

# Venues where juridical and economic rationalities of regulation interact in the 19th and early 20th century

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*Max-Planck-Institute for European Legal History*

At the beginning of the 19th century the state began to withdraw its control over the economy. At the same time it restricted the power of intermediate institutions, which until then had organized sectors of the economy without competition. In this sense one can talk about a deregulation of the markets having taken place. But this subsequent vacuum was not completely filled by free private coordination. Parallel to this regulatory arrangements developed, in which societal self-regulation and state regulation were linked. In doing so, the use of organizational forms of the traditional corporate society, which were modified and advanced, was possible, and partially new instruments of regulation were developed (see project “Regulated self-regulation from a legal historian’s perspective”). The combination of state and societal structural logics occurred both within and outside of state organizations.

In the representative conceptions of law the emergence of these forms was insufficiently reflected for a long time. The science of public law was approached from a state perspective. However, partially it did open itself to these phenomena. This concerns, for example, the law of infrastructures, of social and economic self-government, but also the regulation of the wartime economy. But which conceptions were dominant? Which impulses influenced the juridical work?

The project concerns itself with the question, which economic considerations influenced conceptions of regulation. The influence of economics on jurisprudence, legislation and jurisdiction in the 19th and the early 20th century is only fragmentarily explored. But this project is not focused on the immediate transformation of economic theories into juridical systematical drafts. This hardly took place. What are of interest are the indirect impulses – be they from the so-called “Nationalökonomie”, which received its initial theoretical impulses from Adam Smith, or from the knowledge base of business administration or from the concept of the so-called “Gemeinwirtschaft”.

In this matter it is not only about reception in only one direction, but also about alternating interactions and their impact. The project is also focused not only on all-embracing conception, but also on the exploration of several branches of regulation, in which juridical and economic knowledge interacted. Also to be considered is the conditioning of legal practitioners by their – so-claimed – broad education which, according to them, included economics, as well as the confrontation of administrative jurists with the demands of the regulation of the economy.

The aim of the project is the analysis on the basis of selected problem areas of the confrontation, the balance and the (partial) harmonization of juridical and economic patterns of thought established in view of dealing with novel challenges of regulation.

*Peter Collin (Frankfurt/M.)*

**Venues where rationalities of regulation interact: causes, levels, instruments and moods of legal-economic communication**

Legal-economic communication is not an end in itself. It is not self-evident, because legal and economic discourses usually occur separately. They are characterized by different structural logics and are based on different premises. The more the state wants to implement its purposes in the economy, the more inevitable and the more intense the contacts are. The more society integrates itself in the interventionist state in the way of self-regulation, the more legal-economic meeting places are established. Amalgams of regulatory rationales are formed which in various ways include legal and economic thought. But this happens only rarely in the form of mutual reconciliation with the intention of definition of common purpose. Rather often it has to do with cases of open or covert instrumental use, pragmatic adaptations of vulgarized neighbouring disciplinary theory extracts, ignorance accompanied by simultaneous claim of the monopoly of definition. On the other hand not only apparently naive attempts at "interdisciplinary" understanding and the activation of stimulating potentials of the findings from neighbouring disciplines can be registered.

The diversity of legal-economic communication can be recorded only when they are contextualized and categorized. The lecture attempts to sketch relevant approaches of consideration and to make plausible their output for a legal-historical analysis of the regulatory phenomena of the late 19th and early 20th century.

*Andreas Thier (Zurich)*

**Thoughts about the meeting points of economical and jurisprudential discourses**

As the example of tax reform debates within the administration around 1880 or the decisions of the Federal Supreme Court of Switzerland about the admissibility of cartels show, the discourse on legislation and jurisdiction seems to be open to economical conceptions in Continental Europe only to a certain extent. Meeting points of economical and juristic discourses are created, if the issues around formation of statehood and social order are negotiated, as it is shown in the influences of Wagner's concept of state socialism and in the example of the "Verein für Socialpolitik". A potential joint epistemic interface of economics and jurisprudence is formed by statistics and official inquiries, as the example of the Swiss price formation commission illustrates.

*Klara Deecke (Marburg)*

**The liberalization of guild system in the early 19th century**

Economic and judicial strategies of argumentation by administration officials and professors from East Prussia and West Pomerania

In the beginning of the 19th century the interaction of economic and judicial arguments characterized the discussion on liberalizing the traditional organization of craft trade. Economic liberalism was adopted by administration officials and professors (jurists as well as cameralists) from Königsberg early on and this specific point of view was also applied to the issue of craft trade. Accordingly their positions are described by the demand for freedom of trade and the disaffirmation of the traditional guild system as both inefficient and unjust. Officials and professors elaborated concrete measures for liberalizing craft trade in order to increase Prussia's economic capacities. A pragmatic proceeding was planned, at which

judicial and economic considerations were taken into account to prevent the violation of existing law as well as economic transitional difficulties.

