German Law Journal (2026), **27**, pp. 651–677
doi:10.1017/glj.2026.10226

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Iudex Non Calculat: Exploring the Number-Aversion Maxim as an Intellectual Trans-Atlantic Export

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(Received 04 September 2025 UTC; accepted 14 January 2026 UTC)

Abstract

The Latin slogan *iudex non calculat* is on the rise. It appears in well over thirty English-language journals and a federal court decision in the United States; in Germany, more than sixty law journal articles mention the phrase in their titles alone, and German members of parliament have used it more frequently in the years 2020–2023 than in most previous decades combined. The phrase gets invoked as an "ancient", "antique", or "Roman" maxim of legal and political practice in Europe and the U.S. alike. Does this show how shared history unites even dissimilar legal systems? Hardly so. There is no general understanding of what the maxim is supposed to mean, or where it actually originated, or what rhetorical effect it serves. An exploration of these questions reveals a fascinating story of intellectual export across the Atlantic: The phrase is not, as commonly assumed, of Roman or antique origin, although it must be considerably older than 1850. It must have originated in Germany, where we find the oldest occurrences and whose authors, topics, and journals clearly drive its international propagation since 1947. There are at least four different interpretations of the maxim, each with opposing connotations, making it a versatile tool in lawyers' rhetorical kit. While academics seem to use it mostly to produce an aura of erudition and epistemological authority, politicians employ it as an offensive or defensive quip mostly among male conservatives. Among German law students, it is by far the best-known principle, maxim or proverb related to law and numbers, although students, too, disagree about its exact meaning. While they acknowledge that the maxim has become part of German lawyers' professional identity, many wish it were otherwise.

Keywords: Law and language; legal Latin; historical myth; Roman law; mathematics

A. An "Old" Trans-Atlantic Maxim in Three Stories and Three Paradoxes

I. Background: Three Converging Stories

Shortly after World War II, an economics professor in the Midwestern United States by the name of Curt Gruneberg discussed "Our Real Difficulties in Understanding Tax Problems" and portrayed the "legal profession of today" as one afflicted by a "psychological handicap" encapsulated in a Latin proverb:

> Each profession develops in its members a special state of mind connected with special preferences and dislikes. One dislike on the part of the legal profession is clearly indicated in the old Roman saying: *judex non calculat* (a jurist does not calculate) . . . Today, this saying is as true as it was two thousand years ago. Whoever has seen the eagerness of a judge to get

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https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

> rid of difficult calculations . . . knows that the old dislike on the part of the legal profession in the Roman Empire has been transmitted to the legal profession of today.[1]

Fast forward sixty-six years. Further south in the United States, Judge Brian K. Tester of the bankruptcy court for the District of Puerto Rico hears the case *In re Sandra Sanchez Ramos*, for which he needs to determine whether projected tax refunds "fall within the disposable income category".[2] The judge explains that "this court *judex non calculat*—does not calculate, and thus engages in the weighing of the following three factors . . . ."[3]

Only a few years later, across the Atlantic, a young law graduate by the name of Philipp Amthor becomes one of Germany's youngest congressmen. He joins parliament at age twenty-four, freshly graduated from law school with no intermittent job experience. In a plenary session of Germany's federal parliament—*Bundestag*—in October 2020 he defends an election law draft that had been criticized by seven invited experts, by declaring: "There is an old beautiful maxim, which is called: Iudex non calculat. And it means: A judgment derives not from the number of arguments provided, but from their quality. And quality is on our side, dear colleagues."[4]

Here are three different stories, seven decades apart, from three professional domains—academia, judiciary, and politics—across two countries with different legal systems. What unites these stories is their shared reference to, and reverence for, an "old beautiful maxim" (Amthor)[5] as "transmitted to the legal profession of today" (Gruneberg). Such a beautiful illustration of how shared legal traditions unite lawyers across time, profession, and jurisdiction. Or is it?

II. Motivation: Three Unresolved Paradoxes

The assumption of convergent legal (hi)stories across the Atlantic quickly crumbles when subjected to further scrutiny. Even with respect to our three introductory stories, at least three paradoxes stand out:

First, while Gruneberg repeatedly highlighted the *non calculat* maxim in U.S. scholarly literature even before 1950,[6] most anglophone scholars will tell you that they never even heard of it. In fact, this Article will show that Gruneberg was the only English-speaking academic to use it in over thirty years, and that it did not gain wider currency until after the year 2000. Why should reference to a Roman saying be distributed so unevenly across the recent past?

Second, while Amthor repeatedly invoked the *non calculat* maxim in quick succession[7]—and was not nearly the first German politician to do so—Judge Tester's decision is unique in the history of published U.S. adjudication. Although scholars note that the Latinization of legal jargon

[1] Curt Gruneberg, *Our Real Difficulties in Understanding Tax Problems*, 83 J. ACCOUNTANCY 35, 40 (1947) (emphasis in original).

[2] *In re* Ramos, 494 B.R. 181 (Bankr. S.D.P.R. 2013).

[3] *Id.*

[4] Philipp Amthor, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 19/183, at 23051, para. B (Oct. 8, 2020), dserver.bundestag.de/btp/19/19183.pdf (Ger.) ("Es gibt einen alten schönen Grundsatz, der heißt: Iudex non calculat. Und das heißt: Ein Urteil entsteht nicht durch die Summe von vorgebrachten Argumenten, sondern durch deren Qualität.").

[5] In the U.S., Latin "maxims" are most familiar as canons of statutory interpretation—from Jeremiah Smith, *The Use of Maxims in Jurisprudence*, 9 HARV. L. REV. 13, 21 (1895) to Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, 1990 WIS. L. REV. 1179 (1990), and Benjamin Minhao Chen, *Do Linguistic Canons Matter?*, 58 CONN. L. REV. 153 (2025)—but the word is surely not limited to this context.

[6] *See* Gruneberg, *supra* note 1. *See also* Curt Gruneberg, *Case and Material on Law and Accounting*, 18 U. KAN. CITY L. REV. 96 (1949) (book review).

[7] *See* Philipp Amthor, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 20/83, at 9899, para. B (Jan. 27, 2023), dserver.bundestag.de/btp/20/20083.pdf (Ger.).

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is particularly pronounced in English legalese—from *ab initio* to *stare decisis*[8] —no other anglophone judge seems to ever have mentioned the maxim publicly.[9] How could that be if it was, indeed, part of a shared trans-Atlantic legal heritage?

Lastly, note that Gruneberg and Amthor explain the maxim's meaning very differently, and with opposite intentions: While the former uses it to criticize judges for their "eagerness to get rid of difficult calculations", the latter uses it to praise judges for their focus on the "quality, not the number of arguments"—which seems to be in line with Judge Tester's usage as well. Those are vastly different readings of the same words. Which interpretation sticks closer to the phrase's original meaning?

III. Outline and Contribution

To resolve the three paradoxes, this Article empirically explores the intellectual history of the *non calculat* maxim across the professional domains represented by the protagonists of our three stories.

In Section B, I will first analyze the anglophone journal literature pioneered by Gruneberg. I conclude that the meaning of the maxim is unclear—there are three competing interpretations—but what is clear is that *every* usage of the maxim is related to Germany or its German-speaking neighbors.

In Section C, I then explore the maxim's usage in Germany, especially in Amthor's political arena. I find that the maxim is used as offensive or defensive banter predominantly by conservative congress*men* with a law degree, some of whom hold yet another, fourth, interpretation of the maxim.

In Section D, I then turn to legal education as the common denominator between our three studies and conduct a survey of German law students. I find that most of them are familiar with the maxim, although they report different meanings yet again, and generally contradict, as a normative matter, the concomitant number aversion in law.

Lastly, in Section E, I set out to locate the historical origin of the maxim and continue the story of our protagonist, Judge Tester. I find that the maxim's origin seems to be lost in the fog of the pre-1850s and suspect that it may just have been an apocryphal bit of law school humor all along.

Taken together, these findings reveal that the *non calculat* maxim originated not in ancient Rome at all, but in Germany, where it made a career in legal education and national politics, and got exported by German authors into English-speaking scholarly journals, until even a United States federal court dignified it, quite whimsically, in a published judgment.

Our investigation of this Latin maxim therefore serves less as a study in legal semiotics than in the intellectual history of Law: Just like U.S. lawyers unfailingly use the letter "K" to abbreviate the word *contract* without knowing or questioning why,[10] German lawyers routinely use the *non calculat* maxim without acknowledging its parochial, possibly satirical, origin. As a quasi-anthropological account of legal habituation, this "Case Study on the Origins, Persistence and Propagation of Legal Conventions"[11] invites us to question the substantial underpinnings of mindless lawyerly rituals.

[8] *See generally* Russ Versteeg, Essential Latin for Lawyers (1990); Lazar Emanuel, Latin for Lawyers (1999); John Gray, Lawyers' Latin: A Vade-mecum (2007); Chris M. Higginson, Common Law Latin Maxim Reference Dictionary (2017).

[9] Full-text search for "non calculat" in Westlaw's case law database on Sep. 1, 2025.

[10] *See generally* Hanjo Hamann, *K Is for Contract—Why Is It, Though? A K's Study on the Origins, Persistence and Propagation of Legal Konventions*, 106 Minn. L. Rev. Headnotes 362 (2022), scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1113&context=headnotes.

[11] Thus the subtitle of *Id.*

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

B. The Meaning and Use of *Non Calculat* in English Scholarship

In Germany, *non calculat* is so popular that it even features in a novel, in one character's incomprehensible diatribe about liability in animal husbandry.[12] In academic scholarship, German lawyers have, over the past forty years (1983–2024), referred or alluded to the *non calculat* maxim in well over sixty scholarly articles, *just by their titles alone*.[13] Some German law professors squarely contend that the maxim is "familiar to any even semi-learned lawyer",[14] or even "familiar to any jurist since antiquity".[15] Compare this perception with English-speaking scholarship: It contains barely half as many references in journal article *full texts* as German scholarship in article *titles*: Even a thorough full-text search for *non calculat*[16] across eight databases yields—after deduplication and cleaning—just thirty-three articles in anglophone journals that have mentioned the maxim.[17]

In order to comprehensively study the maxim's usage in English-language scholarship, I explore in Section I. what authors actually mean by it, in Section II. when and where it gets used, and in Section III. what rhetorical purpose it might serve. I document each occurrence (with its verbatim quote) in the Appendix, and their metadata in a public Zenodo dataset.[18] In the remaining text I cite each source by its [publication year in square brackets] as recorded in the Appendix at the end of the Article.

I. How do Authors Define and Translate Non Calculat?

Being a Latin phrase, what do authors mean when they use it in English-language scholarship? Consider first their *literal translations*, if they provide one at all: Some translate the maxim as "judge/s do/es not calculate"—[1949], [2001], [2006]—which one author attributes to Wikipedia [2013b]. Others vary this slightly into "a jurist does not calculate" [1947], "lawyers do not calculate" [2018a] or "a judge never calculates" [2024a]. Two authors even settle on the (unintentionally?) comical translation "the judge does not count" or "judges do not count" [1998, 2004b]. Note that all translations are in present tense indicative, hence favoring a descriptive understanding—"does not"—rather than a normative one—"should not". Just two authors favor clearly normative constructions as "the judge does not (like to) do math" [2002] and "lawyers . . . fail to properly 'do' mathematics" [2023].

More interesting and elaborate than literal translations is the *semantic meaning* attributed to these words. There are at least three, which one author in our corpus [2013b] lifts straight from Wikipedia:

> It originates from the Roman legal concept that obvious calculation errors in a court decision are not harmful to the decision itself and can be corrected at any time.

[12] Eckhard Henscheid, Die Mätresse des Bischofs 195 (2010), available at archive.org/details/diematressedesbi0000hens/?q=%22non+calculat%22.

[13] Title search for "calculat" in law journals and *Festschrifts* through databases Kuselit Online, juris, deGruyter, and Google Scholar (queried through Harzing's Publish or Perish), results tabulated as *Titelwort-calculat_1975-2024.csv*, Zenodo, "iudex non calculat" – Data on an Apocryphal Legal Maxim, doi.org/10.5281/zenodo.8228373.

[14] *See generally* Uwe Wesel, *Iudex non Calculat*, *in* Methodenlehre zwischen Wissenschaft und Handwerk 57 (Susanne Hähnchen ed., 2018) ("Diesen Satz . . . kennt jeder halbwegs gebildete Jurist.").

