

Great Christian Jurists in German History

Edited by
MATHIAS SCHMOECKEL
and JOHN WITTE JR.

Mohr Siebeck

Great Christian Jurists in German History

*Edited by
Mathias Schmoeckel and John Witte Jr.*



Great Christian Jurists in German History

Edited by
Mathias Schmoeckel and John Witte Jr.

Mohr Siebeck

Mathias Schmoeckel is professor of civil law and legal history and Director of the Institute of German and Rhenish Legal History.

John Witte Jr. is Robert W. Woodruff University Professor of Law, McDonald Distinguished Professor of Religion, and Director of the Center for the Study of Law and Religion at Emory University in Atlanta.

ISBN 978-3-16-158346-9 / eISBN 978-978-3-16-158347-6
DOI 10.1628/978-3-16-158347-6

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliographie; detailed bibliographic data are available at <http://dnb.dnb.de>.

© 2020 Mohr Siebeck Tübingen, Germany. www.mohrsiebeck.com

This book may not be reproduced, in whole or in part, in any form (beyond that permitted by copyright law) without the publisher's written permission. This applies particularly to reproductions, translations and storage and processing in electronic systems.

The book was typeset using Stempel Garamond typeface and printed on non-aging paper by Laupp und Göbel in Gomaringen, and bound by Nädele in Nehren.

Printed in Germany.

Table of Contents

| | |
|---|-----|
| Preface and Acknowledgements | IX |
| CHAPTER 1 | |
| <i>Ken Pennington: Johannes Teutonicus</i> (ca. 1170/75–1245) | 1 |
| CHAPTER 2 | |
| <i>Tilman Repgen: Eike von Repgow</i> (ca. 1180–1235) and the Christian Character of his <i>Sachsenspiegel</i> | 13 |
| CHAPTER 3 | |
| <i>Sven Lichtmann and Hannes Möhle: Albertus Magnus</i> (ca. 1200–1280) Natural Law as Law of Reason and its Significance for the Political Order | 26 |
| CHAPTER 4 | |
| <i>Mathias Schmoeckel: Johann von Buch</i> (1290–1356) and the First Gloss of the <i>Mirror of the Saxons</i> | 44 |
| CHAPTER 5 | |
| <i>Gero Fuchs: Conrad Peutinger</i> (1465–1547) | 63 |
| CHAPTER 6 | |
| <i>John Witte Jr.: The Good Lutheran Jurist Johann Oldendorp</i> (ca. 1486–1567) | 80 |
| CHAPTER 7 | |
| <i>Wolfgang Forster: Andreas Gail</i> (1526–1587) | 99 |
| CHAPTER 8 | |
| <i>Heiner Lück: Matthew Wesenbeck</i> (1531–1586): Professor of Jurisprudence in Wittenberg | 113 |
| CHAPTER 9 | |
| <i>Cornel Zwierlein: Johannes Althusius</i> (1563–1638) | 128 |

CHAPTER 10

Pascal Förster: Dominicus Arumäus (1579–1637) 144

CHAPTER 11

Mathias Schmoeckel: Benedict Carpzov the Younger (1595–1666) 156

CHAPTER 12

Robert von Friedeburg: Samuel von Pufendorf (1632–1694) 174

CHAPTER 13

Steffen Schlinker: Gottfried Wilhelm Leibniz (1646–1716) 188

CHAPTER 14

Christoph Strohm: Christian Thomasius (1655–1728) 203

CHAPTER 15

Sebastian Michels: Carl Gottlieb Svarez (1746–1798) 219

CHAPTER 16

Joachim Rückert: Friedrich Carl von Savigny (1779–1861) 238

CHAPTER 17

Steffen Schlinker: Karl Friedrich Eichhorn (1781–1854) 252

CHAPTER 18

Hans-Georg Hermann: “Rescued from Scylla, to be thrown to Charybdis”:
Religious Conviction and the Separation of Church and State in the Works
of Sylvester Jordan (1792–1861) 268

CHAPTER 19

Hans-Peter Haferkamp: Moritz August von Bethmann-Hollweg
(1795–1877) 284

CHAPTER 20

Heinrich de Wall: Friedrich Julius Stahl (1802–1861) 293

CHAPTER 21

Malte Becker: Max von Seydel (1846–1901) 308

CHAPTER 22

Andreas Thier: Rudolph Sohm (1841–1917) 321

CHAPTER 23

| | |
|--|-----|
| <i>Konrad Adenauer</i> : Konrad Adenauer (1876–1967) | 333 |
|--|-----|

CHAPTER 24

| | |
|--|-----|
| <i>Werner Schubert</i> : Hans Nawiasky (1880–1961) | 350 |
|--|-----|

CHAPTER 25

| | |
|--|-----|
| <i>Joachim Rückert</i> : Eugen Bolz (1881–1945): Jurisprudence, Dictatorship, and the Responsibilities of a Jurist and Christian* | 365 |
|--|-----|

CHAPTER 26

| | |
|---|-----|
| <i>Ken Pennington</i> : Stephan Georg Kuttner (1907–1996) | 381 |
|---|-----|

| | |
|----------------------|-----|
| Index of Names | 395 |
|----------------------|-----|

| | |
|-----------------------|-----|
| Index of Places | 401 |
|-----------------------|-----|

| | |
|-------------------------|-----|
| Index of Subjects | 403 |
|-------------------------|-----|

| | |
|-----------------------|-----|
| List of Authors | 409 |
|-----------------------|-----|

Preface and Acknowledgements

Since 1520, the German territories have lived with a mixture of confessional Christian traditions – primarily Catholic and Lutheran (Evangelical) at first, but also Reformed, Anabaptist, and Jewish groups, each subdivided into various denominational and regional forms. Small pockets of Orthodox Christians and a few Muslims could also be found in early modern eastern territories, and the eighteenth-century Enlightenment unleashed new forms of free thinkers and their associations, particularly in the larger university cities. But the German territories remained largely Protestant and Catholic in confession until the twentieth century. After the Second World War, the large migration within and from outside Germany enhanced the presence of larger confessional minorities in all parts of Germany, and religious pluralism within and across the territories became the new normal.

Until the 1980s, there were still plenty of formally required and voluntary indications of a person's religious identity and affiliation, but today it is generally much harder to recognize these distinctions. Previously, religious diversity sometimes produced various tensions, not only between competing forms of faith but also within religious groups – from being called a heretic to being excluded from some groups altogether. Today, however, the question of religion is often deliberately ignored, in part to avoid such tensions within and between faiths. In the last few decades, even biographies of earlier figures in German history have intentionally neglected discussion of their subjects' confession in order to overcome the remaining religious tensions and ignore the conflicts.¹ Recently, some politicians have even denied the existence of a specific Christian tradition in Germany to include a longstanding Muslim or Turkish influence, symbolized for them by the presence of coffee and croissants.

While such political attempts to deprecate religion might help to reduce social conflict, they are and cause serious and conscious misrepresentations of history. Yet these fashions are now common in today's academic study of history, too. Most German scholarly texts in legal history, political history, and related fields outside the formal fields of theology – and apart from some more or less restricted chapters on canon law and on Luther – tend to ignore the influences of

¹ This is true, e. g., for the *Handwörterbuch zur Deutschen Rechtsgeschichte*, the *Dtv-Lexikon*, and the *Deutsche Biographische Enzyklopädie*, unless the individual author refers explicitly to the confession.

the church or Christian tradition.² Moreover, even recent histories of theology and religion are narrowly focused on the history of one Christian tradition or topic, rather than offering comparative and interdisciplinary studies of the lasting influence of the different Christian confessions on various aspects of German thought, culture, politics, or law.

But German legal history, on the Protestant as well as on the Roman Catholic side, cannot deny the influence of the Roman Catholic Church and the Protestant Reformation. European law has been transformed at least three times over by a dominating Christian influence: first, by the Church Fathers in late antiquity, who gradually Christianized prevailing Roman law and legal and political thought; second, by the Scholastics of the High Middle Ages, who produced a massive new system of canon law and civil law and accompanying learned theological jurisprudence and political theory, taught in the newly established European universities; and finally, by the sixteenth-century Protestant Reformation and Catholic Counter-Reformation, which created a major gap in the European legal order until at least the end of the eighteenth century, with these two confessions taking vastly different approaches to the technical problems posed by scientific jurisprudence.³

A century and more ago, this historical interaction of law and Christianity was a scholarly commonplace in Germany. Indeed, great German scholars led the world in producing critical editions of thousands of historical texts of law and theology, establishing pathbreaking journals like the *Zeitschrift für Rechtsgeschichte*, and producing vast historical studies of the interaction of law and Christianity over the prior two millennia. German universities were home to such scholarly legal giants as Friedrich Carl von Savigny, Otto von Gierke, Roderic von Stintzing, Ernst Landsberg, Theodor Muther, Adolf von Harnack, Theodor Mommsen, Rudolph Sohm, Wolfgang Kunkel, Eduard Schmidt, Emil Sehling, and so many others. And German scholars in other fields, such as Wilhelm Dilthey, Max Weber, Ernst Troeltch, and many others, also offered compelling accounts of the interactions of law, religion, society, and politics in German history.

Today, by contrast, most German scholars and students lack a deep understanding or appreciation of this history of law and Christianity. Not since Erik Wolf's classic text, *Grosse Rechtsdenker der deutschen Geistesgeschichte* (4th ed. 1963) has there been a thorough investigation into the influence of Christian theology on German legal thinkers through the centuries. While some scholars of late, animated in part by the five-hundredth anniversary of Luther's Reformation in 2017, have studied Protestant influences on law and politics, the

² Stephan Meder, *Rechtsgeschichte*, 6th ed. (Köln/Weimar/Wien: Böhlau, 2017), 147–70, refers to canon law and the medieval struggle between the pope and the emperor, but there is no reference to theology in the chapters on the rediscovery of Roman law, on legal humanism, or on the modern tradition of natural or rational law.

³ See Mathias Schmoeckel, *Das Recht der Reformation: Die epistemologische Revolution der Wissenschaft und die Spaltung der Rechtsordnung in der Frühen Neuzeit* (Tübingen: Mohr Siebeck, 2014).

scholarly study of the millennium-long canon law tradition in German history, or the influence of Christianity on discrete areas of public, private, penal, and procedural law, has become almost irrelevant for all but specialists. Ironically, Germany, once the world's leader in the scholarly study of law and Christianity, has now largely lost its capacity to research even its own Christian traditions and their legal influence. And the few bold attempts to do so of late have garnered little public interest, sympathy, or funding, and sometimes have met with considerable opposition.

This volume on *Great Christian Jurists in German History* aims to restore and expand on this tradition of scholarly study of law and Christianity. This volume is part and product of an ongoing project on Great Christian Jurists in World History. The project is directed by the Center for the Study of Law and Religion at Emory University, where the lead editor of this volume, Mathias Schmoeckel, serves as a center fellow, and where coeditor John Witte Jr. serves as center director. Each volume in this global Great Christian Jurists series focuses on a specific country, region, or era, and samples the life and work of a score or more of its greatest legal minds over the centuries. These legal minds include not only civil and canon lawyers and judges but also theologians, philosophers, and church leaders who contributed decisively to legal ideas and institutions, or who helped create landmark statutes, canons, or cases. Thus, familiar Christian jurists like Gratian, Grotius, Blackstone, Kuttner, and Scalia appear in this series, but so do Augustine, Isidore, Aquinas, Calvin, Barth, and Romero. This biographical approach is not intended to deprecate institutional, doctrinal, or intellectual histories of law, nor will it devolve into a new form of hagiography or hero worship of dead white males. It is instead designed to offer a simple common method and heuristic to study the interaction of law and Christianity around the world over the past two millennia. In due course, we hope to produce some fifty volumes and one thousand biographical case studies all told.

