

CHAPTER ONE

Introduction

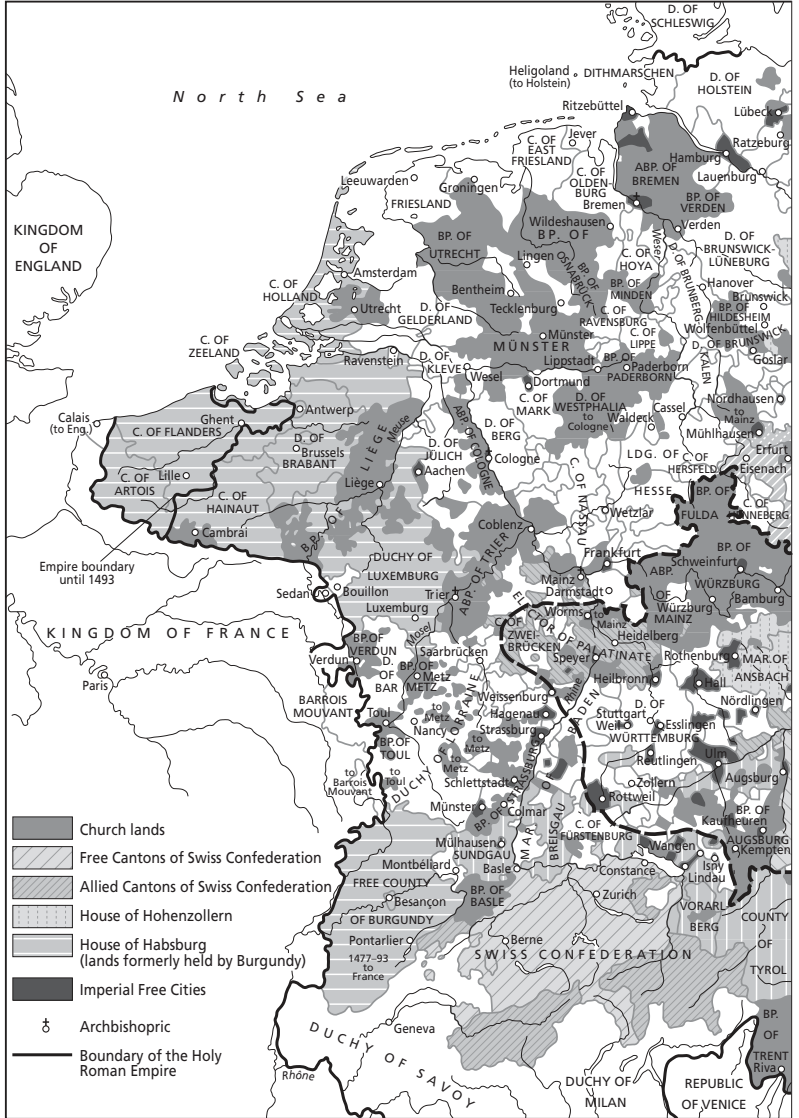
The struggle over the feud in early
modern Germany

One of the striking features of late medieval and early modern Germany was the pervasiveness of feuds by noblemen. Foreign observers found it difficult to explain. A Roman cardinal, overcome with indignation, exclaimed ‘all Germany is a gang of bandits and, among the nobles, the more grasping the more glorious’.¹ A similar point was made by Poggio Bracciolini in his treatise *On Nobility* (c. 1440). Pointing out the difficulty of defining what true nobility consisted in, he wrote that the Germans think ‘that a noble lives in the mountains robbing those who pass through’.² Even as thoughtful a man of the world as Philippe de Commines was perplexed by the custom of feuding in Germany. He noted that

there are [in Germany] so many fortified places and so many people inclined to do evil and to plunder and rob, and who use force and violence against each other on the slightest pretence, that it is almost incredible. For a single man with only a valet to attend him will defy a whole city and even attack

¹ Johann Kamann, *Die Fehde des Götz von Berlichingen mit der Reichsstadt Nürnberg und dem Hochstifte Bamberg 1512–1514* (Nuremberg, 1893), 103 n. 2.