[15] Wilhelm Steinmüller, Informationstechnologie und Gesellschaft: Einführung in die angewandte Informatik 25 (1993) ("[E]in jedem Juristen seit der Antike geläufiger Satz.").

[16] This was used to account for spelling variants ("iudex" vs. "judex"). The search returned no other phrases that included "non calculat".

[17] *See* Appendix.

[18] *See* file *JournalArticles_1947-2024.csv*, Zenodo, "iudex non calculat" – Data on an Apocryphal Legal Maxim, doi.org/10.5281/zenodo.8228373.

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

> Figuratively it also describes the concept that a judge does not 'add up' the number of arguments but instead bases their decision on the strength of those arguments.
>
> Jokingly, it is often used to mean 'judges (or jurists) are unable to do the math', often by jurists themselves[19]

Two of these meanings were already present in our introductory stories: While German congressman Amthor referred to the second interpretation to praise judges' reasoning skills, U.S. economics professor Gruneberg referred to the third to criticize judges' "eagerness ... to get rid of difficult calculations".[20] What about judges themselves? Our remaining protagonist, Judge Tester, when asked to explain his usage of the maxim, sounded similar notes as Amthor: "The use of 'judex non calculat' in that opinion was to express the idea that 10 legal arguments versus one on the other side would still require analysis to determine the more persuasive. The judge should not just decide that the numerous prevails over the few."[21]

Surprisingly, however, this judge-friendly interpretation is not what we find in our corpus. None of the journal authors embrace this reading. Of the twenty-two articles explaining the maxim in any detail, every single explanation hews closely to the third interpretation. Albeit rarely in jocular tone, but in rather serious words of (dis-)approval.

Most assert that *iudex non calculat* expresses some "aversion of judges and counsels to any 'mathematics'" [1992, 2018a], because "lawyers have traditionally been reluctant to cope with" mathematical structures [2010], and "mathematical formulae are not drawn up for lawyers" [1984]. More specifically, some authors assert "that lawyers to a certain extent are reluctant to use" probability calculus [2006], or tend to reject "probabilistic reasoning in judicial decisions" [2024b]. Whatever the precise extent of this "dislike on the part of the legal profession" [1947], it gets credited for number-aversion across areas of the law that roughly fall into two domains:

In the *economic* domain, Gruneberg blamed such number aversion for "our real difficulties in understanding tax problems" [1947], others found it "to discourage law students and lawyers from learning accounting" [1984],[22] from working with "trade contingency measures ... which is traditionally not particularly favored by jurists" [2009], or "determining the market value of a property" which "hardly is merely a matter of legal interpretation" [2024a].

In the *technological* domain, the aversion was said to explain why "financial contracts are written in natural language" [2018a], why "judges and jurors struggle with the proper understanding of scientific methods" [2018b], why lawyers fail at "recognising and resolving technico-social problems" in general [1979], or more specifically their "serious lack of understanding of the statistical issues" involved in algorithmic data mining [2023].

This negatively connoted "scarifying aspect, to law students, of mathematics" [2004a] competes with a much more celebratory perspective: A number of recent authors commend *non calculat* as a "traditional ideal on the European Continent" (and in England) where "solicitors were often quite proud to be bad bookkeepers, which went with their identification with the ideal of learned gentlemen" [2004b]. Consequently, "[l]awyers hailed themselves that 'number crunching' was not their business" [2015a] or that "[a]ssessing the future development of economic variables is ... hardly the court's task" [2017]. In this perspective, *non calculat* might be considered a legacy of the "legalist tradition which ... personifies Justice under the traits of a blindfolded goddess,

[19] *See Iudex non calculat*, WIKIPEDIA, en.wikipedia.org/wiki/Iudex_non_calculat (last visited Sep. 1, 2025).

[20] *See supra* quote accompanying note 1.

[21] Private e-mail correspondence from Brian Tester (Aug. 11, 2023).

[22] *See also* Thomas Raiser, *The Theory of Enterprise Law and the Harmonization of the Rules on the Annual Accounts and on Consolidated Accounts in the European Communities* 1 (Eur. U. I., Working Paper No. 85/197, 1985), cadmus.eui.eu/bitstream/handle/1814/23143/1985_EUIWP_197.pdf ("For myself, I take to heart the sentence: iudex non calculat, and moreover I have always found accounting to be a stupid and boring matter.").

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

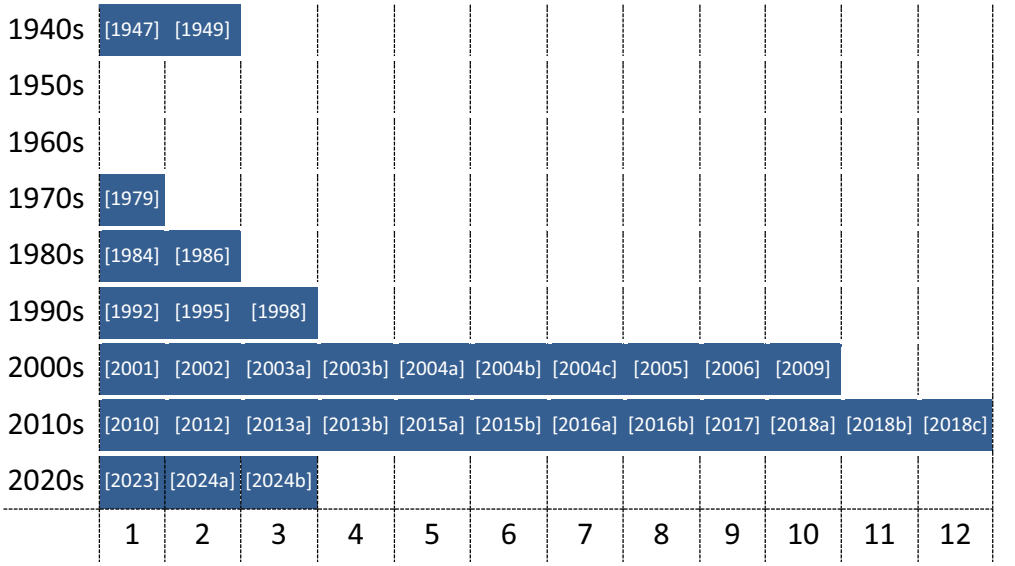


Figure 1. Absolute number of English-language law journal articles substantively mentioning *non calculat* across decades since 1947.

omniscient, unbiased and insensitive to the identities of the parties and to the context in which decisions are taken" [2015b]. According to this view, *non calculat* becomes

> more than a description of past judicial practice; it is a customary norm that reflects the scope of judicial resources and ability. Courts are not administrative agencies; they lack the bureaucracy needed for maintaining consistent oversight; and their procedural safeguards are better suited to deliberating about occasional and highly focused issues than to maintaining a permanent watch on the activities of another governmental branch [2013a]

Regardless of whether one subscribes to the first understanding, which might be labelled critical and descriptive—"lawyers are bad at numbers"—or the second one, which might be labelled praiseful and normative—"lawyers should not care for numbers"—the fact remains that of three potential meanings of the *non calculat* maxim, just one has been adopted by scholars writing in international journals.

II. When and by Whom was Non Calculat Used in Journals?

Having reviewed the commonly assumed meaning of the maxim, we next turn to its usage across time and location. Considering the diachronic distribution of references, we find that the maxim was used just twice in the three decades after the second World War, with most other references accruing in the recent three decades, as shown in Figure 1:

Of these usages of *non calculat*, only two occurred within the article title—[2001], [2015b]—in contrast to over sixty German article titles mentioning the phrase.[23] In one instance, the titular reference was singular: Nowhere else did the article mention the maxim [2001].[24] Other formats

[23] *See supra* note 13 and accompanying text.

[24] This is more common in Germany, *see e.g.* Markus Heintzen, *Judex non calculat!*, *in* FINANZIERUNGSTHEORIE AUF VOLLKOMMENEN UND UNVOLLKOMMENEN KAPITALMÄRKTEN: FESTSCHRIFT FÜR LUTZ KRUSCHWITZ (Jörg Laitenberger & Andreas Löffler eds., 2008).

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in which the maxim appeared include a speech [1995], a workshop comment [2003], a discussion transcript [2013b], a special issue introduction [2024b], and five book reviews, including two of the earliest corpus entries: [1949], [1984], [2005], [2009], and [2016b].

Considering the recent date of most references, and the relative dearth of older sources, it may seem surprising to see a Latin maxim *grow* in popularity from virtual obscurity at just the time when command of Latin was still common academic currency. A simple explanation might come from a 1997 study on "the Use of Latin in the Modern Legal World" that demonstrated empirically how, in the U.S., "Latin in court opinions has experienced a revival over the past forty years."[25] There is a better explanation though.

Looking at the publishing venues of the thirty-three articles in our corpus, we find that almost half of them were either published in declaredly "European" journals—[2010], [2013b], [2015a], [2015b], [2017], [2023], [2024b]—or the *Columbia Journal of European Law* [2002], the *Common Market Law Review* [1986, 2009], or in a "German" [2004c], "Austrian" [2005], "Hungarian" [1998], "Geneva" [1995] or "Scandinavian" [2006] journal.

Considering the country of affiliation reported for the authors of these articles, seven out of seventeen, or 41.2 %, turn out to have been from Germany.[26] In addition, three more articles referred to specifically "German" issues of law in their titles—two of them written by a German author [2012] [2016a], one by an Austrian [2024a]. Of the remaining fifteen articles in the corpus, one third had at least one German author, one third had at least one author from the United States, and one article had both [2013a].[27]

This means that of altogether thirty-seven distinct authors in our corpus, at least fifteen, or 40.5 %, were affiliated in Germany—including repeat offender Klaus Meßerschmidt [2012] [2016a]—and only five, or 13.5 %, were affiliated in the United States—including the other repeat offender Curt Gruneberg [1947] [1949]. Of the five U.S. authors, three co-authored their text with a German [2013a], French [2004b], or Swiss [2018a] colleague, and another merely cited "German academics" who he had overheard [2004a].

This authorship pattern suggests a likely cause for the rising popularity of *non calculat* in English legal literature: The growing globalization of legal academia and an increasing presence of European (co-)authors in international law journals might have ushered the maxim across the Atlantic. Yet, why would the oldest references to *non calculat* [1947] [1949] come from an economics professor in Kansas? This is a fascinating story,[28] and its protagonist entirely forgotten, so I shall briefly dig into it.

Gruneberg, who in the U.S. was variously called *Grueneburg* or *Gruenburg,*[29] was actually born Curt Grüneberg—with an umlaut—in Berlin on Christmas Day 1895 to a "Mosaic" (Jewish) merchant and his wife.[30] Both parents were said to be "distinguished" individuals, with his father apparently coming "from a musical family", and his mother part "of the Kantozovich [Kantorovich?] family, widely known in intellectual life".[31] According to Gruneberg's

[25] *See generally* Peter R. Macleod, *Latin in Legal Writing: An Inquiry into the Use of Latin in the Modern Legal World*, 39 Boston Coll. L. Rev. 235 (1997) (studying the use of fifteen Latin phrases in three U.S. courts).

[26] Other authors came from Austria and Portugal (one each), France, Netherlands, Norway, and Switzerland (two each).

[27] Other (co-)authors came from Finland, France, Hungary, and three from Switzerland. One more text in the corpus [2016b] was published anonymously, but probably "written by a member of the editorial board" which comprises exclusively Europeans. *See* private correspondence from E.B., Exec. Assistant Swiss Arb. Ass'n (Oct. 6, 2023).

[28] For the remainder of this section, I acknowledge research support by Coryell Deege of the Special Collections & Archives Division at the Miller Nichols Library of the University of Missouri-Kansas City (UMKC), as well as Clemens Wachter at the University Archive of the Friedrich Alexander University at Erlangen-Nuremberg (Germany). They provided documents that are archived in file *Curt_Gruneberg_UMKC&FAU.zip*, Zenodo, "iudex non calculat" – Data on an Apocryphal Legal Maxim, doi.org/10.5281/zenodo.8228373.

[29] *See* N.N., *New Professor in Economics*, Kan. City Univ. News, Nov. 5, 1947, at 5 col. 2.

[30] His parents' names were recorded as Neumann and Anna (née Gieldzinski) but Curt called his father Nathan, *see* birth certificate vs. handwritten CV, Zenodo, *supra* note 28.

[31] N.N., *University Loses Eminent Scholar*, Kan. City Univ. News, Feb. 8, 1950, at 1 col. 1, 2 col. 3.

