

The End of Territorial Lordship in Medieval Germany. Reflections upon an Historiographical Theory.¹

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In parliamentary meetings held at Nuremberg and Metz during 1356, Emperor Charles IV (1346-1378) promulgated what he called *unser keiserliches rechtbuch*, an imperial lawbook by which the method of imperial election as well as many other matters concerning the political structure of the German Empire were to be regulated. Its later designation as Charles IV's 'Golden Bull' refers simply to the seal, an *aurea bulla*.² Technically it was an imperial edict named after the first two words of the main text, *Omne regum*. Since *Omne regum* somewhat resembles a written constitution about princely as well as imperial rights, it always comes as a surprise to read the diatribe assembled from biblical passages against the princes of Germany which introduces the lawbook. They are even castigated as companions of thieves. But after all, one of the emperor's intentions was to reconcile the political prestige and the local authority of the electoral princes with the hopes of the German rulers to establish dynasties by harmonizing the elective with the hereditary principles of succession. This Charles IV achieved when his son Wenceslas was elected king of the Romans at Frankfurt in 1376. The title indicated that the incumbent would, after his predecessor's death, undertake the *expeditio Romana* to receive coronation as emperor at the hands of the pope. In the event Wenceslas never went to Rome, possibly as a consequence of increasing alcoholism. He was in any case deposed as king of the Romans in 1400 but survived as king of Bohemia until 1419.

To return to Nuremberg in 1356, and to *Omne regum*:

Every kingdom divided against itself is brought to desolation, for its princes are made companions of thieves. The Lord hath mingled a spirit of perverseness in the midst of them, so that they grope at noonday as in the night. He hath moved their candlestick out of its place so that they are blind and guides of

the blind, and those who walk in darkness have offended, and the blind with their wicked minds have accomplished the divisions which they set on foot.³

This preamble goes on to explain how four of the seven deadly sins, particularly envy, have endangered the welfare of the *christianum imperium*, possibly a reference to the circumstances in which Charles IV was himself elected in 1346 as the candidate of the papacy against his discredited predecessor, Emperor Louis IV the Bavarian (1314-1347).⁴

While concentrating mainly upon the seven electoral principalities, *Omne regum* clearly recognizes the actual division of Germany into a multiplicity of jurisdictions.⁵ By 1356 we have reached that stage in Germany's political evolution described by the Swiss scholar Peter Blickle as an hierarchical structure of authority in the Empire: a threefold constellation in which manorial jurisdiction is roofed in by territorial lordship, and the latter overarched by imperial authority.⁶ This *Dreierkonstellation* in Blickle's phrase is actually nearer to a *Zweierkonstellation* because territorial lordship was to a great extent an outgrowth of manorial lordship tinged with delegated imperial power under the *Landfriede*, as we shall see.

Yet it would be misleading to pretend that the most novel of such clusters of rights, *Landesherrschaft* or territorial lordship, had achieved much stability by the fourteenth century. By contrast, quite favourable views of royal power were being put forward by several theorists in the thirteenth and fourteenth centuries.⁷ Yet the manorial or seigneurial method of exploitation and reward was coming under strain and challenge in the fourteenth century,⁸ although everyone still understood all too well how it functioned. But *Landesherrschaft*, territorial lordship? The best that *Omne regum* can do is to try to define it as the local authority of the seven electoral princes; the count palatine of the Rhine, the king of Bohemia, the margrave of Brandenburg, the duke of Saxony, and the archbishops of Cologne, Mainz, and Trier. The eleventh chapter of the lawbook, *De immunitate principum electorum*, expressly exempts the jurisdiction of the electors from any appeals to courts outside their own territories with the exception of the imperial court. In other words, the electors, their law courts, and their officials were confirmed in an almost exclusive jurisdictional authority reminiscent of that in modern sovereign states. It extended over 'counts, barons, nobles, fief-holders, vassals,

castellans, knights, retainers, townsmen, peasants ... or any inhabitant of whatever status, rank, or condition ...'.

De immunitate was already anachronistic in that many other principalities in the Empire possessed almost exactly the same kind of high jurisdictional power, often recorded in surviving imperial charters: for the duchy of Austria in 1156, the bishopric of Würzburg in 1168, the duchy of Westphalia in 1180, the duchy of Brunswick-Lüneburg in 1235, the archbishopric of Salzburg in 1278, the landgravate of Hesse in 1292, and the county of Henneberg in 1310.⁹ These charters as well as *Omne regum* testify to a long haul in Germany's legal history which has reached its culmination in our own time. In 1990 the government of a reunited Germany restored six *Länder* or provinces with medieval names to a federal structure now totalling sixteen such lands with autonomous powers of regional government. In constitutional history this modern federation reflects earlier and much more numerous combinations of autarkic regional authorities in Germany, associations confirmed by the Peace of Westphalia in 1648 and the Congress of Vienna in 1815. The fact that several of today's German *Länder* carry the names of principalities assembled in the twelfth century should remind us that the decentralized, federal status of the modern German Republic has strong roots grounded in the medieval past.

This twelfth-century roll call is quite impressive when matched with the names of today's *Länder*: the county of Holstein granted to Count Adolf I of Schauenburg in 1110; the landgravate of Thuringia founded in 1131; the march of Brandenburg set up for Albert the Bear in 1150; the Rhine Palatinate enfeoffed to Conrad of Staufen, the emperor's half-brother, in 1156; the county of Mecklenburg established in the 1160s; the duchy of Pomerania recognized by Emperor Frederick Barbarossa in 1181; and the counties of Anhalt, Baden, and Württemberg which are in evidence before the end of the twelfth century. As place-names the majority are older than the twelfth century. But it is at that time that they re-emerged as jurisdictional and comital names, like the much older regional names of Saxony, Westphalia, Hesse, and Bavaria which also serve for six federal *Länder* today.

