

## The jurist as manager of emotions

### German debates on *Rechtsgefühl* in the late 19<sup>th</sup> and early 20<sup>th</sup> century as sites of negotiating the juristic treatment of emotions<sup>1</sup>

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Writing in 1914, the well-known German jurist Gustav Radbruch took up the longspun cultural narrative of Western tradition that connects law with reason and places emotions in a juridical danger zone (Maroney 2011): When thinking about law, Radbruch (1914, 344) wrote, what first comes to mind is »ponderous reasoning, sharp will, but certainly not warm feeling.« During the 19<sup>th</sup> century, law had become more and more codified and juridical practice standardized through rules of procedure (Raphael 2000). During this period—whose measure of scientificity was founded on the separation of reason from feeling (Jensen and Morat 2008, 12)—a »new type of scientific objectivity« (Daston and Galison 2002, 30) gained footing, not only in the legal field, but in many sciences.

It is thus all the more notable that German jurisprudential thought at the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> century dedicated itself intensively to questions of emotion, namely to the constitution of *Rechtsgefühl*. Multi-faceted and difficult to translate, this concept's spectrum of meanings ranges from an innate feeling for justice or an inner moral sense to a trained feeling for the written law and for legal right. It is also related to the process of making a judgment in a case, understood as a juridical intuition or hunch. Even concepts like *Rechtsbewußtsein* (consciousness of

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justice) and *Gewissen* (conscience) were used synonymously with the term.<sup>2</sup> Despite this multitude of meanings, the concept was discussed under the category of »feelings« in the late 19<sup>th</sup> and early 20<sup>th</sup> century, and was evaluated with concepts and terminology commonly used at the time for defining emotions. Precisely that makes the notion particularly interesting from the perspective of the study of the history of emotions.<sup>3</sup> At the term's core is not only the question of how emotion and law are related to one another, but also the question of how both should be defined. On the one hand, debates on *Rechtsgefühl* gave emotions an epistemological function; while on the other hand, the debates addressed the influence emotions have on human thought and action, in particular within court proceedings and juridical decision-making.

Viewing emotions as an epistemological category had become popular in the 18<sup>th</sup> century, when philosophical trends like sensualism, moral sense philosophy and Romantic philosophy exerted a decisive influence on broader understandings of what an emotion is. During this period, justice was »felt« and thus translated into emotional categories (see the contribution in this volume by Köhler and Schmidt »The Enigmatic Ground: On the Genesis of Law out of Emotion in the Writings of Savigny and Uhland«). But just as jurisprudence changed, the sciences that defined emotions also underwent radical shifts up through the 20<sup>th</sup> century. Philosophy and theology lost their positions as leading disciplines, while 19<sup>th</sup> century medicine, with its focus on physiological and neuronal processes, gained in influence. Along with this, physiology and psychology developed into independent disciplines with considerable powers of interpretation (Landweer and Renz 2008, 3–15; Frevert 2011, 264; Dixon 2003).

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2 About usages of the term, see Rümelin (1925, 3, 6). In a broader sense, *Rechtsgefühl* can even be connected to the Greek and Roman concepts of *epieikeia* and *aequitas* as well as to the discourse of natural law. See Sykora (2011, 5–13); Hubmann (1962).

3 For a theoretical background of the history of emotions see Reddy (2001).

This historical background provides the context for my analysis of texts that deal with *Rechtsgefühl* from the fields of legal philosophy and legal theory.<sup>4</sup> The paper will chart the shifting understandings of the relation between law and emotions in the late 19<sup>th</sup> and early 20<sup>th</sup> century and show how conventional ways of interpreting emotions changed not only the definition of *Rechtsgefühl*, but also its position in juridical practice. Could a jurist consult his *Rechtsgefühl* when making a judgment? Should he? Was he permitted to do so? Historical debates on the meaning and practical use of *Rechtsgefühl* can be viewed as sites where the juristic treatment of emotions was negotiated. In the end, jurists were supposed to approach their emotions in a way that made them something like »managers of emotions,« a concept that draws on the work of the sociologist Arlie Russell Hochschild. Hochschild described how strategies and practices of shaping (producing, altering, or suppressing) one's own emotions have acquired an exchange value in the service economy as well as in the private sphere. He speaks of a »currency of feeling« (Hochschild 1983, 18). As I will show, the jurist of the 19<sup>th</sup> and early 20<sup>th</sup> century—at least as depicted by source texts—can be considered the manager of emotions *par excellence*. His currency of feeling would thus not be part of the service economy, but rather would have an exchange value within the bourgeois world of jurisprudence. Viewed in this way, the social roots of the concept of *Rechtsgefühl* become clearer: what is negotiated with this currency is the jurist's occupational as well as social status as a bourgeois man. However, this social status begins to erode in the years around 1900, while at the same time the debates on *Rechtsgefühl* put contemporary concepts of masculinity on trial.

### **Rechtsgefühl as innate drive: Gustav Rümelin**

One of the first texts dedicated to the concept *Rechtsgefühl* was written by Gustav Rümelin. Chancellor of the University of Tübingen with a background in theology, Rümelin held an honorary doctorate in jurisprudence.

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4 This essay is based on research for my PhD thesis, which will broaden the topic and source material, drawing on, among other things, court sources.

As an educator, he focused on topics in sociology, psychology, and jurisprudence; legal philosophy was a central element of his pedagogical work (Mann 2005, 224; Wolf 1948, 41–44). In 1871, Gustav Rümelin held the speech »Über das Rechtsgefühl« before his colleagues at the University of Tübingen. Here he addressed the question of the origins of law, which he thought were to be found in a feeling, namely Rechtsgefühl. He defined Rechtsgefühl as an »unwritten natural law and law of reason that we bear within ourselves.« For him, it was a normative measure possessed by all humans that made it possible for them to differentiate between right and wrong. An innate human capacity, it was »something that drives us, a force in us« (Rümelin 1871, 5, 11).

This description gives us a good idea of Rümelin's general understanding of feelings. He saw them as effects of inner drives that affect the body in the form of a »dark, indeterminate impulse« (Rümelin 1871, 12). Rechtsgefühl, which in Rümelin's conception stems from an innate »justice drive« (*Rechtstrieb*), is thus equated with the »feeling of an unconditional ought« (1871, 11). It follows an inner force that strives towards the »good,« and is the motor of the social development of law.<sup>5</sup> The notion of a *Rechtstrieb* directed towards an ideal has its roots in the jurisprudential thought of the influential early 19<sup>th</sup> century German Historical School of Law. The key thinker of this school, Friedrich Carl von Savigny—some of whose formulations Rümelin adapted almost verbatim—does not speak of a »Rechtsgefühl« per se. Nevertheless, he did deduce the law from the »inner, silently working forces« (Savigny 1814, 79) of human beings. According to him, these forces give rise to a sort of collective »spirit of the people« (*Volksggeist*), a force that pushes the development of law forward by spurring people to follow a »feeling of inner necessity« (Savigny 1814, 76; Rümelin 1871, 5). Of key importance for Savigny was the idea that humans had an inner drive to be logically consequent and consistent, a drive that was determined in advance by nature and that made the »organic« development of law possible (Coing

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5 The term *Rechtstrieb* thus includes not only the notion of a »justice drive« but also the notion of a »drive to do what is right.«

1973, 153). Similarly, Rümelin also maintains that the metaphysical »idea of the good« is the »ethical root« of Rechtsgefühl (1871, 12–13).

