Journal of Contextual Economics 141 (2021), 273–290
Duncker & Humblot, Berlin

Introduction to Special Issue "The *Jahrbuch*: The First 150 Years"

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I. *Schmollers Jahrbuch* in the Context of German-Language Journals of Political Economy (1871–1944)***

1. On the Necessity of Scientific Journals in the Social Sciences

The origins of scientific journals can be traced back at least to the Enlightenment. In contrast to newspapers whose purpose was to inform about events and social problems, scientific journals expected their readers to possess the necessary knowledge about these events and social problems. Journal contributions commented and discussed these events in a broader political, politico-economic, and scientific context with the aim of elevating their significance for the development of science in general. In this context, the emergence of the scientific journals reflected the result of two tendencies in the late 18th century. The rise of a more educated audience interested in deepening one's knowledge on topical problems, as well as the formation of scientific communities, fostered journals as an important medium of communication. The members of a scientific community were now able to popularize their achievements to the broader audience and to discuss with their colleagues the results of their research efforts. At the same time, journals were considered as a further source of funding that financed the administrative costs related to the organization of a scientific community (Raabe 1974; Martens 1980; Dann 1999).

The first academic journal, *Journal des sçavans*, was founded in 1664. Its purpose was to announce new publications, whereby its slogan was a journal from scientists for

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*** The book of our former co-editor Erik Grimmer-Solem *The Rise of Historical Economics and Social Reform in Germany 1864–1894* (2003) was foundational for this part of the introduction.

scientists (Raabe 1974, 101; Stolleis 1999, viii). The journal was followed by the British *Philosophical Transactions of the Royal Society*, founded in 1665, which was the first journal devoted to science, in particular to the communication of new discoveries and inventions. The first scientific journals were divided into three sections: first, book reviews; second, obituaries which gained a central role because they not only announced the death of renowned scientists but, most importantly, also used the opportunity to review the relevance of the deceased's achievements for the progress of the scientific discipline; third, yet of no lesser importance, these journals contained contributions about new scientific achievements and discoveries (Dann 1999).

The oldest German-language journal for political economy was *Oekonomische Fama von allerhand zu den öconomischen, Policey- und Cameral-Wissenschaften gehörigen Büchern, auserlesenen Materien, nützlichen Erfindungen, Projecten, Bedencken und anderen dergleichen Sachen handelnd* (Roscher 1865, 86). The journal was published by Justus Christoph Dithmar (1678–1737), one of the very first professors of cameralistic political economy at the University of Frankfurt an der Oder. The establishment of the journal reflects a wish expressed by the Saxon cameralist and natural scientist Julius Bernhard von Rohr (1688–1742), the first to voice the necessity of establishing such a journal in German-language area. The journal was founded in 1729 and had a very short life: it reached only 10 issues. The title itself betrays that it pursued the purpose of discussing newly published books or new discoveries in the area of political economy. Despite its short life, the journal gave the impulse for the future establishment of journals of political economy, public finance or statistics. Such an example provides the *Leipziger Sammlungen von wirthschaftlichen, Policey-, Cammer- und Finanz-Sachen* which was published by Leipzig cameralist Georg Heinrich Zincke (1692–1768). The journal dominated the German-language area until the end of 18th century (Roscher 1865, 86–8). In spite of its confidence-inducing coming-into-being, it would take a long time for German-language journals of political economy until they reached the scientific standards and quality of the Anglo-Saxon or French journals. Wilhelm Roscher (1817–1894), one of the leading members of the Older Historical School, bemoaned the poor standing of these journals in Germany in his 1865 essay. He reminded the reader that the original purpose of these journals was to communicate information about newly published books or some forgotten letters, but most of them focused on practical issues such as how to knit sweaters, not taking notice of the newest achievements in political economy in England and France (Roscher 1865, 90–2).

The 19th century was characterized by a boom of journals of political economy in the German-language area. Heidelberg economist Karl Heinrich Rau (1792–1870), author of one of the most influential textbooks of the time, founded the *Archiv der politischen Ökonomie und Polizeiwissenschaften* in 1835. Later it merged with the *Zeitschrift für die gesamte Staatswissenschaft*, founded in 1844 by Tübingen professor of public law Robert von Mohl (1799–1875). The latter is considered today the oldest still existing German-language journal. The journal played a fundamental role for political economy in the German-language area. Gustav Schmoller (1838–1917),

the head of the Younger Historical School, published there his doctoral thesis "Zur Geschichte der nationalökonomischen Ansichten in Deutschland während der Reformationsperiode" (1860) and a long paper on taxation (1863). Another prominent member of the Younger Historical School, Adolf Held (1844 – 1880), published another long paper on taxation, "Zur Lehre von der Überwälzung der Steuern" (1868), which was accepted as his habilitation thesis (Grimmer-Solem 2003, 76).

