The Chancellor: a few historical highlights on the development of the person and the office from ancient times to the Middle Ages and the Zenden Republic of Valais

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1. *The Chancellery: the oldest body of the Confederation*

1.1. The Act of Mediation of 1803

The Federal Chancellor has existed as an administrative official since NAPOLEON'S Act of Mediation of 1803[1]. The Federal Chancellery was the first permanent official institution of the Confederation. At first glance this may seem astounding but a closer look at historical facts explains how this developed.

1.2. Chief of Staff, not a government leader: how history determined the differences between Switzerland and neighboring countries

The Federal Chancellor of Switzerland is not to be confused with those in the two federated states on the borders of Switzerland: Germany and Austria. The Swiss Federal Chancellor is not the head of a government[2], but the Chief of Staff of the government[3]. The difference arises from historical circumstances. The German and Austrian chancellors originally served as counterweights to the power of the emperor[4]. From this they became the exclusive natural heirs of government power after the Kaisers disqualified themselves as rulers during the First World War. The federal-democratic structure of the Swiss Confederation on the other hand was fertile ground for a collegial government. The Chancellor was never thought of in terms of a counterweight to a monarchy. The collegial leadership in Switzerland always guaranteed that the heirs to power were to be found within the existing government itself.

2. *The Chancellor: the person with the world's oldest title: antiquity*

2.1. Introduction: the original significance of the office

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[1] Vgl. Mediationsakte vom 19. Februar 1803 Kap. XX: Acte fédéral de l'an 1803, art. 38; unzutreffend diesbezüglich C. FURRER: Der Kanzler im schweizerischen Regierungssystem. In: H. P. FAGAGNINI/H. WILI (Hgg.): Staatsreform wohin? Festgabe zum 65. Geburtstag von Bundeskanzler Dr. KARL HUBER. Luzern 1980, 84-92, hier: 84. - Zur Geschichte der alteidgenössischen Kanzlei bis 1848 vgl. einlässlicher in dieser Festschrift E. ADAM: La Chancellerie fédérale dans l'histoire: Aperçu sur les origines d'une institution bientôt bicentenaire.

[2] Vgl. für Deutschland: Bonner Grundgesetz Art. 65 in Verbindung mit Art. 62 und Art. 64; erheblich weniger weitgehend für Oesterreich: Bundes-Verfassungsgesetz Art. 69 und Art. 70.

[3] Vgl. Verwaltungsorganisationsgesetz vom 19. September 1978 (SR *172.010*), Art. 33 Abs. 1 in Verbindung mit Art. 38; der Entwurf des Bundesrates vom 20. Oktober 1993 zu einem Regierungs- und Verwaltungsorganisationsgesetz (RVOG) sieht diesbezüglich keine Aenderung vor: vgl. BBl *1993* III 997-1236, hier: 1227 Art. 29 Abs. 1.

[4] Vgl. etwa H. PLANITZ/K. A. ECKHARDT: Deutsche Rechtsgeschichte. 3. Auflage Graz/Köln 1971, 282f und 294; heute: Bonner Grundgesetz Art. 58; oesterreichisches Bundes-Verfassungsgesetz Art. 47 Abs. 3, Art. 67 Abs. 2, Art. 70 Abs. 1 und Art. 72 Abs. 2.

The office of chancellor, or state (or royal) scribe, developed, not without good reason, with the rise of civil service functions. As rulers extended the territory over which they reigned, they found that they had problems enforcing their power. From the moment when rulers realized that they could be overthrown by family and "friendly" vassals[5], they developed the idea of an official civil service which could be kept under a tight rein[6]. According to modern research, the development of writing was spurred for the most part by the needs of the (economic) administration[7]. Only after writing had appeared was the birth of legislation possible. The commands of the ruler were to be recorded in writing and made known throughout the kingdom. That was possible only with the aid of a suitable, i.e. rationalized script[8] and appropriate material for recording[9]. This in turn demanded people who could read and write and who were loyal to the ruler. With the expansion of the ruler's territory through military conquest came the problem of different languages and the difficulty subjects had understanding the official language of the kingdom[10]. There thus arose the need for the translation of laws into all subject languages. Except for China, which, because of the diversity of its languages, has kept its extensive script instead of individual letters to this day[11], the growth in written documents imposed a gradual stylization and simplification of the letters which expresses text using whole words[12]. In the Babylonian and Egyptian empires, it was more difficult and time consuming to write on the customary

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[5] Z.B. in China ab dem Ende des 3. Jhs v. Chr. - Aus dem Hethiterreich sind schriftlich abgefasste Vasallenverträge erhalten. Vgl. G. LIEDKE: Gestalt und Bezeichnung alttestamentlicher Rechtssätze. Eine formgeschichtlich-terminologische Studie. (Wissenschaftliche Monographien zum Alten und Neuen Testament, 39.) Neukirchen-Vluyn 1971, 28f; E. VON SCHULER: Hethitische Königserlässe als Quellen der Rechtsfindung und ihr Verhältnis zum kodifizierten Recht. In: Festschrift J. FRIEDRICH zum 65. Geburtstag. Heidelberg 1959, 435ff; E. VON SCHULER: Hethitische Dienstanweisungen für höhere Hof- und Staatsbeamte. In: Archiv für Orientforschung, Beiheft 10. Graz 1957.

[6] R. HERZOG: Staaten der Frühzeit. Ursprünge und Herrschaftsformen. München 1988, 261 und 274. - Solche Beamte konnten durchaus auch gezielt aus königlichen Sklaven, Menschen aus Unterschichten und Ausländern (vgl. Genesis 37,23-28; 39,1-41,45) rekrutiert werden (Hethiterreich, Aegypten!), und nicht selten entwickelten sich daraus nach dem Willen der Herrscher eigentliche Beamtenfamilien (Aegypten, China, Israel, vgl. Fn. 35 und Fn. 62 hiernach). - Eigentliche (Gerichts-) Landschreiberdynastien waren später in der Eidgenossenschaft festzustellen, so etwa die Zuger ZURLAUBEN im Freiamt: vgl. Die Rechtsquellen des Kantons Aargau. Zweiter Teil: Die Rechte der Landschaft. Achter Band: Die Freien Aemter I. Die Landvogteiverwaltung bis 1712. Bearbeitet von J. J. SIEGRIST. (Sammlung Schweizerischer Rechtsquellen, II/8.) Aarau 1976, 382-410 Nr. 147.

[7] Als Beispiel vgl. die Auseinandersetzung über die Frage, ob es in Aegypten angesichts der Präsenz der göttlichen Pharaonen überhaupt kodifiziertes Recht habe geben können. Verneinend J. A. WILSON: Authority and Law in Ancient Egypt. In: Authority and Law in the Ancient Orient. (Supplement to the Journal of the American oriental society, 17.) Baltimore 1954, 1ff, hier: 5f; die Widerlegung bei E. OTTO: Prolegomena zur Frage der Gesetzgebung und Rechtsprechung in Aegypten. In: Mitteilungen des deutschen Instituts für aegyptische Altertumskunde in Kairo, 14 (= Festschrift KEES). Wiesbaden 1956, 150-159, hier: 152. Zur Widerlegung vgl. auch Ziff. 2.2 *in fine* hiernach, und LIEDKE, 28f.

[8] Erfindung der Silbenschrift durch die Sumerer ca. 3000 v. Chr. (vgl. A. NEGEV [Hg.]: Archäologisches Lexikon zur Bibel. München/Wien/Zürich 1972, 336), später rationalisierende Weiterentwicklung hin zur Buchstabenschrift (vgl. HERZOG, 282-284).

[9] Stein, Tontäfelchen, Tonscherben (Οστρακα [Omicron][sigma][tau][rho][alpha][kappa][alpha]), Bronze, Holz-Wachstäfelchen (Χειρογραφα [Chi][epsilon][iota][rho][omicron][gamma][rho][alpha][phi][alpha]), Papyrus, Pergament.

[10] Nacheinander Sumerisch, Akkadisch, Elamisch, Aramäisch, Griechisch und Lateinisch: Vgl. HERZOG, 282.

[11] Bis heute kann die chinesische Schrift in Ländern mit unterschiedlichsten Sprachen verwendet werden: phonetisch jedesmal anders gelesen, bezeichnet sie stets gleichen Sinn und Inhalt. Die notgedrungene Beschränkung auf das Medium der Schrift machte aus China einen spezifisch "schriftlichen", bürokratischen Staat. Erhalten werden konnte dies angesichts der beschriebenen Umstände nur dank dem Verbleiben bei der Wortschrift. Die Beherrschung dieser Schrift und damit der Zugang zu Staatsämtern erforderte jahrelanges Studium, welches somit fast nur den Söhnen arrivierter, zumeist bereits beamteter Väter möglich war. Beamtendynastien waren unausweichliche Folge: vgl. HERZOG, 283.