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handwritten CV, he studied in Freiburg until World War I broke out, then intermittently served in the war and finished his studies in Berlin.[32] For unclear reasons, he then obtained a doctorate *cum laude* in administrative law from the University of Erlangen in 1921,[33] before working for an unnamed "publishing company" from which the Nazis "discharged" him in 1933.[34] We may assume that the publisher was Berlin's *Allgemeine Fleischerzeitung*, Butchers' General Gazette, which is still published today, because Grüneberg produced a 248-page legal self-help book there in 1932.[35] Six years later, he emigrated, via Jerusalem, Trieste, and Toronto, to the United States, where his subsequent career was summarized by two obituaries:[36] He worked as a tax consultant or accountant in New York, obtained a master's degree in accountancy from Columbia University in 1942, was drafted by the military in April of the same year and applied (as a "stateless" person) for U.S. citizenship in December. He was naturalized in 1949 after being appointed an assistant professor of economics at Kansas City University (K.C.U.) two years prior. His university career was short-lived: He died from a heart attack just after midnight on January 14, 1950 at Menorah Hospital in Kansas City. He left no spouse or children. His main legacy may just be the first recorded usage of *non calculat* by a U.S. citizen—and the only one for over half a century.

This all shows that there simply is no tradition of the *non calculat* maxim in the Anglo-American world. Wherever the maxim appears in English scholarly writing, a German lawyer lurks just around the corner.

III. Which Rhetorical Purpose does Non Calculat Serve?

If the maxim is not, as we might have assumed, part of a shared tradition, then why do authors even use it vis-à-vis an uninitiated audience? In order to explore its pragmatics, we analyze the co-occurrences of *non calculat*: How was it framed rhetorically, and which, if any, attributes usually accompanied the phrase? Table 1 provides a detailed breakdown of all 19 *non calculat* frames encountered in our corpus.

This breakdown allows several inferences to be drawn about the pragmatics of *non calculat* in scholarly literature:

1. None of the 19 epithets occurs twice. This low degree of formulaicity suggests that individual authors may be genuinely convinced of the attributes they assign to the phrase, rather than merely copying and pasting boilerplate characterizations.
2. All but five epithets—[1995], [2012], [2013a], [2016a], [2018b]—include age-related framing: "old", "ancient", "Latin", "Roman". Even the earliest reference [1947] called *non calculat* an "old Roman saying" to conjure images of the "Roman Empire" and its world "two thousand years ago".[37] This suggests that most authors try to derive epistemological authority from the maxim's supposed historicity.
3. None of eight nominal attributes get used in more than 26 % of cases. While some articles simply refer to *non calculat* as "the maxim" [1995], others are more prolix, calling it an "old maxim from Roman law" and "legal term" [2013b]. This suggests that the epistemological status of the "maxim" is either unclear or differs across contexts.

[32] *See* Handwritten CV, ZENODO, *supra* note 28. *See also* N.N., *Dr. Curt Gruneberg: Heart Ailment Fatal to K.C.U. Economics Professor*, KAN. CITY STAR, Jan. 14, 1950, at 2.

[33] KURT GRÜNEBERG, DIE NEBENBESTIMMUNGEN EINES VERWALTUNGSAKTES UNTER BESONDERER BERÜCKSICHTIGUNG DER BESCHRÄNKUNGEN EINER SCHANKKONZESSION (1920) (99 page dissertation). *See also* dissertation file, ZENODO, *supra* note 28 (confirming that dissertation was defended on July 20, 1920, and degree issued on Feb. 8, 1921).

[34] N.N., *supra* note 31.

[35] *See generally* CURT GRÜNEBERG, DER JURISTISCHE RATGEBER FÜR DAS FLEISCHERGEWERBE (1932).

[36] *See* N.N., *supra* note 31. *See also* N.N., *supra* note 32.

[37] *See supra* quote accompanying note 1.

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Table 1. Co-occurrences and attributive framing of *non calculat*.

	[valence]	old	Roman	Latin	legal	saying	dictum	proverb	maxim	[other]
[1947]		√	√			√				
[1949]		√	√					√		
[1995]									√	
[2001]		ancient	√					√		
[2002]	timeless			√			√			
[2003a]	wise		√					√		
[2004a]				√						phrase
[2005]		√					√			
[2006]				√						sentence
[2012]								√		
[2013a]										formula
[2013b]		√	√		√				√	legal term
[2015b]				√					√	
[2016a]	wisdom							√		
[2016b]				√			√			
[2018a]		√	√			√				
[2018b]					√					axiom
[2023]			√							say
[2024a]				√		√				
	16 %	32 %	37 %	32 %	11 %	16 %	16 %	26 %	19 %	32 %

4. Less than one out of every five epithets, or 16 %, attributes valence; each of these cases connotes the maxim positively as a "timeless" [2002] "wise" [2003a] "wisdom" [2016a] rather than negatively as, say, a "dogma".[38] This positive valence starkly contrasts with the mostly critical explanation observed earlier. Most authors, however, seem to abstain from judging the maxim's veracity or authority.

Just as authors hesitate to attribute valence, they seem to be equally as reluctant to cite external references. Many use the maxim in mere passing, treating it matter-of-factly as though it required no introduction or explanation at all.[39] Considering the strict scrutinies of law review bluebooking, it is quite remarkable that even of four articles published in student law reviews—[1949], [1984], [2004a], [2013a]—just one (!) even attempted to cite a source for the maxim: In a paper for the *Connecticut Journal of International Law*, Markus Heintzen and Stephen Utz assert that "[t]he formula *judex non calculat* is found in the Digests of Roman Law (Dig. 49, 8, I § 1) as early as the second century B.C.E." [2013a]. While reassuringly precise, the

[38] *But see* Živorad Rašević & Marko Ćitić, *The Legal Interpretation as a Decision-Making Algorithm*, 4 Proceedings of Virtual International Conference Path to a Knowledge Society (PaKSoM) 299, 300 (2022) ("[C]ontrary to the dogma that Iudex non calculate[.]").

[39] *See* [1979], [1986], [2003b], [2004c], [2005], [2012], [2016a], [2016b], [2018c], [2024b].

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

reference is equally as misleading: Neither the Roman Digest cited,[40] nor other Latin classics, even use the phrase *non calculat* at all.[41]

Yet, the assumed historicity suggests that authors employ *non calculat* to generate an aura of erudition and to invoke the epistemological authority inherent in the maxim's purportedly ancient pedigree.

C. The Pragmatics of Non Calculat in German Politics

If English-language scholarship takes no note of *non calculat* except where European scholars contribute to it, and if many European scholars idealize number-aversion as a political virtue, then how do politicians themselves treat this supposed virtue? Empirically, the comparative pattern is similar to the one in scholarly journals: A full-text search across all types of U.S. Congress documents since 1949, while returning almost two million documents, returns *not a single* reference to the *non calculat* maxim.[42] In contrast, over the same time span, the maxim was invoked some twenty times across eighteen debates of the German Parliament, *Bundestag*, and once even in the travaux préparatoires for a draft law.

Each of these recorded uses—with verbatim quotes, the URL of each session protocol, and demographic data for the respective congressmen—have been made available in a public Zenodo dataset.[43] A closer look at these data in Section C.I will reveal who used the maxim in parliament, in Section C.II when it was most popular, and in Section C.III what these lawmakers intended.

I. Who Invoked the Non Calculat Maxim?

Fifteen distinct congressmen—no women[44] —have used the maxim in debates,[45] three of whom used it repeatedly.[46] Unsurprisingly, just two were engineers,[47] all others law school graduates. Even the earliest recorded use of *non calculat* in 1950 was meant to "remind my lawyer colleagues

[40] Dig. 49.8.1.1 reads in unabridged form: "Item si calculi error in sententia esse dicatur, appellare necesse non est: veluti si iudex ita pronuntiaverit: 'cum constet titium seio ex illa specie quinquaginta, item ex illa specie viginti quinque debere, idcirco lucium titium seio centum condemno': nam quoniam error computationis est, nec appellare necesse est et citra provocationem corrigitur. sed et si huius quaestionis iudex sententiam centum confirmaverit, si quidem ideo, quod quinquaginta et viginti quinque fieri centum putaverit, adhuc idem error computationis est nec appellare necesse est: si vero ideo, quoniam et alias species viginti quinque fuisse dixerit, appellationi locus est."

[41] Full-text search across William L. Carey's The Latin Library, available at thelatinlibrary.com. *See infra* Section E (discussing the relationship between *non calculat* and the actual expressions "calculi error" and "error computationis").

[42] Full text search (Aug. 31, 2025) for phrase "non calculat" across 1,981,889 documents via congress.gov/search?q={"congress":"all", "source":"all", "search":"\"non%20calculat\""}.

[43] *See* file *Bundestag_1950-2024.csv*, Zenodo, "iudex non calculat" – Data on an Apocryphal Legal Maxim, doi.org/10.5281/zenodo.8228373.

[44] Note that male members of parliament never outnumbered female ones to a similar degree (15-to-one). *See Frauenanteil im Deutschen Bundestag seit 1949,* Wikipedia (Ger.), de.wikipedia.org/wiki/Frauenanteil_im_Deutschen_Bundestag_seit_1949 (documenting a share of congresswomen of between 6.8 % in 1949 and 35.6 % in 2025).

[45] Plus one interjection whose author and party affiliation were not recorded. *See* Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 15/74, at 6382, para. B (Nov. 12, 2003), dserver.bundestag.de/btp/15/15074.pdf (Ger.).

[46] Philipp Amthor, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 19/183, at 23051, para. B (Oct. 8, 2020), dserver.bundestag.de/btp/19/19183.pdf (Ger.) and Philipp Amthor, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 20/83, at 9899, para. B (Jan. 27, 2023), dserver.bundestag.de/btp/20/20083.pdf (Ger.); Stephan Brandner, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 20/85, at 10188A, para. B (Sep. 2, 2023), dserver.bundestag.de/btp/20/20085.pdf (Ger.), and Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 20/145, at 18442, para. B (Dec 15, 2023), dserver.bundestag.de/btp/20/20145.pdf (Ger.); Detlef Kleinert, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 8/183, at 14489, para. B (Nov. 8, 1979), dserver.bundestag.de/btp/08/08183.pdf (Ger.), and Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 9/122, at 7365, para. B (Oct. 14, 1982), dserver.bundestag.de/btp/09/09122.pdf (Ger.).

[47] Elmar Kolb, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 9/106, at 6399, para. A (June 16, 1982), dserver.bundestag.de/btp/09/09106.pdf (Ger.); Norbert Eimer, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 12/172, at 14821, para. D (June 16, 1982), dserver.bundestag.de/btp/12/12172.pdf (Ger.).

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in this House that jurists in general are not sympathetic towards number-juggling".[48] This matter-of-fact usage suggests that the speaker's "lawyer colleagues" were assumed to be well familiar with the maxim even then.

Interestingly, this speaker—being the first post-war congressman to use *non calculat* in debate—was an unapologetic Nazi. He had joined the party in 1933, and continued to praise the "revolutionary NSDAP line" even four years after Germany had lost the war.[49] While there is no obvious relationship between political leanings and Latin maxims, it appears that of all congressmen who used *non calculat* over the years, all but two[50] belonged to right-leaning conservative parties such as Free Democrats (FDP), Christian Democrats (CDU), or the far-right fringe (DRP/AfD). There seems to be an inverse correlation between conservative beliefs and the willingness to have lawyers calculate[51] —but we will test this hypothesis later, in Section D.IV.

II. When Did the Non Calculat Maxim Get Used?

Analysing the maxim's appearances over time (see Figure 2 below), we find a similar pattern as in English-speaking journals: Following a dearth in early years—with only two references in the three post-war decades—the maxim's prominence surges in the very recent past: Seven of all eighteen debates that included the maxim, or 39 %, occurred in just the first third of this decade alone.

Unlike the rising popularity in English-language scholarship, there is no intuitive reason why the maxim should attain peak prominence in 2020–23.

III. Why did Politicians use Non Calculat?

Of the three competing interpretations of *non calculat*,[52] the first never appeared in parliamentary debates, and just three debates referred to the second reading that judges should weigh, not add arguments.[53] As in scholarly journals, almost all instances of *non calculat* referred to its third, jocular, usage; either *offensively* to criticize opponents—for example, "I am surprised you would

[48] Herwart Miessner, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 1/54, at 1980, para. D (Mar. 29, 1950), dserver.bundestag.de/btp/01/01054.pdf (Ger.) (noting on the establishment of the Federal Tax Court, *Bundesfinanzhof*: "Ich darf wohl die Juristenkollegen hier im Hause daran erinnern, daß es dem Juristen im allgemeinen nicht sehr sympathisch ist, mit Zahlen zu jonglieren. Judex non calculat!").

