Obituary

A Luminous Trace. Commemorating the Frankfurt Lawyer and Historian of International Law Michael Stolleis (20 July 1941–18 March 2021)

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Perhaps it is not an inappropriate idea to have a profile of the late pioneer of global international legal history and emeritus editor of this journal, Michael Stolleis, begin in a Munich attic room. So let's travel back a few decades, to Munich in the late 1960s, where Stolleis, a doctoral student and later post-doctoral lecturer, received crucial inspiration for his style of thinking.

The story about the influential author and teacher of public law thus begins with his own teacher. Michael Stolleis has often, readily and with affectionate admiration, reported on the decisive intellectual imprint of Sten Gagnér on him. And it was and is worth listening to him when Stolleis praised his character traits decades later: 'He probably had his greatest gifts as a teacher and as a role model. He loved his pupils, he accompanied them throughout their lives, rejoiced and worried with them. And they, in turn, felt not actually a "school", but connected by this very unusual, unacademic person.' Wasn't that Stolleis himself?

* The original German version of this obituary is available as a JHIL-online publication at <https://doi.org/10.1163/15718050-12340190>.

Michael Stolleis 2010 in his MPI office

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Michael Stolleis was born in Ludwigshafen on 20 July 1941, grew up in Gimmeldingen, did an apprenticeship as a vintner's assistant, studied law as well as German and art history in Heidelberg and Würzburg. In 1965, he arrived in the Bavarian capital, met Karen the following year, and later lived with her in a beautiful flat in the Schwabing district on Schellingstraße, incidentally in the immediate vicinity of an antiquarian bookshop he cherished. In Munich, he found an unusual teacher in the Swedish legal historian Gagnér, whom one can no longer imagine teaching at a law faculty today, let alone at a German one. Gagnér had just been appointed professor of German and Nordic legal history and civil law in Munich, and Michael Stolleis became his first doctoral student. The motivation he received from him points to a broad European horizon as a researcher, to curiosity and criminological accuracy in dealing with sources (Gagnér had also previously worked for the Swedish Criminal Police), and to an absence of prejudice in approaching historical facts. After his Munich years, Michael Stolleis imparted all these virtues in turn as a university professor at the University of Frankfurt (1974–2006) and later as director of the Max Planck Institute for European Legal History (1991–2009) to generations of doctoral and post-doctoral students, pupils and visitors from all over the world, with patience and goodwill, but also gentle insistence.

I could also have written the following narrative about Michael Stolleis quite differently. Michael Stolleis was not only a pioneer of modern international law history as a legal historian, but also an extremely renowned public law scholar. His work may be perceived quite differently by other companions and later researchers from their own points of view, for many people felt that he was supported by and remained connected to them. In fact, the young Frankfurt professor Stolleis was particularly interested in canon law and social law, and was even offered the directorship of the Max Planck Institute for Social Law in Munich, which he turned down in favour of European legal history, i.e. the Frankfurt MPI. His interest in religious and particularly denominational influences on law, jurisprudence and society also remained with him throughout his life.

Michael Stolleis was intellectually unconventional. He was interested in many more legal and non-legal issues than one might think. His list of publications speaks volumes about the young man's stupendous academic curiosity. He not only read diligently, but also reviewed and published year after year in great quantity, high quality and always very readably. The history of international law, for which Michael Stolleis became a great and, at least in Germany, unique stimulus, was embedded in his tireless and intrepid curiosity about the connection between law, history, politics and also morality. His history of science was never purely a history of persons, institutions or even legal dogma. The narratives he had unfolded in his dissertation and post-doctoral thesis were by no means comparable in their teachings. The resulting books dealt with two quite different fields: *Reason of State, Law and Morality in Philosophical Texts of the Late 18th Century* (*Staatsraison, Recht und Moral in philosophischen Texten des späten 18. Jahrhunderts*) explored by the example of Christian Garve the late Enlightenment period. *Common Good Formulas in National Socialist Law* (*Gemeinwohlformeln im nationalsozialistischen Recht*), as his 1974 Munich legal habilitation thesis, dealt with a still young, much darker and, in terms of memory politics, conflict-ridden field of research in legal history. Barely three decades after the end of the Second World War and the fall of the Nazi regime, this was a historical and legal minefield in Germany over which intellectual history – especially within the law faculties – had long maintained a leaden silence. It would occupy him often; also being family-related, because his father was not only a winegrower and lawyer, but also the mayor of Ludwigshafen during the Nazi era. If you read the titles of his journalistic interventions, essays and biographical notes today, you are fascinated by their factual, yet deliberately chosen tone: 'Burned state ships. One hundred years ago, the jurist and constitutional historian Ernst Rudolf Huber was born' and 'Passed through

