Crime, Histoire & Sociétés / Crime, History & Societies

Vol. 5, n°2 | 2001
Varia

Andreas Blauert, *Das Urfehdewesen im deutschen Südwesten im Spätmittelalter und in der frühen Neuzeit*

Tubingen, Bibliotheca Academica, 2000, 200 pp., ISBN 3-928471-25-2
(Frühneuzeit-Forschungen, Bd. 7)

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Electronic version

URL: <https://journals.openedition.org/chs/748>

DOI: 10.4000/chs.748

ISSN: 1663-4837

Publisher

Librairie Droz

Printed version

Date of publication: 1 January 2001

Number of pages: 158-161

ISBN: 2-600-00664-8

ISSN: 1422-0857

Electronic reference

Hillay Zmora, "Andreas Blauert, *Das Urfehdewesen im deutschen Südwesten im Spätmittelalter und in der frühen Neuzeit*", *Crime, Histoire & Sociétés / Crime, History & Societies* [Online], Vol. 5, n°2 | 2001, Online since 02 April 2009, connection on 23 March 2022. URL: <http://journals.openedition.org/chs/748> ; DOI: <https://doi.org/10.4000/chs.748>

World I. Beyond the high ground of liberal demands for free movement the state administration and the police in France, Germany, as well as in Britain, relied on a multitude of laws and regulations, permits and identity papers which aimed at the surveillance and control of the movements of certain segments of the population (servants, workers, artisans, gypsies, the *Sachsengänger* in Prussia).

Torpey's conclusion is plausible, when he assumes that the bureaucratic identification of subjects played a decisive role in the way subjects formed their identities as citizens and nationals. The crucial question, however, is to what extent the subjects of administrative identification processes in fact «have to some extent become prisoners of their identities, which may sharply limit their opportunities to come and go across jurisdictional spaces» (p. 166). On the theoretical level, Torpey hardly touches the topic of how administrative identification, the establishment of citizenship, and the emergence of nationalism are intertwined in the regimes which try to control the movement of persons in the modern state system. On the empirical level, Torpey does not reach beyond a general analysis of legislative efforts to improve the means of identification, which remained poor in everyday policing. This gap considerably limited the far-reaching claims of the nation state to control the movement of persons in, into, and across its territory far into the 20th century. Even the legislative story Torpey narrates does not simply add up to a steady «monopolization of the legitimate means of movement». Ultimately Torpey does not give a systematic account of the «history of the passport», but ends the book with a typology of identification papers currently in use by nation states.

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Urfehde denoted originally an oath to keep the peace taken by those released from gaol, forswearing vengeance for their confinement. The very need for such assurances provides a revealing testimony to the nature of public order in the early part of the period covered in this book: the precarious legitimacy of governments, their weakness and vulnerability, and, correspondingly, the capacity and even legitimacy of «private» persons to resort to violence against governments and their representatives. In other words, governments did not simply lack the technical wherewithal to enforce a generally recognised claim to a monopoly of the legitimate means of violence; more fundamentally, their very right was contested and could also be claimed by «private» individuals or associations. This was a world in which the law had trouble with people rather than the other way around. «A world in which the feud is always a possibility», Otto Brunner emphasised, «of necessity has a structure altogether completely different from the civil world of an absolute state which claims the monopoly of the legitimate use of force»¹. Government depended

¹ Otto Brunner, 'Moderner Verfassungsbegriff und mittelalterliche Verfassungsgeschichte,' *Mitteilungen des österreichischen Instituts für Geschichtsforschung, Erg.-Band 14* (1939), pp. 513-528, at 527.

for the effective exercise of its authority on the consent and active co-operation of the governed – a partnership facilitated by a belief in a God with empirically proven retributive capabilities. How was the transition made to the world of the modern state is a central and richly complex historical conundrum to which historians and sociologists have proposed numerous answers. Blauert's aim, while more modest, is closely related to these attempts: to «elucidate the connections between the *Urfehde* and the gradual transition from the medieval idea of the state as the custodian of the law (*Rechtspflegestaat*) to the emergence of the sovereign disciplinary state (*souverän gewordener Obrigkeitsstaat*)».

