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The “Dictionary of Historical German Legal Terms” and its European Concept

A. What is the DRW?

As you will notice very soon, my English is absolutely not of a higher degree of proficiency. Therefore I sometimes had huge problems with the translation of this paper. To speak the truth: My problems already began with the title. How was I to translate “Deutsches Rechtswörterbuch”, shortly “DRW”? Translated word by word it means “German Law-Dictionary“. But that is completely wrong. Our dictionary is not an encyclopaedic lexicon. You will not find explanations relating to a legal institution or a legal concept in it, dealt with under one umbrella term. Rather, it is primarily a language dictionary. It includes all juridical terms detectable as such – with explanation of their various meanings, which are justified on the basis of excerpts from source texts. Therefore it would be better to speak of a “Dictionary of German Legal Terms”.

But that is not exact either: Despite its name, the “Deutsches Rechtswörterbuch” focuses exclusively on the older legal language. Consequently, I might translate “Dictionary of Historical German Legal Terms”. But – after all – this translation does not really convey the right meaning, either: Of course, our dictionary has to cover all the historical *German* legal terms. But that is not all: When the project was founded – at the end of the 19th century – the scientists of legal history and of linguistics both were convinced that a dictionary of older German legal terms could not be created without covering the terms of all Western-Germanic languages and dialects at the same time. So they initiated a “Dictionary of historical German *and Western-Germanic* Legal Terms”. And despite some limitations, implemented particularly in the 1970s, that is what it still is.¹

1. Time frame: about 1400 years of legal terminology

All in all, the dictionary therefore has an extremely wide-ranging programme. As for the time span to be covered, about 1400 years of legal history and linguistic history are to be considered – from the beginning of written

¹ Heino Speer, Art. „Deutsches Rechtswörterbuch“, in: Handwörterbuch zur deutschen Rechtsgeschichte I, 2. Aufl., Berlin 2008, column 1007-1011.

documentation up to a fixed time limit, which was slightly altered several times.

The currently oldest record is "mundburt" in a Merovingian charter of Clovis I. dating from the year 479 AD. Apart from this charter, the Old English texts are among our earliest sources.

In order for a compound to be added to the dictionary, the first verifiable evidence of the word must date from the year 1700 at the latest. In order for a simplex to be included in the dictionary, the first verifiable evidence of the word must date from 1815 at the latest. If the first record of a term does not lie within the aforementioned time limits but still dates from before 1835, a short reference to the term will be created, which will not be printed but published in the online version.

2. Linguistic framework

The linguistic framework of the project is the "German language", to which – according to the concept of the 19th century – the whole of the West Germanic language family belongs, as Jacob Grimm has laid down in his introduction to the "German dictionary".²

• This includes vernacular words in the Latin texts of the Germanic tribes of the migration period, the so-called "Leges barbarorum" (450-800).

It also encompasses:

- Old English (500 - 1100)
- Old High German (600 - 1050)
- Lombardic (650 - 1000)
- Old Dutch (700 - 1200)
- Old Saxon (800 - 1200)
- Old Frisian (800 - 1500)
- Middle High German (1050 - 1350)
- Middle Dutch (in 1200 - 1500/1600)
- Middle Low German (1200 - 1650)
- Early New German (1350 - 1650)
- and • New High German (from 1650).³

3. Content framework

As for the content of the dictionary, the DRW logically covers primarily the technical language of the law. However, the DRW pays equal attention the legally relevant part of everyday language.

² Deutsches Wörterbuch I, Leipzig 1854, p. XIV.

³ Katharina Falkson/Ingrid Lemberg/Eva-Maria Lill, Das Deutsche Rechtswörterbuch. Ein Wörterbuch der älteren deutschen Rechtssprache, in: Ulrike Hass (ed.), Sprache und Recht, Berlin/New York 2002, pp. 355-360; Ingrid Lemberg, Lexikographie und Kulturgeschichte: 1.400 Jahre Rechtskultur im Spiegel des Deutschen Rechtswörterbuchs, in: Heidrun Kämper/Ludwig M. Eichinger (ed.), Sprache - Kognition - Kultur. Sprache zwischen mentaler Struktur und kultureller Prägung, Berlin/New York 2007, pp. 151-173.