² Poggio Bracciolini, *On Nobility*, in *Knowledge, Goodness, and Power: the Debate over Nobility among Quattrocento Italian Humanists*, ed. Albert Rabil, Jr (Binghamton, NY, 1991), 63–89, at 74. See also p. 69: ‘The Germans think that those are noble whose inherited property provides an adequate living, or who rule over fortresses and small towns far from the cities, even though most of this latter group engage in highway robbery.’ On the treatise see Claudio Donati, *L’idea di nobiltà in Italia: secoli XIV–XVIII* (Bari, 1988), 11–12.



Map of the Holy Roman Empire, c. 1500

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a duke, so that he will have a better excuse to rob him, by using a small castle on a rock, where he can retire and where he has twenty or thirty horsemen.³

These observers were clearly struck by what they saw as the rule of lawlessness in Germany. Their reactions, allowing for misinformation about and misperception of the German reality, nevertheless encapsulate the deep significance of the phenomenon of the feud: it raises, in a fundamental way, the question of the nature of public order in Germany in the late Middle Ages.⁴ Given their ubiquity and the power and prestige of the nobles who carried them out, feuds readily appear to have been antithetical to any public order worthy of the name, let alone to modern conceptions of state and law. By the same token, however, few historical phenomena are as fruitful for examining modern preconceptions about pre-modern polities.

Precisely this was the insight that stimulated the Austrian historian Otto Brunner, who effectively created the history of the feud as a research field with his publication, in 1939, of *'Land' and Lordship*. Its first chapter, devoted to the problem of the feud, has set the terms of debate up to the most recent scholarship.⁵ Brunner began by criticising the widespread notion that the late medieval feud was merely banditry by another name. He contended that the language of the sources could not be taken at face value and that when 'an opponent is called a "brigand" (*Räuber*), this in principle means nothing more than that he is held to be acting unrightfully – something to

³ Samuel Kinser (ed.), *The Memoirs of Philippe de Commines*, 2 vols., trans. Isabelle Cazeaux (Columbia, SC, 1969–73), 1, 354–5.

⁴ This applies of course not only to Germany. A superb historiographical survey is Jeppe Büchert Netterstrøm, 'Introduction: The Study of Feud in Medieval and Early Modern History', in *Feud in Medieval and Early Modern Europe*, ed. Jeppe Büchert Netterstrøm and Bjørn Poulsen (Aarhus, 2007), 9–67.

⁵ Otto Brunner, *'Land' and Lordship: Structures of Governance in Medieval Austria*, trans. Howard Kaminsky and James Van Horn Melton (Philadelphia, 1992), 1–94.

keep in mind in the countless cases where “brigand” appears in our sources’.⁶

Brunner thus shifted the basis of the discussion from the economic and social to the legal and political.⁷ Indeed, Brunner’s main argument was that the feud was not illegal, a criminal use of naked power, as historians had previously portrayed it. Quite the contrary – it was an eminently lawful means of conflict resolution, provided it was carried out in accordance with the accepted rules of conduct. These ranged from a preliminary attempt to settle differences peacefully to a delivery of a cartel of defiance (*Absage* or *diffidatio*) well before opening hostilities.⁸

Brunner, however, sought to do a good deal more than explain the feud per se and rehabilitate it in historical judgment. His study of the feud served, among other things, the purpose of ‘defamiliarising’ the Middle Ages, of demonstrating its radical otherness, and thus exposing the inadequacies of explanations based on modern assumptions about the state and the law.⁹ By viewing the feud with precisely these modern preconceptions in mind, historians did worse than doom themselves to misunderstanding the feud; they practically condemned themselves to misapprehending the world of the Middle Ages itself. For the feud, far from being an aberration, played a central role in shaping and sustaining the public order of this world. As Brunner put it, the feud was:

the juridical form of all medieval politics, in so far as it resorts, internally as well as externally, to the force of arms. Only from the perspective of the feud, which is simultaneously Right and Might, can one understand the relationship between these two factors in the Middle Ages. A world in which the feud is always a possibility, of necessity has a structure altogether

⁶ *Ibid.*, 7.

⁷ Thomas Schweier, *Feudalismus in den Artusepopöen Hartmanns von Aue? Kritik der Schriften Otto Brunners im Rahmen sozialgeschichtlicher Interpretationen* (Würzburg, 2004), 304.

⁸ For a more detailed discussion see Chapter 2. ⁹ Brunner, *Land’ and Lordship*, 9.



