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# To Have and to Hold

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other disciplines, including the natural and life sciences. Perhaps this will yield answers that offer »suggestions as to how, in the face of omnipresent uncertainty, it is possible to live and coexist under the conditions of our present age«. Who knows?

■

**Caspar Ehlers**

# To Have and to Hold*

The title of this new series, of which the book under review is the first volume, is intriguing: »Constitutional History of the Middle Ages«. This anthology submits its particular subject, lending, to meticulous scrutiny in 15 articles, which cannot all be discussed here in detail. The terminology deliberately abstains from using the seemingly established but rather vague term »feudalism« (9, and the introductory article by Jürgen Dendorfer and Steffen Patzold, 11–23), a term that has been the subject of criticism for decades.[1] The volume is built on a periodisation into early and high Middle Ages and presents a number of European case studies; some of these are broader in scope (dealing with corpora containing sovereign and private documents), while others are more specific (looking at regions or individual monasteries or bishoprics).

With regard to the early Middle Ages, the contributions unanimously conclude that it is more likely that loan relationships were the results of individual negotiations rather than predetermined legal acts within a fixed framework. This is further confirmation of what other examples have shown for the so-called early Middle Ages (Carolingian and Ottonian periods): variable norms and legal concepts were gradually consolidated, a long process with different temporal and spatial dynamics.

Christoph Haack's discussion (27–52) of »legal foundations« in the early Middle Ages focuses on the corpus of sources contained in the capitularies. Among these, the so-called Will of Charlemagne[2] from 806 is significant, as it appears to use the term *beneficium* in the sense of »fief« and to distinguish it from the concept of *res immobiles*. Haack points out, though, that the range of applications of the word *beneficium* also includes »beneficence«, and that therefore it is not possible to assign a legal character to the word (30 f.). However, the distinction between *beneficium* and *allod* (freehold property), made five years later in another of Charlemagne's capitularies,[3] indicates precisely such legal character. Haack identifies four expressions for loaned property in the capitularies – *beneficium*, *precaria*, *res* and *terram habere* (34–36) – and offers a detailed discussion of the distinction between royal property and church property as categories with regard to the loans (3–43). He concludes (51 f.) that the regulations on services and taxes attached to granted land and on heretability do not indicate that there was any system for the legal norms contained in the capitularies.

The contributions by Daniel Ludwig, evaluating the Carolingian royal charters from the 9th century (53–84), and by Thomas Kohl, who analyses East Frankish private charters from the same period (85–102), offer complementary perspectives to Haack's text. Like the capitularies, these two corpora lack stringent terminology, which furthermore is also true of the West Frankish private charters (Fraser McNair, 103–130).

* Jürgen Dendorfer, Steffen Patzold (Hg.), *Tenere et habere*. Leihen als soziale Praxis im frühen und hohen Mittelalter (Besitz und Beziehungen. Studien zur Verfassungsgeschichte des Mittelalters 1), Ostfildern: Thorbecke 2023, 484 S., ISBN 978-3-7995-5040-6; English translations by Caspar Ehlers and Vera Mark

1 Oliver Auge, Art. Lehnrecht, Lehnswesen, in: Handwörterbuch zur deutschen Rechtsgeschichte (HRG), vol. 3, 2nd ed. 2014, col. 717–736.

2 MGH Capitularia 1, No. 45.

3 MGH Capitularia 1, No. 80.

Marco Veronesi's contribution on the »Precaria of the 9th Century in West Frankish and Alemannic Formularies« (131–156) asks »to what extent new instruments of monastic social policy were consciously created in Alemannic monasteries« and surmises that the consequences of such policies may have paved the way for the emergence of feudalism (156). Steffen Patzold draws a similar conclusion from his examination of the »Polyptycha of the 9th Century« (157–182), arguing that the Carolingian regulations constituted the »prehistory of the later feudal system« (181).

Levi Roach begins his contribution on the »Legal Historiography of the Late Salian and Early Staufer Periods« (185–211) by stating that nowadays the feudal system is generally regarded as a phenomenon of the high Middle Ages, and that it is therefore not possible to project its structures back into earlier times (185). However, he notes – a point that also emerges in the section on the early Middle Ages – that we are »still a long way from a feudal system that was in any way recorded in manuals« (211). Similarly, Roman Deutinger speaks of tentative beginnings in the context of the »Staufian Imperial Chronicles« (213–228). Rüdiger Lorenz evaluates the corpus of »Royal and Imperial Charters (1125–1250)« with regard to feudal law (229–287) and emphasises the differences in the development of legal practice north and south of the Alps. In the north, the decrees tended to be pragmatic and problem-oriented, whereas in the south, the legal aspects were »named« and classified (282–287).

Four further areas from the high Middle Ages are then submitted to scrutiny: the Bamberg episcopal charters of the 12th and 13th centuries (Sebastian Kalla, 289–332), the Tegernsee cartularies (Jürgen Dendorfer, 333–373), private charters from Vercelli and Asti (Rebekka de Vries, 375–411), and the charters of the Milanese monastery of St. Ambrogio (Alberto Spataro, 413–436). All these contributions confirm, largely unanimously, the finding that the terminology in use was flexible, so that it would be more accurate to speak of »loan« rather than »fief«.

In conclusion, the two editors emphasise that the decision not to use the terms »fief« and »vassal« in this volume did not lead to any terminological or analytical gaps, whereas the term »feudalism« would have obscured the topics under discussion. This way, an »astonishing flexibility in the handling of fiefs« was revealed, and the debate on feudalism could now be »in a sense [concluded] or at least [continued] in a different way« (467 f.). It should be noted, however, that there are other approaches to dealing with these questions, which already existed at the time of publication of the anthology.[4]

**Caspar Ehlers**

# The Older, the Better*

The focal point of Katja Bauer's dissertation, written in 2022 under the supervision of Heiner Lück (Halle / Saale), is the question of what »motives Eike von Repgow may have had in naming Charlemagne as the source of the law recorded in the *Sachsenspiegel*« (22 f.). Her work is divided into three parts, the first of which offers a »conceptual classification: legislation – Saxony – Charlemagne« (27–114). The second part is entitled »Charlemagne, the real legislator of the Saxons« (115–164) and the third »Charlemagne, the mythical legislator of the Saxons« (165–288). The con-

4 For example, from the Frankfurt Cluster of Excellence »Normative Orders« in the anthology edited by Simon Groth (Hg.), Der geschichtliche Ort der historischen Forschung. Das 20. Jahrhundert, das Lehnswesen und der Feudalismus (Normative Orders 28), Frankfurt am Main 2020.

* Katja Bauer, Karl der Große als Gesetzgeber der Sachsen. Von den Kapitularien bis zum Sachsenspiegel (Schriften zur Rechtsgeschichte 220), Berlin: Duncker & Humblot 2024, 412 S., ISBN 978-3-428-18980-9; English translations by Caspar Ehlers and Vera Mark