The situation in Königsberg contrasts sharply with Neuvorpommern, which had become Prussian only since 1815. Economic and judicial arguments cooperated here as well, but at first only in order to retain the guild system. The local administration officials argued that the traditional system had been legally guaranteed by Prussia and was a precondition for wealth. Later on liberal thinking was adopted in Neuvorpommern at least by degrees and came into conflict with the traditional rights and constitutions. To put more economic freedom into practice the administration officials did not vote for a fundamental reform of craft trade organization, but for preventing guild abuse and for a liberal interpretation of existing law.

*Ulrich Jan Schröder (Münster)*

### **“Steuerstaatlichkeit” on trial**

The reception of financial concepts of duty funding in legal discourses between the end of the 19th century and the Weimar Republic

Tax collection is a constitutive character of modern statehood. The outstanding importance of tax revenue for the national budget is indicated by the concept “Steuerstaat”. The way state duties and responsibilities are funded became topical during the evaluation period because of several reasons. Charges offered an instrument for funding those by services for the public provided benefits, especially on a communal level. Increasing privatization of sovereign enterprises lead to value performance in return for remuneration under private law. Even concepts of social self-government (e.g. corporatistic-corporate in connection to professional self-government or the free economy movement) had to answer the question of funding administrative tasks. Furthermore shall be examined to what extent ideas of justice that were picked up and advanced by economic science found their way into juridical discourses. Thereby the principle of equivalence can be traced in interdisciplinary exchange as a guiding norm of non-fiscal dues.

*Monia Manâa (Bonn)*

### **‘Do economic crises alter concepts of state regulation?’**

The influence of legal and economic research on corporate law before the economic crisis of 1931

In the aftermath of financial crises, legislators often develop new regulations. Hence, the law is meant to intervene where markets are failing. This is a global phenomenon that may easily provoke one to call these legal reforms “bubble laws”.

In Germany, the government responded quite quickly to the financial crisis of 1931 by introducing an Emergency Decree (“Verordnung über Aktienrecht, Bankenaufsicht und über eine Steueramnestie vom 19. September 1931”). With this Emergency Decree, the government, among other things, tried to counterbalance the weakness of the internal control inside the corporation by establishing a new external instance (audit), as well as implementing rules guaranteeing a better internal communication and more transparency. Yet, was it really the financial crisis of 1931 that initiated this shift towards the concept of regulated self-control?

In my presentation, I will show how legal and economic research and the already existing economic practice influenced the Corporate Law reform that led to the 1931 Emergency Decree and to the Corporate Act of 1937. This will demonstrate that the perception of “economy” and its political meaning had already changed over the decades preceding the

crisis of 1931. As always, no single event had changed the underlying values of economic policies; rather, it is a principle of constant “dripping” that will wear away any stone: the crisis of 1931 was less a reason than an occasion to change Corporate Law.

*Gerd Bender (Frankfurt/M.)*

### **The wage formation system controversial**

Discourses of „Staatswissenschaft“ in the early 20th century

The question of collective decision about wages and working conditions attracted attention of the economic-juridical reflexion in the early 20th century in a way only few other topics did. Particularly, the topic “Tarifautonomie” – its effectiveness and legitimacy as well as its relation to state policy – frequently preoccupied the interdisciplinary grounds of “Socialpolitik”.

Between deliberations about a “Bürgerliche Sozialreform” in the late German empire and debates about “political wages” during the Weimar Republic discursive relationships came into being, in which the new idea of regulated self-regulation was put on stage as an important controversy of this time. The planned contribution tries to reconstruct these relationships.

*Boris Gehlen (Bonn)*

### **The “Deutsche Handelstag” as a meeting point in economical and legal regulatory rationalities (1861-1914)**

Since 1861 the Deutsche Handelstag (DHT) – the umbrella organisation of the German chambers of commerce and other regional interest groups – deliberated all essential processes of regulatory legislation with macroeconomic significance – e.g. in the railway system, in telegraphy and in the insurance business, (mortgage) banks and stock exchanges. It didn't solely react on governmental plans, but also took action with own proposals and suggestions. As far as they were chambers of commerce or similar associations, its members were directed by law to introduce their economical expertise to legislative processes. Thus juridical and economical legal regulative rationalities continuously met on the level of membership as well as in debates in the DHT. This contribution elaborates these structures and extends it on the basis of the legislation in the railway and insurance sector..

