

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg23>
Zitervorschlag: Rechtsgeschichte – Legal History Rg 23 (2015)
<http://dx.doi.org/10.12946/rg23/301-304>

Rg **23** 2015 301 – 304

Carsten Fischer

Deconstruction, reconstruction

auf die Behandlung der Jüdinnen im westgotischen Recht. Wieder nach Byzanz führt der sehr interessante Artikel von Oscar Prieto Domínguez (The mass conversion of Jews decreed by Emperor Basil I in 873: its reflection in contemporary legal codes and its underlying reasons; 283–310),² der eventuellen Auswirkungen der in den Quellen gut bezeugten Zwangstaufe von Juden 873/874 durch Basileios I. nachgeht. Insbesondere seine Ausführungen zur Rolle des Patriarchen Photios (und dessen antijüdischer Politik) sind durchaus geeignet, unser Verständnis der Zeitumstände – inkl. der Rolle der Juden in der byzantinischen Gesellschaft – näher zu beleuchten. Der vierte Abschnitt endet mit einem umfassenden Artikel von Amnon Linder (The Jewry-Oath in Christian Europe; 311–358), der das oft traktierte Phänomen der sog. Judeneide behandelt.

Einen deutlich erkennbaren Schwerpunkt stellt die Rechtsgeschichte der iberischen Halbinsel dar,

mit einem Focus auf der Westgotenzeit (Céline Martin, Bat-Sheva Albert, Raul González-Salinero, Rachel Stocking, María Jesús Fuente). Erfreulich aus der Sicht des Byzantinisten sind die dem Oströmischen Reich und seinem Recht gewidmeten Beiträge (Alexander Panayotov, Paul Magdalino, Oscar Prieto Domínguez). Der lateinische Westen ist ebenfalls durch eine Anzahl von Beiträgen vertreten (Bruno Judic, Jessi Sherwood, Philippe De preux, Capucine Nemo-Pekelman, Johannes Heil).

Nach einer Zusammenfassung von John Tolan und Nicolas de Lange (Conclusion, 359–365) folgt ein hinreichend ausführliches Register, das die zahlreichen Inhalte, von denen – naturgemäß – verschiedene Aspekte in verschiedenen Aufsätzen behandelt werden, erschließt (367–379). ■

Carsten Fischer

Deconstruction, reconstruction

»Nothing is more soothing to the nerves than a detailed discussion of homage and lordship ...« If William de Briwerr, fictional English knight and narrator in Alfred Duggan's historical novel *Lord Geoffrey's Fancy*, is right, then a conference held in April 2011 will have set the participants at ease. Following the call of the *Konstanzer Arbeitskreis für mittelalterliche Geschichte* and the conference organiser, Karl-Heinz Spieß, they had gathered to discuss the »Formation and dissemination of feudalism in the Empire and in Italy during the 12th and 13th century«. The conference proceedings have now been published,* and I suppose William de Briwerr would have approved of the intensity of discussion contained therein.

2 Leider hatte der Autor offensichtlich keine Möglichkeit zur Korrektur. Die vielen Druckfehler gehen aber vermutlich nicht auf sein Konto.

* KARL-HEINZ SPIESS (ed.), *Ausbildung und Verbreitung des Lehnswesens im Reich und in Italien im 12. und 13. Jahrhundert (Vorträge und Forschungen 76)*, Ostfildern: Jan Thorbecke 2013, 371 p., ISBN 978-3-7995-6876-0

The conference, of course, owed its existence to Susan Reynolds's *Fiefs and Vassals – The Medieval Evidence Reinterpreted* (1994), which has rekindled academic interest in medieval Europe's feudo-vassallic ties. It seems that by now, the neat and tidy structures erected especially by scholars like François-Louis Ganshof and Heinrich Mitteis have been demolished. The dust has not yet settled, and it remains to be seen which new constructs will replace the older ones. It is this work of de- and reconstruction that the present collection of eleven essays, flanked by an introduction and a summarising outlook, undertakes to do with a view to the high medieval Empire and Italy. It is the second such concerted effort regarding the Empire: in

2008 Jürgen Dendorfer and Roman Deutinger hosted a similar conference in Munich, inviting nearly two dozen medievalists to scrutinise feudo-vassallic structures in specific regions or sources.¹ Those essays focused on the 11th and 12th centuries. »Ausbildung und Verbreitung« thus begins where Dendorfer and Deutinger left off.