Columbia University Press opened this series in 2006 by publishing a three volume work titled *Modern Christian Teachings on Law, Politics, and Human Nature*, divided into case studies of nearly thirty modern Catholic, Protestant, and Orthodox Christian figures. Cambridge University Press has in print or in press commissioned studies on great Christian jurists in the first millennium, as well as in English, Spanish, French, Lowlands, and American history. Routledge will publish major new volumes on Great Christian Jurists in Italian, Russian, Welsh, and Latin American history. Federation Press is taking up the Australian story. In due course, the Center for the Study of Law and Religion aims to commission similar studies for other parts of the world, particularly other countries in Europe and discrete regions and eras in the Middle East, Eurasia, Africa, and the Pacific Rim.

We are delighted to have the leading press in Germany, Mohr Siebeck, publish this volume on *Great Christian Jurists in German History*, featuring a score of leading scholars, mostly from German universities. It proved hard to press this vast topic into a single volume, and the editors and contributors had to work out the parameters of this study:

- “Christian,” of course, includes all confessions, but Roman Catholics, Lutherans, and Calvinists dominate German legal history, and that is reflected in this volume. We did not look for the most pious lawyers in German history, but rather for those who reflect religious influences in their work. We did not try to find representatives of all confessional divisions within these three main traditions, but focused on those who proved most legally innovative and influential.
- With regard to the category of “jurists,” our chosen lawyers are not necessarily the most famous and best of their age. Some did not even work as lawyers, but had a certain influence on the legal order of their time like Albertus Magnus or Konrad Adenauer. Some differences had to be illustrated between a Roman Catholic and a Protestant, a practitioner and a professor, a martyr and a less open dissenter, although these biographies do not prove that a particular reaction was typical for any particular confession. The various reactions of Christian jurists to momentous events like the Reformation and Counter-Reformation, the rise of Prussian absolutism, and the outbreak of National Socialism and Nazism had to be shown. Regrettably, however, since our focus is not primarily on the twentieth century, it was impossible to find female jurists for a case study or two.
- With regard to the “greatness” of these jurists, we decided not to focus on law professors alone. We did not even ask for a lasting visible influence of the life and teaching of each selected figure. Some became interesting for their capacity to resist dominating influences of their time thanks to their religious conviction, while some demonstrated how important their Christian confession could become even in more recent centuries.
- “German” lawyers are not necessarily authors who wrote in German. As Latin remained the dominant academic and diplomatic language until the nineteenth century, most of our lawyers wrote in Latin. Instead of focusing on the language, we chose instead to select lawyers from territories which belong to Germany today. This does not imply, certainly, that these lawyers felt “German” in their time. Those working in the Saxon tradition might have been aware of their Germanic heritage, but they tended to view themselves primarily as members of the great Saxon legal tradition. In this respect, “German” as a criterion is less apt to describe the way these authors regarded themselves.

With those criteria in mind, the editors and contributors made their selections of biographical case studies for this volume. Of course we had to choose some medieval authors who can be regarded as jurists or at least legal minds. No German legal history could omit Eike von Repgow, who gained his expertise in his position as a judge. Fortunately, we have a chapter on Johannes Teutonicus, too, as an early example of the learned tradition, particularly on canon law. We were fortunate to be able to include a chapter on Albertus Magnus who, while not trained as a jurist, established main ideas of natural law theory and others that led to the establishment of legal professionalization in Germany. Johann von Buch, by contrast, is an early example of a medieval German lawyer trained at the Uni-

versity of Bologna. While it was easy to take Johann Oldendorp as one early example of a leading Lutheran lawyer, it was more complicated to find a suitable Catholic counterpart, and we settled on Andreas Gaill. Authors from the seventeenth and eighteenth centuries, particularly of the Saxon tradition take up a substantial place in the middle of the this volume: Dominicus Arumaeus, Samuel von Pufendorf, Benedict Carpzov, Gottfried Wilhelm Leibniz, and Christian Thomasius [Boehmer] just could not be omitted, even though they constitute a dominating Lutheran block. With the crypto-Calvinist Johannes Wesenbeck, from Wittenberg, and the more outspoken Calvinist Johannes Althusius, we have at least a Reformed counterpart. Although we find distinguished Roman Catholic lawyers in all ages, it is hardly a coincidence that no example of this tradition from the seventeenth and eighteenth centuries appears in this collection. The new, predominant Prussian tradition is represented by Carl Gottlieb Svarez, Friedrich Karl von Savigny, Karl Friedrich Eichhorn, Moritz August von Bethmann-Hollweg, and Friedrich Julius Stahl, while Sylvester Jordan and Max von Seydel represent Roman Catholic counterparts. The reaction to Nazism is reflected in the biographies of a Protestant martyr like Eugen Bolz, Roman-Catholic lawyers like the politician Konrad Adenauer, the jurist Hans Nawiaski, and the great canonist and émigré scholar Stephan Kuttner.

Plenty more eminent legal scholars in German history, devout Christians among them, could have been included in this volume. And not all criteria for selection apply equally to those whom we selected. Nobody can doubt the importance of Savigny, for example, in German legal history, but he certainly was not known until recently for his specifically Christian perspective; even his confessional identity was hardly known in his own day.⁴ Many of our authors could be replaced by even more celebrated lawyers or more famous Christians. We had to make judicious selections of illustrative figures over a millennium, knowing that a single collection like this can never represent German history of law and Christianity in all its multifold perspectives in a systematic or comprehensive manner. In this respect, this collection is a first attempt, which will be successful if it results in encouraging more research along these lines.

While we deliberately included less famous lawyers, some of them, we hope, will become better known through this volume. Most German readers will hardly know Sylvester Jordan, but might realize now why the law faculty of Munich recently put his name on its award for the best dissertation. Other lawyers are famous in Germany but unknown by English and American historians. With regard to the politics of Emperor Louis IV, for example, William of Ockham and Marsilius of Padua of his court in Munich are well known, but the great and original lawyer Johann von Buch, the leading lawyer of Brandenburg in the service of the emperor's eldest son, has been ignored, although he had highly

⁴ Mathias Schmoeckel, "Schleiermacher und Savigny: Von der 'intellektuellen Anschauung' zum historischen System (1795–1817)," in Uwe Niedersen (ed.), *Reformation in Kirche und Staat. Von den Anfängen bis zur Gegenwart* (Dresden: Torgau, 2017; 2nd ed. Berlin: Duncker & Humblot, 2019), 197–224.

original views on the topics of the day. This publication may help, therefore, to point toward some historic figures who deserve a more general recognition.

We are grateful for those colleagues who took part in this project – however out of step with current German academic fashions – and delivered such inspiring chapters. In September 2018, most of the contributors convened on the beautiful premises of the medieval Maria Laach Abbey in the Eifel region of Germany, with the organizational help of the team in the Institut für Deutsche und Rheinische Rechtsgeschichte at the University of Bonn, especially Julius Schwaferts and Malte Becker. Many of the collaborators in Bonn agreed to present a chapter for this project, while others helped to organize, translate, or correct the chapters. Gary S. Hauk, senior editorial consultant for the Center for the Study of Law and Religion at Emory University, improved the quality of the texts tremendously with his exacting editorial work. The cooperation of his colleagues Anita Mann, Amy Wheeler, and other members of the Center enabled us to carry out our plans from the first initiative to its realization. And this volume would not have been possible without the generous underwriting of the McDonald Agape Foundation, and its principal officers, Ambassador Alonzo L. McDonald and his wife, Suzie McDonald, and their son and now new foundation president, Peter McDonald. We give thanks to all these friends and colleagues for their support, and to our friends at Mohr Siebeck for applying their usual high standards of excellence to the timely publication of this volume.

Mathias Schmoeckel, University of Bonn
John Witte Jr., Emory University

CHAPTER 1

Johannes Teutonicus (ca. 1170/75–1245)

Ken Pennington

I. Early Life and Legends

Johannes Teutonicus was the first and earliest German jurist to achieve European-wide fame and was the first German to teach at the law school at Bologna.¹ Johannes was born in the last quarter of the twelfth century probably in the diocese of Halberstadt where he spent the last years of his life (1241–1245) as provost of the cathedral chapter. Previously, he also held the position of provost (1223) of the collegiate church St. Maria in Halberstadt. Two manuscript versions of his epitaph give him the family name of Semeke (Zemeke). In the legal literature of the *Ius commune* he was always referred to as Teutonicus because of his Germanic origins. All the epitaphs describe him a “lux decretorum (the light of Gratian’s *Decretum*)” a title that connects Semeke to the jurist in Bologna with some certainty.² He died in 1245.

As is the case for so many of the twelfth- and thirteenth-century canonists there is little biographical information about Johannes. His fame, however, was so great that writers from the sixteenth and eighteenth centuries concocted stories about him. He was called a magician, illegitimate, and a champion who fought against papal taxes levied on Germany.³ The facts are more mundane. He was probably born ca. 1170–1175 and entered law school ca. 1200. The only teacher that he mentioned in his works was the great Roman lawyer, Azo.⁴ In 1212 he

¹ *Peter Landau*, Johannes Teutonicus und Johannes Zemeke: Zu den Quellen über das Leben des Bologneser Kanonisten und Halberstädter Dompropstes, in: Ullmann (ed.), *Studien zu Dom und Liebfrauenkirche: Königtum und Kirche* (Berlin: Akademie Verlag, 1997), 18–29.

² *Stephan Kuttner*, Johannes Teutonicus, in: *Neue Deutsche Biographie* 10 (Berlin: Duncker & Humblot, 1974), 571–573. The inscription is confirmed by several manuscripts, see *Ken Pennington*, The Epitaph of Johannes Teutonicus, *Bulletin of Medieval Canon Law* 13 (1983), 61–62; *Horst Fuhrmann*, Das Grabmal für Johannes Zemeke im Dom zu Halberstadt und die Inschriften in seinem Umkreis, *Signa iuris* 6 (2010), 35–73.

³ See *Johann Friedrich von Schulte*, Johannes Teutonicus (Semeke, Zemeke), *Zeitschrift für Kirchenrecht* 16 (1881) 107–132, whose essay is still the most complete evaluation of the evidence for Johannes’ time in Halberstadt. Even modern authors insert errors or baseless assertions into his biography, e.g. *Heiner Lück*, Johannes Teutonicus († 1245), in: Cordes/Lück/Werkmüller/Bertelsmeier-Kierst (eds.), *Handwörterbuch zur deutschen Rechtsgeschichte* 2 (Berlin: Erich Schmidt Verlag, 2012), 1379–1381, thinks that the Ordinary Gloss was based on the *Gloss Palatina*, that Pope Innocent III commissioned Johannes to gloss *Compilatio tertia* and that Johannes may have known Eike von Repgow, the author of the *Sachsenspiegel*.

⁴ Gloss to Gratian’s *Decretum* at D. 86 c. 4 s. v. *frangatur auctoritas*.

had been appointed a canon in the cathedral at Halberstadt and already held the title of master (magister), which indicated that he was teaching. There is a letter in the register of the archbishops of Magdeburg dated 1218 in which Johannes was a witness. Consequently, Johannes probably taught at Bologna from ca. 1210 to 1218 and spent the rest of his life in Halberstadt and the surrounding region.