*Heinz Mohnhaupt (Frankfurt/M.)*

### **The “Institut für Wirtschaftsrecht” in Jena (1919-1936) as a meeting space for the exploration of law in economic life**

The foundation of the Institute is the outcome of a movement at the beginning of the 19th century, which sought to make the “doctrines of Economics and of Transport” of service to the legal community. The “linking of law with economics” became a programme of legal education that began in Jena and led to the foundation of the institute on 1 May 1919. It was established in close connection with the Carl Zeiss Foundation, being a University institute within the Law Faculty and headed by a member of that Faculty, Professor Justus Wilhelm Hedemann. From the beginning until his departure to join the Berlin Faculty (1936), Hedemann served as editor of the “Communications of the Jena Institute for Law and Economics”. This review had 32 issues until 1937, and reflects the Institute's research initiatives and topics, as well as its relations to the Economy in general. Among the subjects treated by the Institute were “the law of organisations”, labour law and “the systematic study

of economic life as such". At the same time, there appeared alongside the review a series of "Publications of the Institute", which were monographs treating individual legal problems arising out of economic developments following the First World War. These were intended to treat "the legal aspects of the consequences of the new economic life". The present workshop on Legal Science and Economics should be enlightened by an analysis of these publications.

*Wilfried Rudloff (Kassel)*

### **Socio-political associations as meeting spaces of scientific approaches?**

This contribution discusses the problem to what extent and in which way differing scientific approaches could meet in the Empire's socio-political and social reform associations (in fact significant protagonists and commentators of the socio-political events). Juridical and economical expertise crossed on this new arising area of policy. Whilst national economists assumed leadership in the 1873 founded "Verein für Sozialpolitik", members of the legal profession did the same in the 1880 founded "Deutscher Verein für Armenpflege und Wohltätigkeit".

The presentation doesn't provide a final result, but tries to connect the workshop's emerging central questions to the topic of socio-political societies and associations. This includes questions like: Which marks did a different way of access, approaches to the problem and mentality leave in the expert association's publications and statements? Do these mentalities compete or do different approaches and rationalities merge? Which mixing ratios can be found with practical experts as those dominating the discussion in the "Deutscher Verein"?

*Sebastian Felz (Münster)*

### **Solving the housing problem – by market or by state?**

The "Bund deutscher Bodenreformer" (German land reform association) and the regulation of the housing market by mortgage reform, increment value tax and ground lease

At the end of 19th century industrialization and urbanization led to desolate living conditions among the lower class. This development made it clear, that a just solution of the housing problem could not be reached by the concept of a free market. Many of the social reformers became convinced that decent housing was the right of every citizen. They believed that it was a governmental duty to find ways to provide such housings.

Some tried to solve the problem by regulating the housing and property sector by socialization, whereas the "Bund deutscher Bodenreformer" (BdB) promoted more moderate concepts. Debt financed buying of land and buildings were only seen as means for speculation and profit. The bank lobbyists and landowners defended these ideas as the old rules of free market.

In contrast the BdB argued in favour of supporting public housing programs by new taxes. Furthermore citizens of the lower class should get the possibility of building houses by special law as ground lease.

The breakthrough of these social reform ideas seemed to draw closer during World War I. High generals like Hindenburg or Ludendorff understood - influenced by the BdB - that winning the war meant solving the housing problem. They intended to build "homes for heroes". But all their achievement(s) ended up as propaganda.

After losing the war and establishing the new Republic of Weimar the government declared good housing situations as an aim of the Constitution. The economic problems of reparations

and inflations and the peoples' claims on the beginning welfare state required more and more financial aids and public housing programs.

*Vera Hierholzer (Frankfurt/M.)*

### **A retreat of law?**

Food regulation in the legal science of the German empire

During the 19<sup>th</sup> century in the wake of industrialization jurists were increasingly confronted with new challenges. Economical and social change let new matters of regulation arise. However, these didn't find adequate counterparts in legal science. The relationship of law and industrialization was rarely examined systematically. University legal science was only little concerned with the new normalization in the field of special law aside the major codifications. The same goes for food regulation, which was not only formed anew by imperial law during 2<sup>nd</sup> half of the century, but also by protagonists from science, economics and consuming public. It's particularly conspicuous that legal science ignored this self-regulation, which effectively established a great impact, and missed to develop theoretical instruments, which could have covered these new regulations.