so many doors. The wallpaper changes, the law always applies: Theodor Maunz was born one hundred years ago'. These titles are rich in imagery and powerful in language, but not polemical or condemnatory – even when writing about scholars like Maunz. The latter's activity even after 1945 as a clandestine author and advisor to the extreme right-wing *National-Zeitung* was a veritable scandal in 1993. Stolleis spoke as he found, but he did not seek cheap headlines; he accepted confrontations when he found things to be wrong; for he could also be very moralistic.

The fact that Michael Stolleis delved into Nazi legal history and was still able to begin a university career was due to a number of factors in addition to his obvious courage. First and foremost was his consummate scholarly ethos, which made such works unassailable in terms of craftsmanship. Added to this, even in all sorts of later public offices and in non-public commemorative political engagements, was the scholar's great integrity of character, which mitigated political, institutional and personal opposition. His objectivity made his appointment as an expert witness and for commissions incorruptible. He never demanded anything for himself personally, and was obliging, discreet and tireless in the pursuit of the common cause. This is what I heard from his friends in Frankfurt about his commitment to the Fritz Bauer Institute and to the Wollheim Memorial. This touching memorial is dedicated to Norbert Wollheim, a forced labourer under the Nazi regime, who won his compensation laboriously but finally successfully before German courts in a test case from which other victims benefited directly as well. Today, the Wollheim Memorial stands alongside the elegant modern main building on the Westend campus of Goethe University. This main building had once been the head office of the IG Farben Corporation, a corporation entangled in Nazi atrocities and unscrupulously profiting from them.

Goethe University appointed Michael Stolleis as professor of public law, at that time still at the Juridicum on the Bockenheimer campus. From his room on the ninth floor, he could see Frankfurt's skyscrapers growing and watch the air traffic over Frankfurt's Rhine-Main Airport. Next to it was the Senckenberg Museum with its world-famous natural history collection and with the Physical Society. Behind the observatory stood the dominating AfE Tower, home to the social sciences. A few years ago it was demolished, and now residential towers with expensive condominiums are springing up along the Senckenberganlage all the way to the trade fair. The Bockenheimer campus misses even more passionately the students of the humanities and social sciences, who moved with the university to the Westend. Michael Stolleis remained loyal to Goethe University for decades, despite calls from abroad. He arrived at a Frankfurt still scarred by war damage (the Alte Oper was still a ruin), but which was bustling.

Frankfurt's 'citizens' university', founded in 1914, was open, liberal, and enlightened maybe precisely because it lacked venerability. Stolleis became part of a critical Frankfurt school and helped shape it. Lifelong friendships were forged not only with his colleagues in public law (Erhard Denninger, Ilse Staff) and criminal law (Wolfgang Naucke, Winfried Hassemer, Klaus Lüderssen), but soon also with legal history, which was uniquely strong both at the university and outside. Some outside observers even spoke of an 'Eintracht Frankfurt'. Stolleis entertained particularly close ties, also personal ones, to fellow legal historians Bernhard Diestelkamp, Dieter Grimm and Heinz Mohnhaupt, as well as to Gerhard Dilcher, and, since their days together in Munich, to Joachim Rückert. To this day, Frankfurt has remained a global brand in legal history. This has a lot to do with the persistent work of Michael Stolleis.

