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/rg31/229-232

Rg 31 2023 229 – 232

Christoph H. F. Meyer*

References in the Vineyard of the Legal Text

* Max-Planck-Institut für Rechtsgeschichte und Rechtstheorie, Frankfurt am Main, cmeyer@lhlt.mpg.de

Christoph H. F. Meyer

References in the Vineyard of the Legal Text*

At the turn from antiquity to the Middle Ages, Isidore of Seville (c. 560–636) knew of special signs in the margins (*Etymologiae* I,XXI,28) that indicated that an explanation of the word or verse indicated could be found at a later place marked by the same sign. Already in antiquity, such cross-references were used to relate passages to each other in order to better understand difficult texts. About half a millennium after Isidore, in the 12th century we encounter similar aids, such as the so-called ›red signs‹, as part of the so-called ›renaissance of jurisprudence‹.[1] Apart from internal references, these texts also contained references to passages in other legal texts.

However, such phenomena are not peculiar to the learned laws. A first, though not comprehensive, insight into the »reference cultures of the Middle Ages« is provided by a slim volume edited by the two Germanists Sabine Griese and Claudine Moulin. The book focusses on the High and Late Middle Ages and begins with an introduction written by the editors (Sabine Griese / Claudine Moulin, »Verweiskulturen – eine Einleitung«, 7–21). This is followed by four essays on individual topics. Stephan Dusil (»*Require retro … require in antea* … Verweiskulturen im mittelalterlichen Recht am Beispiel des *Decretum Gratiani*«, 23–46) deals with references in medieval law using the example of the *Decretum Gratiani*. Nikolaus Henkel (»Verweisen aus der Sicht der Wissens- und Bildungsgeschichte. Sebastian Brants *Narrenschiff* und die *Stultifera navis*«, 47–85) deals with the phenomenon in question in the German and Latin versions of Sebastian Brant's *Ship of Fools*. By contrast, Diana di Segni (»Die Marginalien in der handschriftlichen Überlieferung des *Dux neutrorum* von Moses Maimonides«, 87–103) considers marginalia in the manuscripts of Moses Maimonides' *Dux neutrorum*, while Markus Späth (»Eine Verweiskultur in Wachs. Siegel als Medien sozialer Zuordnung und Distinktion im Spätmittelalter«, 105–139) examines late medieval seals as a form of reference. The volume concludes with a list of authors, several colour illustrations of manuscripts, prints and seals as well as two indices: the first of names, places and topics, the second of manuscripts, prints and objects (141–165).

From the perspective of legal history, the introduction and Dusil's essay are of particular interest. In their introduction, Griese and Moulin start with the general phenomenon of referencing and then approach the focus of the anthology, namely the script-based »reference systems« of the Middle Ages (8), using, among other things, a number of illustrative examples. In this context, the authors also discuss their approach (13–14), which in particular includes the idea »that practices of referencing can only be meaningfully understood in their functionality at the specific historical location of a work or object« (14). The starting point for answering the question of the function of references are thus the primary sources, from which a multifaceted picture emerges – also indicated by the plural in the book's title: »cultures of reference«. The alternative of approaching the topic theoretically is mentioned in connection with the concept of intertextuality; however, it is not pursued, since the editors estimate that such an approach would yield few results. After this methodological clarification and an overview over the following essays (14–19), Griese and Moulin conclude with some general observations on referencing and its significance in the medieval orders of knowledge (19–20).

Following the introduction, Stephan Dusil takes a detailed look at references in medieval (canon) law. The focus of his essay is the *Decretum Gratiani*. First, however, he offers an introduction (23–26) based on German legal sources of the 13th and 14th centuries. At the end of this section, he defines *Verweise* comparatively broadly as »reference[s] to a passage in the same manuscript, to

* Sabine Griese, Claudine Moulin (eds.), Verweiskulturen des Mittelalters (Wolfenbütteler Forschungen 167), Wolfenbüttel: Herzog August Bibliothek 2022, 165 p., ISBN 978-3-447-11684-8

1 Gero Dolezalek, Rudolf Weigand (1983), Das Geheimnis der roten Zeichen. Ein Beitrag zur Paläographie juristischer Handschriften des zwölften Jahrhunderts, in: Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung 69, 143–199.

another legal text or to another subject matter« (25). Dusil lists various forms of references: a) implicit references, where the reader himself makes a reference to another text, b) explicit references (signalled by words like *infra*, *supra*, etc.), c) references that do not originate from the text's ›author‹ but have been added later, and d) visual, non-textual references.

Armed with the tools thus devised, the author approaches the *Decretum Gratiani*, which can be addressed equally as a collection and as a textbook of canon law. The work is traditionally attributed to the monk Gratian, and according to the current state of research it was produced in two redactions – the first roughly between 1120 and 1140, the second in the first half of the 1140s – and continued to be supplemented until the end of the 12th century. The *Decretum* is of great historical importance because Gratian's teaching based on it led to two key developments in Bologna: the emergence of a law school and of a canonistic literature based on the *Decretum*, which spread to other parts of Europe from the 1150s onwards. Closely connected to the emergence of the science of canon law was the rise of the canonists, who were to have a decisive influence not only on the development of ecclesial but also of secular law in the following centuries.

