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Geistliche und weltliche Gerichte im Alten Reich. Zuständigkeitsstreitigkeiten und Instanzenzüge

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disciplinary eclecticism – a kind of eclecticism, to be sure, that stays clear of the pitfalls of academic quietism.

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Geistliche und weltliche Gerichte im Alten Reich. Zuständigkeitsstreitigkeiten und Instanzenzüge, by Peter Oestmann, *Quellen und Forschungen zur höchsten Gerichtsbarkeit im Alten Reich*, 61, Böhlau, 2012, 859 pp., €71.90 (hbk), ISBN 978-3-412-20865-3

‘Es gibt kein Gesamtbild’ – there is no general picture (716). After 700 pages of detailed observations on 150 court files from secular and spiritual tribunals in the early-modern German Empire, Oestmann’s masterpiece risks leaving the reader unsatisfied, certainly if he or she does not specialize in early-modern German legal history. Few scholars around the world will be familiar with the intricacies of power and justice in the territories making up the Holy Roman Empire consisting of hundreds of kingdoms, archduchies, duchies, counties, prince-(arch) bishoprics and imperial cities. The question raised at the beginning of this work remains relevant, though, even for historians of other European countries: in the light of the co-existence of religious and political power forces in the early-modern period, where was the line demarcating their competence in judicial matters drawn? The question of the frontier between the competence of secular and religious authorities in settling disputes was a key issue at the time and not as clear-cut as it is today. Spiritual courts claimed competence in worldly affairs, for instance in cases concerning attached horses (12), and not just in cases involving clerics or ecclesiastical goods.

For example, in the Catholic prince-bishopric of Münster it was common for litigants to take worldly affairs, ranging from the enforcement of contractual debts to disputes concerning real estate, to the ecclesiastical court (43). Moreover, the parties in a dispute involving worldly affairs could appeal a sentence pronounced by the judicial vicar in Münster to the Imperial Chamber Court (*Reichskammergericht*) as well as to the archiepiscopal court (*Metropolitangericht*) in Cologne. More often than not, parties would take litigation a step further and appeal the sentence pronounced by the archiepiscopal court in Cologne to the Apostolic nuncio, a local representative of the Roman Pontiff. The losing party would in turn appeal the sentence of the Apostolic nuncio to the Imperial Chamber Court (123). The latter type of case provides us an insight into the growing sense of sovereignty of local German territories, as the parties would argue that foreigners such as the Apostolic nuncio must stay away from German affairs. Sometimes the cases

also offer a glimpse into the increasing struggle for emancipation from the judicial power of the Church, as when litigants argued that clerics should stick to their trade and say masses instead of settling disputes (729).

Oestmann's scholarship starts from a strong methodological commitment to a history of judicial practice and the study of cases. He advocates a particular conception of legal history as a history of 'Rechtsstreitigkeiten', that is disputes before court (737). Without ignoring the relevance of doctrinal sources, Oestmann wants to draw attention primarily to court records instead of statutory regulations and learned literature to find a more realistic answer to the question about the distribution of judicial competence among spiritual and secular authorities. This might constitute an innovative approach in a German context, as Oestmann's polemic against Mathias Schmoeckel and 'many legal historians' seems to imply (32). But in countries such as Belgium, France and the UK the emphasis on studying court records as much as legal doctrine has not been absent in recent decades, even if there are more court files than there are human resources available to thoroughly investigate them. In this regard, the selection of representative sample cases is indispensable to keep this type of research feasible and to guarantee the validity of the general conclusions inferred from archival research in particular places.

As other reviewers of this book have pointed out, the anthology of cases on which the investigation draws is open to criticism on account of its selective nature.¹ It nevertheless relies upon a praiseworthy effort to collect evidence from different types of territories within the northern and western part of the Holy Roman Empire, including the Catholic prince-bishoprics of Münster, Osnabrück and Hildesheim, the Protestant imperial cities Lübeck and Hamburg, the Protestant duchies of Mecklenburg and Sachsen-Lauenburg, the Reformed county of Lippe and the Catholic duchy of Jülich-Berg. The particularities of the cases discussed in each of these territories will be of interest mostly to local historians, but they have the merit of providing clear instances of the competition for judicial power between secular and spiritual powers. In a Protestant imperial city such as Lübeck, Protestant pastors would still vindicate the right to be judged by the spiritual powers in the consistory court (*Konsistorium*) rather than by the city council (*Rat*), arguing that the Reformation had not altered the *privilegium fori* previously granted to clerics (337). However, appeals against sentences by the consistory court were dealt with by the council. A prohibition against appeal from the *Rat*'s decisions to the Imperial Chamber Court in Speyer is indicative of the growing autonomy of Protestant cities and territories. Yet generalizations remain difficult, as the counter-example of Mecklenburg shows, where it

¹Anette Baumann, 'Peter Oestmann: Geistliche und weltliche Gerichte im Alten Reich' (2013) 13 *Sehepunkte: Rezensionjournal für die Geschichtswissenschaften* (www.sehepunkte.de/2013/06/22561.html [accessed 26 May 2015]); David von Mayenburg, 'Geistliche und weltliche Gerichte im Alten Reich' (2014) 131 *Savigny-Zeitschrift für Rechtsgeschichte: Germanistische Abteilung* 662.

became common practice to appeal decisions by the territorial court to Speyer (383).

In practice, then, the real relationship between secular and religious judicial authorities differed from one territory to another and from case to case. Insisting upon the complexity of legal practice, the author has bravely resisted any attempt at making sweeping generalizations, even if this renders his work very difficult to access for non-specialists. The reader remains left with only a couple of general inferences from the many complex court cases that have been meticulously described and analysed in the book under review. A rather obvious finding is that the delimitation of judicial competence was as futile in early-modern times as it had been in the late Middle Ages (717), but the complexity of the matter is further amplified by the fact that the definition of secular and spiritual affairs, respectively, remained unclear as well (718). More concrete is the observation that the highest courts in the Holy Roman Empire, namely the Imperial Chamber Court and the Aulic Council (*Reichshofrat*) resisted appeals with Papal representatives or the Rota Romana, the supreme court of the Catholic Church (722). This is one of the limited yet interesting examples of conclusions about the struggle for judicial sovereignty in the early-modern German area which could serve as a starting point for comparative legal historical scholarship.

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Frankfurt und Hamburg vor dem Reichskammergericht. Zwei Handels- und Handwerkszentren im Vergleich, by Robert Riemer, Cologne, Böhlau, 2012, 431 pp., €59.90 (hbk), ISBN 978-3-412-20822-6

This book is the published version of Robert Riemer's doctoral dissertation, which was completed in 2006 at the Ernst-Moritz-Arndt-Universität of the former Hanseatic city of Greifswald. The book evaluates the institutional integration of two major commercial centres, Hamburg and Frankfurt, into the overall administrative system of the Holy Roman Empire. Riemer investigates the extent to which that process of integration can be regarded as successful by means of an in-depth analysis of the lawsuits that originated in Frankfurt and Hamburg and were brought before the Imperial Chamber Court during its existence between 1495 and 1806. In other words, Riemer asks who approached the Imperial Chamber Court, and for what kinds of legal dispute (3). The answers to these questions may prove to be different depending on whether a case originated in Frankfurt or Hamburg, so an examination of such cases may illustrate