In 1863, the *Jahrbuch für Nationalökonomie und Statistik* was founded by Jena economist Bruno Hildebrand (1812 – 1878), a member of the Older Historical School. Hildebrand considered the *Jahrbuch* to be his life's project. He concentrated much energy in publishing and popularizing it that it was later called *Hildebrand's Jahrbücher* (Grimmer-Solem 2003, 77). Prominent members of the Historical School such as Schmoller, Held and Georg Friedrich Knapp (1842 – 1926) published extensive papers in the *Jahrbuch* that established their reputation as leading economists in the German Empire. After Hildebrand's death in 1878, his son-in-law, Johannes Conrad (1839 – 1915), took over the editorship and moved the journal's methodological orientation from a theoretical to a rather empirical one. It resulted in articles focused on the collection of statistical data, their analysis and interpretation. One of the great achievements of Conrad was his co-editorship of the encyclopedia *Handwörterbuch der Staatswissenschaften* with German economists Ludwig Elster (1856 – 1935), Wilhelm Lexis (1837 – 1914) and Edgar Loening (1843 – 1919) during the period 1891 – 1897 (Schmoller 1885, 1312 – 13; Grimmer-Solem 2003, 77).

Until the late 19th century, the "sciences of the state" (*Staatswissenschaften*) played an integrating role between law, political economy, history, and the burgeoning field of sociology in German academia. Entire German and American generations studied the discipline at German faculties which encouraged students and young scholars to think along interdisciplinary paths (McAdam, Kolev, and Dekker 2018). However, in the late 19th century this integrating function started to crumble because the disciplines struggled for emancipation and, in the process of differentiation and specialization, started to assert themselves as independent sciences. Furthermore, the social problems that arose with the industrialization of the German Empire increased the necessity of a special discipline concerned with the social questions of the time, giving rise to the establishment of journals concerned with the Social and Labor Questions, such as the *Zeitschrift des Central-Vereins für das Wohl der arbeitenden Klassen*, founded in 1858, known after 1863 as *Der Arbeiterfreund.* One consequential result of this tendency was the founding of the *Archiv für soziale Gesetzgebung und Statistik* in 1888. It was founded by one of Schmoller's students, the socialist Heinrich Braun (1854 – 1927), who envisaged the journal to concentrate on economic sociology and all "phenomena of economic and general social life from the viewpoint of its revolutionization through capitalism" (as cited and translated by Grimmer-Solem 2003, 83). In 1904, the editorship was assumed by Max Weber (1864 – 1920), Werner Sombart (1863 – 1941) and Edgar Jaffé (1866 – 1921) who renamed the journal in the *Archiv für Sozialwissenschaft und Sozialpolitik.*

Solving social problems was entwined with methods which were becoming increasingly popular in the development of statistical research. As such, statistical training had gained in importance in the academic curriculum of German universities. Statistics was treated as part of the descriptive methods which the Historical School employed in their research program. In this way the representatives of the Historical School aimed at theoretical generalizations inductively derived, as well as to support their normative implications for social policy (Kolev and Dekker 2023). This explains the boom of statistical journals such as the *Zeitschrift des Statistischen Bureaus des Königlich Sächsischen Ministerium des Innern*, established in 1855, followed by the *Zeitschrift des Königlich Preußischen Statistischen Bureaus*, established in 1860. Both journals were established by the renowned statistician and social economist Ernst Engel (1821–1896), famous today for the Engel Curve, who was determined to make statistics an independent science (Schmidt 2006, 35; Schneider 2013, 70–2).