[49] *See Herwart Miessner*, Wikipedia (Ger.), de.wikipedia.org/wiki/Herwart_Miessner.

[50] Norbert Mann (Green Party), Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 10/171, at 12880, para. B (Nov. 7, 1985), dserver.bundestag.de/btp/10/10171.pdf (Ger.); Dirk Wiese (Social Democrats), Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 20/83, at 9905, para. D (Jan. 27, 2023), dserver.bundestag.de/btp/20/20083.pdf (Ger.).

[51] In contrast, we find no correlation with age: Between the youngest (27) and oldest (78), similar numbers of congressmen were in their 30s (4×), 40s (3×), 50s (6×), and 60s (2×).

[52] *See supra* text accompanying note 19.

[53] Philipp Amthor, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 19/183, at 23051, para. B (Oct. 8, 2020), dserver.bundestag.de/btp/19/19183.pdf (Ger.); Paul Lehrieder, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 19/199, at 25068, para. C (Dec. 10, 2020), dserver.bundestag.de/btp/19/19199.pdf (Ger.) ("[N]icht die reine Anzahl der Argumente für oder gegen etwas zählt, sondern dass man in der Lage ist, gut zwischen ihnen abzuwägen und auf dieser Grundlage Entscheidungen zu treffen." ["It is not the sheer number of arguments for or against something that counts, but rather the ability to weigh them carefully and make decisions on that basis."]); Günter Krings, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 20/57, at 6271, para. D (Sep. 29, 2022), dserver.bundestag.de/btp/20/20057.pdf (Ger.) ("Die Anzahl von Gerichtsurteilen zu zählen ... ist noch nie ein starkes juristisches oder politisches Argument gewesen." ["Counting court rulings ... has never been a strong legal or political argument."]).

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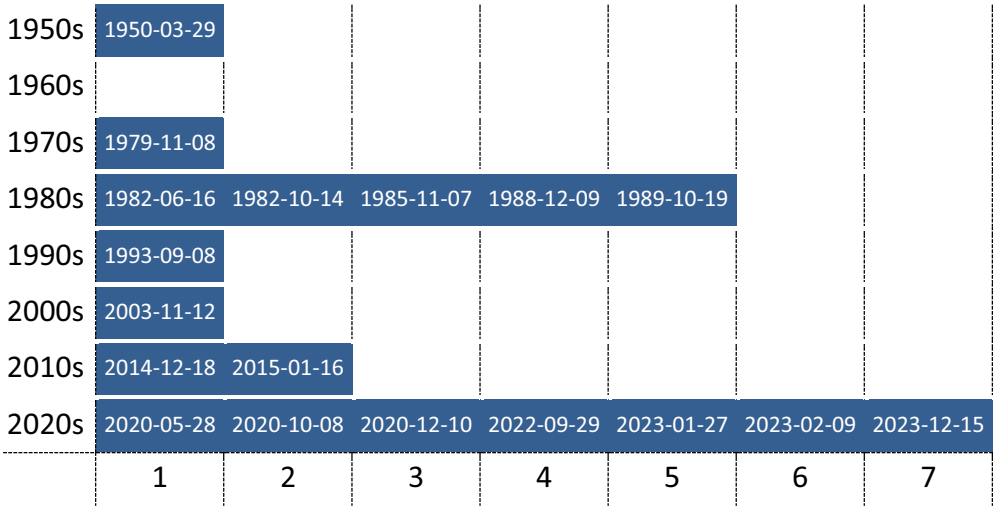


Figure 2. Absolute number of plenary sessions of Germany's federal parliament, *Bundestag*, containing references to *non calculat* across decades since 1950.

be capable of adding this correctly"[54] —or *defensively* to apologize for numerical slips—"You know: judex non calculat."[55]

In addition to oral banter, *non calculat* also appeared in legislative documents once, namely in the official 1996 rationale for reforming Germany's arbitration laws. As part of this reform, legislators had to explain why arbitration courts—unlike state civil courts—should decide not just on the merits of the case, but also on the costs of their proceeding: "Civil courts do decide on the costs, yet without quantifying them. However, the maxim 'judex non calculat' derives in civil courts from the cost assessment procedure administered by legal officers."[56]

This quote provides evidence for a fourth reading of *non calculat*, namely that judges are relieved from quantifying court costs due to administrative assistance. It was not the first time that this interpretation appeared: Just a few years prior, a pioneer of German legal informatics had argued in a textbook on "applied computer science" that "the two thousand year old Roman-law tradition of *'Iudex non calculat'*" implied that judges "let subordinates do the calculations" and "automatically deny themselves closer engagement with the *calculator* [devices]".[57] This interpretation may also be what Curt Gruneberg had had in mind,[58] and more recently, ill-

[54] Detlef Kleinert, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 8/183, at 14489, para. B (Nov. 8, 1979), dserver.bundestag.de/btp/08/08183.pdf (Ger.) ("Herr Kollege Lenz, iudex non calculat, sagt man. Ich bin überrascht, daß Sie dennoch in der Lage waren, das richtig zu addieren.").

[55] Norbert Mann (Green Party), Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 10/171, at 12880, para. B (Nov. 7, 1985), dserver.bundestag.de/btp/10/10171.pdf (Ger.) ("Sie wissen: judex non calculat.").

[56] Draft law "SchiedsVfG-E", Deutscher Bundestag: Drucksachen [BT-Drs.] 13/5274, at 57 (July 12, 1996), dserver.bundestag.de/btd/13/052/1305274.pdf (Ger.) ("Die ordentlichen Gerichte entscheiden zwar über die Kosten, ohne sie zu beziffern. Der Grundsatz 'judex non calculat' erklärt sich aber bei den staatlichen Gerichten aus der Existenz des Kostenfestsetzungsverfahrens, das vom Rechtspfleger durchgeführt wird.").

[57] Steinmüller, *supra* note 15, at 25 ("Die zweitausendjährige römisch-rechtliche Tradition des '*Iudex non calculat*' ('Der Richter . . . rechnet nicht'' d.h., er läßt durch Untergebene rechnen . . .) verbot von selbst eine nähere Beschäftigung mit dem *Calculator*/Rechner.")

[58] The second ellipsis in the quote accompanying note 1 replaces the words "and to transfer this part of the case to an accountant".

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

conceived interpretations of *non calculat* were described as a manifest reason why "the issue of calculation has traditionally attracted relatively little attention in legal writing and practice".[59]

D. Thinking Like a Lawyer: *Non Calculat* in Legal Education

We have already seen how some legal scholars from Germany celebrate *non calculat* as a proud commitment to their "legalist tradition"—barring them from *quantifying* justice[60] —as best summarized by one German attorney:

> [I]n the legal context, I am generally wary of mathematical axioms. Maybe the sentence 'iudex non calculat' is well put .... Certainly O.W. Holmes was correct – even for our legal system – to assert that 'The life of law has not been logic; it has been experience' .... We need no numerical dogmatics, but pragmatism and normative evaluation. Any lawyer who proceeds otherwise risks being derided as a scholastic, as a rule automaton, a technician of the law, and a case plumber. The natural-sciency logic of terms ... only covers up ... the actual problems of attributing responsibility.[61]

Rarely do German lawyers ramble so polemically, and rarer still do they appeal to legal authorities from the U.S. Given that politicians with law school training—even those with little else in terms of life experience[62] —also employ *non calculat* as an instinctive rhetorical device, maybe there is indeed what Curt Gruneberg called a "special state of mind" of the "legal profession".[63] Might its root cause lie in the common denominator of these professional domains—their protagonists' law school experience? To explore this question, I conducted a survey among German law students.[64] Below I briefly summarize the method and survey uptake, before analysing the responses in detail in Sections I. through IV.

There are currently forty-four law schools at German universities. No platform allows to contact their students collectively, so I e-mailed the student body representatives at each of forty-two law schools:[65] I asked them to relay my survey "on the language of law" to all students at their school, and I reminded them twice at ten day intervals. As a result, slightly less than half of the student bodies responded: All of fifteen agreed to disseminate the survey, five refused—some on account of being unable to contact their members, others due to an overwhelming number of similar requests. There is reason to suspect, however, that only five student representatives actually did distribute the survey as agreed: While my survey respondents reported affiliations with twenty-one different law schools—or half of the total—most of these schools (sixteen or 76.2 %)

[59] Irmgard Marboe, Calculation of Compensation and Damages in International Investment Law 1 (2009) ("The issue of calculation has traditionally attracted relatively little attention in legal writing and practice ... Hereby, a wrongful interpretation of the Latin verdict of *iudex non calculat* likely manifests.").

[60] *See supra* near the end of Section B.I.

[61] Christian Manfred Klette, *Zur sogenannten Additionsmethode bei Mehrfach-Irreführungen*, 85 Gewerblicher Rechtsschutz und Urheberrecht (GRUR) 414, 422 (1983) ("[I]ch habe im Juristischen immer Sorge vor mathematisch formulierten Axiomen. Vielleicht ist mit dem Satz 'iudex non calculat' etwas ... Zutreffendes formuliert. Und Recht hatte zweifellos O. W. Holmes mit seiner – auch für unseren Rechtskreis zutreffenden – Feststellung: 'The life of law has not been logic; it has been experience'. Insbesondere ... brauchen wir nicht numerische Dogmatik, sondern Pragmatik und Bewertung. Der Jurist, der anders verfährt, läuft Gefahr, gescholten zu werden als Scholastiker, Paragraphenautomat, Rechtstechniker und Fallklempner. Die quasi-naturwissenschaftliche Begriffslogik ... verdeckt nur ... die wirklichen Zurechnungsprobleme.").

[62] *See* Philipp Amthor, Deutscher Bundestag: Plenarprotokoll [BT-PlProt.] 19/183, at 23051, para. B (Oct. 8, 2020), dserver.bundestag.de/btp/19/19183.pdf (Ger.) anecdote, accompanying text *supra* after note 4.

[63] *See supra* quote accompanying note 1.

[64] Survey conducted from Aug. 8 to Sep. 8, 2023, with first request sent on Aug. 8, and reminders on Aug. 18 and Aug. 28.

[65] I excluded my own, *EBS Law School*, to avoid response bias, and the university of distance-learning, *Fernuniversität Hagen*, where students receive more written or recorded materials than oral instruction, and for which I found no student body e-mail contact.

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were mentioned but once. Instead, responses clustered heavily in five law schools[66] and cannot, therefore, faithfully represent all German law students. Some variation in geography and reputation did transpire nonetheless: Of the five schools, one was located in each of the North, South, West, East, and capital region of Germany; at the time of my survey they ranked—in a satisfaction survey among German law students—sixth, twentieth, twenty-first, thirty-seventh, and thirty-ninth respectively,[67] out of forty-four.

The survey was designed to run for one full month during off-class season on a platform for social science research in Germany, SoSciSurvey (www.soscisurvey.de). 235 law students completed the questionnaire. Respondents passed through three consecutive survey pages. On the first, they were asked to respond to four socio-demographic questions, which I will analyse in Section D.IV below. On the second survey page, they were asked to actively recall statements pertaining to "law and numbers", which I will utilize in Section D.I. On the third page, they were then asked to think about *non calculat* specifically, and to answer four additional questions about this maxim, which will be the subject of sections D.II and D.III.

Throughout these following sections, individual responses get cited by their ID (for example, "#200") from the dataset, which has been archived—along with questionnaire and codebook—in the online repository Zenodo.[68]

I. How Many Students Actively Recall Non Calculat?

The survey had been introduced in general terms as "regarding the language of law", and before it first mentioned *non calculat*, respondents were asked to list any "legal principles, maxims or proverbs"—*juristische Prinzipien, Grundsätze oder Sprichwörter*—which they could think of in relation to "law and numbers"—*Recht und Zahlen*.

This request alone caused major survey attrition: Fifty participants aborted the survey, thirteen more continued without responding to this question. Many may have just lost interest at the mention of "numbers", as even two who continued protested that "I study law and not maths." (#119) or "I have not studied law to do calculations." (#230) Eight others frankly admitted that they could not think of *any* such "principle, maxim, or proverb".

