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## SOME NEWS ON THE MAKING OF THE *SACHSENSPIEGEL* AND ITS MEDIAEVAL GLOSSES\*

THOMAS DUVE\*\*

The *Sachsenspiegel*, written between 1220 and 1235 by Eike von Repgow, first vernacular legal prose of German-speaking lands, is considered one of the most important sources of medieval legal, political and cultural history. There is hardly any book on medieval law and society that would not use iconographical material from one of the four brilliantly illustrated manuscripts dating from the 14<sup>th</sup> and 15<sup>th</sup> centuries – the Dresdener, Heidelberger and the Wolfenbütteler<sup>1</sup> manuscripts are now available *online*– or cite regulations on some of the wide-ranging subjects of the *Sachsenspiegel* such as procedural, criminal, family, succession and constitutional law. Phrases like “God is Law itself” (Preface 1) or the author’s interpretation of the doctrine of the two swords (Book I, 1.) have captured the attention of generations of historians of law and political thought.

Still, there remain a lot of doubts about the making and the character of the *Sachsenspiegel*. For centuries, the *Sachsenspiegel* and its tradition had been venerated as a monument of the beginning of “German jurisprudence”, highly influential for the legal history of the whole Eastern Europe where the different law books of the German territories were transplanted within the process of German colonization. The *Sachsenspiegel* and even its later transformation through the glossators were seen to be a national fortress against the “foreign law” that advanced from the south within the process of reception of the *ius commune* in Central and Northern Europe.

Much of this might be true. Nevertheless, due to some investigations into the history of the *Sachsenspiegel* and its reception as well as to some notable editorial efforts by the *Monumenta Germaniae Historica* and the Saxon Academy of Sciences

\* Review on Frank-Michael Kaufmann (ed.), *Glossen zum Sachsenspiegel-Lehnrecht. Die kürzere Glosse* (= *Monumenta Germaniae Historica. Fontes iuris Germanici antiqui*, Nova series 8), 2 tomos, Hannover 2006; Peter Landau, Der Entstehungsort des *Sachsenspiegels*. Eike von Repgow, Altzelle und die angio-normannische Kanonistik, *Deutsches Archiv zur Erforschung des Mittelalters* 61 (2005), 78-101; Bernd Kannowski, Der *Sachsenspiegel* und die Buch’sche Glosse – Begegnung deutschrechtlichen und romanistischen Rechtsdenkens?, in: Gerhard Dilcher/Eva-Marie Distler (comp.), *Leges-Gentes-Regna. Zur Rolle von germanischen Rechtsgewohnheiten und lateinischer Schrifttradition bei der Ausbildung der frühmittelalterlichen Rechtskultur*, Berlin 2006, 503-521; Bernd Kannowski, Zwischen Appellation und Urteilsschelte. Über das Rechtsdenken des Johann von Buch, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 123 (2006), 110-134.

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<sup>1</sup> URL: <http://www.slub-dresden.de/sammlungen/handschriften-drucke/handschriftensammlung/sachsenspiegel>; <http://www.ub.uni-heidelberg.de/helios/fachinfo/www/jura/sachsenspiegel.html>; <http://digi.ub.uni-heidelberg.de/diglit/cpg164/>; <http://www.sachsenspiegel-online.de/cms/>

in Leipzig, a somewhat distinctive vision on the history of the *Sachsenspiegel* and its reception is emerging.

## I

It is not long ago that within the long list of *desiderata* for further investigation into the *Sachsenspiegel*, drawn by one of the leading investigators, Heiner Lück (Halle), the long disputed question of the intellectual profile and the sources of the Saxon mirror's author has been regarded as nearly impossible to answer: "There are hardly any sources and possible combinations left"<sup>2</sup>.

In the light of this affirmation, a recent study of Peter Landau (Munich), presented on the *Deutscher Rechtshistorikertag* in Bonn in 2004 and published in the *Deutsches Archiv für die Erforschung des Mittelalters* 61 (2005), has been considered a major discovery: Landau presents a well founded hypothesis on the place where the *Sachsenspiegel* might have been written – a monastery of the order of the Cistercians in Altzelle, "the Saxon St. Denis". Giving highly suggestive evidence for his hypothesis, Landau depicts the intellectual profile of Eike and concludes that the author of the *Sachsenspiegel* "owes his knowledge of learned law to the Anglo-Norman schools of law, not to Bologna" and thus draws a line "that reaches from Saxony passing through England to Normandy" (97).

Landau's main argument is a careful revision of what we know about the possible sources of the *Sachsenspiegel* and the comparison of these sources with a catalogue of the abbey Altzelle, written in 1514. Landau shows that in Altzelle Eike, whose relations with this place had already been pointed out by Peter Johaneck in 1984, could have used not only manuscripts of the Bible but also of the *Historia Scholastica* by Petrus Comestor, whose influence on Eike had already been suggested by Guido Kisch. The same applies to the *Gesta Saxonum*, written by Widukind von Corvey, and to writings by Origenes, cited by Eike as "Orienes", interpreted for a long time as a citation of Isidore of Seville, which Landau refutes, and to Isidore's *Synonyma de lamentatione animae peccatricis*: all these manuscripts could have formed part of the monasteries' libraries – at least according to the catalogue of 1514. In Altzelle, Eike probably found as well Gratian's *Decretum*, which has been used on several occasions, and other collections of canon law, especially the *Rhetorica ecclesiastica* and the *Collectio Appendix Lateranensis*, which might have influenced the whole structure of the *Sachsenspiegel* – and which was a product, as Landau has shown in other opportunities, of the Anglo-Saxon schools of canon law, led by Walter of Coutance<sup>3</sup>.

