natural and social.

Secondly, it is the advancement of technology which obscures the difference between nature and society. So, the technical possibilities of medicine make it almost impossible to differentiate between a natural and a non-natural death. The same is true for the beginning of human life because of the progress of reproductive medicine. The genetic manipulation of organisms abolishes the

distinction between artefact and natural creature. Technological progress produces in these and many other cases a synthesis between the natural and the man-made world.

The consequences of these developments are rising ambivalences and uncertainties about the limits of institutional action and of human influence. These uncertainties constitute the battle-fields for conflicting institutional and group interests connected with different definitions of nature. It is unlikely, however, that there will be a complete overthrow of the distinction between nature and society because it would destroy the ability of ascribing responsibility in institutional settings. Therefore it is more realistic to start from the assumption that there will be a pluralization of natural definitions, and thus of the fictional pictures that each implies.

It remains to be investigated whether other fundamental distinctions are affected by forms of meta-change. One key question that remains to be taken up is whether the distinction between gainful employment and other forms of activity is beginning to blur in favor of an extension and pluralization of what counts as work. Given the key role that gainful employment plays in modern society, this would have widespread ramifications.

Another important boundary that awaits investigation is that between public and private, which appears to be blurring under the influence of new means of communication and losing its ability to orient people. A similar melting of the distinction between global and local (expressed in literature by the expression 'glocal') has also been the subject of many empirical and theoretical investigations.

Other candidates for fundamental distinctions that are beginning to blur are the distinctions between market and hierarchy, between fiction and reality, war and peace (Kaldor 2000), and, last but not least, the distinction between we and the others.

These central dichotomies have been up to now deeply inscribed in our institutions and habits of thinking. Their implosion (or rat-

her pluralization) could indicate a major change of the self understanding and the basic orientation patterns of modernity.

The forms of meta-change (or reflexive modernization) that I have roughly sketched out are clearly ideal types. In reality they can occur simultaneously or in variable sequences. For example the erosion of central dichotomies might precede the problematization of side effects and enforce it, or the reverse might happen. The research programm of reflexive modernization is an endeavor to disentangle these complex and intertwined causal relations.

This research programm which I tried to outline in a very provisional and hypothetical manner has one important disadvantage. It draws a picture of social change from the perspective of European societies. Since this theory posits first modern society as a prerequisite for second modern society, there are clearly groups of countries it doesn't apply to, for example parts of Africa and Asia. By the criteria laid above, such areas never had a first modern society, despite the fact that they are now enduring several of the same destabilizing forces as European societies.

In other words, the theoretical frame of reflexive modernization applies only to one historical constellation. It is completely eurocentric. It takes for granted that the institutions that second modern society dissolves or transforms exist: a nation state, a welfare state (at least a rudimentary one), highly developed institutions of science and technology, and the institutionalized expectation of full employment. Naturally this European constellation must be enlarged and corrected by studying the effect of reflexive modernization on non-European constellations, like those of Africa, where the dynamics of second modernization performs its work not on first modern society but rather on the disordered constellations of postcolonialism.

Today, both economic and cultural globalization form part of everyday African life while the hopeful expectations of modernization are still largely unfulfilled. The two combine to produce

what some writers have called entangled modernities. But this African reality can not be grasped simply as the radical other, either of first modern or second modern society. The deep and precariousness of modernity has been experienced more in Africa than in Europe. Taking back this knowledge might be another step of reflexivity.

<sup>1</sup> For an enlarged version of this article see Beck, Bonß and Lau (2001)

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## **New Economy and the Concept of „Soziale Marktwirtschaft“**

Prof. Dr. Horst Hanusch

Ladies and Gentlemen,

in Germany, at the moment, we are confronted with an ongoing discussion about economic policy. This discussion is centered on two major and interrelated topics:

On the one hand – as in many other countries – we are preoccupied with the „New Economy“, a phenomenon which is characterized by the highly dynamic economic and technological evolution in the information and communication industries.

On the other hand, we have a reminiscent debate about an economic concept that was developed by two great economists after the Second World War – Ludwig Erhard and Alfred Müller-Armack. This concept, called „Soziale Marktwirtschaft“, or social market economy, profoundly influenced Germany's economic and social development in the last fifty years. As you may know, it is a typical German concept, thought to be an alternative to the idea of a purely liberal and capitalistic free market economy. The latter still is, as it has always been, a dominant feature of the unprecedented Western industrialized country, the U.S.A.

In contrast to the US-type economy, Germany's social market economy is typified by a strong and influential Government that intervenes in numerous economic and social affairs by legal or administrative regulations in order to commensurate with some desired political or social standards.

The focus of such regulatory interventions is mainly put on social and competition policy questions.

In this debate economists and politicians try to reflect in a basic and fundamental way on the future development of the „Soziale Marktwirtschaft“, a concept in former times well approved and commonly accepted in Germany. But, is it still an appropriate suit for a modern, high-speed dynamic economy? Or does the so-called „New Economy“ ask for a supplemental and different economic framework? Do we even have to turn the whole economic system up-side-down?

In my talk I will discuss this central economic problem from a German perspective.

Given the time restrictions of this workshop, I will focus mainly on the following fundamental issues:

Is there anything like a „New Economy“ at all? And if so, what are its characteristics?

Taking the „New Economy“ seriously, what consequences will arise with regard to the development of economic systems in general and concerning the economic policy in particular? In this context, is the concept of the „Soziale Marktwirtschaft“ (social market economy), as suggested by Erhard, still valid, and what would an alternative concept look like?

1. The buzz word „New Economy“ already seems to be a center piece of our daily life. Economists, journalists and politicians – even the highbrow of philosophy and cultural science are fascinated by this term. But what do we actually mean with the expression „New Economy“?

2. When we reduce the subject of the „New Economy“ to the fields characterized by the exchange of information, of knowledge and of creative ideas in the web, there is a simple concept in economic theorizing, especially known in public finance, which might tell us the story. There, it has been discussed for decades and has almost been forgotten in the context of the „New Economy“. It is the idea of „public goods“ which inhibits the functioning of a free market system. The main features of a public good are „non-rivalry“ and „non-exclusion“. „Non-rivalry“ means that

a public good can be consumed jointly. While „non-exclusion“ suggests that nobody can be hindered from consuming the good.

3. There are many examples for non-rivalry: Goods and services in sports, culture, education and science, but also and especially in areas where networks are prevailing, such as transportation, communication and information technologies. In addition, the rise of the information and knowledge society has given the concept of non-rivalry an unprecedented importance in economics. The exchange of information in the internet and the usage of software – to name it – are concerned just with that type of effects economists also call externalities. People use goods, but it is a challenge for entrepreneurs to make them pay for them.

4. From a management perspective, non-rival and quasi-public goods, respectively, induce high initial investment costs, which are sunk costs, and marginal costs that almost go to zero. Suppose the entrepreneur is able to generate revenues from each additional participant that joins the network by using a standard software. Then he can overcome the critical mass and create a „lock-in“ effect, that is consumers will stick to a standard product (or network) because externalities will prevent him from choosing an alternative standard. A lock-in can be regarded equally as a natural monopoly where the producer is able to use his market power to charge a higher price than in competitive markets. And, as we all know: monopolies lead to a dead weight loss, which means to a non-desirable result for society.

Therefore, in the context of quasi public goods we always have to consider whether an intervention by the government could be an alternative to a market supply.

5. This brings us to a first aspect in judging the concept of the „Soziale Marktwirtschaft“, namely *government regulation*. At Erhard's times, the state was the main provider of public goods. The educational and cultural systems, science as well as traffic and communication systems were in the public domain.

Private markets either did not exist at all or there were niche

markets at the most. But, in the meantime this has changed dramatically.

6. Nowadays, we are facing a completely different situation. To an unforeseen extent, private markets go also for the production of quasi-public goods. This is true for almost all industrialized nations in the world. On the one hand, privatization is the keyword, looking at once regulated industries. On the other hand, a flood of business founders can be detected, so-called start-ups, which undertake the venture to supply society with quasi public goods via internet.

This competitive element in a formerly explicit world of public economics definitely is a phenomenon that deserves to be called „NEW“.

7. New is also the enthusiasm, the imaginative power and creativity topped with a high risk-affinity of start-ups. The commercialization of quasi-public goods is a difficult challenge. As already said, on the one hand there are high initial costs that have to be raised. On the other hand, there is the risk that the costs of daily business cannot be covered. If there is a price, and if it is too high, consumers may abandon the market. Moreover, the ease of market entry, combined with the dynamics of the internet business prevailing, cause a fierce price competition. To survive in such a business, it is indispensable to show flexibility, the capability to react quickly, and it also requires strong financial resources. In the end, the weak will vanish and only the strong will survive and exploit their market power.

