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Lost law?

chatsregesten von Grumel und Darrouzès, die »Prosopographie der mittelbyzantinischen Zeit« [= PmbZ] oder die CD-ROM der »Prosopography of the Byzantine Empire« [= PBE]) wurden nicht benutzt, obwohl sie im Literaturverzeichnis auftauchen. Das führt gelegentlich zu eigenartigen Aussagen. So etwa 236 Anm. 1129, wo bemerkt wird, dass der Erzbischof Theophil nur aus einer Quelle (der Vita Euthymii) bekannt sei, während die PmbZ Nr. 8209 diverse weitere Quellen und eine Biographie des Theophil bietet (derartige Beispiele gibt es zahlreich; man vgl. nur die 131 f. aufgelisteten »Hilfskräfte« bei der Abhaltung des Konzils mit den jeweiligen Lemmata der PmbZ oder der PBE). Eine gewisse Unvertrautheit mit der byzantinischen Verwaltung wird da deutlich, wo der Verfasser etwa die kaiserlichen Vertreter am Konzil benennt. Es ist immer sehr gefährlich, byzantinische Amtsbezeichnungen mit modernen Titeln zu übersetzen (so besonders 128 f.). Es sind diese zahllosen Fehler, missverständliche Formulierungen, längst überholte Ansichten usw., die es dem Byzanzhistoriker schwer machen, den Band zufrieden unter die oft benutzten Handbücher einzureihen. Wer auf eine wirkliche Verortung des Geschehens gerechnet hat, sieht sich enttäuscht. Man muss also auf die lange angekündigte Monographie von John Haldon und Leslie Brubaker über den Bilderstreit warten. Die z. T. gravierenden Differenzen zu Thümmels Darstellung seien schon an dieser Stelle annonciert.[24] Ich habe diese hier nicht angeführt und verweise den Leser/die Leserin auf dieses hoffentlich bald erscheinende Buch.

Nach einigen Seiten heftiger Kritik sollen jedoch auch einige Vorzüge des Bandes benannt werden. Es ist zweifellos für alle geeignet, die schnell einen Überblick über die wichtigsten Ereignisse der Kirchengeschichte während des sog. Bilderstreites im 8. und 9. Jahrhundert suchen. Die Entwicklung der theologischen Positionen und die zunehmende Verfeinerung der theologischen Argumentation für den Bilderkult, der bis heute einen zentralen Bestandteil des Selbstverständnisses der orthodoxen Kirchen darstellt, werden anschaulich verdeutlicht.[25]

Und dennoch bleibt ein bitterer Beigeschmack. Angesichts des Umstandes, dass dieser Band in einer so zentralen Reihe erschienen ist und sicher bald in diverse Sprachen übersetzt werden wird, werden seine Fehler und Mängel in der nächsten Zeit verbreitet werden. Daran wird auch eine kritische Rezension nichts ändern.

Wolfram Brandes

24 John Haldon war so freundlich, mir wesentliche Teile des ungedruckten Manuskripts zuzusenden.

25 Auch wenn gelegentliche (XXI f.) Ausfälle gegen Heinz Ohme, Ikonen, historische Kritik und Traditio, in: Zeitschrift für Kirchengeschichte 110 (1999) 1–24 befremden.

Lost law?*

If a book with such a theme had been published hundred years ago, it would have been widely read among legal scholars in the Nordic countries. Looking back into the central journal of Nordic legal science – *Tidsskrift for Retsvidenskab* – piles of books dealing with Germanic themes were discussed as part of the ongoing conceptualisation of legal science and legal ideology. The cultural shift from Romanism to Germanism in the decades around 1900 influenced many aspects of legal science and the general image of law in society. But from the Nordic

* Gerhard Dilcher, Eva-Marie Distler (Hg.), Leges – Gentes – Regna. Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittalterlichen Rechtskultur. Berlin: Erich Schmidt Verlag 2006, 650 S., ISBN 978-3-503-07973-5

point of view this general interest is long since lost. Both the emergence of social sciences as the paradigm for legal science and the professionalisation of the historical studies on the Middle Ages have changed this. Also, for the general legal science the idea that anything in law could be Germanic is a strange idea, and the present book – even though it is splendid in its own right – is a book for the select few specialists being able to read through the methodological and ideological doubts structuring most of the contributions, and a number of the articles deals directly with this problematic inheritance.

