
BUCHBESPRECHUNGEN

Silke Hensel / Ulrike Bock / Katrin Dirksen / Hans-Ulrich Thamer (Eds.): Constitutional Cultures. On the Concept and Representation of Constitutions in the Atlantic World, Cambridge Scholars Publishing, Newcastle upon Tyne 2012, XII, 467 pp.

Rezensiert von
Helmut Goerlich, Leipzig

This collection of essays under the embracing concept of constitutional culture is a product of a conference mainly held by two research projects allocated at the University of Münster in Westphalia, which are interdisciplinary and not dominated by academic lawyers at all, but on the contrary. Also, these projects widened their horizons by combining their efforts and enlarged the hemisphere they deal with, including the nations adjacent to the Caribbean and the southern Atlantic seas as well.

After a short preface by the editors, one of them, Silke Hensel, offers the first contribution, containing not only a first survey of the contents of the whole book but at the same time a further perspective by dealing with “Constitutional Cultures in the Atlantic World during the ‘Age of

Revolutions” – thus putting some further limitations on the chosen field of research as the sole introduction, even though it is followed by a contribution, already under a different heading and authored by Hans Vorländer, the well known political scientist of Dresden University, who can be seen as an outstanding scholar in questions of constitutionalism. This contribution asks, “What is ‘Constitutional Culture’” and thus adds a further perspective for the concept of the project as a whole.

Apart from this first glances on what it is all about, the book consists of four parts; firstly it deals with “Constitutions in the Atlantic World”, secondly it reports on “Celebrations of the Constitution”, thirdly it takes a look at “Representations of the Constitution and Constitutional Bodies”, fourthly and finally it comes to “The People as Sovereign: Elections” and ends without summing up the results of the whole endeavour. But each part is commented by one person and thus somehow bound to represent a specific bunch of research.

In Part 1, after Vorländer, José M. Portillo Valdés reports on “Early Constitutionalism and the Limits of Liberalism in the Spanish World”; he is followed by Jaime E. Rodríguez O, who tells of “Hispanic Constitutions, 1812 and 1824” and by Klaus Deinelt, who speaks about “The Development of the Constitutional Concepts in the First Part of 19th Century France”.

Then, these first essays are reflected in a first comment by Andreas Biefang who sums them up under “Constitutions and Constitutional Cultures” – thus referring to the core of the whole undertaking.

Part 2 starts with an essay by another editor, Katrin Dirksen, who tells the story of “Representations of Competing Political Orders: Constitutional Festivities in Mexico City, 1824–1846”; she is followed by “Symbolic Politics and the Visualisation of the Constitutional Order during the First French Republic, 1792–1799”, authored by Christina Schröer; and this part stays in France with the essay “The Imponderabilia of Constitutional Celebrations: Constitutional Culture in France during the Long 19th Century” by Armin Owzar – answered by the comment on this part which binds the different narratives together under the headline “Celebrations of the Constitution” by another editor, Hans-Ulrich Thamer.

Part 3 starts with “Representing the Constitution in the US Capitol Building” by Vivien Green Fryd. This is followed by “Embodiments of Ideal Order: Visualisations of Constitutions in Early Southern German Constitutionalism” by Martin Knauer. Next is “Spatial and Temporal Dimensions of Constitutional Culture: Mistrust and the Congress as ‘Ersatz Monarch’ in Michoacán, 1824–1835” by Sebastian Dorsch and “Failing to Construct a Lasting Order: Constitutions and Constitutional Bodies in Yucatan, 1823–1838” by Ulrike Bock; and again the chapter ends with a comment, now “Representations of Constitution and Constitutional Bodies” by Annick Lempérère.

Part 4, relating to “The People as Sovereign: Elections”, starts with “Representa-

tion, Suffrage and Political Order in the River Plate during the Age of Revolutions” by Marcela Ternavasio, followed by “The Symbolic Meaning of Electoral Processes in Mexico in the Early 19th Century” by Silke Hensel again, then “Citizenship without Democracy: The Culture of Elections in France under the Constitutional Monarchy, 1814–1848” by Malcolm Crook and, as the final essay, “Discipline and Elections: Registration of Voters in the USA” by Hedwig Richter, thereafter mirrored in the last comment “Elections and Euro-American Modernity” by Ulrich Mücke.

There is no conclusion at the end; to begin with, one might re-read the introduction by Silke Hensel to substitute such conclusion. Thus, one has to work it out for oneself: the collection as a whole – which as its last part contains the list of authors, but no index at all – discloses a common perspective step by step, but not one single author can be named to have done this. It is a common endeavour. This implies – as compared to books like “A Sociology of Constitutions. Constitutions and State Legitimacy in Historical-Sociological Perspective” by Chris Thornhill, Cambridge, U.K. 2011 – that the perspective of culture and symbols is followed in different ways and styles. It enriches the reader’s insight but he or she sometimes has to behave like an investigative journalist who looks for the common ground of actors behind the visible display. Also, the historical events, which provide for the case studies, are sometimes quite hidden for the European reader. Nevertheless, the collection is a great achievement in comparative studies if one looks at it from the point of view of German academic traditions, which

