Comparative Studies
in Continental and Anglo-American Legal History

Vergleichende Untersuchungen zur kontinentaleuropäischen
und anglo-amerikanischen Rechtsgeschichte

Band 21

Seigneurial Jurisdiction

Edited by

Lloyd Bonfield

Duncker & Humblot · Berlin

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Table of Contents

LLOYD BONFIELD

Introduction

Comparative legal history is a difficult, if rewarding discipline. Our efforts to produce a volume on Seigneurial Jurisdictions belie elements of both emotions: frustration at unresolved problems of scope and methodology which our efforts manifest; and compensation and perhaps even exhileration in the form of having established a framework for comparing the various courts in pre-modern Europe that can be lumped together as being "seigneurial". This Introduction attempts to shed some light on our collective enterprise, and suggest avenues of future collaboration.

The first issue of scope which we addressed was precisely how to define courts which were seigneurial given the variety of legal heritages which obtained in medieval and early modern Europe. To some extent, it was easier to reach a conclusion by reduction: to first determine which courts were not seigneurial. The exercise was by no means straightforward. For England, the historian might exclude the king's court and the church courts, but because the crown and the church were feudal lords with vassals, and with power to adjudicate disputes between them and to monitor the rendering of services due, they too held feudal jurisdiction. Yet in order to exercise their authority, both crown and church created separate courts to govern relations with their vassals; the seigneurial and the other aspects of adjudication were not amalgamated. Another important English jurisdiction, the courts of boroughs are not properly regarded as seigneurial. English historians tend to consider borough courts as a unique forum, because jurisdictions in the towns were largely concerned with matters of commerce rather than with disputes over land or obligations arising therefrom, the staple of feudal courts.

On the continent, where central courts were less prominent, there appears to be a more flexible notion of seigneurial jurisdiction. Or, at the very least, we find differing models of seigneurial courts. In the area of French Switzerland studied by Professor Poudret, for example, the municipal courts seems to combine seigneurial rule with other aspects of their jurisdiction. In Basle, where Professor Bühler has examined the records of the diocesan court, on the other hand, the seigneurial aspect of jurisdiction seems more compartmentalized, with the church having separate courts for spiritual affairs, and its criminal jurisdiction relegated to the sheriff. In the parts of France, Germany and Italy which we have studied, the feudal lord is a secular figure, an individual more reminiscent of the traditional feudal lord with

comprehensive jurisdiction over his vassals, a situation that after the reign of Henry II (1154 - 1189) might have evoked a certain degree of envy across the Channel.

We have therefore attempted to look at the variety of jurisdictions in which lords in medieval and early modern Europe governed the legal relations of their vassals. Our scope has been circumscribed both in terms of number of courts surveyed and geographical reach. The former limitation is easy to defend. No study on the seigneurial courts could claim to be comprehensive given the sheer number of extant tribunals. And varied in jurisdiction and structure they no doubt were. Even in England, for which we have three contributions, our focus has been largely on a single type of court, the manorial court, the forum on lowest rung of the ladder of seigneurial jurisdictions. The geographical limits of our volume are another matter. Regrettably, our plans to enlarge the purview geographically were thwarted, although at earlier meetings of our working group we had useful contributions from Spain and southern Italy. Yet the reservoir of knowledge of other areas of Europe revealed in the reports of our continental colleagues is some compensation for the absence of geographical comprehensiveness of reports. Finally, we had to cope with differing time periods; our contributors are largely, though not exclusively, medievalists. The point in time at which the seigneurial court is observed may be crucial, since there were at various eras and in various geographical areas declines in the authority of seigneurial courts. England provides an example. By the close of the thirteenth century, due to the expansion of the king's court, only the lowest level of seigneurial jurisdiction, the manorial court, retained vibrancy as a court. Three centuries thereafter, the manorial court no longer heard disputes, and retained only one of its earlier functions: a registry of transfers of manorial land. At other points in time, and in other geographical areas, the influence of the seigneurial court waxed rather than waned. For example, Professor Poudret observes an accretion in jurisdiction by seigneurial courts in French-speaking Swiss cantons in the middle ages.

If our comparative venture has neither been comprehensive temporally nor spatially, we have confronted a number of important issues in comparative legal history. In the first place, our goal has been to place the seigneurial jurisdiction within its national context, as one of a variety of courts which co-existed with other forums. Each contributor has addressed this issue. As Professor Helmholz has illustrated for England, there was considerable interplay between seigneurial courts and other jurisdictions. In England, then, the manorial court did not exist in a jurisprudential vacuum. On the other hand, litigants in the court of the Duchy of Lorraine studied by Professor Coudert did not seem to need to look elsewhere for justice. This also seems to be the case in areas of north and west Germany studied by Professor Ebel.

In addition, we have tried to come to terms with the origin and nature of substantive law which was implemented in our courts. In his comprehensive report on

seigneurial courts in Lombardy, Professor Panero ably struggles with the jurisprudential origins of Langobard customary law and its connection with written law. His endeavor parallels that exercise undertaken by Professor Poos and myself for the English manorial court. Yet his courts, unlike manorial courts in England, seem fortunate to have had their own written customals, a benefit also to the judges in the courts of the Duchy of Lorraine investigated by Professor Coudert. Professor Willoweit's courts seem most similar in terms of legal sources to the English manorial court, and serviced a comparable social and economic group to the English villeinage. All our contributors observe custom being formulated and refined, in large measure demonstrating the dynamic quality of custom.

Finally, we have observed procedure. In England, in particular, the medieval period witnessed considerable developments in the way in which cases came before the manorial court and how proof of the complainant's claim was ascertained. Perhaps procedure and process in the medieval and early modern period is much more an English concern than one on the continent. Professor Buhler's discussion of procedure on the continent is perhaps the most thorough, and with the exception of the process of appeal or rationalizing of decisions which he observes in Basle, the procedure therein is strikingly familiar to the historian of English manorial courts.

No brief summary attempted herein can do 'justice' to the painstaking archival work and analysis undertaken by our reporters. Our reports have provided the framework for further study by historians in England and on the Continent by addressing common aspects of seigneurial jurisdiction in an array of different geographical areas. Yet our enquiries can be pressed further. One subject which merits additional consideration is that of personnel: in particular, were those lawyers and judges who labored in our courts active participants in or removed from other courts? Some investigation of the medieval legal practitioner in the seigneurial court might provide more insight into how and in what manner both procedure and custom developed therein. Moreover, it would be interesting to know if the cases observed turn up elsewhere: are litigants content with feudal justice, or are the claims pursued in other forums? In addition, we have not explored the manner in which feudal courts actually enforced their judgments. Finally, we have not accounted for the disappearance of our jurisdiction.

Our reports have demonstrated some similarities and some differences between seigneurial jurisdictions in England and on the continent. Perhaps the most significant difference is that seigneurial jurisdictions seemed to have survived longer on the continent than in England. Moreover, Continental seigneurial courts seemed to have serviced a broader strata of society. Yet what is perhaps more striking are the similarities in procedure and in the process of custom making which our reports have uncovered.