

ABSTRACT

The Old-Law Tradition in Württemberg, 1770–1870

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'The Old-Law tradition in Württemberg, 1770-1870' is the history of an intellectual tradition that was predominant in the constitutional thought of the German state of Württemberg. This tradition, somewhat similar to American Republicanism, was first formed into a coherent and self-conscious intellectual system by Johann Jacob Moser in reaction to the threat of the Enlightenment. The Enlightenment, Old-Law thinkers feared, rejected old rights and limitations of government but was, since it rejected all particulars, unable to replace them, and thus would lead to unlimited government and unstrained rule of greater force. The Old-Law tradition, however, was not only conservative, but, owing to its Pietist roots, also progressive. It was able to fuse these conservative and progressive tendencies through the notion of the reformation of the constitution, *i. e.*, bringing it back to its roots by adapting it to changed circumstances.

When King Frederick abrogated the old constitution during the Napoleonic Wars and later tried to replace it with a new one, this synthesis of conservatism and progress disintegrated. Old-Law thinkers, fearing that once the unilateral abrogation of contractual constitution was permitted no right would be safe any more, shed ideals of progress and demanded the Old Law's full restoration. Another group of Württembergers responded to this turn with a developmental philosophy intended to make right and progress compatible again, culminating in

Hegel's *Philosophy of History*. They achieved this new synthesis by moving the restoration of right, which the Old-Law tradition held would be achieved on Judgment Day, back into time through the action of Providence.

In 1819, Württembergers concluded a new contractual constitution with their King. Robert von Mohl brought this new constitution into a legal system by adapting American Federalism to constitutional monarchies and coined the term '*Rechtsstaat*' for this system. Over the course of the nineteenth century Old-Law thought ebbed, but came back vigorously when right was once more challenged by military expansion in the German Wars of Unification. 'The Old-Law tradition in Württemberg' traces these intellectual developments and poses important questions about their contemporary significance.