Early modern case studies : The example of Germany's Imperial Chamber Court*

– Historical context, methodological fallacies and the difficulties of working with source material –

Nikolaus Linder**

When professor Sim[1] invited me last October to present a *case study* from early modern German legal history here in Seoul, I accepted immediately. Needless to say, I felt very honored. It was only a few months later when I began to work on the project in earnest that I became aware of some of the conceptual difficulties it involves. It required the answer to a number or preliminary questions. First and foremost, what kind of polity is (or was) „Germany" in early modern times? Which courts of justice could be said to be p generically art of this polity? What would constitute a court case in such a court?

Before looking into some such cases from the 1620s onwards it is thus necessary to make a few remarks regarding the basic concepts of place and central legal institutions. Hopefully, by the end of my presentation, it will become a bit clearer what administration of justice in early modern „Germany" meant. What was „Germany" at this time?

---

* 이 원고는 "중세유럽의 민사 분쟁과 법(Civil Dispute and the Law in Medieval Europe)"이라는 주제로 2019년 6월 28일(금) 개최된 韓國法史學會 제129회 정례학술발표회에서 발표한 것으로 저자의 허락을 구하여 여기에 수록하였다.

** Georg-August-Universität Göttingen

1) 연세대학교 법학전문대학원 심희기 교수(편집자 주)

Ⅰ.

Let me start with a bold statement : There was no such thing as „Germany" during the early modern period, at least not in the sense of a „state" in any modern or pre-modern sense. What existed instead was a complex, polycentric, multi-ethnic and, from the sixteenth century onwards, increasingly fragmented religious-political space which, even to contemporaries, seemed so complicated that it could neither be analyzed nor even described in other than strangely metaphorical terms. Its symbol was a two-headed eagle, hinting its double nature as a transcendental idea and a real polity, reaching from what today is eastern France to the Baltic and from the shores of the North Sea almost to the gates of Rome. Since the late Middle Ages it had been called „Heiliges Römisches Reich", *Holy Roman Empire*(HRE); from the late fifteenth century onwards the words *of Germanic nation* („deutscher Nation") had been added in order to signify the preponderance of its German-speaking members and the disproportionate role they played in its institutions. This polity ceased to exist in 1806. Today, in order not to be confounded with the ‚new' German empire created by Otto von Bismarck later in the nineteenth century, it is often called the *Alte Reich*; for the present purpose I call it simply the Reich.

Whilst it seems not necessary, for the moment, to fully explore the Reich's „pre-modern strangeness",[2] as it has been called by professor Stollberg-Rilinger, it is perhaps useful to note a few peculiarities relevant to our topic :

The Reich was nominally led by the Emperor. Unlike the rulers of

2) Stollberg-Rilinger, Das HRRDN, S. 9. Zum folgenden vgl. ebd. S. 116 ff.

France, England and other kingdoms in medieval and early modern Europe, the Emperor was an elective monarch who was chosen by a small group of princes of the realm. From the fourteenth century onwards, this group constituted itself as the *Kurfürstenkolleg*, the College of Electors whose seven members – three archbishops and four temporal princes –, together with the Emperor, embodied the Reich.

From the Emperor and the Electors at the top to the other imperial princes and further downwards to cities and knights, the Reich was ordered hierarchically in the so-called *Reichsstände*, estates of the realm, corporations whose members enjoyed the same privileges and freedoms within the Reich. Whilst exercising direct sovereign rights over the subjects living within their domains they were equally, to varying degrees, entitled to take part in the accumulation and administration of power within the Reich. The Emperor's rule, therefore, was never a direct one. Direct rule belonged to the members of the Reichsstände with their own stakes in the power economy of the Reich. There were no executive organs independent of the Reichsstände. Universal imperial citizenship equally granted to all subjects did not exist.

Thus, the Reich may be described as a multi-level association based exclusively on mutual personal allegiance. At every level, intricate networks of oaths linked persons to one another : imperial vassals to the Emperor, estates to their sovereign rulers, councilors to the communities they served, manorial subjects to their landlords, etc. In the absence of a written constitution, these interpersonal bonds were periodically made ‚visible' through symbolic stagings, demonstrative public rituals such as coronations, enfeoffments, tributes, office appointments, to name but a few.

