

Romanticism in Law & Art

German Romanticism, Creativity, and European Legal Culture

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Legal scholarship and romanticism

The connection between law and romanticism is certainly for many lawyers a rather odd relation. This article, however, starts out with such a hypothesis: Late modern legal scholarship of the 21st century can be identified as a part of a new romanticism. Also the late modern legal cultures, defined as the cognitive structures of the contemporary legal actors (judges, lawyers, law professors), are included in this trend, in which the transnational deep structures of the law are an important part of the current legal paradigm (Tuori 2002). Romanticism is a phenomenon related to the early 19th century. Generally the law – and especially modern scholarship – has its roots in the early 1800's as an essential element of the romantic era (Ziolkowski 1990,94).

This late modern romanticism of the early 21st century has elements common with those of the early 19th and early 20th centuries even if interpretations and contexts are quite different. The current romanticism of the early 21st century has been described as "an almost obsessive return to Romanticism" (Ziolkowski 1990, 383). In relation to law and legal scholarship it's more an identifiable and visible trend than a dominant cognitive paradigm; it has the character of a legal construct composed as a contra-force to the characteristics of the modernity of the 20th century – a synthesis in progress.

The romanticism of the 19th century was a contra-force to the dominant rational cognitive structure constructed by the philosophers of the Enlightenment. Also the national romanticism of the early 20th century became a contra-force to the dominant positivistic, social, realistic and even naturalistic trends within science, law, literature and art. The current romanticism has been observed e.g. within comparative law by the Yale legal historian James Q Whitman and defined as the "neo-romantic turn" (Whitman 2003, 312) Also the legal anthropologist Rebecca R French at Buffalo University has identified keywords for this transmission within contemporary legal cultures, *retraditionalization* and *desecularization* (French 1998). The renaissance of legal concern in the concepts of customary law and traditions, (Glenn, 2014) and the visibility of religion in the late-modern societies as well as religious arguments in legal decision-making (Gordon 2010) are just a couple of examples to proof the contents of those keywords in current legal cultures. In this article I will try to identify the relationship between law, religion and

art and make a comparison between the romanticism of the 19th century and the “neo-romanticism” of the 21st century.

Two German artists, one from each paradigm, Caspar David Friedrich (1774 – 1840) and Anselm Kiefer (b. 1945), will demonstrate the validity of the hypothesis made. With help of the ruin, a metaphor often used within discourses on romanticism, this sketch will demonstrate the interdisciplinary transference within law, religion and art as a necessary part of a romantic paradigm.

Italy as a geographical center for 19th century romanticism

Johann Wolfgang Goethe's book on his *Italian journey* 1786–88 became one of the most important catalyst works for the counter-force to Enlightenment rationalism and to contemporary modern thinking. Goethe's book on Italy is no travel-guide for people fascinated in Italian landscapes of art (Michel 1976). Instead it has more the character of a subjective pleading for a reflection on the European cultural heritage. Conscious historical reflection was a key element for the romanticists, (Benjamin 2008, 19) and by going to Rome you were regarded as a reflecting individual included in the history.

Goethe's *Italian Journey* became a classic for all those romantics, who in the early 19th century made their cultural pilgrimages in his tracks. One of them, the Swedish professor of aesthetics at Uppsala university, Per Daniel Amadeus Atterbom, went on a journey to Rome in 1817. On his way to Italy he met in Dresden with Caspar David Friedrich (who born in Pomerania regarded himself as a “half Swede”) (Atterbom 2002, 112). To Atterbom Friedrich was “a sort of metaphysicus with a brush” who expressed a symbolic meaning, “Bedeutung”, in his art. Atterbom himself experienced such an “*Aesthetical Wonder*” when he for the first time observed Rafael's painting *S:ta Cecilia* in the art gallery in Bologna (Atterbom, 2002, 404). With help of his book Goethe not only inspired the first generations of Italian tourists of the 19th century, he also gave nutrition to the European romanticism as such.