II. Teaching and Writings

If Johannes did teach for only eight years, he was prodigiously productive and successful in a very short time. He must have been viewed as remarkably gifted. In that time he wrote and compiled four major works. His most important work for his future reputation was an extensive gloss to Gratian's *Decretum* that very quickly became the *Ordinary Gloss* used in the classrooms and produced in the writing workshops (scriptoria) all over Europe. His *Ordinary Gloss* alone would have established him as the leading canonist of his age. Johannes incorporated the glosses of other major canonists in his work, especially those of Huguccio and Laurentius Hispanus, which accounts for its immediate acceptance and success. Jurists, polemicists, and theologians used it as a guide to the *Decretum* for centuries. Johannes' student, Bartolomaeus Brixiensis made additions to Johannes' Gloss in the mid-thirteenth century.⁵ He updated Johannes' legal citations to conform to Pope Gregory IX's *Decretals* and appended critical comments to Johannes' glosses. The manuscripts and the early printed editions do not always distinguish between Bartolomaeus' and Johannes' texts. A reader must consult manuscripts to be certain whether a particular text is Johannes' or Bartolomaeus'.⁶

Papal decretals were gradually taking precedence over Gratian's *Decretum* in the schools. Early in his teaching career Johannes began to gloss a collection of Pope Innocent III's decretals, called *Compilatio tertia*.⁷ The manuscripts reveal that he finished his commentary and then began to revise it but never finished his revisions. Books 3–5 witness his first text and books 1 and 2 his revised version. In the first two books Johannes did not copy glosses of other canonists verbatim but incorporated them into a coherent commentary. In books 3–5 he copied the glosses of Vincentius Hispanus and Laurentius Hispanus frequently and did not refashion them as his own glosses.⁸

When Pope Innocent III promulgated the canons of the Fourth Lateran Council Johannes first glossed them separately and then almost immediately placed them into his new collection of decretals that the schools called *Compilatio quarta*.

⁵ Bartolomaeus' glosses comprise ca. 10 % of the standard *Ordinary Gloss*.

⁶ For example Admont, Stiftbibliothek 35.

⁷ Pennington, *Decretal Collections 1190–1234*, in: Hartmann/Pennington (eds.), *The History of Medieval Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX* (Washington, D. C.: Catholic Univ. of America Press, 2008), 293–317, at 309–311.

⁸ Pennington, *Johannis Teutonici Apparatus glossarum in Compilationem tertiam*, in: *Monumenta iuris canonici, Series A, 3*; (Città del Vaticano: Biblioteca Vaticana, 1981), xi–xxvi.

He not only compiled the collection but glossed it as well ca. 1216–1217. Innocent refused to approve the new collection for reasons that are opaque. The pope may have wanted the conciliar canons to circulate separately. Johannes worked on several different versions of his collection, but none seem to have satisfied Innocent. Whatever the pope's reasons, this failure may have convinced Johannes that he no longer wished to stay in Bologna. *Compilatio quarta*, however, was accepted by the schools. His glosses became the *Ordinary Gloss* to the collection.⁹

These four works were Johannes' major contributions to canonical jurisprudence. He also wrote three minor works: Glosses to the *Arbor consanguinitatis et affinitatis*, a set of "Quaestiones" on legal problems, and a legal brief (consilium) that he wrote while in Halberstadt.¹⁰ Recently other works have been attributed to him with no solid evidence as well as an alleged, undocumented interest in theological matters that cannot be found in his other works.¹¹

III. Jurisprudence

Johannes can be described as a canonist who was concerned about the power and authority of the papacy in the Christian church. His doubts about papal monarchical power and about the pope's usurping the jurisdictional authority of local bishops can be seen in his positions on a number of issues that reveal his ideas about how the Church should be governed. His glosses also touched many subjects concerning people and society. When he wrote about the art of teaching, he noted that some students rush to a prestigious places to learn, not understanding that a teacher brings prestige to a school; the school bestows no prestige on a teacher (Cum magister faciat cathedram, non cathedra magistrum).¹² Lawyers, he thought, should not be paid for their advice if they did not have to burrow into their books.¹³ Only labor should be rewarded. He cited a proverb from Cato the Elder, the Roman poet:

When work is in disrepute
Poverty then is sure to root.
(Cum labor in damno est,
Crescit mortalis egestas)

⁹ Pennington, *The Fourth Lateran Council: Its Legislation and the Development of Legal Procedure*, in: Melville/Helmroth (eds.), *The Fourth Lateran Council: Institutional Reform and Spiritual Renewal: Proceedings of the Conference Marking the Eighth Hundredth Anniversary of the Council Organized by the Pontificio Comitato di Scienze Storiche* (Rome 15–17 October 2015) (Affalterbach: Didymos-Verlag, 2017), 41–54 at 43–47; Pennington (note 7), 314–315.

¹⁰ Antonio García y García, *Glosas de Juan Teutónico, Vicente Hispano y Dámaso Húngaro a los Arbores Consanguinitatis et Affinitatis*, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt.*, 68 (1982), 153–185.

¹¹ E. g. several essays in Carmassi/Drossbach (eds.), *Rechtshandschriften des deutschen Mittelalters: Produktionsorte und Importwege, Wolfenbütteler Mittelalter-Studien*, Vol. 29 (Wiesbaden: Harrassowitz, 2015); see my review in *Speculum* 93 (2018), 1174–1175.

¹² Gloss to Gratian, *Decretum* C. 8 q. 1 c. 21 s. v. *maiorem*.

¹³ *Ibid.* C. 11 q. 3 c. 71 s. v. *instum*.

Johannes quoted ancient Roman writers fairly often: Virgil, Horace, Ovid (frequently), Persius, Seneca, and Lucan. Although he might have taken some of them from the glosses of earlier jurists he must have had some training in rhetoric.

Johannes frequently included comments about the human condition in his glosses to the *Decretum* that account, in part, for its success. A few examples are comments that he made on marriage, drinking, and sex. Johannes confronted the dangers of marriage from the male perspective. Marriage, he noted, was “Just as a sailor subjects himself to various dangers and is controlled by wind and not his will, so is it when a man has a wife.”¹⁴ Long before the age of nationalism, jurists were conscious of differences between peoples. Johannes noted that a soul cannot live in arid conditions. That is why, he continued tongue in cheek, that Normans, English, and Polish drink so much. They do not want their souls to die.¹⁵ In a more philosophical vein, Johannes noted that fishing was superior to hunting. The fisherman can find solitude, but not the hunter. Hunters are so engaged in the hunt they cannot contemplate the divine.¹⁶

Pleasure, especially sexual pleasure, was a problem for the jurists. When was it sinful? A number of his predecessors, especially Huguccio, had argued that men and women could not have sex without sin. Johannes disagreed. If a spouse requested sexual intercourse, the couple did not sin.¹⁷ Johannes’ glosses on sexual issues in the *Decretum* discussed issues that later readers found fascinating for centuries. An example is his gloss on fornication:¹⁸

Huguccio said that it is a greater sin to fornicate with a beautiful than with an ugly woman. A man has greater pleasure with a beautiful woman, but a man leaves an ugly woman more quickly. Bazianus wrote that it is a greater sin to fornicate with an ugly woman because many more things tempt a man with a beautiful woman than with an ugly woman: namely her beauty and one’s lust.

Because of glosses like these and many others almost everyone who wrote about the Church in the later Middle Ages knew and quoted Johannes’ glosses to Gratian. It is almost impossible to pick up a medieval tract dealing with ecclesiastical and theological issues that does not cite him. Thomas Aquinas, Bonaventura, William of Ockham, John Hus, and Martin Luther found a cornucopia of material in his glosses. At the end of the Middle Ages, Johannes Baptista de San Blasio († 1492) wrote that Johannes’ glosses were “brief, but full of juice. More fertile and useful than the legal glosses in other volumes of law (breves, sed succo plene et utiliores ac fertiliores quam sunt glossas aliorum voluminum iuris).”¹⁹

¹⁴ Ibid. C. 17 q. 2 c. 2 s. v. *navigasti*.

¹⁵ Ibid. C. 32 q. 2 c. 9 s. v. *in sicco*.

¹⁶ Ibid. D. 86 c. 9 s. v. *piscatores*.

¹⁷ Ibid. C. 32 q. 2 c. 3 s. v. *ab adulterio*.

¹⁸ Ibid. C. 14 q. 6 c. 4 s. v. *fornicatione*.

¹⁹ *Thomas Diplovatatus*, Liber de claris iuris consultis, in: Schulz/Kantorowicz/Rabotti (eds.), *Studia Gratiana* 10 (Bononiae: Inst. Gratianum, 1968), 95–97 at 95, who cites other jurists who praised Johannes.

IV. Johannes' Theories of Church Government (Ecclesiology)

Pope Innocent III rejected Johannes's request to approve his decretal collection, *Compilatio quarta*. In the earliest versions of his Commentary on *Compilatio tertia*, Johannes wrote scathing introductory words about Innocent in his letter of promulgation:²⁰

Although here you call yourself the servant of the servants of God, nevertheless at another place you thunder from on high and disdain to be called the vicar of Peter.

The Bolognese canonists objected to the sharpness of Johannes's gloss and deleted it from the manuscript copies that circulated in Bologna and elsewhere after he left for Halberstadt. Johannes' animus was not directed towards papal power and authority but towards Innocent. In another gloss he extolled papal power with extravagant language that was immediately embraced and repeated by many later jurists for centuries:²¹

The pope exercises the office of God, because he can make something out of nothing ... Likewise he has fullness of power in ecclesiastical matters ... he dispenses from the law.

Johannes granted the pope great authority and used the language that the Roman law jurists used to describe the authority of the emperor to define papal power. The origins of their power was different. The pope received his authority from councils; the emperor from the people. He noted, however, that God also granted the pope authority directly. As Brian Tierney has pointed out these glosses and others in Johannes' *Ordinary Gloss to the Decretum* was a rich source for the fifteenth-century conciliarists when they attempted to limit papal power with church councils.²² Johannes' theories about the origins of papal authority gave them arguments for using general councils to circumscribe papal power. If councils had given the popes authority, they could, logically, take it away.

Johannes was an "episcopal" in some sense. He argued that the jurisdiction of bishops was also derived from church councils and other sources but not directly from the pope. He defended episcopal jurisdictional rights to grant dispensations to clerics who held multiple benefices which was contrary to canon law. This became an important issue at the Fourth Lateran Council (1215).²³ Innocent III promulgated a canon that forbade any cleric from possessing more than one benefice with the care of souls. The pope could, however, issue a dispensation. Johannes took a strikingly "episcopal" stance on the issue. For him the conciliar canon raised the question from where bishops derived their juris-

²⁰ 3 Comp. ed. Pennington, p. 1 to *Devotioni vestrae s.v. servus servorum*.

²¹ 3 Comp. ed. Pennington, p. 43 to 3 Comp. 1.5.3 (X 1.7.3) s.v. *sed ueri dei*; see Pennington, *Pope and Bishops: The Papal Monarchy in the Twelfth and Thirteenth Centuries* (Philadelphia: Univ. of Pennsylvania Press, 1984), 26.

²² Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism, *Studies in the History of Christian Thought* (Leiden/New York/Köln: Brill, 1998), 229–232 et passim.