Illustration 1. Gerhard von Valangin declares a feud on Bern, 1339. Diebold Schilling, *Spiezer Chronik*, Burgerbibliothek Bern, Mss.h.h.I.16, p. 248

completely different from the civil world of an absolute state which claims the monopoly of the legitimate use of force.¹⁰

In *'Land' and Lordship*, this crucial point is demonstrated by four examples of noblemen's feuds against kings and emperors.¹¹ That

¹⁰ Otto Brunner, 'Moderner Verfassungsbegriff und mittelalterliche Verfassungsgeschichte', *Mitteilungen des österreichischen Instituts für Geschichtsforschung. Erg.-Band 14* (1939), 513–28, at 527. See also Brunner, *'Land' and Lordship*, 9.

¹¹ Brunner, *'Land' and Lordship*, 9–14.

these could be considered lawful and not high treason reveals ‘pre-conditions for political action radically different from those we take for granted in the modern state . . . these nobles believed that their actions were entirely legitimate’. A dramatically alien practice from a state-centred perspective, the feud represents a historical problem which is impervious to modern preconceptions. ‘In the Middle Ages . . . we see rulers and subjects declare war and conclude peace with each other “as if” each were subject to international law. Were such actions merely an abuse of power based on “the law of the fist?” To the contrary: they were the expression of a legal consciousness.’¹² Legitimacy and justice were not defined by sovereignty, which had no place in this world. Rather, they were embodied in the ‘good old law’ or ‘good custom’ – a shorthand for a system of moral and religious norms and sensibilities.¹³ This legal order provided the framework of a general consensus within which conflicts between the various power-holders were carried out and settled. The feud was essentially a legal mechanism for the maintenance of order in a commonwealth of aristocratic lordships.

Brunner’s achievement is perhaps best appreciated by comparing his break with the historiography of his day with the research on the feud in England and, especially, France. The contrast could hardly be sharper: Brunner discarded the anachronistic contradiction between noble violence and viable public order. Inevitably, his study of the feud has had far-reaching implications for a re-evaluation of the place of the nobility in the body politic, helping to overcome the view that it was the Antistate incarnate. French historiography, on the other hand, has largely remained ‘monarchist’. Whereas

¹² Ibid., 13–14.

¹³ Brunner, *Land and Lordship*, xix, 192, 195–6. See also, for instance, O. Brunner, ‘Die Freiheitsrechte in der altständischen Gesellschaft’, in his *Neue Wege der Verfassungs- und Sozialgeschichte*, 3rd edn (Göttingen, 1980), 187–98, at 194: ‘Denn Recht ist hier eine über den Menschen stehende Ordnung.’

Brunner argued that it was impossible to write medieval political and constitutional history without giving the feud pride of place,¹⁴ French historians have mostly gone about this task as if it were impossible to accomplish without banishing the ghost of feuding to the limbo of recalcitrant facts. It is not that feuds did not occur in France. As Howard Kaminsky has observed, ‘The remarkable thing is not the ubiquity and legitimacy of the noble feud but the failure of French historians to come to grips with it.’¹⁵ A historiographical tradition dominated by the grand narratives of the monarchically directed state formation and the emergence of the nation could find no useful role for feuding nobles:

historians who identify the interest of the nation with the rise of the state are not moved to focus on mentalities and practices whose *prima facie* import was to interfere with that rise, as well as to destroy the civil peace whose enforcement would be the main business of the post-medieval state. From their point of view the noble feud can only appear as disruption, anarchy, and might-makes-right, a view taken as confirmed by medieval testimony in the same sense by non-nobles who suffered from the warfare – burghers, clerics, intellectuals.¹⁶

While Brunner’s *‘Land’ and Lordship* has generally been passed over in France and, to a lesser extent, in the Anglo-Saxon world,¹⁷ in Germany it has had an immense and lasting impact. Greeted with

¹⁴ *‘Land’ and Lordship*, 14.

¹⁵ Howard Kaminsky, ‘The Noble Feud in the Later Middle Ages’, *Past and Present* 177 (2002), 55–83, at 66.

¹⁶ *Ibid.*, 67. See also Stuart Carroll, *Blood and Violence in Early Modern France* (Oxford, 2006), 4, 6, who doubts, however, the applicability to France of Brunner’s interpretation of the feud. For ‘feud’ in England see Christine Reinle, ‘“Fehde” und gewaltsame Selbsthilfe in England und im römisch-deutschen Reich’, in *Akten des 36. Deutschen Rechtshistorikertages*, ed. Rolf Lieberwirth and Heiner Lück (Zurich, 2008), 99–132; Kaminsky, ‘The Noble Feud in the Later Middle Ages’, 74–9.