Artists from Europe and the United States made their cultural pilgrimage to Italy and were inspired by the historical remnants of the Roman Empire embedded in the romantic landscape.

The Ruin – a metaphor with different references

First of all we have to identify legal constructs related to culture, history and tradition. It was – and still is – the main task for jurists who act within the context of romanticism. The ruins in Rome or elsewhere in Europe were the most frequent metaphor for historical reflection. The English painter Joseph Mallord William Turner (1775-1851) is a good example of an artist who frequently used the ruins as motive for reflection on the past. His famous paintings on English ruins, *Tintern Abbey in Wales* (1794-5) were followed up some years later with William Wordsworth's poem "*Lines composed a few miles above Tintern Abbey*" (1798). During Turner's two Italian journeys 1819-20 and to Rome 1828-29 the Roman ruins became a repeated motive for his historical reflection (Costello 2012,166).

"The ruin of a building... means that where the work of art is dying other forces and forms, those of nature, have grown; and that out of what art still lives in the ruin and what nature already lives in it, there has emerged a new whole, a characteristic unit, a unit which is no longer grounded in human purposiveness but in that depth where human purposiveness and the working of non-conscious natural forces grow from their common root..."(Simmel 1959, 259).

Also within the rhetoric of 19th century jurists the metaphors became important to express their historical consciousness. When the professors of Roman law within the Historical school of law put all their efforts in reconstructing the Roman law system in Germany for the needs of the 19th century, they metaphorically made use of all the remains of legal ruins and their historical artifacts.

Savigny's imperative to his students was to return directly to the sources, to observe how history really took place; he wanted to explore "*wie es eigentlich gewesen ist*". And when Savigny talked of the importance of going back to the original sources and the dwells he constructed its elements by calling them *legal sources*. One of the main tasks, though, for the members of the historical school was to identify the historical legal sources and bring them to the public. For the historical school the living law, the customary law, which as a tradition continuously had been brought between the generations, became the dominant interest.

The German philosopher and sociologist Georg Simmel (1858 – 1918), a contemporary pioneer to the jurist and sociologist Max Weber, took an anti-positivistic view within sociology. In 1911 Simmel wrote a frequent-quoted essay on the ruin, (Simmel 1911, 265) in which he argued the ruin represented an encounter, a struggle, a battle between

a Hegelian will constantly striving and the “downward-dragging, corroding, crumbling power of nature.” (Simmel 1911, 265) Simmel argued that ruins are articulations of the battle between nature and culture that resides within all people. For Simmel, the “form of the soul” was dictated by this struggle between nature and culture, something that the ruin preserved in a “profound peace.” He noted: “The aesthetic value of the ruin combines the disharmony, the eternal becoming of the soul struggling against itself, with the satisfaction of form, the firm limitedness, of the work of art.” (Simmel 1911, 265) To the American professor of comparative literature Andreas Huyssen (b. 1942), ruins allow for the “hardly nostalgic consciousness of the transitoriness of all greatness and power, the warning of imperial hubris, and remembrance of nature in all culture.” (Huyssen 2006, 13).

Caspar David Friedrich (1774 – 1840) – The Master of Romantic Ruins

One of the most representative artists within German romanticism was Caspar David Friedrich, born in Greifswald 1774 and trained in Copenhagen. He spent a great deal of his career in Dresden even if many of his paintings found inspiration in his native region, Pomerania.

The young artists in Pomerania around 1800 made their peregrinations to the Scandinavian countries. The artists Philipp Otto Runge (1777–1810), Caspar David Friedrich and Georg Friedrich Kersting (1785–1847), all of them characterized as “awesome North-German pioneers within romanticism”. All of them went to Copenhagen to study art. In Copenhagen the education was free of charge, and the professors Nicolai Abraham Abildgaard (1743–1809), Jens Juel (1745–1802) and Christian August Lorentzen (1749–1828) had international reputation. After the studies in Copenhagen all the German students went to Dresden, the cultural center of German romanticism, Friedrich in 1798, Runge in 1802 and Kersting in 1810.

