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STANLEY N. KATZ

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Although this text has been suspected of interpolation on the grounds that Julian could not have endorsed such a populistic notion, it is difficult to see how such a view would have been any more attractive to his successors. However, many of Julian's opinions were cited by later jurists, especially Ulpian, with approval, and jurists of the caliber of Marcellus and Paul published notes on his text.

[*See also* Praetorian Edict.]

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ANDREW LEWIS

JURISPRUDENCE OF CONCEPTS. *Begriffsjurisprudenz* (jurisprudence of concepts) is a polemical and negative German sobriquet for a jurisprudence that is removed from real life and limited to the mathematical application of terms and concepts. No jurist ever called himself a "Begriffjurist." Even though there seems to be general agreement that *Begriffsjurisprudenz* is something objectionable, a definition has not been agreed upon to this day.

Terminology. Three interrelated basic positions are imputed: (1) the given law has no gaps; (2) the given law can be reduced to a purely logical system of concepts ("pyramid of concepts"); and (3) new laws can be logically deduced from superior legal concepts arrived at through induction ("method of inversion"). The objections raised against these positions cite epistemological and logical naïveté, obfuscation of valuations, removal from real life, and lack of consideration for legal principles governing positive law.

History of the Term. The term *Begriffsjurisprudenz* was used for the first time in 1884 by Rudolf von Jhering against contemporary *Pandektistik* (pandectism). By using the term, Jhering took aim at exaggerations far removed from reality in the coining of concepts ("construction") and the insistence on antiquated solutions ("cult of mummies"). His polemic was based on new directions in contemporary theories of science. After 1860, the rightness of a systematic connection of knowledge under the headline "Back to Kant" (first used by Otto Liebmann) was questioned just as much as the usefulness of historical research for the existing law. Furthermore, the fact that *Begriffsjurisprudenz* was declared the enemy illustrates the pressure for modernization that legal scholarship, which was still working with antique sources, was subjected to after 1871. The demand for values, for taking into account the "demands of commerce" and the "facts of real life," expressed certain antiformal tendencies that can be detected throughout the Western world after 1900. For example, comparable tendencies may be found in the French and Belgian criticism of the *école d'exègese* (school of exegesis) and the discussions there about the *abus de droit* (abuse of rights); or in the realm of common law in the consequential criticism of the organic logical concept of law of the so-called classical period by O.W. Holmes and Roscoe Pound.

After 1900 in Germany, it was no longer the scholarly legal work on the casuistic antique sources that formed the centerpiece of the criticism of *Begriffsjurisprudenz*, but rather the work of the judge with the conceptually clear Bürgerliches Gesetzbuch (civil code). In this context, Philipp Heck criticized a development of the law that concentrated only on certain terms and concepts as *Begriffsjurisprudenz*. His alternative model was the use of the interests underlying the law and their values (*Interessenjurisprudenz*, jurisprudence of interests); the *Freirechtsschule* (school of free law), which came into existence at the same time, went further and demanded free and transparent values.

After 1918, the accusation inherent in *Begriffsjurisprudenz* changed again. Julius Binder criticized the lack of consideration of the material ties in the system of pandects as a "pyramid of concepts." Inverted according to contemporary tendencies, now the idea was an antiliberal imposition of the legislative on superpositive law. During the time of the National Socialists and into the 1960s, this perspective on *Begriffsjurisprudenz* was dominant, promulgated in Germany especially through the work on methodology of Karl Larenz. Regarding the judge's work, the rightness of traditional dogmatics was now countered by a view upon the "objective spirit of the order of values"

(Larenz 1969) or the "evaluation of social reality" (Josef Esser 1940) or apparently the mere empiricism of "social reality" (Walter Wilhelm 1958). Thus, the image of *Begriffsjurisprudenz* has been inextricably connected to central basic questions of methodology and legal philosophy to this day.

Did *Begriffsjurisprudenz* Exist? Historically, *Begriffsjurisprudenz* is usually located within the "historical school of law" and the "pandectism" of the nineteenth century, and the names most frequently mentioned are Georg Friedrich Puchta and Bernhard Windscheid. Obviously, the accusations were felt to be self-evident for a long time. Only in 1958 did Wilhelm anchor the image more precisely in the sources. Against his results, there has been increasing opposition, although a comprehensive examination is still to come.

First of all, it is noticeable that none of the detailed examinations of legal dogmatics support the finding of *Begriffsjurisprudenz*. It cannot be deduced that its application led to a lack of justice from the examination of methodological programs. A look into the history of dogma cannot confirm the supposed lack of reality, without regard to single exaggerations. It was the legal science of the nineteenth century that created important foundations for modern civil law that were successful around the world, providing solutions for possession, agency, assignment, impossibility, culpa in contrahendo (breach of duty at the time of contracting), and mortgage.

Even a constricted consideration of only the programs of methodology has recently resulted in corrections of the traditional image of *Begriffsjurisprudenz*, as far as Puchta and Windscheid are concerned. Windscheid always allowed for a "check for justice" in his dogmatics and also gave the judges far-reaching discretionary powers. In part, the relationship between scientific work and real life was discussed explicitly in the programs of methodology; thus, Puchta measured a new law against the "practical necessities" as an indicator of the people's will (*Volksgeist*).

In the meantime, the scientific-theoretic premises of this legal science are increasingly becoming the focus of attention. Before 1848, it was mainly in philosophy that assurance was sought, especially in the works of Immanuel Kant, G. W. F. Hegel, and F. W. J. von Schelling, whose thoughts were adapted in legal science. The systematic model before 1848 was the organism, meaning ubiquitous, not hierarchical, connections. Thus, law was also systematic ("necessary") as the preordained harmony of the people's spirit would, if undisturbed, create an organism of law similar to that of language where "one step touches a thousand threads" (Goethe, Schelling). Of course, *ius commune* was full of disturbances and mistakes. Furthermore, the people's spirit was not amenable to reason and a "dark workbench." Puchta interpreted the genesis of laws as "free determination" that would lead to logical consequences—if one did not want to suppose general madness of the human spirit—until a different "determination" led to other causal events. The law was held to be necessary *and* free. Logic was only an auxiliary tool, not a certain path to knowledge. The development of concepts, therefore, was seen as a complex hermeneutic interplay between the thinker and the thought, the contemporary term being *Anschauung* (observation).

Behind the systematic work on concepts of legal scholarship in the nineteenth century, there are clear legal-political positions that are easily overlooked when the nonpolitical language of the interpretation of antique sources is employed. At the beginning of the century, the goal was the establishment of a consistent national dogma that could be applied with certainty, with consideration of the older *ius commune*. The partners of legal scholars were first the judges, and after 1871 the legislature as well. Freedom was supposed to be the "germ cell" of law: in other words, the goal was a society with free commerce and private autonomy against throne and altar.

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HANS-PETER HAFERKAMP
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JURISTS. Roman jurists, known as *iurisperiti*, *iurisprudentes*, or *iurisstudiosi*—men skilled, wise, or learned