8. Yet, at the moment we haven't reached that state in the internet economy, although the tendency towards this scenario is apparent. The enthusiasm of venture capitalists providing the seed financing of start-ups is going down as competition goes up. The number of bankruptcies is growing, and, not surprisingly, financially solid „Old Economy“ companies are beginning to discover the „New Economy“. Perhaps, in the long run, the „Old Economy“-firms will overrun the bubble-companies of the „New

Economy“ and enter the „E-markets“, giving a new appearance to their business activities. And this scenario does not have to be the worst option to a modern economy.

9. Reflecting such aspects, one surely has to deal with phenomena like *dynamics*, *creativity* and *risk*. They already dominate the modern entrepreneurial spirit, and, as it seems, also have a large influence in today's society and its expectations. Only policy, in Germany as well as in other European countries, seems to lag behind and is, more or less, sticking to an old-fashioned tool-box, also based on the concept of a social market economy. But, policy cannot refuse to follow such transmissions, which already show in business and in society. Modern economies have to be shaped differently than former economic systems. In particular, the relationship between markets and the government as well as between politics and economics have to be revised. Innovation, dynamics, and risk-affinity are specific entrepreneurial features, but they are no elements of governmental behavior. However, if society accepts such values, governments, and the political system as a whole, will necessarily also have to adapt their functions correspondingly. This implies that policy can no longer be intended to establish a relatively rigid economic and social framework, as proposed by the concept of „Soziale Marktwirtschaft“, where the social compensation for income and wealth inequalities is a major task. Instead, the public sector will have to take on a less dominant role in social and economic life. Maybe, it should play only the role of an unpretentious political moderator. This means, on the one hand that in those parts of the economy where there is too little dynamics, creativity, and risk willingness, it is up to the government to spur those factors by creating suitable incentive mechanisms. And in those fields, on the other hand, where the economic rules tend to be blown up in speculative bubbles, it has to prevent the economy from overheating.

Let me give you some concrete examples:

10. In a dynamic economy and society, it is the major target for economic policy to foster „growth“. Social policy finally, will also have to subordinate its actions to that target. In addition, innova-

tions and venture capital are the main prerequisites of growth. As you all know, innovations heavily depend on R&D in the private as well as in the public sector. And, as for R&D, it is highly determined by the so-called human capital of a society, meaning the knowledge and educational background its members have acquired. But, what does that mean for growth? It means that educational policy is an essential part of innovation policy which again is an indispensable element to achieve economic growth. So, in the end, growth and the process of change will decisively shape the development of dynamic societies.

11. As far as I know, relationships like these can hardly be discovered in the concept of a „Soziale Marktwirtschaft“ as proclaimed by Erhard or Müller-Armack, even if it has to be admitted, however, that both have put some emphasis on the importance of entrepreneurship for the development of an economy. But, frankly spoken, it is another German economist who formulated the right and important concepts to describe the functioning of dynamic change and growth, namely *Joseph Alois Schumpeter*. Let me mention here only his ideas about „dynamic competition“ on the basis of „innovative changes“ and the process of „creative destruction“.

12. Of course – and this is all too apparent – high dynamics in an economy will also have less desired outcomes, namely structural problems in employment and in the distribution of income and wealth. But these difficulties can be solved much easier in a growing and flexible economy, compared to a rigid one characterised by an extensive social system and much too broad interventions of the government. Wolfgang Stolper, also a German-born economist, once put the matter the following way:

„In an evolutionary economy the major function of social policy is to maintain incomes but not specific jobs.“

Actually, I do not want to add any further comments to that statement. Instead, I would like to make you aware of one aspect of a too fast development, now widely discussed in connection with the hyper-dynamics of the US economy. The high and astonishing

speed that has been driving productivity and growth in that country for more than a decade, has besides its very positive features, such as low inflation and unemployment, its negative ones as well. This is especially true for the financial markets: Its results seem to break free from the real economic sphere. They are, to a great deal, instead determined by future expectations, and thus, by speculations on the chances of the New Economy. Is it in a situation like this reasonable to rely solely on the restricted economic policy options of central banks and to cut back any other? Or isn't it a duty for the government to define necessary norms and standards in order to grant an acceptable level of security to all the participants of overheated financial markets? These relations between the monetary and the real sector of modern economies are also issues which the concept of „Soziale Marktwirtschaft“ cannot handle adequately as far as I know.

13. So let me come to an end and conclude with a very personal statement. I do not believe that without fundamental changes the concept of a „Soziale Marktwirtschaft“, as we know it - and as it has been applied in Germany after the Second World War - has either the theoretical or the political potentials to cope with the chances and with the problems of highly dynamic economies. But, allowing fundamental adaptations the initial characteristic features of that concept could not be identified any longer. So, why shouldn't we in that case switch to another approach in economic theory and policy which really is able to offer us an explanation of the transitional dynamics of economic systems and which can also be used to derive the policy actions we need to undertake. To my mind, only one approach is suitable to serve both demands, that of Joseph A. Schumpeter.

## Integral Galois modules versus the zeta function

Prof. Dr. Jürgen Ritter

Ladies and Gentlemen ,

talking about a topic in mathematics to a mostly non-mathematical audience is always a big challenge for me. In fact, over the centuries mathematicians have created quite a number of notions which are totally alien to people with a different background, and it sometimes appears as if there was no common language anymore in which a mathematical problem could be imparted to somebody who is not doing mathematics him or herself. This is a real pity. Nevertheless, being asked to present an idea of my scientific work here today, I better try to overcome these difficulties (at least for the first 15 minutes), and so I start out from a very concrete problem.

Imagine that you are given a polynomial equation with integral coefficients such as, for example,

$$2 + 2^2x + 2^2x^2 + \dots + 2^{2^n}x^n = 0, \text{ a polynomial in a variable } x,$$

$$x^2 - y^2 - 101xy = 1700017, \text{ a quadratic form in two variables } x, y,$$

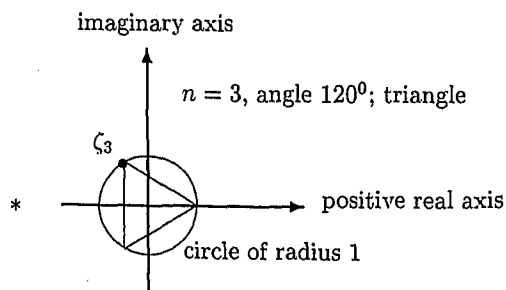
$$x^n + y^n = z^n, \text{ the Fermat equation to an odd exponent } n.$$

Investigations into the solvability of equations of this type have been on the hit list in mathematics for at least two and a half thousand years now, and are so still today. In fact, the study of this kind of question can be traced back to Greek mathematics already (Pythagoras and Diophantus are just two references), and first general results were achieved in the 17th, 18th and 19th centuries (by Fermat, Legendre,

The first thing that comes to mind when looking at equations of the above type is to perform a factorization – e.g., with respect to our Fermat equation, we have

$$x^n + y^n = \prod_{i=0}^{n-1} (x + y\zeta_n^i),$$

Here is a picture for  $n = 3$ :


$$\dots, -3, -2, -1, 0, 1, 2, \dots;$$

Coming back to the factorization

$$x^n + y^n = \prod_{i=0}^{n-1} (x + y\zeta_n^i)$$

$$\begin{aligned} K &= \mathbb{Q}(\zeta_n) = \text{rational polynomials in } \zeta_n \\ &\quad (\text{in the field } \mathbb{C} \text{ of complex numbers}) \\ &= \{a_0 + a_1\zeta_n + a_2\zeta_n^2 + \cdots + a_{n-1}\zeta_n^{n-1}, a_j \text{ rational}\} \end{aligned}$$

$$\begin{aligned} \mathfrak{o}_K &= \text{ring of integers in } K \\ &= \mathbb{Z}[\zeta_n], \quad \text{i.e., the above } a_i \text{ are integral.} \end{aligned}$$

Unfortunately, these rings  $\mathfrak{o}_K$  are more complicated than the ring  $\mathbb{Z}$  of ordinary integers, and this in two respects. Firstly, they do not allow unique factorization in general; secondly, they usually have big groups  $U_K$  of units (that is: of invertible elements) which we do not know as well as we should, I'm afraid. (In  $\mathbb{Z}$ , however, this group  $U_{\mathbb{Q}}$  is just  $\{\pm 1\}$ ). In other words, divisibility properties alone do not reflect the whole story anymore.