Also Friedrich’s contemporary friend in Greifswald, the law professor Karl Schildener (1777–1843) wanted to go to Dresden. This city not only had an art school and famous art museums, it was also an attractive center of its time – *Florence of the North*. Also to Schildener, who spent the summer 1800 in Dresden, the city became an impressive experience. Schildener left Dresden for Göttingen to study archeology, an enduring field of interest for him. To his friend Friedrich the archeological artifacts in the nature played an important role, too. His painting *Dolmen in snow*, “Hünengrab im Schnee” (1807) belonged to the most important pieces in Schildener’s increasing art collection (Hinz

1968, 25). Karl Schildener aimed to be an artist, too, but the Greifswald law professor Emanuel Friedrich Hagemeister convinced him to be a jurist.

For Caspar David Friedrich German romanticism included a critical reflection to the motive he painted: "The painter shall not only paint what he sees in front of himself, but also what he sees within himself...". The artist has to have a mental, metaphysical relation to nature.

Friedrich's paintings belong to the masterpieces of German romanticism and have inspired not only artists but also lawyers and clergy. Of special interests are some of his paintings with ruin motives from Greifswald and the monastery of Eldena, some miles east of Greifswald. Those paintings are of special interest as the function of the ruin in Friedrich's motives has been widely debated. Karl Whittington has recently argued that Friedrich's painting *The Abbey in the Oak Forest* (1810), destroyed in April 1945 in Berlin, together with other of his contemporary paintings can be viewed as "deathscapes". Whittington argues, that in those pictures "death and burial - - are depicted as separate from contemporary rituals and institutions, placing the space of death into the past, and, especially, back into the hands of the church, an institution from which death had become increasingly separate". (Whittington, 2012). I will argue that those painting demonstrate not only were interpreted as dead artifacts but also *as living ruins* (Modéer 2011, 128). Even if the landscape is desolated, the institution, the church is still working, upholding a *living tradition*, adjusted to a new context (Glenn, 2014).

For Friedrich gothic churches and monasteries represented "tremendous remains from past centuries, - - which as witnesses raises from a previous great past over an ailing present"(Friedrich 124, 173). His paintings were filled with metaphysical metaphors, attracted also the jurists of his time – one of them his Greifswald friend Karl Schildener. Schildener's cultural pilgrimage went to Sweden 1800 where he spent some years; he studied Swedish law at Uppsala University and was involved in discussions with his Swedish colleagues (Modéer 2007, 237).

Schildener was a representative of the historical school. He edited the medieval laws from the island of Gotland in the Baltic Sea, *Guta Lagh*. They were published in 1818 and became model for other similar editions in other countries, also in Sweden and Denmark (Modéer 2007, 238).

For Schildener and his contemporaries the artistic living ruins became an artistic metaphor associated not only to history and living traditions but also to historically founded legal systems (Modéer 2007, 233).

Romantic Art in Legal and Religious Contexts

In the post-revolutionary period of the early 19th century, characterized by rationality and early tendencies of secularism, romanticism and early revivalist movement became important contra-forces (Modéer 2007). The jurists, conservative and critical to modern reforms, found their argumentation in traditions and history. With help of historical artifacts the archeologists concretely could proof Savigny's words "*wie es eigentlich gewesen ist*". The jurists were on the same track. The reconstruction of Roman law within the German legal system in the 19th century focused on the jurists' historical consciousness within a romantic paradigm as it was articulated by the artists, authors and composers of its time. And the romantic artists supported and stimulated this paradigm with their paintings; they painted landscapes filled with metaphors associated not only to historical law and traditional religion but also to the subjective being (*Dasein*). Idealistically oriented and believing jurists experienced a *sublime* relation between law and religion. They explored their experiences not only in the private sphere; the sublime was also visible in the public sphere in their daily-life profession as judges or law professors. The romantic jurists were to a great extent inspired from Friedrich Schleiermacher (1768 – 1834), theologian and philosopher at the Reform University in Berlin, and father of modern liberal theology with its individualistic and nature-oriented approach to belief.