Basic features of this intricate network of personal power relationships

were contractual bonds and agreements, namely between the Emperor and the Electors, the so-called *Wahlkapitulationen* (electoral contracts), but also between members of the *Reichsstände* and rulers and their subjects in general. Situative alliances, interest groups, unions, leagues and confederations were immensely popular.

The ubiquity and structural necessity of negotiating within and across hierarchical ordered networks of power had a number of implications. Particularly noteworthy is the central role of legal discourse and legal arrangements necessitated, at least in part, by the constant brokering and bargaining of contractual positions on the part of the Reichsstände and their subjects. Being a member of the Reich, first and foremost, meant enjoying the protection of the *Landfrieden*, a universal ban of armed conflict resolution guaranteed and periodically renewed by the Emperor; second, to be able to seek justice before imperial courts; and third, to contribute, directly or indirectly, to the public duties. For the Reichsstände and their subjects, the main reasons for their membership were the enjoyment of public peace and the rule of law whose embodiment was the Emperor.

What was considered „law“ in this framework consisted mainly in a multi-layered, alluvial mass of ancient (and often contradictory) legal precepts, acquired rights, freedoms, and privileges, rules uniformly practiced since times immemorial or agreed upon by powerful players within the networks, many of which dated back hundreds of years.

For most of the Early Modern period, the strong dissemination of power made the centre seem excessively weak, especially when compared to the Reich's Western neighbors, France and England. Against the will of the Reichsstände, the Emperor found it difficult to enforce even basic decisions; in other words, imperial legislation, in the proper sense of the

word, did not exist. Instead, with the resistance of vested interests causing a high degree of collective pressure, consensus-building and compromises were essential prerequisites in every political transaction. When no consensus could be found, conflicts often used to remain unresolved for decades. This became especially evident throughout the Reformation period and in the run-up to the Thirty Years' War, the period I will turn to below.

Consensus building within the Reich was promoted to a considerable extent by handing out material benefits, mostly land ownership granted to powerful players. Over time this resulted in intense territorial fragmentation which weakened the centre further and thus reinforced the need for integration. By the late middle ages, the Reich had reached a degree of complexity which threatened its political unity and tended to limit the scope for governing action even further.

The idea of reform, to turn the Reich into a state, and had been discussed for decades during the fifteenth century. At its end a process of „institutional concentration and solidification"[3] was set into motion; between 1495 and 1521, the Reich's organizational chart was completely re-written. With the „Ewige Landfriede", promulgated in 1495, organized armed conflict by individual actors within the Reich was outlawed forever. The congregation of the Reichsstände was re-made into a formal corporation, the *Reichstag* (Imperial Diet) whose decisions, the „Abschiede" were now recorded and promulgated as imperial laws. The territories of the Reich were integrated into administrative sections, the *Reichskreise* whose primary purposes were the organization of a common defense and the collection of the *Gemeine Pfennig*, a newly introduced imperial tax.

3) „Institutionelle Verdichtung", „Verfestigung" cf. Stollberg-Rilinger, op cit. pp. 36, 40.

Also in 1495 the *Reichskammergericht* (Imperial Chamber Court) was established, a new supreme court for the Reich based in Frankfurt whose staff was nominated in equal parts by the Reichsstände and the Emperor.

Ⅱ.

The Ewige Landfriede had brought eternal peace to the Reich, and the Reichskammergericht hat been established to help maintain it. Together, they constituted the most important and lasting institutional changes brought about by the reforms. Nominally replacing the Emperor's ancient *Hofgericht* (royal court), the Reichskammergericht was, in fact, a complete novelty which strengthened the Reichsstände's position vis-à-vis the monarch. The latter, jealous of his role as the Reichs's supreme guardian of justice and suspicious of the Reichskammergericht's presumed partiality, established a competing court under his control only a few years later. From 1498, the Vienna-based *Reichshofrat* (Aulic Council) acted alongside the Reichskammergericht as the Reich's highest judicial authorities with competing spheres of competence. In a rare opportunity of early modern *forum shopping*, parties could, apart from a few exceptions, choose which supreme judicial authority to turn to.