If, however, the field  $K$  is given as a *Galois* extension of some subfield  $k$ , such as in our case with  $K = \mathbb{Q}(\zeta_n)$  and  $k = \mathbb{Q}$ , there is additional information on  $cl_K$  and  $U_K$ . Then we have a distinguished group of symmetries acting on  $cl_K$  and  $U_K$ , namely the Galois group  $G$  of our extension  $K/k$  of number fields. In the example this  $G$  is a group of certain permutations of the vertices of the regular  $n$ -gon; if  $n = 3$  it consists of the identity and the reflection with respect to the real axis. It would now be very desirable to know which special Galois structures  $cl_K$  and  $U_K$  carry. In a way, though, this question is ill posed: in general there does not even exist a (finite) list of all the possible structures. So we need to look for arithmetic invariants describing the  $G$ -action. And it has emerged from the research work of the last, say, 25 years that



these invariants are likely encoded in special values of certain analytically defined functions, the  $L$ -functions attached to  $K/k$ . Again, and before going on, let me mention at least some names here: Hecke, Artin, Weil, Hasse, Iwasawa, Stark, Tate, Fröhlich, Chinburg.

The ordinary  $\zeta$ -function is the series  $\sum_{n \geq 1} 1/n^s$ ,  $\Re(s) > 1$ . Riemann's great work has revealed the hidden arithmetic in  $\zeta(s)$  when extended to a meromorphic function on the whole complex plane (with a simple pole at 1). Just recall Riemann's famous, still unsolved conjecture on the zeros of  $\zeta(s)$  (which, by the way, is the last of the great conjectures of the 19th century, or of before, that has withstood all attempts of proof until today – its verification would have numerous applications inside and outside of mathematics). Like  $\zeta(s)$  for  $\mathbb{Q}$ , there is a  $\zeta_K(s)$  for each number field  $K$ , and the residue of  $\zeta_K(s)$  at  $s = 1$  is closely related to the class number  $h_K$  of  $K$ . If we happen to be in the Galois setting, i.e.,  $K/k$  is a Galois extension with group  $G$ , then  $\zeta_K(s)$  can be decomposed into a product of  $L$ -functions  $L(\chi, s)$  which have been defined by Artin and which are attached to the irreducible complex characters  $\chi$  of  $G$ . Let me turn to this in some detail now and, at the same time, try to give an impression of my own recent work. Of course, I'm aware of talking to just the mathematicians from now on, but it will only be for five minutes.

Assume, as before, that  $K/k$  is Galois with group  $G$ . I need to choose a finite, sufficiently large,  $G$ -stable set  $S$  of places (or valuations) of  $K$  which contains all archimedean ones, and to replace  $U_K$  by the larger group  $U_S$  of  $S$ -units of  $K$ , i.e., by all  $u \in K$  which have value zero outside  $S$ . Define now  $K^{\text{ab}}$  to be the maximal abelian Galois extension of  $K$ , that is, to be the union of all finite Galois extensions of  $K$  (in  $\mathbb{C}$ ) with abelian Galois group:

$$\begin{array}{c} K^{\text{ab}} \\ | \\ K \\ | \\ k \end{array} \quad \begin{array}{l} \text{Then Galois theory provides the distin-} \\ \text{guished short exact sequence of Galois} \\ \text{groups} \\ \\ G \end{array} \quad G(K^{\text{ab}}/K) \twoheadrightarrow G(K^{\text{ab}}/k) \twoheadrightarrow G.$$

By means of class field theory (the great discovery in the first half of the 20th century) this sequence and its local analogues can be translated into an exact sequence of  $\mathbb{Z}G$ -modules

$$U_S \twoheadrightarrow A \rightarrow B \twoheadrightarrow \Delta S.$$

In it  $\Delta S$  is a module which is directly derived from the set  $S$ ,  $B$  is a free module and  $A$  is almost free – to be precise: it has finite projective dimension. The sequence has been constructed by Tate in the sixties and has become a basic tool in today's Galois structure research. The question is: How far off is  $A$  from being free itself.

Based on the famous Stark conjecture on the existence of certain special units, Chinburg (shall I say: otherwise out of the blue?) has formulated a conjectural answer in terms of the values of the Artin  $L$ -functions at zero. If it is true, it will shed light on the Galois structure of  $U_K$  that we want to see. And it is this conjecture that determines my research work and that of my coauthor A. Weiss from Edmonton in Canada. We proved a weaker form of it, known as Strong Stark Conjecture, for fields  $K$  which are subfields of cyclotomic fields. Our proof heavily depends on the main conjecture of Iwasawa theory (which I won't go into here); it luckily has been confirmed by Wiles in the nineties. However, in order to make progress with respect to Chinburg's conjecture itself, this main conjecture of Iwasawa theory is definitely too weak. That is why we saw the need to first strengthen Chinburg's conjecture, so as to get in a position to attack it locally, and, accordingly, to formulate a main conjecture of a new, equivariant Iwasawa theory. Our last paper (dated January 2001) presents a proof of the equivalence of this main conjecture of equivariant Iwasawa theory and our strengthened Chinburg conjecture in the absolutely abelian case of odd degree.

Thank you very much for your attention.

## Die Wiedervereinigung im Spiegel der deutschen Literatur

Prof. Dr. Dr. h. c. Helmut Koopmann

Revolutionen sind sprachschöpferisch - auch dann, wenn sie eigentlich gar keine waren. 1989 wurde der Wendehals erfunden, so wie man 1945 die Stunde Null erfunden hatte. Den Wendehälsen entsprach die Wendeliteratur. Von der Währungsunion redeten die Politiker; „Abwicklung“ war ein anderes Wende-Wort, und nach 1989 sprach man auch von der „Ostalgie“ und vom „Ossi“-Komplex, der bezeichnenderweise im Osten eher zu finden war als im Westen. Mit dem Begriff der Revolution hatte man jedoch seine Schwierigkeiten. So war gelegentlich von der „nachholenden Revolution“ die Rede (Habermas), auch von „revolutionsartigen Ereignissen“, von der „sanften Revolution“, manchmal auch von der zweiten Stunde Null. Umbruch, „friedliche Revolution“, „Zeitenkehre“ sind weitere Versuche, die Ereignisse des Herbstes 1989 zu klassifizieren. Christa Wolf schwärmte am 4. 11. 1989 auf dem Berliner Alexanderplatz von einer „revolutionären Erneuerung“. Auch sie hatte mit dem Wort Wende ihre „Schwierigkeiten“, weil sie an ein Segelboot dachte, und der Kapitän rufe: „Klar zur Wende“, weil der Wind sich gedreht habe. Aber: war es wirklich eine Wende?

Die Historiker haben uns gelehrt, dass derartige Wenden und Revolutionen häufig auf Täuschungen beruhen. Zweifellos ist 1989 eine Epoche ans Ende gekommen, und zwar die Epoche des kurzen 20. Jahrhunderts, das von 1917/18 bis 1989/90 dauerte: Zentraltheorien wie die des Marxismus-Kommunismus bzw. zuvor die des Faschismus-Nationalsozialismus sind 1989 untergegangen. Aber nicht weniger hoch sind die Kontinuitäten zu bewerten. Wir sehen heute, dass die Geschichte der DDR mit derjenigen des Deutschen Reiches vor und bis 1945 vielfach verbunden war.

Es sind gleichsam Lebenskontinuitäten. Die Jugendweihe etwa war eine obligatorische Angelegenheit der DDR - Ulbricht hatte sie 1906/07 in Leipzig kennengelernt. Und die Subventionspolitik der DDR bei allen lebenswichtigen Grundbedarfsgütern entsprang offensichtlich Erfahrungen aus der Zeit der Weltwirtschaftskrise 1929.<sup>1</sup> Der Volksbegriff schließlich entstammte in seiner neuzeitlichen Ausprägung den 20er und 30er Jahren; die Nazis haben ihn hochstilisiert zum Begriff der Volksgemeinschaft. Doch in der DDR lebte der Volksbegriff völlig ungebrochen weiter. Wörter wie „Volkskammer“, „Volksarmee“, „Volkspolizei“ zeigen, wie kontinuierlich die Volksvorstellungen das Jahr 1945 überdauert haben. Das von Goebbels erfundene „Wunschkonzert“ erfreute sich noch in den 50er Jahren großer Beliebtheit. Was blieb 1989, was war tatsächlich anders geworden?

Das Thema ist zu umfassend, als dass es bis in Details hinein erörtert werden könnte. Ich beschränke mich deswegen auf einige Thesen.

1. Die Schriftsteller westlich und östlich wurden von den Geschehnissen des Herbstes 1989 genauso überrascht wie die Politiker und antworteten mit Rettungsbemühungen.

