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/rg34
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 34 (2026)
http://dx.doi.org/10.12946/rg34/210-211

Rg 34 2026 210 – 211

Caspar Ehlers*

He Who is Free is a King

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

Dieser Beitrag steht unter einer Creative Commons Attribution 4.0 International License

Caspar Ehlers

He Who is Free is a King*

An essay by the author of the monograph discussed here has already been reviewed in this journal: »The Punishment of servi in Merovingian and Carolingian Legal Texts« in the edited volume *Norms of Dependency in Late Antique and Early Medieval Societies*. However, the focus of this review is on Dominik Leyendecker's doctoral thesis, submitted to Karl Ubl at the University of Cologne during the Winter Semester 2023/24 and accepted by the faculty. The thesis is prefaced by an apodictic quotation from the first chapter of Capitular No. 58 from the reign of Charlemagne, stating that there was »nothing left but the free and the unfree«.[1] From this dictum of the emperor, some have concluded that there was no Frankish nobility, which would, after all, have had to be ›freer than free‹ (11–15). The author is therefore concerned with investigating what he calls the »policy towards the unfree of the Carolingian rulers and elites« on the basis of the surviving capitularies from the years 742 to 840. To this end, he has selected five thematic areas: change of status, punishment, flight, marriage and ordination. These were chosen because of their frequency in the 70 capitularies examined (289 ff.).

Following an overview of the sources consulted (21–31) and a clarification of the terminology used in the study (31–51), as well as the definition of the »working hypotheses« (52), Leyendecker's focused analysis opens the second chapter with an examination of the »change in legal status in pre-Carolingian law« between antiquity and the Merovingian period (53–70). Under the first Carolingian king, Pippin the Younger, the question of a person's legal status centred on legislation concerning marriage (70–75), whereas Charlemagne, whilst revisiting this area of law at the start of his reign, subsequently turns his attention to manumission and debt bondage (the Capitularies of Neuching, the »Notitia Italica«, the Capitularies of Herstal and the »Capitulatio de Partibus Saxoniae«, 75–87). This meticulous approach continues through Charlemagne's imperial reforms to Louis the Pious and a brief outlook on Lothair I (87–122).

The third chapter examines the thematic complex of »Serfs and Punishment« (123–168). It is noteworthy that, over time, even free men who had become insolvent could be subjected to corporal punishment and that, under Charlemagne, punishment was increasingly carried out in public (166–168), whereas in earlier times relatives, or in the case of serfs the free owner, could often be called upon to compensate for the damage (124–128). In the fourth chapter, Leyendecker turns to the »escape of unfree persons«, which he distinguishes phenomenologically from »migration« (169 ff.). Beginning with the Roman legal regulations governing the escape of unfree persons in antiquity / late antiquity and the Merovingian Empire (171–178), the focus is on the era of Charlemagne, with a geographical distinction being made here between the southern and northern Alpine regions of the empire (178–185 and 186–189 respectively), moving on to the governance practices of Louis the Pious and Lothair I, and concluding with a digression on »Free Franks and freedom of movement«, who were apparently only prohibited from moving from one sub-kingdom to another (195 ff.).

The serf marriage regulations are one of the better-known areas of law from the Frankish period; it is therefore even more surprising that they have not yet been systematically examined on the basis of the capitularies (199). Dominik Leyendecker undertakes this task using the method applied in each of the chapters, beginning with late antique Roman law (199–204), then presenting »Frankish law before the Carolingians« (204–208), and finally moving from Pippin the Elder and his reforms (208–220) to the legislation of Charlemagne

* Dominik Leyendecker, Unfreiheit und Recht. Die *servi* in den karolingischen Kapitularien (742–840) (Quellen und Forschungen zum Recht im Mittelalter 14), Ostfildern: Patmos 2025, 340 S., ISBN 978-3-7995-6094-8

1 Monumenta Germaniae Historica, Capitularia regum Francorum, vol. 1, ed. by Alfred Boretius, Hannover 1883. Reprint München 1984, no. 58, chap. 1, 145.