The revivalist movement and members of the "*Historical Christian School of Law*" influenced Friedrich, Wilhelm Joseph Schelling (1775–1854), the idealistic philosopher, and historically oriented legal philosophers and law professors as Friedrich Carl von Savigny and his circle of students after 1815 (Haferkamp 2009). One of Savigny's special students, Moritz August von Bethmann-Hollweg (1795–1877), was affiliated to the revivalist movement. He regarded the historical courthouse comparable with a "gothic cathedral" in which "the vaults seemed to hover" ("Mit einem 'gotische Dome' vergleichbar, bei dem 'sein Gewölbe in der Luft zu schweben scheint'." - Haferkamp 2009, 7). Also the romantic law professor Schildener used this meta-physical metaphor.

The old oak forest could in Friedrich's paintings be identified as church pillars in the nature, creating a surviving continuity. His paintings were, so Ludwig Richter, "symbolic pictures from the nature, which sensualized abstract thoughts through landscapes" (Börsch-Supran 1973, 162).

Art, history, philosophy and theology were interacting in the time of romanticism. The small university town Greifswald in Pomerania (northern Germany) became a center for German romanticism the decades around 1800. Personalities like the historian Ernst Moritz Arndt (1769–1860), the clergyman and poet Ludwig Gotthard Kosegarten (1758–1818), the professor of legal history at the University of Greifswald, Karl Schildener (1777–1843), all of them were friends of Caspar David Friedrich. This intellectual cluster interacted in a very constructive interdisciplinary dialogue.

The legal historian Karl Schildener is a good example of the German legal scholars, who were attracted by the religious romantic movement. He was connected to the revivalist movement and its members of the Historical-critical school of law. In 1830 Friedrich Julius Stahl stated, that with Schelling a new movement had started in philosophy: “The pursuit to be a Christian philosophy” (“Das Streben, eine Christliche Philosophie zu seyn.” Stahl 1830, 363).

The pastor of Altenkirchen on the island of Rügen, Ludvig Gotthard Kosegarten, was famous for his shore sermons in his parish. Schildener and Friedrich shared his romantic religiosity. In his autobiography Schildener emphasized the importance for him of the Sunday worships in the Greifswald cathedral. There he met with people, who had their daily works, but “in a building and under a vault which indicated something more than our earthly existence” (Schildener 1840); it had a great impact for his religious identity as a romantic legal historian. Metaphysics was a part of the law professors’ cognitive structures in the 19th century.

Also the architects of the time found their ideals in the Gothic architecture and the medieval Gothic cathedrals. Karl Friedrich Schinkel’s painting *Cathedral Towering over a Town 1813* is a good example of how art and architecture not only emphasized the historical perspective in a neo-classical style but also communicated the motive’s metaphysical dimension. This painting is also destroyed. A copy by Karl Eduard Biermann (after Schinkel’s original), *Dom über eine Stadt*, is to be seen in Neue Pinachotek, Munich.

Neo-romanticism and the Law in the Late Modernity

Now we turn to the neo-romanticism of the 21st century. Several examples on the interest for romanticism in art can be mentioned. Successful exhibitions on Caspar David Friedrich and his paintings have been exposed in Germany, Sweden as well as in Denmark. His works have also inspired current artists in a remarkable way. How the Friedrich heritage has been administrated and developed by current Swedish artists was demonstrated in

an exhibition at the Swedish National Museum in 2009 (Friedrich 2009). Even if it has been argued that there always has been a continuous interest in romanticism – a romantic current a secret source also among the modernist artists of the 20th century – it was first with the post-modernism this new interest for romanticism and Caspar David Friedrich became manifest (Nilsson 2009, 8, 10).