Innerhalb der DDR gab es keine literarischen Umstürzbewegungen. Die im Osten vor 1989 geträumten Träume von einem demokratischeren Sozialismus waren nur regimekritische Träumereien, nicht revolutionäre. Dazu kann man Christoph Heins „Der fremde Freund“ rechnen, auch Werner Heiduczecks „Tod am Meer“, Erich Loests „Es geht seinen Gang oder Mühen in unserer Ebene“. Da die Schriftsteller überrascht worden waren – und das bestätigt das unrevolutionäre Klima –, schwiegen sie zunächst einmal auf breiter Front; die Diskussionen um Gewinn und Verlust der Wende wurden anderswo ausgetragen, nämlich in den Feuilletons der West-Zeitungen. Die Schriftsteller blieben im eigentlichen Sinne sprachlos, so wie das Thomas Rosenlöcher in „Die verkauften Pflastersteine“ beschrieb, wenn er sagte: „Die Grenzen sind offen! Liebes Tagebuch, mir fehlen die Worte. Mir fehlen wirklich die Worte“. Bei Klaus Schlesinger hieß es: „An

Manifestationen, Aufmärschen, Diskussionen habe ich, mit einer Ausnahme, nicht mehr teilgenommen [...] selbst in der Nacht, als die Mauer fiel und sich die halbe Stadt in den Armen lag, bin ich [...] ins K. O. B. gegangen, habe schnell drei Bier getrunken und mich ins Bett gelegt“. Das Schweigen war freilich nicht vollständig; auf der Kundgebung am 4. November 1989 auf dem Berliner Alexanderplatz sprachen unter anderem Christa Wolf, Christoph Hein und Heiner Müller. Heiner Müller hat das später respektlos „Illusionstheater“ genannt, doch der Bürgerrechtler Jens Reich meinte, dieses poetisch-politische Schlussfeuerwerk sei das Beste gewesen, was die DDR überhaupt je hervorgebracht habe. Aber sonst wurde weithin geschwiegen. Der Überraschtheit der Schriftsteller entsprach, dass 1989 nicht die Literatur die untergründig treibende Kraft gewesen war, sondern dass in Leipzig der Musik eine sehr viel entscheidendere Rolle zukam. Die Literatur hat, mit anderen Worten, zunächst kaum reagiert und auf keinen Fall agiert. Hinter der Überraschung wurde, psychologisch verständlich, hingegen eine Gefahr sichtbar: der Verlust des Vertrauten und des auf jeden Fall Bewahrenswerten. Und als die Literatur endlich reagierte, ging es um konservatorische Maßnahmen. Auffällig war im übrigen, in welchem Ausmaß Schriftsteller der früheren DDR den Sozialismus oder doch wenigstens etwas davon retten wollten. Der Aufruf „Für unser Land“ (FAZ, 29. 11. 1989) wandte sich gegen den „Ausverkauf unserer materiellen und moralischen Werte“, und gleichzeitig wurden „die antifaschistischen und humanistischen Ideale, von denen wir ausgegangen sind“, wieder eingefordert. Ziel war nicht etwa die Wiedervereinigung, sondern eine „sozialistische Alternative zur Bundesrepublik“. Damit wurde eine Gegenkraft sichtbar, die sich sofort gegen die scheinbar vollständige „Wende“ einstellte. Dahinter stand der Wunsch, eine zwar erhoffte, aber niemals realisierte Utopie, nämlich die eines humanen Sozialismus, nicht preiszugeben, sondern vielmehr jetzt, nach 1989, zu praktizieren. Doch der bessere sozialistische Staat war 1989 von der Realität weiter entfernt als je zuvor. Das hat Volker Braun in einem Gedicht „Das Eigentum“ mit dem ursprünglichen Titel „Nachruf“ beschrieben, und in ihm heißen die beiden Schlusszeilen: „Was ich niemals be-

saß, wird mir entrissen./ Was ich nicht lebte, werd' ich ewig missen“. Dieses absurde Fazit kennzeichnet die Erkenntnis jener, die sich seinerzeit auf dem Weg zu einem besseren sozialistischen Deutschland sahen - und die plötzlich erkennen mussten, dass das, was sie eigentlich gewollt hatten, nun lediglich als Verlust zu buchen war.

Auch sonst änderte sich wenig - manches wurde nur umgepolt. Innerhalb der DDR hatte sich vor 1989 ein erhebliches Maß an kritischem Potential angesammelt, und das betraf die Unzulänglichkeit des praktizierten Sozialismus ebenso wie die offiziellen Beschönigungen des DDR-Alltags und die inhumanen Verhältnisse des sozialistischen Staates, aber da im November 1989 der Gegenstand der Kritik, nämlich die DDR, sich gleichsam in Luft aufgelöst hatte, floss aus diesem kritischen Potential ein breiter Strom ab und wurde zum kritischen Vorbehalt dem vereinigten Deutschland gegenüber. Am deutlichsten zeigt sich das bei Erich Loest, der Ende der 90er Jahre Präsident des gesamtdeutschen PEN geworden war. Sein Artikel mit der bezeichnenden Überschrift „Nestbeschmutzers Polemik“ war eine erbarmungslose Abrechnung mit der Politik der Bundesrepublik, die den Staat zu einem Selbstbedienungsladen für Politiker gemacht hatte. Ostautoren haben bis 1989 die Bundesrepublik kaum angegriffen - wenn man von relativ plumpen lyrischen Attacken Bertolt Brechts auf Adenauers Wacht am Rhein in den frühen 50er Jahren einmal absieht. Aber das war die Zeit des Kalten Krieges. 1989 endete die politische Wiedervereinigung also in einer von östlicher Seite vorgebrachten Staatskritik an der neuen, größeren gewordenen Bundesrepublik, und zugleich wurden Träume von einem besseren Sozialismus weitergeträumt. Darin zeigt sich das Beharrungsvermögen der DDR-Literatur auf gleichzeitig positive wie negative Weise: kritisches Potential und utopisches Denken waren nicht mit dem Ende der DDR verlorengegangen, sondern hatten sich gleichsam neue Ziele, Bahnen und Kanäle gesucht.

2. Die Wiedervereinigung 1989 machte deutlich, dass es nicht hier eine westdeutsche und dort eine ostdeutsche Literatur gegeben hatte, sondern nur ein dialektisches Verhältnis zwischen den beiden Literaturen.

Nun aber waren feste Positionen nicht mehr zu erkennen. Anders gesagt: vorher existierte eher eine deutsch-deutsche Konkurrenzbeziehung (Hockerts). Das gilt bereits für die 70er Jahre, als die neue Subjektivität in der bundesrepublikanischen Literatur aufkam - in Christa Wolf fand sie ihr ostdeutsches Gegenstück, und umgekehrt wurde Christa Wolf zum Sprachrohr der No-Future-Generation und der Angstliteratur, die es mit geringer zeitlicher Verzögerung auch im Westen gegeben hatte. Doch nach 1989 endete dieses Konkurrenzbewusstsein und mündete in eine unisono-Haltung: die Standpunkte und Haltungen waren plötzlich austauschbar. Zum gleichen Zeitpunkt, zu dem Volker Braun seine Utopie eines nicht erlebten, aber um so mehr ersehnten Sozialismus noch einmal beschwor, sprach Günter Grass dafür, die Identität der DDR-Bürger nicht jenem „dumpfen Einheitsgebot“ zu opfern, das für ihn schon sehr bald das Ziel eines deutschen zentralistischen Einheitsstaates verkündete. Das ist in seinem Buch „Deutscher Lastenausgleich. Wider das dumpfe Einheitsgebot“ 1990 nachzulesen: seine Reden und Gespräche bezeugen immer wieder seinen Unwillen über das, was sich als Wiedervereinigung abspielte. Günter Grass wollte, dass etwas aus der bisherigen DDR in den Westen, der alles nun zu dominieren schien, eingebracht würde, „etwas, das uns hier fehlt: ein langsames Lebenstempo, entsprechend mehr Zeit für Gespräche ... etwas Biedermeierliches wie zu Metternichs Zeiten“. Günter Grass hat die DDR damit allerdings doch wohl schöneredet, dort etwas obscure innere Werte gesucht und gefunden, und so hat er sich als politischer Programmatiker betätigt und einer zwar gewandelten, aber immer noch existenten DDR zugestimmt: „Es hätte die innere Demokratisierung weiter vorangetrieben, die Öffnung der Grenzen angekündigt werden müssen [...], das wiederum hätte zu einer Umstrukturierung der DDR auf der höheren Ebene führen können und auch den Oppositionsgruppen mehr Spielraum gegeben“. Die totale Einverleibung der DDR habe Verluste zur Folge gehabt, die nicht auszugleichen seien: „Denn nichts bliebe

den Bürgern des anderen, nunmehr vereinnahmten Staates von ihrer leidvollen, zum Schluss beisspiellos erkämpften Identität. [...] Nichts wäre gewonnen außer einer beängstigenden Machtfülle, gebläht vom Gelüst nach mehr und mehr Macht. Allen Beteuerungen, selbst den gutgemeinten zum Trotz, wären wir Deutschen wieder zum Fürchten“. So entwickelte er seine Theorie von einer deutschen Konföderation, und er meinte, dass sie dem europäischen Einigungsprozess näherstehe als ein übergewichtiger Einheitsstaat; das „Einheitsgebot“ gehöre auf den Müllhaufen unserer Geschichte, nur eine Konföderation erlaube Freiheit, Einigung und Vielfalt. Zugleich stritt Grass gegen eine überstürzte Währungsunion und für einen auf kulturelle Eigenständigkeit gegründeten Staat, einen neuen Bundesstaat also. Aber nichts anderes wollten auch Christa Wolf und deren Anhänger. „Bleiben Sie doch in Ihrer Heimat, bleiben Sie bei uns“, hatte sie 1989 von ihren Landsleuten gefordert. Auch sie wollte das „Kulturschutzgebiet DDR“ bewahren.

