

Comparative Studies
in the History of Insurance Law

Studien zur vergleichenden Geschichte
des Versicherungsrechts

Volume / Band 7

Professional Guilds and the History of Insurance

A Comparative Analysis

Edited by

Phillip Hellwege



Duncker & Humblot · Berlin

PHILLIP HELLWEGE (ED.)

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Edited by / Herausgegeben von
Prof. Dr. Phillip Hellwege

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Preface

The present volume is the seventh volume resulting from the research project 'A Comparative History of Insurance Law in Europe' CHILE. CHILE has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No. 647019). The contributions to the present volume are based on papers presented at a conference in Augsburg in February 2018. I would like to thank Michael Friedman for his critical comments on an earlier draft of this volume and for, once again, correcting the English.

Augsburg, March 2020

Phillip Hellwege

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Chapter 1: Introduction

By *Phillip Hellwege*^{*}

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A. Professional guilds and the history of insurance

The objective of the present volume is to assess from a comparative perspective (i) whether it is possible to analyse in terms of insurance the support offered by medieval and early modern professional guilds to members in need and (ii) whether guild support had a lasting impact on the development of modern insurance and insurance law.

The present volume is part of a research project on a comparative history of insurance law in Europe. The project's point of departure – together with the project's research agenda, it is fully mapped out in the first publication resulting from the project¹ – is the determination that the state of research on the history of insurance and insurance law in Europe is, from a comparative perspective, unsatisfactory. Foremost, modern literature on the history of insurance and insurance law has developed distinct national narratives. German literature claims that insurance has three roots, the first root being marine insurance, which supposedly is the origin of commercial insurance. Life and fire insurance have allegedly developed from the other two roots: the cooperative protection provided by medieval and early modern guilds, on the one hand, and state-run insurance schemes (which were first established in the 17th century) on the other. German literature furthermore implies that the evolution of insurance law followed identical paths. By contrast, English authors claim that insurance as whole developed from marine insurance. Early on, merchants insured, for example, the lives of a ship's crew, the starting point for the development of life insurance. And it is

^{*} The present chapter is a shortened version of the introductory chapter to *Phillip Hellwege, From Guild Welfare to Bismarck Care. Professional guilds and the origins of modern social security law and insurance law in Germany* (2020).

¹ *Phillip Hellwege* (ed.), *A Comparative History of Insurance Law in Europe. A Research Agenda* (2018).

usually alleged that the law regulating life and fire insurance developed from marine insurance law, too. Consequently, English scholars suggest that there is only one root for insurance and insurance law: marine insurance (law). The literature on developments in, for example, France, Italy, and the Netherlands follows similar narratives.

The overall aim of the present volume is, thus, to test these different narratives and to reassess the history of insurance and insurance law in Europe. To this end, the present volume covers various European countries – the Southern Netherlands (Belgium), the (Northern) Netherlands, England, Germany, Sweden, France, Italy, Spain, Poland, and Hungary – followed by a comparative analysis.

B. The state of research on guild support

The state of research on guild support is as unsatisfactory as the state of research on the history of insurance and insurance law, but for different reasons. For the purpose of this introduction I will map out in detail the state of research in Germany; thereafter, I will briefly refer the reader to the state of research in other European countries as has been summarized by the various authors of the present volume. When charting the state of research in Germany, it is best to distinguish three different historiographic contexts in which guild support is discussed.

First, there is the history of insurance and insurance law. The respective literature stresses, as has just been pointed out, the relevance which guild support had for the development of modern insurance as well as modern insurance law.² Hans-Martin Oberholzer, for example, contends ‘that guilds were crucial for forming the idea of insurance’ (‘dass das Gildewesen für die Entstehung des Gedankens des Versicherungswesens ausschlaggebend war’).³ Clemens von

