

Some Remarks on the Western Legal Culture and the Purposes of a Historiographie of Law Universität i Bergen

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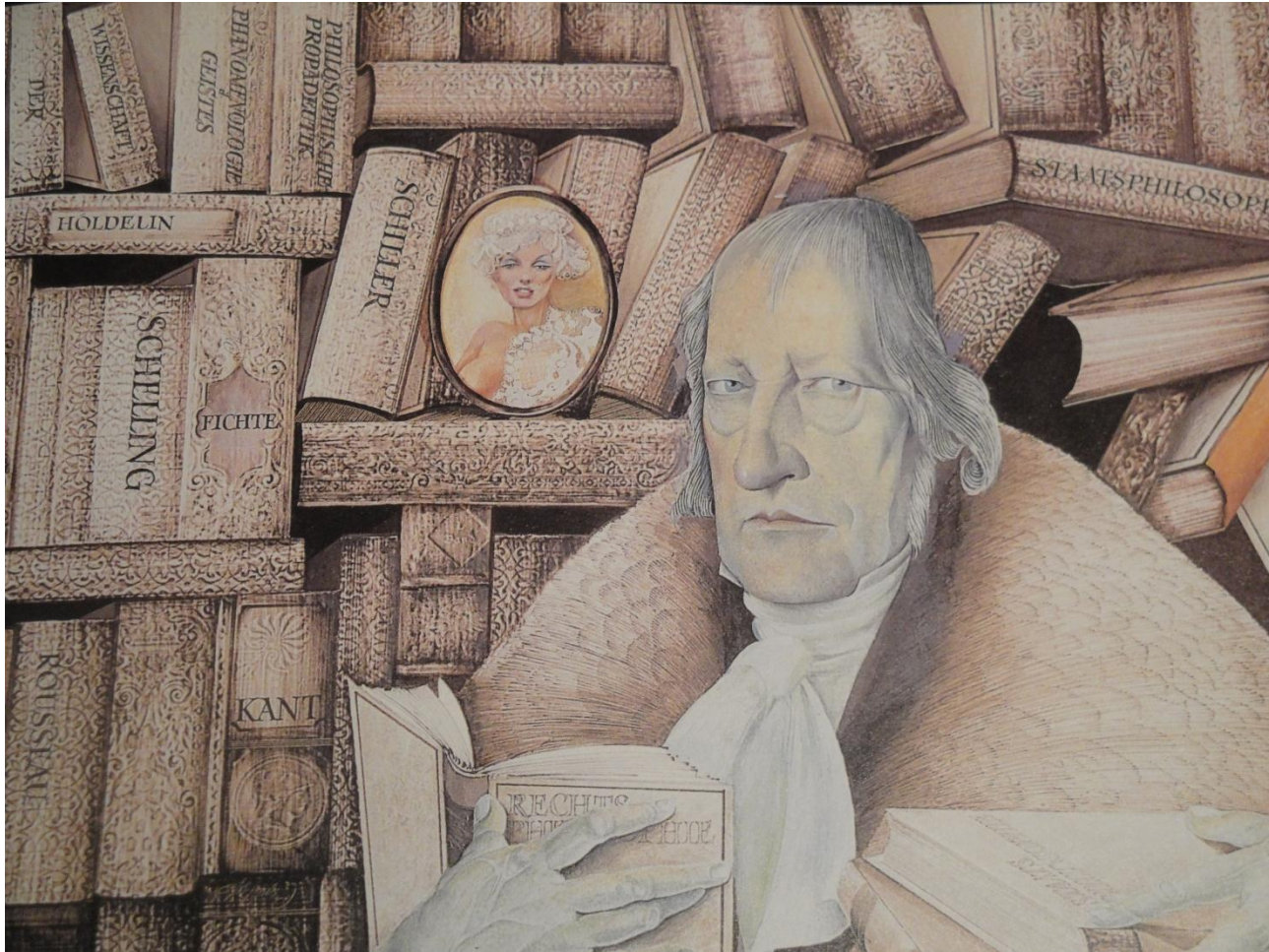
- I. Introduction: Two terms
 1. Legal Culture
 2. The Western World
- II. And finally: The Western Legal Culture
- III. Perspectives: Paths to a European Legal Culture
 1. Network structure
 2. A "European judicial culture" and tasks of legal history as a discipline

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Legal Culture means the „epitome of all the values, standards, institutions, procedures and legal policies“ and thus the entirety of „all phenomena of law and legal practicegen.“

*Thomas Raiser (*1935)*





„Law is a manifestation of culture.“

Gustav Radbruch (1878-1949)



„The interpretation of legal codes differs from the interpretation of other text forms in that crucial aspect that the principle of checks and balances of the three state powers do not allow the civil servant or judge to understand the text irrespectively and independently from its author - as one might do with other literary text forms as novels or poems.“

*Bernd Rüthers (*1930)*



Legal culture is not a category for legal esoterics,
but prevents that legal doctrine is going
dangerously astray.