The interpretation of Germany's political fragmentation down to the time of Napoleon and Bismarck is one of the most complex and controversial of all problems in modern historiography. One of its preoccupations had been to examine how the political command

structure of multiple local authorities inherited from the medieval centuries was eventually undermined and overthrown between the French Revolution and the end of the First World War. Medievalists have concerned themselves with finding out how the diversified structure came about in the first place.

A short answer is that the medieval German imperial crown did not possess the administrative means, the political opportunity, the coercive military capacity, or the judicial rights to dissolve the autonomous jurisdictional powers of the aristocracy and the Church in so large an empire. As the legal historian Gerhard Buchda has pointed out:

Since Germany's political constitution never corresponded to the simple antithesis of *the king and his people* ... but was stamped over many centuries with graded joint government through the aristocracy, the structure of justice took a particularist direction. Neither the Frankish nor the German kings were successful in bringing jurisdiction completely into their own hands, to improve it into a nucleus of central ruling power.¹⁰

One consequence of this jurisdictional formation was, as the German scholar Wolfgang Petke has observed, that 'On the basis of its actual ascendancy, the aristocracy had since Frankish times made good its pretensions to joint rule.'¹¹ That both historians have referred to the Franks whose royal dynasty in Germany had already come to an end in 911 is significant in hinting how the *de facto* jurisdictional independence of the secular and ecclesiastical princes was a foregone conclusion throughout German medieval history. But such long-lasting regional autarky was not incompatible with effective imperial rule since the 960s either. In other words king, Church, and aristocracy could operate within different land-funded levels of power.

In the nineteenth century the answer to the riddle about Germany's particularism in the Middle Ages was sought at the summit of the political structure. In some manner which seemed to elude precise definition, it was thought that the imperial crown had failed in the political task of centralization between the eleventh and the thirteenth centuries; that good opportunities had been missed; and that in consequence royal authority, jurisdictions, and possessions were usurped by the secular princely dynasties, by the bishops and imperial

abbots, and by the strongest towns. There emerged a list of episodes when the crown's grasp of affairs was thought to have been perilously loosened: the minority of Henry IV between 1056 and 1065; the War of Investitures which turned into a species of civil war involving the Church, the throne, and the princes between 1076 and 1122; the regional disorders in the reigns of Lothar III and Conrad III; the early death of Henry VI followed by rivalry for the royal title fought out between 1198 and 1214; and finally the confrontation between the Staufen dynasty and the Roman See particularly after the First Council of Lyons in 1245, when the excommunicated emperor Frederick II was declared irrevocably deposed.

Plainly these times were dangerously conflict laden for royal authority in Germany, but there are difficulties in employing them as a kind of counterpoise to explain the rise of independent aristocratic jurisdictions. In the first place the princes projected no explicit programme for undermining, let alone usurping, royal authority. On the contrary, the majority supported the crown and most of them approved of strong imperial rule. Secondly, the crown exhibited remarkable powers of recovery and a capacity for the rapid consolidation of its authority after emergencies. A recent study by Andreas Christoph Schlunk, for example, indicates that the crown was as rich in lands and other resources by 1195 as it had ever been in the best days of the tenth and eleventh centuries and again made up its losses from the civil wars of 1198 to 1214, reaching a new height of prosperity by about 1240.¹²

Clearly there was something wrong with equating weak periods or crises in the political history of the German court with the ascendant jurisdictional power supposedly wrung from the king by greedy and selfish princes. It was the Austrian legal historian Hans Hirsch who found out what was inappropriate about this. In a short analysis of the relevant eleventh- and twelfth-century sources about criminal or 'high' jurisdiction in the German realm, he came to the conclusion that the jurisdictional authority in the hands of the princes was not in the least like usurped royal jurisdiction, even though the names for older jurisdictions such as *comitatus* or county and *ducatus* or duchy were carried on into the thirteenth century.¹³ So the way was open for a new set of explanations which has reigned in scholarship for most of the twentieth century as 'the rise of territorial lordship' to account for the phenomenal concretion of princely power discernible everywhere in Germany from the late eleventh century onwards, culminating in the

type of territorial principality which was to last until the *Reichsdeputationshauptschluss* of 1803.

So the theory of 'the rise of territorial lordship' moved the focus of explanation away from the chronicle of supposed weaknesses and failings at the imperial court down to the much more complex theatre of regional rights and jurisdictions. The territorial principality was made possible because the Church and aristocracy inherited clusters of regional resources and legitimate jurisdictions which were then converted to fresh uses from about 1100. What motivated this conversion, and what forces were impinging upon the upper levels of German society in order to make a new consolidation of authority a reality, we will examine below. But first we should notice that the focus upon the regional rather than the imperial plane of politics had the historiographical advantage of releasing the imperial dynasties from the unreal question of their supposed failure to centralize Germany, a programme for which they did not possess the personnel, resources, or techniques.¹⁴ Since aristocratic and ecclesiastical jurisdiction on the local level was in essence *sui generis*, it cannot be derived from royal state-power in decay since Henry III's death in 1056 and carried off by the princes during the War of Investitures to decorate their own structures of authority.¹⁵

In turn this clarifies the political relationship of the throne with the princes. No longer is it necessary to postulate a fundamental competition for power which the crown eventually lost when the Staufien dynasty was overthrown in the middle of the thirteenth century. Instead, we see that the authority of the crown was of one kind, and princely jurisdiction, with its own autonomous, legitimate, and inherited basis in the regions, was of another. As the quotations from Gerhard Buchda and Wolfgang Petke indicated, that basis went back as far as the Franks, so that it had always been accepted in the Empire that royal power and aristocratic power compromised in sharing jurisdictional right. This had never been a matter for conscious debate or regret at court, but was a precondition which rendered Otto the Great's Empire founded officially in 962 much longer-lasting and politically more stable than the preceding Carolingian Empire, where unrealistic programmes of centralization are said to have been tried and failed.¹⁶

So power sharing between the crown, the Church, and the secular princes was a German tradition based upon a different understanding of the Carolingian legacy. The authority of the three had parallel or

complementary aims. While the ruler was mainly concerned with his transcendental duties as Roman emperor, the bishops in their dioceses and the dukes, margraves, landgraves and a selection of counts acted as agents of the crown, as its vassals, in the tasks of enforcing peace and order in their own regions, the conscious aim of crown policy.