New in Rümelin's conception is the way he questions the precise functioning of these »inner forces.« In the early 19<sup>th</sup> century, conceptions of the drives and inner forces remain within the purview of Romantic theories of the organic whole, thus drawing on ideas from holistic medicine and the pathology of the humors. But the late 19<sup>th</sup> century saw the birth of new models. Following developments in the natural sciences, ideas of vital principles and inner life forces were gradually supplanted by mechanical models and causal stimulation-reaction schemata (Harrington 2002, 37–41; Schiera 1992, 60). Traces of this paradigm shift can also be seen in Rümelin's thesis: Moving away from metaphysical speculation, he tried to give a functional explanation of Rechtsgefühl by developing a hierarchy of human drives in which Rechtsgefühl also had its place. Rümelin's model corresponds with mid to late 19<sup>th</sup>-century theories of emotions, which, as already mentioned, were strongly influenced by mechanistic trends in the natural sciences. These theories gradually carried over the concept of drive—originally conceived of as the moving force of human action—to the semantics of emotions. Following contemporary physiology, emotions were no longer thought of as inner cognitions, but rather as a flow, triggered by physiological stimuli (Eitler 2011, 101–7; Mertens 1998, col. 1492). Thus Rümelin appropriated both old and new concepts in describing Rechtsgefühl as an inner, natural force that followed a metaphysical good, while tracing its roots to mechanical/physiological notions of »stimuli« and »flows.« Accordingly, Rechtsgefühl was defined as a stimulation effectuated by the inner force of the *Rechtstrieb*, and could thus be placed in relation to other emotions in a hierarchical model.

Rümelin's hierarchization of the drives led to a hierarchization of emotions, which in turn functioned as a way of categorizing emotional intensities. Rümelin (1871, 8–9) separated the »animal drives«—equivalent to »burning passion«—from the »human drives,« which he saw as »gentler [and] milder,« as connected to a feeling »of another, purer, higher sort.« The tumultuous drives, which »dominate and dictate« humans as if they were »attached to invisible strings,« were seen as being common to both

humans and animals. But it was precisely the »ethical drives« of humans that differentiated them from animals (Rümelin 1871, 7). The widespread moralization of drives and emotions and the distinction between lower drives and higher emotions were often used as criteria for the differentiation of man and animal (Perler 2011; Frevert 2011, 267; Eitler 2011). But the appearance of Charles Darwin's *On the Origin of Species* in 1859 (German 1860), which reduced all living beings to the same ancestors and the same composition, made qualitative differentiations between man and animal seem anachronistic (Eitler 2011, 111). Darwin's theory of evolution posed a challenge to contemporaneous concepts of emotions in general and, with them, to Rümelin's Rechtsgefühl in particular, which was defined by such a distinction between man and animal.<sup>6</sup> In contrast to Darwin's theory, Rümelin (1871, 8) understood human nature as naturally fixed, given, and unchanging.

A closer look at Rümelin's hierarchical model and the position of Rechtsgefühl in it shows that he believed the *Ordnungstrieb*, or »drive to order« played a significant role in the system of human drives. For Rümelin, the human *Ordnungstrieb* is the root of all higher drives, out of which the *Rechtstrieb*—and thus by implication the Rechtsgefühl—is derived. As part of the *Ordnungstrieb*, Rechtsgefühl serves to balance and hierarchize the drives (Rümelin 1871, 6). But Rechtsgefühl had more than this structuring function. Differing from the »passive« emotion of sympathy, for instance, Rechtsgefühl was characterized by activity. It was primarily manifested in »outrage and indignation« when rights were violated, and was accompanied by a compulsion to take direct action. Rechtsgefühl thus approached a sort of feeling of righteousness, which, however, was not viewed as detached from other emotions. *Mitgefühl* (compassion, literally »feeling with«)—in contrast to the passive *Mitleid* (sympathy, literally »suffering with«)—was also of considerable significance for the makeup of Rechtsgefühl: it fostered Rechtsgefühl and was at once »condense[d] and transfigure[d]« by it (Rümelin 1871, 12–13).

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6 On the problems of German interpretations of Darwin, see Gliboff (2008).

In summary, for Rümelin, Rechtsgefühl is part of a hierarchically organized model of the drives. According to his theory, law develops »naturally« out of this system. Specific concepts of »nature« and the »nature of man« thus form the foundations of Rümelin's views on law. The law, he thought, had its origins in Rechtsgefühl, a *Rechtstrieb* innate in every human being.

### **Rechtsgefühl as corporeal emotion: Rudolf von Jhering**

Only one year later, in 1872, Rudolf von Jhering, a teacher of civil law, held a speech entitled »The Struggle for Law« that was highly respected by contemporaries and subsequently translated into 18 languages.<sup>7</sup> Jhering can be counted among the best-known, most influential personalities of 19<sup>th</sup> century jurisprudence. But despite the fact that Rümelin's and Jhering's speeches were held only a year apart from one another, their basic assumptions and points of reference starkly diverge. Rümelin and Jhering agree that Rechtsgefühl was a fundamental pillar of law and of society itself, and they concur on its guiding function for human actions. But Jhering substitutes the »naturalness« of the law's origins in Rechtsgefühl with the fulfillment of Rechtsgefühl through conflict in the courtroom. Jhering completely discards Savigny's notion of organic growth to which Rümelin still subscribed. He sees law not as the reign of a »quiet working power« (Jhering 1915, 7), but rather as a »continual struggle« (ibid., 6–7) of »restless striving and working« (ibid., 2). Jhering invests this notion with positive connotations: in his conception, Rechtsgefühl carries with it an imperative to actively shape the law. Law could only develop in society if it was felt, if it was taken seriously as a guide for individual action. For this reason, Jhering pleads insistently for the active cultivation of Rechtsgefühl in private and in public life. The state, too, has the »urgent duty« to »nourish the powerful Rechtsgefühl in every possible

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7 The source material for this text was taken from the original speech (1872) as well as the extended written version entitled *Der Kampf um's Recht* ([1872] 1897), the English translation of which, *The Struggle for Law* (1915), is primarily quoted here.

way« (Jhering 1872, 122). For Jhering, the instinct for self-preservation is manifested in *Rechtsgefühl*:

The preservation of existence is the highest law of the whole living creation. It manifests itself in every creature in the instinct of self-preservation. Now man is not only concerned with his physical life but with his moral existence. But the condition of this moral existence is right, in the law. In the law, man possesses and defends the moral condition of his existence—without law he sinks to the level of the beast [...]. (Jhering 1915, 31)

This quote pointedly demonstrates how strongly Jhering—in opposition to Rümelin—appropriates and productively deploys the language of evolutionary biology. The similarity of the speech's title, »The Struggle for Law,« with Darwin's »struggle for existence« thus appears to have been more than a marketing ploy. Jhering, as was common at the time, repeatedly draws on models from the natural sciences (Coing 1973, 153; Treiber 1998, 170–74). Contemporary scholars have shown that jurisprudence in particular shows a »tendency towards appropriating this type of »transfer knowledge« (Treiber 1998, 173). The »exact« sciences, with their promise of precision and objectivity, underwent a leap in popularity during the second half of the 19<sup>th</sup> century and advanced to become the lodestar of contemporary scientific culture (Tanner 2008, 38). Consequently, the category of »emotion« gradually became a somatic category (Hitzer 2011, 135).

This shift can be clearly seen in Jhering's text, which defines *Rechtsgefühl* in biological terms. *Rechtsgefühl* expresses itself through a »moral pain« (Jhering 1915, 28), which in a sense is a corporeal means of knowledge acquisition. *Rechtsgefühl* can thus serve as a substitute for mental knowledge; it is a sort of corporeal knowledge, a »gut feeling«:

[W]hat do the people know of the right of property, of contract as a moral condition of the existence of the person? Know? They may know nothing about it, but whether they do not feel it is another question; and I hope that I shall be able to show that such is the case. What do the people know of the kidneys, lungs, liver, as

conditions of their physical life? But every one feels the stitch in the lungs, or a pain in the kidneys or liver, and understands the warning which it conveys to him. Physical pain is the signal of a disturbance in the organism, of the presence of an influence inimical to it. [...] The very same is true of the moral pain caused us by intentional injustice, by arbitrariness. (Jhering 1915, 41)

Jhering develops a »pathology of Rechtsgefühl« (1915, 60). He uses the oppositions of »healthy« and »vigorous« vs. »blunted,« »diseased,« and »apathetic« to characterize Rechtsgefühl<sup>8</sup> (Jhering 1915, 103, 98). According to him, Rechtsgefühl can become decayed and blunted, and thus always needs to be practiced and trained (ibid., 41–42, 49). As opposed to Rümelin, Jhering (1884, 17) does not hold the view »that nature gave human beings special equipment,« as he stated in his 1884 speech »Ueber die Entstehung des Rechtsgeföhles« (On the origin of Rechtsgefühl). For this reason, there can be no innate drive out of which Rechtsgefühl simply develops. Even instincts, as the natural sciences had shown, were malleable and acquired through experience (Jhering 1884, 28). Going against the current of popular opinion, Jhering connects the insight that Rechtsgefühl is not given at birth with ideas drawn from the natural sciences; for example, he uses the image of »ethical spores« that »float in the ethical air surrounding us« and that we breathe in from childhood on (1884, 43). For Jhering, Rechtsgefühl is thus a »historical product« (ibid., 19). Accordingly, the forces that stimulate Rechtsgefühl can vary historically as well as along lines of »class« and class interests (Jhering 1915, 3, 10, 46).

For Jhering, Rechtsgefühl has the irreplaceable function of making the law reality. There can be no functioning law without this energy, without this emotional connection. Without this feeling, rationality would be impotent: »The power of the law lies in feeling, just as does the power of love; and the intellect cannot supply that feeling when it is wanting« (Jhering 1915, 61).

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8 On discourses of »health« and »illness« in Jhering's time, see Brink (2009), which also goes into the popular reception of Jhering's *Kampf ums Recht*.

### **The Rechtsgefühl of the jurist as the foundation of the law**

For Gustav Rümelin as well as for Rudolf von Jhering, Rechtsgefühl stands at the center of a functioning legal order and society. But what consequences was this supposed to have for jurists? If Rechtsgefühl is so central for the law, must the judge, for example, call upon his Rechtsgefühl when making a judgment?

Rümelin thought that the practical relevance of this emotion lies in the role it played in the genesis of law. For him, it was important to demonstrate that law is not only made by jurists, but has its origins in a »natural« Rechtsgefühl. Nevertheless, because of its growing complexity, the law needed trained jurists to interpret and apply it. And for their part, jurists need more than just their Rechtsgefühl: »Nobody will ever be able to deduce a single law from Rechtsgefühl alone« (Rümelin 1871, 18). For Rümelin, Rechtsgefühl serves as an ever-present guide and a reliable warning signal, but it can be quickly overburdened by the complexity of life, necessitating »relief from a logical-technical element.« The problem for the jurist thus lies in the fact that an appeal to his Rechtsgefühl seems necessary, but is at the same time made almost impossible by the complexity of life and law (Rümelin 1871, 19). One solution is for the jurist to »stay in touch with the Rechtsgefühl of the people« (ibid., 20). The jurist is thus supposed to allow his Rechtsgefühl to be supported and guided by that of the community. This also applied to the professional judge, for whom Rümelin makes a sharp distinction from others whose work demands they draw upon their Rechtsgefühl, such as lay judges. Rümelin in no way claims that the »undeveloped and naïve Rechtsgefühl« of the average person was comparable with the »trained and practiced« Rechtsgefühl of the professional jurist (1871, 28). While judges need to have a connection to the people's Rechtsgefühl in order to make sound judgments, they nonetheless possess a better Rechtsgefühl. The judge's Rechtsgefühl is an educated Rechtsgefühl, which can nevertheless be easily overburdened by the ever-increasing complexity of the law.<sup>9</sup>

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9 Rümelin does not go into the ways this qualitative emotional connection is supposed to take place. As drives and emotions are in principle unchang-

Rudolf von Jhering holds a wholly different position on the practice of the jurist: He pleads *for* the inclusion of Rechtsgefühl, and precisely for a »strong« Rechtsgefühl of a »simple nature« as opposed to the »degraded form of Rechtsgefühl« found among those trained in law (Jhering 1872, 129–30). Jhering diagnoses an emotional deficiency in juridical professionals that had its origins in their focus on abstract legal rules.<sup>10</sup> The law has »gone through the filter of learnedness; the learned man does not feel himself to be like the man of life, the practical man« (Jhering 1872, 127). Jhering thus makes use of a common thread of contemporaneous juridical and legal criticism, namely the idea that German jurists are detached from life (Ormond 2000). As opposed to Rümelin, Jhering is concerned with the actualization of the law, which includes its application by the jurist. He wants »to make a place for a concrete, simple Rechtsgefühl in our contemporary institutions« (Jhering 1872, 130). The jurist's Rechtsgefühl needs to be cultivated in order help shape the laws themselves, because contemporary law, according to Jhering (1897, 74–75), does not support Rechtsgefühl and thus allows it to become dull. Only »in the form of an emotion, of direct feeling« can the true meaning of the law first appear (Jhering 1915, 61). As the focus on reason, abstraction, and rules corrupts and weakens Rechtsgefühl, Jhering demanded that jurists consciously orient themselves towards a »healthy,« »powerful« Rechtsgefühl, defined as an emotional tie to the law.