In the main part of his essay, Dusil first considers (26–37) Gratian's *Decretum* in its capacity as a »medieval textbook of canon law« (26). Here, he discusses the so-called *dicta Gratiani* contained in the two redactions, which explain the authorities contained in the *Decretum*. As in older collections of canon law, the number of implicit and explicit references in the *Decretum Gratiani* is limited. While the former refer in particular to the canonical tradition and can determine the structure of the *Decretum*, the explicit textual references have two main functions. They are mostly used to avoid the repetition of a chapter listed elsewhere. Only occasionally do they serve to relate content dealt with in different chapters to each other and thus contributed to a deeper intellectual analysis of the authorities. This finding with regard to the references' function – which reveals continuity rather than a radical break with the pre-Gratian collections of canon law – corresponds to the findings regarding their quantity. Thus, in the first redaction, there are just 13 explicit references in the *dicta Gratiani*, and 29 in the second redaction (35).

In contrast, a real quantum leap began with what Dusil calls the *ergänzte Verweise* (»added references«, 37–44). They are found in the glosses that were entered in various layers in the margins of the *Decretum Gratiani* from about 1150 onwards and finally found a permanent context of transmission in the *Glossa ordinaria* to the *Decretum* compiled by Johannes Teutonicus (after 1215) and revised by Bartholomaeus Brixiensis (1234–1241). The importance of the glosses for Dusil's object of study lies above all in the combination of canonical reflections with references, whether to (other) passages of the *Decretum Gratiani* or to other texts, and especially to legal sources, which were indicated in a highly abbreviated form with the help of *allegationes*.[2] In contrast to the visual references (44), which are only briefly discussed, the references contained in glosses became a mass phenomenon within a few decades from the middle of the 12th century onwards, marking the real break with the world of pre-Gratian collections of canon law. In the middle of the 12th century, as Dusil's summary (44–46) states, »a principally new access to normative texts emerged through references« (44). Of particular interest here is an observation pointedly formulated by Dusil on the functional significance of this process: the linearity of the pre-Gratian collections of canon law and to some extent also of the *Decretum Gratiani* was replaced by the relationality of *allegationes*. Allegations and the references not only created a network connecting works such as the *Decretum Gratiani* or the Digest; they also led to the emergence of a new networked legal knowledge that succeeded the old linear one (44).

So much for the content of the parts of the collective volume that are of particular interest to

2 Hermann Kantorowicz (1935), Die Allegationen im späteren Mittelalter, in: Archiv für Urkundenforschung 13, 15–29. See also Melodie H. Eichbauer / James A. Brundage (2023), Medieval Canon Law. Second edition, Oxford, 164–172. Paucaplea, allegedly Gratian's first pupil, is said to have already entered such references as glosses in the *Decretum*. See The Summa Parisiensis on the Decretum Gratiani, ed. Terence P. McLaughlin, Toronto 1952, 1 (D. 1 c. 1 v. *fas*).

legal historians. Looking at the volume as a whole, it is first of all commendable that the editors have made references the subject of discussion at all. Equally welcome is their decision to approach the subject from the perspective of the sources rather than theory. Once concrete findings have been elaborated, the question of the theoretical basis for understanding them (e. g. intertextuality) can be answered with incomparably greater benefit for medieval studies.

If the collective volume as a whole deserves recognition, this applies all the more to Dusil's contribution. It is true that authors have dealt with canonistic references before, but this was done within the framework of the history of the sources of canon law. By contrast, Dusil largely breaks new ground with his cultural-historical approach. Even though the study of the *Decretum Gratiani* yields only limited conclusions about medieval law as a whole, Dusil's article offers important insights that should inspire further work. These include the distinction between the different types of references, the observations on the *dicta Gratiani* and the decretistic glosses, as well as the important point regarding the new kind of networked legal knowledge that emerged through glosses and references. Further research would be desirable in this area in particular.

It would also be worthwhile to examine the cultural context of the phenomenon more closely. Regardless of which form of references one considers, they draw attention to an essential activity of the (learned) jurist, namely the intensive work with texts. This focus was not limited to legists and canonists in the 12th century but was in line with the times, more precisely with scholasticism. This has already been pointed out some time ago. We need only recall Ivan Illich's study of early scholastic text culture (»In the Vineyard of the Text«) and Rolf Schönberger's reference to »thinking along the text« as a characteristic of scholasticism.[3]

Particularly with regard to working with texts, however, the limits of the practice of referencing also become apparent, as the example of the *allegationes* shows. The great advantage of *allegationes* lay in the short and precise indication of where a certain passage could be found in the individual parts of the *Corpus Juris Civilis* and the *Corpus Juris Canonici*, in the *Lombarda*, the *Libri Feudorum* or the *Glossa ordinaria*. This information, however, had a serious disadvantage for outsiders, since it was based on a system of abbreviations that even educated non-lawyers found difficult to understand and even more difficult to apply themselves. A scholar like Dietrich of Nieheim (c. 1345–1418), who had studied canon law himself but without earning a degree, therefore saw fit not to make more extensive use of allegations with a view to the judgement of the doctors of both laws, and to rely instead on theological and moral arguments.[4] The exclusionary effect of the *allegationes* was not entirely inconvenient for the jurists, but it limited the scope and impact of their own argumentation in the debates with members of other disciplines.

