Allgemeines Landrecht für die Preußischen Staaten (ALR)

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Angaben zur Veröffentlichung / Publication details:

Hellwege, Phillip. 2012. "Allgemeines Landrecht für die Preußischen Staaten (ALR)." In *Max Planck encyclopedia of European private law*, edited by Jürgen Basedow, Klaus J. Hopt, Andreas Stier, and Reinhard Zimmermann, 56–59. Oxford: Oxford University Press.

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1. Historical background

The *Allgemeines Landrecht für die Preußischen Staaten* (ALR) of 1794 (Prussian territorial law), the French → *Code civil* of 1804, and the → *Allgemeines Bürgerliches Gesetzbuch* (ABGB) of 1811 (Austrian civil code) emerged towards the end of the age of enlightenment and the → natural law movement. Together, they are the natural law codes (*Naturrechtskodifikationen*) and the first modern European → codifications. Of course, laws had always been recorded in writing and written legal sources had always been in use: the Middle Ages saw private collections of the existing customary laws. Since the reception of → Roman law the → *Corpus Juris Civilis* had been in use as a subsidiary legal source. It was the basis of the → *ius commune*. With regard to the modern application of Roman law we also speak of the → *usus modernus*. And we find examples of legislation in the age of the reception: in Germany the *Reformationen* (city laws) and the *Landrechte* (territorial laws). They aimed at harmonizing the *ius commune* and the local customs. In doing so they drew heavily on the *ius commune* and only further developed it carefully, but did not fundamentally revise it. Furthermore, they did not replace the *ius commune*, which, rather, remained in force as a subsidiary legal source. The *Codex Maximilianeus Bavaricus Civilis* of 1756 (Bavarian civil code) is still part of this older tradition. The natural law codes, in contrast, covered a whole area of law and dealt with it systematically, coherently and exhaustively. This new quality of legislation only became possible on the basis of the achievements of the natural law movement in the 17th and 18th centuries: the *Vernunftrecht* (law of reason). Compared with the *usus modernus* it was more systematic and its terminology was more precise. Furthermore, these codes were supposed not only to restate the existing law but also to reform it; they replaced the *ius commune* and, thereby, became the 'centre point of the system of the formal sources of law' (Gerhard Dilcher). Originally, in absolute corporative states the powers of the sovereign remained limited and did not include the authority to enact such a code because it also affected the rights of the estates. By the end of the 18th century the corresponding powers of the estates had diminished.

2. Origin

Already at the beginning of the 18th century, Prussia consisted of a variety of territories and during the course of the 18th century it gained further territories, eg as a result of the Silesian Wars and the partitions of Poland. However, each territory had its own laws. The *Ordre an die Juristen Facultät zu Halle wegen Abfassung einiger Constitutionen zum Land-Recht* (Order to the Law Faculty at Halle to draft constitutions for a territorial code) by Frederic William I in 1714 is often named as a first step towards achieving a legal unity within Prussia. However, the drafts were never enacted and are lost. It is unlikely that they would have resulted in a natural law code, and it appears that their enactment was only envisaged for the territory of Brandenburg.

In 1746, Frederic II, son of and successor of Frederic William I, instructed Samuel von Cocceji (later to become his Grand Chancellor) to prepare a general territorial code. Cocceji had already received a similar instruction from Frederic William I in 1738. Between 1749 and 1751 he submitted the first parts of a draft under the title *Projekt des Corporis Juris Fridericiani*. However, soon the project came to a halt, also due to Cocceji's death in 1755. Only parts of it were enacted in some territories. Frederic II had demanded that the code should only be based on reason and on the laws of the territories, that it should be written in the German language and that it should replace the → *ius commune*. Nevertheless, the first parts of the draft suggest that, again, they would not have resulted in a natural law code.