Reposing on a wide and varied foundation of sources, Blauert distinguishes three phases in evolution of the *Urfehde*. The first phase spanned the fourteenth and early fifteenth centuries; the second, deemed the heyday of *Urfehde*, lasted from the early fifteenth century to the early seventeenth; and the last corresponded to the seventeenth and eighteenth centuries, a period which the present book is the first to explore systematically.

The early stage of the *Urfehde* was intimately connected to the practice of *Fehde*, or feud (alas, no literal translation can accurately convey the meaning of the German original). A prevalent form of conflict and conflict resolution in the late medieval Holy Roman Empire of the German Nation, the feud struck contemporary foreign observers such as Commynes and Bodin as wildly outlandish. They looked down on it as both a major cause and a distinct symptom of the rampant lawlessness and disorder in the Empire. Eighteenth- and nineteenth-century German bourgeois, too, decried the feud and stigmatised it as the «law of the fist» of a declining nobility. Recent research, however, has done much to «rehabilitate» the feud as a highly structured and norm-bound political practice. Blauert sidesteps the snare-cliché of the «robber-knighthood thesis» which has its origins in the cities' and Church's exertions to delegitimise the knightly feud. And it is precisely in this pre-eminently power-political and ideological context of an (especially urban²) effort to reduce the lords of the *contado* that the *Urfehde* acquired its early prominence as a legal instrument.

There is therefore some historical irony in the fact that while the feud is no longer considered an appropriate theme in the history of crime, the *Urfehde*, initially developed to cope with it, is very much so. The reason for this, however, is a rather serious matter: the *Urfehde* was turned around and, as its were, inside by urban governments and put to use to control those among their population who deviated from the normative order. In other words, inscribed in the history of the *Urfehde* is a shift in the conception of government which manifested itself in a more authoritarian approach to the business of ruling - in treating the urban populace as more subjects than citizens. Whereas in the fourteenth century offenders taken into custody foreswore vengeance and were released, in the fifteenth century *Urfehden* were already recording the detainees' gratitude to the government for mercifully releasing them from gaol (p. 64): from forgiveness *by* the «prisoner» to forgiveness *to* the prisoner. To be sure, governments were at this point in time still far from being able to rely solely on the use or threat of force in order to secure compliance; they still needed to resort to social and economic – in contradistinction to strictly legal –

² Ulrich Andermann, *Ritterliche Gewalt und bürgerliche Selbstbehauptung: Untersuchungen zur Kriminalisierung und Bekämpfung des spätmittelalterlichen Raubrittertums am Beispiel nord-deutscher Hansestädte* (Frankfurt a.M., 1991).

mechanisms to ensure acquiescence (p. 69). But this by no means diminishes the importance of the transition: the relationship between rulers and rules was growing ever more asymmetrical (pp. 70-71).

Closely related to this transformation is a change in what was construed as deviance, a process which the *Urfehde* both reflected and helped to shape. A notable example is provided by Freiburg in the Breisgau. Based on 1100 *Urfehden* from the years 1331-1780, Blauert's research divulges a marked shift in the relative weight of different categories of crime. And the mid-sixteenth century stands out as the turning point, when a «scissors effect» occurred: if until around 1550 it was crimes of violence and those against the authorities which preponderated, after that date they were taken over by crimes against property and sexual offences (pp. 93-97, 157). A century later, and the complexion of crime is again different: violent crimes were replaced by sexual offences as the predominant form. What had taken place in the intervening period is of course not so much a sudden relaxation of sexual mores as the growing obsession of the authorities with prosecuting what they now – in the wake of confessionalisation and the attendant campaign of social disciplining – perceived as licentious, dissolute behaviour (p. 100). Towards the end of the eighteenth century (1763-1772) the picture had changed yet again: crimes against property took the lead (46,6 per cent of all recorded cases), followed closely by sexual offences, while crimes of violence and those against the authorities trailed behind (4,1 and 4 per cent, respectively) (p. 101).

