

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg27>
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 27 (2019)
<http://dx.doi.org/10.12946/rg27/296-297>

Rg **27** 2019 296–297

Guido Pfeifer*

(No) Hard Feelings!

* Institut für Rechtsgeschichte, Goethe-Universität Frankfurt am Main, pfeifer@jur.uni-frankfurt.de

Dieser Beitrag steht unter einer Creative Commons Attribution 4.0 International License



Guido Pfeifer

(No) Hard Feelings!*

Every now and again, one is overcome by a sense of utter disbelief. How can it be that some conventional narratives are still so persistent and influential in this day and age? In fact, they are so pervasive that one feels compelled to put pen to paper in order to combat them. Among these narratives, we find the tale of cultural evolution, where law plays a fundamental role as an instrument for rationalizing archaic societies. Having rejected this kind of historiography in his last essay on the early history of law (ZRG RA 127, 1–13), the late Raymond Westbrook instead postulated new paradigms. Moving in the same direction, Philipp Ruch thwarts this story of civilizing progress in a twofold manner: In his eyes, honor and vengeance are not the anthropological factors that law has to contain in order to create civilization. According to Ruch, and the main thrust of his 2016 dissertation, it was in fact law in the context of honor and vengeance that produced emotionality.

Rather than a »history of emotions of ancient law« – the subtitle of the study – Ruch offers a (Greek) legal history of the affections around honor and vengeance. His sources include Homer's epics, as well as the philosophers, playwrights, and historians of the early and classical polis. Against this background, the author's diagnosis becomes more malleable, that is, he shows how law preceded honor and vengeance. At the same time, both of them are characterized as highly organized forms of law: Honor and vengeance do not affect abstract emotions, but are of tangible material value. This becomes apparent when Agamemnon tried to conciliate Achilles' anger with generous tributes, or when Hector sought to compensate the son of Peleus for the vengeance he had sworn as the result of Patroclus' death with material benefits. The same mechanism is perceptible when Ulysses brings Penelope's suitors to justice.

The vengeance enacted, however, has to be in accordance with actual law, thus becoming a doubtful endeavor. The extent to which the materialized resource honor requires normative regulation to become at all efficacious becomes apparent in the case of the honorary dinner at the Prytaneum that Socrates – in Plato's *Apology* – suggested as a fitting punishment. This should also be clear to a reader less well acquainted with legal historical matters. Even stranger (and far less convenient for believers in progress) is Ruch's observation how the nascent state in the polis of the 6th century institutionalized private criminal law, and this development is not accompanied by a weakening but rather an intensification of the right to vengeance. Here, the author is able to capitalize on the potential for irritation these ancient sources present because they have become alien to the modern reader. Another useful example for the connection between the intensification of punishment and the rise of a »civil« social class can be found in the notorious Old Babylonian principle of talion (»eye for an eye«), which replaced a milder system of sanctions in the form of fines. Here, as well, the identity of the social status of the citizen might have been fostered by exclusive, though negotiable, legal severity. Besides, the occasional sideways glance to Greece's neighbors would certainly have been worthwhile: the Roman infamy, under the aspect of losing one's honor, demonstrates another sophisticated system of sanctions reproducing in an even more paradigmatic way how efficient a legal mechanism can be that leads to social marginalization.

Ruch, the founder of the Centre for Political Beauty and advocate of aggressive humanism, consistently chooses examples from more recent historical periods, which is methodologically speaking – due to its transparency – much less trouble-

* PHILIPP RUCH, »Ehre und Rache«. Eine Gefühlsgeschichte des antiken Rechts, Frankfurt am Main: Campus Verlag 2017, 437 p., ISBN 978-3-593-50720-0; the German version of this review appeared in the FAZ on 2 Aug. 2017

some than his use of an prefatory *captatio benevolentiae* in favor of an »argumentative and discursive transhistoricity« might suggest. The same holds true for the ex-ante and applicative aiming toward a »post-honor society«, which at best deprives the reader the delight of drawing one's own conclusions. The recourse to contemporary so-called honor killings as an uncivilized phenomenon remains overly simplistic, especially since it is the postulated legal character of such acts of revenge that could be problematized and seems to be mutating into a parallel system of justice. On the other hand, Ruch's examples from classical antiquity repeatedly demonstrate how well suited they are to research of anachronistic structures. For instance, the interstate conflict between Athens and Mytilene clearly shows that even (or particularly) democratic communities require narratives of legitimation that go beyond the mere process of decision-making when it comes to the use of

violence – a situation encountered with greater frequency in recent times.

The study offers neither fundamentally new paradigms to legal history, in the sense of Westbrook's formulation of them as a desideratum, nor policy recommendations for modern »dis-honorable« societies. Moreover, the author, unfortunately, does not provide an index to help make the impressive number of sources and examples more accessible. Ruch's history of emotion and law is nevertheless worth all the effort because it enhances our view of the eternally »new« sources of antiquity, and thus of ourselves. If emotions prove to be bound not only by culture and time, but also by law, and if we accept that law is a process of communication and knowledge, then the syllogism still offers us some leeway.



Karla Escobar

Agresivamente histórico y global*

Global Histories and Cultures of Statehood, libro editado por John L. Brooke, Julia Strauss y Greg Anderson, es una propuesta interesante de reflexión interdisciplinaria sobre las formaciones estatales en un marco temporal amplísimo: desde la Antigüedad hasta el siglo XX. Los capítulos que componen el libro fueron presentados en un programa de dos años en la Universidad Estatal de Ohio. La publicación es claramente el producto de un ejercicio de discusión colectiva de una red académica con sede en los Estados Unidos y, por tal motivo, la mayoría de sus miembros pertenecen a instituciones académicas en este país.

Las diferentes trayectorias de sus editores – Brooke, desde la historia intelectual y ambiental;

Strauss, desde la Ciencia Política y Anderson, desde la teoría crítica – se corresponden con las variadas trayectorias académicas de los contribuyentes. Considero que el aporte más importante de este libro es precisamente su interés por presentar diferentes aproximaciones – incluso aquellas contrarias entre sí –, en las que los académicos han interpretado históricamente los procesos de formación estatal a partir de marcos cronológicos y geográficos diversos. Tal variedad de aproximaciones es articulada en la introducción y conclusión, en donde los editores cumplen con la difícil tarea de hacer un balance sobre los principales puntos de encuentro y desencuentro entre trabajos tan diversos.

* JOHN BROOKE et al. (eds.), *State Formations. Global Histories and Cultures of Statehood*, Cambridge: Cambridge University Press 2018, xxiii + 383 p., ISBN 978-1-108-40394-8