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## Michael Stolleis (1941–2021)

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## Michael Stolleis (1941–2021)

There are few images that have shaped our idea of the early modern state as much as the frontispiece of Thomas Hobbes' »Leviathan«, published in 1651. Above the head of the majestic colossus is written »There is no power on earth to be compared to him«.

Those who were born in 1941 in Germany and studied law in the 1960s had every reason to question the power of the state: after the injustices committed by the state – also through the use of the law – after the failure of the elites, after the role of the »terrible jurists« in National Socialism. However, the 1968 movement and Brandt's »Dare more democracy« (*Mehr Demokratie wagen*) in turn gave many hope that a different state could be possible: a constitutional and welfare state that would not become a means of oppression, but rather one that could ensure justice and offer life opportunities for all.

For Michael Stolleis, the confrontation with German history already began at a young age. His birthday on 20 July, and his own family history, appear from a later perspective as a mandate to engage with the unfathomable. As a seventeen year old, his visit to the theatre at Schiffbauerdamm to see Brecht's »The Resistable Rise of Arturo Ui« was formative. While studying law, first in Heidelberg, then in Würzburg, he bought, like so many others at the university entrance, the »Brown Book« from the GDR, which published material on jurists from the Federal Republic and their involvement in National Socialism. He attended the first lecture series on National Socialism and sought out an untainted doctoral supervisor.

He found more than such a person in the Munich legal historian Sten Gagnér. His dissertation on the late enlightenment philosopher Christian Garve was not least about the *Staatsrason* (»reason of the state«), ie the boundary between the validity of the law and the violation of law, about the state of emergency as an instrument of law, about law in situations of injustice – one of the great problems of legal history that accompanied Michael Stolleis throughout his life. His habilitation thesis on formulas for the common good (*Gemeinwohlformeln*) in national socialist law directly addressed this lifelong topic. The study of National Socialism appeared to him, as he put it in

a speech on the occasion of being awarded the Balzan Prize in 2000, to be both scientifically interesting and a requirement of political morality: From his student days, he asked himself why does a brutal and martial dictatorship – one that from the very beginning beat up, imprisoned and killed its political opponents – continue to use legal form? Why is it, following Brecht, that the times of extreme oppression are also generally the times when there is so much talk of great and lofty things? The method of carefully reconstructing the use of language that Michael Stolleis employed to examine the formulas for the common good owed much to his encounter with the Wittgensteinian critique of language in Sten Gagnér's seminar. It became a creed for him, as it did for many other students of the now largely forgotten Gagnér. Language also includes images, as Michael Stolleis demonstrated in his well-known study on the metaphor and image of »The Eye of the Law« (*Das Auge des Gesetzes*).

To submit a dissertation like this on National Socialism in 1973 at the Munich law faculty – ie that of Karl Larenz and Theodor Maunz – was not without risk to his further academic career, even if pioneering studies such as that of Bernd Rüthers had paved the way for an examination of the role of law in National Socialism. The Savigny journal, the flagship of the discipline, limited itself to a short announcement of his thesis, perhaps also because the field of »contemporary legal history« did not even exist yet; it was Michael Stolleis himself who later gave the decisive impulse for its establishment in the canon of university subjects. In addition, the combination of public law with legal history and canon law was no guarantee for his career prospects. However, in Frankfurt, where he was appointed professor in 1974, a liberal spirit prevailed. The university was growing, the basic legal subjects were strong and original minds were sought. Social law and Protestant church law, which he had engaged with as assistant to Axel Freiherr von Campenhausen, became his main focus areas in public law.

In legal history, Michael Stolleis turned back to the early modern period, to the time of the growth of the Leviathan. This resulted in studies on political philosophers of the 17th and 18th centuries, on

the political theory of the 17th century and on the state and the »reason of the state« in the early modern period. Above all, however, his plan for a history of the science of public law was maturing. The first volume was published in 1988; three others followed. Initially conceived as a single-volume counterpart to Franz Wieacker's history of private law, this highly influential book that was based on a strong philosophical conviction about the nature of law, the history of public law became much more: an erudite overall account of *ius publicum* between 1600 and 1990 emerged such as had never existed before, not in Germany, not in Italy, not even in France, to which he felt particularly attached. Guided by the firm resolution to avoid writing a highbrow history of great minds or narratives of progress, and oriented towards guides such as Johann Stefan Pütter's »Litteratur des Teutschen Staatsrechts« (1776–1783) and Robert von Mohl's »Geschichte und Literatur der Staatswissenschaften« (1855–1858), it explores, down to the smallest details, the institutional contexts of knowledge production, the histories of the fields of law and politics, literary histories, constitutional history and the history of ideas over four centuries. For legal history, traditionally concentrated on private law, this work opened a new world.