The Reichskammergericht's first years were marked by continuous changes of location, from Frankfurt to Worms, Nuremberg, Ratisbon, Augsburg, Esslingen finally to the imperial city of Speyer where it remained until 1688. Exiled by French troops, it then moved to Wetzlar where it remained until the Reich's demise in 1806. The court's early years were equally characterized by the development of organizational rules and routines, from the selection of judicial personnel from the Reichskreise to

the procedural rules most suitable for its proceedings, the majority of whom, during this time, were appeals against high court rulings, the (in Latin) so-called appellatio and complaints for breach of the Landfriede. At times of war during the first half of the sixteenth century Protestant Reichsstände sometimes refused to submit to the Reichskammergericht's authority in matters of religious jurisdiction. After the end of hostilities in 1555, case numbers increased. With first instance proceedings now becoming the norm, proceedings reached an all-time high. At the end of the century, with religious tension once again on the rise, the number of complaints dwindled.

The judges at the Reichskammergericht were called assessors. Initially, their number had been set at 16, equally split into knightly noblemen and graduated lawyers. In 1570, the number was increased to 38, in 1648 to 50. The assessors sat in groups, the so-called senates, each led by a president. The court was presided and represented to the outside world by the *Kammerrichter* (Chamber Judge), a nobleman appointed by the Emperor, who, together with the presidents, also supervised and organized the court's work without taking part in the process of adjudication. Due to financial constraints, regular positions often remained vacant whilst extraordinary assessors were hired to help. From 1570 all candidates had to pass a special examination in order to prove their legal knowledge. With a law degree as a de facto prerequisite, learned jurists became the norm at the expense of the nobility.

Positions at the Reichskammergericht were filled according to a complicated system. Emperors and Electors had the right to propose candidates for certain posts; the majority of assessors, however, was proposed by the Reichskreise, incorporations of the Reichsstände. At the beginning of the court's history, assessorships at the Reichskammergericht

were considered intermediate career stations; later on these positions strongly gained in reputation; being named an assessor became a coveted highlight of a demanding legal career.

As indicated above, the Reichskammergericht's original competence concerned appeals against judgments of territorial and imperial high courts in civil matters. Furthermore the Reichskammergericht, as a supervising authority, ruled on actions for denial or delay and on nullity appeals for gross violations of the law committed by territorial or municipal courts. In the role of a court of first instance, finally, the Reichskammergericht decided on complaints for breach of the Reichslandfriede and legal disputes involving immediate members of the Reich and their subjects.

By bringing *Untertanenprozesse* to legal resolution, often through settlement, the court effectively established legal standards for master-subject relationships and thus limited territorial sovereignty. In the middle of the sixteenth century, the Imperial Court of Appeals won with the mandate "a first-instance exception for critically accentuated conflict situations-regardless of whether the triggering litigation before the court belonged" (Hinz). This accelerated procedure protected the land peace, broke the path of legal thought and served the imperial supervision.

Parties had to be represented by barristers, the so-called *Prokuratoren* specially admitted to the court. Licensed *Advokaten* wrote the pleadings and gave legal advice but were not allowed to plead themselves. The court's staff also included numerous interns. Emperor and Reich were represented by the *Reichsfiskal*, a special kind of prosecutor. The Chancellery of the Reichskammergericht with its own body of summoners, the so-called *Kammerboten*, was presided by the Elector of Mainz in his role as Arch Chancellor of the Reich.

The body of procedural rules applied before the Reichskammergericht,

the *Kameralprozess*, followed patterns of jurisprudence developed in 13th century Italy from Roman and Canonical law. Many of its concepts may be found in civil procedure laws even today. Contrary to Italian models, however, the Kameralprozess conserved the traditional separating of judges and jurors according to medieval German law with the assessors in the role of jurors and the Chamber Judge as game master. Its most important source is the *Reichskammergerichtsordnung* (RKGO) of 1555 which stayed in force until the demise of the Reich in 1806.

The Kameralprozess prescribed a purely written form of procedure with quite considerable powers accorded to the parties. Plaintiff and defendant were largely able to delimit the subject matter of the proceedings (Dispositionsmaxime) and had to present the facts to be decided before the court (Verhandlungsmaxime). There were both ordinary and extraordinary forms of procedures. For interim relief and as a remedy for acute conflict situations, the Kameralprozess offered interim injunctions without the other party being heard by way of the so-called *Mandatsprozess*. This accelerated procedure mainly served the protection of the Landfriede but was also available in other matters.