Wie austauschbar die Positionen geworden waren, wie aus dem dialektischen Gegeneinander von früher eine fast homogene Haltung in Ost und West aufkam, zeigt eine zweite Stellungnahme, die ebenfalls dafür warb, die DDR-Kultur zu bewahren. Ein solches Plädoyer wurde von Walter Jens gehalten unter dem Titel „Gegen die Preisgabe der DDR-Kultur“. Ob es jedoch eine solche Kunst gegeben hatte, wie Walter Jens sie sah, darf als zweifelhaft gelten. Weder hatte sich in der DDR eine epochenmachende Baukunst noch eine neue Musik entwickelt, allenfalls eine Malerei mit einiger Eigenständigkeit - der Streit um die Bilder von Sitte zeigt, wie weit auch heute noch die Auseinandersetzung darum geht, ob DDR-Kunst auch im Westen akzeptabel sei oder nicht. Jens, der zum Verteidiger der DDR-Literatur und der DDR-Kultur wurde, sah in der westdeutschen und in der ostdeutschen Literatur Gemeinsamkeiten als *concordia discors*, und ihm stellte sich das dialektische Verhältnis, wenn man es immer noch so benennen will, so dar: „Kleine Probleme im Westen: der Schriftsteller - ein Mensch ohne Macht, den man klein hält, indem man ihm Preise verleiht. Große Probleme im Osten: der Schriftsteller - ein potentieller Widersacher, der mundtot gemacht werden muss“.

Alles in allem: es gab jahrzehntelang eine deutsch-deutsche Literatur, die sich von heute her besser als je zuvor in ihrer dialektischen Spannung begreifen lässt; mit gewissen geringen Phasenverschiebungen wurde in beide Literaturen häufig das gleiche konstatiert, wenngleich die Nähe immer wieder zur Fremde wurde. Dieses endete 1989; die frühere DDR-Utopie wurde zur bundesrepublikanischen Nostalgie.

3. Im deutsch-deutschen Kulturstreit kulminierte die dialektische Spannung zwischen Ost- und Westliteratur, und mit ihm endete sie zugleich.

Er war das öffentlichkeitsbekannteste Ereignis im Rahmen der Wiedervereinigung nicht nur der Nationen, sondern auch der Literaturen. Der Streit konzentrierte sich auf Christa Wolf und deren tagebuchartige Erzählung „Was bleibt“, 1990 erschienen, angeblich 1979 geschrieben. Diese Geschichte einer Stasibespitzelung hat eine Diskussion ausgelöst, die das Dasein in der DDR gleichsam auf den Prüfstand stellte, da es hierbei um die Aufrichtigkeit der Literatur und ihrer Autoren ging. Kaum ein anderer Text hat so polarisierend gewirkt wie dieser, aber bezeichnend ist, dass nicht eine Diskussion zwischen Ost und West entstand, sondern dass auch hier die Positionen austauschbar wurden. Ihre Gegner warfen Christa Wolf vor, dass sie ihre bürgerliche Familienherkunft nie überwunden, sondern nur abgewählt und durch den Staat ersetzt und nie begriffen habe, dass sie in einem totalitären System lebte. Ihr sei wie ihrer ganzen Generation ein Hang zur Ein- und Unterordnung eigentümlich, zugleich Angst vor Widerspruch und Widerstand - und ihr Buch „Was bleibt“ sei nichts anderes als ein Buch des schlechten Gewissens. Eben darin sei es unglaublich; dass die wortgewaltige Verteidigerin des DDR-Staates und seiner Sozialutopie selbst Opfer dieses Staates gewesen sein sollte, war zu unwahrscheinlich, als dass es stimmig hätte sein können, und man erinnerte sich, dass Christa Wolf nicht zu hören gewesen war, als der Aufstand des 17. Juni 1953 niedergeschlagen wurde, dass bei ihr nichts über den Mauerbau von 1961 zu lesen war, nichts über das Ende des Prager Frühlings im August 1968, nichts über die RAF-Terroristen in der Bundesrepublik, nichts über das Peking Massaker und über den Af-

ghanistankrieg: hingegen gab es überall ein geschicktes und schnelles Bearbeiten aller möglichen Themen, vom Störfall 1987, auf die Katastrophe von Tschernobyl bezogen, bis hin zur vorher veröffentlichten Schrift „Kassandra“, ein schwacher Versuch, dem aufkommenden Feminismus Tribut zu zahlen und andererseits der westlichen No-Future-Literatur jener Jahre eine östliche Angstliteratur zur Seite zu stellen.

Aber im Westen wurde sie auch verteidigt. Ihr sei nichts vorzuwerfen, konnte man am 1. Juni 1990 in der „ZEIT“ lesen, denn sie habe nie ein Amt bekleidet, habe sich nie danach gedrängt, in einem Verband den Vorsitz zu führen, sie sei weltberühmt geworden durch ihre Arbeit, durch die Literatur (so Volker Hage). Auch ein Kritiker des Sowjetkommunismus wie Lew Kopelev hat sie in Schutz genommen: Christa Wolf habe immer nur gelitten, bei Auseinandersetzungen im Schriftstellerverband wie im Konflikt mit der Zensur, mit Staats- und Parteinstanzen. Dabei zeigte der Streit, dass die Argumente bis zur Verwechslung austauschbar wurden. Wer Christa Wolf kritisch unterstellte, dass sie das wirkliche Verhältnis von Staatsmacht und Geistesleben der Nation, von Parteiideologie und Literatur nicht habe wahrhaben wollen, dem wurde eben das gleiche vorgehalten: dass er seinerseits das wirkliche Verhältnis von Staatsmacht und Geistesleben der Nation, von Parteiideologie und Literatur nicht habe sehen wollen. So erschien Christa Wolf gleichzeitig als Opportunistin und als Opfer des gleichen Systems, und ihr Buch „Was bleibt“ wurde ebenso als unerbittliches Protokoll einer an ihr versuchten Destruktion gelesen wie als Versuch, sich nachträglich als Opfer zu deklarieren. Als dann noch bekannt wurde, dass selbst Heiner Müller und Christa Wolf durchaus nicht nur Opfer der Staatssicherheit gewesen waren, sondern, wenn auch nur zeitweise, mit ihr kooperiert hatten, war die Verwirrung perfekt. Und so kam es zu dem sonderbaren Phänomen, dass im Westen Befürworter und Kritiker Christa Wolfs auftraten, dass im Osten aber gleichermaßen Verteidiger Christa Wolfs erschienen und ebenfalls Bücher von Autoren, die etwas als wirkliche Leidensgeschichte unter einem Regime beschrieben, das Autoren wie Christa Wolf eine letztlich unbeschwerte Existenz spendiert hatte. Schließlich gehörte sie