[12] Einen guten Ueberblick über diese Entwicklung im altorientalischen Raum geben G. CORNFELD/J. BOTTERWECK (Hgg.): Die Bibel und ihre Welt. Bd. 1. (dtv, 3092.) München 1972, 57-77.

clay tablets[13] than on expensive papyrus[14], parchment[15] and foldable wood and wax tablets (Χειρογραφα [Chi, epsilon, iota, rho, omicron, gamma, rho, alpha, phi, alpha]) in Rome; on Greek, Hebrew or Egyptian shards (Οστρακα [Omicron, sigma, tau, rho, alpha, kapa, alpha]) or even on today's paper. To chisel all the laws[16] and inscriptions[17] into stone required an enormous amount of time[18]. The significance of the chancellor's office and an estimation of the difficulties of definition must also take into account the fact that a separation of powers as we know it today naturally did not yet exist[19].

2.2. Court scribes in ancient Egypt

References to a kind of state scribe have been found in studies of the Hittites[20] and Assyrians[21] 21 as well as of various Ugaritic[22] and many late Phoenician[23] civilizations. We

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[13] Vgl. etwa die Amarnabriefe, d.h. die internationale Korrespondenz der Pharaonen ECHNATON (= AMENOPHIS IV., 1374-1347 v. Chr.) und THUTANCHAMUN (1347-1338 v. Chr.) und anderer, aber auch bereits die ersten akkadischen Gesetze von Eschnunna ("*Codex Bilalama*", um 1900 v. Chr.).

[14] Vor allem in Aegypten gebräuchlich, vgl. eine aegyptische Prozessurkunde auf dem Berliner Papyrus 9010 von etwa 2300 v. Chr.

[15] Vor allem im hellenistischen Pergamon wurde Eselsleder verwendet, vgl. ein aegyptisches Fragment der Florentiner Handschriften der Digesten sowie von GAJUS: Institutionen.

[16] Z.B. den akkadischen Codex HAMMURAPIS (1729-1687 v. Chr.) von Babylon; Gesetze von Gortyn auf Kreta um 450 v. Chr.

[17] Vgl. so noch ein römisches *Codicillum* von 175 n. Chr. (V. ARANGIO-RUIZ [Hg.]: Fontes Iuris Romani Anteiustiniani [FIRA]. Bd. III: Negotia. 2. Auflage Firenze 1968, 56), die in Bronze eingegossenen Erlasse (vgl. aus der Zeit der römischen Republik die *Lex Rubria de Gallia cisalpina* [vermutlich zwischen 49 und 42 v. Chr.] über die Zivilgerichtsbarkeit im Pogebiet [S. RICCOBONO {Hg.}: FIRA Bd. I: Leges. Firenze 1941, 97ff und 169ff]) oder die 1929 nordöstlich des Theaters in Korinth entdeckte antike *Erastus-Inschrift*, die für die Aufnahme eines Bronzegusses in Stein gemeisselt worden war (vgl. W. ELLIGER: Paulus in Griechenland. Philippi, Thessaloniki, Athen, Korinth. [Stuttgarter Bibelstudien, 92/93.] Stuttgart 1978, 227-230).

[18] Zum Schreibmaterial vgl. etwa E. SEIDL: Römische Rechtsgeschichte und römisches Zivilprozessrecht. Köln/Berlin/Bonn/München 1962, 13-17 Randziffern 30-39; NEGEV, 37 und 162.

[19] HERZOG, 259 und 275.

[20] Vgl. HERZOG, 257 und 259: "Tafelschreiber" und *tartēnu* (= der Folgende, der zweite Mann, seit König SUPPILULIUMAS I. [1385-1345 v. Chr.]); vgl. mit weiteren Hinweisen U. RÜTERSWÖRDEN: Die Beamten der israelitischen Königszeit. (Beiträge zur Wissenschaft vom Alten und Neuen Testament, 117.) Stuttgart 1985, 127; A. F. RAINEY: The social stratification of Ugarit. Diss. Brandeis University 1962, 106. - Dagegen dürfte der *irnanna* sumerisch-akkadischer Staaten des 3. Jahrtausends v. Chr. (seit der 3. Dynastie von Ur) eher einem Regierungschef vergleichbar gewesen sein.

[21] Vgl. 2. Könige 18,17: *tartan* (= Schreiber), der jedoch wiederum eher dem Grosswesir (= Regierungschef) vergleichbar war: HERZOG, 257-259.

[22] Kolophon 62. - In den Schlussklauseln mancher Rechtsurkunden aus Ugarit garantiert der König des Stadtreiches die Unanfechtbarkeit einer Entscheidung und droht für den Fall ihrer Anfechtung der widerspenstigen Partei hohe Geldstrafen an: vgl. etwa *Palais royal d'Ugarit (PRU).* Paris 1956ff, Bd. III, S. 33 (*16*.129 und 144), 34 (*8*.207), 37 (*15*.81; *16*.287), 43 (*16*.270), 53 (*15*.89), 55 (*15*.92), 60 (*16*.141), 65 (*16*.200), 75 (*16*.344), 81 (*16*.239), 98 (*16*.249), 144 (*16*.353), 170 (*8*.279); dazu G. BOYER: Etude juridique. In: *PRU* III 281ff, hier: 286ff; RÜTERSWÖRDEN, 126f; LIEDKE, 28f. - Ursprünglicher Arbeitsbereich des ugaritischen Stadtreichsschreibers müssen aufgrund der Kolophone Abschrift und Pflege von Texten über Baalsmythen gewesen sein (vgl. M. DIETRICH/O. LORETZ/J. SAMMARTIN [Hgg.]: Die keilalphabetischen Texte aus Ugarit einschliesslich der keilalphabetischen Texte ausserhalb Ugarits. Teil I: Transscription. [Alter Orient und Altes Testament. Veröffentlichungen zur Kultur und Geschichte des Alten Orients und des Alten Testaments, 24/1.] Kevelaer/Neukirchen-Vluyn 1976, *6* VI 54; *17* VI 56; *4* VIII 49 und *16* VI 59). Der ugaritische Stadtschreiber dürfte u.a. vom Oberpriester (*rb khn*) ausgebildet worden sein (vgl. RAINEY, 107f). Spätestens seit dem Schreiber ILIMILKU, dessen Abschriften erhalten sind, gehört auch die internationale Korrespondenz zu den Aufgaben des ugaritischen Stadtreichsschreibers. Innerhalb der Schreiber gab es Abstufungen (*šamaš-šarru*, *tupšarru emqu*, *sukallu*) mit einem Vorsteher (*rb spr*): vgl. DIETRICH/LORETZ/SAMMARTIN I, *75* 10.

[23] J. EUTING: Sammlung von karthagischen Inschriften. Strassburg 1883, 61; *Corpus inscriptionum semiticarum*. Paris (I-III) 1881-1885, 86A,14; 154; dazu M. DELCOR: Le personnel du Temple d'Astarté à

also find a distinctive form of the function primarily in Egypt. At the time of the New Kingdom (1552-1070 B.C.) we frequently come across the title "court scribe", either as a separate function or together with other duties. What is peculiar is that in Egypt, in contrast to Mesopotamia[24] and also to the Israel of the Old Testament[25], no written sources of any kind reflect expressions of an opposition to the monarchy, an opposition which certainly must have existed at the time. In Egypt, writing may have been an exclusive instrument of the pharaoh and his court[26]. Some royal scribes also had the highest duties to perform and they were expected to participate in general affairs of state. During the 13th Dynasty (1800 B.C.) the so-called "Scribe of the Royal Documents" was one of the four guardians of the seal. During the reign of RAMSES IX (end of 12th century B.C.), the vizier, i.e. the royal palace administrator *[mr pr]*[27], the "court scribe" (sš) and the herald, i.e. messenger *[whm.w],* named in that order, headed the investigation into the serious affair relating to the plundering of the pharaoh's monument. The "court scribe" transcribed the grand edict of HOREMHEB (around 1329-1306 B.C.) against abuses in tax collection based on the direct words of the pharaoh. It is an edict which can be seen today on a stele at the Temple of Karnak[28].

2.3. State scribes in the Israel of the Old Testament

The Egyptian influence on the organization of Israel's administration must have been considerable.