Even though there is a considerable time gap between the time of Eikes' writing and the catalogue from 1514, Landau's findings, related with other discoveries on the importance of the Anglo-Norman school of canon law and its influence on the continent and on the early reception of learned and canon law in central and northern Europe<sup>4</sup>, underline the importance not only of canon law and the interconnection

<sup>2</sup> Heiner Lück, *Über den Sachsenspiegel. Entstehung, Inhalt und Wirkung des Rechtsbuches*, Halle 1999, 80.

<sup>3</sup> Peter Landau, Walter von Coutances und die Anfänge der anglo-normannischen Rechtswissenschaft, in: *Panta Rei. Studi in onore di Manlio Bellomo*, III, Roma, 2004, 183-203.

<sup>4</sup> See in this context Landau (note 3); Christoph H.F. Meyer, Langobardisches Recht nördlich der Alpen. Unbeachtete Wanderungen gelehrten Rechts im 12.-14. Jahrhundert, *Tijdschrift voor Rechtsgeschiedenis* 71 (2003), 387-408; Peter Landau, The importance of Classical Canon Law in Scandinavia in the 12th and 13th Centuries, in: Ditlev Tamm / Helle Vogt (comp.), *How Nordic are the Nordic Medieval Laws?*, Copenhagen 2005, 24-39.

between northern European schools of law, but also raise new questions about the relation of the oral tradition and the new learned laws. Whereas traditionally the *Sachsenspiegel* seemed to embody the “good old law”, Landaus’ argument strengthens the vision already expressed by Heinrich Brunner of Eike as a “path breaking reformer” that not only mirrored the oral customs, but also created new law.

## II

A century after Eike, the *Sachsenspiegel* started to be glossed by learned jurists. There are more than 200 manuscripts of these glosses, starting with the famous gloss made by Johann von Buch, known as the “*Buch’sche Glosse*” on the territorial law (*Landrecht*) that has been carefully edited by a group of researchers formed at the Saxon Academy of Sciences (Leipzig) and the *Monumenta Germaniae Historica* in 2002<sup>5</sup>. Only a few years later, the same group of researchers now presents the first critical edition of a gloss on the second part of the *Sachsenspiegel*, the feudal law (*Lehnrecht*), the so called “shorter gloss” (*Die kürzere Glosse*). This “shorter gloss” represents the first of four classes of glosses that have been established, distinguishing the shorter (class I), the larger (class II), the “Wurm’sche” (class III) and the mixed German-Latin gloss (class IV, also Stendaler Glosse). For this critical edition of the first class, the editors have used the ten remaining manuscripts of this class and one early imprint, distinguishing three groups of manuscripts with characteristic formal differences, and selecting one of them as a leading manuscript (*Leithandschrift*). The edition is accompanied by a list of manuscripts and imprints, a synopsis of all textual testimonies of the gloss, the register of names and sources.

The relation between the classes I-III is not quite clear, as editor Frank-Michael Kaufmann summarises in his introductory remarks (pp. XIII-LIV). Neither is there any certainty about the *Lehnrechtsglosse*’s author or date: the only certainty we have is that it was not Johann von Buch, but merely a group of authors, and that the gloss must have been written after the *Landrechtsglosse* and before 1386. An answer to these and other questions can only be found once critical editions of different manuscript classes permit a closer view on the inner structure and formal criteria of the glosses.

## III

The importance and fruitfulness of this large scale editorial enterprise has already been proven by some investigations based on this edition. In recent studies on the *Buch’sche Glosse*, based on the edition of 2002, Bernd Kannowski (Freiburg) underlines that the gloss does not express a “defence” of “German” law against “foreign” influence – a pattern that guided the 19<sup>th</sup> century analysis of the *Sachsenspiegel* and its gloss – but stands for the encounter of two different legal cultures: the legal thinking that was fundamentally based on oral tradition and that wanted to put into written words a part of this tradition on the one hand, and the juridical reasoning of a trained jurist who considered the tradition laid down in the *Sachsenspiegel* to be particular law which needed to be accompanied and completed by the *ius commune* on the other.

<sup>5</sup> Frank-Michael Kaufmann (ed.), *Glossen zum Sachsenspiegel-Landrecht. Buch’sche Glosse* (Monumenta Germaniae Historica. Fontes iuris Germanici antiqui, Nova series), 3 vols., Hannover 2002.

Up to what extent is this vision compatible with Landaus' findings that emphasize the *Sachsenspiegel's* origin in a legal culture already influenced by the reception of classical canon law? Further investigation into the making of the *Sachsenspiegel* and into the glosses will contribute to develop a clearer vision of these fundamental aspects of European legal history.