2. The Early Decades of the *Jahrbuch*

The new Social and Labor questions also made journals face a new trade-off: either study the new imperial constitutional law and emerging administrative law, or focus on political economy. A prime example was the *Jahrbuch für Gesetzgebung, Verwaltung und Rechtspflege des Deutschen Reichs* – the precursor to the *Journal of Contextual Economics* whose 150-year anniversary we are celebrating with this Special Issue – which was founded in 1871 by the legal scholar Franz von Holtzendorff (1829–1889), the editor of the *Allgemeine Deutsche Strafrechtszeitung*, whose vita we discuss at length in this Special Issue. Its original purpose was to comment and elaborate on recently adopted German laws with the aim to make them more understandable to a broader audience. However, the project soon left the realm of imperial constitutional law and administrative law and concentrated on more specialized economic and social problems (Doerfert 1999, 430–31; Holtzendorff 2015).

Holtzendorff's journal had a new purpose which was not related to a specific political orientation, but rather offered a scientific discussion on developments pertaining to constitutional and administrative law of the newly established German Empire. The journal aimed to fill the gap created by "the lack of a clear and maximally complete presentation of the material from the public life of the German Empire that is necessary for the political judgment of contemporaries, covering larger periods of time" (Holtzendorff 2015, 279).

Holtzendorff was able to attract the German lawyer Levin Goldschmidt (1829–1897) as one of his assistant editors. Goldschmidt, who later became Max Weber's doctoral supervisor, had experience of founding and editing journals. He had founded *Die Zeitschrift für das gesamte Handelsrecht* in 1858, which remained the leading journal of commercial law for a longer period. Besides Goldschmidt, Holtzendorff was able to attract as assistant editors the Swiss lawyer Johann Caspar Bluntschli (1808–1881) as well as the publicist and liberal politician August Lammers (1831–

1892), who had experience in publishing law journals (Bergfeld 1999, 259). The first editions of the *Jahrbuch* earned positive reviews. For example, in 1872 the *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* acknowledged the relevance of the purpose followed by the *Jahrbuch* and recommended it to the readers "who wish to familiarize themselves more closely with imperial law and to recognize its proper spirit and context" (Holtzendorff 2015, 280). Two years later, another law journal, *Gerichtssaal*, declared that "the relevance and significance of the journal had long been recognized" (Holtzendorff 2015, 280).

The *Jahrbuch* was not only interested in national problems, but also in international issues. In the 1880s and 1890s, public-law contributions dominated the journal (Doerfert 1999, 432). In 1877, by recognizing the relevance of economic issues, Holtzendorff attracted Lujo Brentano (1844 – 1931) as co-editor. Along with statistician and economist August Meitzen (1822 – 1910) and economist Adolph Wagner (1835 – 1917), Brentano had already published in the journal at the time of his assumption of the co-editor role.

Brentano began his editorship by changing the name of the journal: from *Rechtspflege* (cultivation of law) to *Volkswirthschaft* (political economy) and defined it as "Neue Folge" (New Series). Schmoller noted that the discussion concerning social and economic problems was now increasingly seen as more important than cultivating law. The *Jahrbuch* thus joined the general tendency dominating many journals in jurisprudence which significantly decreased the contributions on law and encouraged articles on political economy, reflecting the social problems that arose in the German Empire. These problems gave rise to the foundation of the *Verein für Socialpolitik* in 1873, among whose founding members were Brentano, Schmoller, Held, Knapp and Holtzendorff himself (Schmoller 1885, 1316; Grimmer-Solem 2003, 80).

Brentano's editorship, however, remained very short and coincided exactly with the prolonged *Gründerkrach* recession which followed the *Gründerzeit* bubble in 1873. Brentanto published two papers which he later considered a mistake (Brentano 1876a; 1876b; see also Brentano [1931] 2004, 106 – 7), earning him harsh criticism from Schmoller. Furthermore, Brentano admitted that he lacked the organizational skills which did not allow him to manage the *Jahrbuch,* and his interest in art and music occupied significantly more time than the newest publications in political economy. On Brentano's suggestion, Schmoller succeeded him as editor of the journal, and Brentano remembered later in his biography that "the job of the editor could not have fallen into more able and committed hands, since Schmoller was able to devote much of his time to it" (Brentano [1931] 2004, 107).