Now, it would be unfair to scholars around 1900 to believe that the works of the famous Germanic authors were not critically discussed on a theoretical level. Indeed, the analytical and historical sensitive Norwegian legal historian Ebbe Hertzberg (1856–1911) attacked the universalism and essentialism of Germanic legal thinking for the manner it combined Scandinavian legal historical sources from the high Middle Ages with sources from everywhere else, as North Africa, Spain, Germany, Italy and several other places, from many centuries apart, believing that this research in a cumulative way could say something »general« about »Germanic« law. Also, when this science was at its peak of social importance it was criticised, as is evident in the subtle writings of Frederic Maitland. The pervasiveness of the idea of a common »Germanisches Recht« far into the 20th century seems only to be explained by the history of a rather immune scientific profession combined with changing legal ideological needs in German speaking areas.

Equally, it would be unfair to the contemporary scholars to associate them with the old Germanic tradition of legal research. After reading this book I was overwhelmed by the breadth and insistency of the research and I have learnt a great deal. The most prominent (mostly) German speaking researchers – historians, lawyers, philologists – are contributing to the issue of norms, society and historical change during the first part of the Middle Ages. In many ways the book is a »Stand der Forschung« of this historical and methodological complicated field of research. The initiator is professor emeritus Gerhard Dilcher (Frankfurt am Main) who has written a number of influential legal historical works on the subject. Both his long introduction and his conclusion are important reassessments of the many threads in contemporary research.

The major theme is presented with the keywords Leges, Gentes, Regna, as structuring elements in the historical, legal and philological interpretation of the legal world (or ›culture‹ as this entity is somewhat modishly called) between late Antiquity and High Middle Ages (appr. 500–1000). How did normative views unfold in different groups of people in the historical processes leading to new territorial defined sovereignties? The classical legal historical approach is supplemented with meta-categories from other disciplines, like Ethnology, Sociology and theoretical-cultural themes, what today is both obvious and necessary. Now, it is certainly too much to demand that all forty contributions in some way or other are guided by this approach. Reading the book was a rather asymmetrical experience in that a number of contributions are relatively disparate contrary to what one would expect having read the introduction. On the other hand a book concerning all aspects of law in society in all corners of Europe during a number of centuries highlighted by different professions must necessarily turn out to be like this. But this is also the strength of the book as it does not hide differences between authors (especially between some of the legal historians and

historians) and it does not pretend to be coherent, which is sympathetic.

The issue of »Germanism« looms through most of the pages. The legal historians seem to agree upon the validity and necessity of the model, not in a 19th and most of 20th century sense, being a genealogical common law of the Germans (what would be quite impossible to maintain), but as an »Idealtypus« (Dilcher), facilitating access to a past legal-cultural practice rising out of the social life and customs of different ethnic groups in the vanishing Roman world. I agree with those not wanting to abolish the concept merely because of recent past political misuse, as during the Nazi time. But if the word has no more meaning than being a connecting element for normative practises of different peoples for the sake of comparison, I fail to see its value. From a Nordic point of view one could certainly let the word rest in peace. On the whole – even though there are some very good arguments in favour of a flexible use of »Germanic« as interpretive and structuring criterion (which Daniela Fruscione shows well) – I was somewhat bewildered by the fact that the harsh critical claims about the use of the Germanic model by historians Walter Pohl and in particular Jörg Jarnut (who wanted to abolish the word altogether) was not debated in a more systematic fashion. The issue was apparently a sensitive one presumably having to do with the discrepancies between the vocabulary of the historians and the legal historians not being entirely pronounced. Also, it may have to do with a rather irritating feeling among legal historians concerning the historians' disinterest in legal issues.

The book is divided into seven parts dealing with methodology, law and language, the establishment of sovereign territories, conflict solutions, changes in legal status, the much discussed issue of continuity of law from antiquity and up till the High Middle Ages and at last a rather extensive concluding part. To include the theme of law and language is self-evident in a book like this. The functions of these analyses seem to be of a contradictory character as to the question of common legal traits among »Germanic« speaking groups. On the one hand linguistic analyses tend to locate the legal rule to a specific language practice, thus having a ›nominalistic‹ function. On the other hand the very idea of a possible common linguistic background seems to be a standing argument in favour of a common *legal* arrangement (an inference that at times might be well founded, at times not). The issue of methods also prevails in the next part dealing with the establishment of sovereign territories. One cannot but be impressed by the searching analysis by a number of authors concerning the possibilities and character of legal and political organisations in the centuries before 1000. Further, I read the contributions by Hermann Nehlsen and Peter Landau on religion and law as important supplementary analysis at times lacking in this discipline.

