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Abstracts

Law and Territory
The case of Saxony in the Early Middle Ages

Between the 9th and the 11th centuries the Saxons developed a specific consciousness regarding their freedom; initially related to the Saxon people it came to be associated with the land of the Saxons. This was accompanied by the growth of power held by the Saxons in respect to the other regna of the empire. They were able to boycott royal elections from the year 1002 onwards and thus force the newly elected king to travel to Saxony in order to win their approval in their territory. In the second half of the 11th century the Saxons endeavoured to make use of the »Saxon freedom« as a right of opposition against the Salian Kings, which precipitated a war with Henry IV, although he was simply trying to establish his own rights as a king within the eastern parts of Saxony (i. e. the reoccupation of the former Ottonian crown domain in and around the Harz mountains, which Henry had inherited). For that reason the war was limited to the eastern parts of Saxony and Thuringia in addition to the lands of the opposition in southern Germany, while Westphalia, for instance, was not touched. Nevertheless, the conflict has been known until our own times as »Henry's IV war with the Saxons«. This is the result of writing history in the 11th century.

In an epoque without states, this is a strong indication how the perception of space changed, intensified and led to the concept of territory. Henry IV was not able to successfully meet this challenge and was never able to develop an appropriate response – as did perhaps all his successors on the German throne.

Caspar Ehlers

German Law in Medieval Galician Rus' (Rotreussen)

This article focuses on the *ius theutonicum Magdeburgense,* its meaning and functions, attempting to understand what *ius theutonicum* meant for contemporaries. It starts with the present interpretation of the term. This is followed by a detailed analysis of the available medieval privileges for Magdeburg law issued for towns in Galician Rus'. The result was not an identification or »reconstruction« of a particular »law« or combination of different »laws« adopted in town courts of Galician Rus' under the term *ius theutonicum*. It was rather the recognition that the notion called *ius theutonicum* in medieval documents was an adaptable pattern applicable to different conditions, a model with many variants or a general set of principles which was filled with real content and adapted to concrete circumstances.

Olga Kozubska-Andrusiv

Thoughts on Hermann Kantorowicz as philologist, his *Textstufen* and Accursius today

The influence of Hermann Ulrich Kantorowicz as historian and philologist working on legal texts still has a significant effect on legal historians working on medieval jurists and their works. His *Einführung in die Textkritik* was recently published in its first Italian edition and his method of classifying authentic recensions of texts by the application of the criterion of the *Textstufe* has been accepted in a monograph dedicated to the *Glossa ordinaria* of Accursius on the *Digestum vetus* by H. H. Jakobs. This article tries to connect textual criticism to the material aspects of the production of texts and books and discusses the practicality of the method of Kantorowicz as applied to legal scholastic texts of the 13th century. At that time the works of the jurists were disseminated at the universities, first of all at Bologna, by means of a serial process of producing manuscripts by *exemplar* and pecias. The scribal practices by which the authors composed their works and revised them, also after their first publication, as well as the means of transmission of texts at the universities, raise the most critical questions in the investigation of the manuscript tradition of this kind of literature. The case of Accursius and the recent results concerning the manuscripts of his works provide the occasion to refute some theses relating to the criterion of the *Textstufe* and its application to the *Glossae* of medieval jurists.

Vincenzo Colli

Autority and authenticity: On the relationship between text and seal on the basis of a legal opinion of Giovanni d'Andrea of 9th May 1329

The analysis of the *consilium* of the famous canonist Giovanni d'Andrea and three of his Bolognese colleagues from 9th May 1329 reveals that legal *consilia* in the fourteenth century were usually authenticated both with the signature and *signum* of the notary drafting the document and with the seals of the jurists.

Three of the seal impressions formerly appended to the document illustrate in a strikingly similar fashion a detailed image widely disseminated on seals of jurists in medieval Italy: the doctor sitting enthroned in the *cathedra*, turned towards the viewer and at the same time concentrated on the open book in his hands.

The image is a sympathetic visualisation of the basic scheme of the consultation of the legal doctors, i. e. the transmission of the theoretical legal knowledge of the *studium* to the world outside the university, which is exemplified in the text of the document in a specific *casus*. Seals of medieval jurists bear an effigy of the owner of the seal, like other seals of high-ranking persons, such as emperors, kings and bishops. Thereby, and by the insistent repetition of a picture form which can be distinguished clearly by its three dimensionally refined visual idiom from the seals of emperors, kings and bishops, the seals of doctors of law advertise themselves as *sigilla authentica* which enjoy absolute credibility.