The introduction in 1103 of a new style of imperial *Landfriede* or peace-keeping association stimulated by the Truce of God movement again shows how this practice was supposed to work.¹⁷ The secular princes and the bishops themselves subscribed to the *Landfrieden*, and such early texts as survive show that the crown expressly enjoined the princes to impose the penalties for crime and violence in their own law courts. Such procedures had already been called into place for enforcing the *pax Dei* proclaimed in 1083 in the diocese of Cologne:

The peace would not be violated if the duke [of Lower Lotharingia] or the other counts or the [ecclesiastical] advocates or those who represent them were meanwhile to hold *placita* [court days] and were to carry out judgement against thieves and bandits and other harmful persons, according to the law.¹⁸

The *iudices* or magistrates mentioned in the texts of the imperial *Landfrieden* surviving from 1152 and 1179 are specifically called dukes, margraves, counts palatine, and counts. In the legislation against arson issued at Nuremberg in 1186 or 1188:

... the duke himself shall pronounce our proscription against him [the incendiary] and then shall proscribe him by the authority of his jurisdiction. The margraves, counts palatine, landgraves and the other counts shall do the same, and none of them may acquit such a person; only the lord emperor may do so.¹⁹

There was no essential contradiction between the perceived need for a strong royal hand to impose peace and order through *Landfrieden* and the growth of princely jurisdictions which eventuated in the thirteenth century as *Landgerichte* or regional magistracies rendered in the Latin sources as *comeciae* or counties.²⁰ And it was not only the *Landfrieden* which encouraged the development of criminal or 'high' jurisdiction in the hands of the princes. The crown granted *ducatus* or ducal status to the archbishops of Cologne in 1151 and 1180, to the margraves of

Austria in 1156, and to the bishops of Würzburg in 1120 and 1168, the principal motive on the jurisdictional front being to enforce the *Landfriede*.²¹ The most rewarding way to read the magnificent series of detailed legislative acts issued by Frederick II and his son Henry VII, culminating in the imperial *Landfriede* of Mainz and the creation of the duchy of Brunswick in 1235, is not as a series of concessions — Frederick II was much too powerful for that — but as confirmation of what was implicit in the imperial structure since the tenth century: that royal authority and princely authority could grow at the same time because they had the same aims; to impose more effective jurisdiction in the provinces and to keep the peace.

The imperial court accepted that the agents of an adequate juridical apparatus would have to be provided by the princes themselves. This attitude to cognate authority shows that the frequent quarrels of the crown with certain princes, churches and regions did not arise from any fundamental antagonisms of institutions in which princes sought to overthrow royal power in order to set up territories of their own, but from much more specific disagreements about the political and ecclesiastical issues of the day. Even the War of Investitures can demonstrate that in spite of the extreme difficulties into which it was driven by just such issues, the crown emerged under Henry V and Lothar III with most of its apparatus in effective working order, while the traditional duchies of Germany had collapsed into fragments.²²

In place of the essentially negative interpretation by which the Church and aristocracy supposedly usurped royal jurisdiction by violence after 1056, we can see that the crown by no means abdicated its duties either by default or mismanagement. It remained a significant force, although not technically a centralizing one, until the papacy managed to bring down the Staufen dynasty between 1241 and 1254. In consequence, the regionalized command structure characteristic of German medieval history should now be regarded as the creation by the lay princes and the bishops — with some of the larger towns and richer abbots as interstitial elements and competitors — of credible and effective jurisdictions of their own, built upon the basis of inherited assets. But why did this process discernibly intensify from the end of the eleventh century?

This is the question to which twentieth century theories of 'the rise of territorial lordship' have sought to provide convincing answers. Numerous monographs based upon the careful analysis of regional sources have sought to explain the territorial multiplicity of the

thirteenth and fourteenth centuries not in simplistic terms of a collapse of imperial rule but in arguments for a positive and creative socio-legal process based in the regions which eventuated in refashioned political, economic, and jurisdictional structures built from below.²³ Some historians even discerned the roots of this process in institutions and events stretching back as far as the Carolingians and to the society of Germanic peoples settled east of the Rhine. The best known example was Walter Schlesinger's *Die Entstehung der Landesherrschaft*, based upon Saxon and Thuringian sources, and first published in 1941.²⁴

In order to understand the theory of 'the rise of territorial lordship', it is necessary to outline the social forces which were playing into the hands of the princes by 1100. The first observation is economic. Medieval Germany was a very large kingdom in which the later eleventh century saw, in spite of the disturbances of the War of Investitures, an enormous expansion in the economy. The wealth and power of the princes were enhanced by programmes of internal colonization, especially through eroding the vast forests of central and southern Germany, and in settling the moors and marshes of the north as well as the Alpine valleys of the south. From the early twelfth century the frontier of Saxony began to be extended again to the east of the River Elbe, and new principalities were founded upon the basis of external colonization. Everywhere in the older Germany as well as in the colonial east, the lords founded towns and markets, manors and systems of communication, castles and monasteries, each with their appropriate jurisdictions and economic administrations.²⁵ Regional dominion was hugely extended through these settlement programmes, which depended upon demographic growth of the kind perceived by the contemporary priest Helmold of Bosau in his chronicle of the German settlement in Slav lands.

The second consideration is the emergence by the end of the eleventh century of aristocratic patrilinear dynasties in possession of large fiefs and allods, out of the much more widely defined noble kindreds of the past. However, this phenomenon, its significance, and its timetable are the subject of quite acrimonious academic debate.²⁶ Yet it can be perceived that aristocratic families enjoyed a greater sense of localized power and identity symbolized by the introduction of toponymics or family place-names derived from their principal castles.²⁷ These new, much larger residential castles constructed of stone represented psychological as well as material capital invested as

the new centres for the administration and defence of aristocratic lands and rights in themselves in a state of rapid expansion; and this is why the majority of the later territorial principalities which arose upon this basis were actually called by these castle-names as well.