### Putting bourgeois masculinity to the test

To get a clearer idea of the place Rechtsgefühl was given within juristic practice, it might be useful to take a closer look at the social status of jurists in the late 19<sup>th</sup> and early 20<sup>th</sup> century. The various conceptions of Rechtsgefühl and its functions were influenced by the social background

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able for Rümelin, one can presume that he understood them as being refined through their intellectual treatment.

10 In the published version of the speech Jhering states more precisely that it was not the jurist's level of education in itself, but rather the shape the law took and its level of abstraction that has a retroactive effect on the »health of the Rechtsgefühl« (Jhering 1872, 44).

of those writing and of those whom they were writing about: male representatives of a bourgeois culture with its own codes of emotional behavior. Legal historians have often viewed debates on juristic methods as a political tactic of jurists to position themselves in their relation to the state.<sup>11</sup> However, if one shifts the focus to the role of *Rechtsgefühl*, it becomes clear to what extent juridical debates have been historically characterized by questions of honor, masculinity, and, bound up with these concerns, the idea of a well-balanced emotional life.

As far as their social background goes, jurists of the German Empire as well as of the early Weimar Republic were a fairly homogenous group. The majority of German jurists came from the families of high-ranking civil servants, families embedded in the values of the educated bourgeoisie (*Bildungsbürgertum*). Many were sworn into the behavioral norms of bourgeois life at university in the popular student organizations (Rottleuthner 1988, 148, 156; Frevert 1991, 139; Möller 2001, 64). The ideal of orienting oneself towards an »unchangeable identity as citizen, man and human« was central in this constellation (Frevert 1991, 181; Ringer 1990, 83–90). This identity also included one's profession: the profession and personality of a bourgeois man were seen as an amalgam (Kondylis 1991, 41). Consequently, the behavioral norms of private life spilled over into professional life and vice versa. During the 19<sup>th</sup> century, the *Bildungsbürgertum* in particular—a social strata that included jurists—experienced a rise in social status. Central to the mores of the *Bildungsbürgertum* were practices and attitudes based on notions of honor that were, for their part, shaped by the growing significance of military culture in the German Empire. The elevation in social standing brought with it the need to publicly demonstrate one's mastery of behavioral norms and the moral integrity of one's person (Frevert, 1991, 87, 98; Ormond 1994, 561–62).

Training and respecting *Rechtsgefühl* as a »question of moral self-preservation,« in Jhering's formulation, has its place here. For Jhering, *Rechtsgefühl* is thus a motivating factor not only in the maintenance of a functioning legal order. The defense of individual interests and social status

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11 See Ogorek (1986); Ormond (1994).

also goes hand-in-hand with the cultivation of *Rechtsgefühl* and the active defense of the law. Central to Jhering's argumentation is the idea that *Rechtsgefühl* makes it possible for everyone to take part in the formation and propagation of the law. And, concurrently, obliges them to do so (Jhering 1872, 117). In a sense, Jhering sees every person as a personification of the law by virtue of their innate *Rechtsgefühl*. Because the law is »a part of the person, it emanates from the person; [...] it is, so to speak, an extension of my powers and personality, I myself am it« (Jhering 1872, 119). If the law is personified in every human—that is, every man—then the »struggle for law« becomes a way of demonstrating one's status.<sup>12</sup> For Jhering, the »order of civil life« would be destroyed if one did not defend the sense of justice fostered by *Rechtsgefühl* (1915, 75). Jhering's argumentation revolves around the polar categories of courage and cowardice, which allowed him to invest *Rechtsgefühl* with relevance for the whole of society and connect it to emotionally laden questions of honor and respect (1872, 117–30). The cultivation of *Rechtsgefühl*<sup>13</sup>—to be demanded of everyone, in particular of jurists—is equated with the development of character, making it a touchstone of »manliness« (Jhering 1915, 131). For Jhering, *Rechtsgefühl* is thus a category formational for both character and masculinity.

In the 19<sup>th</sup> century, this connection between the treatment of emotions and the formation of the masculine personality is not at all unusual. The superabundance of behavioral guides in this period shows that a balanced approach to emotions was seen as something through which the bourgeois man had to prove himself (Kessel 2000, 173). Domination of one's emotions functioned as a means of distinction, both between the sexes as well as in the context of defending one's social position (Kessel 2000, 167, 173). The debates on *Rechtsgefühl* can thus be viewed as sites

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12 The concept of property is closely bound up in this, a concept central not only for Jhering's argumentation but for the propertied bourgeoisie to which Jhering belonged.

13 Jhering does not provide details on the ways this cultivation might take place, but it is clear that it is contingent on a well-founded understanding of essential values, such as property.

where a specifically masculine, juridical treatment of emotions was negotiated. Exemplary in this respect is Gustav Rümelin, for whom the »correct« treatment of emotions is essential to the masculinity of a jurist, and of a judge in particular. This idea becomes clearest in the conception of the female sex he developed in an 1880 speech on Rechtsgefühl. The essence of women, according to Rümelin, cannot be brought into harmony with juridical judgment because »the peculiarity of the female spirit [...] lags behind [that of men] in its sense for law and justice.« Women lack the necessary emotional control, and thus »impartiality.«<sup>14</sup> »The female sense of justice,« according to Rümelin (1880, 38–39), is »the ideal, naïve sense of justice [...], led by immediate emotional impressions,« whereas the male sense of justice is the »realistic, rational, empirically schooled and trained form of justice.« And only he who keeps his feelings in check also has his Rechtsgefühl under control.

However, the disciplining of feelings so important for bourgeois self-understanding is in no way a simple suppression of emotions. It is precisely the co-existence of emotional control and well-rationed passion that are definitive for the 19<sup>th</sup> century masculine culture of emotions (Kessel 2000, 157–58). This is manifested, for instance, in Rümelin's demand for a precise, rational treatment of emotions. In his definition of Rechtsgefühl as an expression of the *Rechtstrieb*, Rechtsgefühl stands in a relation of mutual determination with other emotions: it feeds on compassion while being held distant from »dangerous,« meaning too intense, emotions. Rechtsgefühl, Rümelin writes, is »only a tender feeling« and thus has »a difficult time standing up against the impulse of burning desires« (1871, 16). In contrast to Jhering, in Rümelin's conception Rechtsgefühl is distinguished from the »furious« emotions. It is defined not by passion, but balance. Precisely this ability to dominate one's emotions turns Rechtsgefühl into »trained Rechtsgefühl,« making it a hallmark of the good jurist. Through the successful management of

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14 Although at the time women were attributed with a higher emotional sensibility, this was often due to the common idea that women's capacity to think logically was inferior to that of men. On notions of gendered emotionality, see Borutta and Verheyen (2010).

emotions according to bourgeois emotional codes, the judge can prove both his professional capability and his masculinity.