²³ Pennington (note 21), 137–143.

dictional authority to dispense. In a long and rambling discussion of the problem he would not concede that the conciliar canon took away a bishop's right to dispense. The pope would not have wanted to infringe on a bishop's jurisdictional authority. He made two points in his defense of bishops: the pope must always conform his will to the law and the constitution of the Church. He argued that bishops received their right to dispense from a conciliar canon and are not dependent upon the pope for the exercise of that prerogative. Second, the pope could not have wished to diminish or infringe upon the rights of bishops. Johannes compared the relationship of the pope to his bishops with that of a bishop to his chapter, subject churches, and clerics. Bishops have the same authority over diocesan churches as the pope has over bishoprics. The pope could infringe upon the jurisdictional rights of bishops, but he must have a good reason for acting. He mentioned a conversation that he had with Innocent III in the papal curia about the subject. He suggested to Innocent that perhaps a bishop could grant a cleric a second benefice if the bishop included the phrase in his bestowal "if it would have pleased the pope." Innocent replied:²⁴

I will elect him if it will please the pope is no different from saying, I can sleep with a man's wife if it would please the husband.

Johannes' anecdote is another example of Innocent's acerbic sense of humor noted so often by contemporaries. It also illustrates Johannes' close ties to the Roman curia and to Innocent III at one point in his career.

Johannes limited the authority of papal legates who carried papal jurisdiction and power into the four corners of Christendom.²⁵ Papal legates were not a major issue in the Church until the twelfth century. Gratian barely discussed them. That changed dramatically when Pope Alexander III issued a decretal in which he asserted that a papal legate can exercise jurisdiction over any case that comes to his attention in a local diocese. Canonists immediately grappled with the ramifications of Alexander's decretal. The first canonists who commented on the decretal accepted its rules. Johannes, however, limited a legate's authority to interfere in diocesan legal affairs. He argued that a legate without a special mandate from the pope may only hear cases that had already been litigated in episcopal courts. The legate could not judge clerics in a diocese without the permission of the bishop. Johannes could not convince his fellow canonists. No thirteenth-century canonist accepted his arguments limiting legatine judicial prerogatives. It was not until the Council of Trent were the provisions of Alexander III's decretal annulled. The place of legates in Johannes' ecclesiology is clear. He distrusted any attempt to give legates power that could undermine the jurisdictional rights of local bishops. He did think that the pope could give legates special mandates, but these special grants of authority were not part of general legatine powers. His opinions were not in the mainstream of canonical thinking,

²⁴ Ibid. 141.

²⁵ For what follows see *Pennington, Johannes Teutonicus and Papal Legates, Archivum Historiae Pontificiae* 21 (1983), 183–194.

but they do give us insight into the few canonists who guarded the fortress of episcopal rights.

Johannes was particularly concerned to keep bishoprics in the hands of the local chapters. His electoral theory favored the rights of members of the cathedral chapter from having an outsider elected to the episcopal chair. At the Fourth Lateran Council Innocent III had promulgated an electoral canon that if the canons in a cathedral chapter had not elected a new bishop within three months, the chapter lost its right to elect. In Johannes' gloss to the canon he asked whether an outsider (*extraneus*) could be elected. He argued that if a worthy candidate could be found in the chapter the local cleric should be elected. If the chapter elected an outsider, the election was valid but the canons sinned. Johannes also raised the issue of what constituted a valid election. Johannes normally thought that a numerical majority of the canons were necessary to elect a new bishop. However, in the case when a worthy member of the cathedral chapter was opposed by an outsider who was favored by a majority of canons, then even two votes for the local candidate would prevail over the majority. From the point of view of the future Johannes was on the wrong side of the issue. A few years later other canonists had collectively decided that a numerical majority of the canons could elect an outsider. Bartolomeus Brixiensis, his student and reviser of his *Ordinary Gloss* to the *Decretum*, rejected Johannes' opinion and endorsed victory of the majority in any election.²⁶

In other cases the key to medieval electoral theory in canon law was the principle "*maior et sanior pars*" (the greater and wiser part). Johannes never wrote a tract on elections, but he did discuss electoral theory extensively in his glosses. Johannes seems to have been one of the last canonists to insist that a candidate for election should have a clear numerical majority (in all other cases, except in the election of a stranger [*extraneus*]). Pope Gregory IX (1227–1234) issued a decretal in which he rejected the idea that elections should always be won by the candidate with the most votes.²⁷ Johannes was a democrat before the word.

Johannes' conception of proper governance within the Church was based on what he thought the structure of the local bishopric should be. After the reforms of the eleventh and twelfth centuries the bishop and his chapter of canons became the fundamental administrative unit of the Church at the local level. Gradually the canons of the cathedral usurped the rights of the other clergy in dioceses. To describe this emerging structure the canonists created corporate theories to define the legal relationship between the bishop and his canons. Johannes' views on episcopal authority are important because they mark an important stage in the development of ecclesiastical corporate theory.

The legal relationship between the bishop and his canons falls into three broad categories. What the bishop could do alone without the consent of his chapter; what the chapter may do without the consent of his canons; and what they both

²⁶ Pennington, *The Golden Age of Episcopal Elections 1100–1300*, *Bulletin of Medieval Canon Law* 35 (2018), 243–253 at 251–252.

²⁷ *Decretals of Gregory IX* 1.6.57.

should do together. Johannes conceived episcopal authority in much the same way as he did papal authority. All ecclesiastical rights and power were not possessed by the pope, and not all diocesan power was in the hands of the bishop.

Within the diocese Johannes maintained that the canons of the cathedral chapter had little jurisdiction and power when the bishop was not present. The authority of the bishop was also circumscribed when the cathedral chapter was not present. Perhaps the most significant plank in Johannes' ecclesiology was his denial that the rights of the chapter could devolve to the bishop alone under certain circumstances.

The bishop and his chapter formed a corporation, or "universitas." Johannes called the bishop a "procurator," by which he meant an administrator of the diocese. The bishop did not, however, have a "free and general administration" (*libera et generalis administratio*). The bishop could only alienate small amounts of ecclesiastical property without the consent of the cathedral chapter.²⁸ In another gloss Johannes noted that:²⁹

If the property is small, the necessity is great, the chapter's consent is not necessary.

Nevertheless, the bishop could not pardon a person who had damaged the church. In that case he needed the consent of the chapter.³⁰

Johannes opposed concentrating too much power in one person within the corporation. The Fourth Lateran Council had dictated in canon seven that if the cathedral chapter did not correct its members in a time determined by the bishop, then the bishop could judge the canons. Johannes disagreed. He thought the right of judging canons could not devolve from the chapter to the bishop. The bishop must always be considered part of the corporation and not separate from it. If the entire chapter were negligent, then the right of judgment did not devolve to the bishop but to the metropolitan. In no case, did the bishop alone have that right.³¹ He would have been judging in a matter in which he had been a participant. It was a cornerstone of his ecclesiology that the rights of the corporation (*universitas*) could not reside in one person.

The only legal action that the cathedral chapter could take without the bishop was to make a contract. In the case of necessity the chapter could alienate property without the bishop, but the alienation must be approved by the metropolitan. Johannes broached the problem again when he discussed a case in which a cathedral chapter was subject directly to the pope:³²

Can the canons reduce the prebends and dignities of the church without the authority of the pope? It seems not, because they cannot augment them ... I say that they can reduce

²⁸ Gloss to Gratian, *Decretum* C. 12 q. 1 c. 28 s. v. *procuracionem*.

²⁹ Ibid. C. 12 q. 2 d. a. c. 1 s. v. *nunc queritur*.

³⁰ 3 Comp. 5.21.10 s. v. *iniuriosa*. <http://legalhistorysources.com/edit517.htm>

³¹ 4 Comp. 1.13.1 s. v. *per capitulum*, *Antiquae collectiones decretalium*, ed. Antonio Augustín (Ilerdae: 1576) unfoliated.

³² 3 Comp. 1.1.4 s. v. *confirmata*, ed. Pennington, p. 5.

the number if there is cause or reason to do so ... and if the bishop gives his authority to do so ... The canons may alienate completely with the bishop's consent if there is a reason. The bishop can permit them to reduce, divide, or abolish completely one prebend.

The maxim, necessity knows no law (*necessitas legem non habet*) and cause/reason (*causa*) were two of the most powerful principles in canonical jurisprudence. Johannes used this principle multiple times in his commentaries. Its force derogated but did not abrogate positive law.

Johannes thought that the bishop and the cathedral chapter legally represented the entire diocese. The bishop managed the diocese with the chapter. Together they ordained priests, dispensed prebends, conferred electoral dignities, and judged court cases.³³ If the bishop wanted to take away a canon's prebend, he needed the consent of other bishops.³⁴

The corporate unity of the bishop and the cathedral chapter was the bedrock of Johannes' ecclesiology. He conceived of the Church as being a local institution that served local interests and that was ruled by local people. Johannes' defense of the local chapter and the local bishop reveals a singular and unsuccessful attempt to combat the centralizing tentacles of Rome in the early thirteenth century. Johannes preferred a decentralized Church rather than a Church with all power and authority centered in Rome. In addition, Johannes and other canonists were in large part responsible for working out the fundamental principles of modern corporate theory. Johannes' ecclesiology did not prevail, but the question of how the Church should be structured would arise again and again in canonical jurisprudence until papal monarchy triumphed in the second half of the fifteenth century.

V. Pope and Emperor

Johannes was a German from northern Germany. Quite naturally his view of the emperor and the pope and their relationship was colored by his origins. Pope Innocent III was a key figure in the development of papal monarchical thought and issued seven decretals that remained important benchmarks for papal claims of authority in the secular world for centuries.³⁵ Johannes glossed all seven. Although Johannes opposed some of Innocent's ecclesiology he accepted Innocent's program for church and state with only minor qualifications. He managed to harmonize his loyalty to the Roman church with his loyalty to the German imperial house. The question of the relationship of imperial to papal power was framed by the metaphor of the "Two Swords" whose existence was inspired by several biblical texts. One sword, the temporal, was called the material sword,

³³ Gloss to Gratian D. 67 c. 1, s. v. *sacerdotes*, D. 84 c. 1 s. v. *consilia*, D. 21 c. 1 s. v. *disponit*, D. 24 c. 6 s. v. *clericorum*.

³⁴ Gloss to Gratian D. 67 c. 2 s. v. *solus*.

³⁵ The best discussion of all these decretals remains *John A. Watt, The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists* (London: Burns & Oates, 1965).

and the other was called the spiritual sword. By the beginning of the thirteenth century, a lively debate was under way in the law schools about who should or did possess these swords. Did the pope possess both swords and delegate the material sword to the emperor or did the emperor hold his sword independently? Johannes wrote a long gloss in his *Ordinary Gloss* to the Decretum in which he grappled with the question:³⁶

Since, therefore these powers are distinct, here it is argued that imperial power is not held from the pope and that the pope does not have both swords, for the army chooses the emperor ... and imperial power is bestowed only by God ... Otherwise if it were bestowed by the pope, it would be licit to appeal to him in temporal matters ... but the contra argument is that the rights of celestial and earthly power (*imperium*) are granted to the pope ... I believe that the powers are distinct, although the pope may now and then assume both powers, as when he legitimates someone in the secular world as in Innocent III's decretal *Per venerabilem*.

Johannes rejected the idea that the pope granted secular power to lay rulers but accepted Innocent III's claim that under certain limited circumstances the pope could exercise secular power.

Papal claims to exercise secular power in central Italy presented complex problems to the jurists. A grant by the first Christian emperor Constantine purported to give the pope sovereignty over central Italy and established the legitimacy of the papal states. Although the Donation of Constantine was included in Gratian's *Decretum* Johannes did not gloss it. Rather he glossed a grant to the pope by the French King Louis the Pious, who also gave popes sovereignty in central Italy. The issue for the jurists was whether the grant was revocable. Johannes argued it was not and put forward a novel legal argument to defend the pope's temporal jurisdictions:³⁷

The emperor cannot revoke the donation for the law states that *immensitas* (immeasurableness) is the measure of things which can be given to the Church.