This sense of place was enhanced at exactly the same time by the large scale patronage of monastic reform by the aristocracy, with the foundation of new family monasteries to serve as dynastic mausoleums as well as to cultivate the significance of the secular founders in written memorials of several genres.²⁸ The Age of Reform in the Church thus affected the character of the German aristocracy in sharpening its moral conscientiousness as a ruling elite; in giving a religious dimension to its sense of place; in contributing to the economic reshaping of the countryside through the programmes of monastic foundation and endowment; and in extending the jurisdictions of the aristocracy by means of the ecclesiastical advocacies which remained in the hands of the founding families.

Some historians have claimed that medieval European aristocracies took their hereditary right to wield jurisdictional authority almost as a celestially given constant.²⁹ *Nobilitas*, in other words, also contained the right to rule, certainly in the service of the crown and Church when called upon to do so, but also in an essentially autonomous mode pertaining to blood and descent. If this was so, then the successes in enriching the economic, dynastic, and religious dimensions of aristocratic power around 1100 simply reinforced such an inherited sense of aristocratic right to rule. Like secular princes, the bishops and greater abbots were able to turn the same forces to use in building up their local power, although they were not dynastic lords. But the churches of Germany were undying corporations, and this gave their incumbents advantages similar to or even better than dynastic right, possession, and descent.

Jurisdictions appropriate to the programmes of material expansion and consolidation already existed. They were manorial jurisdiction for the mass of the rural population; ecclesiastical advocacies for imposing law and order in the lands of the Church; household rules sometimes recorded in customals for the retinues of *ministeriales* which were being enfeoffed on a large scale to provide the military and administrative manpower for the emergent principalities; forest jurisdiction relevant to much of the land area actually being developed economically; and ecclesiastical immunities which were designed to protect the resources of the Church from abuse.

The twelfth and thirteenth centuries represented an era of great speculation and experiment in the legal outlook of the Empire; especially in Roman Law, town law, 'feudal' law called *lehenrecht* at that time (and therefore no anachronism);³⁰ and above all in *Landrecht* or regional law as it was affected by the onset of the crown's most cherished jurisdictional reform, the proclamation of *Landfrieden* for the suppression of crime. This was extremely significant for the future of jurisdiction over the new resources of the aristocracy because the crown enjoined the princes themselves to enforce the terms of the *Landfrieden* through their regional courts, as we have seen. The courts of the princes thus stood in the place of royal assizes to exercise the prestigious power of life and limb, that is, capital jurisdiction in addition to their manorial, forest, advocatial, urban, and household jurisdictions.

Much confusion was caused in the legal history of Germany because most of the aristocratic regional jurisdictions were called counties, and the princes who exercised or delegated them were for the great part called counts as well, the titles being inherited from their tenth- and eleventh-century forbears.³¹ But another consequence of Hans Hirsch's work is that we can now perceive that these counties or regional magistracies which emerge in detail in the thirteenth century could not have been the comital jurisdictions exercised in the Ottonian and Salian Empire derived ultimately from the Carolingian jurisdictional foundation. As juridical, military, and possibly administrative instruments in the service of the crown, the earlier counties had already atrophied beyond repair in the eleventh century. Their fiscally valuable remnants passed mainly into the hands of the Church, and most of them disappear from the sources by the end of the eleventh century. The timing of such a complicated process benefited the princes who were able to carry on the prestigious name of county for what were new allodial jurisdictions over assarted woodland and newly settled waste, as well as for the criminal or 'high' jurisdiction assembled over all their lands under the aegis of the *Landfrieden*.³²

Since the princes were preoccupied with the extension of authentic and efficacious jurisdiction over so much newly developed land, it was not inappropriate that from the 1220s the imperial chancery occasionally described them as *domini terrae*, the lords of lands.³³ In 1231 the royal court recognized that such *domini terrae*, also called *principes* or princes in the source, might impose new laws and customs, *constituciones vel nova iura*, with the consent of the

meliores et maiores terrae, that is, the greater men of that land.³⁴ The act conveys a sense of the prince, his lands, the nobility in them subordinate to him, and both in possession of rights for making new regulations for the land. This is much like the organic structural picture of a *Land* built up for Austria and other south-eastern territories of the Empire in Otto Brunner's book *Land und Herrschaft* (1939).³⁵ Such a use of *dominus terrae* might also indicate that shortly after 1200 the German elite had become aware of a new territorial dimension to their jurisdiction, to which the inhabitants of the *terrae* or lands were obliged to submit. Could this even be the arrival of 'territorial lordship' after its rise?

The modern theory of a 'rise of territorial lordship' in medieval Germany is nevertheless a construction of historiography with such serious explanatory flaws that it is safer to relegate it to the realm of descriptions. One problem lies in the word 'lordship', *Herrschaft*. In medieval learned vocabulary the terms *dominium*, *potestas*, *dicio*, *regimen*, *principatus*, and *dominatio* indicated the exercise of governing authority³⁶ aimed at specific things; empires, churches, kingdoms, towns, groups or orders of subordinated persons, forests, households, castles, manors, and sometimes *terrae* or lands as well. To translate these words as 'lordship' is to create an acceptable modern synonym, but lordship as a concept, a free-floating idea of power being exercised, did not exist in medieval society separate from the items which were its objects, or from the lords or *domini* who had inherited, or had been appointed to or elected to, the offices or locations where the powers were supposed to be exercised. In other words, there were many jurisdictions but no unified concept of lordship.

Let us take *principatus* for an example. In 1186 Margrave Otto of Meissen issued a charter in which he described his jurisdiction within the march of Meissen as *principatus*, its purpose being the guardianship of the peace, the prosecution of law breakers, and the universal availability of justice.³⁷ Here the existence of a jurisdiction under the lord who legitimately exercises it is certainly matched with a specific land, the march of Meissen, but his power is not conceptually any different from the most ancient duty of all lords such as kings in their kingdoms, bishops in their dioceses, or landowners in their manors to offer justice to their subjects or subordinates. It would therefore be difficult to show that the margrave thought of his power called *principatus* in the march of Meissen as 'territorial lordship'.