Even if the “cult of ruins” – as we have learnt – has been a part of the sociological and literary critic discourse since the 18th century it has got a new renaissance in the late modernity. Andreas Huyssen has noted, “over the past decade and a half, a strange obsession with ruins has developed in the countries of the northern transatlantic as part of a much broader discourse about memory and trauma, genocide and war.” (Huyssen 2006, 7). Not only the ruins of World Trade Center in NYC after “September 11”, but also the ruins due to the decline of the industrial era have resulted in important discourses. “The more spectacular the ruin, the more intriguing it is. Probably because we recognize that someone invested tremendous time and effort bringing it into existence. What powerful motivation did they have? And what terrible fate overcame them and their aspirations, that their once-grand edifice is now returning to the earth?” (Skrdla 2006, 17).

Germany as a Center for “Reckoning with the past”: Anselm Kiefer

After World War II the ruins as a metaphor got a very special connotation. The devastated European civilizations became not only a symbol of an apocalypse but also for the collective memory of the upcoming generation. There was generally a fascination for ruins in the post-war era (Macauley 1953, 453). Also the concept of ruins got new dimensions and observations.

The works by the contemporary German artist Anselm Kiefer are in that respect of great interest. Kiefer was born in Donaueschingen, Baden Württemberg 1945. He could have regarded himself as a child of *Stunde Null*, but as a grownup he distanced himself to this temporal concept as such. “Germany never went back to zero after the war”, he has stated. “There is always the burden of history on your back.” (Chayka 2010).

Instead Kiefer was included in the post-war generation, which from 1968 started to reflect on the history of the near past, the history of his parent-generation, which was closely involved with the WW II, its laws, politics, and culture.

In Kiefer’s paintings there is an evident relationship between him and the great romantic painters of the 19th century, William Turner and Caspar David Friedrich (Wagner

2008). The 19th century romanticism can be identified as an iterated projection in Kiefer's paintings. Already and especially in his early paintings *Heroic Symbols* (Heroische Sinnbilder) from the late 1960ies associations to the Nazi-period became provocative parts in his paintings, which tried to catch German identity. His arguments became even stronger as he used irony as a part of his interpretations. Friedrich's famous painting "*Monk at the Sea*" got a historical projection when Kiefer made his interpretation of this painting with the monk substituted by a person (himself) making *Hitler-Gruss*. In 1970 such projections were taboo, today they are regarded as a contribution to an important and indispensable part of the German historical identity. From this period onwards Kiefer wanted to be regarded as an irritating part of the German cultural nuisance "worrying away at the scabs of memory until they revealed open and livid wounds again" (Schama 1997, 168).

The reckoning with the near past is a repeated theme in Kiefer's paintings. His 1981 painting *Interior* (Innenraum) in Stedelijk Museum in Amsterdam shows the Mosaic Hall in the New Reich Chancellery in Berlin, totally damaged in 1945 and only documented with help of photos, one of which inspired Kiefer for this monumental painting. Another photo from immediately after the war shows the Mosaic hall in ruins. Also this picture is interpreted in Kiefer's *Interior* of Albert Speer's neo-classicist monumental state architecture – totally laid in ashes after the war. In the Nuremberg Trial 1945-46 Albert Speer was sentenced to twenty years in prison. His moral and metaphysical guilt in the Holocaust became an iterating, immanent but evident metaphor in Kiefer's paintings (Busch 1999, 11).

The painting *To the Unknown Painter*, Dem unbekannten Maler (1983), has a similar motive interpreting the neo-classicist buildings by Albert Speer and contributing to the collective memory. Similar message appears in the painting *Pillars* (Säulen) from 1983 at Louisiana Museum of Art; its another example of how Kiefer used the impressive classical architecture, adored by the Nazi elite, laid in ruins. It's the burned black ruin of a building demonstrating power. As in the *Interior* there are no human beings in the painting. He shows the ruin as a dead artifact. Also in this painting Kiefer demonstrated his affirmation strategy, confronting the artist as well as the viewer with a taboo subject in the post-war Germans' conscience (Louisiana Undervisning 2011).

By identifying "memorial sites", Gedenkstätte, post-war Germany has been able to make the reckoning with the near past in a concrete way. The Historical struggle 1986/1987 among the historians about their responsibilities regarding their disastrous past became an important discourse for establishing the contemporary history as an important part of the

late modern German (legal) identity. Especially within the law the discourses regarding “Hitler’s Justice” (Ingo Müller, 1991) resulted in a special subdivision within legal history – *Juristische Zeitgeschichte* (Stolleis, 2014).