zum Reisekader. Skeptischer könnte man auch sagen: die sogenannte Wende von 1989 hat dazu geführt, dass sich das dialektische Spannungsverhältnis zwischen einer Ost- und einer Westliteratur selbst ad absurdum führte. Phänomene, Personen und Haltungen waren nicht mehr eindeutig zu bestimmen: sie wurden gleichzeitig verurteilt und gerühmt, und das auf beiden Seiten Deutschlands. Die Konfusion war das Resultat einer letztlich paradoxen Haltung: es sollte beibehalten werden, was man endlich gerade losgeworden glaubte. Alles das traf sich in der Person und im jüngsten Werk der Christa Wolf. Unsicherheit in der Bewertung dieses Aushängeschildes der DDR und ihrer Literatur kommt vor allem dort auf, wo Christa Wolf zwischen Verteidigung und Attacke gerät. So sehr Martin Ahrends sie verteidigte, wenn er sagte, dass Christa Wolf nicht das System geschützt, sondern die Bedrückungen bis zur Grenze des Erträglichen geschildert habe, dass sie bewusst eine Gratwanderung angetreten habe, um ihrem Publikum verfügbar gewesen zu sein, dass sie die Einschnürung in der DDR bis zur Erstarrung mitgetragen und auch in ihrer Sprache zum Ausdruck gebracht habe, so sehr polemisiert Thomas Brussig in seinem Roman „Helden wie wir“ von 1996 gegen seine Landsmännin, und das nicht nur, wenn die Wolf auf komische Weise mit der bekanntesten Eislauftainerin der DDR verwechselt wird, und nicht nur darin, dass ihrem „Geteilten Himmel“ der Held einen „geheilten Pimmel“ gegenüberstellt. Der noch wenige Jahre zuvor so todernt genommene Literaturstreit erscheint aus der Retrospektive der späteren 90er Jahre so: „Anlass des Literaturstreits war eine Erzählung von Christa Wolf, in der eine Schriftstellerin von der Stasi durch wochenlanges Anstarren so weit getrieben wird, dass sie schließlich binnen einer halben Stunde einen Pralinekasten zur Gänze auffrisst. Vielleicht ging es auch um etwas anderes, denn ich habe diese Erzählung zunächst nur gelesen, um endlich eine Antwort auf meine Frage zu finden, nämlich ob mein Umschmeißen der Mauer durch Christa Wolf gedeckt war“. Aber dann gelingt ihm der Nachweis, dass dieses eine Autorin „für jede, aber auch wirklich für jede Gelegenheit ist“. Damit wurde sie zu dem, was sie selbst nach außen hin so verabscheut hatte, nämlich zum Wendehals.

#### 4. Nach der Wende: die Subjektivierung der deutschen Geschichte.

Die literarischen Auskristallisationen der unmittelbaren Wendezeit sind spärlich. Was immer zu den Ereignissen gesagt wurde, erschien eher in Form von Dokumentationen, aber die sind weniger literarisch als vielmehr zeitgeschichtlich interessant: eigentlich haben sie nur den Rang von Protokollen. 1990 wurden etwa „Befehle und Lageberichte des MfS Januar bis November 1989“ unter dem berühmten Mielke-Titel „Ich liebe euch doch alle!“ publiziert, andere Bände enthielten Dokumente der Untersuchungskommission zu den Ereignissen vom 7. und 8. Oktober 1989. 1990 erschien ein Band mit dem Titel „Wir sind das Volk! Flugschriften, Aufrufe und Texte einer deutschen Revolution“, und heraus kam auch ein Buch mit dem Titel „Die sanfte Revolution. Prosa, Lyrik, Protokolle, Erlebnisberichte, Reden“, herausgegeben von Stefan Heym und Werner Heiduczek. Es gibt kaum ein politisches Ereignis unseres Jahrhunderts, zu dem so viel Dokumentarisches so schnell vorgelegt wurde. Damals kam auch das Schlagwort vom „Wendestress“ auf. Die Zahl der „Wende“-Romane ist jedoch spärlich. Einen traditionellen verfasste Erich Loest mit seiner „Nikolaikirche“ 1995 - ein politischer Roman in Form einer Familiengeschichte. In verschiedenen Zeitquerschnitten wird beschrieben, wie sich die Bürgerbewegung entwickelte. Der Roman sollte, stark mit Gesprächen angereichert, ein möglichst objektives Bild der Verhältnisse geben - so sind Rückblicke in die frühen Lebensphasen derer, von denen der Roman erzählt, eingeschlossen. Auch hier ist die Nähe zur Reportage spürbar. Brussigs Roman „Helden wie wir“ von 1996 ist ein Versuch, das sinnentleerte Leben in der DDR satirisch nach Art eines Schelmenromans einzufangen; Brussig macht Front gegen die Prüderie der DDR und ihrer Literatur, der Fall der Mauer wird zu einem quasi sexuellen Betriebsunfall, und die Satire erweist sich hier als das, was sie in diktatorischen Zeiten immer gewesen ist: als eine Möglichkeit der Befreiung. Man kann diesem Roman freilich zum Vorwurf machen, dass er die tödliche Bedrohung der Stasi-Welt nicht angemessen zum Ausdruck bringen kann. Wie disparat die Verhältnisse, wie austauschbar die Positionen von Ost und West geworden sind, lässt Rolf Hochhuths

Theaterstück „Wessis in Weimar. Szenen aus einem besetzten Land“ erkennen. Was im Osten als Befreiung erlebt wurde, sah ein westlicher Schriftsteller als das Gegenteil, nämlich als Besetzung. Auch hier drängt sich stark Protokollarisches ein; das zeigt sich in den Zeitungsmeldungen, mit denen das Buch durchsetzt ist. Neue Klischees bauen sich auf: die Naivität der Osis, die Gerissenheit der Wessis. Auch hier Polarisierungen, aber das Ganze ist eher moralisierende Holzschnittarbeit als wirklichkeitsnah. Ein weiterer Wenderoman stammt von Brigitte Burmeister mit „Unter dem Namen Norma“, und im Umkreis der Wendeliteratur sind andere Romane angesiedelt: von Angela Krauß „Die Überfliegerin“, von Marion Titze die Erzählung „Unbekannter Verlust“, von Helga Königsdorf „Im Schatten des Regenbogens“. Von Fritz Rudolf Fries erschien ein Nachwenderoman „Die Nonnen von Bratislava“. Versuche, gleichsam mythologische Klischees aufzuwerten wie in Volker Brauns Drama „Iphigenie in Freiheit“, werden der Wirklichkeit allerdings wohl auch nicht gerecht. Im Ganzen moralisierende, satirisierende und mythisierende Darstellungen. Es sind Realitätsauslegungen, aber die Realität dahinter ist kaum zu fassen.

Wie wenig die Wende wirklich eine Wende war, zeigen die zahlreichen Versuche, sich der eigenen Geschichte zu vergewissern. Darin ist die vormalige westliche wie die vormalige östliche Literatur ungefähr gleichermaßen stark beteiligt. Kontinuitäts- und Vergangenheitssuche prägen Günter Grass' „Ein weites Feld“; die Fontane-Attitüde ist nicht erzählerische Zutat, sondern ein Versuch, historische Dimensionen in den Roman einzubringen, das heißt: eine 100jährige deutsche Geschichte. Die deutsch-deutsche Vereinigung wird mit der Reichsgründung von 1871 verglichen, doch das Scheitern von 1918 und von 1933 bis 45 wird ebenfalls einbezogen: das sind die Muster, die jetzt, in der Wiedervereinigung, neu zu fürchten sind. Die von der Geschichte geprägten Verhaltensmodelle kehren wieder, das wilhelminische Hurra-geschrei tönt durch die Sylvesternacht 1989, und so ist dieser Roman denn weniger ein Wenderoman als vielmehr ein Roman zur deutschen Geschichte des 20. Jahrhunderts, das Auf und Ab der Geschichte symbolisiert im Paternoster-Aufzug, der geradezu als

geschichtsträchtiges Werkzeug erscheint, denn er hat „unter jedem System seinen Dienst“ geleistet, ist ein „Symbol der ewigen Wiederkehr“, fatales Sinnbild einer ungebrochenen deutschen Tradition, der es um Macht geht und nichts anderes. So ergeben sich Parallelen und gleichzeitig historische Stränge, Wiederholungen und Prägungen der Gegenwart durch die Geschichte. Die Wirklichkeit ist freilich auch hier verfälscht worden – das hat Hans-Joachim Schädlich gezeigt, der mit seinem „Tallhover“-Roman sehr viel überzeugender als Grass deutsche Geschichte geschrieben hat – mit Recht hat er darauf aufmerksam gemacht, dass das Stasi-System bei Grass verharmlost sei und die Gleichsetzung des Spitzels mit dessen Objekt dem einen wie dem anderen nicht gerecht werde. Wenn der Treuhändchef mit Hermann Göring verglichen werde, so werde damit die Ermordung von Rohwedder gleichsam legitimiert. Ostdeutsche Bürgerrechtlerinnen erscheinen bei Grass als „diese protestantischen Kirchenmäuse“. Schädlich's Vorwurf geht dahin, dass er, neben dem Diebstahl des Stoffes und der Idee, die Mittel und Methoden der Geheimpolizei verschiedener Gesellschaftssysteme gleichgesetzt habe, und damit sei nicht nur die Geschichte der DDR, sondern auch die von Tallhover zitierte deutsche Geschichte gründlich missverstanden worden. Das verbindet sich bei Grass mit einer eigentümlichen „Ostalgia“, zumal Grass eben für eine noch einmal drangehängte Runde „Sozialismus“ plädierte. Auf der anderen Seite: Rückversicherungen, vor allem bei Autoren der früheren DDR, in die eigene Privatgeschichte hinein. Dafür mag Hilbigs Roman „Ich“ prototypisch sein – offenbar ist es nur so möglich, die seelischen Verunsicherungen und die Abgründe der DDR-Geschichte zu beschreiben: in der Geschichte eines Einzelnen. Kein Wunder, dass nach dem Zusammenbruch der DDR auch Autobiographien wieder aufkommen wie die von Günter de Bruyn: „Zwischenbilanz“ und „Vierzig Jahre. Ein Lebensbericht“. Die Lebensgeschichten, wie sie etwa auch bei Ahrends in „Der Märkische Radfahrer“ in fiktiver oder auch halb realistischer Rückerinnerung erscheinen, sind ebenfalls Kontinuitätssicherungen, verständlich aus einer Zeit heraus, die scheinbar keine Kontinuität mehr kannte. Nicht uninteressant auch, dass in der Arbeit einer früheren DDR-Germanistin (Ilse Nagelschmidt) der