Freiburg was not unique. Another case in point is the imperial city of Schwäbisch Hall. A review of the various misdemeanours for which *Urfehden* were sworn in the years 1760-1769 reveals that here too «indecentcies» were a favourite object of governmental prosecution: 428 of a total of 565 recorded incidents, or 75 per cent. More specifically, as the figures adduced by Renate Dürr show, pre-marital sex and adultery must have become a risky pastime: the proportion of cases that found their way to *Urfehden* shot up from 16 per cent in 1660-1664 to 75 per cent in 1765-1769 (pp. 139-140). Thus, whilst in the later middle ages the main corrective effort focused on the «outer» human being, regulating their penchant to violence among themselves and in their relation with the authorities, in the early modern period the main effort was directed more and more towards the «inner» human being – and at first towards their moral standards (p. 118). All this tallies well with the view current in the literature that the seventeenth century was characterised by what might be termed a morality craze, which was only to intensify in the eighteenth century (p. 141). The Age of Reason evidently was less reasonable than its founding fathers and many progenies liked to believe.

This is further evidenced by another, related development that took place in the eighteenth century. Not only the common folk's moral conduct became a principal target of stricter control, but also their concept of property. This, of course, had to do with the emergence of capitalism. The *Urfehde* assumed now a new function: it became to all intents and purposes synonymous with banishment, whereby it was exploited by the authorities as a means to getting a grip on the pressing social problems posed by the ubiquity of beggars and vagabonds. If the early *Urfehde* was an instrument for reintegrating deviants into society, in the eighteenth century it was employed primarily to ostracise them; it was turned into a penal measure – which it never had been in its early days. One arrives, then, at a significant conclusion: Enlightenment society was, at least in this respect, remarkably less «tolerant», less

willing than the late medieval one to accept back into the social fold those who had fallen foul of its norms (pp. 20, 145, 147, 152, 156).

The *Urfehde* thus serves Blauert as a fine tool for tracing an important aspect of the momentous transformation undergone by German society between the fourteenth and eighteenth centuries. But at the end of the day one is left wondering whether, after such tortuous historical meandering, the *Urfehde* of the eighteenth century and that of the fourteenth are not in fact two different phenomena with very little in common but the name. Blauert is keenly aware of the possible doubts, and takes pains to insist on the coherence and unity of the *Urfehde* (pp. 21, 153-154). But these attempts at methodological justification of his enterprise may strike one as being more of the order of assertions than of convincing arguments. It is to his credit that they are quite effectively undermined by his own remarkably able description and analysis of the evolution of the *Urfehde* – which suggest that the mutations were of such quality as to bring forth an altogether new «creature». This book, then, is a valuable *wissenschaftliche* contribution. Indeed, crime being potentially so seductive and beguiling a subject, a window as it were onto the deepest, most disquieting yet perhaps also most telling recesses of human nature, the author is to be appreciated for not having succumbed to temptations, and for having treated it with such clinical detachment and precision.

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Joannès (F.), (Dir.), *Rendre la justice en Mésopotamie, Archives judiciaires du Proche-Orient ancien (III^e-I^{er} millénaires avant J.-C.).* Saint-Denis, Presses Universitaires de Vincennes, 2000, 270 pp., ISBN 2-84292-071-6

Pour celui qui s'intéresse aux droits cunéiformes, il existe un matériel épigraphique très riche. Mais d'une part, ce matériel n'est pas facilement accessible et d'autre part ce qui est surtout connu, ce sont les lois, comme les lois d'Ur-Nammu ou le code de Hammurabi. Or, comme l'annonce le sous-titre, ce n'est pas ce type de texte que vise ce livre : il sera question de documentation judiciaire au sens large, incluant, comme le rappelle Sophie Lafont, « non seulement les minutes de procès, mais aussi les lettres faisant référence à des litiges ou les pièces des dossiers d'instruction » (p. 15). En outre, dans l'avant-propos, Francis Joannès annonce explicitement la finalité et la méthodologie de l'ouvrage, dont l'ambition « n'est pas de présenter la totalité des sources, ni d'en faire un traitement exhaustif. Nous avons cherché, tout en reprenant des textes déjà connus ou en présentant la documentation récente, à ajouter une nouvelle dimension aux études existantes. Les archives que l'on peut qualifier de « judiciaires » fournissent en effet un éclairage d'une remarquable diversité sur les réalités de la vie quotidienne, des relations sociales et des contraintes politiques ou économiques en Mésopotamie du IV^e au I^{er} millénaire av. J.-C. » (p. 8). Plusieurs points de vue scientifiques s'accordent donc celui du juriste, du philologue et de l'historien, en particulier pour construire une approche anthropologique qui renouvelle notre connaissance de thèmes institutionnels, dont certains [d'entre eux] pourraient paraître classiques par ailleurs.