He had culled this maxim out of Justinian's legislation called the *Novellae*. Justinian had attempted to control the donations given to the church. He promulgated a law in which private persons were limited in the amount that they could donate to a church, but only the emperor could give any amount that he wished.³⁸ Accursius, the Roman lawyer who wrote the *Ordinary Gloss* to Justinian's legislation remarked that if you would take Johannes' argument to its logical conclusion, the emperor could give everything to the church and imperial power would die.³⁹ Johannes, somewhat surprising, defended the pope's right to rule the papal states, while other jurists rejected the idea.

One historian has described Johannes as "an extreme exponent of the idea of empire" and attributed his enthusiasm to his Germanic background. This is

³⁶ Gloss to Gratian D. 10 c. 8 s. v. *discrevit*.

³⁷ Gloss to Gratian, D. 63 c. 30 s. v. *viculis*.

³⁸ Justinian, *Novella* 7.2.1.

³⁹ Accursius, Gloss to Authen. 1.6 s. v. *conferens generi*.

Index of Names

- Accursius, Glossator 10, 69, 389
Adalbert Azzo II of Este 194
Adenauer, August 334
Adenauer, Elisabeth 345
Adenauer, Emma geb. Weyer 334
Adenauer, Ferdinand 334, 345
Adenauer, Gussie née Zinsser 334
Adenauer, Helene née Scharfenberg 333, 334
Adenauer, Johann Conrad 333
Adenauer, Johannes 334
Adenauer, Konrad 334, 335, 336, 338, 340, 341, 342, 343, 344, 346, 347, 348, 366
– Christmas speeches 347
Adenauer, Konrad (son) 333
Adenauer, Maria geb. Greven 334, 338, 345
Adenauer, Max 335, 338
Adenauer, Paul 341, 343, 345, 346, 347, 349
Afflictis, Matthäus de 104
Agnes of Brandenburg, Marchioness 47
Ahnert, Thomas 209, 210
Alexander Tartagnus de Imola 104
Althusius, Johannes 91, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142
Alting, Johann Heinrich 139
Andrae, Johannes 46
Anselm of Canterbury 14, 15, 16, 24
Anton Ulrich, Duke of Braunschweig-Wolfenbüttel 190
Aristotle 26, 27, 33, 34, 35, 36, 37, 38, 41, 83, 94, 132, 133, 141, 190, 215, 218, 228
Arnauld, Antoine 189, 191
Arumaeus, Dominicus 144, 145, 146, 147, 149, 150, 151, 152, 153, 154, 155, 160, 163
Aurelius Augustine bishop of Hippo 14
Azpilcueta, Martín de 68
Baldus de Ubaldis 104
Bang, Johann Christian 243
Barclay, William 140
Bartolus de Saxoferrato 104
Bassianus, Johannes 46
Baumgarten, Arthur 343
Beauharnais, Eugène Comte de 269, 279
Bech, Joseph 341
Behr, Wilhelm 270
Ben Gurion, David 341, 343, 346
Benedict XVI, Pope 197
Benedikt of Nursia 261
Berlich, Matthias 165
Bernard of Pavia 46
Berman, Harold 14, 91
Bernward, Bishop of Hildesheim 195
Bethmann-Hollweg, Moritz August von 245, 246, 284, 285, 286, 287, 288, 289, 290, 291
Beza, Theodore 134
Bienert, Walther 210, 217
Biermann, Conrad 152
Bismarck, Otto von 311, 344
Blomberg, Werner von 374
Blos, Wilhelm 368
Bodin, Jean 187, 311
Böhmer, Johann Samuel Friedrich von 157, 220
Böhmer, Justus Henning 157, 163
Boineburg, Johann Christian von 188
Bossuet, Jacques Bénigne 198, 199
Boyle, Robert 189
Brandenburg, Friedrich Wilhelm von 204
Brandenburg, Sigismund Elector of 204
Brentano, Clemens von 238, 243
Brentano, Gunda von 238
Brentano, Heinrich von 354
Brüning, Heinrich 371, 372, 373
Brunnemann, Johann 124, 168
Brunner, Heinrich 325
Buch, Johann von 44
Buchanan, George 140

- Bulganin, Nikolai 342
 Bullinger, Heinrich 139
 Bunsen, Christian Carl Josias von 306
 Burchard III of Magdeburg, Archbishop 47
 Buttrigarius, Jacobus 46

 Calvin, John 126, 134, 138, 225, 228, 229, 233, 234, 235, 236
 Carmer, Johann Heinrich Casimir Graf von 220, 221, 236
 Carpzov, Benedict 105, 156, 157, 158, 159, 160, 161, 162, 164, 167, 168, 169, 170, 172
 Carpzov, Benedict the Elder 157, 178
 Carpzov, Johann Benedict the Elder/the Younger 103, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173
 Cassel, Sir Ernest 336
 Celtius, Conrad 66
 Charles IV, Emperor 49
 Chemnitz, Bogislav Philip von 194
 Chruschtschow, Nikita 342
 Churchill, Winston 341, 343, 348
 Clapmar, Arnoldus 135, 140
 Clemens XII, Pope 280
 Copernicus, Nicolaus 199
 Coudenhove-Kalergi, Richard 348
 Cran, Heinrich Andreas 108
 Cujas, Jacques 141

 Damasus 46
 Daneau, Lambert 132, 133, 134, 135, 138
 Darjes, Joachim Georg 220
 Decianus, Tiberius 104, 105
 Dehlinger, Alfred 374
 Descartes, René 200
 Dinus Muxellanus 46
 Dueñas, Petrus 104
 Dulles, John Foster 343
 Duns Scotus, John
 – Scotistic-Ockhamistic 217

 Ebert, Friedrich 372
 Edward VII, King of England 336
 Eike of Reggow 13, 14, 16, 17, 18, 20, 22, 24, 51, 52
 Elisabeth II, Queen of England 344
 Erhard, Ludwig 342
 Ernst August, Elector of Braunschweig-Lüneburg 189, 310

 Ernst of Bavaria, Archbishop 101
 Ernst of Saxony, Elector 147

 Farinacci/Farinacius, Prospero 159
 Faulhaber, Michael Cardinal von 347
 Favre/Faber, Antoine/Antonius 158, 159, 166
 Felinus Sandaeus 104
 Ferdinand III, Emperor of the Holy Roman Empire 223
 Fichte, Johann Gottlieb 240, 242
 Ford, Henry 337
 Franciscus Curtius Senior 104, 105
 Francke, August Hermann 204, 205, 208, 217
 Frantzius, Thomas 131
 Frederik the Wise, Elector of Saxony 147, 149
 Freisler, Roland 366
 Frick, Wilhelm 370
 Friedrich Wilhelm I “The Great Prince-Elector” of Brandenburg 222, 233
 Friedrich II “The Great” King of Prussia 220, 221, 225, 229, 233, 234, 235, 266
 Friedrich III, Elector of Saxony 205, 147
 Friedrich III, Emperor of the Holy Roman Empire 66, 147, 205, 225
 Friedrich Wilhelm IV, King of Prussia 286, 289, 295
 Friedrich, Carl Joachim 131, 137
 Friedrich-Wilhelm I, King of Prussia 235
 Friedrich-Wilhelm II, King of Prussia 221, 222, 230
 Friedrich-Wilhelm III, King of Prussia 221, 222, 224, 230, 234, 253
 Frings, Joseph Cardinal 347
 Fugger, Jakob 68, 72
 Fürst und Kupferberg, Maximilian von 221

 Gail, Andreas 99, 100, 101, 102, 104, 105, 106, 108, 110, 112
 Gasperi, Alcide de 340, 341
 Gaulle, Charles de 340, 341, 342, 343, 344
 Gentili, Scipio 133, 135
 Georg, King of Great Britain and Ireland, Elector of Braunschweig-Lüneburg 190
 Gerhardt, Paul 253
 Gerlach, Ernst Ludwig/Leopold/Wilhelm 284
 Gierke, Otto von 128, 138, 325, 326

- Giovanni della Casa 133
 Goerdeler, Carl Friedrich 366, 367
 Goethe, Johann Wolfgang von 109, 237, 241, 242, 249
 Göring, Hermann 375
 Gosia, Martinus 46
 Goßler, Christoph 220
 Graham, Billy 347
 Gratian (of Chiusi) 2, 6, 10, 22, 23, 31, 32, 88, 383, 384, 389
 Grégoire, Pierre 140
 Gregory VII, Pope 258, 259
 Grimaldi, Claudio 190
 Grotius, Hugo 136, 172, 174, 175, 176, 177, 179, 180, 181, 200, 204, 206, 207, 212, 213
 Grynaeus, Johann Jakob 130
 Guazzo, Stefano 133
- Hahne, Conrad 282
 Haller, Carl Ludwig 276
 Harnack, Adolf von 331
 Haußmann, Konrad 378
 Heckel, Johannes 293
 Hegel, Georg Wilhelm Friedrich 240, 243, 248, 276, 278, 287
 Heller, Robert 281
 Henri IV, King of France 140
 Henry III, Emperor of the Holy Roman Empire 257, 258
 Hermes, Justus Gottfried 243
 Hermes, Georg 289
 Herwegen, Ildefons 338
 Heuss, Theodor 339, 366
 Heymann, Franz 159, 239
 Hilty, Carl 347
 Hindenburg, Paul von 370, 373
 Hippolytus de Marsiliis 104
 Hitler, Adolf 338, 352, 366, 370, 371, 375, 390
 Hobbes, Thomas 25, 184, 200, 293
 Höchstetter, Ulrich 64, 65, 68, 78
 Hohenzollern, Dynasty 49
 Hotman, François 91, 229
 Hoyer Count of Falkenstein 17
 Hugo, Gustav 252, 284
 Humboldt, Wilhelm von 238
 Huygens, Christiaan 189
- Innocent III, Pope 2, 3, 5, 6, 7, 9, 10, 11, 12
 Innocent IV, Pope 110
 Innocent VI, Pope 259
- Jagow, Dietrich von 371, 373, 374, 379
 Jhering, Rudolf von 324, 378
 Johann VI, Count of Nassau-Dillenburg 130
 Johann of Bohemia, King 60
 John XXIII, Pope 346, 390, 392
 Johann-Friedrich, Duke of Braunschweig-Lüneburg 148, 189, 190, 202
 Johnson, Lyndon Baines 343
 Jolson-Uhlfelder, Julius = Stahl, Friedrich Julius 294
 Jordan, Henriette 269
 Joseph II, Emperor of the Holy Roman Empire, Archduke of Austria 257, 266
 Jugler, Johann Friedrich 144, 156, 161
- Kaas, Ludwig 375
 Kahl, Wilhelm 330, 337
 Kant, Immanuel 41, 93, 241, 242, 246, 247, 279, 283, 377
 Karl V, Emperor of the Holy Roman Empire 63, 67, 69, 74, 190
 Karl VI, Emperor of the Holy Roman Empire 190
 Kausen, Hermann 335
 Kelsen, Hans 343, 351, 354, 358
 Kindler, Julie 294
 Kohl, Helmut 341
 Krell, Nicolaus 158
 Kuyper, Abraham 141
- Landau, Peter 17, 388, 390
 Lasco, John a 141
 Leibniz, Gottfried Wilhelm 203, 206
 Leopold I, Emperor of the Holy Roman Empire 198, 202
 Lessing, Gotthold Ephraim 242
 Leyser, Augustin 157, 168, 172
 Lieberwirth, Rolf 17
 Lijphart, Arnd 142
 Locke, John 200
 Louis I of Brandenburg 47
 Louis IV, Emperor 47, 56
 Louis V of Bavaria 47
 Louis XIV, King of France 185, 187, 195, 256
 Louis the Elder, Margrave and Elector of Brandenburg 47
 Lück, Heiner 17, 45, 48, 118
 Louis "The Roman", Margrave and Elector of Brandenburg 47