This can be seen *firstly* in the provisions for the most important administrative officials[29]. Except for the expansion of the administration[30] under King SOLOMON, which later largely disappeared with the splitting up of the kingdom, Israel's administrative structure under King DAVID consisted of a circle of ministers who were both "servants" of the king and "leaders" *[*שרים = *sarim]* of the people[31]. Of those, there were probably two officials in King DAVID's court and three in SOLOMON's who were of central importance. They were, in order

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Kition d'après une tablette phénicienne (*Corpus Inscriptionum Semiticarum*, 86 A et B). In: Ugarit-Forschungen *11* (1979) 147-164, hier: 160f.

[24] Dazu vgl. *La voix de l'opposition en Mesopotamie.* Colloque organisé par l'Institut des hautes études de Belgique, le 19 et le 20 mars 1973. Bruxelles 1973.

[25] F. CRÜSEMANN: Der Widerstand gegen das Königtum. Die antiköniglichen Texte des Alten Testaments und der Kampf um den frühen israelitischen Staat. (Wissenschaftliche Monographien zum Alten und Neuen Testament, 49.) Neukirchen-Vluyn 1978, 19-84, hat nachgewiesen, dass die schärfsten herrschaftskritischen Passagen aus der Zeit der Staatsbildung stammen und die Opposition gegen DAVID und SALOMO reflektieren. Vgl. auch J. ASSMANN: Politische Theologie zwischen Aegypten und Israel. (Carl Friedrich von Siemens-Stiftung: Themen, 52.) München 1992, 72f.

[26] So in Frageform ASSMANN, 42.

[27] Genesis 41,40-44; 45,8.

[28] Vgl. R. DE VAUX: Das Alte Testament und seine Lebensordnungen. Bd. I: Fortleben des Nomadentums. Gestalt des Familienlebens. Einrichtungen und Gesetze des Volkes (=*AT*). 2. Auflage Freiburg im Breisgau/ Basel/Wien 1964, 213f; SEIDL, 33f Rz. 80.

[29] R. DE VAUX: Titres et fonctionnaires égyptiens à la cour de David et de Salomon. In: Revue Biblique *48* (1939) 394-405.

[30] Vgl. 1. Könige 4,1-19; 5,17.

[31] 1. Könige 4,1. - Das hebräische *sar* entspricht dem akkadischen *šarru* = König (vgl. dazu Fn. 22 hiervor), bezeichnet aber im Alten Testament bei aller Differenzierung nicht selbständige Herrscher, sondern amtlich beauftragte Befehlshaber. In 1. Könige 4,1 geht es um die Bezeichnung der höchsten Staatsämter; vgl. M. NOTH: Könige. 1. Teilband: I Könige 1-16. (Biblischer Kommentar Altes Testament, IX/1.) 2. Auflage Neukirchen-Vluyn 1983, 63. - Vgl. ferner RÜTERSWÖRDEN, 128: die dem hebräischen *sôfēr hammelech* ähnliche Bezeichnung *tupšar šarri* findet sich in den Jerusalemer (und nur in diesen!) Amarnabriefen *286*,61; *287*,64; *288*,62; *289*,47; ferner vgl. T. N. D. METTINGER: Solomonic State Officials. (Coniectanea biblica, 5.) Lund 1971, speziell 19-51.

of significance, the state secretary (Egyptian *sš)* and the herald[32], over whom the palace governor later may have had precedence[33]. The three positions existed up to the end of the monarchy (beginning of the 6th century B.C.). In 701 B.C., these three officials, the palace governor, the state secretary and the herald, were delegated to take part in the negotiations with RAB SCHAKE, the plenipotentiary of the Assyrian king SENNACHERIB[34].

A *second* indication of the Egyptian influence is the fact that various office holders may have had Egyptian or Hurrian names[35].

A *third* indication is also the similarity certain titles had with those in official Egyptian correspondence[36]. This should come as no surprise given the parallel between the work of the Egyptian and Israelite officials[37].

The young Israelite monarchy may also have hired a number of its officials from neighboring countries which already had administrative experience. In any case it based its administration structure on the Canaanite[38] and foreign models[39]. Basic requirements such as the ability to write, familiarity with legal matters and a mastery of a wide range of languages meant that the office of scribe was a lifetime position and to a certain extent, an inherited one, passed on from father to son[40].

The royal scribe (סופר המלך = sôfēr hammelech[41] = *qui ab epistolis est*) is, in the Old Testament, a permanently-appointed[42], literate[43], and for the most part legally-skilled[44]

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[32] Zu diesen beiden Funktionen vgl. J. BEGRICH: Sopher und Mazkir. Ein Beitrag zur inneren Geschichte des davidisch-salomonischen Grossreichs und des Königreiches Juda. In: Zeitschrift für alttestamentliche Wissenschaft *58* (1940/41) 1-29.

[33] DE VAUX, AT, 206, 211f und 213; Palastvorsteher SCHEBNA wird Ende des 8. Jh. v. Chr. zum Staatssekretär zurückgestuft (Jesaja 22,15-22; 36,3), vermag sich dann aber auf diesem zweitwichtigsten Posten zu halten (2. Könige 18,18.37; 19,3; Jesaja 22,15; 36,3); anderer Meinung freilich H. L. GINSBERG: Gleanings in First Isaiah: VI. The Shebna-Eliakim-Pericope, 2:15-25. In: M. M. KAPLAN Jubilee Volume. 1953, 252-257.

[34] 2. Könige 18,18.37; 19,2; Jesaja 36,3.11.22; DE VAUX, AT, 210 und 214; RÜTERSWÖRDEN, 126.

[35] Vgl. so DE VAUX, AT, 209; A. CODY: Le titre et le nom propre du scribe de David. In. Revue biblique *72* (1965) 381-393; 1. Chronik 8,16: Unter König DAVID der Staatsschreiber SCHISCHA oder SCHAWSCHA (1. Chronik 18,16); unter König SALOMO dessen Söhne ELICHOREF BEN-SCHISCHA und ACHIJA BEN-SCHISCHA (1. Könige 4,3). - Anderer Ansicht jedoch mit meines Erachtens überzeugenden Gründen diesbezüglich NOTH, 56 und 63f; ebenfalls mit Zweifeln RÜTERSWÖRDEN, 128.

[36] Vgl. Jesaja 22,15 סכן = sôkēn für Palastvorsteher, was dem ugaritischen *skn* (Praefekt, Inhaber des höchsten Staatsamtes, "Aussenminister" und "Staatsanwalt" in einem; vgl. Beispiele bei DIETRICH/LORETZ/SAMMARTIN, III, *1* 8; IV, *36* 3; IV, *68* 63; IV, *102* 17; IV, *110* 2; IV, *132* 5; IV, *165* 1; IV, *184* 4; IV, *357* 30; IV, *361* 1; IV, *410* 33; IV, *635* 8ff) oder dem akkadischen *šaknu*, *sakânu ana* oder *šakin mâti* in der Pharaonenkorrespondenz (zum Beispiel Amarnabriefe *285*,24.86; *286*,17.48; *287*,34.45.52; *288*,19.59) entsprechen könnte. Vgl. DE VAUX, AT, 212; zurückhaltender H. WILDBERGER: Jesaja. 2. Teilband: Jesaja 13-27. (Biblischer Kommentar Altes Testament, X/2.) 2. Auflage Neukirchen-Vluyn 1978, 835f und 844f; RÜTERSWÖRDEN, 115-119; M. LIVERANI: Histoire (Ras Shamra II). In: Dictionnaire de la bible. Supplément. Paris 1928ff, Bd. 9, Sp. 1295-1348, hier: Sp. 1337.

[37] DE VAUX, AT, 211; NOTH, 63.

[38] Vgl. mit Belegen RÜTERSWÖRDEN, 126-130.

[39] DE VAUX, AT, 209. - Vgl. zur Erklärung nur Genesis 41,40-44 und 45,8 (JOSEPH als *Wesir* = Palastvorsteher des Pharao!). - Unzulässig ist hingegen die Konstruktion einer Abhängigkeit des hebräischen *Sôfêr* vom akkadischen *šâpirum*: vgl. mit eingehender Begründung METTINGER, 35f; RÜTERSWÖRDEN, 129 Fn. 129.

[40] Vgl. so auch NOTH, 63. - Beispiel vgl. Fussnote 35 hiervor.

[41] 2. Könige 2,11 und parallel 2. Chronik 24,11. Dies mag ursprünglich der volle Titel des Staatsschreibers gewesen sein; doch findet sich auf den bisher gefundenen Siegeln mit der Amtsbezeichnung "Staatsschreiber" stets nur die Inschrift "הספר = *hassôfêr*": vgl. RÜTERSWÖRDEN, 27 und 125; METTINGER, 20.