Ruth Wolff

The Wheels of Watermills and the Wheel of Fortune A *consilium* of Donatus Ricchi de Aldighieris

Along with two well rehearsed *quaestiones disputatae*, Bartolus de Saxoferrato's *repetitio ad l. Quominus* constitutes the cornerstone of the medieval elaboration of legal issues relating to rivers. Ranging from the construction of watermills to protective embankments, and from the maintenance of water canals to the reconstruction of run-down structures, the eighteen questions of the *repetitio* prepared students for situations they would likely encounter when practising law. A legal opinion (*consilium*) penned by one of Bartolus' disciples, Donato Aldighieri, in response to the doubts the Abbot of Vallombrosa had concerning damage inflicted on his monastic estate by the Arno river, illustrates the legal fertility of Bartolus' seminal discussion. In addition, the *consilium* also attests to the complexity of the efforts of a medieval commune, Florence in this specific case, to gain control of a resource like the Arno, essential for the economic development of the city. Unable to shoulder alone the financial burden of preventing floods, the commune had no other option than to enlist the help and know-how of a monastic institution. Though the whole city benefited from the preventive work of the monks, the new embankment engendered an unexpected conflict with other adjacent land owners. The politically prominent Donato was called in to negotiate the abbot's rights against the claims of the adjacent owners and the policy of the city.

Osvaldo Cavallar

Vassals and subjects: a research proposal based on the case of Lombardy (XV–XVI century)

Taking the Lombard case as a starting point, this essay reflects on the progressive transformation of the vassalage's political rule during the 15th century. Not only in the Visconti's dominion, indeed, but also in the German area, even if in very different times and ways, the princes and the landlords seemed to have the intention of making the bond with their vassals tighter, involving them in a net of personal bonds. It became progressively more and more difficult for a vassal to be only a vassal, and not also a *domesticus* or *subditus*.

Within the regional state-building process, a relationship – which was still personal, but which had almost nothing to do with the individual will since it was naturally linked with his living on the land – would gradually incorporate the different fidelities that already constituted bonding element of political society.

Federica Cengarle

Imperium and Italy in the 15th Century: jurists and humanists confront the deromanisation of the Empire

The nature of the Empire was the object of constant discussion on the part of the jurists. In the 15th century, the Italian intellectuals paid more particular attention to the nationality of the Emperor and confirmed its inevitable non-Romanization and its subsequent Germanization. The present paper examines the sources, both legal and humanistic, of this important debate. One of the turning points in the discussion was the creation of the duchy of Milan in 1395. Baldo degli Ubaldi was one of the legal experts to make his contribution, explaining that the creation of duchy was like a revival of the Empire in Lombardy. At the end of the century, the discussion between Italians and Germans became more virulent. At stake was the legitimate nationality of the emperor. The question is not neutral because it reveals the capacity of the intellectuals to use the most diversified sources to answer the fundamental question of the legitimacy of states, in particular Italian territorial states. It is moreover striking that humanists and Italian jurists, so often in opposition between themselves, have had convergent points of view on this issue, even when the theoretical base of their reflection was not the same. The Empire had stopped being Roman and had been reduced to its Germanic dimension. The German intellectuals naturally tried to benefit from it.

Patrick Gilli

On the history of legal methodology between 1850 and 1933

The legal methodology in Germany between 1850 and 1933 has not yet been satisfactorily presented. The author holds that the contemporary concept of law is the key to understanding this matter. In the second half of the 19th century the perception of law as a product of the legislator's or the legal community's will establishes itself against the historical school's theory of persuasion. New concepts of statutes and customary law accord with this concept of law. Statutes are now seen as the expression of the will of the state. Neither the sense of justice nor the legal conviction are, as in the historical school, decisive for customary law, but intention and practice, with a subsequent sense of justice. Finally, judge-made law becomes a source of law, because, on the basis of the voluntaristic concept of law, older subsidiary sources such as natural law and academical law are no longer acknowledged. In this context judge-made law represents only the individual decision, but not a common judicial practice.

Three types of voluntarism can be distinguished: a sociological, which attributes the law creating will to its social preconditions (Jhering, Heck, Ehrlich et al.), an idealistic, which sees it as an attempt to create fair, »right« law (Stammler, Radbruch et al.), and a »normative« type, which restricts itself to the wording of a law and rejects sociological and philosophical explanations (Kelsen). The effects of these differences can be seen, for example, in the theory of interpretation. The so called »subjective« interpretation theory is rooted in the sociological, whereas the »objective« is rooted in the idealistic type of voluntarism.

Jan Schröder