Three contributions situate feudo-vassallic relations within a wider framework of social and legal ties, viewing them as but one tool to create social bonds, and, often, not even the most important one. Stefan Weinfurter observes the occasional and increasingly frequent use of feudal terms and concepts by the papacy over the course of the 12th century. But he struggles to identify a consistently conscious use of feudo-vassallic vocabulary. According to Weinfurter, the popes of the 11th and 12th centuries employed feudal ideas when it suited them, but to their minds they did not depend on them; their position as God's vicar and the concept of *plenitudo potestatis* were seen as a much sounder basis for claims of supremacy, especially over kings and emperors. Christoph Dartmann comes to a similar conclusion in his examination of feudo-vassallic relations in 11th and 12th century Italy: feudo-vassallic ties were increasingly used to allocate resources and to structure local spheres of influence in those areas dominated by urban communities. Nevertheless, and despite a hitherto unknown legal precision, they remained only one means, among others, to these ends and were marked by »constant reversibility« (130). Brigitte Kasten sees parallels between the elevation of nobles to princes (*Fürstenerhebungen*), on the one hand, and medieval *precaria*-contracts, on the other. In both cases, a lease or the conferring of certain economic goods, titles or status respectively had been prepared by the future grantee, who had beforehand conferred rights or titles on the future grantor in order to receive them or their equivalent in value back in lease. Kasten shows that fundamental feudo-vassallic processes cannot be understood without a thorough knowledge of similar or related but non-feudal institutions, like *precariae*.

Gerhard Dilcher and Heiner Lück tread on classic legal historical ground, engaging two key texts for the development and dissemination of feudal law, its concepts and vocabulary. Dilcher examines the content and evolution of the *Libri Feudorum* and offers insights into northern Italian legal norms governing fiefs and vassals between the 11th and 13th centuries. His paper will be an important stepping stone for all further and needed research into the *Libri Feudorum*'s early reception north of the Alps and their role in the development of feudal law proper. Dilcher's second contribution can be viewed as an annex to the first. It interprets two pictorial sources, the tympanum of San Zeno in Verona and Lorenzetti's depiction of *Buon Governo* in Siena, with a view to the relationship between local feudal elites and urban communities. In comparison to the Mirror of the Saxons's land law, its feudal law has received little academic attention in the past decades. It is, therefore, commendable that Heiner Lück sheds some light on the sources of the feudal norms contained in the Mirror of the Saxons. According to Lück, the feudal law part had been written prior to the land law and shows surprisingly little influence of the *Libri Feudorum*.

Roman Deutinger and Jürgen Dendorfer argue for a creeping reception of learned feudal law north of the Alps roughly around the year 1200. A re-reading of charters, historiography and other sources leads Deutinger to a radically new assessment of the way in which medieval contemporaries perceived German duchies: far into the 12th century duchies were not seen as fiefs granted by the king, but rather as offices. Only from the mid-13th century onward were duchies generally acknowledged to be fiefs, subject to the rules of feudal law. For Deutinger, this development bears testimony to the reception of concepts of feudal law as well as to the increasing importance of learned lawyers and legal professionals. Dendorfer turns his attention to one of traditional German medieval legal history's favourite pets, the so-called »political trials« – namely, the proceedings against Henry the Lion. Dendorfer finds little trace of

¹ DENDORFER, JÜRGEN, ROMAN DEUTINGER (eds.), *Das Lehnswesen im Hochmittelalter. Forschungs-konstrukte – Quellenbefunde – Deutungsrelevanz*, Ostfildern 2010.

feudal law in the sources recording these trials and no trace at all of procedural rules governing trials under feudal law in general or the forfeiture of fiefs in particular. The »political trials« of the 12th century cannot, therefore, be cited as evidence for a fundamentally feudo-vassallic structure of the Empire during Barbarossa's time.

Two authors respectively compare the occurrence and function of fiefs and vassals in different lordships or political entities. Rudolf Schieffer offers a cross-section of royal charters of the 12th and 13th centuries, examining those of the empress Constance (1195–1212), Frederick II's charters during his first stay in the *regnum teutonicum* (1212–1220) and the charters of the kings of Jerusalem (1099–1291). Schieffer traces feudal terminology – an approach forestalling insights into feudo-vassallic concepts that might not have been expressed in classic terms like *beneficium* or *homagium*. Nevertheless, Schieffer finds an iridescent variety of meanings attached to feudal vocabulary within the different *regna*. Steffen Patzold turns to three 12th to 13th century historiographic sources (*Annales Steterburgenses*, *Chronicon Ottenburanum*, Gilbert of Mons's Chronicle of Hainault). These document the widely varying legal, economic and military uses of fiefs and vassalage. Patzold emphasises the necessity of viewing fiefs and vassalage in a wider framework of possibilities to allocate rights and to build social networks. *Precariae*, for example, were closely related alternatives to fiefs and could be put to similar uses. Patzold points to the often underrated economic implications of conferring titles to land and other sources of income in the form of fiefs, thereby introducing economic rationale as a motivating factor into the discussion.

Kurt Andermann traces the dissemination, structures and functions of feudo-vassallic relations in the upper echelons of nobility, especially in south-western Germany, and thus he focuses on territorial rather than royal or imperial lordship. Andermann sees regional feudal structures raising their heads over the course of the 12th century, but as so often is the case, there are significantly more references to fiefs than to the personal bonds of feudalism, i.e., to vassals and their relations to lords and other vassals.