In 1988, the first volume of his *History of Public Law* was published, and one can learn a lot about Stolleis' approach to the history of international law from this masterpiece: The dense sections on the 'Ius Gentium' were embedded in a monumental narrative on 'Reichspublizistik und Policywissenschaft', many of which cited ancient and medieval roots. This history was connected to political science influenced by Protestant New Aristotelianism as well as to the themes of confessionalisation, the Peace of Westphalia, natural law and the 'Gute Policy'. On the book's colourful dust jacket, a cosmological image, a copperplate engraving from Jacob Bernhard Miltz, 'Repraesentatio Maiestatis' from 1690, symbolised the idea of an etatist-monarchical sovereignty: from the solar centre, individual sovereign rights, including Pax, Bellum and Foedera, shone as majestic stars in the great cosmos of legal matters.

Perhaps this volume impressed me the most of all four to this day because it brought together so many different threads, a 'baroque iceberg of scholarship'. Of course, it was in many cases a very German history, there was a 'German law of nations' that applied not only externally but also internally. The Old Reich was territorially fragmented and in its federalism at the same time embedded within Europe, which was politically full of disputes. However, public law became a common language in which the conflicts were negotiated, partly resolved and partly permanently excluded.

Michael Stolleis also became my teacher in public law in 1988. In the Administrative Law lectures he offered to provide students with letters of recommendation for studies abroad. He then wrote a letter with a benevolence that put me to shame. Today I know that countless people thought that meeting him could make a difference in their lives. In conversation, he liked to smile. The encouragement, the kindness, and the encouragement did not stop. He used a 'philanthropic tone' (to cite his book title, under which he wittily reflects on Johann Peter Hebel's 'Calendar stories', which he treasured).

Continuously, and perhaps increasingly, one could learn from him. The older we got, the more we understood, the more concrete questions we had, which we were allowed to ask him at any time, the more valuable he became to us.

For decades Stolleis held a weekly workshop for PhD students, PostDocs, and international guests. He listened to us, always at eye level, followed the presentations of succeeding generations attentively, changing his glasses as he did so, made entries in the black diaries that he pulled out of his astonishingly empty briefcase, and at the end always offered encouragement, but sometimes also cautionary advice. He often spoke surprisingly softly. The moderate tone of fatherly gravity fed on a caring disposition. For he knew that even hard-working and clever people could lose their way, that in the end only written texts could be examined, graded and earn a title. Craftsmanship was always important, diligence indispensable, and genius alone by no means sufficient for serious work.

It was all the easier to accept these standards and criticism from him because Stolleis' standards always applied to himself as well. He also consistently presented his own research within this framework and put it up for discussion to us younger people. Throughout his life – and astonishingly even at the zenith of his obligations as a science manager – he was never a pure organiser of research. It was and remained a mystery to all who had the privilege of observing him from afar and up close, how he, alongside managing the Max Planck Institute and being involved in countless other projects, continued his monumental work on the *History of Public Law in Germany*, begun in 1988, with the further volumes in 1992 (omitting international law) and 1999, and brought to an internationally sensational conclusion in 2012 (then already as emeritus professor). Translations of this and many other works (as the 'Eye of the Law') into numerous languages followed. To all who knew him, it remained a mystery how one could read, know and write so much. He was a remarkable man and an icon of a researcher. For all this, he was awarded major national and international prizes and awards. Last but not least, he was honoured for his services as a researcher and public moral authority with the Grand Federal Cross of Merit with Star in 2015. But probably more important to him were the friendships he made all over the world.

Again and again, and right up to recent times, Michael Stolleis maintained his perspective on the normative relationships between autonomous political actors, which is not limited to the legal sphere alone, and has published on them. 'The dispute over primacy, or: The Wasung War' ('Der Streit um den Vorrang, oder: Der Wasunger Krieg') describes a typical early modern ceremonial dispute between territories. It leads to military disputes at duodecimal level, but there was eventually an arbitral solution. Stolleis finds 'elements of

comedy and theatricality' in it and gives the Imperial Chamber Court praise for its quick, peace-keeping work. In the conclusion, a pattern of conflict resolution, or at any rate control over potentially violent actors, appears with a 'combination of diplomatic actions and military threats'. 'The Princess as Bride' ('Die Prinzessin als Braut') narrates pre-modern marriage law with an international law twist, namely the marriage of princes and princesses as a 'state action of the highest importance'; again, the role of 'imperial law and of international law' is emphasised. And 'narration' literally means a tone that achieved vividness, liveliness and clarity in stories.