A contemporary *memorial site* is the restored Parliament Building in Berlin, conquered as a site for democracy after the German reunification 1990, restored after having been laid totally in ruins 1945. In one of the towers of the parliament building Anselm Kiefer in 1998 created a painting “*Only with wind, with time and with sound: Hommage à Ingeborg Bachmann*”. The painting shows a totally eroded mudbrick tower in Mesopotamia, and in the upper part of the painting the quoted line from Ingeborg Bachmann’s poem “Exil” is transcribed.

“Only with wind, with time and with sound” associates to symbols of power and how the tower of Babylon demonstrated the hubris of human beings and their overestimation of pretended possibilities.

Kiefer has stated that in this painting he emphasized the mud of the remains of the tower, which in process of many centuries has fallen into ruins, the fugitive and instant occurrences that wind, time and sound represent, and he makes it so evidently, that the apparently solid and fugitive are equals in front of the eternity.

Kiefer urges the viewer to accept the temporal fugitive character of passing actions and plans, especially important in the German parliament building where the daily staging of power and feasibility is present (<http://kunst-magazin.de/blog/page/191>).

In his works Kiefer has a special relation to the ruin as a process: “What interests me is the transformation, not the monument. I don’t construct ruins, but I feel ruins are moments when things show themselves. A ruin is not a catastrophe. It is the moment when things can start again.” (Schwartz 2012).

In an interview at Louisiana Art Museum the artist explained his relation to religion. To Kiefer art can be defined as a quasi-religious phenomenon. When he was nine years old he as a Catholic took his first communion. He still looks upon this event as a crucial moment in his life. He expected an illumination, but it didn’t happen. Instead he learnt from that experience that instead you get this quasi-religious form of illumination the moment when he creates art. Those moments are spiritual to him. Art connect things, which are separated. Art is the only way to connect sciences, he argues. The scientific specialists only way to have contact is by the art. Art as mystery connects (Louisiana Museum).

Kiefer began to study law but turned over to art. Nonetheless his paintings connect the historical perspective with that of law and justice. Duncan Kennedy has identified the period after 1945 as a human rights paradigm dominated by democracy, rights, rule of law and constitutional law (Kennedy 2006). Consequently Anselm Kiefer has used the Rumanian Jewish poet Paul Celan (1920–1970) and his famous poem *Death Fugue*, “Todesfuge” (1948) to investigate the horrors of the Holocaust. When he from the late 1960ies provocatively expressed his tries to come to terms with the past by identifying the dialectical relation between the German and the Jewish, he used Celan’s metaphor, the two women Margaret (from Goethe’s *Faust*) and Sulamith (from the Song of Solomon in the Old Testament) (Buhl 2010, 99). Margret with her golden hair, Sulamith with her ash-grey hair appeared in a couple of his paintings 1980 (Buhl 2010, 103). Even if German and Jewish culture couldn’t be integrated in the fateful modern German history it will forever be unified in an involuntarily traumatic complex of guilt (Buhl, 2010, 103). War and Holocaust in Kiefer’s works don’t represent any romantic landscape under subjective reflection. In his paintings the landscape is transformed into a functional sterile military terrain, a memory site, where the tracks are transformed into a metaphor for transportations of Jews leading to the black hole in modern history, which can’t be painted (Buhl 2010, 104). His landscapes are painted without possibilities for human dignity life to survive, the “*Unrechtsstaat*” as an apocalypse. If Friedrich’s ruins after all can be interpreted as *living ruins*, Kiefer’s apocalyptic ruins give no space for such an interpretations. They are dead, sterile and just – memory sites.

Also the ruin as metaphor is evident in Kiefer’s works. In Sophie Fennies’ film “*Over your cities grass will grow*” Kiefer has skillfully demonstrated his use of this metaphor. In his studio in southern France he created his works as a “ruination” with references to Friedrich’s use of ruins in his art (Art 2011).