[42] Vgl. Nahum 3,17.

[43] Der in der Masora (d.h. der hebräischen Fassung des Alten Testamentes) für den Staatsschreiber an allen hier zitierten Stellen ausnahmslos verwendete hebräische Ausdruck סופר = sôfēr bedeutet in seiner Wurzel

"state secretary"[45] who copied texts in the name of the king[46], who dealt with the domestic and foreign correspondence of the king[47], read[48] and interpreted[49] legal scrolls, carried out certain fiscal tasks[50] such as the collecting and recording of temple contributions according to an edict of King JEHOASH (835-796 B.C.) in Judah and levied recruits for the army[51]. Moreover, the Israelite state scribe must have had considerable responsibility keeping records concerning the traditions of the people and writing historical texts[52]. The office of state scribe was an indispensable one for the government and the person holding that office had a considerable role to play in public affairs in Judah[53].

The Judean state scribe had his own offices. In the chancellery of the state scribe ELISHAMA, Judean high officials gathered for their meetings. It was here that the pronouncements of the prophet JEREMIAH were presented[54]. Shortly before the fall of Jerusalem, during the siege by the Babylonian leader NEBUCHADNEZZAR (587 B.C.) a public prison was set up in the house of the state scribe JEHONATHAN[55].

The Septuagint[56] describes the function of state scribe with few exceptions this way: Γραμματευς (gamma, rho, alpha, mu, mu, alpha, tau, epsilon, upsilon, varsigma) sometimes with an additional description[57]. Only the prophet NAHUM describes the function Συμμικτος (sigma, upsilon, mu, mu, iota, kappa, tau, omicron, varsigma). Similarly, the Vulgate[58] as a rule describes the state scribe function as *scriba*[59]. While the Hebrew term סופר = *sôfēr* means both "literate, versed in law and well read", the Vulgate cannot fall back on such a play on words. It translates this simply with *litteratus*[60]. The French translation of סופר = *sôfēr* is interesting. The word *secrétaire* is usually used to describe the historical

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zugleich Buch ספר = Séfær. Der Ausdruck begegnet im Alten Testament 54 mal; doch handelt es sich dabei nur dort um den Staatsschreiber, wo der *sôfēr* auch ein שר = sar (Führer) ist (2. Samuel 8,17; 20,25; 1. Könige 4,3; 2. Könige 12,11; 18,18.37; 19,2; 22,3.8.9.10.12; 1. Chronik 18,16; 2. Chronik 24,11; 34,15.16.18.20 [vgl. auch V. 8]; Jesaja 36,3.22; 37,2; Jeremja 36,10.12.20.21; 37,15.20; vgl. METTINGER, 19f).

[44] Vgl. Esra 7,6.12.21.

[45] Vgl. zu den Wortbedeutungen W. GESENIUS: Hebräisches und aramäisches Handwörterbuch über das Alte Testament. 10. Auflage Leipzig 1886, 585; J. KÜHLEWEIN: Séfær Buch. In: E. JENNI/C. WESTERMANN [Hgg.]: Theologisches Handwörterbuch zum Alten Testament. München/Zürich 1976, 162-173.

[46] Vgl. Jeremja 8,8; Ezechiel 9,2.3; Psalm 45,2. - Dies machte die Kenntnis fremder Schriftarten und Sprachen nötig; infolgedessen erweiterte sich der Aufgabenkreis des Staatsschreibers mit dem Ausbau der internationalen Beziehungen Israels unter SALOMO beträchtlich: An die Stelle des einzigen Staatsschreibers unter DAVID treten bei SALOMO deren zwei (vgl. Fn. 35 hiervor).

[47] DE VAUX, AT, 213.

[48] Vgl. 2. Könige 22,8.10; 2. Chronik 34,15.18.20f; Nehemia 8,8.

[49] Nehemia 8,8.

[50] 2. Könige 12,10f; 22,3f.9; 2. Chronik 24,11; 34; ferner Esra 7,21; Jesaja 33,18; dazu RÜTERSWÖRDEN, 125f. - Vgl. heute das deutsche *Buch*halter, *Buch*führung.

[51] Vgl. Jeremja 51,27.

[52] Dies ergibt sich aus dem gesamten chronistischen Geschichtswerk im Alten Testament. Vgl. so auch RÜTERSWÖRDEN, 130.

[53] DE VAUX, AT, 213; als Beispiel vgl. etwa 2. Könige 22,12.14.20 mit 23,1-20.

[54] Jeremja 36,12.20.21; DE VAUX, AT, 213; zur Lokalisierung vgl. K. GALLING: Die Halle des Schreibers. In: Palästinajahrbuch *27* (1931) 51-57; anders METTINGER, 33f. - In Jeremja 36,10 hingegen bezieht sich *sôfêr* nicht auf ELISCHAMA, sondern auf SCHAPHAN BEN-AZALJA; vgl. W. RUDOLPH: Jeremja. (Handbuch zum Alten Testament I/12.) 3. Auflage Tübingen 1968, 230 und RÜTERSWÖRDEN, 126 Fn. 108; anderer Ansicht METTINGER, 32.

[55] Jeremja 37,15.20; DE VAUX, AT, 213; RÜTERSWÖRDEN, 126.

[56] Septuaginta (LXX) heisst die im 3. Jh. v. Chr. entstandene *griechische* Fassung des Alten Testamentes.

[57] 2. Könige 12,11; Psalm 45,2; Jeremja 8,8; Esra 7,6.12.21.

[58] Lateinische Uebersetzung des Alten Testaments.

[59] Ausnahmen sind Ezechiel 9,2.3 (*altramentarium scriptoris*) und Nahum 3,17 (*parvuli*!).

[60] 1. Chronik 27,32f; Jesaja 33,18.

functions of state scribe, occasionally with additional words. This is in keeping with all other languages[61]. On the other hand, literate is translated as *homme de savoir* (a man of learning) and in JEREMIAH 8:8 as well as EZRA 7:6.12.21 the translation *scribe* is used. Finally, there are two striking variations. In Psalm 45:2 סופר = *sôfēr* is described as *writer* and the prophet NAHUM (3:17) uses *chefs* (cf LXX and the Vulgate).

During the time of the united kingdom (the northern kingdom of Israel and the southern kingdom of Judah) under King DAVID (ca. 1010-970 B.C.) and SOLOMON (ca. 970-931 B.C.)[62] as well as for the southern kingdom alone[63], following the breakup (931 B.C.) and the conquest of the northern kingdom of Israel by the Assyrians (722 B.C.), the Old Testament mentions various people who were state scribes.

2.4. The chancellery in the development of the Achaemenian civil service of Persia

The Persians had hardly emerged from their nomadic existence, when King DARIUS I (521-486 B.C.) probably made the fundamental decisions concerning the setup of the first royal administration with which we are more closely acquainted. The administration was that of the Persian kingdom of the ACHAEMENIANS which was likely modelled along the lines of the Babylonian and Assyrian structures. Heading the Persian civil service was a permanently-appointed "court marshal" who managed the appointments of the king, arranged audiences and with the help of his staff organized the implementation of royal decisions. He was probably one of the seven members of the "royal court council"[64]. Beneath this government level, the administration consisted of an economic administration, an administration of royal property and a court chancellery. The latter was responsible for the royal post and the dissemination of royal edicts and decrees. The official language was Elamite up to 448 B.C. and Aramaic afterwards. The more important royal acts however must have been translated into the languages of the subjects of the king, including Greek, to assure that the decisions of the king were executed. The satraps, or provincial governors, also had their chancelleries[65] whose secretaries were named by the king to control the satrap and to guard against threats to local power[66].

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[61] *Secrétaire du roi* 2. Samuel 20,25.

[62] Staatsschreiber des Gesamtreiches waren unter König DAVID: SERAJAH (2. Samuel 8,17) = SCHAWSCHA (1. Chronik 18,16) bzw. SCHEJA = SCHEWA (2. Samuel 20,25); unter König SALOMO: ELICHOREF BEN-SCHISCHA und ACHIJA BEN-SCHISCHA (1. Könige 4,3). - Berater König DAVIDs hingegen waren sein rechtskundiger Onkel JONATHAN (1. Chronik 27,32) sowie ACHITOFEL (2. Samuel 15,12; 16,15.21.23; 1. Chronik 27,33), und Herold König DAVIDs wie auch noch seines Nachfolgers SALOMO war JEHOSCHAFAT BEN-ACHILUD (2. Samuel 20,24; 1. Könige 4,3).