Michael Stolleis at the MPI staff outing 2006 to the Rhön mountains

PHOTO: MILOŠ VEC

His appointment as co-director with Dieter Simon brought to the non-university institute of the Max Planck Society in its new building on the Nidda numerous new fields of research in the subject of 'European legal history': 'Gute Policy', the history of international law, the legal history of South East Europe, and the history of technology law had not existed in this form before. The Max Planck Institute opened up possibilities for Michael Stolleis to research legal history that overcame the perspective and thematic limitations of the subject as taught at a university, and allowed him to criticise them performatively. Stolleis not only called for openings, expansions, and departures. He not only wrote frequently about the method of legal history, thinking in particular about its relationship to literature, ruminating on the 'dispensability of "concept" and "fact"' in historiography. No, he himself moved forward and personally reformed the subject of legal history or set it on a decisive course. With the help of the Volkswagen Foundation, he installed a new chair for contemporary legal history at Frankfurt University, which was occupied by Joachim Rückert, also a student of Gagnér. Another of these pioneering projects was the DFG-funded group 'German International Law in 19th and 20th Century Europe'. It existed from 1997 to 2001 and was an internationally unique cluster of young researchers into the history of international law, from which countless dissertations of high quality emerged. In 2001, he founded the *Studien zur Geschichte des Völkerrechts* (*Studies on the History of International Law*), which has since been published by Nomos-Verlag as a book series, and in 2004, joined this journal, the *Journal of the History of International Law*, as an editor.

This departure, undertaken not by chance in a non-university research institute, coincided with an international turn to the history of international law. In July 2002, Michael Stolleis prominently and extensively reviewed Martti Koskenniemi's *Gentle Civilizer* in the *Frankfurter Allgemeine Zeitung* (FAZ) and actively supported this increasingly globally visible 'turn to history': 'Koskenniemi's book is a great achievement of European academic history and a literary masterpiece' was the final sentence of the appreciative review. At the same time, however, one could always hear the indignant Stolleis, who was dissatisfied with the state of the discipline, audibly calling for more innovation in this respect as well: 'But the [publication of Koskenniemi's book] does not actually improve the situation of international law history in Germany itself. The subject is practically non-existent', he wrote in 2006. With Masaharu Yanagihara, he edited the volume *East Asian and European Perspectives on International Law* in 2004. The preface written by both of them raises contemporary research questions, especially relevant today:

It is also arguable whether modern European international law was universal in the world in the latter half of the 19th century. We should realize that there are two aspects to the question. The first one is whether international law was monolithic in Europe, or whether each European country had its own international law such as German international law, or English international law. The second one is whether modern European international law could be actually applied universally in the world.

Because Stolleis was an incredibly informed and educated scholar, his history of international law always remained embedded in larger historical and geographical contexts. For him, all law was 'law in context'. He did not shy away from putting his finger on contentious points. He became a Max Planck director soon after the German reunification and wrote critically about the shape of the 'accession' of the former GDR. In addition, he repeatedly conducted retrospective research into the history of GDR law and promoted legal history and legal historians in Eastern Germany. During his lifetime, he experienced the political and legal integration of Europe, in which the reunified Germany participated with all its expectations, hopes and historical ballast. The laws of the nation states, European law, and international law had to be understood appropriately in their mutual interdependencies. Nationalism and internationalism were also interrelated. One could not understand one idea without the other. With a view to comparative public law in the late nineteenth century, he noted in 1998: 'Growing nationalism and internationalism thus turned out not to be opposites, but to a certain extent Siamese twins. The closer one came to the other, the sharper the nationalist phrases of demarcation became. The stronger the international networking became, the more the need to preserve national identity grew.'