With an announcement in October 1880, the Leipzig-based publisher Duncker & Humblot, whose proprietor Carl Geibel was an active member of the *Verein* and a formative figure for the direction of the *Jahrbuch*, noted in its fourth issue that "Prof. Dr. Schmoller from Strasbourg i. E." had become the only editor, and that his student Karl Theodor Eheberg (1855 – 1941), also in Strasbourg, would join the *Jahrbuch* as co-editor (Duncker & Humblot 1880). In 1881, after having published only five papers

in the *Jahrbuch* (Holtzendorff 1871; 1875; 1877a; 1877b; 1878), Holtzendorff departed from his role as editor and decided to direct his efforts to the *Allgemeine Deutsche Strafrechtszeitung*. Schmoller remained the only editor, which provided him the opportunity to involve his younger students Karl Eheberg and Karl Oldenberg (1864–1936) into the editorship, thereby promoting their academic careers. Generally, Schmoller was supportive of his students, something which Brentano ([1931] 2004, 157) documented when he suggested Schmoller as the new editor. Schmoller even encouraged his student, the above-mentioned socialist Heinrich Braun (1854–1927), to establish the *Archiv für Soziale Gesetzgebung und Statistik* in 1888 later to be taken over by Weber, Jaffé and Sombart. Schmoller's supportive attitude reveals that he did not intend to monopolize scientific publishing with the *Jahrbuch,* but instead sought manifold contributions in the academic journal landscape in the German-language area.

Schmoller's first article as editor, "Ueber Zweck und Ziele des Jahrbuchs" (1881a), was programmatic for the future direction of the *Jahrbuch.*[1] It was followed by another article by Schmoller, "Die Gerechtigkeit in der Volkswirthschaft" ([1881] 2016), which he himself "considered to be his best work" (Spiethoff 1918, 24; McAdam and Störring 2016, 367). In his programmatic piece Schmoller declared, not without self-confidence, that the number of submitted and published papers had increased to such an extent that it vindicated the *Jahrbuch* to appear in quarterly issues. He announced the new direction of research based on historical-descriptive methods which would be applied in exploring topical issues. Schmoller stressed the ethical-moral components of the new approach formulating economic policy whose measures should be undertaken against *laissez-faire* and as solutions to social problems (Schmoller 1885, 286). Schmoller declared that not only did he not intend to abandon the practical tendency of the journal, but instead planned to strengthen it: it should concentrate on "greater questions which currently preoccupy public opinion, parliament and the German government" (Schmoller 1881a, 1). Schmoller thus aimed to establish a German journal that concentrated on practical economic and administration problems. The journal's direction was to be in harmony with his own research by concentrating on economic and social problems embedded in their cultural, societal, and historical context. Schmoller attached to economic and historical research the fundamental role to provide the basis for economic political recommendations necessary for social reforms: It was a basic belief of his that "all political, moral, economic, and social principles are not so much the result of exact science, as the diverted singular teachings of systems and *Weltanschaungen*, and of schools and parties" (Schmoller 1881a, 5).

The journal became the leading organ of the Historical School. Schmoller himself published papers and book reviews that aimed to shape the direction of the *Verein.*

[1] It is therefore not by happenstance that upon the change of editors and name of the journal in 2016, the editors chose the title "On the Purpose and Aims of the Journal of Contextual Economics" (Goldschmidt *et al*. 2016) to outline their vision for the journal to focus on contextual matters in economic analysis.

Schmoller's 1881 paper on justice would play a crucial role in the *Werturteilsstreit* as it unfolded in the 1900s between Sombart and Weber on the one hand and Schmoller on the other (Janssen [1998] 2012; Glaeser 2014). Other luminaries of the social sciences published in the *Jahrbuch* (Simon 1998, 250–67): Georg Simmel (1858–1918) published his psychological treatise on money that played a foundational role in the development of sociology (Simmel 1889); Georg Friedrich Knapp (1842–1926) wrote on manorial capitalism and elaborated on his state theory of money in the *Jahrbuch* (Knapp 1891; 1906); and Max Weber published the famous three-part article that discussed the methods applied by Wilhelm Roscher and Karl Knies in it (Weber 1903; 1905; 1906; Goldschmidt, Kolev, and Störring 2020).