This was just a statement, in high diplomatic style, of a set of tasks that all dukes, bishops, margraves, counts and landgraves had to carry out; enforcement of the *Landfriede* and the proffer of justice under *Landrecht*.

The domination of the Wittelsbach dukes over Bavaria was likewise called *principatus* in a sense where the meanings of jurisdiction in the abstract and a land as a visible landscape melt into each other, as I have suggested as the credible explanation in the case of Meissen in 1186. For the year 1255 Abbot Hermann of Niederaltaich reported in his annals that 'about Eastertime Louis and Henry, dukes of Bavaria, divided the *principatus* between them,'³⁸ going on to describe the two sections or *partes* in the physical sense, listing the towns and fortresses of the partition.

But the case which, in my view, clinches the matter concerns the nunneries of Niedermünster and Obermünster in Regensburg in 1216. The abbesses of these extremely rich and prestigious houses were immediate vassals of the Empire, and their authority was described as *principatus*.³⁹ However, they did not rule over any territory at all although they possessed extensive land, because their numerous manors beyond the city walls were subject to the regional jurisdiction of the Bavarian dukes. The historian of medieval Latin usage, Jan Frederick Niermeyer, also provided us with general examples of such very different meanings for *principatus*: as 'rulership' both secular and ecclesiastical; as an area of land; or even as a body of distinguished persons.⁴⁰

In medieval usage there was authority over persons, places, and things rendered by the term *dominium* both in public and in private law,⁴¹ and there are indeed examples from the thirteenth-century German realm where *dominium* was associated with a *terra* or land under a prince. Provost Burchard of Ursberg described the authority of the Staufen dynasty in Swabia as *dominium terrae*, 'lordship of the land';⁴² in 1282, in a letter from the bishop of Chur, the county of Tirol was called a *dominium* and a *terra*;⁴³ and in 1300 the counties of Zeeland, Holland and Frisia were described as *dominia terrarum*.⁴⁴

But the lordship or *dominium* over these provinces was actually a specific jurisdiction, and jurisdiction was the word which an enactment issued by the royal court in 1255 accurately used:⁴⁵

that the nobles and *domini terrae* shall possess by right their courts and maintain their legal authority everywhere as it

should be, and shall require and accept such obligations and rightful service from those who inhabit their jurisdictions as they and their progenitors have rightly been accustomed to do for the last thirty or forty or fifty years ...

So the source observes just at the right moment that practical solidification of legal authority under the princes in the two generations prior to 1255, but that is far from equating specific jurisdictions with lordship generally. And as the German legal historian Karl Kroeschell has noticed, our concept of lordship is basically an invention of nineteenth century social theory, and he doubts that it could ever have existed as a phenomenon in the legal and political consciousness and practice of medieval times. He suspects that 'lordship' may be an ideological or even a polemical construction of modern scholarship for unifying or tidying up disparate forms of authority, ownership, and right. He concedes, nevertheless, that the Old High German word *hêrschaft*, a personal attribution to noblemen indicating their reputation and dignity, did drift in Middle High German towards the Roman legal concept of *dominium* or ownership: 'The first clear witnesses for *herschaph* as a lordly position over things, serfs or areas of land belong to the thirteenth century'.⁴⁶ Manorial lordship was clearly a species of *dominium*, but to apply it as *Landesherrschaft* or territorial lordship must be *ex eventu* and no more than descriptive.

A further reason for rejecting the phrase *domini terrae* as evidence for emergent territorial lordship is its informality and its rarity. It was only occasionally used as a synonym for princes, and survives in sources much later than the edict of 1231 as an expression for the nobility generally, that is, for the knights and other lords who were vassals of the princes and inhabited their jurisdictions. For this one may cite the fourteenth-century chroniclers Mathias of Neuenburg and Henry Taube of Selbach.⁴⁷ Vernacular texts also preserved 'lords of the land', *landthêirrin* as in the early twelfth-century *Annolied*, or *landesherren* as in a late thirteenth-century Saxon satire, as a label for noblemen under the subjection of the princes.⁴⁸

Like the very concept of lordship, the adjective 'territorial' can also be misleading when applied to the undoubted concretion of princely power in the German regions after 1100. This expansion or consolidation is not territorial but jurisdictional in conception, and can only include 'territory' because land was itself so important a

component of aristocratic resource throughout the Middle Ages. The lords did not try to draw land boundaries around their jurisdictions, so that if aristocratic dominion is to be described as territorial, then it had always been so since the disintegration of the western Roman Empire in the simple sense of a necessary concern with land. But *terrae* or lands constituted only one facet of a cluster of rights, jurisdictions, and assets which were being revised and extended by the German princes after 1100. Depending upon the resources available to the lords in question, bishops and abbots on the one hand, secular dynasties of princes and some of the lesser lords on the other, the post-1100 expansion could only be based consciously upon the effects available in the individual example: *ducatus* in a few instances; ecclesiastical advocacies in the case of most dynasties; forest as a widespread jurisdiction especially in ecclesiastical hands; reformed diocesan powers in the case of bishops; *comitatus* in the case of most princely families; castles, towns, markets, knightly retinues, tolls and communications all with their own appropriate jurisdictions; and so down to the manorial jurisdictions which were the understood method for organizing such inhabited landscapes as the dynasties and churches did actually possess. So the nearest analogue to 'the rise of territorial lordship' of twentieth-century historiography would be, in twelfth-century parlance, 'the extension of manorial jurisdiction in newly colonized land' and that is what the numerous charters and the more detailed chronicle accounts such as those of Pegau in Saxony and Scheyern in Bavaria record both for internal colonization and for the expansion to the east of the Elbe and Saale rivers.⁴⁹

Not only was 'territorial lordship' in the crucial transitional period, the twelfth and thirteenth centuries, not 'lordship' in a realistic sense comprehensible from the sources, but it was also not 'territorial' except as part of a much longer list of resources: jurisdiction over persons from prestigious *comitatus*, *ducatus*, and *conductus* over communications down to urban laws, customals for vassals, and manorial rules, as well as command over building complexes such as fortresses and monasteries. Jurisdictions, persons, places, buildings and so on were set within a landscape, but this sense of 'territorial' was the same as that of all west European landowning elites which had existed since the collapse of the late Roman *civitates*.

