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Steffen Wunderlich

das Protokollbuch von Mathias Alber: Zur Praxis des Reichskammergerichts im frühen 16. Jahrhundert

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A colleague once said that if each of us legal historians edited just one important piece of source material during his or her career, research would be made much easier for all of us. Steffen Wunderlich has now done his share, editing a notebook of Mathias Alber, who was active as a judge at the Imperial Chamber Court in the early part of the sixteenth century. 1

The notebook covers the years 1532–33, and includes entries on 146 cases. It was not unusual for a judge at the Imperial Chamber Court to keep notes of his cases. Many did so, for various reasons: to organize the legal arguments neatly, to exchange information with colleagues, or to prepare themselves for possible malpractice charges. Only a few of the notebooks, however, have survived to this day, which makes Wunderlich’s work particularly valuable. 2

Alber took detailed notes of the cases that came before him, commenting on the legal questions, sources, and evidence. Not all of his opinions found their way into the final decisions of the Court, but many did. The notebook nevertheless offers an important insight into the reasoning behind the decisions of the Imperial Chamber Court. As is well known, early modern European courts rarely justified their decisions. Researchers have thus had to find alternative ways of attempting to understand how early modern judges thought. It might be of interest, however, that similar notebooks are known in the Anglo-American sphere as well. In 1983, John Langbein published an important article based largely on the notebooks of Sir Dudley Rider, who served as a judge at the Old Bailey in 1754–1756 (“Shaping the Eighteenth-Century Criminal Trial: A View from the Ryder Sources,” 50 *The University of Chicago Law Review* 1983:1, 1–136). 3

Wunderlich has not only meticulously edited Alber’s notebook. In addition, he has written a full-length study analyzing the judge’s notes. Wunderlich approaches the notebook from the point of view of legal sources, providing chapters on *Gemeines Recht*, imperial law, the legal practice of the Imperial Chamber Court, and local legal orders (*Partikularrechte*). The author has listed the source citations on the Court, Alber himself, and the parties. We learn, for instance, how often Alber refers to Panormitanus or *Tres libri Codicis*. The legal scholars cited and their works have been listed separately. It becomes clear, among other things, that humanist legal literature does not appear in the notebook at all. Nor did Alber make use of the emerging German legal scholarship (except for Ulrich Zasius), not to speak of Dutch, Spanish, or Portuguese literature. 4

Wunderlich shows that Alber, like most of his contemporary German lawyers, maintained the traditional lines of *mos italicus*. For Alber, the texts of *Corpus iuris civilis* and *Corpus iuris canonici* were nevertheless considerably more important than legal literature. Non-positive legal concepts such as natural law, divine law, or *aequitas* figure infrequently. As Wunderlich remarks, the 5

contemporary legal scholarship mostly made use of them in order to determine or limit the imperial *plenitudo potestatis* or to prevent unjust procedural law outcomes in individual cases.

The wealth of material in Wunderlich's work prevents us from commenting on everything. Procedural questions, however, occupy much of the author's attention, which is understandable, given the character of his source. Interestingly, Wunderlich emphasizes the importance of oral tradition in the early sixteenth -century Imperial Chamber Court. Older judges passed information on how things were done to younger colleagues. It was then, according to Wunderlich, not until the late sixteenth century that the customary procedural law of the Court was fixed in the works of Mynsinger von Frundeck and Andreas Gail. It might be added that neither was it until then that the practice of the Imperial Chamber Court could begin to influence judicial practice in other parts of Europe.

Nor is this all that there is to find in Wunderlich's two thick volumes. The reader will find the register (*Regesten*), which Wunderlich has prepared on each of the 146 case entries that Alber provides, particularly helpful. These registers take up all of volume two. Wunderlich analyzes Alber's case descriptions cases using a uniform matrix, informing the reader of the type of case, the parties, judges, the judicial stage of the case, the previous decisions of the lower courts, and the essential legal problems involved. Wunderlich also analyzes the "style" of each entry: how and for what purpose Alber has written each entry. Some of the entries are more detailed than others, some pay attention more to procedural questions and those of substantive law, and so on. Most of the registers are, however, devoted to analyses of the legal questions involved. Wunderlich does an excellent job here, relating Alber's comments to contemporary legal sources and modern scholarship.

What is the use of Alber's notebook for future research? It has to be taken into account that Alber was a judge in one of the most prestigious courts of early modern Europe. The court was not only prestigious because it was one of the two highest courts of the Holy Roman Empire. It was also prestigious because its judges were the best lawyers that were to be found. The wealth of legal sources found in Alber (or, for instance, in the minutes of the Court itself, edited by Peter Oestmann) naturally cannot be found everywhere in early modern Europe. Nevertheless, other researchers will take an interest in comparing their archival findings to the wealth of information in Wunderlich's edition.

It is difficult to say what more a reader would wish from a work of this kind. Without doubt, Wunderlich's edition is a valuable addition to the early modern legal history sources on legal practice. Alber's notebook will undoubtedly figure in the notes of many future works dealing with early modern legal practice.

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