3. *Schmollers Jahrbuch* and the Decades of Fragility

In 1913, honoring the 75th birthday of its long-time editor, the *Jahrbuch* changed its name to *Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft im Deutschen Reiche.* This renaming was justified: Schmoller had published 78 articles and 320 book reviews, far more than any other contributor to the *Jahrbuch.* The journal would be remembered as the battlefield of several intense methodological debates. The Debate over Methods (*Methodenstreit*) erupted in the *Jahrbuch* after Schmoller reviewed critically Carl Menger's *Untersuchungen über die Methoden der Socialwissenschaften und der Politischen Oekonomie insbesondere* (1883).[2] Schmoller's review published in this issue ([1883] 2021) was followed by many papers that promoted the empirical methods of the Historical School and criticized the theoretically abstract methods of the newly established Austrian School. Examples are Wilhelm Hasbach's papers (1895; 1896) that recapitulated the unbridgeable cleavage between the methods of Historical and Austrian Schools (Backhaus and Hansen 2000). In 1912, Heinrich Herkner (1863–1932) reflected upon the second methodological debate, the Debate over Value Judgments (*Werturteilsstreit*), defending Schmoller's arguments about the relevance of moral-ethical orientation of political economy in an extensive article "Der Kampf um das sittliche Werturteil in der Nationalökonomie" (1912) (Glaeser 2014).

After Schmoller's death in 1917, many contributors fought over his intellectual legacy. For example, Herkner, who was the successor of Schmoller's chair at the University of Berlin, reviewed Edgar Salin's *Geschichte der Volkswirtschaftslehre* (1923) in an attempt to save Schmoller's reputation from Salin's devastating criticism. It gave rise to a broader attention, and even Schmoller's wife, Lucie Schmoller, intervened by asking Salin to apologize for the insulting words about her late husband (Köster 2011, 54–5). Another controversy was sparked by Joseph Schumpeter's paper "Gustav v. Schmoller und die Probleme von heute" ([1926] 2018), which assessed the scientific achievements of Schmoller's legacy to be on the level of Alfred

[2] Translated as *Investigations into the Method of the Social Sciences* (1985).

Marshall (1842 – 1924).[3] The essay had far-reaching effects because it disappointed the younger theoretically-oriented scholars who sought to win over Schumpeter in their struggle against the still dominating Historical School. Werner Sombart's *Die drei Nationalökonomien* (1930), whose original title implied an end of economics, aimed at initiating another methodological debate about the inability of economics to explain the inherent instability of capitalism, which in his view was cursed with deep and prolonged economic depressions. Six reviews of Sombart's book were published in the *Jahrbuch*, among others by Julius Landmann (1877 – 1931) and Edgar Salin (1892 – 1974), most notably by Alfred Amonn (1883 – 1962) whose critical discussion of Sombart contained more than 100 pages (Köster 2011, 148 – 50).

Schmoller's student Hermann Schumacher (1868 – 1952) succeeded him as editor in 1918 and was able to attract another student of Schmoller as co-editor, the business cycle theorist Arthur Spiethoff (1873 – 1957). Schumacher, professor at Berlin, and Spiethoff, professor at Bonn, were depicted as the double-head of the Youngest Historical School. In the early 1920s, Schumacher's assistant and the later founder of the Freiburg School, Walter Eucken (1891 – 1950), served as editorial secretary. When he took over, Schumacher declared that the pure collection of data is over: "A hunger for inner summary pervades the German people today, perhaps the whole of humanity. […] The spiritual penetration of the material, its clarification in its causes, its summary under large points of view, is today's task"(Köster 2011, 91). Conflict among the editors set in quickly. The distance between Bonn and Berlin and the intensifying disagreements sparked a fierce struggle between Schumacher and Spiethoff. Schumacher was so disappointed by Spiethoff that he asked Schmoller's widow, Lucie Schmoller, to intervene and support his allegations against Spiethoff who, in Schumacher's understanding, had been unable to manage the journal. Spiethoff's refusal to leave the editorial board resulted in a long-lasting legal controversy between the publisher Duncker & Humblot and Schumacher. It even prevented the journal from appearing in 1923. Eventually, Schumacher himself was forced to leave at the end of 1923, leaving Spiethoff as the only editor until 1939 (Goldschmidt 2005; Köster 2011, 57 – 8). In the summer of 1933, Keynes published a translation of his "National Self-Sufficiency" (1933) in the *Jahrbuch*, and Spiethoff's role as editor has remained controversial due to his tweaking of the translation to potentially make it more palatable to the new Nazi regime (Borchardt 1990).

In 1939, the editorship was assumed by the tragic figure of Jens Jessen (1895 – 1944). The journal appeared until the end of 1944. Its publication was discontinued because Jessen was swept up in the violent reaction of the regime following the July 20 assassination attempt against Hitler. Jessen, who played an instrumental role in creating the economic program of the National Socialists in the 1930s, was executed in November 1944 (Schmölders 1949, 10 – 4; Janssen [1998] 2012, 92 – 5).