Ordinary procedures, on the other hand, were cumbersome. They began with formal declarations by the parties in a public audience, setting the legal dispute in motion (litis contestatio). This was followed by counsels submitting their briefs to the court according to a strict order. Factual statements had to be presented in a highly formalized manner. In order to limit the number of claims where proof was needed, parties were obliged to split their factual statements into individual articles. Each article had to be presented individually to the opponent whose statements had to be answered in equal detail. As all this happened in written form, procedures became exceedingly tedious. The court's strict insistence on the

indirect nature of its proceedings was equally painstaking. Judges never came into direct contact with witnesses but restricted themselves to written depositions recorded and presented to them by commissioners.

Despite multiple attempts at reform over four centuries, the Kameralprozess still retained most of its cumbersome nature and sluggishness. Before and after 1806, generations of German lawyers and legal historians regarded it as a warning example of the maladministration of justice. At the same time (and ironically), the Kameralprozess served as a model for procedural reforms in many territories throughout Germany. Much like the Reichskammergericht in general, scholars have come to view this particular procedure in a much more favorable light during recent years. Organizational deficiencies and procedural lengthiness, goes the reasoning, provided ample opportunity for out-of-court settlements and, by paving the way for consensual conflict resolution, served the pacification of early modern society. The immense wealth of material left behind by the court－80.000 case files deposited in 39 archives throughout Germany, France, Belgium, the Netherlands and Austria－constitutes a trove of source material for all kinds of historians. In the next chapter I will turn to the scholarly expectations with regard to this material on the part of legal historians, a few associated caveats and, last but not least, some of the case examples announced in the title.

Ⅲ.

For historians, working with Reichskammergericht files poses a number of problems. First, as already mentioned, there is the sheer vastness of archival material and its dispersion across multiple countries. To a large

extent, these holdings have been indexed in recent years thanks to a major initiative financed by the Deutsche Forschungsgemeinschaft. To date, there are 32 multi-volume inventories with uniform finding aids for tens of thousands of cases. Digitalization, unfortunately, has not progressed very far. The single database currently in existence, to my knowledge, lists 38.000 cases and is maintained by professor Amend-Traut of the University of Würzburg. Its format seems to be quite outdated and crucial information such as case histories or keywords is missing from the entries. Thus, in my research for this presentation I was continually thrown back to the official finding aids.

For legal historians, there are additional, specific issues touching on methodology. With most of the cases neither a final judgment or a preliminary ruling can be found. It seems that many of the court's proceedings were not resolved by final judgment; also, many records of judgments have been lost. Because judgments were recorded separately from the minute books, judges' names often remain elusive. Albeit recent research suggests that many parties only resorted to bring action to the Reichskammergericht in order to increase public pressure and were not really interested in enforceable judgments, the massive loss in archival data still makes it difficult to make general statements.

Another even more far-reaching difficulty for legal historians is the fact that grounds for the judgment are but rarely given. As a rule, the Reichskammergericht made available only the operative parts of its judgments. Whilst assessors were obliged to base their decisions on certain reasons, they were strictly forbidden to make these available to the parties. In many cases, therefore, the opinion of the court may be divined from semi-official communications of the assessors amongst themselves which are, obviously, not generally available. The practice of non-disclosure was,

of course, not limited to the Reichskammergericht but also commonplace in lower courts and widely accepted by legal scholars throughout the Reich and beyond.

Reichskammergericht files, however, contain much more. Assessors only spent a small part of their work on final judgments. Equally important were preliminary consultations, opinions or interim decisions, all requiring as much file study and legal ingenuity as the judgments themselves. Interim decisions and injunctions thus provide substantive information on court trials. Our view, therefore, should not be limited to narrow processes of legal decision-making; instead we should analyze the judicial activity of the Reichskammergericht as a whole.

