

# Preface

*Common European Legal Thinking* emanates from the existence of a shared European legal culture as especially reflected in the existence of a common European constitutional law. It denotes a body of individual constitutional principles – written and unwritten – that represent the common heritage of the constitutions of the Member States. Taking into account the two major European organisations, the Council of Europe and especially the European Union, the essays of this *Festschrift* discuss a range of constitutional principles, including the rule of law, democracy, and the exercise of political power in a multilevel system which recognises fundamental rights as directly applicable and supreme law. Other essays examine the value of pluralism, the commitment of private organisations to uphold public values, principles or rules, and the objectives and methods of a transnational science of administrative law. These articles highlight the fact that the *Ius Publicum Europaeum Commune* is “politically” in the making, which can often be seen in the shape of general legal principles. The publication recognises the role of *Albrecht Weber* as a forerunner of *Common European Legal Thinking*.

After his legal studies at the Universities of Munich, Frankfurt, Geneva and Würzburg and the completion of his second state examination, *Albrecht Weber* received his Ph.D. in 1972 with a study on the status of UN civil servants in the United States – Privileges and Immunities (“Der UN-Beamte in den USA”). He then worked as an assistant to Dr. Dr. h.c. *Hugo J. Hahn* (1927–2010), professor of public law and international public law. Professor Hahn decisively influenced and shaped *Albrecht Weber*’s academic thinking and research interests, including monetary law. In 1980, the jubilee qualified as a professor at the University of Würzburg with a book on protection provisions and economic integration (“Schutznormen und Wirtschaftsintegration”, 1982). He was awarded the *venia legendi* for European, International and German and Foreign Public Law, all of which he inspired with his ideas and research during his time as an active university professor (1982–2010).

An important part of his academic work was the law relating to aliens, migration and refugees, which is interrelated with public international and now also European law. Up until his retirement as an active university professor in 2010, the jubilee has worked at the Institute for Research on Migration and Intercultural Studies (IMIS)

at the University of Osnabrück, as well as for the Council on Migration (Berlin) and the Association of the Study of the World Refugee Problem (AWR) – not only for academic reasons, but also motivated by a Christian sense of responsibility.

Having been assigned the status of Private Lecturer (*Privatdozent*), from 1980 to 1982 *Albrecht Weber* worked as an academic assistant to the then president of the German Federal Constitutional Court, Prof. Dr. h.c. *E. Benda*. Under his guidance he experienced the practice of German “constitutional jurisdiction” in the so-called “Third Senate”,<sup>1</sup> which strongly and sustainably shaped his thinking and his academic writing on constitutional law. The first reflection of this experience was the first edition in the 1980s, edited together with *Ch. Starck*, of a comparative law study on constitutional jurisdiction in Western Europe (“*Verfassungsgerichtsbarkeit in Westeuropa*”, 1986/90). Analysing constitutional jurisdiction and judicial review always comprises the question of whether a national legal order guarantees the procedure of “constitutional complaint”. As a consequence, from the mid-1990s the jubilee has worked on questions of substantial protection of fundamental rights in a DFG-funded project on “Fundamental Rights in Europe and North America” (2001).

From 1982 to 2010, *Albrecht Weber* was full professor for public law at the Faculty of Law of the University of Osnabrück and a member of the executive board of the Institute for European Law. His interest in foreign public law, comparative law and European law is also reflected by the number of occasions when he was invited as a visiting professor to universities in Europe and all over the world, including Montreal (McGill University, 1987), where he worked on language arrangements and minority protection, Aix-Marseille (1990, 1995 and 2003), Paris (Sorbonne, 1999, 2003) and Pisa (2000).

Since the early 1990s, *Albrecht Weber* has conducted multiannual research programmes on comparative constitutional law at the University of Seville, as well as with the Faculty of Law of the University of Aix-Marseille. For many years he has been participating as a valued dialogue partner in the *Table ronde internationale de justice constitutionnelle* (Aix-Marseille University). It was there that he was confronted with the thinking of French constitutional lawyer *Louis Favoreu*, the “missionnaire du droit constitutionnel”. After the end of the division of Europe in the 1990s, *Albrecht Weber* was a consultant to the European Union’s TACIS Projects in Russia (1998–2000) and Poland (2000).

