

IMEMS LIBRARY FELLOWSHIP
RESEARCH REPORT
(2 – 30 NOVEMBER 2015)

In response to the 2015 call for applications of the Durham University Institute of Medieval and Early Modern Studies I applied for a Durham Library Fellowship sponsored by Joanna Baker for a period of three months. In March 2015 I was notified by the Durham University that my application was successful and I was granted a one-month fellowship with an honorarium of £500. In November 2015 I used this honorarium to conduct a comparative analysis of medieval roads found in North East England and in mainland Europe. Since the research period was shorter than the one I had submitted a research plan for, I decided to narrow the scope of my research for the reason of feasibility. I selected one of the three goals outlined in my research proposal and elaborated on that. My study was focused on medieval legal regulations of the construction, maintenance, and use of roads and places of river crossing.

Law of the highway in mainland Europe and in England

The medieval English law of the highway did not develop in isolation. Ancient Roman legal ideas that reached Britain during the Roman occupation persisted and contributed to a shared group of legal concepts about the highway and communication by land. Rules about the width, construction, repair and clearance of roads appeared in Roman law as early as the Twelve Tables. The idea of public road (*via publica, iter publicum*) had firmly been established by the second century AD. Julian's Edict, for example, prohibited violence against those who sought to clear a blocked public road and those who used a public road. Justinian's Digest quotes these rules together with the definition of public and private roads, and that of road maintenance.

In addition to the shared ancient Roman legacy, it was due to contacts between Anglo-Saxon England and mainland Europe as well as seeking solutions to similar problems that made Anglo-Saxon law of the highway develop similarly to those drawn on the Continent. The early medieval law codes, such as the *Lex Romana Raetica Curiensis*, the *Lex Baiwariorum*, and the *Pactus Legis Salicae* continued to prohibit damaging and obstructing the public road. Other codes such as the Alamannian, Bavarian and Burgundian Laws, contain clauses about the protection of travellers (particularly strangers/pilgrims and women) on public roads.

Anglo-Saxon sources are generally silent about the maintenance of roads, but they provide ample evidence about communal obligations to repair bridges. From Post-Conquest England the *Leges Henrici Primi* is one of our most invaluable sources concerning legal concepts about the highway. It provides a definition of the highway, stipulates the physical quality of the road itself, and describes royal jurisdiction exercised over the highway. The *Leges Henrici Primi* prohibit *stretbreche* (i.e. digging up or blocking the road) and *forsteal* (i.e. attacking one's enemy on the highway unexpectedly) which prohibitions continue to be present in numerous legal documents drawn in the subsequent centuries.

Documents of legal cases related to highways in North East England

The *Durham Cathedral Muniments* (especially the *Locelli*, *Register* and *Registrum Parvum* collections) held by the Archives and Special Collections of the Durham University Library offer an insight into the legislation of highways in medieval North East England. Some documents are concerned with the construction and maintenance of roads and bridges (see: Appendix I). Others discuss various assaults against travellers on the highway (see: Appendix II). Since the king's highway (*via regia*) was a special zone where the king guaranteed the safety of travellers, the violation of this safety belonged to the king's own jurisdiction beginning with the tenth century. The Durham Cathedral Muniments collection holds numerous documents in which the plaintiffs report about insults (beating, robbery, and murder) that they themselves or their vassals or servants suffered on the king's highway. In other cases it is the culprit who relates the attack on the king's highway in a memorandum of petition while seeking sanctuary (*immunitas*) at the Durham Cathedral.

The outcome of the fellowship

The research results achieved during the one-month IMEMS Library Fellowship will be used as comparative material in my further investigations into the medieval law of the highway in various parts of Europe. The outcome of these investigations will be a scholarly paper, a copy of which will be submitted to the Institute of Medieval and Early Modern Studies after publication.