Limiting the subsequent analysis to 185 respondents who did continue the survey, the median respondent provided two maxims—or 2.25 on average—and only five respondents exhausted the preset maximum of ten responses. Of those who provided any response at all, eighty-five—or 49.4 %—included a variation of *iudex/judex/iurex/iuris/ius non calcula(t)* or, in three cases, a German paraphrase—"*Juristen rechnen nicht*" or "*Der Richter rechnet nicht*". In all but five of these eighty-five instances, this was the very first mention. This implies that *non calculat* is the very first thing that comes to a law student's mind in almost every second case of thinking about law and numbers. No other principle, maxim or proverb was nearly as prominent.[69]

Looking at the duration of law school exposure, additional experience did seem to boost recall: The sixty-nine enrolled students who mentioned *non calculat* had studied 5.6 semesters on average, whereas the eighty-eight who did not had studied 4.6 semesters; just one provided no study duration. Among law graduates, sixteen out of twenty-seven, or 59.3 %, mentioned the maxim. When later prompted to think specifically about *non calculat* and *where* they encountered it, sixty-eight of 127 respondents, or 53.5 %, reported knowing it "from classes at university".

[66] Specifically, Goethe University Frankfurt (twenty-four respondents), Christian Albrechts University Kiel (twenty-six), Humboldt University Berlin (forty-nine), Eberhard Karls University Tübingen (fifty-six), and Martin Luther University Halle-Wittenberg (sixty-four).

[67] *Uni-Ranking Jura*, LTO Karriere, lto.de/karriere/jura-studium/uni-ranking.

[68] *See* files *SoSciSurveyDE_2023* . . . *, Zenodo, "iudex non calculat" – Data on an Apocryphal Legal Maxim, doi.org/10.5281/zenodo.8228373 (comprising questionnaire as **.pdf/.xml*, codebook as **.xlsx*, and data as **.csv*).

[69] Among first mentions, the ranks behind *non calculat* (80) were taken by *in dubio pro reo* (18) and "Geld hat man zu haben." (8)—the latter meaning the inapplicability of impossibility-of-performance defenses against financial debt.

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Table 2. Proposed meanings of *iudex non calculat* by 116 German law students.

	... does not ...	... cannot ...	... need not ...	
Judge ...	56.5	0	0	48.7 %
Jurist ...	39.5	13	1	46.1 %
Court[71] ...	2.5	0	0	2.2 %
Law[72] ...	3.5	0	0	3.0 %
	87.9 %	11.2 %	0.9 %	... calculate.

Almost as many (sixty-six) recalled it from "private conversation among personal acquaintances" —which likely includes fellow law students, seeing as the fifty-two respondents who knew the maxim from private conversations had studied 6.1 semesters on average, while seventy-six others had studied just 4.9 semesters.

II. What does Non Calculat Mean to Law Students?

When asked what they suppose the maxim "means"—*bedeutet*—eight respondents provided a circumlocution, 109 a literal translation, and seven combined both. Of the 116 translations, Table 2 breaks down their variation:

The table shows that while nearly everyone[70] translated *calculat* to "calculate"—*rechnen* or, in one instance, *kalkulieren*—their subject and predicate phrases differed. Each table cell reports the absolute number of cases—out of 116—combining the given subject and predicate. In eight instances, respondents held two competing interpretations; each was counted with a fraction of 0.5. The table is noticeably sparse: Most respondents construed the maxim as referring to judges—48.7 %—or jurists—46.1 %—and despite some variation in modality, no respondent construed the maxim as saying that one "should not" or "must not" calculate. In that sense, the maxim's interpretations were surprisingly uniform.

Moving from translations to circumlocutions, the dominant themes among the fourteen identified responses were "quality, not quantity" or judges weighing rather than adding arguments—#3, #11, #52, #122, #213, #225—and "law is not formulaic", not capable of scientific precision—#88, #94, #177/#218: *keine Zählwissenschaft*. Two respondents reported a "quotidian" (#50) or "false" (#225) interpretation of jurists' inability to calculate, others read the maxim to say that judges decide only on the merits, not on the extent (#147), that courts can correct miscalculations post-hoc (#183), that judges apply the law regardless of parties' material interests (#124), and that judges should not offset punishments against each other (#223).

Here we thus re-encounter each of our four previously established interpretations,[73] as well as two new ones (in #124 and #223). In these "new" cases, neither of the two respondents meaningfully answered the question about the origin of their familiarity with *non calculat*.

III. How Much did Students Agree with Non Calculat?

In addition to their *understanding* of the maxim, students were also surveyed about their *agreement* with it. At least one respondent had reported during the active recall phase that he

[70] Merely two respondents (#146 and #213) translated *calculat* to "count" (*zählen*).
[71] This row combines two concrete institutions: *Gericht* and *Justiz*.
[72] This row combines three abstract concepts: *Gesetz*, *Recht*, and *Jurisprudenz*.
[73] *See* text accompanying notes 19 and 57.

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Table 3. Ten evaluative statements about *non calculat*, with mean and median strength of agreement on descriptive Likert items converted to [−2,+2] among N German law students.

	statements about *non calculat*, as evaluated by respondents		agreement		
	original (German)	translated (English)	mean	median	N
1	*Den Satz finde ich persönlich richtig/zutreffend.*	I personally agree with this statement.	0.7	1	117
2	*Ich fühle mich an diesen Satz rechtlich gebunden.*	I feel legally bound to this statement.	−1.0	−2	114
3	*Ich richte mein Verhalten nach diesem Satz, soweit ich kann.*	I adjust my own behavior to this statement as much as I can.	−0.7	−1	115
4	*Der Satz ist ein zentrales Ideal deutscher Rechtswissenschaft.*	The statement is a central ideal of German legal studies.	−0.6	−1	113
5	*Der Satz passt zum realen Selbstbild deutscher Jurist:innen.*	The statement fits the real self-construal of German jurists.	0.5	1	111
6	*Für die Praxistätigkeit von Jurist:innen ist der Satz hilfreich.*	The statement is helpful for the practical work of jurists.	−0.7	−1	108
7	*Die juristische Ausbildung sollte diesen Satz verwirklichen helfen.*	Legal education should strive to put this statement into effect.	−1.0	−2	113
8	*Die juristische Ausbildung sollte diesen Satz widerlegen helfen.*	Legal education should strive to refute this statement.	0.1	0	113
9	*Deutsche Jurist:innen lehnen quantitative Methoden ab.*	German jurists disapprove of quantitative methods.	0.0	0	98
10	*Deutsche Jurist:innen sollten quantitative Methoden verstehen lernen.*	German jurists should learn to understand quantitative methods.	0.8	1	110

"frequently uses" the maxim "in everyday life when someone wants to know something about numbers from me"—#205—which implies its defensive function in line with this respondent's self-construal of his task as a legal professional.

At the conclusion of the survey, all respondents were asked how strongly they agree—on a scale of five[74] —with each of ten statements about their previously stated understanding of *non calculat*. Two of these statements—at rows seven and eight—directly contradicted each other, as an attention check to ensure respondents did not fill the survey blindly. Six respondents who did indeed simultaneously agree with *both* of these statements—#35, #38, #86, #93, #151, #231—were excluded from the following analysis.

This left 117 respondents previously familiar with *non calculat* and with some conception of what it meant to them. Their responses were pooled due to the substantially similar understandings reported earlier.[75] Each respondent replied to at least four of the ten statements,[76] summarized as follows:

As this tabulation shows, on the *micro-level* of subjective attitudes, students personally support the *descriptive* assertion that "jurists do not calculate"—the median respondent "agrees

[74] Measured by Likert items—"disagree completely", *lehne völlig ab*, "disagree somewhat", *lehne eher ab,* "neutral/indifferent", *neutral/egal,* "agree somewhat", *stimme eher zu*, "agree completely", *stimme völlig zu*—which were converted to numerical scores [−2, +2] for analysis and summary in Table 3 below.

[75] *See supra* Table 2. As a robustness check, I repeated the following analysis excluding the one normative construal—"need not", #90—and whoever provided no simple translation at all—#11, #52, #124, #147, #177, #218, #223, #225. This reduced the sample size to 108 but changed no mean agreement value by more than 0.1.

[76] There was a "cannot say"—*kann ich nicht sagen*—option that some selected repeatedly.

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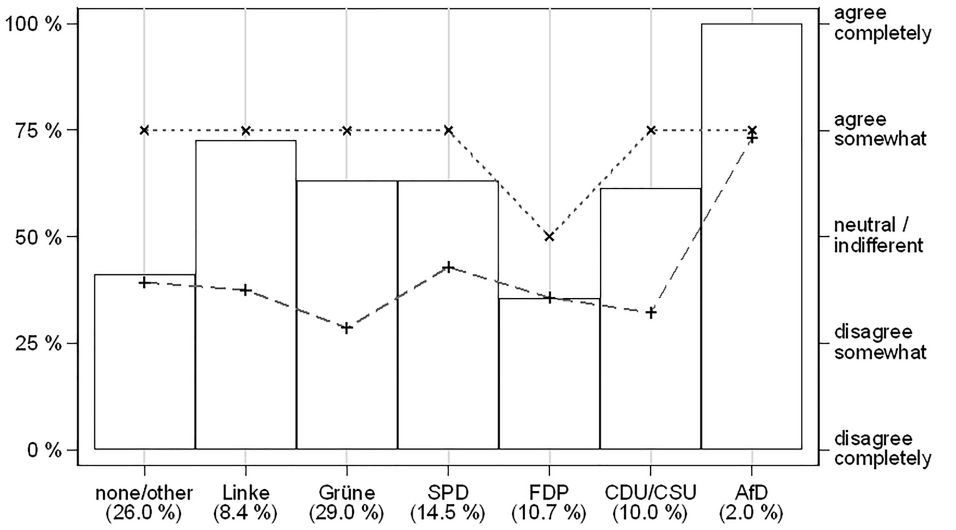


Figure 3. Correlation of familiarity/agreement with *non calculat* and political leaning[77]

somewhat" with statement 1—but refuse the *normative* implications of feeling legally bound—they "disagree completely" with statement 2—or of adjusting their behavior *de facto*—as they "disagree somewhat" with statement 3.

Turning next to the *macro-level* of their assumptions about German lawyers in general, students neither consider *non calculat* a "central ideal" of legal studies—the median respondent "disagrees somewhat" with statement 4—nor do they find it practically helpful—they "disagree somewhat" with statement 6. Yet they do agree, again, with the more *descriptive* assertion that *non calculat* "fits the real self-construal" of German jurists—they "agree somewhat" with statement 5—while they seem somewhat less convinced of the general disapproval of German jurists vis-à-vis quantitative methods—they remain "neutral/indifferent" with respect to statement 9.

Considering finally their *policy* stance, students do not want legal education to promote *non calculat*—they "disagree completely" with statement 7—but neither are they in favor of its eradication—remaining "neutral/indifferent" about statement 8. They merely affirm the importance of learning to understand quantitative methods—as they "agree somewhat" with statement 10. This aligns with their earlier disapproval of practically any *normative* reading of *non calculat* in statements 2–4 and 6.

Thus emerges a mixed picture: German law students are not, generally, in favor of number aversion, but they do appreciate its widespread prevalence. They perceive it as part of German jurists' *actual* image of themselves, but not as an *ideal* worth supporting. They personally agree that *non calculat* is true, while perceiving no obligation for it to be so. They want jurists to learn about quantitative methods and they perceive refusal as unhelpful for legal practice. In short: *Iudex non calculat—sed debet*. ("... but they should.")

IV. Which Political Loyalties does Non Calculat Serve?

Although students *on average* did not normatively support *non calculat*, there might still be attitudinal differences along party lines. After all, 90 % of references to *non calculat* in German parliament had come from politicians speaking on behalf of liberal-conservative or right-wing

[77] The party names on the horizontal axis refer respectively—from left to right—to the left, green, social democratic, liberal democratic, conservative Christian and right-wing party.

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parties (see Section C.I above). In order to test whether political conservatism might correlate with the urge to dissociate law and computation, I included in my survey a sociodemographic question asking respondents about their political leanings.[78] Surprisingly, there was no discernible pattern among the 131 respondents whose party leaning could be correlated with their attitudes towards *non calculat*, as illustrated by the following correlation graph:

The previous graph plots respondents' position on the political spectrum on the horizontal axis against three *non calculat* measures on one of the two vertical axes: As a bar plot against the left-hand vertical axis, their proclivity to actively recall *non calculat* in % of respondents; as line plots against the right-hand vertical axis, either their median agreement (marked as ×) with the last statement in table 3—"German jurists should learn to understand quantitative methods."—or the median value of a composite index (marked as +) which averages each respondent's agreement with the first seven statements from table 3. Both lines appear almost flat, showing close to no correlation between *non calculat* attitude and political leaning.