- Ludovicus Romanus = Ludovicus Pontanus 104
 Ludwig I, King of Bavaria 294, 309
 Ludwig IV ("the Bavarian"), Emperor of the Holy Roman Empire 259; 47
 Luther, Martin 4, 62, 67, 72, 80, 81, 94, 97, 116, 121, 175, 176, 184, 204, 210, 212, 216, 226, 227, 256, 257, 262, 366, 391
- Malebranche, Nicolas 189
 Margaret Maultasch 49, 60
 Maria (Mother of God) 278
 Mariana, Juan de 134
 Marsilius of Padua 58
 Masius, Hector Gottfried 204
 Maximilian I, Emperor of the Holy Roman Empire 63, 65, 66, 67, 77, 279
 Maximilian I. Joseph, King of Bavaria 279
 Maximilian II, Emperor of the Holy Roman Empire 147
 Mayno, Jason de 104
 Mecklenburg-Güstrow, Karl Wilhelm Duke of 203
 Meinel, Carl Friedrich 269
 Melancthon, Philipp 83, 85, 86, 89, 90, 92, 93, 94, 97, 98, 126, 158, 163, 164, 176, 214, 228, 229, 230
 Mevius, David 103, 104
 Mitteis, Heinrich 343
 Molanus, Gerhard 198
 Molina, Luis de 67, 105, 136
 Molotow, Wjatscheslaw 342
 Moltke, Helmuth James von 366
 Monnet, Jean 340, 341
 Möser, Justus 252
 Moses 85, 90, 201, 231
 Murr, Wilhelm 373
 Mynsinger von Frundeck, Joachim 99, 103, 106, 107
- Nemo, Philippe 15, 16
 Nider, Johannes 68
 Novalis (Georg Philipp Friedrich von Hardenberg) 243
- Obertus ab Orto 46
 Oldekop, Justus 168
 Oldenburger, Philipp Andreas 168
 Otto "The Mild", Duke of Braunschweig-Göttingen 47, 50
- Pahlewi, Reza, Shah of Persia 342
 Pange, Jean de 348
 Panormitanus = Niccolo dei Tedeschi 104
 Papen, Franz von 351, 370, 371, 373, 378
 Papinianus 108, 116
 Paraeus, David 139
 Paris de Puteo 134, 140
 – Pozzo, Paride dal 134, 140
 Paul of Tarsus, Apostle 200, 207, 228
 Paul VI, Pope 342, 346, 390, 392
 Pelletarius, Hugo 132
 Pellison, Paul 199
 Peter, Tsar of Russia 190
 Petrus Abaelardus 52
 Pferdenges, Dora 345
 Pferdenges, Robert 345
 Pingizzer, Virgilius 145
 Pius XI, Pope 141, 363, 382
 Pius XII, Pope 346, 381, 392
 Planitz, Hans 343
 Pleven, René 340, 348
 Plutarch 133
 Puchta, Georg Friedrich 246, 287, 288
 Pufendorf, Samuel von 174, 175, 176, 177, 178, 182, 184, 186, 200, 204, 216
 Pütter, Johann Stephan 252
- Ramée, Pierre de la 132
 Rauchbar, Andreas 118, 122
 Reibstein, Ernst 137
 Reinking, Dietrich 194
 Ringseis, Johann Nepomuk 242
 Robespierre, Maximilien de 298
 Rojas y Spinola, Cristobal de 198
 Ronge, Johannes 282
 Rose, Guillaume 134
 Roth, Paul 323
 Rotterdam, Erasmus Desiderius of 72
 Rousseau, Jean-Jacques 41, 298
 Rudolf II, Emperor of the Holy Roman Empire 106
 Rudorff, August Friedrich 245, 245, 288
- Sachsen-Zeitz, Moritz Wilhelm Duke of 204
 Sailer, Johann Michael 240, 241, 242, 249, 279, 285
 Salat, Jakob 278, 279
 Savigny, Friedrich Carl von 138, 172, 230, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 254, 284, 285, 286, 287, 288, 296

- Schelling, Friedrich Wilhelm Joseph 240, 243, 279
 Schleiermacher, Friedrich Daniel 242, 245, 285
 Schliebusch, Fritz 338
 Schmidt-Wiegand, Ruth 18, 19, 24, 114
 Schmitt, Carl 293, 314, 343
 Schneiders, Werner 208
 Schönborn, Johann Philipp von 187
 Schulte, Johann Friedrich von 253
 Schuman, Robert 340, 341, 348
 Schwartz, Michael 222
 Schweitzer, Albert 197
 Sigismund, Emperor 49
 Silvester zum Ahrenthal 144
 Socinus, Bartholomaeus 104
 Sohm, Rudolph 214, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332
 Solomon, King 14, 19, 96
 Sophie Charlotte, Queen of Prussia 190, 196
 Sophie, Duchess/Electress of Braunschweig-Lüneburg 190, 197, 199, 202
 Spaak, Paul Henri 341
 Spener, Philipp Jakob 197, 205, 123
 Spinoza, Baruch 198, 200
 Sproll, Johann Baptist 375
 Stahl, Friedrich Julius 247, 276, 287, 288, 290, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307
 Staudinger, Maria 277
 Stauffenberg, Claus Graf von 366
 Steudener, Johann Samuel Ernst 221
 Steverly (anagram for Sylvester [Jordan]) 280
 Stier-Somlo, Fritz 343
 Stölzel, Adolf 219, 220
 Stryck, Samuel 203
 Summenhart, Konrad 68
 Suth, Lilli geb. Adenauer 334
 Suth, Willi 334
 Sutherland, Graham 346
 Svarez, Carl Gottlieb 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237
 Svarez, Catharine Dorothea 220
 Svarez, Gottfried 220
 Svarez, Johanna Dorothea 221
 Tancredus of Bologna 106
 Theodoricus (Dietrich), Petrus 165
 Theophilus of Constantinople 138
 Thomas Aquinas 4, 14, 16, 24, 27, 140, 175, 197, 357
 Thomasius, Christian 156, 169, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218
 Thomasius, Jacob 169, 203
 Truchseß von Waldburg, Gebhard 101, 130
 Tuhr, Andreas von 343
 Ursinus, Zacharias 133, 134, 139
 Vaudoncourt, Frédéric Guillaume de 279
 Vehus, Hieronymus 72, 73
 Vermigli, Pietro Martyr 134
 Wallraf, Max 325
 Weber, Max 327
 Weihe, Eberhard von der 140
 Welser, Anton 65
 Welser, Margarethe 65
 Weyer, Emanuel 334, 345
 Weyer, Maria 345
 Weyer, Max 345
 Weyer, Paul 345
 Weyer/Wier, Johannes 171
 Weyhe, Eberhard von der 122
 Wigand, Paul 272, 277
 Wilhelm I, King/Emperor 295
 Wilhelm II, Elector of Hessen 276
 Wilhelm II, German Emperor and King of Prussia 221, 222, 223, 230, 236, 368
 Wilhelm IV, Landgrave of Hessen-Kassel 130
 William of Ockham 58
 Wilson, Harold 343
 Wippermann, Karl 270
 Wittgenstein, Ludwig von 129, 130
 Woldemar, Margrave 49
 Wolff, Christian 206, 220, 225
 Wurm, Theophil 375
 Zasius, Ulrich 104
 Zepper, Wilhelm 135
 Zinsser, Ferdinand 334
 Zwingli, Ulrich 64, 74, 75, 77, 211, 214, 263

Index of Places

- Aachen 341
Altdorf 120, 151, 188, 193
Altzella 51
Arum 144
Augsburg 63, 64, 65, 66, 68, 69, 70, 71, 72,
75, 76, 77, 84, 86, 100, 101, 106, 111,
130, 162, 177, 223, 260, 265
Avignon 46, 259
Axams (near Innsbruck, Austria) 269
- Bad Honnef (Rhöndorf) 338, 343
Basel 64, 103, 123, 125, 130, 151
Berleburg 129
Berlin 44, 55, 174, 189, 190, 192, 221, 224,
238, 240, 242, 243, 245, 252, 253, 284,
286, 289, 294, 322, 334, 336, 337, 338,
342, 351, 366, 368, 371, 377, 381, 382,
383
Bologna XI, 1, 2, 3, 5, 45, 46, 51, 57, 64,
66, 82, 100, 189, 386, 389
Bonn 49, 236, 286, 289, 333, 334, 338,
339, 340, 342, 346, 381, 385, 390
Brandenburg 44, 45, 47, 48, 49, 55, 56,
57, 58, 60, 61, 62, 121, 157, 174, 178,
186, 203
– Altmark 45, 47
– Buch 45, 50
– Havelberg 45
– Jerichow 45, 50
– Tangermünde 45, 50
Brauweiler 338, 345
Bremen 121, 130
- Cadenabbia 346
Clausthal 189
Cologne 26, 83, 100, 108, 119, 130, 240,
253, 289, 331, 333, 335, 337, 347, 387
– Grüngürtel 336
– Müllheim 336
Colombey-Les-Deux-Eglises 341
Constance 346
Coventry 346
- Denmark 59, 204
Diedenshausen 129
Dresden 157, 159, 189
- Emden 131
Emmerich 100
- Ferrara 189
Florence 189
Franeker 145
Frankfurt/Main 121, 240, 270, 274, 279
– Frankfurter Wachensturm (the “charge
of the Frankfurt guard house”) 270
Frankfurt/Oder 55, 83, 124, 203, 219,
225, 252
Freiburg/Breisgau 323, 334
Fulton/Missouri 348
- Geneva 130
Göttingen 238, 240, 252, 284, 286, 289, 322
- Halle 121, 127, 169, 205, 207, 210
Hamburg 82, 123, 242, 336, 390
Hanau 240
Hannover 121, 188, 192, 194, 198, 202, 387
Hawaii 342
Heidelberg 117, 130, 133, 151, 174, 270,
294, 322, 382
Herborn 130, 132
- Innsbruck 271
- Jena 113, 116, 145, 148, 150, 153, 155,
158, 160, 174, 188, 240, 243, 252
Jeschwitz 146
- Karlsruhe 340
Kassel 270
- Landshut 238, 240, 242, 269, 271, 278
Laurahütte (Silesia) 282
Leeuwarden 144

- Leipzig 122, 124, 157, 159, 162, 167, 169,
 174, 188, 203, 205, 207, 240, 252, 277,
 323, 325, 337
 Lobeda 146
 London 189
 Louvain 100, 385
 Luxemburg 60, 341

 Mainz 121, 188, 192
 Marburg 83, 130, 151, 238, 240, 243, 263,
 270
 Maria Laach XII, 338
 Meißen 16, 162
 Moscow 342, 346
 Munich XII, 46, 58, 269, 277, 279, 294, 309,
 313, 334, 347, 350, 352, 354, 369, 390

 Naples 189
 Neustadt/Haardt 130
 New York 341, 385
 Nijmegen 194
 Nuremberg 69, 188