[63] Staatsschreiber nur des *Südreiches Juda* waren

a. unter König HISKIJA (716-687 v. Chr.): SCHEBNA (2. Könige 18,18.37; 19,2; Jesaja 36,3.22), der zunächst Palastvorsteher (vgl. Fn. 33 hiervor) gewesen war. (Jesaja 22,15 bezeichnet ihn sowohl als סכן = *sôkên* wie auch als אשר על־הביח = *ascher al-habbajit*). - Herold König HISKIJAS hingegen war JOACH BEN-ASAF (2. Könige 18,18.37; Jesaja 36,3.22);
b. unter den Königen JOSCHIJA (640-609 v. Chr.), JEHOACHAS (609 v. Chr.), JOJAKIM (609-598 v. Chr.), JOJACHIN (598-597 v. Chr.) und ZIDKIJA (598-586 v. Chr.): SCHAPHAN BEN-AZALJA (622-604 v. Chr.: 2. Könige 22,3.8-10.12.14; 2. Chronik 34,15.18.20; vgl. auch Jeremja 36,10), ELISCHAMA (604-588 v. Chr.: Jeremja 36,12.20) und JEHONATHAN (588-586 v. Chr.: Jeremja 37,15.20); vgl. DE VAUX, AT, 212.

Das Fehlen entsprechender Hinweise für das *Nordreich Israel* vor seinem Untergang 722 v. Chr. darf uns nicht zum Schluss verleiten, ein Staatsschreiber habe dort gefehlt: vgl. METTINGER, 20.

[64] Vgl. Esther 1,14; Esra 7,14.

[65] HERZOG, 262-265. Immerhin hatte bereits zur Zeit des KAMBYSES (529-522 v. Chr.) ein "Schreiber des Königs" im Eanna-Heiligtum Verwaltungsaufgaben erfüllt: vgl. M. DANDAMAYEV: State and Temple in

2.5. The chancellor and the post of Grand Scribe in the Chinese civil service of the HAN Dynasty

Around the turn of the era, the central government of the HAN Dynasty (202 B.C. to 220 A.D.) controlled 103 military garrisons and feudal kingdoms - administrative regions in the middle of the power structure each of which had an average of more than a half million inhabitants. No wonder that the commanders of the garrisons needed chancellors because in China only the extremely complicated pictographs which were familiar to everyone could guarantee a uniform leadership amid the country's multitude of languages. The more stable external political conditions were, the more the list of civilian administrative tasks grew[67]. A chancellor oversaw the whole central civilian administration in Ch'ang-an. Military administration was handled frequently by a commander in chief while the third power in the triumvirate was the "Great Lord over the royal secretariat". Occasionally, there were serious power struggles between the two civilian officials and not every chancellor succeeded in protecting his prerogatives. The tasks of the "Grand Secretary" included monitoring the overall royal administration - a job which, during the HAN Dynasty, was entrusted mainly to skilled successors who had completed a training programme based on the profound CONFUCIAN ethic of duty. Other duties included managing correspondence with officials in the middle and lower strata of the power structure and, related to that, the publication of royal decrees and orders[68].

2.6. Council secretary and legislative overseer in old Athens and Asia Minor

In the old city state of Athens, the men considered to be the most reputable and most trustworthy were chosen from the legislative body, or boule, of every prytany (each of the ten divisions of the Athenian Council of 500) as Council secretary (Γραμματευς Βουλης [gamma, rho, alpha, mu, mu, alpha, tau, epsilon, upsilon, varsigma, beta, omicron, upsilon, lambda, eta, varsigma]), as auditing specialist (Αντιγραφευς [alpha, nu, tau, iota, gamma, rho, alpha, phi, epsilon, upsilon, varsigma]) and as legislative overseer (Νομογραφος [nu, omicron, mu, omicron, gamma, rho, alpha, phi, omicron, varsigma])[69]. The Council secretary (Γραμματευς Βουλης [gamma, rho, alpha, mu, mu, alpha, tau, epsilon, upsilon, varsigma, beta, omicron, upsilon, lambda, eta, varsigma]) was responsible for documentation and authentication, the archiving of all voting results and the minutes of all council sessions. Later this official was, as were almost all other functionaries, chosen by lots. It was otherwise with a second Council secretary who had to stand alone before the council and the people and *read aloud* the items on the agenda[70].

Babylonia in the First Millenium B.C. In: E. LIPINSKI (Hg.): State and Temple Economy in the Ancient Near East, II. (Orientalia Lovaniensia Analecta, 6.) Leuven 1979, 589-596, hier: 590.

[66] Vgl. W. und A. DURANT: Kulturgeschichte der Menschheit. Bd. 1: Der alte Orient und Indien. (Ullstein-Buch, 36101.) Frankfurt am Main/Berlin/Wien 1981, 321f.

[67] HERZOG, 220.

[68] HERZOG, 265-271.

[69] Vgl. ARISTOTELES: Der Staat der Athener 45,4; dazu H.-U. WILI: Kollektive Mitwirkungsrechte von Gliedstaaten in der Schweiz und im Ausland. Geschichtlicher Werdegang, Rechtsvergleichung, Zukunftsperspektiven. Eine institutsbezogene Studie. (Abhandlungen zum schweizerischen Recht, 519.) Bern 1988, 22 (mit Fn. 48) und 24.

[70] Vgl. ARISTOTELES: Der Staat der Athener 54,3; F. M. HEICHELHEIM: Grammateis. In: K. ZIEGLER/W. SONTHEIMER: Der Kleine Pauly. Lexikon der Antike. Bd. 2. (dtv, 5963.) München 1979, 864f.

Around the turn of the era, there apparently was also a scribe (Γραμματευς [gamma, rho, alpha, mu, mu, alpha, tau, epsilon, upsilon, varsigma]) along the lines of Council secretary involved in the self- administration of cities in Asia Minor under Roman domination (Province of Asia). This was the case at least as far as the senatorial provinces with a people's council were concerned as shown by the example of the city of Ephesus[71].

2.7. Chancellors in ancient Rome

2.7.1. Their importance

In Rome's administrative structure during the early years of the Republic, the scribes *(scribae)* and the administrative and justice officers *(lictores)* were the first and only attendants *(apparitores)* of the magistrates *(consules, praetores)*[72]. But this secondary level of power grew in influence as a result of the annual rotation of top magistrates and the need for continuity in the administration of the aerarium, the taking of minutes and the reading out of documents[73]. During the time of the principate (the rule of early Roman emperors, during which some features of republican government were retained), the emperor increasingly enlisted the services of present and former slaves (frequently Greek) and freemen in their households for government duties[74]. Ultimately, these *de facto* court officials developed partly into actual ministers. The emperor HADRIAN (117-138 A.D.) created a solid organization of royal administrators and filled the higher offices with knights. Besides the main accounting office *(officium a rationibus),* there were ministries as early as the reign of CLAUDIUS (41-54 A.D.).

For example:

a. the royal rescript office *(officium a libellis)* which was responsible for the processing of petitions from private individuals and of royal pardons as well as for the related control of the administration of justice. The *rescripta* decided on legal questions leaving the courts with the task of deciding only on what facts to include in the decisive evidence of a case[75]. After the death of HERENNIUS MODESTINUS *(praefectus vigilum* 224-244 *A.D.),* only in the *officium a libellis* is there evidence of an effort to maintain the high classic tradition in a post classic era[76]. But even here after 350 A.D. the tendency to use vulgar rhetoric in this office crept in[77].

b. the imperial chancellery or Office of Letters *(officium ab epistulis)* was a kind of secret chamber for communications, i.e. the preparation and processing from reports of royal offices throughout the empire, as well as the handing down of orders and

[71] Vgl. Apostelgeschichte 19,29.31-33.*35*.36.*38-40*.
[72] Vgl. M. KASER: Römische *Rechtsgeschichte*. Göttingen 1967, 41.
[73] Vgl. T. MOMMSEN: Römisches Staatsrecht. Bd. I. (Handbuch der römischen Alterthümer, I.) Leipzig 1871, 274f (mit Zitat von PLUTARCHOS: *Cato minor* 16) und 278f (mit Zitat von DIONYSIOS *5*,8,9).
[74] Vgl. CASSIUS DIO *72*,9ff; vgl. aber auch MOMMSEN, I 254f.
[75] P. JÖRS/W. KUNKEL/L. WENGER: Römisches Privatrecht. (Enzyklopädie der Rechts- und Staatswissenschaft, II-III.) 3. Auflage Berlin/Göttingen/Heidelberg 1949, 16f § 11 Ziff. 3; MOMMSEN, Bd. II/2. (Handbuch der römischen Alterthümer, II.) Leipzig 1875, 850 und 916f.
[76] V.a. unter KONSTANTIN und DIOKLETIAN: vgl. etwa die Praefatio zum *Edictum de pretiis rerum venalium* (Codex *7*,62,6).
[77] Vgl. M. KASER: Das Römische Privatrecht. (Handbuch der Altertumswissenschaft, X. Abteilung, III. Teil, 3. Band, 2. Abschnitt.) Bd. II. 2. Auflage München 1975, 8, 18 und 22.

decrees of the emperor including those concerning the appointment of military commanders for the land and sea forces[78]. The head of these offices needed scientific training[79] and these management functions in the bloated royal bureaucracy gave special authority to administration lawyers rather than to private experts in jurisprudence[80].

