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Law as State Builder

stellungen. Nicht mehr plausibel ist erst Flaigs Folgerung: »Der Wert der Zeichen und die Stärke der Bedeutungen stehen nicht ein für allemal fest wie idealiter in einem Text.« Das ist der hermeneutische Sündenfall. Dass Wert, Stärke und Bedeutung eines Textes, auch eines Textes über Gesten und Gebärden, mit jedem Hörer oder Leser changieren und nicht einmal »idealiter« feststehen, sollte sich herumgesprochen haben. Statt mit Livius' Augen Narben zu betrachten, hätte Flaig sich als Zuhörer einer politischen Rede des Cicero von den semantischen Valenzen eines »Textes« schnell überzeugen können. Aber die Rhetorik, das Musterbeispiel einer gelungenen Kombination von Zeichen, Texten und Ritualen, kommt bei Flaig nicht vor, gerade so als gehöre sie nicht zu den »interaktionalen und kommunikativen Dynamiken« der römischen Republik. Eine »praxeologisch ausgerichtete Kulturgeschichte«, die nur daran interessiert ist, was die Leute »taten«, und nicht daran,

was und wie einige Leute sagten, was sie oder andere taten, verpasst einen wesentlichen, wenn nicht sogar den einzigen zugänglichen Teil der »kommunikativen Dynamik« in den politischen, auf die Differenz von Macht und Ohnmacht fokussierten Diskursen.

Die Erlösung von den staatsrechtlichen Kategorien des 19. Jahrhunderts, die Flaig in seiner Darstellung der römischen Republik anbietet und vollzieht, ist eine Wohltat. Doch an deren Stelle der Praxis den Vorzug vor dem Text, der Wirklichkeit den Vorzug vor kommunikativen Konstruktionen, dem nackten Zeichen den Vorzug vor dem gesprochenen und geschriebenen Wort zu geben, offenbart neue Lücken. Eine Analyse *aller* politischen Kommunikationen, vom Kniefall bis zur Kunst der Rhetorik oder, besser, von der Bedeutung des Kniefalls *in* der Rhetorik, steht aus.

Marie Theres Fögen

Law as State Builder*

This book is an exploration – at times almost a meditation – on the uses to which the words ›status‹, ›etat‹, ›estate‹, ›Staat‹, and ›state‹ were put in Europe from the time of the Carolingians to the mid-seventeenth century. Its primary focus rests upon French and English developments, although the author also casts his eye on what happened in German speaking lands, Italian cities and the Church. His assumption is that the examination will shed light on a perennial question of legal and political history: When and how did the modern concept of the Nation State come into being? What led thinkers

to conceive of ›the state‹ as a dynamic institution, separate from groups within society, capable of governing them, and able to deal as an equal with other states?

In the hands of Professor Harding, the evidence of the ways in which the various forms of the word ›state‹ were used yields many insights into the history of the development of laws and governments. It does not, however, produce a straight-forward account of the word's evolution. In fact, the word has had ›various meanings‹ over the course of its history (332). It was used to refer either to a ruler, the whole of his

* ALAN HARDING, *Medieval Law and the Foundations of the State*, Oxford: Oxford University Press 2002, IX, 392 p., ISBN 0-19821958-x

people (2), or to groups among them (237). Indeed at anyone time there would have been many shades and differences of meaning. No lineal growth of a specific, concrete idea took place.

What did take place was that the word ›status‹ served various concrete purposes. It proved useful. For example, the term ›royal state‹ in England served to define and assert the scope of the king's prerogatives. It was used to keep popes and English parliaments from encroaching on the monarch's rights over churches within his realm (144). It was used to provide a means of providing government when the king was expecting to depart on crusade (174). It was broad enough to encompass the liberties of the community of the people (264). It was capable of being used to define interests in real property, as in ›estate in fee simple‹ (235).

Such multiple but real meanings given to the term were by no means limited to the government of England. The French kings and people used it, as did the Empire and the Church. Nor was it restricted to monarchical terminology. The *Respublica gallica* served Francis I to define his task of guarding the laws and customs of his realm (292–93). Ultimately it would be taken over to support actual republics and even city states. The author threads his way through this complex mixture of possible meanings.

The book is therefore an alternative to (and an indirect challenge of) the prevalent idea that the emergence of the modern state depended upon a number of external tests applied to the

government: e. g., establishing fixed geographical boundaries, acquiring a monopoly on the legal use of force, gaining the right to make ordinances binding all its citizens, securing diplomatic recognition as an equal from other states, and the like. Instead, the work looks for internal foundations of states, and it finds them in the actions taken by kings and rulers in service to the idea of *status regni* (or its variants). Doing justice looms large in this. That was the responsibility of medieval rulers, and it is the author's conclusion that by the end of the Middle Ages, its expansion ›identified the state of the commonwealth with the state of the king‹ (295). From there the term acquired a life of its own. It was taken over and became the modern state.

Hard-headed international lawyers will probably not be convinced that the author's way of looking at development of the idea of the state is preferable to their own. The book's method is too miscellaneous. It does not fully engage with and argue against accustomed ways of thinking about the emergence of the modern state. For those, however, who prefer to see the building up of state power as the final product of everyday acts done by kings and their ministers in the service of justice and the public welfare, this book has much to recommend it. The author shows in rich detail just how those acts were related to building up the *status regni*.

Richard H. Helmholz