### **The turn towards the judge: The early 20<sup>th</sup> century**

When reading the texts on *Rechtsgefühl* composed during the early 20<sup>th</sup> century, one sees that the lines of inquiry and points of departure underwent a marked shift. In contrast to the texts written in the early years of the German Empire, which grappled with the genesis and essence of law, the role of the jurist now took center stage. With the introduction of the *Bürgerliches Gesetzbuch* (the German Civil Code) in 1900, and the political challenges posed by the Weimar Republic later on, questions about the function and application of law and legal practice acquire a new significance (Wilhelm 2010, 322, 599; Ortmann 2008, 413). These questions are also discussed in debates on *Rechtsgefühl*.

One sign of the shift of focus towards judicial judgment in jurisprudential discourse is the rise of the so-called *Freirechtsbewegung* (Free Law Movement), which focused on the subjective aspects of judgment and which became influential in jurisprudential circles, both nationally and internationally (Wilhelm 2010, 600–603).<sup>15</sup> But supporters of *Rechtsgefühl* were directly countered by its vehement opponents, who decried it as a feeling that »unconsciously« misled jurists, claiming that it was the »holy duty of the judge [...] to never allow the voice of his personal *Rechtsgefühl* [...] to come to the surface« (Bülow 1906, 94–96). Max Rümelin's 1925 speech »*Rechtsgefühl und Rechtsbewußtsein*« serves as a good example of the shape of these debates and demonstrates the challenges faced by jurists of the time. In this speech Max Rümelin, son of Gustav Rümelin and a professor of civil law, grappled with the question of whether *Rechtsgefühl* should guide a judge's actions. Despite the change of

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15 Although these theses were not in any way epistemologically novel, as the subjective elements of judgment had already been conceptualized beforehand, the *Freirechtsbewegung* nonetheless gave the topic of the »subjective element of will and emotion« a new significance. The *Freirechtsbewegung* even had some adherents outside of Germany, exerting a particular influence on the American Legal Realists.

circumstances, Rümelin's central argument in one area shows continuity with the positions of his Imperial predecessors: The successful management of emotions, including *Rechtsgefühl*, stands, he claimed, at the heart of understanding how a »good« judge is to be defined. New, however, was the context in which this judicial emotional work played itself out. According to Rümelin, it was precisely the judge who had the task of facing the great challenges of his time. He believed these challenges lay in the subjectivist and relativist trends that he saw not only in the field of law, but also in society in general. For him, these trends called into question the possibility of universally binding values and were the illnesses of an epoch that found itself in a state of decay (Rümelin 1925, 59). In response, Max Rümelin defended his belief in historically shifting, but nevertheless temporarily objective ethical values. He held to the idea that these universal values manifested themselves in a people's consciousness (*Volksbewußtsein*) accessible to the jurist (Rümelin 1925, 63, 72–74). The greatest thing a judge could accomplish was to have a feeling for this consciousness in such turbulent times.

Max Rümelin's image of society exemplifies the general crisis of confidence in bourgeois culture at the beginning of the 20<sup>th</sup> century (Kondylis 1991, 54). The focus on practicing jurists is intensified by the feelings of uncertainty dominant in the legal world itself. Even in the years of the German Empire, German jurists experienced a loss of prestige: An ever-growing number of university graduates flooded the market, the professionalization of the university and the strengthening of new disciplines caused jurisprudence to call its self-understanding into doubt, and judges in particular considered their profession undervalued (Treiber 1998, 174; Ormond 1994, 563; Röwekamp 2011, 193–96). Along with the structural transformation of the legal system came a loss of certainty among jurists that affected not only their professional, but also their social status. The defeat in World War I contributed to this sense of uncertainty. In particular, the relation between the people and the legal apparatus had fallen into a »crisis of trust« (Kondylis 1991, 56–57; Wilhelm 2010, 323). In the Weimar Republic, these shifts intensified and led to the further destabilization of the social position and values of the bourgeoisie (Jensen and

Morat 2008, 26). One crucial factor was the suffrage movement. The struggle for social equality also aimed for the inclusion of women in the administration of justice, a demand that contemporary, exclusively male judges vehemently protested. Only at the end of the 1920s were women allowed to become judges.<sup>16</sup> In the Weimar Republic, the majority of jurists still held the opinion that a woman was not suited to be a judge because of her »peculiar mental composition, which makes her subject to the influence of emotions to the most extreme degree« (Stadelmann 1921, 199).

Thus, it seems that the debate on the judge's *Rechtsgefühl* began to gain steam at a time when the bourgeois model of society began to erode, a time when the bourgeois man, and thus the bourgeois jurist, began to lose ground both in his social legitimacy and in his understanding of himself. Parallel to this debate, the question of the judge's treatment of emotions became ever more pressing.

### **Rechtsgefühl through strength of will: Max Rümelin**

According to Max Rümelin, one of the most significant representatives of civil law in the early 20<sup>th</sup> century, only a well dominated *Rechtsgefühl* could master the trials and tribulations of the era. Nevertheless, he was not in complete favor of *Rechtsgefühl*. In fact, he attempted to perform a difficult balancing act in his speech: On the one hand, he pointed out the dangers of a subjectively determined turn towards *Rechtsgefühl*, but on the other hand, he spoke of the necessity and omnipresence of this feeling during the act of judging. Differing from his father Gustav Rümelin and from Rudolf von Jhering, whom he named as his predecessors in thought on *Rechtsgefühl*, Max Rümelin was able to reference newer works that dealt specifically with the topic.

In contrast to his father, Max Rümelin rejects the idea of an innate *Rechtstrieb* as the origin of *Rechtsgefühl*. Rather, he views *Rechtsgefühl* as a mix of innate principles of the will and cognitive elements, such as concepts of

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16 On varying opinions of who the »first female judge« was and the year she assumed her office, see Röwekamp (2011, 453–54).

law, which are historically and culturally variable (Rümelin 1925, 16, 25–27). The models drawn from medicine and evolutionary biology that Jhering deployed give way to other points of reference: more important for Max Rümelin are the insights of psychology and the »volatile theory of emotions,« which define emotions as effects of the will (1925, 12–13n6).