In Germany the landowning order east of the Rhine was revised by the Carolingians in the eighth and ninth centuries. Fisc was acquired by the crown; extensive lands were given to the new bishoprics and

abbeys; resources were enfeoffed or given outright to such persons as the Frankish counts installed in Bavaria after 788, and so on. We know too little about the devolution of property within the landowning kindreds of East Francia and of the German realm before 1100, but there exists a huge body of information about ecclesiastical landowning in the flood of diplomata emanating from the royal chancery; in the monastic polyptyques; in the extremely rich *Traditionsbücher* of the German cathedral churches as well as the monasteries; in the biographies of so many men and women who held high office in the Church; and in innumerable ecclesiastical *gesta*, foundation narratives, *translatio* reports, and other chronicle notices and official lists. This huge corpus of material from the ninth, tenth, and eleventh centuries reveals an intense preoccupation with land and the territorial, decorated with its appropriate jurisdictions, economic possibilities, and legal defences no different in essence from the attitudes of the twelfth and thirteenth centuries. So the 'territorial' outlook goes hand in hand with landowning as the technical foundation of ecclesiastical and aristocratic survival, continuity, and authority. For hundreds of years kings, churches, and aristocrats had exploited a visible landscape of manors and other resources, and if we were to possess the necessary detail, it would prove possible to apply territorial and cartographical criteria to every age of landowning from the late Roman Empire through to the Carolingian era and so down to the transformations in the rural economy beginning in the latter half of the eleventh century in the German realm as elsewhere in western Europe.

Perhaps the least unsatisfactory element in the theory of 'the rise of territorial lordship' is the term 'rise', in German *Entstehung*,⁵⁰ because there seems little doubt that the powers of the princes were indeed consolidated in regional dimensions in the twelfth and thirteenth centuries. But even *Entstehung* can be taken to be inappropriate because this was not the first time that the German aristocracy and Church had been ambitious for improvements in their regional standing. Like 'territorial' and 'lordship' this must go back to the eighth century at least, in that all landowners were keen to advance their local status through the jurisdictional, economic, political, and military opportunities available to them. This can clearly be perceived in the struggles of the margravian and ducal families which emerged at the end of the ninth and the beginning of the tenth centuries in East Francia.⁵¹ *Entstehung* was in reality a continual process and a question

of pace in that each church and kindred normally took advantage of local circumstances to enhance its footing or eminence. So it would be prudent to replace *Entstehung* for the period after 1100 with some synonym such as cohesion or concretion, since 'rise' is actually consonant with every generation involved in landowning politics since the Carolingian settlement in the eighth century.

Applied to the centuries following 1100, the word 'rise' can in any case only be applied to the dynasties, undoubtedly a minority, that actually survived. And it also conceals well documented setbacks incurred by the Church when it was stripped of fiefs and jurisdictions which its vassals and advocates incorporated by force into their own *dominia* or clusters of rights. In other words, 'the rise of territorial lordship' misleadingly conceals the decline and fall of regional authority for many a comital dynasty which died out, or found difficulty in surviving as a credible power after partitions amongst its own members, or after destructive feuds with its neighbours.⁵² The same applies to many monastic and to a handful of cathedral churches subjected by their advocates who were too powerful for them. Notable amongst such princes were the margraves of Brandenburg, the margraves of Meissen, the counts of Tirol, and the dukes of Bavaria. In the last case, the 'rise of territorial lordship' in truth involved a protracted decline for about forty Bavarian comital dynasties and for about fifty monasteries whose resources fell into the hands of the Wittelsbach dukes of Bavaria between the late twelfth and the early fourteenth centuries.⁵³

So rapid was the Wittelsbach rise to territorial power by these means that Abbot Conrad of Scheyern could write of Duke Louis I (1183-1231) that 'He became richer than the rich, more powerful than the powerful, and resolve maintained him as sole prince of the princes in his lands, and they respected his superiority'.⁵⁴ Yet the essentially patrimonial view which the German dynasties took of their possessions is shown by the fact that Louis I's son Otto II (1231-53) was the last duke for centuries to rule the unified Wittelsbach territory. Fragmentation took the place of rise and consolidation. As we have seen, the Bavarian duchy was divided in half in 1255, and further divisions took place in 1294, 1329, 1349, 1353, and 1392.⁵⁵ The original thirteenth-century landholdings were eventually reunified in 1503 by the duke reigning in Munich, but other medieval possessions were not recovered from cadet branches until 1628, and the final reversal of the major *divisio* of 1329 had to wait until 1777.

The collapse of so many dynasties after 1100, the partition of so many dynastic principalities between rival branches, and the spoliation of so many of the survivors by their neighbours simply serves to show that the theory of a 'rise of territorial lordship' should be reduced to a relative political description: a rise only for the minority that survived and succeeded in their regional schemes of power. And if the ecclesiastical chronicles are to be taken at face value, then the period from about 1100 well into the fourteenth century ought to be characterized for the Church as the 'collapse of territorial lordship' in that they record in detail the lands, jurisdictions, and other resources of which the Church was despoiled by the greedy secular princes. However, most of the reports ought to be taken with a pinch of salt because most of the bishops and abbots were competent exponents of the concretion of lordship after 1100, and most of the former retained their local independence and extensive lands down to the eventual abolition of ecclesiastical rule in 1802 and 1803.