The only exception to this finding is a sharp increase in the right-most part of the graph. This needs to interpreted with caution though, due to the heavily skewed distribution of political leanings in our sample. While more than a quarter of respondents—thirty-four of 131—did not report leaning towards any of the six mainstream German parties, more than half of respondents, sixty-eight or 51.9 %, sympathized with one of the three parties in the left-green coalition government at the time of my survey—thirty-eight Green, nineteen SPD, and eleven Left, respectively. Only twenty-seven respondents, or 21 %, leaned towards the liberal-conservative parties—FDP, CDU/CSU—and just two towards the extreme right—AfD. Given subsamples this small, any increase on the right-hand side of the graph may be due to sampling bias.

E. Whence *Non Calculat*: Unthinking Adherence or Quixotical Humor?

While law students do not reproduce the politicized pattern of *non calculat* usage which we observed in politicians, their responses confirm that number aversion is considered an integral part of German lawyers' identity, even at the earliest career stage of those attending law school.[79] Might law school even condition students "into unthinking adherence to conventions that we cannot even explain ourselves"?[80] Consider what legal anthropologist Elizabeth Mertz once called "Thinking Like a Lawyer", namely "the acquisition of lawyerly 'thinking' as an initiation into" a legal "tradition".[81] Even as *non calculat* has failed to become a shared trans-Atlantic tradition, might it still be considered a genuinely defining *German* legal tradition?

In order to explore this question, I studied how different actors in the legal system perceive its historical authority —from law students in Section E.I, to judges in Section E.II, and legal historians in Section E.III. Yet, any attempt to historically trace the first instance of the maxim has failed: Its origin story may just be lost in the fog of the pre-1850s, as Section E.IV concludes.

I. Law Students' Collective Dating: 986 Years

When asked in my survey (Section D.) how long ago German law students supposed that *non calculat* first appeared in writing, their 144 responses ranged from zero to 3,000 years. Excluding respondents who had never previously heard of *non calculat*, and therefore had to guesstimate

[78] The exact phrasing of the question was adapted from established representative polls of the German populace (ALLBUS, SOEP, Politbarometer, Trafo, GLES): "*Menschen neigen oft länger einer bestimmten politischen Partei zu, obwohl sie auch ab und zu mal eine andere wählen. Neigen Sie – ganz allgemein gesprochen – einer bestimmten Partei zu?*" ("People often lean toward a particular political party for a longer period of time, although they occasionally vote for another. Generally speaking, do you lean towards a particular party?").

[79] Note that in Germany Law is an undergraduate degree aimed at high school graduates.

[80] *See* Hamann, *supra* note 10, at 385.

[81] Elizabeth Mertz, The Language of Law School: Learning to "Think Like a Lawyer" 4 (2007).

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based on the Latin phrasing, the remaining 124 estimates produced a combined average of 986 years, median 550 years, which would correspond to a medieval origin. Only twenty-nine respondents—23.4 %—assumed an age of 2,000 or more years, which would correspond to an origin in antiquity, such as classical Roman law.

II. Judicial Skepticism: No More Than a "Pseudo-Adage"?

Judges are even more skeptical of *non calculat*'s antique origin. While German judges have thus far refrained from even mentioning the maxim, the published case record of European courts, CJEU and ECtHR,[82] is more explicit: Even the earliest user of *non calculat*—French advocate general (AG) Henri Mayras—saw it as no more than a "pseudo-adage attributed to mediaeval jurists".[83] Of the three subsequent cases, two had a specifically German pedigree,[84] leaving just one instance with no apparent relation to Germany where *non calculat* got used without questioning its historical veracity.[85]

In the U.S., Judge Tester, as the only judge who referred to *non calculat,* did not exactly choose it for its antique pedigree either. His reference was quite a bit more quixotical, as the judge himself clarified upon request:

> [W]hile I was in law school, I had a colleague who was an English major and in each of his essay answers to exams, he would use a word that he was certain the professor would have to look up … Also, a fellow federal judge of mine quoted Shakespeare in all of his opinions. I shared these stories with my law clerks at the time, and we decided to draft the opinion to include 5 Latin phrases that we thought would be appropriate and interesting.[86]

Indeed, Tester's decision also referred to *quantum meruit*—"as much as she deserves"—*de die in diem*—"from day to day"—and to "the well-established Latin maxim" *vigilantibus non dormientibus aequitas subvenit*—"equity aids the vigilant, not the sleeping"—as well as *generalia specialibus non derogant*—"the general does not detract from the specific". Like these other phrases, the judge had chosen *non calculat* less to ground his judicial philosophy than to craft an "interesting" judicial in-joke.[87] For what it is worth, at least his was no case of "unthinking adherence" to law school drills.

[82] A full-text search for "non calculat" in databases EUR-Lex and HUDOC (Aug. 31, 2025) obtained four search results, as discussed in the main text below.

[83] ECJ, Case 112/77, Töpfer v. Commission (Apr. 12, 1978), at 1034, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61977CC0112 ("I shall have to take note of certain figures at the risk of belying the pseudo-adage attributed to mediaeval jurists: *judex non calculat.*").

[84] ECJ Joined Cases C-113/10, C-147/10 & C-234/10, Zuckerfabrik Jülich v. Hauptzollamt Aachen, ECLI:EU:C:2011:701 (Oct. 27, 2011), at 18, para. 101, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62010CC0113 ("'*Judex non calculat*', as the agent for the German Government put it at the hearing. Presented with such a variety of figures, the Court would indeed be well advised to resist any temptation to seek an arithmetical solution."); Opinion of German Advocate General Juliane Kokott (Apr. 18, 2013), ECJ Case C-501/11, Schindler Holding v. Commission, at 31, para. 193, eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62011CC0501 ("The value of evidence is not assessed on a numerical basis ('*iudex non calculat*') or on the basis of how often the Commission referred to it").

[85] Zagrebačka banka v. Croatia, Eur. Ct. H.R., App. No. 39544/05, para. 202 (Dec. 12, 2013), hudoc.echr.coe.int/eng?i=001-138917 ("[T[he exact calculation … was not a mere technical issue as it is in other circumstances (*judex non calculat*).").

[86] Private e-mail correspondence from Brian Tester (Aug. 11, 2023, and Sep. 21, 2023), adding: "[t]he suggestion came from my law clerk at the time and his name is Cheng-Yu Hou. I tried to track him down but had no luck. I believe that he is or was affiliated with Stanford."

[87] *See also* Jon J. Lieberman, *The Virtues of Latin for Lawyers*, FED. LAWYER, Mar.–Apr. 2022, at 6, 7 (relating a similar anecdote in a bankruptcy case from the opposite side of the bench: "My most memorable 'Latin moment' occurred while arguing an appeal of a bankruptcy appellate panel decision before the Sixth Circuit Court of Appeals. I … learned that one of the Sixth Circuit judges had been a classics major … I made sure to include quite a few Latin phrases into the answer to a

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III. Scholarly Dispute: "No Earlier Than the Middle Ages"?

Like a quarter of German law students in my survey, well over a third of the scholarly literature also dates *non calculat* to "Roman" times.[88] However, just one English-language article, co-authored by a German lawyer [2013a], ever cited a historical source—albeit one we could not confirm.[89] Tracing this error further back, we find that the author had quoted from own prior work in German,[90] which in turn referred to a collection of "Latin Legal Rules and Proverbs" by German legal historian *Detlef Liebs* saying:

> *Judex non calculat*. The judge does not calculate. Calculation is not the judge's task; simple calculations in a decision do not partake of the finality of judgment. A mistake in this process can be corrected anytime. See Dig. 49, 8, 1 § 2 (Macer) . . .[91]

German legal scholars frequently defer to such collections, which is why *Liebs'* interpretation has become almost uncontested as "the analysis generally given time and again."[92] All similar encyclopedias either repeat *Liebs'* explanation and accept him as the authoritative source,[93] or they cite no source at all.[94] Only recently have other legal historians begun to acknowledge that *non calculat* "cannot be classical Roman law, because 'to calculate' in the words of classical jurists was '*computare*', not '*calculare*'. Calculare only started appearing at the end of the fourth century A.D."[95]

One expert from Austria, while finding the maxim to be "in line with the general spirit of the antique sources", estimated its first *literal* appearance as "no earlier than the Middle Ages".[96] A German colleague dates the appearance of *non calculat* even later: "I opine that we can be absolutely certain that the paroemia cannot originate from the Middle Ages."[97]

With so little agreement on the maxim's original meaning and historical source, I eventually decided to engage the wisdom of crowds: I initiated a "Research Competition in History of Language and Law" and called upon legal historians all over the world to provide any example or evidence of "primary sources (written or printed, published or not) containing the exact phrase '(i/j)udex non calculat' prior to 1850." The competition was announced on LinkedIn in April 2024, reposted on LinkedIn and Twitter (X) by the Centre for Legal History at Edinburgh, shared

really tough question she posed . . . the judge and I spent a good amount of time discussing my use of Latin, and she ran out of time to ask me any more tough questions. Latin has been very, very good to me.")

[88] *See* column "Roman" *supra* Table 1.

[89] *See supra* text accompanying notes 40, 41.

[90] Heintzen, *supra* note 24, at 22 n. 3.

[91] Detlef Liebs, Lateinische Rechtsregeln und Rechtssprichwörter 102, no. J150 (1982) ("Judex non calculat. Der Richter rechnet nicht. Rechnen ist nicht Aufgabe des Richters; reine Rechenarbeit im Urteil erwächst nicht in Rechtskraft, ein dabei unterlaufener Fehler kann jederzeit berichtigt werden. S. Dig. 49, 8, 1 § 2 (Macer) . . .").

[92] Wesel, *supra* note 14, at 58 ("Das ist die Analyse, die allgemein immer gegeben wird.").

[93] Nikolaus Benke & Franz-Stefan Meissel, Juristenlatein 184 (4th ed. 2021); Hubertus Kudla, Lexikon der lateinischen Zitate 350, no. 2302 (5th ed. 2023); Gerhard Köbler, Zielwörterbuch europäischer Rechtsgeschichte 350 (4th ed. 2006), koeblergerhard.de/ZusammenfassendesWoerterbucheuropaeischerRechtsgeschichte.pdf.

[94] *See* Karl Luggauer, Juristen-Latein 126 (3rd ed., 1979); Rolf Lieberwirth, Latein im Recht 153 (5th ed. 2007).

[95] Wesel, *supra* note 14, at 58 ("[I]udex non calculat kann nicht klassisches römisches Recht sein, denn 'rechnen' heißt für den klassischen Juristen 'computare,' nicht 'calculare'. Calculare kommt erst Ende des vierten Jahrhunderts auf"); Susanne Hähnchen, Latein für Jurastudierende 7 (8th ed., 2022) ("Für die römischen Quellen findet sich nur der error computationis (Rechenfehler) bei Macer Dig. 49, 8, I, 1. Darauf wird die o.g. Regel zu Unrecht zurückgeführt, da sie sich erst viel später entwickelte bzw. nachweisbar ist.").

[96] Theo Mayer-Maly, *Error calculi*, Festschrift für Hubert Niederländer 97, 99 (Ed. E. Jayme ed., 1991) ("Die Parömien *error calculi non nocet* und *iudex non calculat* stammen zwar erst aus dem Mittelalter, entsprechen aber der Grundhaltung der antiken Quellen.").

[97] Wesel, *supra* note 14, at 58 ("Meiner Meinung nach kann man sogar mit völliger Sicherheit sagen, dass die Parömie jedenfalls nicht aus dem Mittelalter stammt.").

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through the *Legal History Blog*,[98] the Dutch legal history blog *Rechtsgeschiedenis*,[99] and the blog of the *European Society for Comparative Legal History*.[100] I also contacted two eminent soon-to-be-retired scholars of Roman law in Germany, who agreed to disseminate the call for submissions through their professional networks.

The competition ran from April through June 2024. Three book prices had been offered as a reward. None was claimed: Of the half dozen responses received from various universities, including Ann Arbor, Berlin, Poznań, and Salamanca, none presented any previously unknown source.[101] This implies that the sources cited in the following section are indeed our collective current state of knowledge about the historical origin of *non calculat*.