Frederic II became increasingly discontent with Prussia's judicial system. Yet, his new Grand Chancellor Carl Joseph Maximilian Freiherr von Fürst und Kupferberg did not meet his requests for reform. As a result of the famous Arnold case—Frederic II believed that the rights of the miller Arnold were infringed by partial judges—Frederic II released Fürst in 1779 from his office and appointed Johann Heinrich Casimir Graf von Carmer as his successor. Prior to this Carmer had made himself known by working out a draft reform of the judicial system as Silesian minister

of justice, a reform that failed because of the opposition of Fürst. Carmer brought along with him his two close staff members, Carl Gottlieb Svarez and Ernst Ferdinand Klein. Immediately they accomplished two reforms introducing a new *Prozeßordnung* in 1781 (Procedural Ordinance) and a new *Hypothekenordnung* in 1783 (Mortgage Ordinance). A first draft of the ALR was prepared between 1783 and 1788. Carmer, Svarez and Klein drew on → Roman law, the territorial laws and the case law. They relied on the expertise of the Prussian administration. Additionally, they consulted experts from outside Prussia, eg scholars and merchants from Hamburg and Lübeck, when drafting the provision on → commercial law. The first draft was published between 1784 and 1788. Then experts and the general public were invited to comment on the draft. In the light of these responses (*Monita*) the draft was finalized between 1789 and 1791. It was published in 1791 as the *Allgemeines Gesetzbuch für die Preußischen Staaten* (General Code for the Prussian Territories). It was intended to come into force on 1 June 1792.

However, Frederic II had already died in 1786 and his successor, Frederic William II, was influenced by conservative circles. Furthermore, Europe had witnessed the French Revolution and these Prussian conservative circles believed the new code to contain revolutionary ideas. At the request of the Silesian minister of justice von Danckelmann, Frederic William II suspended the code's coming into force *sine die* on 18 April 1792. Nonetheless, Svarez did not give up promoting the code. On the one hand, he co-authored together with Christoph Goßler in 1793 the pamphlet *Unterricht über die Gesetze für die Einwohner der Preussischen Staaten* (Instruction on the Laws for the People of the Prussian Territories) in order to make the code known to the Prussian people. On the other hand, he delivered lectures to the Crown Prince, the future Frederic William III, in 1791 and 1792, and tried to influence him in favour of the code. Nevertheless, the direct cause for enacting the code was, as a result of the Second partition of Poland in 1793, Prussia's gaining Danzig, Thorn and the newly formed territory which was named Southern Prussia. These new territories had to be integrated into Prussia, and it was decided that the code should not only be put into force in these new territories but in the whole of Prussia. As a concession to the conservative circles the code was again revised. The changes were, however, minor. Additionally, the traditional title of *Landrecht* was chosen instead of the title of a *Gesetzbuch* (code of law). The ALR finally came into force on 1 June 1794.

3. The *Allgemeines Landrecht für die Preußischen Staaten* and the hierarchy of the formal sources of law

A modern codification not only takes precedence over the → *ius commune* without questioning that the *ius commune* remains in force as a subsidiary legal source. It repeals the *ius commune* in its entirety. Accordingly, the ALR replaced the → Roman law, the common Saxon laws and other subsidiary legal sources. However, unlike the → *Code civil* and the → *Allgemeines Bürgerliches Gesetzbuch* (ABGB), but just like the *ius commune*, the ALR was supposed to be only a subsidiary legal source. The laws of the individual territories were to prevail over the ALR, but only under the condition that they themselves were codified. Nevertheless, in practice the ALR prevailed because only in East Prussia (in 1801) and in West Prussia (in 1844) were such codifications enacted. However, the fact that the ALR was, at least in theory, only a subsidiary legal source reveals that it came into being in a time of transition and that it remained rooted in traditions which were soon to be overcome, namely the idea of the sovereign's limited power to legislate in an absolute corporative state.

4. Content

The ALR consisted of 19,194 sections. *Prima facie*, it appears to be very voluminous. However, in contrast to the *Code civil* and the ABGB it contained the entirety of private law, the entirety of public law, including constitutional law and criminal law, and it contained also feudal law. It is divided into a short introduction and two parts. The introduction formulated, for example, rules on statutory interpretation and general principles of law. The first part was devoted to property law, but it also incorporated contract law because property is acquired *inter vivos* by contract and it also included testate succession as a means to acquire property on death. The second part was dedicated to the different forms of the association of human beings. Here we find family law, the law on intestate succession and the titles on the different estates (nobility, burghers and farmers). The title on burghers contained, for instance, the law on guilds, commercial law and insurance law. Finally, in this second part we find public law and criminal law.