All contributions – easily accessible via a register of places and one of persons – are of high quality. None merely strives to dismantle older scholarly views. Rather, in the reassessment of seemingly well-known sources, they often offer original insights and new angles. »Ausbildung und Verbreitung des Lehnswesens im Reich und in Italien im 12. und 13. Jahrhundert« is an important addition to the ongoing debate about medieval European feudalism. Its attempt to fathom the functions of feudo-vassallic structures, where they actually are encountered, is a welcome step in the direction of reconstructing European feudalism – constructing, so to speak, a feudalism 2.0.

Despite all its merits, »Ausbildung und Verbreitung« also hints at a few stumbling blocks for current research on fiefs and vassals, some of which are explicitly mentioned by Oliver Auge in his lucid summary and outlook. Three of these challenges shall be briefly touched upon here.

1. More of an observation than criticism, the contributions tend more towards the 12th than the 13th century, especially not to the 13th century's latter half. This is something of a surprise, given that it was the expressed intention of the editor and conference organiser, Karl-Heinz Spieß, to shift the limelight of research further along the timeline and into the 13th century.² But then, the 12th century now seems to be confirmed as a decisive period for the formation of feudo-vassallic concepts and structures; another close look at it will surely do no harm. Nevertheless, it seems as if current scholarship of feudalism shuns the 13th century and later Middle Ages, almost as if – after so much deconstruction – it is afraid of encountering the ghosts of Ganshof and Mitteis amidst feudo-vassallic structures far more to their liking than those now unearthed in the 11th and 12th centuries. Late medieval feudalism still awaits reassessment. Thus it might come about that a period Ganshof and Mitteis merely viewed as one of decay and degeneration with regard to feudalism will turn out to be a time of its blossoming, at least north of the Alps.

2. After eleven contributions have dedicated so much effort to deconstructing obsolete perceptions of feudal Europe, it is almost comforting to be led into familiar territory with a reference to Gans-

² Cf. OLIVER AUGE's summary, 342–343.

hof's seminal work on feudalism when Auge closes his summarising remarks and befittingly the entire volume with the question: »Was ist das *Lehnswesen*?«³ But this question also points to a certain deficiency: the regrettable lack of an attempt to (re-)define feudalism, even though the volume's title indicates that one is to learn something about its very formation and dissemination. The current state of research will probably not admit any lasting definition of *Lehnswesen*, feudalism or feudo-vassallic structures. But avoiding conceptual precision makes discourses, at the very least, cumbersome, if not futile. Karl-Heinz Spieß, therefore, deserves credit for offering some semantic transparency. According to Spieß, one may speak of feudalism (*Lehnswesen*), if fiefs and vassalage are causally linked and regulated by legal norms (10). This is, nevertheless, a very high threshold. And it is certainly more than can be witnessed in the Empire north of the Alps or in royal politics, at least, prior to 1200. Furthermore, it begs the next question: what, if not feudalism, do we encounter in the 12th century sources from the *regnum teutonicum*?

3. It is remarkable that even though legal normativity is used by Karl-Heinz Spieß as a *conditio sine qua non* for feudalism, most contributions get along without a great deal of reflection concerning the legal character of feudo-vassallic ties. This is all the more striking if one recalls that it was Susan Reynolds's critical stance that brought about the reassessment of fiefs and vassals in the first place. Her main thesis is that high medieval feudo-vassallic structures in no way represented an ordered legal system. She claims our view had been warped by the systematising writings and teachings of medieval and especially early modern legal schol-

ars. In other words, we took 11th and 12th century feudalism for what 13th to 17th century lawyers made it out to be. Reynolds's whole argument revolves around law and lawyers. But neither of these feature prominently in the current debate. However, in all likelihood, by the end of the 13th century, legal normativity had come to play a new and important role in feudo-vassallic relations. In order to assess this development, the next conference, perhaps with a clear focus on the 13th to 14th centuries, will have to clarify what we actually mean when we speak of feudal *law*; the recent discourse about the concept of law in the Middle Ages (*Rechtsbegriff im Mittelalter*) might receive renewed attention. Several of the contributions have already pointed in that direction, thereby raising questions as to how legal knowledge could have been transferred and which role learned lawyers or legal experts played in the dissemination of feudal law. Several places of origin as well as possible routes and modes of transmission have been suggested, namely by Jürgen Dendorfer. These questions, in particular, will offer ample scope for further collaboration between historians and legal historians.

Amidst all these reassessments and uncertainties, one thing is sure: William de Briwerr would not have been happy about such legal professionals' dabbling in any matters feudal: »Nothing is more soothing to the nerves than a detailed discussion of homage and lordship; and I have noticed that though every knight begins by explaining that he is not one of these pettifogging lawyers, every knight prides himself on getting to the heart of a complicated question of homage.«⁴

■

3 Cf. GANSHOF, FRANÇOIS-LOUIS,
Was ist das *Lehnswesen*?, 6th ed.,
Darmstadt 1983.

4 DUGGAN, ALFRED, Lord Geoffrey's
Fancy, London 2012, 49
(first published 1962).