The emergence and spread of law had to be seen in the context of its counter-concepts and opposing developments: injustice in legal form and the disappearance of law. Throughout his life, he remained connected to the subject of the National Socialist state of injustice, not only intellectually as a researcher who wrote intelligently about National Socialist international law, but also as an active part of (Frankfurt and German) civil society. The Nazi crimes had not only left traces in the history of science, but also generated new norms, and civil societies repeatedly renegotiated how they saw, evaluated and wanted to legally grasp their own past. 'Crimes against humanity' and 'genocide' were the legal-moral accusations in factual form in which human rights and international law came together. After 1945, they experienced highly changeable conjunctures in international criminal law.

Michael Stolleis was aware that the ‘expectations of the law’ were a yardstick for the perception and possible criticism of developments – and could also overtax constitutional states and the world community of states. He himself openly formulated ‘legal dreams’ for legal policy and curricular reforms, especially when these could not be implemented in day-to-day politics. His expectations of legal history were an open and unfinished project. He repeatedly challenged the subject and its representatives, neighbouring disciplines and the public, but not from the comfortable role of critic, but as part of the wave that we are ourselves.

His books were by no means aimed solely at a specialist legal audience, but, like his Festschrift *Herzkammern der Republik* (*Heart Chambers of the Republic*) published on the occasion of the 60th anniversary of the Federal Constitutional Court, at a general public. He contributed significantly to the prominent

Michael Stolleis at the MPI Summer Academy on 22 July 2016, shortly after his 75th birthday

PHOTO: CHRISTIANE BIRR

placing of the importance of law in public discourses. He wrote around 140 articles for the FAZ alone. The last one appeared on Friday, 12 February 2021 and was a touching book review: 'Ein Junge in Auschwitz. Singuläres Zeugnis: Tomás Radils Erinnerungen'.

In the house of the Stolleis family in Kronberg am Taunus, close to the entrance, there is a beautiful white shelf perfectly incorporated into the wall (a gift from his wife Karen) with selected old leather and parchment volumes. Imperial history, *Ius Publicum*, nineteenth century constitutional law and others are there in condensed form casual witnesses to his work. I assume that Johann Stephan Pütter's three-volume *Litteratur des Deutschen Staatsrechts* is there and I am sure that in any case Robert von Mohl is among them, whom he in a sense succeeded some 150 years later, with, for his part, an accomplished survey of the 'history and literature of political science', written with discipline and formulated with a sense of proportion in the judgements.

Stolleis' small collection cannot be compared to the legendary library of Sten Gagnér, which was 'a Noah's Ark of scholarship' and numbered 9,676 volumes (not counting the 25 or so specialist journals he continuously subscribed to). But Michael Stolleis did not care for possessions and even less so for luxury, and often amazed people with his modesty and spareness. Decades later, his companions still remember the professor, who always appeared youthful, showing up at meetings with Frankfurt students in jeans. He had a boyish charm. He was headstrong, impatient and liked to go it alone. He often departed from societies early. In his free hours he pottered lovingly and with very presentable results. He enjoyed going on hikes and cycling tours with friends, sometimes lasting several days. When his children Friederike and Peter tired at the end of the hike, he would tell them about the Odyssey. Barely more than a year ago, I walked with him through the Taunus mountains, we surveyed hurricane damage to the tall coniferous forest and did not let ourselves be deterred by paths that were closed. He was passionate about art and literature, and his writing benefited unmistakably from this. He, the unpretentious one, was an aesthete and stylist in every word and every sentence. When his teacher Sten Gagnér died in 2000, Stolleis dedicated an affectionate obituary to him in the FAZ, ending a programmatic first paragraph with an appreciation of his personality: 'His gift for friendship was legendary. Wherever he appeared, an infectious cheerfulness unfolded, but at the same time an intensive scientific exchange.' The headline, a single word: 'Gewährenlassen' ('Connivance'). Michael Stolleis died on 18 March 2021 at 79, the same age as his teacher Sten Gagnér. There were three words at the end of his obituary, and they also fit the author Michael Stolleis: 'A luminous trace.'

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