At the beginning of the 20<sup>th</sup> century, the quickly ascending field of psychology, which had absolved itself of philosophy and become an empirically-based discipline, exerted a powerful influence on theories of emotions. Notions of inner force no longer served to explain human emotions (Jensen and Morat 2008, 22; Stöckmann 2009, 490). This helps to explain the shift that Max Rümelin's definition of Rechtsgefühl took. He relied on the research of the legal psychology of his time,<sup>17</sup> which among other things emphasized the relation between emotion and cognition. The »idealism« still attached to Rechtsgefühl in Jhering's work became a secondary matter. The categories of will, intellect, and cognition now carry more weight and open new lines of argumentation for the legal theory of the early 20<sup>th</sup> century. As a legal psychological study by Erwin Riezler explains, the judicature strove towards a level of precision and certainty that was often seen as opposed to emotions and to Rechtsgefühl. He claims, however, that the intellectual aspects of Rechtsgefühl had often »been overlooked« (Riezler 1921, 151).<sup>18</sup>

Nevertheless, the emphasis on emotions, according to Max Rümelin (1925, 78), harbors the danger of opening the flood gates for their »overpowering influence« in judicial praxis. At the same time, Max Rümelin is conscious of the fact that judicial decisions are often value judgments that can only be made through »intuition« or »feeling« (1925, 43). According to him, judgments are formed in two steps: the primary, central process of cognition is followed by the emotional, or—used

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17 See Kübl (1913); Riezler (1921); Maier (1908); Sturm (1910). On the intersection of psychology and jurisprudence, see Schmoeckel (2009).

18 This does not mean, however, that there were not similar theories in legal philosophy before. They simply did not find their way into juridical doctrine. See Ogorek (1986).

synonymously by Max Rümelin—intuitive act of evaluation, which he often describes as a »lightning-like flash.« *Rechtsgefühl* marks the end of the process of evaluation. In the ideal case, that evaluation would correspond with the evaluation of society as a whole, a correspondence whose likelihood would increase in correlation with the »the brilliance of the personality of the judge« (Rümelin 1925, 54–57). Max Rümelin thus demands that the judge have a feeling that bordered on genius for the needs and views of his time and society. The judge's social sensibility thus came to serve as a norm against which his capacity to exercise his office could be measured.

Max Rümelin agrees with the idea that the capacity of *Rechtsgefühl* to aid in making judgments »can be practiced and developed, but also suppressed, disrupted and misled« (1925, 15). For him, *Rechtsgefühl* is not something inherent in all humans to the same degree, but rather a disposition that could be intentionally developed both by culture and by the individual. This aspect of *Rechtsgefühl* is more extensively connected to the concept of character than is the case with the other authors examined. For Max Rümelin, »temper and character« are just as important as intellect for the good judge. But how was »character« supposed to manifest itself in a judge? Max Rümelin thought it was primarily expressed through the judge's approach to emotions. According to Max Rümelin, specialized knowledge could not stand alone: »love of law and love of others must step into the foreground, along with the feeling of inner involvement in the fates of those to be judged.« For him, the judge's capacity to »place himself in the others' shoes, experiencing the sufferings and joys of all involved« is a cornerstone of *Rechtsgefühl*. The one forming the judgment must be able to »feel his way into« the situation of others. He views this capacity as a key emotional competence, even for the professional judge. Nevertheless, he believes it must be trained: »It is not as if the judge should give himself over to the impulse of sympathy. He is not permitted to do this any more than he is permitted to follow the emotions of rage and anger. It is precisely these emotional impulses that he must learn to overcome.« Max Rümelin thus attributes »a strong

and certain Rechtsgefühl« only to him who did not allow himself to be led into error by these emotions (1925, 76).

The notion of the judge as a »manager of emotions« appears here most clearly. It is no doubt a complex task to strike a balance between the emotions that foster judgment and those that hinder it, between the use of emotions and the suppression of emotions. In Max Rümelin's words, it demands not only »practice,« but also involves »strength of will,« while »lack of self-control« poses the greatest danger (1925, 78). In Max Rümelin's perspective, Rechtsgefühl thus serves as a sort of filter. An emotion that is based on a conglomerate of emotions, it must be intentionally cultivated. However, reason has to keep it separate from other emotions. For Max Rümelin, the complex emotional competence demanded of a judge thus forms the core of what he calls »strength of character« (1925, 80).

### **Conclusion: The jurist as manager of emotions**

The texts of the early period of the German Empire considered here place a strong focus on the law and its genesis, whereas the texts of the early 20<sup>th</sup> century focus on the question of whether Rechtsgefühl might serve as a guide for the actions of jurists. As this paper has tried to show, many different influences played into the shifting conceptions of Rechtsgefühl. First, structural changes in the legal sphere brought forth the need to rethink the foundations of jurisprudence. These influences compelled jurists to pose questions about Rechtsgefühl, its role in the formation of law and—in the 20<sup>th</sup> century—the role it played in the methodical application of the law in the act of judgment. The focus of the texts thus shifted from the examination of Rechtsgefühl as a general human capacity to the conceptual specification of the judge's Rechtsgefühl. Secondly, shifts in the sciences influencing jurisprudence also influenced concepts of emotions and of Rechtsgefühl: Models of fixed inner forces were called into question by evolutionary biology, while psychology's volitional theories of emotions offered new approaches that produced various, historically specific conceptions of Rechtsgefühl. Finally, social factors had an impact on the way the individual conceptions of Rechtsgefühl were shaped, in particular in those cases where its relation to the judge

was analyzed. During the late 19<sup>th</sup> and the early 20<sup>th</sup> century, bourgeois values and morals increasingly became an object of criticism. And the jurist, as a classic representative of this social class, was increasingly open to attack. These criticisms were aimed at bourgeois scientific traditions as well as bourgeois mores in general, both of which were closely related.

Thus although thoughts about the function and effect of Rechtsgefühl and its role in juridical practice greatly diverged, they all concurred on one point: namely that emotions had to be managed by the judge in one way or another. The »correct« treatment of Rechtsgefühl demanded the management of emotions, and the capacity to do so became a test of character that the jurist had to pass. At the beginning of the 20<sup>th</sup> century, the judge himself moved to the center of the debate. The erosion of bourgeois values and morals reinforced the interest in Rechtsgefühl and the »correct« management of feelings. From Rümelin senior to Rümelin junior, the fight for the appropriate treatment of emotions can be seen as a fight for prestige on multiple levels: Despite their diverging conceptions of the proper way to treat Rechtsgefühl, it is at every moment clear that this special emotion poses a difficult task for the judge. Whether he succeeds or fails at this task serves on the one hand as a measure of the quality of his professional work, and on the other as a measure of his bourgeois character, and thus his masculinity.

It is precisely the combination of both levels—the investment of professional abilities with dimensions of bourgeois, masculine character formation—that seems to have made the topic of Rechtsgefühl so important around the turn of the century. In this light, the office of the judge appears as a *professionalization* of the tests on the proper treatment of emotions that the bourgeois man of the 19<sup>th</sup> and early 20<sup>th</sup> century had to pass. The judge had to prove himself an able manager of emotions.