Wunsch durchschlägt, „Kontinuität zeigen zu wollen“. Nicht uninteressant, dass die gleiche Autorin zu einer eigentümlichen Rechtfertigung der DDR-Literatur und der Literatur, die nach der DDR erschien, kommt, wenn sie sagt: „Die Literatur nach 1989 ist kein gesamtdeutsches, sondern vor allem ein ostdeutsches Ereignis“. Auch dahinein gehören die Lebensgeschichten. Man hat sogar von der „Wiederaneignung des Verschwiegenen in Autobiographien und Dokumenten“ gesprochen (W. Emmerich<sup>2</sup>). Dort erscheint die alte Welt wieder, und zwar als Versuch, sich von Traumata zu befreien.

Ob die Kontinuitätssicherungen Bestand haben werden, weiß niemand. Betont man die Lebenskontinuitäten, wird es das dialektische Verhältnis zwischen Ost und West auch nach dem Ende der Mauer noch lange geben. Zu vieles hat früher die sogenannten Umbrüche überdauert. Es war nicht nur der Volkswagen und die KDF-Reise, es war auch anderes. Helga Schubert, auch auf der Suche nach einer DDR-Identität, hat die SED-Staatlichkeit so beschrieben, wie Martin Walser die bundesrepublikanische Gesellschaft in den 50er Jahren dargestellt hat: Disziplin, Heuchelei, Scheu, das eigene Nest zu beschmutzen, „nichts Kritisches nach außen dringen zu lassen, starres und unflexibles Handeln, Intoleranz gegenüber Fremden“. Das gab es auch in den 50er Jahren, und die Intoleranz gegenüber Fremden setzt sich bis in unsere Tage in Form rechtsextremistischer und fremdenfeindlicher Aktionen vor allem in den neuen Bundesländern fort. Wir dürfen davon ausgehen, dass die Geschichte und dass ein Kontinuitätsdenken sich vor allem dann als stark erweisen, wenn die Gegenwart orientierungslos geworden ist. Das war sie 1989. Von Heinz Czechowski gibt es ein Gedicht mit dem Titel „Die überstandene Wende“:

*Was hinter uns liegt,  
Wissen wir. Was vor uns liegt,  
Wird uns unbekannt bleiben,  
Bis wir es  
Hinter uns haben.*

5. In einer Hinsicht war die Wende mit Sicherheit keine Wende: die Verkaufszahlen von DDR-Autoren im Westen sind über 1989 hin ungebrochen.

Christa Wolfs „Kassandra“ war bereits gegen Ende der 80er Jahre mit 415.000 verkauften Exemplaren eine Spitzenreiterin, „Störfall“ fand 300.000 Leser, Christoph Heins „Drachenblut“ immerhin 120.000. Christa Wolf, Monika Maron, Rainer Kuntze, Erich Loest, Ulrich Plenzdorf, Christoph Hein behielten ihr Publikum, wenn auch nicht im gleichen Ausmaß wie früher. Der Grund des Erfolges: in der DDR-Literatur kamen Themen zur Sprache, die in dieser Form im Westen nicht behandelt worden waren: Ökologisches, Vereinsamung der Individuen, eine pathologisch machende Industriegesellschaft, in der Frauen es schwer hatten, innerhalb der Männergesellschaft ihr Leben zu führen, Angst vor Atomkatastrophen und anderes mehr. Das änderte sich auch nach 1989 nicht wesentlich.

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Georg Gottfried Gervinus hat in seinen „Grundzügen der Historik“ 1837 gesagt, dass der Historiker nicht urteilen könne, wo er nicht die Schlussszenen vor sich habe. Ob die Szenen von 1989 Schlussszenen waren, möge die nächste Generation beurteilen. Vielleicht haben wir es tatsächlich nur mit Variationen, Modernisierungen zu tun, und wir sehen nun, 10 Jahre nach der Wende, dass Geschichte fortwirkt bzw., wie Knut Borchardt das festgestellt hat, dass sich nur ein relativ kleiner Teil der in der Gesellschaft akkumulierten Bestände verändert. Am Ende war die Wende vielleicht gar keine Wende - jedenfalls literarisch gesehen. Niklas Luhmann schrieb schon 1985: „Man könnte Geschichtsverlaufsdarstellungen und Epocheneinteilungen als eine Art Volksglauben der Intellektuellen abtun, der sich bei näherem Zusehen in Nebel auflöst.“<sup>3</sup>



6. Eine ebenso provokante wie riskante These mag die Überlegungen beschließen: hat die DDR 1989 nachgeholt, was die junge Generation im Westen 1968 geprobt hat?

Immerhin hat der frühere deutsche Bundespräsident Richard von Weizsäcker 1990 erklärt, dass die Jugendrevolte von 1968 „zu einer Vertiefung des demokratischen Engagements in der Gesellschaft“ beigetragen habe. In dem Falle wäre die sogenannte Wende nichts anderes gewesen als das Nachholen einer westlichen Vorgabe, also nachgeholte Geschichte und ein weiterer Hinweis auf die dialektische Spannung zwischen Ost und West. Ob 1989 damit zur „Modernisierung“, wie die zur Zeit beliebteste Kategorie der Historiker lautet, beigetragen hat, mag angesichts der historischen Rückversicherungen zweifelhaft sein. Am Ende war die „Wende“ tatsächlich nichts anderes als ein Stück nachgeholter Geschichte.

## Anmerkungen

<sup>1</sup> Vgl. dazu Hans Günter Hockerts: Zeitgeschichte nach der Epochenwende. In: Jörg Calließ (Hg.): Historische Orientierung nach der Epochenwende oder: Die Herausforderungen der Geschichtswissenschaft durch die Geschichte. Loccumer Protokolle 71/93. Loccum 1995. S. 95-104.

<sup>2</sup> Kleine Literaturgeschichte der DDR. Erweiterte Neuausgabe Leipzig 1996.

<sup>3</sup> Das Problem der Epochenbildung und die Evolutionstheorie. In: H.-V. Gumbrecht u. U. Linke-Heer: Epochenschwellen und Epochenstrukturen im Diskurs der Literatur- und Spruchhistorie. Frankfurt am Main 1985. S. 11-33).

## Augsburger Universitätsreden

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**1 • Helmuth Kittel:** 50 Jahre Religionspädagogik – Erlebnisse und Erfahrungen. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Philosophische Fakultät I am 22. Juni 1983, Augsburg 1983

**2 • Helmut Zeddies:** Luther, Staat und Kirche. Das Lutherjahr 1983 in der DDR, Augsburg 1984

**3 • Hochschulpolitik und Wissenschaftskonzeption bei der Gründung der Universität Augsburg.** Ansprachen anlässlich der Feier des 65. Geburtstages des Augsburger Gründungspräsidenten Prof. Dr. Louis Perri-don am 25. Januar 1984, Augsburg 1984

**4 • Bruno Bushart:** Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Philosophische Fakultät II am 7. Dezember 1983, Augsburg 1985

**5 • Ruggero J. Aldisert:** Grenzlinien: Die Schranken zulässiger richterlicher Rechtsschöpfung in Amerika. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Juristische Fakultät am 7. November 1984, Augsburg 1985

**6 • Kanada-Studien in Augsburg.** Vorträge und Ansprachen anlässlich der Eröffnung des Instituts für Kanada-Studien am 4. Dezember 1985, Augsburg 1986

**7 • Theodor Eschenburg:** Anfänge der Politikwissenschaft und des Schul-faches Politik in Deutschland seit 1945. Vortrag und Ansprachen an-llässlich der Verleihung der Ehrendoktorwürde durch die Philosophische Fa-kultät I am 16. Juli 1985, Augsburg 1986

**8 • Lothar Collatz:** Geometrische Ornamente. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Naturwissen-schaftliche Fakultät am 12. November 1985, Augsburg 1986

**9 • in memoriam Jürgen Schäfer.** Ansprachen anlässlich der Trauerfeier für Prof. Dr. Jürgen Schäfer am 4. Juni 1986, Augsburg 1986