 Omes (near Innsbruck, Austria) 269
 Orléans 100
 Oxford 145

 Padua XII, 64, 66
 Paris 26, 115, 185, 188, 191, 199, 240, 340,
 344, 347, 385
 Potsdam 338
 Prague 189

 Regensburg 26, 252
 Reims 341
 Rome 9, 12, 69, 71, 75, 77, 100, 184, 189,
 199, 227, 275, 317, 382
 Rostock 82, 92, 121, 145, 322

 Saxe-Weimar, Dukes of 146
 Sde Boker 341
 s-Gravenhage 131
 Speyer 100, 103, 109
 Steinfurt 130
 Strassburg 117, 195, 323, 348

 The Hague 189
 Trento 6, 199, 264

 Venice 108, 189
 Vienna 100, 189, 195, 199, 240, 252, 269,
 300, 309, 350

 Wake 342
 Washington D. C. 342, 383, 392
 Wassenaar 341
 Wetzlar 109, 240, 252
 Wismar 104
 Wittenberg XI, 80, 91, 113, 116, 118, 121,
 123, 125, 127, 148, 157, 159, 162, 290
 Wolfenbüttel 18, 190
 Worms 64, 68, 70, 72, 96

 Zerbst 130
 Zurich 348, 353

Index of Subjects

- Académie des Sciences Morales et Politiques 344
- Acceptio personarum 111
- Anabaptist 64, 71
- Anathema 214
- Anthropology 203, 206, 217
- Arbitrariness 52, 246, 257, 261, 290, 361
- Aristocracy 158, 184, 233
- Attack 74, 93, 168, 174, 178, 179, 181, 182, 183, 184, 187, 195, 204, 241, 301, 307, 341, 349
- Autonomy 41, 42, 255, 256, 274, 275, 351
- Battle of Mühlberg 147, 149
- Bavaria
- Bavarian Constitution of 1818 269, 317
 - Bavarian Constitution of 1919 351, 352
 - Bavarian Constitution of 1946 353, 360, 361, 362
- Bede 56
- Bell of the Cologne Cathedral (Deutsche Glocke am Rhein) 337, 347
- Berlin
- Wall 342
- Bible 13, 17, 18, 21, 32, 71, 75, 84, 85, 86, 88, 89, 90, 91, 95, 97, 115, 136, 172, 203, 210, 215, 217, 228, 231, 232, 252, 263, 331
- Bigamy 204
- Bishopric 7
- Bondage 15, 18, 25, 218
- Burgundian circle 109
- Butzweilerhof Airport 336
- Calvinism 126, 136, 137, 139, 158, 204, 222, 233
- Calvinist 128, 130, 131, 13, 136, 137, 138, 139, 140, 141, 146, 155, 158, 222, 228, 229, 232, 233, 234, 235
- Capitalism 63
- capitaneus 48, 49, 55
- Caritas hospital 338
- Cameralistic 109
- Catholic church/catholic doctrine 64, 65, 71, 72, 74, 75, 76, 77, 78, 176, 199, 228, 264, 281, 282, 283, 308, 309, 315, 319, 328, 331, 359, 354, 389, 390, 391, 392; 199, 267, 391
- Catholic clergy 212
 - Catholicism 199, 223, 263, 264, 278, 281, 282, 283, 286, 315, 316, 327, 328, 382, 393
- Causa Lutheri 72
- Christlich Demokratische Union Deutschlands (CDU) 339, 342, 347
- Charisma 327, 328
- Charity 85
- Christianity
- early Christianity 201, 214
 - emperors 61
 - priesthood 212
 - values 267
- Church 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 26, 46, 52, 53, 54, 55, 60, 61, 62, 64, 65, 71, 72, 74, 75, 76, 77, 78, 81, 82, 84, 85, 86, 87, 88, 89, 91, 94, 96, 97, 111, 114, 116, 117, 118, 119, 122, 124, 126, 130, 136, 139, 141, 142, 159, 161, 174, 175, 176, 180, 186, 198, 199, 204, 206, 207, 208, 210, 212, 213, 214, 216, 223, 227, 228, 232, 234, 248, 240, 241, 253, 254, 255, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 277, 278, 279, 280, 281, 282, 283, 286, 289, 290, 292, 295, 296, 303, 304, 305, 306, 307, 308, 309, 315, 316, 317, 318, 319, 320, 321, 323, 325, 326, 327, 328, 329, 330, 331, 332, 333, 341, 343, 345, 346, 349, 350, 354, 367, 3375, 377, 380, 383, 389, 390, 391, 392, 393
- church-state relation 212, 213, 214, 215, 216, 326, 327, 328, 329, 330, 331
 - protestant church 233, 253, 277, 280, 286, 290, 295, 316, 330, 331

- reformed church 204, 280
- Union of churches 198
- Civil society 34, 226, 227, 260
- Civil unrest 233
- Clergy 7, 57, 74, 75, 87, 162, 204, 212, 213, 227, 259, 260, 261, 264, 271, 276, 282, 307, 317, 318, 374, 375, 391
- Clerics 5, 6, 60, 66, 110, 213, 214, 216
- Codex Justiniani 69
- Codification 221, 227, 228, 230
- Cologne 26, 81, 83, 100, 101, 103, 107, 108, 109, 119, 124, 125, 130, 240, 253, 289, 316, 331, 333, 334, 335, 336, 337, 338, 339, 343, 344, 346, 347, 348, 387
 - Archdiocese of Cologne 100
 - Cologne local authority 289
 - Cologne trade fair 336, 337, 338, 344
 - Cologne Justice (Kölner Justiz) 100, 333, 334
 - Cologne University of Music and Dance 334, 336
 - Stadium of Cologne 336, 337
 - University of Cologne 130, 334, 336, 343, 344, 348
- Columbia University 344
- Commandment of Love 19, 89, 226
- Common good (bonum commune) 34, 35, 36, 67, 89, 190, 199, 201, 232, 298
- Conceptual jurisprudence (Begriffsjurisprudenz) 325
- Confessio Augustana 214
- Confession 84, 119, 139, 172, 177, 207, 214, 218, 222, 253, 255, 260, 264, 268, 330, 331
- Conscience 30, 32, 73, 78, 82, 84, 88, 90, 91, 95, 96, 98, 181, 199, 201, 207, 215, 216, 218, 229, 229, 235, 264, 275, 287, 357, 364, 376, 378, 379
- Consensus 71, 111, 125, 143, 204, 237, 264, 267, 274
- Consistories 161, 162
- Constitutio Criminalis Carolina 163, 171
- Constitution 254, 256, 267
- Constitutionalism 268, 294
- Contracts 31, 87, 89, 107, 125, 135, 166, 167, 183, 265
- Convention of Herrenchiemsee 353, 362, 363, 364
- Council of workers and soldiers 335
- Court of Appeal 157, 159, 188, 189, 192, 238, 270
- Courts 6, 52, 53, 54, 60, 96, 97, 103, 105, 106, 107, 111, 121, 126, 159, 160, 166, 167, 170, 190, 235, 255, 256, 264, 301, 302, 340
 - Aulic Council (Reichshofrat) 99, 100
- Criminal procedure (passim) 166
- Cross of Nails 346
- Crown Prince Lectures 224, 229
- Christlich-Soziale Union (CSU) 339, 342
- Deutsche Demokratische Partei (DDP) 337
- Death penalty 165, 170, 171, 173
- Decretales Clementinae 46
- Determinism 189
- Deutsche Lufthansa 336
- Devil worship 171, 207, 208
- Diplomat 88, 93, 146, 150, 151, 155, 188, 243
- Diversity 53, 160, 205, 255, 267
- Divine revelation 175, 207, 330
- Divine right/law 27, 42, 72, 88, 89, 90, 91, 94, 97, 98, 175, 214, 287, 357, 377
- Divorce 91, 126, 230, 231, 248, 265, 267, 349, 392
- Doctorate 116, 155, 158, 188, 193, 203, 238, 252, 268, 286, 294, 334, 344, 351, 353, 281
- Dogma 159, 214, 216, 253, 314, 315
- Dowry 102, 107
- Deutsche Partei (DP) 339
- Dynamic pension (Dynamische Rente) 341
- Ecclesiastical power 135, 139, 261, 326
- Ecclesiastical Unity 199
- Élysée Treaty (Élyséevertrag) 341
- Emergency state law 355
- Emotion 209, 211, 216, 217, 218, 272
- Encyclica Divini redemptoris (1937) 363
- Enlightenment 171, 173, 186, 208, 209, 210, 217, 218, 231, 241, 242, 243, 271, 278, 357, 364
- Enthusiasm 10, 209, 226, 253, 285, 316
- Eschatological perspective 18, 19, 20
- estates 56, 57
- Ethics 16, 28, 33, 34, 35, 37, 38, 39, 41, 98, 132, 133, 203, 206, 229, 245, 246, 247, 285, 287, 326, 360, 364
- EURATOM (Europäische Atom-Gemeinschaft) 340
- “Europaunion” 348

- European Defense Community (EDC)
(Europäische Verteidigungs-Gemeinschaft) 340
- European Economic Community (EEC)
(Europäische Wirtschafts-Gemeinschaft) 340
- Excommunication 58, 59, 280, 282, 318
- Faith 13, 24, 53, 60, 63, 71, 75, 76, 77, 78, 81, 84, 85, 92, 98, 115, 126, 131, 136, 169, 172, 177, 196, 197, 199, 202, 213, 215, 216, 217, 218, 228, 232, 239, 240, 241, 243, 244, 245, 247, 250, 253, 256, 257, 258, 262, 263, 264, 265, 266, 267, 272, 273, 274, 277, 278, 281, 282, 293, 295, 305, 306, 307, 308, 316, 319, 326, 327, 328, 331, 345, 347, 349, 350, 359, 375, 376, 381, 382, 390
- Free Democratic Party (FDP) 339, 342
- Federal Republic of Germany 333, 338, 339, 340, 341
- elections 339, 342, 346
 - Federal Armed Forces (Bundeswehr) 342
 - Federal Constitutional Court (BVerfG) 340, 345, 379
- Feudum 107
- Fideicommissa 107
- Ford-Werke 337
- Formula of Concord 214, 263
- Fouchet plans 341
- Frankfurt National Assembly (Frankfurter Nationalversammlung) 273
- French National Assembly 340
- Freedom 189, 195, 201, 255, 257, 264, 267
- Freemason 277, 279, 281
- Sokrates zur Standhaftigkeit (Frankfurter Freimaurerloge) 279
- Free State, monarchical 275
- Fruitful Society 148
- Fundamental rights (Grundrechte) 353, 360, 362, 364
- GAG (Gemeinnützige Aktiengesellschaft für Wohnungsbau) 336
- General Court Order 224
- General State Laws 225, 229
- Germany 211
- German Catholicism (Deutsch-Katholizismus) 278, 281, 283
 - German Civil Code (Bürgerliches Gesetzbuch) 323
 - German Combat Games (Deutsche Kampfspiele) 336
 - German Constitution of 1949 (Grundgesetz) 360
 - German Gymnastics Festival (Deutsches Turnfest) 337
 - German Legal Colloquium (Deutscher Juristentag) 343
 - Germany Treaty (Deutschlandvertrag) 340
- God 194, 196, 197, 200, 202, 252, 256, 257, 271
- God in nature 189
- Government 55, 57, 233, 256, 259, 269
- administration 55, 56
 - jurisdiction 55
- German Basic Code 340
- Happiness 197
- Harmony of the universe 198
- Harvard University 344
- Heresy 60, 170, 208, 215, 260
- Heretics 211, 215
- Hessian constitution (1831) 268
- Heterodoxy 329
- Historical School of Jurisprudence 323
- Historical sources 189, 252
- History 204, 206
- Holy Scripture 214, 215
- Holy Spirit 218
- Honorary doctorate 344
- Human will 217, 297
- Humanism 64, 66, 82, 115, 217
- Humanity 14, 27, 40, 81, 169, 266, 287, 297, 357
- Immortality of the soul 198
- Imperial Chamber Court 99, 100
- Imperial Diet 63, 68, 72, 103, 129
- Individual 15, 16
- Indulgences 73, 227
- Infinitesimal calculation 191
- Insurance 202, 351
- Israel 341
- Ius/iura
- iura circa sacra 207
 - Ius Commune 1, 51, 52, 62, 99, 103, 105, 110, 163, 167, 170, 235, 388
 - Ius divinum 88, 204, 355, 357
 - ius publicum 153
 - Ius Retractus 108