In endeavouring to replace such a loose explanation labelled 'the rise of territorial lordship' with a hard description called 'the revision of princely jurisdiction', the visible or territorial dimensions of the assets possessed by any particular church or dynasty in medieval Germany recedes into a much less distinct focus. Princely rights bounded by frontiers are later phenomena, based upon the *Landesordnungen* from the fourteenth century onwards.⁵⁶ The power made more concrete by the enrichment of the Church and the aristocracy after 1100 was governing authority, that *principatus* which was examined earlier. But it was not power usurped from the crown, since the admittedly ancient names of county, duchy, and advocacy really indicated new responsibilities in the juridical sphere which were a consequence of the introduction of the *Landfrieden*. The jurisdictional autarky of the Church and aristocracy as landowners went back to the Carolingian Empire, so that the amplification of this ancient sense of independence did not in itself upset the relationship of the crown and the princes or testify to an onslaught upon royal prerogatives.

It would also be wrong to suggest that nothing was changing after all. *Principatus* was jurisdiction, and such jurisdiction was on the way to becoming a principality, and the implication was recognized in the royal enactments of 1231 and 1255 examined above. This trend in German history eventually motivated a comment that 'now every prince is like a king in his land, and who would dare tell him what to do?'⁵⁷ So we are on our way to *ius territorii et superioritatis*, that is,

an anomalous regional suzerainty under imperial sovereignty as adumbrated in Charles IV's *Omne regum* of 1356 and belatedly sanctioned by the Peace of Westphalia in 1648.⁵⁸

NOTES

¹ Earlier versions of this paper were presented in seminars held at Reading University, the Institute of Historical Research in London and at the University of California, Los Angeles. I would like to thank the participants for their helpful suggestions, many of which are incorporated in the text.

² W.D. Fritz, *Die Goldene Bulle Kaiser Karls IV vom Jahre 1356*, Monumenta Germaniae Historica (hereafter MGH), Fontes iuris germanici antiqui, 11, Berlin, Böhlau, 1972; A. Laufs, 'Goldene Bulle' in *Handwörterbuch zur deutschen Rechtsgeschichte* (hereafter HRG), 2, Berlin, Erich Schmidt, 1971, cols. 1739-46.

³ See Lk 11, 17; Is 1, 23 and 19, 14; Jb 5, 14; Rev 2, 5; Mt 15, 14; Is 50, 10.

⁴ D. Wood, *Clement VI. The pontificate and ideas of an Avignon pope*, Cambridge Studies in medieval life and thought, 4th series, Cambridge, Cambridge University Press, 1989, pp. 142-76.

⁵ Outline of the process in B. Arnold, *Princes and territories in medieval Germany*, Cambridge, Cambridge University Press, 1991.

⁶ *Deutsche Untertanen. Ein Widerspruch*, Munich, Verlag C.H. Beck, 1981, p. 20.

⁷ A. Black, *Political Thought in Europe, 1250-1450*, Cambridge Medieval Textbooks, Cambridge, Cambridge University Press, 1992, pp. 136-61.

⁸ For conditions at that time, see A. Mayhew, *Rural Settlement and Farming in Germany*, London, Batsford, 1973, pp. 91-117.

⁹ MGH, Diplomata of Frederick I, no. 151, pp. 255-60, 1156; no. 546, pp. 3-7, 1168; no. 795, pp. 360-3, 1180. MGH, *Constitutiones et acta publica*, 2, no. 197, pp. 263-5, 1235; 3, no. 205, pp. 190-1, 1278; 3, nos. 476-8, pp. 464-6, 1292; 4, no. 404, p. 352, 1310.

¹⁰ 'Gerichtsverfassung' in HRG, 1, col. 1564.

¹¹ *Kanzlei, Kapelle und königliche Kurie unter Lothar III*, Beihefte zu J.F. Böhmer, *Regesta Imperii*, 5, Cologne and Vienna, Böhlau, 1985, p. 100.

¹² *Königsmacht und Krongut. Die Machtgrundlage des deutschen Königtums im 13. Jahrhundert*, Stuttgart, Franz Steiner Verlag, 1988.

¹³ *Die hohe Gerichtsbarkeit im deutschen Mittelalter*, reprint of the 1922 edn., Graz and Cologne, Böhlau Nachfolger, 1958.

¹⁴ I am not thinking of Stefan Weinfurter's non-administrative concept of centralization in his 'Die Zentralisierung der Herrschaftsgewalt im Reich durch Kaiser Heinrich II.', *Historisches Jahrbuch*, 106 (1986), 241-97.

¹⁵ For the shortcomings of the state-fixated idea about this process, see F. Graus, 'Verfassungsgeschichte des Mittelalters', *Historische Zeitschrift*, 243 (1986), 529-89.

¹⁶ J. Fleckenstein, 'Das Grossfränkische Reich: Möglichkeiten und Grenzen der Grossreichbildung im Mittelalter', *Historische Zeitschrift*, 233 (1981), 265-94.

¹⁷ MGH, *Constitutiones et acta publica*, 1, no. 74, pp. 125-6 for the report of it; see B. Arnold, *Medieval Germany 500-1300. A political interpretation*, Basingstoke and London, Macmillan, 1997, pp. 151-6 for discussion.

¹⁸ MGH, *Constitutiones et acta publica*, 1, no. 424, p. 604 (ch. 11).

¹⁹ *Ibid.* no. 318, p. 450 (ch. 2).

²⁰ F. Merzbacher, 'Landgericht', 'Landrichter' in HRG, 2, cols. 1495-1501, 1545-47.

²¹ Arnold, *Princes and Territories*, pp. 88-111.

²² Arnold, *Medieval Germany*, pp. 62-8.

²³ F. Merzbacher, 'Landesherr, Landesherrschaft' in HRG, 2, cols. 1383-88.

²⁴ Subtitled *Untersuchungen vorwiegend nach mitteldeutschen Quellen*, I have used the 1973 edition published at Darmstadt.

²⁵ R. Bartlett, *The Making of Europe. Conquest, Colonization and Cultural Change 950-1350*, London, Allen Lane, 1993, pp. 133-66.

