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Dorothee Gottwald. *Fürstenrecht und Staatsrecht im 19. Jahrhundert: Eine wissenschaftsgeschichtliche Studie.* Frankfurt am Main: Vittorio Klostermann, 2009. x + 290 pp. EUR 69.00 (paper), ISBN 978-3-465-04071-2.

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Now You See It, Now You Don't: The "Law of the High Nobility" in Nineteenth-Century Germany

The focus of this work, the debate about a body of law dealing with aristocratic issues, is not easy to summarize. This problem stems in part from a topic that historians who do not work on law might be forgiven for considering nonexistent; in part, it has to do with the indirect way in which Dorothee Gottwald engages with current trends in the historiography of nineteenth-century Germany.

As the subtitle indicates, Gottwald is interested in the place occupied by a premodern field of law in the construction of a modern German jurisprudence in the nineteenth century. Her sources are jurists' discussions on a law of the princes, which she deftly inserts into the prevailing intellectual trends of the day. *FÃ¼rstenrecht* (princely law) was an irritating anachronism for liberal jurists in more ways than one (conservative jurists, by contrast, appear to have been less irritated and less interested, except when it came to pronouncing on individual cases). It assumed that there was a body other than state governments or legislatures that could create law–for example by drawing up new *Hausgesetze* (rules regulating the conduct of members of princely houses) in family assemblies. It sought to conserve a political status that had come to an end in 1806. And it assumed a distinction at odds with equality before the law by setting the high aristocracy apart from the petty nobility as well as from the majority of the population that was not noble.

The root of the problem was Article 14 of the 1815 Federal Act (*Bundesakte*), which assured the princely families that had been sovereign (*reichsunmittelbar*) prior to the 1806 mediatizations that they would retain their status in its entirety and many of their practical privileges. They would remain equal (*ebenbÃ¼rtig*) to the princely families who had retained their thrones; they would obtain seats in the first chamber of any legislature; they would be able to regulate their family affairs autonomously in ways which might contradict the legislation which applied to non-nobles or the lesser nobility of any given German state; they retained some of their income from public rights, as well as their administrative and judicial competences, could post guards of honor in front of their residences, and make particularly extensive use of coats of arms and titles. Moreover, the Federal Diet

(*Bundesversammlung*) would "contemplate" whether the members of formerly ruling houses should obtain one or more collective votes. This contemplation never took place, and in political terms Article 14 turned out to be one of the many aspects of the 1815 framework for the future political order of Germany, which raised high hopes that were later to be dashed completely. The *Standesherren* (noblemen), as the states denominated them, or *Mediatisierten* (mediated princes), as the group initially preferred to call itself, had to rely on the Federal Diet, which either indulged in its typical delaying tactics or tended to back the states against the aristocracy, allowing them to chip away at the group's privileges.

Lawyers noted different problems, and this issue caught Gottwald's attention. These were partly issues of detail. It was not clear to which families Article 14 actually referred–before 1806, a number of families possessed a seat in the Holy Roman Empire's Diet, even though they ruled no territory, and vice-versa; the definition of *ebenbÃ¼rtig* remained vague (the ability to marry into Germany's high aristocracy or into ruling houses across Europe, for example). Although Gottwald's book contains a mine of information on such problems, as well as on the most important cases that turned on *Standesherren* status (of which there were remarkably few), this is not her most pressing concern.

On a theoretical level, the issue which occupied German jurists most in the decades immediately after 1815 was how to reconcile the existence of a *FÃ¼rstenrecht* with the theoretical distinction between public and private law just coming into favor. The solution adopted by most was to divide the material. Matters concerning the succession of ruling monarchs, for example, were seen as part of public law (and thus destined for more intensive public and legislative scrutiny), whereas inheritance and succession among *Standesherren* could be considered part of private law (where the autonomy of certain families presented no threat to the coherence of the legal system, and where the texts themselves could remain secret).

In the 1830s and 1840s, liberal jurists discovered that this approach provided for new problems, not only because it created distinctions between different types of subjects of the state but also because it cemented a body of law apparently immune to democratic intervention or control. These concerns were supported in practice by the consequences of the revolution of 1848, which allowed some German states to do away with more of the *Standesherren*'s political or judicial privileges, usually by accepting the Paulskirche's constitution and leaving those basic rights that attacked the privileges of *Standesherren* in place when other basic rights were revoked.

The foundation of the Wilhelmine Empire sparked a new phase of the debate. The demise of the German Confederation had raised the question whether rights of *Standesherren* continued to exist at all. Even though most jurists accepted they probably did (as they could be upheld with reference to international law, private law, or natural law), it became more difficult to integrate them into a vision of a German legal system based on equality and democratic scrutiny of legislation. The solution of choice, elaborated most clearly in the work of Hermann Schulze, who is the study's key protagonist, was to argue that the high nobility formed a "corporation" (*Genossenschaft*) with limited autonomy, similar to a locality (*Gemeinde*). While recognizing the nobility's historical importance, this construction implied that it was subject to parliamentary legislation. A number of laws enacted during the liberal years of the empire indeed proceeded to do away with princely privileges in family law, bankruptcy law, laws of judicial procedure, with reference to the age of majority, and so on.

The 1890s witnessed prominent legal debates on the relationship between *FÃ¼rstenrecht* and parliamentary legislation, with contradictory results. With regard to the rights of succession in Braunschweig, where the former king of Hanover was barred from taking over a throne which was doubtless rightfully his on state security grounds, state legislation took precedence over princely laws of succession. But in Lippe, where the question which potential heir was *ebenbÃ¼rtig* was at issue, two courts of arbitration reached a resolution outside normal parliamentary and judicial forums, though in line with the desires of the majority in the state's legislative assembly. By 1900, the notion of a common *FÃ¼rstenrecht* appears to have given way to discussions on the rights of *Standesherren*, mostly kept alive by the group's lobbying organization–in fact, the *BÃ¼rgerliches Gesetzbuch* appeared to return some of their earlier autonomy by recognizing the right to deviate from the civil code. Gottwald's discussion of the Austrian maverick jurist and later National Socialist activist Otto von Dungern, who sought to defend the *FÃ¼rstenrecht* on what were ever more blatantly racial grounds, presents a fitting epilogue.

Gottwald's concise and clearly argued book sheds new light on a test case for the modernity of legal theories in Germany. As she makes clear, the area of law she focuses on was obscure not just by today's standards,

but also by contemporary ones. This observation speaks for the modernity of German public law, which found it difficult accommodate the anachronistic concept of a notional "high nobility" descended from the princes of the Holy Roman Empire. Read against the grain, however, her account can also be understood as illuminating the limited reach of the law in areas that were close to the heart of monarchical governance. None of the cases she discusses appear to have been settled in a legal or parliamentary forum; all were resolved by political compromise or by extra-judicial arbitration proceedings that actually confirmed the ability of non-state actors to create binding legal formats–in spite of what legal theories suggested.

Gottwald's study joins a resurgence of interest in the status of the nobility in German history. This topic has usually been approached with a classical social history methodology, adapted from earlier studies of the working classes and the middle strata of society. Gottwald's insightful study shows that there is much to gain by a sensitive rereading of intellectual debates on the status of aristocrats as well. It would be interesting to see whether it might be possible to combine the two approaches in a study of disputes on aristocratic family affairs before courts, in arbitration procedures, or in the public eye.

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