Conclusion: “Art will survive its ruins” (Kiefer 2010)

Art is a great communicator to the relation between law and the past. As the past is in focus to romanticism, this period is a great period for an investigation of this relationship. Caspar David Friedrich in the early 19th century and Anselm Kiefer two centuries later are involved in discourses on the reckoning with the past in very different contexts.

Both of them have a fascinating relation to metaphysics. To Friedrich nature was a part of the creation, his Christian faith was an important part of his art. Friedrich’s friend Karl Schildener embraced also this metaphysical approach – also to the law. Law was defined in a broader organic sense, not directly with legislative power. In his post-modern

historical paintings Kiefer has a similar approach. When Kiefer is reckoning with the past, he involves the viewer in his discourse on collective memory and guilt. With help of his infertile ruins and landscapes the viewer can identify the consequences of the historical past. Kiefer has in an interesting way worked with historical motives from the vulnerable 20th century and conceptualized the law and legal culture within his paintings.

If history by Friedrich was a motive for inspiration, by Kiefer history it's used as an argument not only for a moral reflection but also for a visualization of the consequences of the *illegitimate state*, der *Unrechtsstaat*. Constitutional perspectives are embedded in Kiefer's art. He demonstrates the manifest impacts of state power in relation to individual power: Totalitarianism in relation to democracy and human rights. Even if Kiefer is very modern and even to some extent avant-garde in his art his paintings also can be interpreted as related to the late modern legal culture, in which e.g. constitutionalism, justice and human rights are important key-words.

In Kiefer's paintings there is also a quasi-religious message on the need for a *civil religion* to uphold a modern society. Friedrich found his inspiration in the renaissance, Kiefer in the values identified in the pre-modern society, before the world catastrophes of the 20th century took place during the Great wars.

The two artists also used the constructs of time and space when they brought their messages to their viewers. Both of them make use of legal as well as historical metaphors for how to interpret our relation to history and the past.

Since the European legal profession appeared in the middle ages there has been a close relation between law and art. Art expressions have been exhibited in legal life and legal culture. But, as this article would like to articulate, art can also appear immanently or be embedded in legal contexts. Law and art can – as in the metaphysics of Caspar David Friedrich and Anselm Kiefer – interact and intertwine, telling us that not only art but also law is created within a historical process. This comparison between the legal cognitive structures of the early 19th and 21st centuries with their similar use of metaphors in relation to art indicates the hypothesis of this article: Romanticism is to be seen within the European legal culture also in the 21st century!

Let me conclude with a caveat: The methodology of comparative legal history has (at least) one major problem. Comparing different time periods means a comparison of different contexts and also different meanings of terms and concepts. Comparisons of time therefore have to be looked upon from a metaphorical perspective.

Universal legal metaphors were used by the jurists of the 19th century. They created the metaphor *legal sources* to describe the instruments to find the written as well as the natural law and the living customary law. In the more or less transparent legal cultures in the early 21st century the legal sources again are not only universal (e.g.international public law) but also traditional customary law (e.g.indigenous law).

This article has tried to demonstrate the relationship between law and art within two different cognitive systems and also different contexts. The romantic era of the early 19th century became a contra-force to the rationalism of the French Enlightenment. The neo-romantic trends within current legal scholarship can also be related to an earlier paradigm: The realistic, pragmatic and positivistic modernity of the 20th century. Both contra-forces are of importance for the artists chosen for this article, Caspar David Friedrich and Anshelm Kiefer – and also for the jurists in their individual paradigm.



Caspar David Friedrich, Monastery Graveyard in the Snow, (Klosterfriedhof im Schnee), 1817/1819. Formerly Nationalgalerie, Berlin. SMB ZA, V/Künstlerdokumentation, Friedrich, Caspar David



Anselm Kiefer, *Heroic Symbol III*, (*Heroisches Sinnbild III*), 1970. Würth Collection, Künzelsau (Inv. 11571)

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