This includes for example all coins, weights and measures. Likewise, all professions are covered as far as they are connected with official or other legal functions or organized in a guild or similar association. It seems that the latter is of interest in particular to name researchers, because a lot of professions that have disappeared have been preserved in surnames.⁴

4. The juridical importance of a "kiss", or: how to define a "legal term"

It is not always easy to determine the legally relevant part of everyday language. Such a legal term in the broad sense is for example "kiss".⁵ If a man kissed a woman, in some areas this led to a binding engagement. In the Middle-Ages it was common in many places for a lord to kiss a vassal as a visible sign of an enfeoffment. Even in the 18th century there was the academic kiss: At the conferment of a doctorate the dean gave the student a kiss to show that from now on he regarded him as his equal. So the kiss as a sign of respect and self-abasement became a legal symbol. Where it was written down the legal symbol turned into a legal term.

Kuß *m., vereinzelt n., z. Etym. vgl. Kluge-Mitzka²⁰ 414, Duden.Etym. 381, NLEtymWB. 371, IEW. 626; Bed. wie heute; im Rechtsleben vorkommend bei d. Aufnahme in e. Gemeinschaft, zur Bekräftigung e. Rechtszustandes od. v. Rechtshandlungen, als Zeichen d. Ehrerbietung u. Selbsterniedrigung, zS. vgl. HRG. II 1320–22 (Lit.). gancge ælc æfter ôðrum tô cosse fratres accedant ad pacem 1.Hälfte 10.Jh. Benediktinerregel/Bosw.-Toller Suppl. 132. dô si den fürsten edele mit kusse güetlich enpfie um 1200 Nibelungenlied, hg. de Boor (191956) Str. 1350, 4. G. und G. mit kusse ir suone ouch machten ganz um 1210 Wolfram v.Eschenb.,Parzival 729, 26. ebd. 779, 26. dô der künic mit kusse versuonte sînen zorn, dô muose man in gelten swaz si heten verlorn um 1240 Kudrun (Symons) Str. 159, 1. ruochet si's, so sol ich gahen, unt sol ez mit kusse enpfahen, mit ir geren sol si'z selbe lihen mir 1.Hälfte 13.Jh. HMS. I 209. under der missen de ... bischop versonde den keiser mit des pacis kusse mit der cristenheit unde let ine ut dem banne 2.Viertel 13.Jh. SächsWChr. 196. swen man toetlich vîntschafft in suone verrigelt, die bestaetigt man und versigelt ze jungist mit dem kus Anf. 14.Jh. ÖRChr. V. 17951. wir setzen in der obgeschriben gûte und dorfere in leiplich nutz und gewere mit dem kusse 1351 Würzburg/Lexer Nachtr.*

⁴ For example *Schädler, Schächter, Scharzenweber, Scheidemann, Schieder* oder *Schiller*.

⁵ DRW VIII, column 212-213.

5. The juridical importance of a "middle finger", or: how to define a "legal term"

The article "middle finger" is very short,⁶ which already shows that we have not attached a great legal significance to this word.

Mittelfinger *m., der mittlere Finger* ; vgl. mittel (IV). gif man middelfinger ofaslæhð iiii scill. gebete [wenn jemand einen Mittelfinger abhaut, büsse er 4 Schill.] 502/03 (Hs. um 1120) Liebermann, AgsG. 6. in der mittelmüle soll ein seul sten, daran sol ein streich hangen an einer kette, die soll reichen von einer müle zu der andern, und sollen die steine von der trimmeln gehen also weit, als ein mittelman ein gleich hett in dem mittelfinger 1529 Unterelsaß/GrW. I 725.

But what makes the "middle finger" legally relevant? The two quotations from the sources show it: The first document about the middle finger deals with its being especially protected from injuries by law. Presumably this was the case because the middle finger is one of the oath fingers. A fixed penalty for cutting off this finger had to be paid. In the second document the middle finger is used as a measure. As you have certainly noticed, the first document is from a very old source: It was taken from an Old English text of the 6th century. The second document was created about 1000 years later, and is originates from France. This leads me on to my next point.

6. The European concept of the DRW: the geographical framework

This linguistic framework automatically entails a geographical framework, which might exceed that of most other European linguistic dictionaries. Indeed, an evaluation of the regional information of the documents in our database has proved, that the sources dealt with in the "Deutsches Rechtswörterbuch" originate from various European countries.

Naturally the most important part of the sources treated in the dictionary originates from the still German-speaking countries **Germany, Austria and Switzerland**.

But the mainly Middle Dutch and Old Frisian legal sources⁷ from the **Netherlands** and the Luxembourgian texts from **Luxembourg** are of scarcely less importance.

⁶ DRW IX, column 793.