(221–229) and Louis the Pious (229–236). The author regards the Carolingian initiative in this field as motivated by church politics, aimed at drawing closer to the papacy. This may also explain why the greatest impetus came from Pippin I, and why his son already devoted significantly less space to matrimonial legislation in his capitularies (237 ff.).

From the perspective of the history of scholarship, the subject of the sixth chapter – which concludes the analysis of the case groups – is no less prominent in medieval studies; it concerns »Unfree Priests and the Ordination of Unfree Persons in the Capitularies« (239–287). Since many of the cherished theories developed by Ulrich Stutz and Friedrich Schaub on the »Germanic private church system« have been undermined by Steffen Patzold,[2] Leyendecker believes the time has come to use his analytical method to reconstruct the priesthood of unfree persons on the basis of legislation. In late antiquity, property regulations were probably the primary reason why only freedmen or slaves could become priests after the death of their master (241–245). In the 740s, the legal status of a man to be ordained as a priest does not seem to have played a major role; he was simply not permitted to be a foreigner or to claim to have already been ordained (245–250). It was not until the reign of Charlemagne that the question of social origin appears to have played a role, for the Admonitio generalis of 789 stipulates that the consent of a slave's master is required as a condition for his ordination, as was also laid down in the Collectio Dionysio-Hadriana of 774 and earlier documents (250–258). In 805, the legal issue reappears in the Capitularies, though this time it must be understood against the backdrop of the great famine. The aim was to prevent landlords from parting with the serfs they were obliged to support by granting them permission to become priests, whilst at the same time curbing the unchecked influx into monasteries (258–260). At the so-called Reform Councils of 813, the issue was raised once more, with the consent of the lord being reaffirmed as a condition, and the irreversibility of ordination being added (260–267). As a punishment for the murder of a priest, a distinction was made in the payment of *wergeld* by the perpetrator between clergy of free birth and those from the class of serfs prior to their ordination, as suggested by a hitherto little-noticed letter from Charlemagne to his son, King Pippin of Italy (270–274). Under Louis the Pious, finally, prior manumission by the lord became a mandatory prerequisite for the ordination of a serf (274–284). In this respect, a legislative shift can also be observed here (284–287).

In the seventh chapter, Dominik Leyendecker once again summarises the findings of the investigations into the five thematic areas with appropriate brevity and conciseness (290–295). In conclusion, he notes that the unfree appear in the capitularies only in one context, never as a subject in their own right; they »remain, at least theoretically, objects of their lords' possession in the capitularies« (295). Only the latter could ensure their ownership; the other freemen, or even the elites surrounding the Carolingian monarchy, took no interest in the unfree object. So much for the theory derived from the sources. In his study, Leyendecker points out that this »does not correspond to the lived practice in the Carolingian Empire« with its »semi-oral legal culture« (296 ff.).

The book provides solid basic research in an accessible style and should not be read solely by specialists in capitularies, as it offers those working on the late antiquity and Early Middle Ages many ideas for exploring side paths. A list of sources and bibliography, as well as an index of manuscripts and one of sources, conclude the volume. An index of persons and places is missing.

■

2 Ulrich Stutz, Die Geschichte des kirchlichen Benefizialwesens von seinen Anfängen bis auf die Zeit Alexanders III, Berlin 1895, 3. Aufl., Nachdruck Aalen 1972; Friedrich Schaub, Studien zur Geschichte der Sklaverei im Frühmittelalter (Abhandlungen zur Mittleren und Neueren Geschichte 44), Berlin / Leipzig 1913; Steffen Patzold, Presbyter. Moral, Mobilität und die Kirchenorganisation im Karolingerreich (Monographien zur Geschichte des Mittelalters 68), Stuttgart 2020.