[3] Translated as "Gustav von Schmoller and the Problems of Today" (2018).

After the end of the war, the publication was restored in 1949 under the old title *Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, with economist and publicist Georg Jahn (1885–1962) as its editor. In 1968, the journal was renamed *Schmollers Jahrbuch für Wirtschafts- und Sozialwissenschaften*, which was its official name until 1972. Thereafter, it was renamed *Zeitschrift für Wirtschafts- und Sozialwissenschaften* (Simon 1998, 27). In 2000, the name was changed to *Schmollers Jahrbuch – Journal of Applied Social Science Studies: Zeitschrift für Wirtschafts- und Sozialwissenschaften.* Nils Goldschmidt, Erik Grimmer-Solem, and Joachim Zweynert took over the editorship in 2016 with the vision of providing an outlet for studies in contextual economics (Goldschmidt, Grimmer-Solem, and Zweynert 2016), adding *Journal of Contextual Economics* to the traditional *Schmollers Jahrbuch.* Stefan Kolev joined as co-editor in 2019, followed by Peter J. Boettke and Stephen T. Ziliak in 2020.

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II. Franz von Holtzendorff (1829–1889): Lawyer, Editor, and Reformer****

1. Biographical Notes

Franz Philipp von Holtzendorff was born on October 14, 1829, in Vietmannsdorff, a small village in the Uckermark region to the Northeast of Berlin. He was a son of the liberal politician and publicist Franz von Holtzendorff-Vietmannsdorff (1804–1872) and Charlotte von Holtzendorff (née Häsike) (1797–1878). The family moved to Berlin in 1838 to enable the further education of his older sister, Marie. From 1840 onward Franz attended the high school "Zum Grauen Kloster," where he developed a

**** This biographical part has profited greatly from the excellent dissertation of Dr. Leonie von Holtzendorff (Holtzendorff 2015).

special interest in the natural sciences. The family returned to Vietmannsdorff where Holtzendorff attended the Lutheran Landesschule Schulpforta between 1843 and 1848. There he demonstrated his language talents by excelling in Latin, French, English and Greek. Young Holtzendorff showed a strong aversion for mathematics, which developed into a general dislike of all things of mechanical and numerical nature. He also nurtured a strong interest in politics, as visible in the lively correspondence between father and son with its emphasis on individual liberty, rule of law and enthusiasm for the unification of Germany (Holtzendorff 2015, 27–42).

Without a full-fledged high school diploma, Holtzendorff immatriculated at the Faculty of Law of the University of Berlin in 1848. Not possessing a high school diploma would have consequences for Holtzendorff's academic career. His very late graduation from high school was itself exploited by the Minister of Justice as a reason to harass the young Holtzendorff for his father's liberal political views. As a result, Holtzendorff was forced to study an additional year before he was allowed to apply for the state examination. When in March 1852, following a rejection of his renewed application to take the state examination on the grounds that he was advised to study for a further six months, the Royal Chamber Court (Königliches Kammergericht) intervened and ruled that Holtzendorff could take the state examination at the next possible date (Holtzendorff 2015, 44–56).

The University of Berlin was very much influenced by the Historical School of Law founded by Friedrich Carl von Savigny (1779–1861). The school emphasized the importance of legal history at the cost of neglecting legal philosophy. Holtzendorff showed particular interest in Roman law. The curriculum included public law, private law, international law and canon law. Holtzendorff wrote his dissertation *De rebus quarum commercium non est* (On Things Incompatible with Commerce) (1852) and delivered his disputation in Latin, in accordance with the statutes of the University. In his doctoral thesis, Holtzendorff discussed how the Romans distinguished between negotiable and non-negotiable things. In November 1852, Holtzendorff received his doctorate. At the end of October 1856, he finished his habilitation thesis in only four weeks at the University of Bonn. The habilitation thesis *De causis poenae mitigandae innominatis* (On the Unwritten Reasons for Mitigating Punishment) (1857) dealt with the unwritten reasons for mitigating punishment and mitigating circumstances characteristic for the judicial system of Prussia. His habilitation thesis concluded that it was not possible to enumerate all the reasons for mitigating punishment completely, not even for each individual offense. After a lecture on the crime of arson, which served as a defense, Holtzendorff was appointed Privatdozent by the Faculty of Law. He gave his first lecture in criminal law at Bonn in the winter semester of 1857/1858 (Holtzendorff 2015, 57–60).