Bibliography

Primary sources

- Boretius, Alfred (ed.). *Capitularia regum Francorum*. Monumenta Germaniae Historica. Legum Sectio II, Tomus 1. Hannover: Hahn, 1883.
- Boretius, Alfred, Victor Krause (eds.). *Capitularia regum Francorum*. Monumenta Germaniae Historica. Legum Sectio II, Tomus 2. Hannover: Hahn, 1897.
- Downer, L. J. *Leges Henrici Primi*. Oxford: Clarendon Press, 1972.
- Eckhart, Karl August (ed.). *Lex Salica*. Monumenta Germaniae Historica. Legum Sectio I, Tomus 4, Pars 2. Hannover: Hahn, 1969.
- Eckhart, Karl August (ed.). *Pactus legis salicae*. Monumenta Germaniae Historica. Legum Sectio I, Tomus 4, Pars 1. Hannover: Hahn, 1962.
- Haenel, Gustav (ed.). *Lex Romana Visigothorum*. Leipzig: Teubner, 1848.
- Kagay, Donald J (ed. and transl.). *The Usatges of Barcelona. The Fundamental Law of Catalonia*. Philadelphia: The University of Pennsylvania Press, 1994.
- Krüger, Paul (ed.). *Corpus Iuris Civilis* vol. 2. *Codex Iustinianus*. Berlin: Weidmann, 1877.
- Lehmann, Karl (ed.). *Leges Alamannorum*. Monumenta Germaniae Historica. Legum Sectio I, Tomus 5, Pars 1. Hannover: Hahn, 1966.
- Mommsen, Theodor and Paul Krüger (Latin text ed.), Alan Watson (English transl.). *The Digest of Justinian*. 4 vols. Philadelphia: University of Pennsylvania Press, 1985.
- Mommsen, Theodor and Paul Krüger (eds.). *Codex Theodosianus*. vol. 1. *Theodosiani libri XVI cum constitutionibus Sirmondianis*. Berlin: Weidmann, 1954.
- Mommsen, Theodor and Paul Krüger (eds.). *Codex Theodosianus*. vol. 2. *Leges novellae ad Theodosianum pertinentes*. Berlin: Weidmann, 1954.
- Raine, James (ed.). *Sanctuarium Dunelmense et Sanctuarium Beverlacense*. The Publications of the Surtees Society 5. London: J.B. Nichols and Son, 1837.

- Raine, James (ed.). *The Priory of Coldingham. The Correspondence, Inventories, Account Rolls, and Law Proceedings of the Priory of Coldingham*. The Publications of the Surtees Society 12. London: J.B. Nichols and Son, 1841.
- Riccobono, Salvator, J. Baviera, C. Ferrini, J. Furlani, V. Arangio-Ruiz (eds.). *Fontes Iuris Romani Antejustiniani in Usum Scholarum*. 3 vols. Florence: G. Barbèra, 1940-1943.
- Robertson, Agnes J. (ed. and transl.). *The Laws of the Kings of England from Edmund to Henry I*. Cambridge: Cambridge University Press, 1925.
- Salis, Ludwig Rudolf von (ed.). *Leges Burgundionum*. Monumenta Germaniae Historica. Legum Sectio I, Tomus 2, Pars 1. Hannover: Hahn, 1892.
- Schwind, Ernst von (ed.). *Lex Baiwariorum*. Monumenta Germaniae Historica. Legum Sectio I, Tomus 5, Pars 2. Hannover: Hahn, 1926.
- Weiland, Ludwig (ed.). *Constitutiones et acta publica imperatorum et regum inde ab a. DCCCCXI usque ad a. MCXCVII (911-1197)*. Monumenta Germaniae Historica. Legum Sectio IV, Tomus 1. Hannover: Hahn, 1893.
- Zeumer, Karl (ed.). *Lex Romana Raetica Curiensis*. In: Monumenta Germaniae Historica. Legum Tomus V. Hannover: Hahn, 1875-1889. 289-444.

Scholarly literature

- Cooper, Alan. "The Rise and Fall of the Anglo-Saxon Law of the Highway." *The Haskins Society Journal* 12 (2002): 39-71.
- Cooper, Alan. *Bridges, Law and Power in Medieval England 700-1400*. Woodbridge: Boydell, 2006.
- Flower, C.T. *Public Works in Mediaeval Law* 1. The Publications of the Selden Society 32. London 1915.
- Flower, C.T. *Public Works in Mediaeval Law* 2. The Publications of the Selden Society 40. London 1923.
- Lambert, Thomas, Benedict. *Protection, Feud and Royal Power: Violence and its Regulation in English Law, c. 850 - c. 1250*. Durham theses, Durham University. 2009. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2/>