In parallel, he produced countless reviews on the legal history of the modern period, collected works on German lawyers of Jewish origin, works on the history of legal history, and studies on social law and its history. He also supervised this journal as editor, and even after his retirement he was one of its most loyal and diligent reviewers. In a large-scale research project at the Max Planck Institute for European Legal History, the institution where Michael Stolleis became director in 1991 and which he decisively shaped for two decades, a repository of early modern so-called police ordinances (*Policeyordnungen*) grew through a patient collection of sources. The research on early modern police ordinances that built on this uncovered a dimension of authoritarian and state control of behaviour that until then had been practically unknown to legal history. At the same time, it led the subject into a new dialogue with the historical sciences, in particular in relation to secularisation, confessionalisation, social discipline and norm implementation. The fact that Michael Stolleis clearly defined legal history as a historical subject, argued with an awareness of method and presented with a brilliant rhetoric, made him a

sought-after dialogue partner in legal and historical scholarship. Over the decades, an overall picture emerged which he increasingly embedded in a European context. Against the background of his history of public law, he claimed that the shared European ideal not only involved the search for the binding of state power to the law, the protection of zones of privacy and autonomy, and legal protection through judicial decisions, but also the responsibility of the authorities for a just social order.

It was also this insight into the rule of law and the welfare state as cultural achievements in European history that motivated Michael Stolleis to turn with particular enthusiasm to the legal history of the GDR and Eastern Europe after the fall of the Berlin Wall, and the Max Planck Institute gave him the institutional framework to do so. For this purpose, he used the funds from the Gottfried Wilhelm Leibniz Prize awarded in 1991, and in the 2000s he completed a larger project on the legal history of South Eastern Europe in cooperation with the Cluster of Excellence »The Formation of Normative Orders«. Support for young researchers from these regions was a particular concern of his, just as he spent a great deal of time and had a great personal commitment to developing and training the young European legal history research community. The Institute and the cooperation with the legal historians at the Goethe University Frankfurt gave him the possibility to do just this, and he never regretted having decided for legal history and against the directorship also offered to him at the Max Planck Institute for Foreign and International Social Law in Munich. There has been no lack of prizes and honours: a few years ago he was inducted into the order *Pour le Mérite* for Sciences and Arts and more recently was appointed to its Office of Vice Chancellor, along with receiving numerous academic memberships and honorary doctorates. He was always pleased to receive these, and could certainly state this with a quiet self-irony.

Above all, however, Michael Stolleis saw himself as an observer and narrator of the history of law, this history of the great attempt to lay the foundations for peaceful and just coexistence – which is, at the same time, also a history of the constant threat to civilisational achievements and the fragility of human existence. As a historian and thus one who works with language (*Spracharbeiter*), as he saw himself, the virtues of craftsmanship were important to him, as he had learned them in his

apprenticeship as a vintner in his native Palatinate region. He valued integrity more than extravagance; he did not need to strive for elegance. He considered self-discipline, attention to detail, reliability and fairness to be the essential prerequisites for scientific work, and if they were lacking, he could be quite blunt. He viewed the emphasis on collaborative research structures and the associated rhetoric of relevance with increasing scepticism; for him it was a mark of the highest esteem to call someone erudite. His generosity with his time and his knowledge, kindness and understanding became exemplary for many of his companions and students.

As someone who would have preferred to study literature and art, in recent years he was increasingly drawn to storytelling. Playing with form and

genre was also a piece of freedom he enjoyed after decades of disciplined research. The Akademie für Sprache und Dichtung (Academy for Language and Poetry) was particularly dear to his heart, and in the book »Margarethe und der Mönch« he told legal history in stories. The last volume, which he completed just a few weeks ago, is entitled »recht erzählen« (telling the story right and, at the same time, narrating law). They are tales from Frankfurt and his native region, reflecting the growth of the Leviathan, whose power and greatness had been a lifelong preoccupation of his.

The editors and the editorial staff of the journal mourn Michael Stolleis and are grateful for all he did for us.