In the summer of 1856, during a medical course of treatment on Helgoland, Holtzendorff met Auguste Pauline Wilhelmine (1831–1912), the daughter of the mayor of Hamburg, Dr. Nicolaus Bender (1785–1865). The couple got engaged within two weeks and married in March 1857. The marriage produced four children:

Hermann, Marie Charlotte who died of diphtheria at the age of six, Richard Achim, and Martha Luise (Stoerk 1889, 33; Holtzendorff 2015, 60–1).

By 1859, at the age of 29, Holtzendorff had become one of the founding board members of the *Juristische Gesellschaft* in Berlin. The society pursued the goal of promoting the further development of jurisprudence through lectures and discussions, as well as fostering the nexus between practice and theory. Its members were not merely scholars, but practitioners could also be counted among their ranks. Holtzendorff served as the librarian of the society from 1859 to 1861 and consulted the commission drafting the North German penal code. His colleagues gave him credit for advocating the establishment of the German Jurists' Congress, which was modeled on other scientific societies that pursued the organization of congresses to establish closer ties among the members of this society (Stoerk 1889, 27–8; Holtzendorff 2015, 66–7).

Holtzendorff became a leading expert in criminal law, publishing numerous articles on prison issues, prosecutorial reform and, most notably, the deportation issue. The latter was considered the milder punitive measure and a viable alternative in contrast to the death penalty. He initiated the founding and publication of several journals: first, the *Allgemeine Deutsche Strafrechtszeitung zur Förderung einheitlicher Entwickelung auf den Gebieten des Strafrechts, des Strafprocesses und des Gefängnißwesens, sowie für strafgerichtliche Medicin*, which Holtzendorff founded in 1860 and edited until the end of his life. The first issue, published on January 5, 1861, concentrated on controversial legal-political, legal-historical and legal-philosophical topics. Second, the *Jahrbuch für Gesetzgebung, Verwaltung und Rechtspflege des Deutschen Reichs*, which he founded in 1871 and which – as discussed in a separate contribution to this Special Issue – aimed at engendering interest in developments pertaining to constitutional and administrative law within the recently formed German Empire. Third, jointly with Wilhelm Oncken (1838–1905), he edited the *Deutsche Zeit- und Streitfragen* until 1876. And fourth, alongside the physician, pathologist, and anthropologist Rudolf Virchow (1821–1902), he was co-editor of *Die Sammlung gemeinverständlicher wissenschaftlicher Vorträge* (Stoerk 1889, 25–6; Virchow 1889; Holtzendorff 2015, 272–82).

On February 19, 1873, Holtzendorff became full professor at the University of Berlin, a career step which he had been denied for a long time. In March of that year, he was appointed to a professorship at the University of Munich. While his appointment at Berlin was for criminal law, criminal procedural law, constitutional law, international law, and canon law, at Munich his teaching activities were confined to criminal law, constitutional law, and international law. Due to numerous illnesses, he was on leave during the winter terms 1878/79 and 1879/80. His overall health condition deteriorated during the 1880s, and he suffered from more severe attacks of gout, in particular. Holtzendorff died on February 4, 1889, at the age of 59 (Virchow 1889; Stoerk 1889; Holtzendorff 2015).

2. Classification of Holtzendorff's Works

The intellectual development of young Holtzendorff was very much influenced by the liberal political views of his father. The latter belonged to the segment of Prussian aristocracy who advocated individual freedom and political unification of Germany (Stoerk 1889, 4; Meltz 1972, 556). A lively correspondence between father and son and constant accompaniment on his father's study trips impacted his political attitude tremendously, concentrating his efforts on the abolition of the death penalty, reforming the public prosecutor's office in Prussia, and equality for women. He was well-regarded by his students (Holtzendorff 2015, 43 – 4).

In his methods, Holtzendorff was a typical representative of the Historical School of Law. He was more interested in the practical questions, putting aside theoretical considerations. Abstract theory interested him only insofar as it had a direct impact on practical issues. Holtzendorff emphasized the importance of empirically-observed regularities, and he demonstrated openness to positivist scientific methods. With the help of statistical data, he aimed at generating scientific insights inductively, for example by arguing that a theory of crime could not be reached by deductive speculation, but only by observation (Holtzendorff 2015, 388 – 90).