From these observations results a third point. It concerns the meaningful selection of cases for a presentation like the present one : what do legal historians want to learn from studying past legal disputes? Especially if, for the most part, neither final decisions nor opinions are given? What criteria should be applied for the selection of cases and case material? During the past twenty years, a number of highly interesting monographs have been looking for answers to these questions : In 1997, Peter Oestmann published his extensive study on witch trials before the Reichskammergericht.[4] Two years later, Ralf-Peter Fuchs's study on libel actions appeared.[5] In 2008, Philipp Nordloh published a study on Cologne guilds' trials before the Reichskammergericht[6]; in the following year, Anja Amend-Traut brought out her book on summary bill enforcement proceedings before the same court.[7] In 2015, „Frankfurter

4) Hexenprozesse am Reichskammergericht / von Peter Oestmann, Köln u.a. : Böhlau, 1997
5) Um die Ehre : westfälische Beleidigungsprozesse vor dem Reichskammergericht 1525-1805 / Ralf-Peter Fuchs. - Paderborn : Schöningh, 1999
6) Kölner Zunftprozesse vor dem Reichskammergericht / Nordloh, Philipp. - Frankfurt am Main : Lang, 2008

Testamentsstreitigkeiten am Reichskammergericht" appeared, a study on the judicial history of inheritance law[8]; and most recently, Christian O. Schmitt presented „Säuberlich banquerott gemachet", a history of bankruptcy proceedings conducted by the Reichskammergericht which appeared in 2016.[9] The chief criterion for selection, in each of these studies, seems to have been a relatively narrow field of law which then was explored on the basis of case material mainly from Frankfurt and north-western Germany. Thus, the number of cases to be investigated could be sufficiently narrowed down.

For the present purpose, let me follow a slightly different path. I would like to give a brief survey a group of cases not from a singular legal field but from a singular historical event, an external shock to the judicial system, if you want. Let us see, what the Reichskammergericht made of it.

Ⅳ.

The cases in question, with some notable exceptions, date from a relatively short period around and after 1620. The historical singularity they can be traced back to was an equally short episode at the beginning of the Thirty Year's War named the *Kipper-und Wipperzeit* (literally :

---

7) Wechselverbindlichkeiten vor dem Reichskammergericht : praktiziertes Zivilrecht in der Frühen Neuzeit
/ Anja Amend-Traut. - Köln u.a. : Böhlau, 2009

8) Frankfurter Testamentsstreitigkeiten am Reichskammergericht : eine Untersuchung anhand der Gerichtsakten der höchstrichterlichen Spruchpraxis (1495-1806)
/ Juliane Freifrau von Rotenhan. - 2015

9) Säuberlich banquerott gemachet : Konkursverfahren aus Frankfurt am Main vor dem Reichskammergericht, Köln : Böhlau Verlag, 2016

„clipper and see-saw period"). To this day, *Kipper und Wipper* is used for speculators and other profiteers from wide currency fluctuations.

Originally, the term Kipper-und Wipperzeit was used for a disastrous period of inflation caused by structural disparities in the money system. It lasted roughly from 1619 to 1623 and was triggered by bold acts of coin debasement at the beginning of the Thirty Years War when the Reichsstände exploited a loophole in the Reich's monetary legislation. According to the Reichsabschied of 1559, the Reichsstände could issue their own coins which were smaller and contained less silver than the coins produced by the imperial mints. Small coins were minted as imitations of common coins of the Reich with a silver content below the nominal value. The counterfeiters placed them on the market in as large quantities as possible in far away areas of the Reich. In order to get hold of the precious metal, heavy coins had to be identified and taken out of circulation for re-minting. This was done by using steelyard scales with horizontal beams of unequal lengths, hence the term „wippen" (seesawing). „Kippen", on the other hand, meant the clipping of heavy coins in order to harvest precious metal, mostly silver which could be turned into new coins. Soon, however, the Reichsstände saw the debased money return to them in the form of taxes and duties. When they realized that their initial gains were merely fictitious, they tried to turn back the clock by establishing a fixed exchange rate of 90 krutzers to the *Reichstaler*, condemning recent mintings and retracting much of the old money. Whilst cashless payments became more popular, new exchange and deposit banks were founded throughout the Reich, namely Hamburg in 1619 and Nuremberg in 1621.

As is well known from more recent monetary crises, hyperinflation is also a strong catalyst for litigation. Thus, after a certain time, claims

began to be presented and actions filed with the Reichskammergericht. Research literature on the subject, focussed on Frankfurt and north-western Germany, lists only a few cases connected with the Kipper and Wipper inflation[10]. „When searching for interdependencies of economic activity and forensic practice", a scholar writes,

> "a much frequented trading place had to be in the foreground of the investigation, imperial cities auch as Frankfurt which were relatively strongly affected by economic imbalance unlike other areas in the Reich such as the Duchy of Bavaria.[11]

When looking beyond the electronic database, however, it soon became clear that Bavaria, and especially the Imperial City of Nuremberg, was indeed a hotspot for legal disputes arising from the Kipper and Wipper inflation. A survey of the first nine volumes of the finding aid to the archival holdings in Munich, roughly corresponding to a quarter of case files archived there, gives a temporary result of 32 relevant cases.