As has already been pointed out, the ALR was created in a time of transition: towards the end of the age of absolutism and of the age of the corpo-

rative states. As a consequence the rules on constitutional law are difficult to assess. They are regarded as being Janus-faced. Modern scholars have vigorously debated whether it is possible to speak of a constitution with respect to the ALR, whether the ALR already hinted at the rule of law and whether the draftsmen tried to transform Prussia into a constitutional monarchy: whether, in other words, the ALR pointed to the future and whether it already laid the ground for overcoming absolutism and the corporative state. The final conclusion of modern commentators is one of scepticism: the ALR tried to preserve the old order. Thus, it soon became outdated.

With regard to private law, eg contract law, the draftsmen of the ALR heavily relied on the → *usus modernus*. Thus, from the perspective of 19th-century liberalism these sections seemed to be antiquated and not exemplary for the future development of private law. However, modern scholars stress that the ALR by relying on the *usus modernus* exhibited social tendencies which were alien to the → *Bürgerliches Gesetzbuch* (BGB) and which had to be incorporated into the BGB only subsequently, in the course of its development. Furthermore, the ALR for the first time codified a number of legal institutions such as → insurance contract law. When drafting maritime insurance contracts the draftsmen could fall back upon the *Königlich-Preußisches See-Recht* of 1727 (Royal Prussian Maritime Law Ordinance) and the *Assekuranz- und Havarie-Ordnung für die Königlich-Preußischen Staaten* of 1766 (Assurance and Average Ordinance for Royal Prussia). Both of these ordinances and the ALR reflected the European law of maritime insurance of the time. Thus, with respect to maritime insurance the ALR did not become outdated soon after its enactment. Moreover, the insurance contract law of the ALR was not limited to maritime insurance but was applicable to all kinds of insurance contracts. Thereby, in this regard the ALR pointed to the future. In Germany only the *Versicherungsvertragsgesetz* (Insurance Contracts Act) of 1908 again achieved an insurance contract law that was not just limited to maritime insurance contracts.

5. Style and language

Today the ALR is often regarded as an example of a casuistic legislation. However, this verdict is one-sided. The ALR does indeed contain examples of an exhausting casuistry (eg I 2 §§ 42–109). Here, its draftsmen had aimed at solving each possible case and did not want to leave any ambiguities or room for interpretation. However, we also find rules exhibiting a high level of abstraction. And furthermore, many rules reflect the ideas of enlightened absolutism in that they pursue an educational purpose, as for example II 2 § 67 obliging a healthy mother to breastfeed her baby. The ALR is exclusively in the German language even though the legal language of the time was still rich in Latin terminology. It was addressed at the Prussian people and believed that they, as the ideas of the enlightenment demanded, should be enabled to read it.

6. Further development

The ALR accomplished legal unity for Prussia, yet, soon, this legal unity was lost again. As a result of the Congress of Vienna, Prussia was in 1815 given the Rhineland, Westphalia, Swedish Pomerania (*Neuvorpommern*) together with the Isle of Rügen and parts of Saxony. The ALR was not introduced in the Prussian Rhine Province, in the Duchy of Berg, in former Swedish Pomerania nor in Rügen. In 1866 Prussia annexed Hanover, Hesse-Kassel, Nassau and Frankfurt, and it also gained control over the whole of Schleswig-Holstein. The ALR was enacted in none of these territories. Moreover, some parts of the ALR had been repealed by subsequent reforms, foremost by the so-called Stein-Hardenberg Reforms, a series of far-reaching enactments in Prussia at the beginning of the 19th century which were initiated primarily by Karl Reichsfreiherr vom und zum Stein and by Karl August von Hardenberg. Affected above all were those parts of the ALR which tried to preserve the old corporative constitution of Prussia. In 1817 a full revision of the ALR was commenced. It aimed at bringing the ALR up to date and to enact it again in the whole of Prussia so as to regain legal unity. However, this endeavour failed. Quite the opposite, ever more legislation was introduced abolishing further parts of the ALR: the Constitution of the Kingdom of Prussia of 1850, the Prussian Penal Code of 1851, the → *Allgemeines Deutsches Handelsgesetzbuch* (ADHGB) of 1861 and the → *Bürgerliches Gesetzbuch* (BGB) of 1900. After 1900 only some public law sections of the ALR remained in force.

