Zeitschrift des Max-Planck-Instituts für Rechtsgeschichte und Rechtstheorie
Journal of the Max Planck Institute for Legal History and Legal Theory

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.lhlt.mpg.de

http://www.rg-rechtsgeschichte.de/rg31
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 31 (2023)
http://dx.doi.org/10.12946/rg31/224-226

Rg 31 2023 224 – 226

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Performance as a New Direction for Legal History

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Es ist ein großes Panorama, das in dem Buch ausgebreitet wird. Die Beiträge sind davon geprägt, die Erforschung der Individualität der römischen Juristen und damit eine weniger beachtete Ebene der Überlieferung des römischen Rechts in ihrer Bedeutung herauszustellen. Diese Untersuchungen scheinen mir einen wichtigen Aspekt zur Erforschung der Rechtstexte beizusteuern. Ein Grundproblem der wissenschaftsgeschichtlichen und zugleich wissenschaftspolitischen Argumentation besteht aber in der Gleichsetzung einer Geschichte der Dogmatik mit einem Wahrheitsanspruch oder mit dem Anspruch, ein monolithisches klassisches Recht als Ideal zu ermitteln. Der Reiz des römischen Rechts liegt in der Erforschung einer Vielzahl von Aspekten, bei denen aber die Bemühungen um eine kohärente Systematik nicht vernachlässigt werden sollten. Folgt man den Hinweisen in den Quellen, dass die römischen Juristen verschiedene Erklärungsmuster für ihre Rechtsordnung und für deren Weiterentwicklung zugrunde gelegt haben, kann man sich von dem Feindbild der Geschichte zeitloser Dogmen lösen. Flexibilität und Anpassungsfähigkeit waren dem römischen Recht auch aufgrund seiner verschiedenen Schichten eigen. Das prätorische Recht spielte für mehrere Jahrhunderte eine wichtige Rolle. Das Konzept des *ius gentium*, das von seinem Allgemeingültigkeitspotential lebt, wäre in das Bild einzuordnen, unabhängig davon, ob es aus einem Naturrechtsgedanken gewonnen wurde oder auf einer zivilisationsrechtlichen Grundlage aufgebaut war. Geschichtlicher Entwicklung unterlag auch dieses Element, wie die Lektüre der Juristenschriften belegt. Die Schriften laden mit der selbst gepflegten Geschichtlichkeit, den Kontroversen und den Kompromissen *(mediae sententiae)* dazu ein, Entwicklungen nachzuzeichnen, Individualitäten zu beschreiben und eine historische Kontextualisierung zu leisten. Der Nutzen einer planvollen Untersuchung von Juristenbiographien und -schriften wird gerade darin liegen können, individuelle Beiträge zu diesem Recht besser zu verstehen und in Denkpfade einzuordnen. Anregungen dazu wären den Arbeiten von Okko Behrends zu entnehmen, die zeigen, wie man eine umfassende Historizität mit einer gehaltvollen Dogmatik und der Erforschung ihrer Geschichte verbinden kann.

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Performance as a New Direction for Legal History*

Julie Stone Peters' book is a novel and provocative contribution to the historical study of law for a number of reasons, ranging from its sources to its methodological approach. It aims to reconstruct the lived experience of and before the law, an aspect that she considers constitutive of Western law but which has yet to be explored in depth in the legal historical literature. It is a gap that she fills with alacrity. This book is the product of the maturation of an intellectual project which the author began more than a decade ago. Given her background in performance studies, law and literature, and law and humanities movements, it is not surprising that this study offers a novel approach to legal history.

This book is based on the idea of performance as a possibility to produce law. Going beyond the written and formulaic traditions that are commonly studied in legal history, the author argues that people's actions also produce law. She rightly

* Julie Stone Peters, Law as Performance: Theatricality, Spectatorship, and the Making of Law in Ancient, Medieval, and Early Modern Europe, Oxford: Oxford University Press 2022, 368 p., ISBN 978-0-19-289849-4

does not establish closed concepts of performance nor the derived categories, such as performativity or theatricality. For the author, the performances which produce law are particular behaviors or patterns of behavior that reveal concepts of the ordinary. In this sense, this book proposes constructing legal history as a history of experiences lived in legal arenas that reveal ideas or discourses about the law in specific historical contexts.

The sources for this book constitute a crucial element of this proposal. In the introduction, the author explains that actions, behaviors, gestures, and movements are rarely recorded in legal texts or judicial documents. Therefore, her sources are texts and images that reveal how legal actors used body language, movements in space and time, styles of action, and ideas about these performative actions. Thus, her study is based on reading treatises on rhetoric, understanding them as source for identifying narratives and concepts about behaviors and how to act or perform in legal events. Another type of source she uses is written and pictorial representations of law. Written accounts of public trials or images that represented rhetoric at different historical moments provide ideas and attitudes about performance. For this reason, the author's extensive research and reading of sources is an important contribution to legal history.

This book has six chapters, which I divide into three sections: European Antiquity, the Middle Ages, and the Early Modern Period. The first section consists of two chapters dealing with the classical cultures of antiquity: Greece and Rome, respectively. In the first chapter, which focuses on Greece, the author presents theatricality as a point of discussion on the performance of legal orators in the forums. Looking at foundational texts by Plato and Aristotle, she examines the ambivalent role of theatricality in manipulating emotions. On the one hand, it is a powerful instrument that can provoke changes in judgments; on the other hand, it can become a poisonous agitator stirring up negative passions. In the second chapter, dedicated to Rome, the author shows how the problem of legal performance in the rhetorical work of Cicero and Quintilian is linked to the fact that it is not only a representation technique but also a crucial ethical practice. She reviews these authors' reflections and practical examples – such as Cicero's thoughts on how to carry out an ethical practice of performance *(actio* and *pronuntiatio)* before the forum – and so lays the foundation for the following section (chapters 3 and 4) focused on the Middle Ages, which keeps referring back to these authors.