Holtzendorff's first publications focused on deportation as a punitive measure. Deportation at the time had a different meaning from contemporary understandings of it, as it was not associated with the deportation of certain population groups, but as a milder punitive measure than capital punishment. During this period, England had become notorious for abolishing it as a punitive measure, whereas France had just began applying it. The deportation question was closely related to another question, namely that of the penal regulation between the mother country and the colonies, something which Holtzendorff discussed in his paper "Das staatsrechtliche Abhängigkeitsverhältniß zwischen England und seinen Colonieen" (The Relationship of Dependance under State Law Between England and Its Colonies) (1859) (Virchow 1889, 5 – 6; Stoerk 1889, 24 – 5; Holtzendorff 2015, 96 – 7).

Holtzendorff acknowledged that the deportation issue had far more limited applicability in Germany than in other countries. When the deportation question was on the agenda of the German Jurists' Congress in 1898, many jurists recognized the high cost and impossibility of controlling convicts – problems that colonial powers such as England and France had been facing for a long time (Schneider 1964, 64 – 8; Schlosser 2006, 46 – 7). That is why Holtzendorff directed his attention to the domestic penal system. More and more imprisonment replaced corporal punishment, sparking discussions about the need to improve prison conditions. Wanting to get an overview of the Irish prison system, which was known for its ability to overcome the contrasts of solitary and community confinement and to ensure a more humane form of punishment, he departed on a study tour resulting in *Das irische Gefängnissystem insbesondere die Zwischenanstalten vor der Entlassung der Sträflinge* (1859), which prompted an immediate translation into English, *The Irish Convict System, More Especially Intermediate Prisons* (1860). Holtzendorff published several writings on

the improvement of the penal system in Germany, such as "Die Individualisierung der Gefangenen vom Standpunkte der Gerechtigkeit" (The Individualization of Prisoners from the Standpoint of Justice) (1865a). Furthermore, he discussed the factors which affect the possibility to shorten prison sentences or conditional releases. In his *Kürzungsfähigkeit der Freiheitsstrafen* (The Ability to Reduce Custodial Sentences) (1861), Holtzendorff advocated that the decision to reduce the penalty should not be left to discretion of penal administration, but rather that it should be reviewed under objective factors considering whether the penalty might be reduced (Schneider 1964, 64–7; Holtzendorff 2015, 180–6).

Improvement of the institution of the public prosecutor's office in Prussia and proposals for its reform were another domain of Holtzendorff's research. During the German Jurists' Congress in 1860 and 1861, dissatisfaction with the public prosecutor's office was raised as one of the leading issues in order to reform the German judicial system. This dissatisfaction prompted Holtzendorff to give a lecture on "Staatsanwaltschaft, Kriminalpolizei und Privatklage" (Public Prosecution, Criminal Police and Private Prosecution) in the winter semester of 1861/1862 (Holtzendorff 2015, 251–2). In order to share his thoughts with a wider audience, he published two essays, "Die Reform der Staatsanwaltschaft in Deutschland" (The Reform of the Public Prosecutor's Office in Germany) (1864) and "Die Umgestaltung der Staatsanwaltschaft" (The Transformation of the Public Prosecutor's Office) (1865b) (Stoerk 1889, 12; Virchow 1889, 5). The prosecutor's office played an important role for the *Vormärz* movement, which espoused the enforcement of the rule of law to overcome arbitrary oppression by the state. As a liberal, Holtzendorff aimed at abolishing the death penalty. He critically examined the arguments of various jurists and dealt with the history of capital punishment since the Roman Empire, advocating for its abolition and at the same time ruling it out as a retributive measure (Schneider 1964; Meltz 1972, 556–7).

England played a central role in Holtzendorff's intellectual legacy. His Anglophilia was the outcome of several trips to England where he recognized the importance of journals and popular periodicals. They contributed enormously to the popularization of scientific achievements and to the self-understanding scientific associations would attain (Holtzendorff 2015, 272–3):

> The press of the present day may be counted among the elements of cosmopolitan life. What influence it exerts on our thinking and our way of looking at things on the whole, we are not yet able to estimate today. […] A formerly noble and reclusive science withdraws more and more from its castles built with the blocks of quartans and folios, by handing over, likewise following the course of time, its investigations and research to the professional journals (Holtzendorff 1870, 3).

This journal is Holtzendorff's lasting legacy.

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