7. The *Allgemeines Landrecht für die Preußischen Staaten* in the literature, in the classroom, and in the courtroom

Initially, the ALR was not taught in law schools and it was ignored in the literature. Academia disapproved of it. Friedrich Carl von Savigny called it 'a piece of slovenly work, both in form and substance'. It was only in the academic year of 1819/20 that lectures on the ALR were first offered, incidentally by Savigny. Since 1826 all

Prussian law schools offered compulsory courses on the ALR. Nevertheless, these courses only played a minor role in the curriculum. As late as 1887, Levin Goldschmidt observed that students, as a rule, left Prussian law schools with no knowledge of the prevailing law in Prussia. Legal literature, too, only slowly started to deal with the ALR. Authors writing on the ALR were foremost Wilhelm Bornemann, Christian Friedrich Koch, Franz Förster, Max Ernst Eccius and Heinrich Dernburg. Under the influence of the historical school of law and the school of pandectism, the literature romanized the ALR: it was interpreted in the light of the Roman law. The courts treated the ALR in a similar way: although the → *ius commune* had been abrogated by the ALR, it remained of significance in practice. Thus, the ALR was construed and applied in the light of the *ius commune*.

8. The influence of the *Allgemeines Landrecht für die Preußischen Staaten*

The impact of the French → *Code civil* and that of the Austrian → *Allgemeines Bürgerliches Gesetzbuch* (ABGB) outside France and Austria, respectively, is well known. The influence of the ALR outside Prussia, in contrast, is much less well known. Admittedly, its influence was not as significant as that of its French and Austrian counterparts. Although the ALR had been the first natural law code and the first modern European codification, it was still rooted in prerevolutionary Europe and, thus, not suitable as a model for the future development. However, the ALR and its preparatory works had at least some impact: Cocceji's *Projekt des Corporis Juris Fridericiani* stimulated the work culminating in the *Codex Maximilianeus Bavaricus Civilis*.

Cocceji's *Projekt* was also translated into French (1751/52) and English (1761), and the French translation served as a model of the, ultimately unsuccessful, project to record the customary laws of Neuchâtel in the second half of the 18th century; Neuchâtel had been ruled by Prussia since the beginning of that century. Furthermore, although the ALR was never enacted in Neuchâtel, it was supposed to function as a role model for drafting a civil code for Neuchâtel. Nevertheless, when the *Code civil de la République et Canton de Neuchâtel* of 1854/55 was finally enacted it was based on the French *Code civil*.

The ALR was taken into consideration when drafting the 19th-century codifications of South America, especially the Argentinean *Código civil* of 1869, and it had also some minor impact on the finalization of the Austrian → *Allgemeines Bürgerliches Gesetzbuch*. The public law of the ALR seems to have been of some influence in Russia in the early 19th century. Finally, since the ALR exhibits an awareness of social problems —an awareness which many thought and think to have been lost during the 19th century— Dernburg, Otto von Gierke and Anton Menger unsuccessfully demanded that the ALR should be taken into account when drafting the BGB.

Literature. Rolf Knütel, 'Preußisches Recht im argentinischen Código civil von 1869' in *Festschrift Hubert Niederländer* (1991) 41; Andreas Schwennicke, *Die Entstehung der Einleitung des Preußischen Allgemeinen Landrechts von 1794* (1993); Gerhard Dilcher, 'Die janusköpfige Kodifikation' (1994) 2 ZEuP 446; Klaus Luig, 'Das Privatrecht im "Allgemeinen Landrecht für die preußischen Staaten" von 1794' (1994) 194 AcP 521; Barbara Dölemeyer and Heinz Mohnhaupt (eds), *200 Jahre Allgemeines Landrecht für die preußischen Staaten* (1995); Friedrich Ebel (ed), *Gemeinwohl—Freiheit—Vernunft—Rechtsstaat* (1995); Tony Weir (tr), Franz Wieacker, *A History of Private Law in Europe* (1995) 257; Thomas Finkenauer, 'Vom Allgemeinen Gesetzbuch zum Allgemeinen Landrecht' (1996) 113 Zeitschrift der Savigny-Stiftung für Rechtsgeschichte—Germanistische Abteilung 40; Jörn Eckert, 'Gesetzesbegriff und Rechtsanwendung im späten Naturrecht. Die Spruchpraxis preußischer Gerichte unter dem Allgemeinen Landrecht' (1998) 37 Der Staat 571; OF Robinson, TD Fergus and WM Gordon, *European Legal History* (3rd edn, 2000) ch 15.

Sources. Hans Hattenhauer (ed), *Allgemeines Landrecht für die Preußischen Staaten von 1794* (3rd edn, 1996).

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