IV. What We Know: First Recorded in 1851, but Certainly Older?

Given its immense prominence in legal writing, the unclear source of the *non calculat* maxim is vexing. What we can learn from the Google Books corpus is that the maxim was already used prior to 1900 to support a variety of causes—be it defending the liberal agenda against welfarist judicial intervention,[102] or allocating accountability for book-keeping matters.[103]

Even earlier, a variant of the maxim—*lex non calculat*—appeared in a debate in the parliament of then-Kingdom Hanover on March 24, 1860, to argue why actuaries rather than judges should be entrusted with book revisions[104] —a forerunner of the fourth interpretation of *non calculat* identified earlier.[105]

Its true origin must precede this by a lot, however. Even high-ranking judges in the 19th century could not recall anymore "where this strange sentence came from".[106] The oldest known appearance to date is a thirty-four page *medical* essay by a prominent Prussian obstetrician about the length of umbilical cords (1851), which opens with the words: "Iudex non calculat; — and may we say the same of physicians."[107] No explanation of the maxim at all, just assumed familiarity even among the journal's non-lawyer readership. We should conclude, therefore, that the maxim became part of the German learned discourse quite some time before that.

[98] Dan Ernst, *The Hunt for Iudex Non Calculat*, Legal Hist. Blog (Apr. 19, 2024), legalhistoryblog.blogspot.com/2024/04/the-hunt-for-iudex-non-calculat.html.

[99] Otto Vervaart, *Calculating the Verdict or Not?*, Rechtsgeschiedenis (Apr. 17, 2024), rechtsgeschiedenis.wordpress.com/2024/04/17/calculating.

[100] Shardool Kulkarni, *Call for Submissions*, ESCLH Blog (May 9, 2024) esclh.blogspot.com/2024/05/call-for-submissions-whence-iudex-non.html.

[101] I sincerely thank the submitters, *Piotr Alexandrowicz*, *Bruce Frier*, *Raimundo Gomez*, *Timm Pravemann*, and *Frederik Schulze Spüntrup* for their shared interest in this riddle and their engagement to solve it.

[102] Geck zu Werden, *Ueber die Reform der Gläubiger-Rechte bei Subhastationen nach dem Justiz-Misterialreskript vom 8. Juni 1870*, 5 Zeitschrift für Gesetzgebung und Rechtspflege in Preussen 195, 199 (1871) ("Dem Leben, dem Verkehr entspricht vielmehr die alte Parömie: judex non calculat; das heißt: der Gläubiger, Bieter, Spekulant, versteht sich besser auf das Rechnen, auf seinen Nutzen als der Richter").

[103] Bernard Borggreve, *Die Portopflichtigkeit der Dienstsendungen*, 19 Forstliche Blätter 353 (1882) ("Das 'iudex non calculat' findet auf den Oberförster keine Anwendung, er bleibt *persönlich* für die Richtigkeit des gesammten Zahlenwerkes verantwortlich, welches aus seiner Registratur hervorgeht.").

[104] Heyl, *49. Sitzung der Zweiten Cammer der Vierzehnten allgemeinen Ständeversammlung (zweite ordentliche Diät) des Königreichs Hannover* [*Session 49 of the Second Chamber of the Fourteenth General Assembly of the Estates (Second Ordinary Diet) of the Kingdom of Hanover*], 4 Hannoversches Landtagsblatt 331, 335 (1860) ("Die Uebertragung der Revision dieser Rechnungen *pro calculo* an die Actuare sei nur zu empfehlen, da diese besser zu rechnen verstehen, als die Richter (nach dem Grundsatze *lex non calculat*).").

[105] *See supra* text accompanying note 56.

[106] Meyer, *Verfügungen des Preußischen Justizministers*, 18 Zeitschrift für Deutschen Civilprozess 290, 296 (1893) (book review) ("Woher eigentlich der sonderbare Satz kommt: 'Judex non calculat' ist mir nicht bekannt.").

[107] Joseph Hermann Schmidt, *Zur Lehre von der zu kurzen und zu langen, umschlungenen und vorgefallenen Nabelschnur*, 2 Annalen des Charité-Krankenhauses zu Berlin 216 (1851) ("Iudex non calculat; — vom Arzte möchte man dasselbe sagen.").

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How long before? "Nobody knows", says one legal historian from Germany who had investigated the question,[108] and he closed his cold case with words that even at the end of our extended exploration, we cannot help but reiterate: "Let research proceed. We shall remain curious."[109]

F. Conclusion: On Mindless Rituals in Law

Even though the origin of *non calculat* remains unclear, our study is still instructive regarding the intellectual history of legal rituals and the sociology of legal habituation. There may be a trans-Atlantic convergence after all—if not in legal Latin, then at least in the mind-numbing effects of law school.

For as far as anyone can tell at the moment, the *non calculat* maxim is an apocryphal, highly ritualized phrase that virtually every lawyer in one jurisdiction, Germany, encounters in law school, internalizes into their professional identity, and invokes mindlessly without any serious thought, despite the phrase's pronounced ambiguity and its users' inability to explain its origins or actual meaning. Lawyers in most other jurisdictions have never even heard of it in the first place.

This exact description has been given before: The *non calculat* maxim shares all of these properties with another apocryphal and equally vexing recent tradition on the other side of the Atlantic: Lawyers in the United States unanimously abbreviate the word "contract" to the letter K, and none of them can conclusively explain this practice or identify its origin. This convention also originated in U.S. law school education and turned into "legal language so sticky that it remains in use long after anyone has forgotten its raison d'être".[110] Exactly the same may now be said for *non calculat*. This peculiar parallel may indeed, at long last, unite lawyers across time, profession, and jurisdiction: Sometimes we simply don't know the "arcane underpinnings of the rules we all follow."[111]

Acknowledgements. The author thanks the convenors and participants of the workshop "Just Computation: Social and Historical perspectives on Calculation in the Law" (8/9 September 2023) at Harvard Kennedy School, which inspired and improved this study, as well as Gregor Albers, Andreas Fleckner, Andreas Kessler, and Martin Schermaier for insightful discussions, two anonymous reviewers for helpful suggestions, and Simon Weyhofen for research assistance.

Competing Interests. The author declares none.

Funding Statement. No specific funding has been obtained for this Article.

Appendix

Corpus of Thirty-three Scholarly Articles Mentioning Non Calculat

The corpus analyzed *supra* (Section B.) resulted from a full-text search for "non calculat" in each of HeinOnline's Law Journal Library, Westlaw's Secondary Sources, LexisNexis Secondary Materials, Kluwer Online, ProQuest Social Science Premium Collection, JSTOR, Google Scholar, and the Internet Archive in June 2023. *Jule Halbach*, *Pariroo Rattan* and *Simon Weyhofen* helped provide access to some of these databases. In order to illustrate corpus construction and cleansing, the detailed process was as follows:

[108] Wesel, *supra* note 14, at 57 ("Diesen Satz, *iudex non calculat*, kennt jeder halbwegs gebildete Jurist. Niemand weiß, woher er kommt."). *See also* Julian Kessler, *iudex non calculat – Ursprung und Bedeutung*, RECHT UND GERECHTIGKEIT: FESTSCHRIFT FÜR MARIANNE ROTH 673–686 (2026).

[109] Wesel, *supra* note 14, at 60 ("Die Forschung schreite voran. Man darf gespannt bleiben.").

[110] Hamann, *supra* note 10, at 386.

[111] *See* Hamann, *supra* note 10, at 379 (citing private correspondence from Christine O'Brien, Apr. 4, 2020).

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- HeinOnline returned 44 results. 11 were not in English (7 German, 1 each Italian, Polish, Bosnian, and Croatian), 11 included "non calculat" exclusively to cite literature with these title words.[112] The remaining 22 articles formed a baseline corpus.
- JSTOR returned 52 results. 11 were indexed as "English", 4 of these duplicated HeinOnline results, 4 contained merely front or back matter, one used "non calculat" exclusively to cite [2015]. The remaining two [1995, 2003] were added to the corpus.
- The Internet Archive returned 58 results. 37 were not in English,[113] 4 used *non calculat* exclusively to cite literature with these title words,[114] another 6 were false positives caused by line breaks or flawed OCR ("non calculat-ive", "non calculat-ed", "non calculat-ing", "non calculat[or]"). Of the remaining 11 results, just one was a journal article [1947].
- Google Scholar (queried through Harzing's Publish or Perish) returned 463 results, but did not allow to filter by language or document type. Because book publications were not within the purview of the present study,[115] the list of results was sifted manually. 100 of the 463 results were found to be in English, but only four contained journal articles not seen in another database [1979, 2018a, 2018b, 2018c].
- ProQuest returned 11 results, with just one relevant article to add [2003a]. Other databases yielded even fewer results (Westlaw 11, Nexis 9, Kluwer 6)—all of them duplicates.

The corpus was last updated in September 2025 using the same four databases from which most of the corpus derived (HeinOnline, JSTOR, Internet Archive, and Google Scholar). Three newer articles were identified, boosting the corpus size up to 33 articles. A tabulated list of these articles is archived on Zenodo.[116] One article from a conference proceedings volume—although equivalent to journal publications in some disciplines—was omitted from the corpus because it merely summarized a journal article already contained in the corpus.[117] The following list cites all journal usages of *non calculat* in verbatim context, sorted ascendingly by date of publication.

[1947] The Journal of Accountancy (p. 35, 40) – Curt Gruneberg

> Each profession develops in its members a special state of mind connected with special preferences and dislikes. One dislike on the part of the legal profession is clearly indicated in the old Roman saying: *judex non calculat* (a jurist does not calculate). This saying was valid not only for Rome but for the Roman Empire; that means for almost the whole world as it was known at that time. Today, this saying is as true as it was two thousand years ago. Whoever has seen the eagerness of a judge to get rid of difficult calculations and to transfer this part of the case to an accountant, knows that the old dislike on the part of the legal profession in the Roman Empire has been transmitted to the legal profession of today.

[1949] University of Kansas City Law Review (p. 96, id.) – Curt Gruneberg

> "Iudex non calculat" (a judge does not calculate) says an old Roman proverb, thereby indicating the general dislike of Roman jurists against determining amounts by way of mathematical processes. This dislike, as we all know, was not restricted to jurists many centuries ago.

[1979] Computer Networks (p. 187, 188–89) – Wilhelm Steinmüller

> lawyers have no preparation for the legal assessment of information processes. [. . .] Even less are they familiar with the exercise of recognising and resolving technico-social problems: judex non calculat.

[1984] Southwestern Law Journal (p. 1217, id.) – Werner F. Ebke

> Despite the long tradition of courses on "Law and Accounting" in a great number of law schools, accounting is today more than ever an almost exclusive domain of business schools rather than law schools. The overemphasis by some

[112] Wolfgang Köberer, Iudex non Calculat: Über die Unmöglichkeit, Strafzumessung sozialwissenschaftlich-mathematisch zu rationalisieren (1996); Levente Borzsák [2001], in this corpus; Carl Peersman, *Iudex Non Calculat. Experiences in Management of International Criminal Tribunals—Sierra Leone on a Shoestring?*, *in* The Netherlands in Court: Essays in Honour of Johan G. Lammers 105 (N. Blokker et al. eds., 2006); Alexandre Biard [2015b], in this corpus.

[113] Most were session protocols or video transcripts from the *Bundestag*, on which *see supra* Section C.

[114] *See supra* note 112.

[115] This exclusion was motivated by the difficulty of delimiting the universe of interest—how to define what counts as a "book", to obtain a comprehensive list of such sources, and keep track of their qualitative differences, among other considerations.

[116] *See* file *JournalArticles_1947-2024.csv*, Zenodo, "iudex non calculat" – Data on an Apocryphal Legal Maxim, doi.org/10.5281/zenodo.8228373.

[117] Rašević & Ćitić, *supra* note 38.

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

texts on the mechanical aspects of bookkeeping, the view that mathematical formulae are not drawn up for lawyers ("iudex non calculat"), the highly technical language of accountants, as well as the complex and too often complicated structure of financial statements, have tended to discourage law students and lawyers from learning accounting.

[1986] Common Market Law Review (p. 641, 650–51) – René Barents

The words "indirect protection" in the second paragraph of Article 95 do not necessarily imply a quantitative determination of the protective effect of the internal tax on the imported products. [. . .] as the definitive judgment in Case 170/78 demonstrates, the Court may relay on a number of indications [. . .] In the proceedings three criteria were put forward: the relationship between the tax and the volume, the alcohol content and the price of these beverages. The application of the first criterion showed a difference of about 400%, the second of at least a 100% and the third a difference of 58-77%, in some cases even 268%. For the Court together these criteria were sufficient to establish the existence of a protective effect of the tax on wine in relation to the tax on beer. The value of this approach is not only that justice can be done on the basis of "iudex non calculat", but also that the burden of proof is considerably lightened as it is no longer necessary for the plaintiff to indicate the correct fiscal relationship between domestic and imported products.