As a Norwegian scholar I found some opening remarks in the article by Klaus von See »Selbsthilfe und öffentlicher Strafanspruch im mittelalterlichen Norden« a somewhat surprising reading – even though von See's article is both elegant and learned. The old Germanic idea about Nordic law as less influenced by external legal ideas is used by von See in phrases like »führten aber nie zur Gefahr einer Kulturüberfremdung« for the Nordic peoples (p. 377 – what is so dangerous about that?), a proposition that I simply do not understand. This somewhat romantic view of an untouched legal past of Nordic peoples has been refuted many times and I missed references to new research on the subject.

On the whole one is surprised that the articles (and sections in articles) on Scandinavian legal history have almost no references to literature in Scandinavian languages.

The last major theme of the book concerns the understanding of normative views during the centuries after the fall of the Roman world. There are several ways of dealing with this complex issue, regarding the interpretations of the historical sources and their socio-political contexts on the one hand and contemporary models on law on the other. This perspective is taken rather far by Joachim Rückert who deals with the possible relevance of contemporary discourses on law for the study on pre- and non-state normative structures and practises. Drawing on Luhmann, Hayek and Hart, Rückert discusses a number of topics dealing with these normative structures. Even though Rückert's conceptual analysis due to his distanced relationship to the historical sources in the end says more about the modern legal world than the medieval one, his article is refreshing as it aims more directly at a contemporary legal understanding of the legal world of the early Middle Ages, a perspective lacking in most of the other contributions. And paradoxically that was exactly why the general Nordic scholars read this kind of literature at the turn of the century.

Dag Michalsen

Der träumende Jurist

1. Erratum*

Dass auch die Geisteswissenschaften durchaus in der Lage sein können, Drittmittel nicht unerheblichen Umfangs einzuwerben, zeigt die 2004 fertig gestellte Edition des Traumtraktats von Johannes de Legnano (1320–1383): Sie konnte, wie bereits ein früheres Werk[1] über das Leben dieses bedeutenden Kanonisten, dank der finanziellen Förderung durch die *Banca Di Legnano* in einer Luxusausgabe veröffentlicht werden. Dabei hatte es viele Jahre den Anschein, als entzöge sich ausgerechnet das *Sompnium* einer kritischen Edition. Zwar hatte Giuseppe Ermini bereits 1940[2] eine Teiledition gewagt, doch scheiterte in den 80er Jahren ein erstes, in Oxford begonnenes umfassendes Editionsprojekt am Unfalltod der damals daran arbeitenden Doktorandin.[3]

Johannes berichtet in seinem *Sompnium* von einer in der Nacht des 14. Februar 1372 erlebten Traumerfahrung (291 der Edition): Zwei Königinnen seien ihm in diesem Traum erschienen: »*et [vidi] (…) duas reginas fulgidissimas: a destris unam habitu regolari decoratam et hec* (sic!) *canonica sapientia vocabatur; a sinistris alteram habitu seculari honestissimo tamen indutam et haec civilis scientia pingebatur*« (7). Kanonistik und Legistik bitten im Traum des Johannes den Papst um Verteidigung gegen das ›leere Geschwätz‹ (*vaniloquia*) der Artisten (*pseudo artistae)*, Theologen und Ärzte, die allesamt den Wissenschaftsstatus beider Rechte verneinen.

Nun ist es also vollbracht: Auf knapp 300 großformatigen Seiten liegt die von Giulietta Voltolina betreute kritische Edition dieses sonderbaren Texts vor, samt einem kenntnisreichen Beitrag über Johannes de Legnano von Maria

* Giovanni da Legnano, Somnium. Giorgio D'Ilario, Giovanni da Legnano: le origini (19–44); Maria Consiglia de Matteis, Diritto e politica nel »Somnium« di Giovanni da Legnano (59–80); Giulietta Voltolina, Somnium. Edizione Critica, Legnano: Banca di Legnano 2004, 293 S.

1 Egidio Gianazza, Giorgio D'Ilario, Vita e Opere di Giovanni da Legnano, Legnano: Banca di Legnano 1983.

2 Giuseppe Ermini, Un ignoto trattato »De Principatu« di Giovanni da Legnano, in: Studi di Storia e Diritto in Onore di Carlo Calisse, Milano 1940, vol. 3, 421–446.

3 G. M. Donovan, K. H. Keen, The ›Somnium‹ of John of Legnano, in: Traditio 37 (1981) 325–345.