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A COMPARATIVE HISTORY OF INSURANCE LAW IN EUROPE: A RESEARCH AGENDA. Ed by Phillip Hellwege

Berlin: Duncker & Humblot (<https://www.duncker-humblot.de>), 2018.

Comparative Studies in the History of Insurance Law, Volume 1. 253 pages.

ISBN 978-3-428-15499-9. €99.90

This is the first volume in a series entitled ‘Comparative Studies in the History of Insurance Law’, dedicated (albeit not exclusively) to publishing the fruits of the European Research Council-funded ‘Comparative History of Insurance Law in Europe’ project (<https://www.uni-augsburg.de/de/fakultaet/jura/lehrende/hellwege/chile/>). Professor Dr Hellwege is the project’s principal investigator, and the editor of and an important contributor to the series. The project began in 2015 and, at time of writing, the series already comprises 17 published volumes. It is remarkable, and inspiring, to see legal-historical research undertaken at such a scale and pace.

An understanding of the project is of use in appreciating the purpose and value of this book. The ultimate goal of the project is to map out a comprehensive, comparative history of European insurance law. The project is intended to investigate not merely contracts of premium insurance, but other forms of mutual assistance and mechanisms for spreading risks. A wide definition of ‘insurance’ is thus retained, requiring only the legal enforceability of the insured’s claim against the insurer, and the transfer of risk (26). Reflecting this, the volumes in the series trace various lines through a broad range of topics, themes and periods, covering marine insurance, general average and sea loans, fire insurance, life insurance and tontines, widows, professional guilds, private health insurance, social security, insurance supervision, and standard-form contracts. England, France, Germany, and Italy feature heavily in single-authored volumes, while the Low Countries, Scandinavia, and Spain are well-represented in multi-authored collections (and Scotland, Poland, Hungary and ancient Rome make comparatively briefer appearances). Building upon the individual studies comprising the series, Hellwege intends in due course to prepare a monograph on the history of insurance law in Europe. This culminating volume (an intimidating work of synthesis!) is one which all scholars of insurance law will await eagerly.

This volume begins with an introductory chapter in which Hellwege promotes the project’s research agenda. Addressing legal historians, he argues, cogently, that a methodologically sound, comparative history of European insurance law and doctrine (as opposed to economic, social or non-doctrinal institutional histories of insurance) has yet to be written. This is both because existing histories largely focus on commercial insurance contracts to the exclusion of other risk-spreading institutions, and because, outside of marine insurance, legal historians have developed distinct, overly narrow national narratives, which have neglected known and possible points of historical interaction between national practices.

Turning to modern lawyers, Hellwege argues that the project may hope to contribute to the ‘creat[ion of] a historical basis for a European scholarship in the field of insurance law and can, thereby, create a historical basis for the process of harmonizing insurance law in Europe’ (17). This is a bold claim for legal-historical research, which Hellwege is careful not to press too far. He expressly *does not* suggest that yesterday’s solutions, however widely adopted they may have been, should be applied today (20). This is sensible, although one can never wholly discount the possibility that some past legal technique, knowledge or insight, salvaged by historians, may be of direct use to today’s lawyers and legislators. Noting that, save in the case of marine insurance, European insurance practice displays ‘no signs of common historical roots’ (17), Hellwege

instead argues that a comparative history of European insurance law should serve to clear the ground for harmonised rules by freeing lawyers from their ‘nationally coined preconceptions’ (20). This is legal history seen (appropriately) as akin to Nietzschean genealogy. Highlighting the contingent, sometimes arbitrary, origins of national insurance-law practices and institutions, serves to dispel any irrational deference to the latter, and is thus a useful (perhaps even necessary) precursor to an effective critique of current legal institutions and to the invention of solutions best suited to present and future conditions.

As its sub-title indicates, this book is intended to set out a research agenda for the project as a whole. The book is more than this, however, and therein lies the answer to Hellwege’s initial question, ‘why is it worthwhile to read the volume?’ (9). At the core of this book is an invaluable set of eight, jurisdictionally focussed, legal-historical chapters, covering Italy, France, Spain and Portugal, Belgium, the Netherlands, England and Scotland, Germany, and Scandinavia. The contributing legal historians, generally all recognisable as local experts, have been charged with critically revisiting ‘the state of research and prospects for future research’ in their local jurisdictions (preface), covering the period from the Middle Ages to the turn of the nineteenth century (23). The resulting chapters succeed in this, collectively depicting the varying states of development of their local insurance-law historiographies. In doing so, the contributors have penned their own, largely narrative, national or regional histories, focussing at a high-level on the development of insurance institutions and practices, and on interventions by public authorities, rather than particular aspects of insurance-law doctrine (though there are examples drawn from the latter as well, e.g. in John MacLeod’s chapter on England and Scotland). Their accounts are accompanied by perceptive meta-historiographical commentary, and, most importantly, by copious references to the existing national literatures. The legal-historian contributors have also clearly adopted a rigorously critical approach to their local historiographies. The chapter on Belgium (by Dirk Heirbaut and Dave De ruyscher), for example, highlights certain doubtful and erroneous assertions advanced by earlier writers (e.g. by Trenerry (92–94), and by Despars (113)). Similarly, in his chapter on the Netherlands, Hellwege convincingly challenges certain conclusions reached by JP Van Niekerk regarding the origins of seventeenth-century Dutch fire contracts (142–144); while in his chapter on Germany, he mounts a sustained critique of that jurisdiction’s traditional ‘three roots’ account of the history of insurance (which we condemn as ‘incomplete’, ‘oversimplifying’, and ill-suited as a ‘basis for a doctrinal history of insurance law’ (186)).

The book concludes with two chapters, by an economic and social historian, respectively, which were intended to add wider historical context by ‘comment[ing] on the findings of the [legal historians] ... from the perspectives of their fields of expertise’ (24). In the event, these interdisciplinary chapters do not wholly live up to this promise. The first such chapter is an interesting stand-alone addition to the collection, addressing the economic-historiography of insurance practice: but the hoped-for commentary on the preceding national narratives is entirely missing. In the second interdisciplinary chapter, which is short and ends rather abruptly, cross-references to the remainder of the book disappear soon after it begins.

These, however, are minor criticisms. The well-referenced and reliably critical legal-historical chapters, which occupy around four-fifths of the book, constitute both a convenient starting point and an ineluctable reference for future historians of European insurance law.

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