deal with narrow fields and specialized knowledge only, especially since universal scholars like Max Weber are and remain great exceptions. The topical method, to compare segments of history of different national cultures and different traditions, which are or seem to be completely apart, is still new to us. Therefore it is not astonishing that results are published in English and the editors might hope to be reviewed in English, which might create the proper academic context and climate for the studies presented. Astonishing seems to be that the best known author dealing with constitutional culture within the field of constitutional law, Peter Häberle, is only quoted twice (pp. 189, 215); the wall between the fields seem too high, even though Häberle and his works are well known and received in law faculties of Spanish-speaking countries, which is indicated by the academic honours Häberle receives in such places. Constitutional Cultures differ in different traditions. Unwritten constitutions depend on the implementation of gestures and symbols, which indicate their validity publicly to all the populace, people in power and those out of it. Written constitutions depend in different ways on such tools of their presence in minds and habits, even more so since most of the people under such instruments will not be lawyers specialized in the area, maybe they even have difficulties to read and write at times. Such symbols have been used in ancient times in Greece and Rome as everywhere; they have been used before and after the French Revolution. They are especially visible where an imperial attitude of statehood is combined with the constitutional traditions like in the United States, but the republican rhetoric of revolutionary

new states in the Americas depends on it as well. So it makes sense to follow that line and collect materials and indicators of such cultural traditions, to trace them back to their roots and to have a look at their future. Basically the concept of the collection, to create a common perception of the nation-building processes accompanied by creation of written constitutions, gets visible. It even succeeds in presenting the intrinsic combination of national and constitutional symbols founding a new culture – and that makes a great difference comparing the constitutional cultures of the West with the German Monarchies of the same time and later, in that they are not nationalistic but constitutional in the sense of a new culture, which is using new values to create acceptance of the new order under law, which is the result of an understanding of a constitution as the supreme law of the land. Thus, constitutional cultures seem to be able to contain nationalism. As supreme law, the constitution – from time to time – might even be viewed at as an almost holy scripture, which has to be obeyed, newly interpreted and better understood in the days to come. Stabilizing such a – one may say – cult of law is one of the purposes of “constitutional culture”. While new interpretations might in fact result in a completely different understanding of the historical text of the document, such a culture might help to continue and identify a – so to speak – constitutional nation over different times. The collection of essays helps to reach such notions of culture and might be even better than the presentations at the foregoing conference. Of course, they are of different quality. And they are fragmentary in the sense of just offering few facets of the wide

stream of historical paradigms of constitutional cultures. Of special merit is the fact that the draft and concept of the conference as a whole had considered all the Americas and the Spanish colonies beyond. Thus the book – as well as the conference – widens the horizon, especially in the case of lawyers who normally only perceive the legal traditions in the northern hemisphere. And one of the great advantages of the perspective of social scientists is that they are prone to take up more than the narrow spotlight shed by law; they are free to deal with any type of custom and arrangements in any type of society. Therefore and this way, such studies widen the perspective for lawyers and their sense of protocol, observance and piety. In this sense this book is a very helpful guide through the thick woods and rich domains of social science and history of mankind. Thus, the book is an achievement and should be viewed as such in the academic cultures, which deal with “constitutional cultures” in our times.

Karin Gottschalk (Hrsg.): Gender Difference in European Legal Cultures. Historical Perspectives, Stuttgart: Franz Steiner 2013, 261 S.

Rezensiert von
Martin Heckel, Leipzig

Der hier zu besprechende Band enthält die gesammelten Aufsätze der fünften Konferenz des Forschungsnetzwerks „Gender

Difference in the History of European Legal Cultures“, die im Jahre 2009 in Frankfurt am Main abgehalten wurde. Neben zwei einleitenden Artikeln enthält das Buch insgesamt 17 Aufsätze, die sowohl thematisch als auch regional ganz unterschiedlich ausfallen und zudem verschiedene Epochen der Rechtsgeschichte abdecken. Der Schwerpunkt der Artikel liegt regional freilich im deutschsprachigen Raum, inhaltlich überwiegen Fragen des Familien- und Eherechts, außerdem solche des Strafrechts. Die zeitliche Grobeinteilung des Bandes scheidet den ersten Teil vom Ende des Mittelalters bis zum Beginn der Moderne vom zweiten Teil der Moderne. Aus den 17 Aufsätzen werden hier fünf (zwei aus dem ersten und drei aus dem zweiten Teil) herausgegriffen, die ihren Fokus zumeist auf das Zivilrecht richten, was nicht zuletzt dem Interesse des Rezensenten geschuldet ist.

In Gottschalks einleitendem Artikel „Gender Difference in the History of Law“ (S. 11–32) stellt die Autorin zutreffend fest, dass die rechtliche Differenzierung anhand des Geschlechts im soziologischen Sinne (*gender*; im Gegensatz zum biologischen Geschlecht *sex*) trotz formaler Gleichberechtigung der Geschlechter nach wie vor virulent ist (S. 11). Konkret gehe es um die Untersuchung von Rechtsnormen, die ausdrücklich auf Männer und Frauen Bezug nehmen. Dabei solle untersucht werden, welche Rolle dem soziologischen Geschlecht bei der Bildung von Rechtsnormen zukomme bzw. umgekehrt inwieweit die Rechtsnormen ihrerseits das soziologische Geschlecht konstruieren können (S. 11).

Dieses Problem ist durchaus nicht nur von historischer, sondern auch von aktu-