*Christian Henrich-Franke (Siegen)*

### **Multidimensional meeting places?**

Juridical and economic rationalities of regulation in German railroad legislation in the 1870s

The German railway legislation of the 1870s – better known as ‚Bismarcks Reichseisenbahnpolitik‘ – has been fascinating the historical research ever since. Historians have repeatedly analysed, why the federal government failed with several legislative acts. These studies mostly focused on the German chancellor, Otto von Bismarck. Why did this famous statesman not manage to pass a policy for the ‚nation's iron tendons‘? In this context (historical) research also analysed aspects of the ‚Ordnungspolitik‘. By doing so, even meeting places of juridical and economic rationalities of regulation have been touched. These works; however, primarily considered (political) negotiations within the federal institutions. Especially the Reichstag attracted much attention. They hardly took into account the numerous decision-making procedures within the Länders' (political) institutions and their interdependencies with the railway legislation.

It is a fundamental mistake to regard railroad legislation as an issue, which was independently dealt with by the federal legislation. Numerous forms of participation and a partial autonomy made the Länder an important player in railroad legislation. Consequently, the meeting places of juridical and economic rationalities of regulation had been very complex. The Länder and the Reich stretched a frame for multidimensional meeting places. Each of these places had its own logic and fundamental conditions, upon which juridical and economic rationalities of regulation met.

The presentation illuminates these meeting places by taking into account the institutions of the Reich as well as those of Prussia and Bavaria. Special focus is put on the role of politicians, which had to operate as mediators of the dialogue between jurists and economists. By differentiating several meeting places two questions will be raised: In how far did jurists and economists communicate directly? And, in how far did they communicate indirectly through means of politicians that adopted the arguments of both sides? It will be further exploited if the protagonists supported a particular ‚Ordnungspolitik‘ because of its basic rationality or because of opportunistic interests.

*Peter Becker (Vienna)*

### **Debates about administrative reforms as an interdisciplinary meeting point**

„Solche fixierte Punkte, in denen das Gleichgewichtszentrum einer Person mit dem Gleichgewichtszentrum der Welt übereinfällt, sind zum Beispiel ein Spucknapf, der sich durch einen einfachen Griff schließen läßt, oder die Abschaffung der Salzfässer in den Gasthäusern, in die man mit den Messern fährt, wodurch mit einem Schlag die Verbreitung der die Menschheit geißelnden Tuberkulose verhindert würde, oder die Einführung des Kurzschriftsystems Öhl, das durch seine unvergleichliche Zeitersparnis gleich auch die soziale Frage löst, oder die Bekehrung zu einer naturgemäßen, der herrschenden Verwüstung Einhaltgebietenden Lebensweise, aber auch eine metapsychische Theorie der Himmelsbewegungen, die Vereinfachung des Verwaltungsapparats und eine Reform des Sexuallebens.“ (Robert Musil, *Der Mann ohne Eigenschaften*)

In this quote from “The Man Without Qualities” Robert Musil presents reform of administration as one of many plans to improve the world, which concern misunderstood redeemers for state and society. It points on an important aspect of 20th century administrative reforms: this reform wasn't merely an administrative and political project, which concerned planning departments in ministries, reform-minded practitioners and scientific experts. Already around the turn of the century it was part of the citizens' wishes and fears. Reform projects became part of the political imaginary through the media and a political language, which was translatable to utopian visions. Beyond imaginary direct connections between protagonists of civil society and the administrative reform could be established through networks, which involved experts and representatives in the debate. In my contribution I will analyse three debates of administrative reforms in Austria as different structured meeting points.

*Roman Köster (Munich)*

### **The economic cartel discussion during Weimar Republic**

Cartels and monopolies have a long tradition as one of national economics topics. Already on the conventions of 1893 and 1905 of the “Verein für Socialpolitik” this topic was discussed intensely. Prior to the First World War the Historical School dominated the discipline, which took intensively part in the debate around antitrust acts before the war. This was to some extent a result of at that time existing professional proximity of national economics and jurisprudence, but also had its cause in the profession's institutional structure: However little the Verein für Socialpolitik could contribute to concrete political decisions finally, it could shape decisively scientific discussions and have an influence in so doing.

The proximity of national economics and jurisprudence that has existed until 1914 disappeared step by step after the First World War. The profession certainly discussed more intensively than ever before about economical and social effects of an increasing cartelization, but it obviously couldn't affect the actual laws and regulations (Kartellverordnung 1923, Kartellgesetz 1933) practically anymore. This presentation wants to derive the reasons for this “estrangement” from the history of the national economics profession and have a look on the debates around cartels from this point of view.