**10 • Franz Klein:** Unstetes Steuerrecht – Unternehmerdisposition im Spannungsfeld von Gesetzgebung, Verwaltung und Rechtsprechung. Vor-trag und Ansprachen anlässlich des Besuchs des Präsidenten des Bun-desfinanzhofs am 9. Dezember 1985, Augsburg 1987

**11 • Paul Raabe:** Die Bibliothek und die alten Bücher. Über das Erhal-ten, Erschließen und Erforschen historischer Bestände, Augsburg 1988

**12 • Hans Maier:** Vertrauen als politische Kategorie. Vortrag und An-sprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Phi-losophische Fakultät I am 7. Juni 1988, Augsburg 1988

**13 • Walther L. Bernecker:** Schmuggel. Illegale Handelspraktiken im Me-xiko des 19. Jahrhunderts. Festvortrag anlässlich der zweiten Verleihung des Augsburger Universitätspreises für Spanien- und Lateinamerikastu-dien am 17. Mai 1988, Augsburg 1988

**14 • Karl Böck:** Die Änderung des Bayerischen Konkordats von 1968. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktor-würde durch die Katholisch-Theologische Fakultät am 17. Februar 1989, Augsburg 1989

**15 • Hans Vilmar Geppert:** „Perfect Perfect“. Das kodierte Kind in Wer-bung und Kurzgeschichte. Vortrag anlässlich des Augsburger Mansfield-Symposiums im Juni 1988 zum 100. Geburtstag von Katherine Mansfield, Augsburg 1989

**16 • Jean-Marie Cardinal Lustiger:** Die Neuheit Christi und die Postmo-derne. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendok-torwürde durch die Katholisch-Theologische Fakultät am 17. November 1989, Augsburg 1990

**17 • Klaus Mainzer:** Aufgaben und Ziele der Wissenschaftsphilosophie. Vortrag anlässlich der Eröffnung des Instituts für Philosophie am 20. No-vember 1989, Augsburg 1990

**18 • Georges-Henri Soutou:** Deutsche Einheit – Europäische Einigung. Französische Perspektiven. Festvortrag anlässlich der 20-Jahr-Feier der Universität am 20. Juli 1990, Augsburg 1990

**19 • Josef Becker:** Deutsche Wege zur nationalen Einheit. Historisch-po-litische Überlegungen zum 3. Oktober 1990, Augsburg 1990

**20 •** Louis Carlen: Kaspar Jodok von Stockalper. Großunternehmer im 17. Jahrhundert, Augsburg 1991

**21 •** Mircea Dinescu – Lyrik, Revolution und das neue Europa. Ansprachen und Texte anlässlich der Verleihung der Akademischen Ehrenbürgerwürde der Universität Augsburg, hg. v. Ioan Constantinescu und Henning Krauß, Augsburg 1991

**22 •** M. Immolata Wetter: Maria Ward – Missverständnisse und Klärung. Vortrag anlässlich der Verleihung der Ehrendoktorwürde durch die Katholisch-Theologische Fakultät am 19. Februar 1993, Augsburg 1993

**23 •** Wirtschaft in Wissenschaft und Literatur. Drei Perspektiven aus historischer und literaturwissenschaftlicher Sicht von Johannes Burkhardt, Helmut Koopmann und Henning Krauß, Augsburg 1993

**24 •** Walther Busse von Colbe: Managementkontrolle durch Rechnungslegungspflichten. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Wirtschafts- und Sozialwissenschaftliche Fakultät am 12. Januar 1994, Augsburg 1994

**25 •** John G. H. Halstead: Kanadas Rolle in einer sich wandelnden Welt. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Philosoph. Fakultät I am 22. Februar 1994, Augsburg 1994

**26 •** Christian Virchow: Medizinhistorisches um den „Zauberberg“. „Das gläserne Angebinde“ und ein pneumologisches Nachspiel. Gastvortrag an der Universität Augsburg am 22. Juni 1992, Augsburg 1995

**27 •** Jürgen Mittelstraß, Tilman Steiner: Wissenschaft verstehen. Ein Dialog in der Reihe „Forum Wissenschaft“ am 8. Februar 1996 an der Universität Augsburg, Augsburg 1996

**28 •** Jochen Brüning: Wissenschaft und Öffentlichkeit. Festvortrag und Ansprachen anlässlich der Verleihung der Ehrensatorenwürde der Universität Augsburg an Ministrialdirigenten a. D. Dietrich Bächler im Rahmen der Eröffnung der Tage der Forschung am 20. November 1995, Augsburg 1996

**29 •** Harald Weinrich: Ehrensache Höflichkeit. Vortrag anlässlich der Verleihung der Ehrendoktorwürde der Philosophischen Fakultät II der Universität Augsburg am 11. Mai 1995, Augsburg 1996

**30 •** Leben und Werk von Friedrich G. Friedmann: Drei Vorträge von Prof. Dr. Manfred Hinz, Herbert Ammon und Dr. Adam Zak SJ im Rahmen eines Symposiums der Jüdischen Kulturwochen 1995 am 16. November 1995 an der Universität Augsburg, Augsburg 1997

**31 •** Erhard Blum: Der Lehrer im Judentum. Vortrag und Ansprachen zum 70. Geburtstag von Prof. Dr. Johannes Hampel bei einer Feierstunde am 12. Dezember 1995, Augsburg 1997

**32 •** Haruo Nishihara: Die Idee des Lebens im japanischen Strafrechtsdenken. Vortrag und Ansprachen anlässlich der Verleihung der Ehrendoktorwürde durch die Juristische Fakultät der Universität Augsburg am 2. Juli 1996, Augsburg 1997

**33 •** Informatik an der Universität Augsburg. Vorträge und Ansprachen anlässlich der Eröffnung des Instituts für Informatik am 26. November 1996, Augsburg 1998

**34 •** Hans Albrecht Hartmann: „... und ich lache mit – und sterbe“. Eine lyrische Hommage à Harry Heine (1797–1856). Festvortrag am Tag der Universität 1997, Augsburg 1998

**35 •** Wilfried Bottke: Hochschulreform mit gutem Grund? Ein Diskussionsbeitrag, Augsburg 1998

**36 •** Nationale Grenzen können niemals Grenzen der Gerechtigkeit sein. Ansprachen und Reden anlässlich der erstmaligen Verleihung des Augsburger Wissenschaftspreises für Interkulturelle Studien, Augsburg, 1998

**37 •** Hans Albrecht Hartmann: Wirtschaft und Werte - eine menschheitsgeschichtliche Mésaillance. Festvortrag und Ansprachen anlässlich der Feier zum 65. Geburtstag von Prof. Dr. Reinhard Blum am 3. November 1998, Augsburg 1998

**38 •** Informations- und Kommunikationstechnik (IuK) als fachübergreifende Aufgabe. Ansprachen und Vorträge anlässlich der Eröffnung des Instituts für Interdisziplinäre Informatik am 27. November 1998, Augsburg 1999

**39 •** Jongleurinnen und Seiltänzerinnen. Ansprachen und Materialien zur Verleihung des Augsburger Wissenschaftspreises für Interkulturelle Studien 1999 an Dr. Encarnación Rodríguez, Augsburg 2000

**40 •** Wilfried Bottke: Was und wozu ist das Amt eines Rektors der Universität Augsburg? Rede aus Anlass der Amtsübernahme am 3. November 1999, Augsburg 2000

**41 •** Wirtschaftswissenschaft in gesellschaftlicher Verantwortung. Ansprachen und Vorträge anlässlich eines Symposiums zum 70. Geburtstag von Prof. em. Dr. Heinz Lampert am 11. Juli 2000, Augsburg 2001

**42 •** Religiöse Orientierungen und Erziehungsvorstellungen. Ansprachen und Materialien zur Verleihung des Augsburger Wissenschaftspreises für Interkulturelle Studien 2000 an Dr. Yasemin Karakasoglu-Aydin, Augsburg, 2001

**43 •** Die Dichter und das Wallis. Akademische Gedenkfeier zum Tode von Kurt Bösch ( 09.07.1907 - 15.07.2000), Augsburg, 2001

**44 •** „Das Amt des Kanzlers wird schwierig bleiben“. Grußworte und Ansprachen anlässlich der Verabschiedung von Kanzler Dr. Dieter Köhler am 26. April 2001. Mit einem Festvortrag über „Umweltschutz im freien Markt“ von Prof. Dr. Reiner Schmidt, Augsburg, 2001

**45 •** Zu Gast in Südafrika. Reden und Vorträge anlässlich des Besuches einer Delegation der Universität Augsburg an der Randse Afrikaanse Universiteit am 5. März 2001, Augsburg, 2002