⁷ See also the latest publication about this topic: Anne Tjerk Popkema, Die Bedeutung des Altfriesischen für die Erforschung des germanischen Rechtswortschatzes und vice versa, in: Andreas Deutsch (ed.), Das Deutsche Rechtswörterbuch – Perspektiven, Heidelberg 2010, pp. 73-90.

Also important are the Old English sources. And as for **Great Britain**, the writings of the Hanseatic merchants have to be mentioned as well, who had, for instance, a remarkable settlement in London.

Concerning **Belgium, France** and **Italy**, the formerly German-speaking areas have entered the DRW, of course. In France those were above all Alsace and Lorraine, where the indigenous population maintains an Alemannic dialect even today, which can already be found in many texts from the Middle-Ages and early modern times. Italian sources covered in the DRW not only originate from South Tyrol and the adjoining territories, but also from the Lombard.

As you know, the mixing of the population was particularly intense in countries belonging to the Austro-Hungarian Empire. Thus it is not surprising that numerous German language legal texts have been preserved especially from **Bohemia, Slovakia** and **Slovenia**. From **Hungary** there are, above all, the laws on mining that are worth mentioning.

Furthermore a very large number of dictionary sources are also from **Poland** - and also east of the former German-speaking areas. This can be explained not only by the great importance of the Magdeburg law in Eastern Europe, but also by the commitment of the Hanseatic League and the Teutonic Order in this area. To be added from a later era are the laws of the Prussian crown.

A special role is played by the Baltic region – especially **Estonia** and **Latvia**: For centuries, the written language there was solely German. Since the Baltic States regained their independence from Russia in 1991, the exploration of the Baltic-German sources has played a crucial role in rediscovering the identity of those countries. Numerous publications have already referred to the specific role of the "Deutsches Rechtswörterbuch" for research on the Baltic-German vocabulary. At present, the Baltic-German language has not been covered more broadly in any other dictionary.⁸

It remains to be mentioned that as supporting documents passages from almost every other European country have been adopted as records in the dictionary. By now there is even a record from Portugal. A lot of these records are reports on life at court in the respective countries or the correspondence of merchants.

⁸ See, e.g., Ulrich Kronauer/Thomas Taterka (ed.), *Baltisch-europäische Rechtsgeschichte und Lexikographie*, Akademiekonferenzen 3, Heidelberg 2009; Ineta Balode, *Baltisch-Deutsch im DRW*, in: Andreas Deutsch (ed.), *Das Deutsche Rechtswörterbuch – Perspektiven*, Heidelberg 2010, pp. 91-126; Hermann Blaese/Dietmar Willoweit, Art. „Baltische Länder“, in: *Handwörterbuch zur deutschen Rechtsgeschichte I*, 2. Aufl., Berlin 2008, column 414-419, and Ulrich Kronauer, *Vortrag bei der Übergabe eines Exemplars des Deutschen Rechtswörterbuchs an die Akademische Bibliothek Lettlands*, Riga, 6. Mai 2005; in: *Triangulum. Germanistisches Jahrbuch für Estland, Lettland und Litauen* 11 (2005), pp. 195-201.

7. An example of a German legal term from England

"Scavage"⁹ is a loan word from the English language. It means a fee that the city of London demanded from foreigners for the import of goods, which was invested, among other things, in cleaning the river Thames. As a technical term, the word was adopted by the German merchants in their everyday-usage. Merchants of the Hanseatic League were exempt from this fee.

Scavage n., in London: eine von Fremden für die Einfuhr von Waren zu leistende städt. Gebühr, von der die Hansekaufleute befreit waren. [Fremde müssen bei der Einfuhr für jedes Pack] scavage [zahlen], dwilche da ist ein stat zoll, zu besserung und sauberung der Tameßen stromms und strassen 1554 London/JbKöln 31/32 (1957) 241.

Scavagegeld n., wie → Scavage. [Fremde müssen] ca-yengelt, prickergelt, schaffagegelt, kraengelt und dergelichen mehe [bezahlen] 1554 London/JbKöln 31/32 (1957) 241.

B. A European project from the beginning¹⁰

The starting point of the project was a call in the Savigny-Journal of 1893, launched by the renowned legal historian Heinrich Brunner. In a review on a "dictionary of the English legal expressions", including a "glossary about the Anglo-French linguistic treasure", projected by the London Selden-Society, he emphasised: ¹¹

"If you compare the fragmentation of the German legal development with the relative closeness of the English one, when we consider the manifoldness of

⁹ DRW XII, column 36 f.