¹⁷ The translation of Brunner into English in 1992 perhaps signalled a change. In Italy Brunner’s works enjoyed earlier and greater acceptance: *‘Land’ and Lordship* was translated in 1983 and *Adeliges Landleben und europäischer Geist: Leben und Werk Wolf Helmhards von Hohberg 1612–1688* (Salzburg, 1949) in 1972.

admiration and disapproval in equal measures, ever since Brunner put forward his interpretation the feud has become a veritable battleground – ideological as well as historiographical. None of the numerous critical appraisals of Brunner’s work, however, has been as sustained and systematic as Gadi Algazi’s *Herrengewalt und Gewalt der Herren*.¹⁸ Algazi’s study is divided into two main parts. The first challenges Brunner’s understanding of ‘protection and safeguard’ (*Schutz und Schirm*) in the Middle Ages.¹⁹ According to this teaching, the relationship between peasants and lords was contractual: the lords defended the peasants, the peasants rendered submission, services and payments to the lords. Algazi argued that the protection extended by the lords to the peasants was actually of the kind offered by Mafia bosses to their ‘customers’: it was ‘protection’ from the threat of violence which they themselves posed to the peasants. When the lords undertook to ‘protect and safeguard’ peasants they committed themselves to nothing beyond refraining from further violating the rights of their peasants.

The second part of Algazi’s critique of Brunner focuses on the feud. The argument here aims to provide an alternative account of the foundations of lordship over peasants. Rather than reciprocity, argues Algazi, lordship rested on violence – not in the form of direct coercion, but in the diffuse form of regularly recurring feuds between noblemen: whilst the rivals were exclusively lords, the actual victims of the hostilities were, almost as exclusively, the rival lords’ subject peasants. Precisely this form of violence, as the consequence of the struggles between individual lords, made it difficult for its victims to perceive the feud as a means of their subjection. As Algazi puts it:

¹⁸ Gadi Algazi, *Herrengewalt und Gewalt der Herren im späten Mittelalter: Herrschaft, Gegenseitigkeit und Sprachgebrauch* (Frankfurt am Main, 1996).

¹⁹ Brunner, ‘Land’ and Lordship, 280–7.

the feud, as an expression of a noble unorganised monopoly of the means of violence, had a concealed sharp edge, which was directed at those who were prevented from possessing these means. The individual warring lords appear as 'private entrepreneurs of extra-economic coercion', whereby precisely the fact that they acted as 'private entrepreneurs' and not as an organised group, was constitutive of the presumed social effect of this form of violence.²⁰

Yet considered as a social category, the lords were the perpetrators of the violence from which protection was needed. Even if feuds were a menace to the economic and social position of individual lords, the feud legitimated their protective function and hence bolstered their collective prominence as lords. The violent dispossession of the peasants by feuding nobles can therefore be construed as a political means to the periodic re-establishment of the 'social order', to the keeping of the peasants in their place. Viewed from this perspective, the feud was in effect a *Kleinkrieg* against the peasants and the feuding nobles were racketeers, forming an uncoordinated cartel of unorganised 'crime'. If for Brunner the feud was a privilege of the lords, for Algazi it was what constituted and reconstituted the lords qua lords in the first place. The indirect consequence – if not necessarily the intention – of feuds was to reproduce the peasants' need for protection and the lords' power over them.

Historians of late medieval Germany were not slow to gainsay Algazi.²¹ Praising the theoretical sophistication of his model of the relationship between lords and peasants, they have exposed some serious problems in it. The contradiction between the two parts of his

²⁰ Algazi, *Herrengewalt und Gewalt der Herren*, 157–8.

²¹ Some were too quick. It is not correct to criticise Algazi's interpretation as a functional explanation of the feud (see Klaus Graf, 'Gewalt und Adel in Südwestdeutschland: Überlegungen zur spätmittelalterlichen Fehde', *Online-Reprint eines Beitrags auf dem Bielefelder Kolloquium 'Gewalt' am 29.11.1998*; www.histsem.uni-freiburg.de/mertens/graf/gewalt.htm (2000)).