At the same time, during and after the reign of AUGUSTUS, the *curator actorum senatus*[81] (or *ab actis senatus* or *ab actis imperatoris)* became a close confidant of the emperor. But once the minutes of senate meetings stopped being published, this position was turned over to a junior appointee named on an annual basis to ensure a regular recording of the minutes[82].

2.7.2. Origins of name

The name *cancellarius*[83] is traceable back to the middle of the 4th century A.D. when it referred to an official of secondary importance, a kind of court usher and registrar who accepted correspondence to be passed on[84]. Although they were of low rank at first[85], the *cancellarii,* who were appointed at the discretion of their superiors[86], had access to confidential information and correspondingly acquired more and more competencies. In the 6th century A.D. only the *cancellarii* were granted senatorial status)[87] who has been in service with the praetorian prefect.

3. The office in Europe beyond the Swiss context: from the Middle Ages to modern times

3.1. The chancellor in the Frankish kingdom

Following the great migrations of the so-called Dark Ages, the monarchies that developed continued the practices of the late Roman Empire in which literate laymen, i.e. non-ordained members of the Church of Rome, executed royal documents and correspondence. Of these activities only those of the Frankish-Merovingian *referendarii* are

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[78] Vgl. A. MEISSNER: Altrömisches Kulturleben. Leipzig 1908, 104; KASER, Rechtsgeschichte, 113f.
[79] Vorsteher dieser in eine lateinische und eine griechische Abteilung gegliederten Kanzlei war von 118 bis 121 der Verfasser der Kaiserviten SUETONIUS (vgl. MEISSNER, 104f; M. FUHRMANN: Suetonius. In: ZIEGLER/SONTHEIMER, Bd. 5. [dtv, 5963.] München 1979, 411).
[80] KASER, Rechtsgeschichte, 188.
[81] Vgl. CASSIUS DIO *78*,22: τα της βουλης υπομνηματα δια χειρος εχων (tau, alpha, tau, eta, varsigma, beta, omicron, upsilon, lambda, eta, varsigma, upsilon, pi, omicron, mu, nu, eta, mu, alpha, tau, alpha, d, iota, alpha, chi, epsilon, iota, rho, omicron, varsigma, epsilon, chi, omega, nu). Vgl. auch *Corpus Inscriptionum Graecarum*. Berlin 1828ff, 1133 und 1327.
[82] Vgl. MOMMSEN, Bd. II/2, 839f.
[83] Der Name leitet sich her von den Gerichtsschranken (*cancelli*).
[84] Vgl. JOHANNES LYDOS: *De magistratibus 3*,37.
[85] *Notitia dignitatum occidentis* 9,15.
[86] Eine Einschränkung vgl. immerhin im *Codex Theodosianus 1*,35,3 (423 n. Chr.).
[87] Vgl. CASSIODORUS: *Variae 11*,6.10; zum Ganzen A. LIPPOLD: Cancellarius. In: ZIEGLER/SONTHEIMER, Bd. 1. (dtv, 5963.) München 1979, 1034f.

more closely known. The Merovingian kings did not have a permanent seat of power, but rather moved with their entire sizeable, royal households from farm to farm on their extensive land holdings. The most important court officials *(marescalcus = comes stabuli; princeps pincernarum = buticularius; truhsazzo = seneschal = steward; thesaurarius)*, although not legally sanctioned, developed de facto into a kind of court council. These officials were freemen of distinguished standing. The actual services were provided by bondsmen *(ministeriales; pueri regis).* The royal household was also the central administration of the kingdom.

Around the year 675 A.D., the function and name *truhsazzo* changed. At first in Gaul, he became known as *Majordomus* and headed the royal *trustis,* the *convivae regis,* i.e. the royal household. In the beginning there were three *majoresdomus* with regional responsibilities (Austrasia, Neustria, Burgundy), but the *majordomus* from Austrasia soon gained overall control because the MEROVINGIANS rarely appeared in the eastern part of the kingdom. In 687 A.D. PEPIN II OF HERISTAL removed the other major-domos and in 751 his ARNULFINGIAN grandson PEPIN III named himself king after doing away completely with the office of *majordomus.*

Royal documents and court documents were written up and countersigned[88] in a chancellery staffed by several clerks and scribes *(cancellarii, notarii)*. The office above this chancellery fell into disuse in France after the split in the kingdom in the 11th century[89]. In the Middle kingdom (Burgundy from 962 A.D.) and in Italy (from 1041 A.D.) the office of chancellor survived only for a short time. On the other hand in France, the office, which was a stepping stone to the post of bishop, gained considerable political importance. It was also in France that the clerical monopoly on the office was first broken[90].

3.2. The chancellor in the German Empire

The first CAROLINGIAN king, PEPIN THE SHORT and his successors throughout the period of 60 years, reformed the central administration from the ground up. The chancellery was now of central importance. Under the rule of CHARLEMAGNE, the chancellery was responsible for enacting the emperor's extensive legislation. It also issued continual instructions to provincial officials and it formally recognized *diplomata.* The head of the chancellery *(cancellarius)* was a highly-placed cleric from Austrasia. Its notaries too *(notarii)*, who prepared documents, were clerics who could read and write and who worked under the archchaplain *(archicapellanus)*, the highest spiritual official in the royal court. Later, under LOUIS THE PIOUS (814-841), the office of court chaplain was merged with that of the chancellor[91] to become the archchancellery *(archicancellarius)*[92]. From the time of the CAROLINGIANS and for centuries after, the monopoly the clergy had on education and the close ties between the monarchy and the church ensured the position of clerics as heads of the royal chancelleries. In the early years of the OTTONIAN dynasty, the office of archchancellor went to the archbishop of Mainz. The archchancellor now oversaw the work of the *notarii* who drew up documents and letters. The growing political importance of the

[88] PLANITZ/ECKHARDT, 85.
[89] Vgl. T. SCHIEFFER: Kanzlei, königliche. In: Lexikon für Theologie und Kirche, Bd. V. 2. Auflage Freiburg im Breisgau 1960, 1312f.
[90] Vgl. dazu generell L. PERRICHET: La grande Chancellerie de France. Paris 1912.
[91] Vgl. PLANITZ/ECKHARDT, 103.
[92] Die päpstliche Kanzlei hingegen hiess erst ab dem Ende des 12. Jhs. n. Chr. *cancellaria*; zuvor trug sie den Titel *scrinium.* Vgl. P. RABIKAUSKAS: Kanzlei, päpstliche. In: Lexikon für Theologie und Kirche, Bd. V. 2. Auflage Freiburg im Breisgau 1960, 1313-1315.

office under the HOHENSTAUFEN emperors favored the presence of stronger archchancellors[93] and increasingly the royal chancellery irrespective of the close connection with the occupant of the Bishopric of Mainz, turned into an independent authority. From 1157, the archchancellor had one protonotary as a second in command. After 1273, that increased to several. From the 14th century the functions were more clearly defined. Between 1433 and 1449, the non-cleric CASPAR SCHLICK, with the help of a falsified document testifying to his alleged promotion to the status of count and his investiture as Lord of Bassano[94] became the first chancellor of the empire not to come from the church[95].

On the "*national*" level, the organization of the administration didn't take place until the 13th century. Besides the steward who acted as the representative of the sovereign in administrative matters in the court and kingdom, the chancellor also acted as protonotary. He presided over the chancellery, supervised the drawing up of all documents and, especially because of the Kings' inability to read and write, gained considerable influence, which at the beginning increased even more with growing supervision of the accounts[96].