## References

- Borutta, Manuel, and Nina Verheyen. 2010. *Die Präsenz der Gefühle: Männlichkeit und Emotion in der Moderne*. Bielefeld: transcript.
- Brink, Cornelia. 2009. »Anti-Vernunft« und »geistige Gesundheit: Eine Fallgeschichte über Norm, Normalität und Selbstnormalisierung im deutschen Kaiserreich.« In *Zum Fall machen, zum Fall werden: Wissensproduktion und Patientenerfahrung in Medizin und Psychiatrie des 19. und 20. Jahrhunderts*, edited by Sibylle Brändli, Barbara Lüthi, and Gregor Spuhler, 121–41. Frankfurt am Main: Campus.
- Coing, Helmut. 1973. »Bemerkungen zur Verwendung des Organismusbegriffs in der Rechtswissenschaft des 19. Jahrhunderts.« In *Biologismus im 19. Jahrhundert*, edited by Gunter Mann, 147–57. Stuttgart: Ferdinand Enke.
- Daston, Lorraine, and Peter Galison. 2002. »Das Bild der Objektivität.« In *Ordnungen der Sichtbarkeit: Fotografie, in Wissenschaft, Kunst, Technologie*, edited by Peter Geimer, 29–99. Frankfurt am Main: Suhrkamp.
- Dixon, Thomas. 2003. *From Passions to Emotions: The Creation of a Secular Psychological Category*. Cambridge: Cambridge University Press.
- Eitler, Pascal. 2011. »Der »Ursprung« der Gefühle—Reizbare Menschen und reizbare Tiere.« In *Gefühlswissen: Eine lexikalische Spurensuche in der Moderne*, edited by Ute Frevert, Monique Scheer, Anne Schmidt, Pascal Eitler, Bettina Hitzer, Nina Verheyen, Benno Gammerl, Christian Bailey, and Margrit Pernau, 93–119. Frankfurt am Main: Campus.
- Frevert, Ute. 1991. *Ehrenmänner: Das Duell in der bürgerlichen Gesellschaft*. Munich: Beck.
- . 2011. »Gefühlswissen in der Moderne—Entwicklungen und Ergebnisse.« In *Gefühlswissen: Eine lexikalische Spurensuche in der Moderne*, edited by Ute Frevert, Monique Scheer, Anne Schmidt, Pascal Eitler, Bettina Hitzer, Nina Verheyen, Benno Gammerl, Christian Bailey, and Margrit Pernau, 263–77. Frankfurt am Main: Campus.
- Gliboff, Sander. 2008. *H. G. Bronn, Ernst Haeckel, and the Origins of German Darwinism: A Study in Translation and Transformation*. Cambridge, MA: MIT Press.

- Harrington, Anne. 2002. *Die Suche nach Ganzheit: Die Geschichte biologisch-psychologischer Ganzheitslehren: Vom Kaiserreich bis zur New-Age-Bewegung*. Translated by Susanne Klockmann. Reinbek bei Hamburg: Rowohlt.
- Hitzer, Bettina. 2011. »Gefühle heilen.« In *Gefühlswissen: Eine lexikalische Spurensuche in der Moderne*, edited by Ute Frevert, Monique Scheer, Anne Schmidt, Pascal Eitler, Bettina Hitzer, Nina Verheyen, Benno Gammerl, Christian Bailey, and Margrit Pernau, 121–51. Frankfurt am Main: Campus.
- Hochschild, Arlie Russell. 1983. *The Managed Heart: Commercialization of Human Feeling*. Berkeley: University of California Press.
- Hubmann, Heinrich. 1954. »Naturrecht und Rechtsgefühl.« In *Archiv für die civilistische Praxis* 153 (4): 297–331.
- Jensen, Uffa, and Daniel Morat. 2008. »Die Verwissenschaftlichung des Emotionalen in der langen Jahrhundertwende (1880–1930).« In *Rationalisierungen des Gefühls: Zum Verhältnis von Wissenschaft und Emotionen 1880–1930*, edited by Uffa Jensen and Daniel Morat, 11–34. Munich: Wilhelm Fink.
- Kessel, Martina. 2000. »Das Trauma der Affektkontrolle: Zur Sehnsucht nach Gefühlen im 19. Jahrhundert.« In *Emotionalität: Zur Geschichte der Gefühle*, edited by Claudia Benthien, Anne Fleig, and Ingrid Kasten, 156–77. Cologne: Wallstein.
- Kondylis, Panajotis. 1991. *Der Niedergang der bürgerlichen Denk- und Lebensform: Die liberale Moderne und die massendemokratische Postmoderne*. Weinheim: VCH, Acta Humaniora.
- Landweer, Hilge, and Ursula Renz. 2008. »Zur Geschichte philosophischer Emotionstheorien.« In *Klassische Emotionstheorien: Von Platon bis Wittgenstein*, edited by Hilge Landweer and Ursula Renz, 1–15. Berlin: De Gruyter.
- Mann, Gunter. 1973. *Biologismus im 19. Jahrhundert*. Stuttgart: Ferdinand Enke.
- Maroney, Terry A. 2011. »The Persistent Cultural Script of Judicial Dispassion.« *California Law Review* 99:629–81.
- Mertens, Wolfgang. 1998. »Gefühl.« In *Historisches Wörterbuch der Philosophie*, vol. 10, edited by Joachim Ritter, Karlfried Gründer and Gottfried Gabriel, col. 1483–92. Basel: Schwabe.