[1992] American Journal of Jurisprudence (p. 171, 183–84) – Hannu T. Klami

When a theoretician of the law tries to develop models *for* legal reasoning, models presupposing numerical assessments of probative force, utility and hierarchy involve complicated calculations. [. . .] I know exactly the aversion of judges and counsels to any "mathematics": *iudex non calculat*. [. . .] *Iudex non calculat*. He will, nevertheless, reason, much in the same vein as two thousand years ago when one spoke about *rheton apo dianoias*, *verba* and *voluntas*—When will they ever learn—When will they ever learn?

[1995] Geneva Papers on Risk and Insurance (p. 74, id.) – Reimer Schmidt

The critical examination by means of economic analysis of the practical results of judicial decisions and the application of law should be taken very seriously but cannot of course be assumed to lead to the conclusion that "economic law" is the general yardstick for legal principles. However, I would join with Hein Kötz in warning not to forget the maxim "iudex non calculate" and to juxtapose the watchword "iudex calcula!".

[1998] Acta Juridica Hungarica (p. 225, id.) – Alexander Blankenagel

one will even find publications on tax law and projects on taxation systems, but there is practically nothing on the constitutional pattern of budget law and the financing system of the state. So maybe it is true that the judge does not count—*iudex non calculat*—but as far as the legal scholars are concerned, they do not even talk about money.

[2001] Journal of Environmental Law (p. 235, article title) – Levente Borzsák

Punishing Member States or Influencing Their Behaviour or *Iudex (non) calculat*?

[n. †: Ancient Roman proverb, stating that judges do not calculate.]

[2002] Columbia Journal of European Law (p. 53, 68) – Markus G. Puder

The number juggling performed during the Nice Summit connotes the timeless Latin dictum about lawyers and mathematics – *iudex non calculat*, which may be freely translated as "the judge does not (like to) do math."

[2003a] Journal of Family History (p. 31, 47) – Wolfram Müller-Freienfels

in connection with their shift from acting as a servant of justice to serving as a welfare functionary, judges have been turned into arithmeticians who are helpless without their pocket calculators (in direct contrast to the wise Roman proverb *iudex non calculat*).

[2003b] Journal of Institutional and Theoretical Econ. (p. 65, 69) – Urs Schweizer

if the buyer feels cheated after having observed the signal, he may take the case to court. [. . .] Never try to update your beliefs. Judges will be happy to hear this message. Yet, they may have arrived at similar conclusions, possibly for other reasons, long ago. First, *judex non calculat*. Second, all human beings, not just judges, have difficulty grasping Bayes's updating rule on intuitive grounds, and hence they are prone to make mistakes. So better keep hands off whenever possible.

[2004a] Chicago-Kent Law Review (p. 403, 418) – Thomas S. Ulen

There are two obvious reasons and two not-so-obvious reasons for the paucity of empirical work in the law. The first of the obvious reasons is that to do empirical work requires a facility with statistical techniques—such as hypothesis testing, regression analysis, and ANOVA—in which the typical law professor has had no formal training. [n. 40: The

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scarifying aspect, to law students, of mathematics is hard to exaggerate. Indeed, it is so well known among German academics that there is a Latin phrase to cover it—*iudex non calculat*.]

[2004b] Law & Social Inquiry (p. 615, 618) – Yves Dezalay & Bryant G. Garth

Professional investment in credibility serves both the lawyers and their clients. [. . .] The importance of this credibility is reflected in professional hierarchies. At the top are the high priests invested with the purity of the law—the legal academy, lawyer statespersons, high court judges, queen's counsel, and others, depending on the time and the place. Below them are the law merchants dealing essentially with the family businesses. And then there are the "pariahs" doing the dirty work at the periphery of the legal world. These are the so-called men of affairs, accountants, or various clerks dealing historically with debt collection, insolvency, and later tax. The traditional ideal on the European Continent was in fact that *Judex non calculat*—judges do not count. In England, similarly, David Sugarman has shown that solicitors were often quite proud to be bad bookkeepers, which went with their identification with the ideal of learned gentlemen.

[2004c] German Law Journal (p. 957, 964) – Gralf-Peter Calliess

On 11 September 2002 the Commission presented a proposal for a revision of the consumer credit directive (87/102/EEC) of 1986. [. . . The proposal] amounts to 89 pages with 38 Articles and three Annexes containing a vast amount of mathematical formulas with examples for calculation (for: iudex non calculat).

[2005] Austrian Review of Int'l and European Law (p. 357, 359) – Sigmar Stadlmeier

Priemayer has presented an interesting study on the approach of EC competition law to alliances of undertakings, with lots of economic insight into legal categories, and has again proved the old dictum *iudex non calculat* inapplicable to competition law.

[2006] Scandinavian Studies in Law (p. 339, 353 n. 31) – Tobias Mahler & Jon Bing

Probability calculations are not necessarily irrelevant to lawyers, but it may be the case that lawyers to a certain extent are reluctant to use them. This may be illustrated by the Latin sentence *judex non calculat* ("the judge does not calculate"). However, note that there are examples of the importance of probabilities in a judicial context, *cf.* [. . .]

[2009] Common Market Law Review (p. 1776, id.) – Christoph Herrmann

the law of trade contingency measures requires at least a superficial understanding of economic concepts such as rent seeking behaviour, demand elasticity etc. and business concepts such as fixed and variable costs, cross-elasticity and the like. Last but not least, dealing with trade contingency measures brings with it a task which is traditionally not particularly favoured by jurists: *iudex non calculat*! However, dumping margins and most of the other legal concepts relevant for the application of trade contingency measures require doing the maths.

[2010] European Journal of Risk Regulation (p. 371, 373) – Thomas Burri

Perhaps the unwillingness of lawyers to grapple with the implications of chaos theory goes back to the technical, mathematical structure of chaos theory – a structure lawyers have traditionally been reluctant to cope with: *iudex non calculat*.

[2012] Legisprudence (p. 347, 377–78) – Klaus Meßerschmidt

Critics of judicial activism assert that courts 'lack the adaptability and capacity to carry out a successful social policy role'. Adjudication, they claim, is 'a particular poor means for framing issues and devising effective policies'. The lack of accountability and steering capacity of the Court may, in the end, lead to serious problems which remind one of the proverbs *fiat iustitia*, *pereat mundus* and *judex non calculat*.

[2013a] Connecticut Journal of Int'l Law (p. 71, 106) – Markus Heintzen & Stephen Utz

Judex non calculat [n. 52: The formula *judex non calculat* is found in the Digests of Roman Law (Dig. 49, 8, I § 1) as early as the second century B.C.E. On the understanding of the time, calculation was not a task for the court but was for the parties before it to settle. Further, the inclusion of purely calculative details in a judgment was beyond the judicial power, because details of this kind were open to judicial correction at any time.] is more than a description of past judicial practice; it is a customary norm that reflects the scope of judicial resources and ability. Courts are not administrative agencies; they lack the bureaucracy needed for maintaining consistent oversight; and their procedural safeguards are better suited to deliberating about occasional and highly focused issues than to maintaining a permanent watch on the activities of another governmental branch.

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[2013b] European Competition Law Annual (p. 516, id.) – José Luis Da Cruz Vilaça

Finally, let me touch once again on the question of economists. I had an Italian colleague who in a hearing once quoted an old maxim from Roman law: *Iudex non calculat*. [n. 48: According a Wikipedia, *Iudex non calculat* is 'a legal term that loosely translates as "The judge does not calculate". It originates from the Roman legal concept that obvious calculation errors in a court decision are not harmful to the decision itself and can be corrected at any time. Figuratively it also describes the concept that a judge does not "add up" the number of arguments but instead bases their decision on the strength of those arguments. Jokingly, it is often used to mean "judges (or jurists) are unable to do the math", often by jurists themselves,'] We have a wide range of legal backgrounds in both Courts, which is really a very good thing for the efficiency and richness of our case law. However, I agree that it's good for judges deciding competition cases to have a good background in economics.

[2015a] European Business Law Review (p. 95, 99) – Bernhard Großfeld

Lawyers hailed themselves that 'number crunching' was not their business: 'Judex non calculat'. This changed with Enron in the United States and with Parmalat in Italy, both events of the 'roaring nineties'. They became a rich issue of worldwide discussions dealing with corporate governance and the role of lawyers in this context. Fannie Mae is another fact of the picture.

[2015b] European Journal of Risk Regulation (p. 597, 598) – Alexandre Biard

[. . .] in an interview given in October 2012 to the Newspaper Le Monde, the President of the German Constitutional Court was asked whether a lawsuit filed by 37,000 individuals weighed more than a lawsuit filed by a single plaintiff. His reply was blatantly negative: 'we do not count but we ask ourselves whether the claim is meritless or not'. His response demonstrated the predominance of the legalist tradition which, in the western tradition at least, personifies Justice under the traits of a blindfolded goddess, omniscient, unbiased and insensitive to the identities of the parties and to the context in which decisions are taken. As the Latin maxim says: *iudex non calculat*. From the viewpoint of judges wishing to protect their social prestige and impartiality, no other response could have been expected.

[2016a] Theory and Practice of Legislation (p. 209, 232) – Klaus Meßerschmidt

While the Court renounced on calculating basic social benefits to the needy independently, it imposed strict standards of rational decision-making on the legislator including a survey of facts. This approach allowed the Court to strike down on the Hartz IV law, although the proverbial wisdom 'judex non calculat' seems untouched by the judiciary. The Court declared that the provisions on standard benefits for adults and children were unconstitutional, primarily because they were not entirely based on a statistical investigation by the legislature.

[2016b] ASA Bulletin (p. 810, 811) – n.a.

[describing the contents of a book:] To overcome the Latin dictum "judex non calculat" hints are given to calculate the appropriate indemnity.

[2017] European Journal of Law and Economics (p. 517, 531) – Juergen G. Backhaus

Assessing the future development of economic variables is difficult, and it is hardly the court's task to assume this onerous burden. Iudex non calculat; and the judge need not even calculate.

[2018a] Journal of Risk Finance (p. 76, 77) – Willi Brammertz & Allan I. Mendelowitz

"Judex non calculat" is an old roman saying, which can be roughly translated as "Lawyers do not calculate"[n. 3: For a complete discussion of this topic, see (Brammertz et al., 2009).]. This aversion to mathematics may be one reason financial contracts are written in natural language.

[2018b] Frontiers in Psychology (#2073, p. 5) – Alex Biedermann & Kyriakos Kotsoglou

Forensic scientists take the legal axiom 'iudex non calculat' quite literally and deplore that traditional fact-finders (judges and jurors) struggle with the proper understanding of scientific methods, and science in general.

[2018c] Rationality & Society (p. 220, 238) – Christoph Engel & Werner Gueth

Iudex non calculat This skeptical assessment may be overstated for simple arithmetic operations. But calculus is certainly beyond most professional lawyers, and out of the question for a jury.

[2023] European Law Journal (p. 223, 225) – Douwe Korff

The above views show a serious lack of understanding of the statistical issues, even in relation to false-true positives and negatives, and the base-rate fallacy. This is not surprising, because lawyers have long failed to properly "do"

https://doi.org/10.1017/glj.2026.10226 Published online by Cambridge University Press

mathematics (*iudex non calculat*, as the Romans used to say). But in the digital age, mathematical and statistical ignorance is no longer acceptable.

[2024a] Land Use Policy (no. 106975, p. 2) – Benjamin Davy

It is not possible to determine the market value of a property merely by applying law as an attorney or court would do. In fact, the Latin saying "iudex non calculat" (literally: a judge never calculates) already indicates that land valuation hardly is merely a matter of legal interpretation.

[2024b] European Journal of Legal History (p. 1) – Filippo Contarini & Florian Reverchon

The *People v. Collins* ruling thus marks a rejection of probabilistic reasoning in judicial decisions: *judex non calculat*. This rejection, however, may appear paradoxical. The science of probability, developed in the mid-17th century, precisely aims to produce objective knowledge of contingent events. Why should the judge [. . .] forgo such a powerful epistemological tool?

Cite this article: Hamann H (2026). *Iudex Non Calculat*: Exploring the Number-Aversion Maxim as an Intellectual Trans-Atlantic Export. *German Law Journal* **27**, 651–677. https://doi.org/10.1017/glj.2026.10226

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