From the 15th century royal chancelleries and imperial court councils were the central authorities of the empire. Although the elector of Mainz as archchancellor still had the right to head the imperial chancellery, it was impossible for him to be present at the court. Instead, an individual who was present at the court headed the imperial chancellery. From 1519, this top official was called vice chancellor. In 1559 he received the decree by the Emperor FERDINAND I who reorganized the imperial chancellery to such an extent that gave the elector of Mainz the right to appoint the vice chancellor himself. In fact however up until 1660 the emperor retained the right to appoint the vice chancellor with the approval of the elector of Mainz[97]. After 1660, the Decree on the Imperial Court Chancellery was executed literally and legally.

In Austria, after the separation of patrimonial from imperial interests, a court chancellery was set up which was headed by the chancellor (marshal, steward) who presided over the royal council, a permanent group consisting of legally-trained and mostly foreign officials. This council was responsible for the administration of the whole Austrian empire, national and foreign policy and particularly for the administration of justice[98].

From the middle of the 19th century, following the NAPOLEONIC upheavals in Europe and the failure of the subsequent restoration, the German Imperial chancellor, who was also Prime Minister of Prussia, who had to countersign the imperial documents, became the chief imperial policy maker. As such, he was not responsible to the parliament. Only from 1917,

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[93] RAINALD VON DASSEL (1156-1162 und 1166-1167) war als gleichzeitiger Berater Kaiser FRIEDRICHS I. BARBAROSSA ein radikaler Verfechter der Reichsrechte gegen das Papsttum (vgl. G. RILL: Rainald von Dassel. In: Lexikon für Theologie und Kirche, Bd. VIII. 2. Auflage Freiburg im Breisgau 1963, 979); CHRISTIAN I. VON MAINZ war ein sprachbegabter Reichskanzler (1162-1166) und förderte Gegenpapst PASCHALIS III. (vgl. A. BRÜCK: Christian I. von Mainz. In: Lexikon für Theologie und Kirche, Bd. II. 2. Auflage Freiburg im Breisgau 1958, 1122f); PHILIPP VON HEINSBERG war als Nachfolger RAINALDS VON DASSEL ab 1167 Erzkanzler, später zeitweise in Opposition zu Kaiser FRIEDRICH I. BARBAROSSA (vgl. R. HAASS: Philipp von Heinsberg. In: Lexikon für Theologie und Kirche, Bd. VIII. 2. Auflage Freiburg im Breisgau 1963, 451).

[94] Vgl. A. POSCH: Schlick Caspar. In: Lexikon für Theologie und Kirche, Bd. IX. 2. Auflage Freiburg im Breisgau 1964, 419.

[95] Vgl. SCHIEFFER, 1313; J. BÄRMANN: Zur Entstehung des Mainzer Erzkanzleramtes. In: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, germanistische Abteilung *75* (1958) 1-92.

[96] Vgl. PLANITZ/ECKHARDT, 194.

[97] Vgl. PLANITZ/ECKHARDT, 269.

[98] Vgl. PLANITZ/ECKHARDT, 275.

did the parliamentary majority have the *de facto* power to appoint the chancellor as effective head of government. This became *de jure* from 1918.

3.3. Famous chancellors in England

The choice of countries presented here to demonstrate the historical development of the office of chancellor and of the person should not lead to the conclusion that the function did not exist elsewhere. Quite the opposite: The institution appeared in a variety of forms in various European states throughout the course of history since the fall of the Roman Empire, but it would go beyond the scope of this work to deal with them all. So we'll limit ourselves - *pars pro toto* - to a brief mention of two of probably the most famous chancellors both of whom held office in the *English* royal courts. The first was the prelate and statesman, THOMAS BECKET, Archbishop of Canterbury and chancellor and advisor to HENRY II from 1155-1170[99]. The second was THOMAS MORE who served as Lord High Chancellor to HENRY VIII from October 15, 1529 to his retirement on May 15, 1532[100]. The importance of the chancellor in England under the PLANTAGENETS can be seen in the fact that the *Lord High Chancellor*, even at the time of the division of the English parliament into the *House of Lords* and the *House of Commons* in 1295, could read the *pronuntiatio,* the forerunner of today's speech from the throne, to the two houses for the King. The chancellor's importance was further in evidence in June 1381 when he had a staff of 30 clerks draw up letters granting freedom to administrative areas who took part in the uprising of the serfs[101].

4. Artists as chancellors

Occasionally, chancellors were also famous writers.

For example, there was the dramatist CHRISTOPH MARTIN WIELAND (1733-1813), who served as chancellor of the Swabian imperial free city of Biberach between 1760 and 1769[102]. In 1774 his experiences were reflected in a timeless satire[103].

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[99] Vgl. H. WOLTER: Thomas Becket. In: Lexikon für Theologie und Kirche, Bd. X. 2. Auflage Freiburg im Breisgau 1965, 135f; darüber auch die Dichter CONRAD FERDINAND MEYER: Der Heilige. Novelle (1879); THOMAS STEARNS ELIOT: Murder in the Cathedral (1935); JEAN ANOUILH: Becket ou l'Honneur de Dieu (1963).

[100] Dazu vgl. etwa W. und A. DURANT: Kulturgeschichte der Menschheit. Bd. 9: Das Zeitalter der Reformation. 2. Buch: Die religiöse Revolution (1517-1564). (Ullstein-Buch, 36109.) Frankfurt am Main/Berlin/Wien 1982, 560-568; THOMAS MORUS: Utopia. (Reclam 513/14.) Stuttgart 1964, deren zweites Buch - viele Jahre vor der Kanzlerschaft MORUS ' verfasst und von der besten Staatsverfassung handelnd - indessen noch keinerlei Einordnung des Kanzleramtes enthält.

[101] W. und A. DURANT: Kulturgeschichte der Menschheit. Bd. 9: Das Zeitalter der Reformation. 1. Buch: Von Wiclif zu Luther (1300-1517). (Ullstein-Buch, 36109.) Frankfurt am Main/Berlin/Wien 982, 43 und 58.

[102] Vgl. dazu JOHANN WOLFGANG GOETHE: Zum Andenken des edlen Dichters, Bruders und Freundes Wieland am 18. Februar 1813. In: Goethes Werke, herausgegeben von E. MERIAN-GENAST, Bd. 12. Basel 1944, 144-164, hier: 146f: "... Die *mechanischen Amtsgeschäfte eines Vorstehers der Kanzlei* raubten ihm zwar Zeit, aber nicht Lust und Mut, und damit ja sein Geist in so engen Verhältnissen nicht verkümmerte, ...", übersetzte Wieland, angeregt durch den Winterthurer Stadtschreiber W. D. SULZER, 22 Dramen William SHAKESPEARES zum ersten Mal ins Deutsche (vgl. W. VON KOPPENFELS: "Ein litterarisches Abenteuer". Zur zweiten Zürcher Ausgabe von Wielands "Shakespeare". In: 'Neue Zürcher Zeitung' Nr. 111 vom 14./15. Mai 1994, 69). Während seiner Zeit als Kanzler verfasste WIELAND ausserdem den Roman "Die Abenteuer des Don Sylvio

Another example appeared 100 years later when the Swiss author GOTTFRIED KELLER (1819-1890) served under ALFRED ESCHER from 1847-48 in the Zurich cantonal chancellery. Later, between 1861 and 1876, he was cantonal chancellor[104]. In his later years he worked his experiences as a form of self criticism into his novel "Martin Salander" and into his unpublished work "Der Wahltag" (The Election Day)[105] following a long period of inactivity as a writer while he was performing his civic duties[106].

CARL SPITTELER (1845-1924) was another great Swiss writer who won the Nobel Prize for Literature in 1919. He was the son of CARL SPITTELER (1809-1878) who served as chancellor for the Basel area between 1845 and 1849 before he joined the Federal Administration as Federal Treasurer[107].

The brilliant organist and composer ANTON BRUCKNER (1824-1896) suffered constantly from self doubt about his musical abilities. In 1851 he joined the chancellery of the district court of St. Florian near Linz. On July 25, 1854, while writing his Missa solemnis in B flat minor, he applied to the government for a minor position in the chancellery. In his own words, he said he wanted to train for the post, which "was an occupation he had long felt was really for him because he was always striving to be the most obedient servant in every possible way and to act with all diligence and dedication"[108]. The music world owes the government eternal thanks that it did not consider the application of the maestro thus permitting him to continue composing.