The third chapter is set at the beginning of a renaissance of lawyers as a professional class (around the 12th and 13th centuries). Traditional narratives of this period hold that medieval rhetorical theorists did not pay attention to forensic oratory or to styles of performance in court and that lawyers were not interested in or used rhetoric. However, Stone Peters shows that lawyers' actions in court (in terms of the use of persuasive techniques in their performances) were a recurring theme in treatises on rhetoric. To do so, she relies on four rhetorical texts – one from the 8th century and the other three from the 13th and 14th centuries – that so far have received little attention by either legal history or modern rhetorical studies. The following chapter builds on the previous one by focusing on the gaps between the normative schemes that prescribed ideals of how a trial should proceed and the actual practices, which deviated from them. It introduces a number of new actors who also participated in these events, such as the crowds at public trials. To illustrate these gaps, she describes the defendants' actions in two criminal trials, one involving heresy and the other witchcraft. With their performances during the public trials, the defendants re-signified the events and sometimes also the results, but always affected the way in which these proceedings were recorded and remembered. From a historical-legal point of view, this part of the book is the most innovative.

The last part is set in the Early Modern Period. Chapter five describes a time in which the number of lawyers and legal professionals had significantly increased, and theaters had become an integral part of urban life. Consequently, it focuses on the parallels established between theaters and courts, actors and lawyers during this period. Humanists throughout Europe turn to the classics of rhetoric, such as Cicero, to discuss the transformation of the courts into centers of entertainment, where justice did not necessarily take precedence over the oratorical tricks of the lawyers. The sixth and final chapter focuses on how the education of students comprised not only the skills required to become a lawyer, but also the practical training on how to look and act like one.

Throughout the chapters, the book focuses on the performance of actors in judicial contexts, either the performance itself or the training to

act in these contexts. One could criticize that the analysis does not consider other broader facets of legal practice. Two readily come to mind: inside the courtroom, when the performance did not consist of lawyers developing arguments or judges deliberating and judging but, for example, lay in the delivery of testimonies. Outside the courtroom, another possibility would be the actions of notaries (in and out of their offices) who may have been bound by formalities or rules of conduct. However, there are records of notaries' actions where their performance properly created law. (A minor editorial detail is that on page 100, in footnote 38, a book edited by Armstrong and Kirshner is cited but then not listed in the bibliography.)

Finally, the book invites the reader to take seriously – and indeed commit to – one of the statements made in the introduction: It is possible for people to produce law through their words and actions. We could develop what is presented in this book further by taking the basic elements of the theoretical approach and applying them to other scenarios outside the spectrum of formal political or legal institutions. Similarly, we could look to non-European or to colonial and postcolonial contexts. In this way, this book could mark the beginning of a theoretical renewal of legal history.

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Caspar Ehlers

Honi soit qui mal y pense*

Ein Buch mit einem solchen Titel erweckt natürlich das Interesse des Mediävisten mit rechtshistorischen Fragestellungen. Und, wie es sich gehört, beginnt man mit der Lektüre am Anfang des Buches. Hier findet sich eine Karte »High Medieval Europe c. 1100« (xiv–xv), die einen schockiert zurücklässt: Straßburg findet man irgendwo in Burgund, Bamberg weitab östlich vom Obermain und Forchheim bei Augsburg, Hersfeld ist an der Ortslage von Frankfurt am Main, Worms südlich von Köln am Rhein, und Köln selbst sowie Aachen, Lüttich und Brügge sind rechtsrheinisch und vom Fluss entfernt eingetragen, Hamburg liegt in Holstein weitab von Elbe und Nordsee, das Weserkloster Corvey befindet sich in Niederlothringen. Nahezu alle Orte sind falsch zugewiesen (Orléans westlich von Paris statt südlich, Compiègne in der Normandie, Prag in Polen unweit von Gnesen, vermutlich ist Posen gemeint).

Von diesen geographischen Unstimmigkeiten leicht betrübt, wendet sich der Rezensent dem Text zu. Der Verfasser stellt einleitend die entscheidende, aber nicht neue Frage, wie man dem nahe kommen könnte, was die Zeitgenossen über das Königtum dachten, und wie wir ein Verständnis für das Zusammenspiel von Norm und Praxis gewinnen können (11). So will er sich auf das »interplay between rulers and ruled« konzentrieren, zumal die persönlichen Ansichten eines Königs diesbzgl. schwer zu ergründen seien (12). Nach einem Exkurs über die Kategorisierung der schriftlichen Quellenüberlieferung und der darin gründenden Problematik, was als Norm, was als Praxis und was als Idealvorstellung anzusprechen sei, zieht Weiler einen Bogen in die politische Gegenwart. Ähnlichkeiten und Parallelen zu heutigen Zeiten dürften nicht über die Ferne des Mittelalters hinwegtäuschen, auch wenn die Echos der Vergangenheit zu hören seien (21).

Das Buch gliedert sich dann in fünf Teile. Es geht um die »Grundlagen«, die »Schaffung des Königtums« (»Creating Kingship«), die »Nachfolge«, die »Wahl« und die »Inauguration«.[1] Der Untersuchungszeitraum – von 950 bis 1200 – macht bei dieser Einteilung neugierig, denn jene Periode sei »pivotal in the development of that political

* Björn Weiler, Paths to Kingship in Medieval Latin Europe, c. 950–1200, New York: Cambridge University Press 2021, 300 S., ISBN 987-1-316-51842-7

1 Übersetzungen ins Deutsche hier und im Folgenden vom Rezensenten.