Three books, published one shortly after the other, were decisive for the jubilee’s work since the late 1990s. At first he referred back to international public law and together with *M. Schweitzer* co-authored a handbook in 2004, co-funded by the Fritz Thyssen Foundation, on the practice of the Federal Republic of Germany in inter-

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<sup>1</sup> “Third Senate” is the unofficial name for the around 70 research assistants working at the Court. According to Art. 13.1 of the Rules of Procedure of the Court, the research assistants “shall assist the judges to whom they have been assigned in their official duties” and they “shall take instructions from such judge”. At present, every judge is assigned four assistants, mostly judges from the different judicial branches. In 1984, the so-called “Third Senate” paid tribute to the imaginary *Friedrich G. Nagelmann* with an anthology of excellent legal essays, thus parodying the genre of a *liber amicorum*.

national public law (“Handbuch der Praxis des Völkerrechts in der Bundesrepublik Deutschland”). This casebook is intended to help those involved in the practical application of public international law and therefore need quick and immediate access to its sources and interpretation. In the same year a comparative law book was published on fundamental rights as guaranteed in the national legal orders of the Western world. Its case-law approach should help in accessing fundamental rights jurisprudence in other legal orders. This work again documents the jubilee’s strong interest in the human rights jurisprudence of the highest courts.

As an outcome of the decades of comparative research, in 2010, the year of his retirement as an active university professor, *Albrecht Weber* published a book on comparative constitutional law in Europe (“Europäische Verfassungsvergleichung”). It contains a study on the “essentials” of the Western European constitutions and thus is a comprehensive fundamental guide of German academic writing for the comparison of constitutional law. At the same time this study can be perceived as a basic work on the foundations of a European Constitution (in the making).

*Albrecht Weber*’s work bears evidence of a truly European lawyer and researcher in law with a broad analytical approach to international public law. It provides valuable insights and impetus for research on European law – in recent years especially with regard to the legal developments in European Economic and Monetary Union – and for comparative constitutional law. Together with the authors, the editors of this *Liber Amicorum* congratulate the jubilee on the occasion of his 70th birthday on July 20, 2015. Ad multos annos!

Erfurt/Luxembourg/Hannover/Pavia in April 2015

Herm.-J. Blanke  
Pedro Cruz Villalón  
Tonio Klein  
Jacques Ziller

# Foreword by the Board of the Institute for Migration Research and Intercultural Studies (IMIS) of the University of Osnabrück

Migration has long constituted a central element of societal change. People's spatial mobility has changed the world in the last centuries. Countless examples attest to the tremendous influence of labour and settlement migration, nomadism, mobility related to education or training, the historical slave trade and contemporary human trafficking, refugee movements, expulsion, and deportation. These have shaped the composition of populations as well as the development of labour markets, political systems, cultural identities and religious orientations. Moreover, migration will continue to be a central societal issue with high political significance in the future, as indicated by the current debates related to further (very unevenly distributed) world population growth, the aging of the wealthy "Northern" societies, climate change, the socio-political and legal challenges of migration, and the lack of skilled labour for increasingly complex, internationally and tightly interconnected "knowledge societies".

For the last quarter of a century, the Institute for Migration Research and Intercultural Studies (IMIS) of the University of Osnabrück has focused its scientific interests on the diverse aspects of spatial mobility and intercultural encounters in history and the present. Prof. Dr. *Albrecht Weber* was one of the founders of IMIS in 1991, when it evolved out of the 1989 "Working Group on Migration Research and Intercultural Studies", of which *Albrecht Weber* was also a participant. This interdisciplinary institute was founded at a time in which migration research in Germany was still figuring out how to position itself and just starting to explore interdisciplinary approaches. During its founding period, the core of IMIS was constituted by *Albrecht Weber*, who brought in his expertise as a law researcher, as well as four other legal cooperation members representing the fields of history, education, psychology, and sociology.