¹⁰ Andreas Deutsch, Von „tausend Wundern“ und einem „gewaltigen Zettelschatz“ – Aus der Geschichte des Deutschen Rechtswörterbuchs, in: Andreas Deutsch (ed.), Das Deutsche Rechtswörterbuch – Perspektiven, Heidelberg 2010, pp. 21-45; Ingrid Lemberg/Heino Speer: Bericht über das Deutsche Rechtswörterbuch, in: ZRG (GA) 114 (1997), pp. 679-697; Adolf Laufs: Das Deutsche Rechtswörterbuch – ein Jahrhundertunternehmen, in: Jahrbuch der Heidelberger Akademie der Wissenschaften für 1986, Heidelberg 1987, pp. 121-129.

¹¹ He was referring to "a dictionary of Law French, the language that was used for legal discourse into the seventeenth century and which is derived from the Anglo-Norman dialect of French", by courtesy of Charles Donahue, Jr., treasurer of the Selden Society for the USA, Harvard Law School, Cambridge, MA, and Victor Tunkel, General secretary of the Selden Society, c/o School of Law, Queen Mary University of London. "The Society did produce a Law-French dictionary compiled by the late Elsie Shanks. The manuscript was shown to Professor Collas, an expert in old French who had co-edited some of our volumes. He was then producing his own dictionary. He thought that the Shanks was not sufficiently scholarly. We therefore did not proceed and the project was dropped." by courtesy of Victor Tunkel, London.

the German dialects and the necessity, when explaining German legal terms, to show consideration for other Germanic rights, one will have to admit that for us a terminological legal dictionary would truly be more urgently necessary than for our English cousins".¹²

Finally founded in 1897, the dictionary was designed as a European project from the outset. When the foundation commission around *Karl von Amira* and *Otto von Gierke* had published the project plan, there were soon about 250 people willing to make excerpts from historical texts for the dictionary, or to support the project otherwise. Among them were numerous important personalities from all over Europe.

Seat of the Foundation commission was the Prussian Academy of the Sciences in Berlin. But the research centre and the Archives of the project have always been in Heidelberg. In May 1900, a "Swiss Commission for the Promotion of the German legal dictionary" was constituted, led by *Eugen Huber*, the creator of the famous Swiss Civil Code. Among the founding members were the eminent collector of medieval proverbs, *Samuel Singer*, and the founding chairman of the Social Democratic Party of Switzerland, *Alexander Reichel*. A little later, in 1903, an Austrian "Committee for the support of the German Legal Dictionary" was formed, to which *Ernst von Schwind* (as chairman), *Karl Kraus* and *Alfons Dopsch* belonged among others. The processing of the Flemish legal sources was organised by *Wilhelm de Marez* in Brussels. Furthermore the lawyer *Sybrandus J. Fockema Andreae* and *Jakob Verdam*, the famous editor of the Middle Dutch dictionary "Verwijs-Verdam",¹³ were entrusted with the excerpts in the Netherlands. In Prague, *Franz Kafka's* academic teacher, the Privy Councillor *Horace Krasnopolski*, the lawyer and philologist *Hans Schreuer*, as well as later on the legal historian *Max Rintelen* were involved in contributing to the DRW. In his preface to the first volume *Ernst Heymann* also thanked the lawyer and historian *Karol Koranyi* from today's Ukrainian Lviv (Lemberg) for his "most valuable support".

