Contents

1	Introduction	1
	1.1 "Life" – a socio-cultural theme at the beginning of the 20th century	1
	1.2 A living topic	7
	1.3 The life of this study – a brief overview	11
2	Some Methodological Reflections	13
	2.1 Introduction	13
	2.2 The historical aspect: Understanding and interpreting legal pasts	15
	2.3 The comparative aspect: Analogical comparisons and actual influences	20
	2.4 The legal aspect: Selection of texts and construction of contexts	24
3	Germany: Sovereign Life and Bare Power?	27
	3.1 Introduction	
	3.2 The backdrop: Germany in an age of transition, 1871–1918	29
	3.2.1 The rise of the interventionist state	29
	3.2.2 Legal paradigms in "the private law society"3.2.3 Carl Friedrich von Gerber and Paul Laband:	34
	The separation of "law" and "life (I)	37

	3.2.4	Hans Kelsen: The separation of "law"	
		and "life" (II)	42
	3.3 Crisis	s and criticism, ca. 1900–1933	50
	3.3.1	Counter-voices in the Imperial years and the convulsions around 1900	50
	3.3.2	A contextualizing detour: free law movement and jurisprudence of interests	54
		The Weimar context: Germany in a state of crisis	62
	3.3.4	Erich Kaufmann: Neo-Kantianism as a dead end	68
	3.3.5	Rudolf Smend: Approximation of "law" and "life" through the concept of integration	75
		Heinrich Triepel: Approximation of law and the life of politics	84
	3.3.7	Carl Schmitt: Transformation of "law" into "life" through decisions	98
	3.4 Brief	summary	117
4	The Uni	ted States: A Government of Life?	119
	4.1 Introduction		
	4.2 The backdrop: The United States in an age of transition, 1870–1900		
	4.2.1	Industrialisation of society and modernisation of the legal system	121
	4.2.2	Constitutional law: The Fourteenth Amendment and the infamous due process	
	423	of law A bird's view on some of the legal thinkers	129
	1.2.3	in the period: Christopher Columbus Langdell and James C. Carter	135
		and James C. Carter	100

	4.2.4	A bird's view on constitutional scholarship in the period: Thomas M. Cooley and		
		Christopher G. Tiedeman	142	
	4.3 Crisis	s and criticism, ca. 1900–1937	149	
	4.3.1	Oliver Wendell Holmes: Experience as the life	149	
	432	of the law Roscoe Pound: "Law" and "life" as a question	149	
	7.5.2	of continuity and change (I)	154	
	4.3.3	Benjamin N. Cardozo: "Law" and "life" as a		
		question of continuity and change (II)	161	
		Felix Frankfurter: Law as the reading of life	166	
	4.3.5	Legal realism and its context: The		
		Restatement Project and proposals for		
		educational reform	169	
	4.3.6	Karl N. Llewellyn: In the Beginning was		
		Behaviour	175	
		Jerome Frank: In the Beginning was Certainty	182	
	4.3.8	"The Living Constitution" and the Supreme		
		Court's volte-face	186	
5	Ideas of	what it means to live: some reflections	195	
	5.1 Intro	duction	195	
	5.2 The rational life of the law			
	5.3 A tal	e of two legal cultures – the debates compared	202	
Sc	urces		209	