The Institute for Migration Research and Intercultural Studies was the first institute in this field to be established with a set, long-term staff and budget at a German university. This institute quickly attracted the interest of other departments within the university, so that the number of participating researchers as well as the spectrum of disciplines grew. Currently the participants at IMIS come from the following fields and research areas: ethnology, geography, history, intercultural

pedagogy, intercultural management, art history, political science, psychology, legal studies, religious studies, sociology, language and literature studies, as well as economics.

From the beginning, IMIS has aimed to support the consolidation and networking of interdisciplinary research as well as the dialogue between science and praxis. This has been accomplished with basic research, publications, public events, and scientific advising. Because of its long-term and intensive research activities as well as its broad spectrum of interdisciplinary exchange, IMIS has become a trans-regionally and internationally well-known and recognized research institute.

From the beginning *Albrecht Weber* helped construct and develop this institute, which profited significantly from his legal-scientific expertise. Since 1995 one focus of scientific activities in IMIS revolved around the interdisciplinary research training group "Migration in Modern Europe". Its establishment and development over the first ten years was made possible in part with the funding application support of *Albrecht Weber*, including two successful application extensions. During this period, about 50 doctoral students and post-docs took part in the interdisciplinary training of this program, funded by the German Research Foundation (DFG). Since 2004 IMIS has also offered basic academic training with its interdisciplinary master's program "International Migration and Intercultural Relations" (IMIB). Until his retirement Prof. Dr. *Albrecht Weber* taught the fundamental concepts and questions of migration law to master's students from all over the world and from diverse fields of study.

*Albrecht Weber's* scientific research achievements at IMIS include numerous publications, especially in the research fields of immigration law, aliens law, citizenship law, and asylum law. With his expertise, *Albrecht Weber* contributed especially to the establishment and development of IMIS' long-term research focuses "Migration – Nation State – Welfare State: Germany and Europe" as well as "Immigration Policy and Legislation: Germany in the International Context". An early and important reference point in IMIS' history was the IMIS-Conference "Germany as a Land of Immigration in the European Union: Development Demands and Regulation Possibilities", funded by the Volkswagen Foundation and the European Union Commission and led by *Albrecht Weber*. The conference papers for this were published in 1997 as Volume 5 of *IMIS-Schriften*. *Albrecht Weber* also led the major research project "Basic Rights in the Constitutional Judicature of Europe and North America", which examined basic rights in 25 legal systems. In this context special attention was given to those basic rights, which applied to the free movement of persons and goods, protection from political persecution, and asylum.

*Albrecht Weber's* intensive and many-sided activities on the issues of migration and integration stretched far beyond Osnabrück. Especially important was his long-term involvement on the board of the "Committee for Migration" (RfM), founded in 1995/96 as a nationwide network of scientists who deal with questions of migration and integration. He was also involved in the many activities of the head committee of the international Association for the Study of the World Refugee Problem (AWR). Also numerous guest professorships (for instance, at the McGill University in Montreal/Canada in 1987, at the University of Marseille III/Aix-en-Provence in

1990 and 1995, at the Sorbonne in 1999 and 2003, as well as at the University of Pisa in 2000) constituted landmarks in *Albrecht Weber's* international research activities.

Prof. Dr. *Albrecht Weber's* devoted efforts to these issues were of fundamental importance for the establishment and further development of IMIS and of migration research more generally. From the beginning, he dedicatedly contributed his law studies expertise in the context of the institute's pursuits. He also supported the sometimes difficult everyday communication regarding the diverse concepts, approaches, and perspectives which make up interdisciplinary migration research. The further development of the institute was also buttressed by his various contacts within the university. With his nationally and internationally highly regarded scientific projects and publications, his international teaching activities, and his work in scientific organizations, *Albrecht Weber* has made an essential contribution to the institute's networks and to the establishment of migration research as a discipline in the academic landscape. We thank him very warmly in the name of IMIS.

Jochen Oltmer  
Andreas Pott

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