These cases, typically, revolve around disputed repayment terms of credit transaction. In the case Wolfgang Philipp von Brand zu Kürmreuth v.

Mayor and City of Monheim, dating from 1629, parties fought about the repayment of a remaining loan debt. At the end of March 1611, City of Monheim, defendant, received a loan of 1,500 guilders from Wolfgang Philipp von Brand, plaintiff. At the end of April 1622, defendant made a payment of 150 Reichstaler for the principal and of 270 guilders in lower-value coins for interest. After a sudden depreciation of coin, plaintiff pleaded first with the City of Monheim and then with the sovereign, the

10) Amend-Traut, Geld regiert.
11) Ibid. p.368.

Duke Wolfgang Wilhelm von Pfalz-Neuburg for full repayment : Instead of 1882 guilders in principal and interest, he maintained, he had received but 190. After failing twice with his claim he applied before the Reichskammergericht for a mandate to pay the remaining debt, which was subsequently granted. The case was settled before the trial was even formally initiated.[12)]

Another dispute over debt payment in bad coin, *Cleminius v. Heirs to Kaspar Burkhard, citizen of Nuremberg* was decided in first instance in 1622 and appealed in 1629 : In early November 1617, mayor and council of Nuremberg cancelled a debt of 13,000 guilders and repaid 6500 gold guilders to plaintiff. Subsequently, the latter lent this amount to Kaspar Burckhard, a merchant who died sometimes at the beginning of 1622. When defendants, heirs to the deceased, notified plaintiff of their intent to liquidate the latter's business and pay off all debts, plaintiff, in mid-February 1622, accepted the payment against receipt and handed over the debenture. Shortly thereafter he learned that the mayor and council of Nuremberg had ordered a depreciation of coins at the end of December 1621, a fact which had been concealed from him. The equivalent of the 13325 guilders in principal and interest paid to him by defendants thus amounted to just 1665 ½ Reichstalers. plaintiff thus sued defendants at the beginning of August 1622 at the city court of Nuremberg for full satisfaction. At the end of April 1629, defendants were discharged from this claim. Now, plaintiff appealed to the Reichskammergericht where, on May 27, 1631, defendants were ordered to repay in good coinage. The proceedings lasted until 1647.[13)]

And yet another dispute over debt payment in inferior coin, this time

12) München #1414, Bd. IV, 9.
13) RKG München 1962, Bd. VI 115f.

involving two noblemen, *Wilhelm von Buttlar zu Gunzenhausen v. Bishop Johann Christoph von Eichstätt* : At the end of Aug. 1613, Veit Erasmus von Eyb zu Eybburg and Cronheim gave the defendant's father Jobst von Buttlar, Margrave of Brandenburg and Amtmann of Gunzenhausen, a note of a debt of 10,000 guilders owed by his father Friedrich von Eyb. In order to secure the debt, von Eyb had mortgaged his manor Eybburg. After the loan was cancelled in mid-September 1621, von Eyb sold the manor to Bishop Johann Christoph von Eichstätt as his liege lord, who, in turn, allegedly paid the debt, using depreciated coin. Plaintiff claimed to have recovered only about one-tenth of the principal and demanded a *mandatum poenale*, an injunction for criminal behavior. Defendant stated that he had not intended to make a payment but wanted to assist his vassal in the procedure. Incidentally, plaintiff had acknowledged the payment and returned the note. From 1626 the dispute dragged on, keeping busy no less than 14 procurators during an ample time of 126 (!) years. After the mandate was first granted, the Reichskammergericht revoked it by judgment of 5 December 1746, thus ending this astonishing affair.[14)]

With these short examples I would like to conclude my presentation. I hope to have been able to show some of the intricacies and fallacies, but also the opportunities of working with early modern source material such as the Reichskammergericht files. I am very much looking forward to a stimulating discussion.

14) München 1832, Bd. IV 510.