As time went on, however, the use of *allegationes* brought problems even among jurists. In order to understand this development, one must once again recall the function of the respective references. It originally consisted of providing an indication of where the reader could find additional material to better understand a specific passage in a legal text such as the *Decretum Gratiani*. However, the more the number of such references grew, the more difficult it became to follow them up. The late medieval reader was therefore often confronted with an impenetrable forest of *allegationes*. As many of them were used to back up the author's view, the impression could arise that such pieces of information primarily served his self-promotion.[5] But if *allegationes*, especially those in glosses, seemed to have become a kind of learned ornamentation, was it not then logical to return to focussing on the legal text itself once more? Such considerations are occasionally found as early as the Late Middle Ages and were especially common among 16th-century humanist jurists *(mos gallicus)*. However, even if the *allegationes*' retreat had al-

3 Ivan Illich (1996), In the Vineyard of the Text. A commentary to Hugh's Didascalicon, Chicago / London; Rolf Schönberger (1991), Was ist Scholastik? (Philosophie und Religion 2), Hildesheim, 83.

4 Achim Funder (1993), Reichsidee und Kirchenrecht. Dietrich von Nieheim als Beispiel spätmittelalterlicher Rechtsauffassung (Römische Quartalschrift für christliche Altertumskunde und Kirchengeschichte, Supplementheft 48), Freiburg / Basel / Wien, 102–103.

5 This applies not only to jurisprudence but also to other disciplines, such as Exegesis. Cf. Jean Gerson, In Marc. I. 2 (89), in: id., Œuvres complètes, ed. P. Glorieux, vol. 3, Paris / Tournai / Rome / New York 1962, 26–36, 28.

ready begun by this time, in the form of glosses they would continue to determine the appearance of many legist and canonist prints until the first half of the 17th century.

If one looks back from the end points to the beginnings of the development, this edited volume offers a good entry point to deal with an important aspect of the relationship between law and text in the Later Middle Ages in more detail. *Vivant sequentes*!

■

Toomas Kotkas

What's the Point in Quantifying Legal Codifications?*

Swedish medieval provincial law codifications *(landskapslagar)* and royal law codifications *(landslagar* and *stadslag)* have been the object of legal historical research for almost two hundred years now. A total of 13 provincial law codifications and 3 royal law codifications that date back to the 13th and 14th centuries have been preserved for posterity (some only partially). The law codifications were first published in original old Swedish by C. J. Schlyter in a thirteen-volume compilation called *Samling af Sveriges Gamla Lagar* (1827–1877). It was not until the 1930s and 1940s that the provincial law codifications were translated into modern Swedish by Åke Holmbäck and Elias Wéssen in a five-volume compilation, *Svenska Landskapslagar* (1933–1946). In 1962, their translation of Magnus Eriksson's Law of the Realm, *Magnus Erikssons landslag i nusvensk tolkning*, was published. Four years later, in 1966, they also published a translation of Magnus Eriksson's Town Law, *Magnus Erikssons Stadslag*.

These Swedish medieval codifications have been studied not only from a legal historical point of view but also, for instance, from the point of view of cultural history, social history and linguistic history. Despite different approaches, there have been a few general research themes that all historical research has been interested in. These are, among others, the question about the chronology of the provincial law codifications, i. e. which of the codifications are older and which more recent. Furthermore, historians have been interested in the question of regional characteristics of the provincial codifications, i. e. whether the codes can be divided into larger groups according to their geographical origin. Indeed, from early on, scholars have divided the codifications into ›southern region‹ *(Götaland)* and ›northern region‹ *(Svealand)* codifications.

Fredrik Charpentier Ljungqvist is Professor of History (esp. historical geography) at Stockholm University. He has previously studied historical climatic changes, plagues, and harvest yields in Sweden and in Scandinavia. Ljungqvist has also studied Nordic medieval law especially from the point of view of royal powers. In this regard, the present book is a natural continuation of his previous work.

In this book, Ljungqvist sets himself the following, more general, research aim: ›to systematically investigate, for the first time, the similarities and differences between ten of the fully preserved medieval Swedish laws (originating between c. 1225–1350) and their legal provisions, through employing mainly quantitative methods‹ (3–4). The similarities and differences between the codi-

* Fredrik Charpentier Ljungqvist, Quantitative Approaches to Medieval Swedish Law, Newcastle upon Tyne: Cambridge Scholars Publishing 2022, XIV + 209 p., ISBN 978-1-5275-8056-5