- Jesuits 265, 273, 278, 292
 Jewish Claims Conference 341
 Journalism 204
 Judge 53, 59, 60
 – emperor 59
 Jurisprudence 188, 276, 321, 323
 – *Jurisprudentiae divinae* 206
 Justice 201
 – Supreme Court Rules (1548) 103
 – International Charlemagne Award of Aachen 341
 – Catholic Days 346

 Kingdom of God 200
 – Prisoners of war 342

 Laity 212, 367
 Last Supper 211
 Last/Final Judgement 18, 20, 356
 Latin 204
 Law 188, 192, 193, 252, 254, 255
 – canon law 5, 23, 45, 52, 68, 80, 87, 97, 111, 114, 213, 255, 266, 327, 381, 383
 – concerning the status of churches 268
 – criminal law 89, 160, 166, 266, 268, 381
 – customary law 21, 22, 80
 – family law 89, 248, 265
 – idea of law 37, 40, 201, 324
 – law of God 15, 139, 204, 206, 208
 – law of Nature 27, 89, 174, 184, 206
 – *lex naturalis* 25
 – natural law 27, 29, 31, 54, 88, 156, 174, 192, 200, 204, 206, 215, 225, 248, 256, 354, 357
 – poem “on laws” 18
 – private law 89, 125, 167, 238, 254, 266, 310
 – public law 150, 153, 160, 252, 308, 325
 – roman law 192, 240, 266, 288
 – roman-dutch law 109, 126
 – rule of law 164, 192, 253, 293
 – secular law 61
 – source 52, 53
 – statute 119, 193, 201, 206, 234, 255
 – state fundamental standards 363
 Legal history 323, 324
 Legal profession 235
 Legal reform 221, 225, 233
 Libel 107
 Liberation 15

 Logic 188
 Love 196, 198
 Lutheran 71, 80, 146, 154, 203
 – Lutheran church/doctrine 198, 199, 201, 253, 259, 263
 – Lutheran Orthodoxy 119, 158, 169, 204, 208, 214, 263
 – Lutheranism 228, 281

 Machine principle (Calvin) 234
 Manslaughter 107
 Marriage 107, 111, 257, 265, 313, 329
 Mathematics 188
 Middle Ages 13, 22
 Military 333
 – Military Campaign 188
 – Military service 232
 Miller Arnold Case 221, 234
 Mining 67, 70
 Monad 195
 Monarchy 185, 266
 – hereditary monarchy (*Erbmonarchie*) 277
 Monopoly 69, 70, 235
 Moral philosophy 206, 217
 Mystical theology 209
 Mysticism 209, 217, 278

 Nationalsocialisme 352
 NATO 340
 Nature
 – of the church 321, 327
 – of the state 330
 – natural light 207, 212
 North Rhine-Westphalia 336, 339

 Obscurantism 278
 Optimism 202
 Ordo indicarius 51, 56, 62
 Ordo iudiciorum 106
 Ordo iuris 54
 Orientalism 205
 Orthodox 203, 208, 210

 Pact of Repurchase 108
 Pandects 114, 145
 Parlamentarischer Rat (Parliamentary Council) 339
 Participation 256
 Paulskirche 273, 274
 Peace of Augsburg 86, 100, 106, 112, 260
 Peace of Westphalia 86, 223

- Philosophical anthropology 217
 Philosophy 188, 201, 203, 205, 209, 215
 Pietas 201
 Pietism 118, 169, 197, 203, 208, 217, 285
 Pope 58, 60, 212
 – papacy 3, 115, 211, 213, 227, 262
 – papal 212, 215, 258
 – papal monarchy 9, 266
 Power verdict; see Word of Authority 233
 – of the state 326
 – of the church 324
 – rule (*Machtgesetz*) 324
 Precedent 105
 Predestination 199
 PRESSA (Intern. Presseausstellung/Press Exhibition) 337
 Prestabilized harmony 195
 Priesthood of all believers 228
 Protestant ecclesiastical law 322
 Protestantism 76, 83, 264
 – Reformed 204
 Prussian law 329, 330
 Pseudo-Isidorian Decretals 258, 261
 Public Peace 102, 106, 112, 361, 373

 Rational religion 197, 218
 Reason 189, 193, 197, 200, 204, 205, 206, 207
 Recess of the Imperial Diet (1570) 103
 Recompensation 344
 Redemption 15, 20, 84, 196, 285
 Reformation 203, 209, 212, 215, 254, 257, 262
 Refugees and displaced people 339
 Religion 255, 260
 Responsibility 264, 267
 Revelation 23, 84, 210, 214, 287, 297, 330
 Revolution 1918 335
 Rheinische Musikschule 336
 Rhineland liberation ceremony 337
 Rhineland-Palatinate 339
 Rhine Province 339
 Right of resistance 58, 59
 Röhm Coup 338
 Roman Catholics 172, 212
 Roman-Canonical process 106
 Romantic 238, 250, 278

 Saar (territory) 340
 Salvation 14, 18, 24
 Satisfaction 15

 Saxon Law 50
 – Saxon Mirror (*Sachsenspiegel*) 25, 44, 50, 52, 163
 – Saxon procedure 51
 Saxony 204
 – Saxe-Weimar 149, 151
 Soviet-occupied zone/German Democratic Republic 341
 Schmalkaldic League 76, 147
 Schmalkaldic War 76
 Scholastic 54, 133, 210, 215, 262
 Scientific research 189
 Serfdom 21, 22, 257
 Sermon on the Mount 14, 175, 231
 Silesian Wars 220
 Slavery 16, 21, 92
 Sodalitas Litteraria Augustana 66
 Sola gratia 227
 Sola scriptura 89, 215, 232, 254
 Soul 196, 198
 Sovereignty 160, 161, 164
 Sovereignty of the people 140, 204
 Sozialdemokratische Partei Deutschlands (SPD) 335
 Spice Trade 69, 70
 St. Gallen Business School 352
 State
 – Secular power 255, 257, 258
 – Separation of state and church 270, 277
 Statute concerning the mint 56
 Supernaturalism 278

 Tabula Peutingeriana 66
 Testament 107, 110
 Theodicy 195
 Theology 193, 202
 Thirty Years War 128, 163, 171, 226
 Thuringia 150, 334
 Tolerance 205, 214
 – Tolerance in religious affairs 232
 Torture 121, 168, 170, 192, 207, 208
 Two Swords 9, 57, 84, 258
 Trade Association 63, 65, 68

 United States (ship) 342
 Universal priesthood 212, 213
 University
 – of Altdorf 151, 188
 – of California, Berkeley 344
 – of California, Los Angeles 344
 – Yale 344, 386

- Unabhängige Sozialdemokratische Partei
 Deutschlands 335
- Usus Modernus Pandectarum 100, 124,
 172
- WDR (West German Broadcasting) 336
- Wednesday Society 224
- Welf (family) 189, 194
- Wettin (family)
- Albertines 147
 - Ernestines 147, 148, 149
- Will
- unfree 217, 218
- Works Constitution Act 340
- Wisdom 19, 88, 201, 211, 297, 386
- Witches 156, 168, 207
- Witchcraft 165, 171, 173
- Word of authority 234
- ZDF (Second Channel of German Tele-
 vision Broadcasting) 345
- Zentrumspartei (Center Party) 335, 337
- Zones
- British occupation zone 337
 - French occupation zone 339

List of Authors

Konrad Adenauer, Lawyer (former notary public) and President of the Association of House and Landowners in Cologne.

Malte Becker, Assistant at the Institute for German and Rhenish History of Law at Rheinische Friedrich-Wilhelms-University in Bonn.

Pascal Förster, Assistant at the Rhenish Institute for notarial law at Rheinische Friedrich-Wilhelms-University in Bonn.

Wolfgang Forster, Professor of Civil Law, Comparative Legal History and Legal Philosophy at Eberhard-Karls-University in Tübingen.

Robert von Friedeburg, Reader in History at the School of Humanities at Bishop Grosseteste University, Lincoln, UK.

Gero Fuchs, Assistant at the Institute for German and Rhenish History of Law at Rheinische Friedrich-Wilhelms-University in Bonn.

Hans-Peter Haferkamp, Professor of Civil Law and German Legal History at Cologne University.

Hans-Georg Hermann, Professor of Civil Law and German and Bavarian Legal History at Ludwig-Maximilians-University in Munich.

Sven Lichtmann, Assistant at the Albertus-Magnus-Institute in Bonn.

Heiner Lück, Professor Emeritus of Civil Law, European and German History of Law at Martin-Luther-University in Halle.

Sebastian Michels, Assistant at the Institute for German and Rhenish History of Law at Rheinische Friedrich-Wilhelms-University in Bonn.

Hannes Möhle, Assistant Professor of Philosophy at Rheinische Friedrich-Wilhelms-University in Bonn and Deputy Director of the Albertus-Magnus-Institute in Bonn.

Kenneth J. Pennington, Kelly-Quinn Professor of Ecclesiastical and Legal History emeritus, The Catholic University of America.

Tilman Repgen, Dean and Professor of German Legal History, Modern History of Private Law and Civil Law at Universität Hamburg.

Joachim Rückert, Professor Emeritus of Contemporary Legal history, Civil Law and Legal Philosophy at Goethe-University in Frankfurt on the Main.

Steffen Schlinker, Professor of Civil Law and Legal history at Julius-Maximilians-University in Würzburg and Tallinn University.

Mathias Schmoeckel, Professor of Civil Law and Legal History and Director of the Institute for German and Rhenish History of Law at Rheinische Friedrich-Wilhelms-University in Bonn.

Werner Schubert, Professor Emeritus of Civil Law, Roman Law, rules of Civil Procedure and History of modern Private Law at Christian-Albrechts-University in Kiel.

Christoph Strohm, Professor of Reformation History and Modern Ecclesiastical History at Ruprecht-Karls-University in Heidelberg.

Andreas Thier, Professor of Legal History, Canon Law, Legal Theory and Civil Law at Zurich University.

Heinrich de Wall, Professor of Ecclesiastical Law, Constitutional and Administrative Law, Director of the Hans-Liermann-Institute for Ecclesiastical Law at Friedrich-Alexander-University of Erlangen and Nuremberg.

John Witte Jr. is Robert W. Woodruff University Professor of Law, McDonald Distinguished Professor of Religion, and Director of the Center for the Study of Law and Religion at Emory University in Atlanta.

Cornel Zwierlein, Privatdozent, Heisenberg-Stelle for teaching and research, German Research Foundation, Free University of Berlin.