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DE L'ESPRIT
DES
LOIX

*OU DU RAPPORT QUE LES LOIX DOIVENT AVOIR AVEC LA
CONSTITUTION DE CHAQUE GOUVERNEMENT, LES MOEURS
LE CLIMAT, LA RELIGION, LE COMMERCE, &c.*

à quoi l'Auteur a ajouté.

Des recherches nouvelles sur les Loix Romaines touchant les
Successions, sur les Loix Françoises, & sur les Loix féodales.

TOME PREMIER.



A GENEVE,
Chez BARILLOT, & FILS.

„The Western World means the latin Europe, that part of Europe which regrouped around Rome as its cultural, intellectual and spiritual gravitational centre.“

*Heinrich August Winkler (*1938)*





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1. Separation of clerical and worldly powers (starting with the Concordat of Worms in 1122)
2. Separation of the worldly power in itself by social stratification (as documented in the Magna Charta of 1215)
3. **Functional separation of the worldly power into the legislative, executive and judicial power (in the 19th century)**



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Movements of individuality and emancipation

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1. (Re-)discovery of individualism in the renaissance

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2. **Positive reassessment of the individuals' conscience in the Protestant Reformation**

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1. (Re-)discovery of individualism in the renaissance
2. Positive reassessment of the individuals' conscience in the Protestant Reformation
3. Enlightenment with the claim of „Man's emergence from his self-imposed immaturity” (Kant)

The divide which basically dates back to the schism of the Roman Empire into Roman-Latin West and Byzantine-Greek East does not mean a sustainable European integration, foremost on the legal level, might be impossible, but it needs awareness of the fact that this integration can only take place on the fundament of an expanded multi-level model based on several layers of different legal cultures

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2. Sovereignty of the people
3. Human rights
4. Rule of law
5. **Equality of women and men**

„Before Germany finally arrived where it is today, it instigated an unprecedented revolt against the Western world and its values in the years 1939-1945.“

*Heinrich August Winkler (*1938)*



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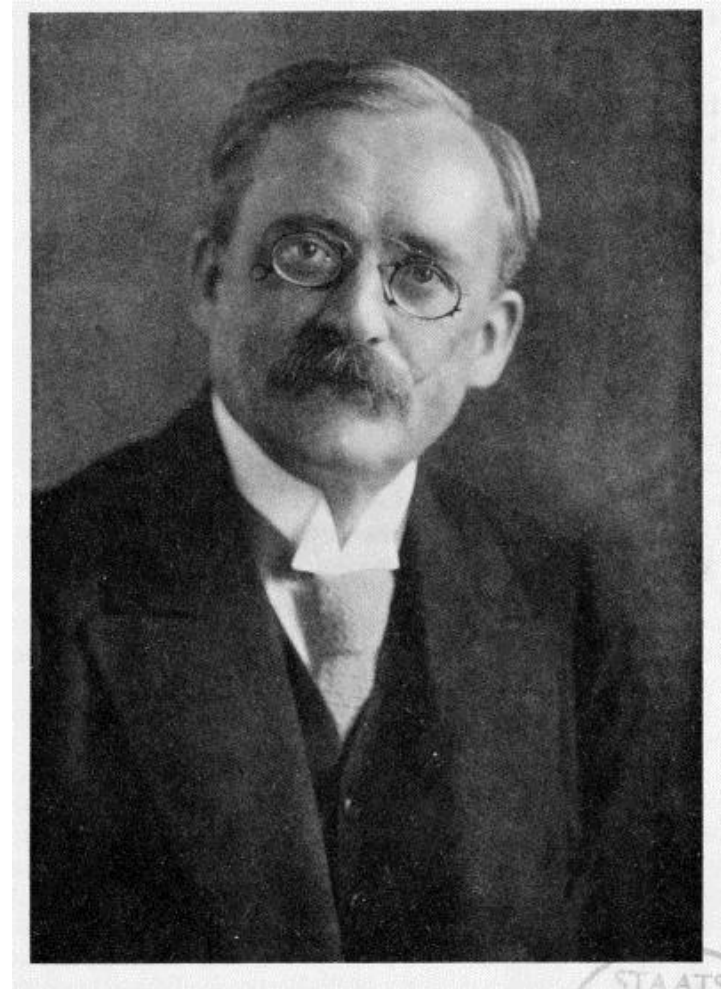
- 1. They could guarantee a legal education that is based on the principles of the respective legal culture**

What could legal scientists contribute to develop a European legal culture?

1. They could guarantee a legal education that is based on the principles of the respective legal culture
2. They could work in legal history as a European comparative legal culture history.

“One cannot compare to find a universal principle or idea that is at the base of the things compared; one can compare to conceive the genuine individuality of the possible items sharper and set it apart from the others.”

Otto Hintze (1861-1940)



A Comparative Historiography of Legal Culture is the soil to let grow a European legal culture – the seeds are already sown, we as jurists and as historians of law can and need to prepare and cultivate that soil in view of the possible harvest with special care. Thus the task of our discipline is outlined for decades.