² See *Hans-Martin Oberholzer*, Zur Rechts- und Gründungsgeschichte der Privatversicherung (1992), 59–66; *Albert Schug*, Der Versicherungsgedanke und seine historischen Grundlagen (2011), especially at 141–144; *Peter Koch*, Geschichte der Versicherungswissenschaft in Deutschland (1998), 25, 98 f., 225; *idem*, Versicherungsplätze in Deutschland (1986), *passim*; *idem*, Geschichte der Versicherungswirtschaft in Deutschland (2012), 15–19; *idem*, Versicherungswesen, in: *Adalbert Erler* et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte, vol. 5 (1998), 815–826, 816; *Paul Bütow*, Versicherung auf Gegenseitigkeit (1883), 9–14; *Peter Ulrich Lehner*, Entstehung des Versicherungswesens, in: *Wolfgang Rohrbach* (ed.), Versicherungsgeschichte Österreichs, vol. 1 (1988), 1–44, 13–16; *Wolfgang Rohrbach*, Versicherungsgeschichte Österreichs von den Anfängen bis zum Börsenkrach des Jahres 1873, in: *idem*, op. cit., 47–432, 64–72; *Heinrich Braun*, Geschichte der Lebensversicherung und der Lebensversicherungstechnik (2nd edn., 1963), 13–16; *Rudolf Bergmann*, Geschichte des rheinischen Versicherungswesens bis zur Mitte des XIX. Jahrhunderts (1928), 2–6; *Wilhelm Hagena*, Die Ansichten der deutschen Kameralisten des 18. Jahrhunderts über das Versicherungswesen (1910), 8.

³ *Oberholzer* (n. 2), 66.

Zedtwitz adds that guild support – even though it reflected the idea of insurance – cannot be categorized as insurance because guild members had no legally enforceable right to support.⁴ Harald von Waldheim argues that such a legal right was introduced only after 1500,⁵ and it follows that he would look upon guild support from that point of time as insurance. By contrast, Peter Koch believes that guild members had a legal right to support from the very beginning of the practice's development:⁶

‘Diese Leistungen der Zünfte und Gesellenbruderschaften stehen am Anfang der deutschen Versicherungsgeschichte und leiten ihre erste Periode ein. Um Versicherungen handelte es sich deshalb, weil die Mitglieder der Vereinigungen durch die Entrichtung von Beiträgen und die Beteiligung an Umlagen einen Rechtsanspruch auf Leistungen erwarben, die zunächst gewohnheitsrechtlich feststanden und später in den Satzungen geregelt waren.’

‘These benefits which were offered by craftsmen's guilds and journeymen's confraternities mark the beginnings of insurance history in Germany, and they are the start of the first period of the development of insurance. These benefits do count as insurance because the members of these associations acquired a legal right to them by paying their contributions and by taking part in apportionments – a legal right which initially derived from customary law and which was later provided for in guild statutes.’

However, modern literature on the history of insurance and insurance law does not base these broad claims on any analysis of primary sources. Furthermore, the belief that guilds had an immediate relevance for the development of insurance and insurance law is not uniformly shared. Most prominently, Levin Goldschmidt and Victor Ehrenberg painted in the late 19th century a different picture, one which does not suggest any mono-causal link between guild support and insurance, but which rather points to complex interactions between cooperative associations (like guilds) and insurance.⁷

Secondly, there is the history of Germany's modern social security. The relevant literature claims that the support offered by professional guilds had a lasting impact on modern social security. Many authors point to the special relevance of miners' guilds.⁸ Ulrich Lauf, for example, proposes that ‘German social security

⁴ Clemens von Zedtwitz, *Die rechtsgeschichtliche Entwicklung der Versicherung* (1999), 75.

⁵ Harald Waldheim, *Das Versicherungswesen in seiner Entwicklung mit besonderer Berücksichtigung der Sozialversicherung* (1928), 10.

⁶ P. Koch, *Versicherungswirtschaft* (n. 2), 18.

⁷ Levin Goldschmidt, *Handbuch des Handelsrechts*, vol. 1/1 (3rd edn., 1891), 40; Victor Ehrenberg, *Versicherungsrecht*, vol. 1 (1893), 26.

⁸ Tobias A. Jopp, *Insurance, Fund Size, and Concentration* (2013), 15; Horst Peters, *Die Geschichte der sozialen Versicherung* (3rd edn., 1978), 21 f.; Augustin Düttmann, *Die deutsche Sozialversicherung in ihrem Entwicklungsgange* (1926), 9 f., 46–52; Andreas Bingener, *Knappschaft*, in: Albrecht Cordes et al. (eds.), *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 2 (2nd edn., 2012), 1907–1909, 1907; Georg Greve, *Gilbert Gratzel*