5. A forerunner of today's Federal Chancellor: the "Schaubare Weisheit" (sovereign wisdom) of the Valais

Since 1339, a body known as the *Consilium generale terrae Valesii,* a kind of general assembly, had worked with the administration of the Bishop of Sion. At first it was presided over by the Bishop himself. Then from 1613 the *Ballivus terrae Vallesiae* who was also

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de Rosalva" (1764), den ersten grossen deutschen Bildungsroman "Geschichte des Agathon" (1766/67) und die Verserzählung "Musarion oder die Philosophie der Grazien" (1768).

[103] CHRISTOPH MARTIN WIELAND: Geschichte der Abderiten. Viertes Buch: Der Prozess um des Esels Schatten. Achtes Kapitel ("Gute Ordnung in der Kanzlei von Abdera").

[104] 1861-1866 vertrat GOTTFRIED KELLER zugleich den Wahlkreis Bülach im Zürcher Grossen Rat. Vgl. T. WIESER: Abschied vom "Waldesdickicht der Nation". Gottfried Kellers politischer Wandel. In: 'Neue Zürcher Zeitung' Nr. 161 vom 14./15. Juli 1990, 68.

[105] Vgl. GOTTFRIED KELLER: Sämtliche Werke und ausgewählte Briefe, herausgegeben von C. HESELHAUS, Bd. 2. München 1956, 1218-1231. - Vgl. dazu etwa E. ERMATINGER: Gottfried Keller. Eine Biographie. (Diogenes-Taschenbuch, 21813.) 8. Auflage Zürich 1950; B. BREITENBRUCH: Gottfried Keller in Selbstzeugnissen und Bilddokumenten. (Rowohlt Monographien, 136.) Reinbek bei Hamburg 1981; A. MUSCHG: Gottfried Keller. (Suhrkamp-Taschenbuch, 617.) 3. Auflage Frankfurt am Main 1980; H. BÖSCHENSTEIN: Gottfried Keller. Stuttgart 1977.

[106] Aus KELLERS Staatsschreiberzeit stammen die "*Sieben Legenden*" (1872) und "*Das verlorene Lachen*" (1874).

[107] Vgl. H. TÜRLER/V. ATTINGER/M. GODET (Hgg.): Historisch-biographisches Lexikon der Schweiz, Bd. VI. Neuenburg 1931, 475f.

[108] Hier zitiert nach der verkürzten Darstellung von P. BENARY: Zur Deutung der Sinfonien Anton Bruckners. In: 'Die Ostschweiz' vom 27. Januar 1979, Beilage "Christ und Kultur"; ausführlicher und präziser F. BLUME: Bruckner Josef Anton. In: F. BLUME (Hg.): Die Musik in Geschichte und Gegenwart. Allgemeine Enzyklopädie der Musik, Bd. 2. Kassel-Basel o.J., 341-382, hier: 344f.

known as the "sovereign power", or the *"Grand Bailli(f)"* took over. The bailif was also the captain general who was elected for two-year periods[109]. Out of this *Consilium generale terrae Valesii,* grew the diet, or Landrat of the "Valais Zenden Republic" which, as early as the 15th century developed a so-called federative referendum[110]. The upper, or German-speaking Valais, was divided into seven "Zenden" *(dixains)* of which the last was the town of Sion. They decided issues democratically by a communal vote. These decisions were then handed in writing to the captain general for the attention of the diet. Or they were delivered verbally directly by the deputies of the seven sovereign dizains who had been given instructions by the general assembly of the people with strict orders not to depart from them. There were two ways the deputies used to deal with the decrees *(les Abscheidts)*[111], or in Latin *(recessus)* or occasionally *(arrestum)*[112] of the diet -by enacting them or by taking them to a referendum *(prendre ad referendum)*[113]. The diet met regularly twice a year in Sion, in May *(diète de may)* and December. Occasionally, if needed, there were extraordinary sessions of the diet *(diétine).* At all these sessions, the chief clerk, who was chosen by the diet as the "sovereign wisdom"[114], drafted the decrees based on the discussions at the sessions. These decrees were frequently more a kind of memorandum[115] for the deputies than actual minutes. The chief clerk first drew up the minutes and then excerpted the decree from it which was read out[116] to the assembled deputies before their return. Afterwards the dizains and the bishop received originals of the decree while a copy went to the ecclesistical chapter at Valères in Sion. Up until 1577, the language used was Latin. From 1577, the documents were written in Latin and German and from 1733 only in German[117]. From 1623, the decree had to contain more important correspondence dealing with foreign policy including that concerning the Swiss Confederation[118]. The clerks of the dizains, or secretaries of state, later drew up copies of this correspondence for the individual communes of their dizains. French translations were also made for the three subject dizains in the Lower Valais where the majority did not speak German[119]. Every clerk vouched for the accuracy of his document with his signature[120] which gave the clerk a kind of notary status[121]. If a decree contained mistakes[122] then the clerk could be suspected of attempted manipulation leaving him with

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[109] Vgl. A. HEUSLER: Rechtsquellen des Cantons Wallis. Einleitung. In: Zeitschrift für Schweizerisches Recht / Revue de droit suisse, Neue Folge *7* (1888) 133-175, hier: 150f; W. LIEBESKIND: Das *Referendum* der Landschaft Wallis. (Leipziger rechtswissenschaftliche Studien, 33.) Leipzig 1928, 33, 42 und 76 mit Quellenhinweisen auf Belege im *Archivum Burgense Sedunense* [ABS] Reihe *204* Bd. 23 S. 515 (1736) und *205*,7 II,23 (1790).

[110] LIEBESKIND, Referendum, 11 gegenüber 5; WILI, 84.

[111] Vgl. ABS *136*,2,88 (1752), *136*,19 (1790-1792) und *136*,20 (1792-1798); LIEBESKIND, Referendum, 21f und 34.

[112] ABS *204*,17,452f; LIEBESKIND, Referendum, 37.

[113] Vgl. ABS *136*,2,4 (1746); vgl. mit vielen weiteren Belegstellen LIEBESKIND, Referendum, 64f.

[114] So sein Titel: Vgl. HEUSLER, 151.

[115] Beispielsweise konnte dem Geschäftstitel die blosse Formel "wie ein jeder Bot witer wohl weiss zu sagen", "*sciat quilibet nuntius referre quomodo*" (vgl. LIEBESKIND, Referendum, 61) beigefügt sein.

[116] Vgl. ABS *204*,20,492 (1688).

[117] Vgl. HEUSLER, 169.

[118] Vgl. samt Quellenbelegen LIEBESKIND, Referendum, 67.

[119] Vgl. LIEBESKIND, Referendum, 65f mit Hinweis auf ABS *204*,12,44 (1606).

[120] Vgl. LIEBESKIND, Referendum, 25 mit Hinweis auf den "Goldenen Abscheid" von Goms: ABS *204*,22,484-486.

[121] So wurde auf dem Maienlandrat 1577 beschlossen, dass kein Richter urteilen solle aufgrund einer Kopie, die nicht durch zwei glaubwürdige Schreiber gegen das rechte Original collationiert oder aber mit eigener Handschrift des Landschreibers unterzeichnet sei: Vgl. HEUSLER, 170.

[122] Beispiele vgl. bei LIEBESKIND, Referendum, 18, 43 und 66f: ABS *204*,13,131 (1618) und *205*,7 II,42 (1790).

no alternative but to resign[123]. Sometimes there were interpretation problems arising from multi-lingual terms of established law. To get around this, it was decided in 1571 that the authentic interpretations recorded in decrees had to be entered into a special book by the clerk and over the years added to the compilation of the law of the land. Nevertheless in 1594, the clerk NICLAUS HECKMANN named "the golden writer" still had to go from area to area collecting the decrees of the various dizains to be able to classify improvements or interpretations of the law[124]. Only from the 17th century did more and more circulars and pamphlets began to appear. To save time these documents were written only once by the clerk and distributed to the dizains, which were expected to reply to these circulars as quickly as possible using the originals to make their own comments[125].

[123] Vgl. für 1589 das Beispiel von GILG JOSSEN samt Quellenhinweisen auf ABS *204*,8,271f bei LIEBESKIND, Referendum 66.
[124] Vgl. HEUSLER, 171.
[125] Vgl. LIEBESKIND, Referendum, 71f und 65f. Zu alledem vgl. auch WILI, 73-84; W. LIEBESKIND: Altschweizerische Foederativsysteme. In: Zeitschrift des Bernischen Juristenvereins / Revue de la Société des Juristes Bernois *69* (1933) 1-23, hier: 19f; HEUSLER, 151 und 169-173; G. GHIKA: La fin de l'état corporatif en Valais et l'établissement de la souveraineté des dizains au XVIIème siècle. Sion 1947, passim.