- Möller, Silke. 2001. *Zwischen Wissenschaft und »Burschenherrlichkeit«: Studentische Sozialisation im deutschen Kaiserreich; 1871–1914*. Stuttgart: Frank Steiner.
- Ogorek, Regina. 1986. *Richterkönig oder Subsumtionsautomat? Zur Justiztheorie im 19. Jahrhundert*. Frankfurt am Main: Vittorio Klostermann.
- Ormond, Thomas. 1994. *Richtervürde und Regierungstreue: Dienstrecht, politische Betätigung und Disziplinierung der Richter in Preußen, Baden und Hessen 1866–1918*. Frankfurt am Main: Vittorio Klostermann.
- . 2000. »Die Richter im Kaiserreich: Entwicklungstendenzen im Zeitalter der Professionalisierung und Verrechtlichung.« In *Rechtskultur, Rechtswissenschaft, Rechtsberufe im 19. Jahrhundert: Professionalisierung und Verrechtlichung in Deutschland und Italien*, edited by Christoph Düpper, 87–99. Berlin: Duncker & Humblot.
- Ortmann, Alexandra. 2010. »Vom »Motiv« zum »Zweck«: Das Recht im täglichen Wandel—Das Beispiel der Reichsstrafprozessordnung 1879.« In *Wie wirkt Recht? Ausgewählte Beiträge zum ersten gemeinsamen Kongress der deutschsprachigen Rechtssoziologie-Vereinigungen an der Universität Luzern 2008*, edited by Michelle Cottier, Josef Estermann, Michael Wrase, 409–30. Baden-Baden: Nomos.
- Perler, Dominik. 2011. *Transformationen der Gefühle: Philosophische Emotionstheorien 1270–1670*. Frankfurt am Main: S. Fischer.
- Raphael, Lutz. 2000. »Rechtskultur, Verrechtlichung, Professionalisierung: Anmerkungen zum 19. Jahrhundert aus kulturanthropologischer Perspektive.« In *Rechtskultur, Rechtswissenschaft, Rechtsberufe im 19. Jahrhundert: Professionalisierung und Verrechtlichung in Deutschland und Italien*, edited by Christoph Düpper, 29–48. Berlin: Duncker & Humblot.
- Reddy, William M. 2001. *The Navigation of Feeling: A Framework for the History of Emotions*. Cambridge: Cambridge University Press.
- Ringer, Fritz K. 1990. *The Decline of the German Mandarins: The German Academic Community, 1890–1933*. Reprint, Hanover: Wesleyan University Press.
- Rottleuthner, Hubert. 1988. »Die gebrochene Bürgerlichkeit einer Scheinprofession: Zur Situation der deutschen Richterschaft zu Beginn des 20. Jahrhunderts.« In *Bürgerliche Berufe: Zur Sozialgeschichte der freien und akademischen Berufe im internationalen Vergleich*, edited by Hannes Siegrist, 145–73. Göttingen: Vandenhoeck & Ruprecht.

- Röwekamp, Marion. 2011. *Die ersten deutschen Juristinnen: Eine Geschichte ihrer Professionalisierung und Emanzipation (1900–1945)*. Cologne: Böhlau.
- Schiera, Pierangelo. 1992. *Laboratorium der bürgerlichen Welt: Deutsche Wissenschaft im 19. Jahrhundert*. Translated by Klaus Peter Tieck. Frankfurt am Main: Suhrkamp.
- Schmoeckel, Matthias. 2009. *Psychologie als Argument in der juristischen Literatur des Kaiserreichs*. Baden-Baden: Nomos.
- Stöckmann, Ingo. 2009. *Der Wille zum Willen: Der Naturalismus und die Gründung der literarischen Moderne 1880–1900*. Berlin: De Gruyter.
- Sykora, Daniel Andreas. 2011. *Der schiedsgerichtliche Billigkeitsentscheid*. Zurich: Dike.
- Tanner, Jakob. 2008. »Unfassbare Gefühle: Emotionen in der Geschichtswissenschaft vom Fin de siècle bis in die Zwischenkriegszeit.« In *Rationalisierungen des Gefühls: Zum Verhältnis von Wissenschaft und Emotionen 1880–1930*, edited by Uffa Jensen and Daniel Morat, 35–59. Munich: Wilhelm Fink.
- Treiber, Hubert. 1998. »Zur Physiologie des Rechts oder Der Muskel als Scharnierbegriff.« In *Physiologie und industrielle Gesellschaft: Studien zur Verwissenschaftlichung des Körpers im 19. Und 20. Jahrhundert*, edited by Philipp Sarasin and Jakob Tanner, 170–203. Frankfurt am Main: Suhrkamp.
- Wieacker, Franz. 1973. »Bemerkungen über Ihering und den Darwinismus.« In *Biologismus im 19. Jahrhundert*, edited by Gunter Mann, 158–63. Stuttgart: Ferdinand Enke.
- Wilhelm, Uwe. 2010. *Das Deutsche Kaiserreich und seine Justiz: Justizkritik—politische Strafrechtssprechung—Justizpolitik*. Berlin: Duncker & Humblot.
- Wolf, Erik. 1948. »Nachwort.« In *Rechtsgefühl und Gerechtigkeit*, edited by Erik Wolf, 41–44. Limburg an der Lahn: Vittorio Klostermann.

### Sources

- Bülow, Oskar. 1992. »Über das Verhältnis der Rechtsprechung zum Gesetzesrecht (1906).« In *Gesetzesbindung und Richterfreiheit: Texte zur Methodendebatte 1900–1914*, edited by Andreas Gängel and Karl A. Mollnau, 82–100. Freiburg: Haufe.
- Jhering, Rudolf von. (1872) 1897. *Der Kampf ums Recht*. 13<sup>th</sup> ed. Vienna: Manz.
- 1915. *The Struggle for Law*. 2<sup>nd</sup> ed. Translated by John J. Lalor. Chicago: Callaghan.
- (1884) 1986. *Ueber die Entstehung des Rechtsgefühles: Mit einer Vorbemerkung und einem anschliessenden Interpretations- und Einordnungsversuch von Okko Behrends*. Napels: Jovene.
- 1992. »Der Kampf um das Recht: Vortrag des Hofrates Professor Jhering; Gehalten in der Wiener Juristischen Gesellschaft am 11. März 1872.« In *Der Kampf ums Recht*, edited by Hermann Klenner, 113–31. Freiburg: Haufe.
- Kübl, Friedrich. 1913. *Das Rechtsgefühl*. Berlin: Puttkammer & Mühlbrecht.
- Maier, Heinrich. 1908. *Psychologie des emotionalen Denkens*. Tübingen: J. C. B. Mohr.
- Radbruch, Gustav. 1914. »Über das Rechtsgefühl.« *Die Tat* 4:337–45.
- Riezler, Erwin. 1921. *Das Rechtsgefühl: Rechtspsychologische Betrachtungen*. Munich: Schweitzer.
- Rümelin, Gustav. 1948a. »Über das Rechtsgefühl: Rede vom 6. November 1871.« In *Rechtsgefühl und Gerechtigkeit*, edited by Erik Wolf, 5–22. Limburg an der Lahn: Vittorio Klostermann.
- 1948b. »Über die Idee der Gerechtigkeit: Rede vom 6. November 1880.« In *Rechtsgefühl und Gerechtigkeit*, edited by Erik Wolf, 23–40. Limburg an der Lahn: Vittorio Klostermann.
- Rümelin, Max. 1925. *Rechtsgefühl und Rechtsbewußtsein: Rede, gehalten bei der akademischen Preisverleihung am 6. November 1925*. Tübingen: Mohr.
- Savigny, Friedrich Carl von. 1814. *Vom Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft*. Heidelberg: Mohr und Zimmer.

Stadelmann, Landgerichtsdirektor. 1921. »Die Zulassung der Frau zum Richteramt.«  
*DRiZ* 13:196–206.

Sturm, August. 1910. *Die psychologische Grundlage des Rechts: Ein Beitrag zur allgemeinen Rechtslehre und zum heutigen Friedensrecht unter Benutzung der vom Auswärtigen Amt zur Verfügung gestellten jüngsten Rechtsquellen*. Hanover: Helwingsche Verlagsbuchhandlung.

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