²⁶ See Arnold, *Princes and territories*, pp. 135-51.

²⁷ For the development of the castle at this time, see H.W. Böhme, *Burgen der Salierzeit*, Römisch-Germanisches Zentralmuseum, Monographien, 25-6, Sigmaringen, Jan Thorbecke Verlag, 1992.

²⁸ The best known example is the *Historia Welforum*, ed. E. König, Schwäbische Chroniken der Stauferzeit, 1, Sigmaringen, Jan Thorbecke Verlag, 1978.

- ²⁹For the German aristocracy, the classic is Otto von Dungern's *Adelsherrschaft im Mittelalter*, 2nd edn, Libelli 198, Darmstadt, Wissenschaftliche Buchgesellschaft, 1972.
- ³⁰G. Franz, *Quellen zur Geschichte des deutschen Bauernstandes im Mittelalter* Ausgewählte Quellen zur deutschen Geschichte des Mittelalters (hereafter AQ), 31, Darmstadt, Wissenschaftliche Buchgesellschaft, 1967, no. 80, p. 214 (1150-65).
- ³¹D. Willoweit and E. Wadle, 'Graf, Grafschaft' in HRG, 1, cols. 1775-95.
- ³²Arnold, *Princes and territories*, pp. 112-20.
- ³³MGH, *Constitutiones et acta publica*, 2, no. 285, pp. 401f., 1224; no. 304, pp. 418-20, 1231; no. 171, pp. 211-13, 1232.
- ³⁴Ibid. no. 305, p. 420.
- ³⁵Translated by H. Kaminsky and J. Van Horn Melton, *Land and Lordship. Structures of Governance in Medieval Austria*, Middle Ages Series, Philadelphia, University of Pennsylvania Press, 1992.
- ³⁶J.F. Niermeyer, *Mediae Latinitatis Lexicon Minus*, Leiden, E.J. Brill, 1954-76, pp. 349, 353, 819-20, 851, 901.
- ³⁷H. Helbig and L. Weinrich, *Urkunden und erzählende Quellen zur deutschen Ostsiedlung im Mittelalter*, part 1, AQ, 26 A, Darmstadt, Wissenschaftliche Buchgesellschaft, 1968, no. 48, pp. 206-8.
- ³⁸*Hermanni Altahenses Annales*, MGH Scriptorum, 17, p. 397.
- ³⁹MGH, *Constitutiones et acta publica*, 2, no. 57, pp. 70-2.
- ⁴⁰Niermeyer, *Lexicon*, p. 851.
- ⁴¹H.K. Schulze and W. Ogris, 'Dominium' in HRG, 1, cols. 754-7.
- ⁴²O. Holder-Egger and B. von Simson, *Die Chronik des Propstes Burchard von Ursberg*, MGH, Scriptorum in usum scholarum, 16, 2nd edn., Hanover and Leipzig, Hahnsche Buchhandlung, 1916, pp. 92f.
- ⁴³MGH, *Constitutiones et acta publica*, 3, no. 304, pp. 299f.
- ⁴⁴Ibid. 4, no. 94, p. 72.
- ⁴⁵Ibid. 2, no. 375, pp. 477f.
- ⁴⁶'Herrschaft' in HRG, 2, col. 106.
- ⁴⁷A. Hofmeister, *Die Chronik des Mathias von Neuenburg*, MGH, Scriptorum rerum germanicarum, new series, 4, Berlin, Weidmann, 1924, p. 81; H. Bresslau, *Die Chronik Heinrichs Taube von Selbach*, MGH,

Scriptores rerum germanicarum, new series, 1, 2nd edn., Berlin, Weidmann, 1964, p. 102.

⁴⁸ M. Roediger, *Das Annolied*, MGH, Deutsche Chroniken, 1, part 2, Dublin and Zurich, Weidmann, 1968, p. 128, line 659; G. Holz, F. Saran, E. Bernoulli, *Die Jenaer Liederhandschrift*, 1, new edn., Hildesheim, C.L. Hirschfeld, 1966, p. 71.

⁴⁹ For accounts in English, Mayhew, *Rural Settlement and Farming*, pp. 37-90; F.L. Carsten, *The Origins of Prussia*, Oxford, Clarendon Press, 1954, pp. 10-51.

⁵⁰ Kaminsky and Van Horn Melton, *Land and Lordship*, p. 194, correctly translate Brunner's *Entstehung* as 'rise', yet *Entstehung* is tinged in modern German with the sense of 'origin' or 'genesis' as well. *Herkunft*, *Aufstieg*, and *Ursprung* were eschewed by the modern theorists as too specific.

⁵¹ E.g. D.C. Jackman, *The Konradiner. A study in genealogical methodology*, Studien zur Europäischen Rechtsgeschichte, 47, Frankfurt am Main, Klostermann, 1990, although some of the findings have proved controversial.

⁵² Arnold, *Princes and territories*, pp. 234-47.

⁵³ The classic account is by M. Spindler, *Die Anfänge des bayerischen Landesfürstentums*, Schriftenreihe zur bayerischen Landesgeschichte, 26, new edn. Aalen, Scientia-Verlag, 1973.

⁵⁴ *Chounradi Schirensis Chronicon*, MGH, Scriptores, 17, p. 621.

⁵⁵ This troubled era in Bavarian history is discussed by M. Spindler, H. Angermeier, T. Straub, and A. Kraus in *Handbuch der Bayerischen Geschichte*, 2, ed. M. Spindler, Munich, Verlag C.H. Beck, 1977, pp. 69-294.

⁵⁶ W. Brauner, 'Landesordnung' in HRG, 2, cols. 1405-8 and D. Willoweit, 'Landessteuer', *ibid.* cols. 1412-15.

⁵⁷ Quoted by J.H. Mundy in *Europe in the High Middle Ages*, London, Longmans, 1973, p. 372.

⁵⁸ W. Sellert, 'Landeshoheit' in HRG, 2, cols. 1388-94.