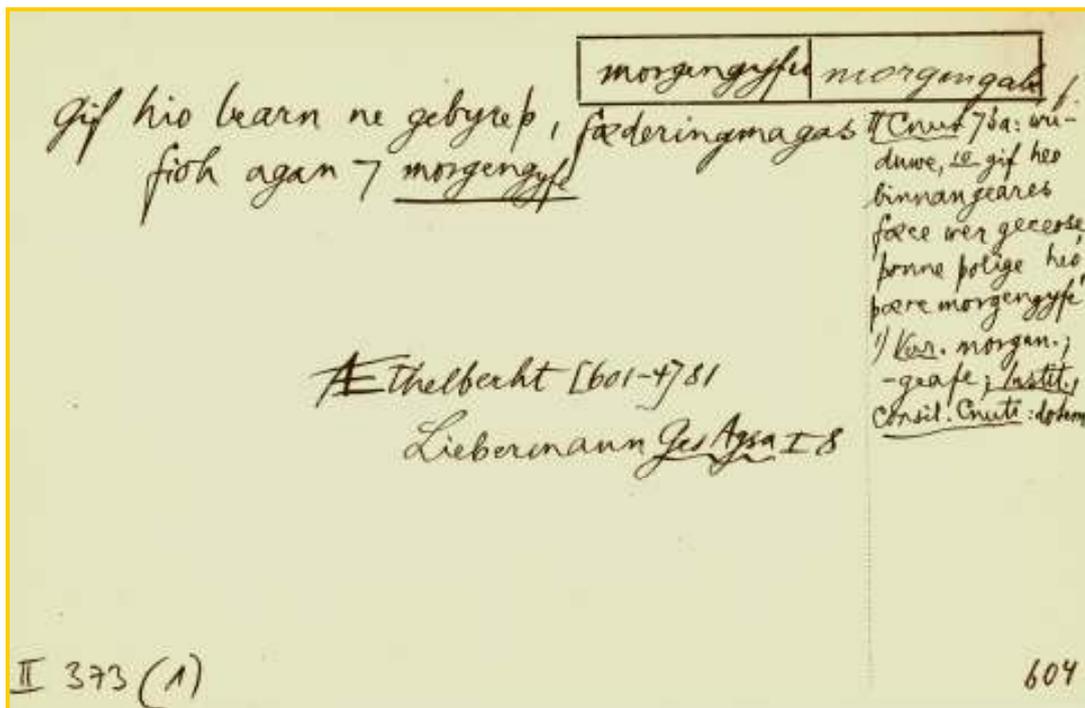
The centre of all these activities has always been Heidelberg. Here all the threads have been gathered up from the beginning. The excerpts compiled on standardised index cards were sent here and sorted by staff in alphabetical card file boxes.

An example of such an index card is shown here: This is a reference to the word "Morgengabe" (dowry, morning gift) from an Old English source, namely a law of King Aethelberht from the year 604. Unfortunately, the hardly legible handwriting is typical of our excerpts. In this case it was written by Felix

¹² Heinrich Brunner, The Publications of Selden Society, in: ZRG GA 14 (1893), pp. 164-168, p. 165: „Wenn man die Zersplitterung der deutschen Rechtsentwicklung mit der verhältnismäßigen Geschlossenheit der englischen vergleicht, wenn man die Manigfaltigkeit der deutschen Mundarten erwägt und die Notwendigkeit, bei Erklärung deutscher Rechtswörter auf die übrigen germanischen Rechte Rücksicht zu nehmen, wird man zugeben müssen, dass uns ein terminologisches Rechtswörterbuch wahrlich noch dringender nötig wäre, als unseren englischen Stammesvettern.“

¹³ *Middelnederlandsch woordenboek van E. Verwijs en J. Verdam*, 's-Gravenhage, 1 (1885) - 11 (1941).

Liebermann, the brother of the painter Max Liebermann. Deceased in 1925, he is still considered the most outstanding German expert on Old English laws.



Today the "Deutsches Rechtswörterbuch" is edited by an interdisciplinary team of academics (lawyers, philologists, historians and a philosopher) at the "Heidelberg Academy of Sciences and Humanities". The printed edition comprises 11 volumes with about 90,000 articles from A to S so far.

The dictionary is based on about 2.5 million index cards – for a large part collected in the initial phase of the project - and electronic text archives with currently about 15 million words, which are being expanded continuously. Overall a text corpus with a total of 8400 sigla is accessed via the index cards and the electronic text archives. While a number of sigla only stand for a single source text (example: "Ssp." means the *Mirror of Saxony*), very many other sigla refer to complete collections or to whole magazine series.

Since 1999 the DRW has gradually been provided with an appearance on the world-wide web. Today all completed articles of the DRW are available to the public on its website (www.deutsches-rechtsworerbuch) free of charge.

End

I would like to summarize the presented ideas with the words of one of my predecessors, the renowned legal anthropologist Eberhard von Künßberg, who once wrote:

"The legal dictionary is a mighty tree, the trunk of which stands firmly on the legal-historical earth, but underneath the border its roots reach far into the neighbouring earth, to draw nourishment there; its branches, however, also spread far over the neighbouring fences, and it thus provides the neighbours with fruits and shade as well."¹⁴

¹⁴ „In diesem Sinne ist das Rechtswörterbuch ein gewaltiger Baum, dessen Stamm zwar in der rechtsgeschichtlichen Erde steht, dessen Wurzeln aber unter der Grenze durch weit in die Nachbarerde hineinreichen, um dort Nahrung zu schöpfen; dessen Zweige aber auch weit über die Nachbarzäune hinübergreifen und auch den Anrainern Früchte und Schatten spenden.“, from: Eberhard von Künßberg, Die deutsche Rechtssprache, in: Zeitschrift für den deutschen Unterricht 44 (1930), pp. 379-389, 388.