Comparative Studies in the History of Insurance Law

Studien zur vergleichenden Geschichte des Versicherungsrechts

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Essays on a Comparative History of Fire Insurance

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 results 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 September 2019. Once again, I would like to thank Michael Friedman for his critical comments on an earlier draft of this volume and for correcting the English.

Augsburg, March 2021

Phillip Hellwege

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Chapter 1: Introduction

By Phillip Hellwege

The aim of the present volume is to reassess – from comparative perspectives – the history of fire insurance and fire insurance law in selected European countries. Its point of departure is the observation that the state of research on the history of fire insurance and fire insurance law is, for a number of reasons, unsatisfactory. First, the history of fire insurance and fire insurance law presents itself differently in the various European historiographies. German authors usually assert that modern fire insurance is rooted in the mutual help offered by medieval and early modern fire guilds, and German literature further claims that state-run fire insurance schemes as first established in the second half of the seventeenth century were of particular importance for the development of modern fire insurance. By contrast, English literature often treats fire insurance as being the offspring of marine insurance. English scholars further argue that modern fire insurance law, too, has developed from marine insurance law. Research in other European countries often follows English literature in treating fire insurance as being firmly rooted in marine insurance. The problem with this state of research is that it is rarely based on an in-depth analysis. For quite some time, German research has had a clear focus on fire guilds and state-run fire insurance schemes, neglecting the history of commercial fire insurance,² and in many other European historiographies, the history of fire insurance and fire insurance law is simply treated as an annex to the history of marine insurance and rarely receives separate treatment.³

Secondly, modern research often claims that English fire insurance practice was of special importance for the development of fire insurance practice and law on the Continent.⁴ Since the late eighteenth century, English fire insurers were active on Continental European insurance markets. It is asserted that they used the policy conditions which they had developed for their domestic market and that these conditions in turn coined the nineteenth-century insurance practice of the newly founded Continental European fire insurers. It is further alleged that, in a second step, insurance practice heavily influenced insurance legislation. When Continental European legislatures first codified terrestrial insurance law, they simply resorted to

¹ On what follows, see in detail *Phillip Hellwege*, Introduction, in: idem (ed.), A Comparative History of Insurance Law in Europe. A Research Agenda (2018), 9–26, 11–15.

² See *Bogner*, p. 30, below.

³ See, e. g., Sirks, pp. 13 f., below.

⁴ See Hellwege (n. 1), 18 f.

the established national insurance practices. Thus, it seems that English fire insurance practice had an indirect influence on Continental fire insurance legislation.⁵ However, this state of research is again problematic as it is not based on any detailed analysis. Against this background, it seemed worthwhile to revisit the history of fire insurance and fire insurance law from comparative perspectives.

The present volume is part of a research project on a comparative history of insurance law in Europe. One ingredient in the project has been the organization of a number of conferences, each resulting in a conference volume:⁶ the first volume fully mapped out the project's point of departure and its research agenda, the second volume focused on a specific product which existed across Europe and which is said to have influenced the history of life insurance and life insurance law (tontines), the third volume was on a specific institution which again existed across Europe and which is again claimed to have had an important impact on the history of life insurance (guilds), the fourth volume considered a specific context (risk management in the maritime context), the fifth volume looked at a specific group of beneficiaries in life insurance (widows), and the present volume addresses a specific risk (fire). Thus, three of these conference volumes have analysed aspects of the history of life insurance and life insurance law, two of them being supplemented by a monographic in-depth analysis of the developments in Germany, but only one volume is dedicated to the history of fire insurance and fire insurance law. However, there is a second ingredient in the project. Altogether twelve PhD-theses on different aspects of the history of insurance and insurance law have resulted from the project, and six of these have a strong focus on fire insurance,8 with the other

⁵ Peter Koch, Geschichte der Versicherungswirtschaft in Deutschland (2012), 49.

⁶ Phillip Hellwege (ed.), Research Agenda (n. 1); idem (ed.), The Past, Present, and Future of Tontines. A Seventeenth Century Financial Product and the Development of Life Insurance (2018); idem (ed.), Professional Guilds and the History of Insurance. A Comparative Analysis (2020); Phillip Hellwege and Guido Rossi (eds.), Maritime Risk Management. Essays on the History of Marine Insurance, General Average and Sea Loan (2021); Phillip Hellwege, Widows and the History of Insurance. A Comparative Analysis (2021).

⁷ *Phillip Hellwege*, A History of Tontines in Germany. From a multi-purpose financial product to a single-purpose pension product (2020); *idem*, From Guild Welfare to Bismarck Care. Professional guilds and the origins of modern social security law and insurance law in Germany (2020).

⁸ Sinem Ogis, The Influence of Marine Insurance Law on the Legal Development of Life and Fire Insurance in England. Offspring or Gradual Convergence? (2019); Florian Siegwart, Englische und französische Feuerversicherungsbedingungen vor 1900. Gemeinsamkeiten – Einflussnahmen – Unterschiede (2021); Antonio Di Mieri, Die Feuerversicherung im italienischen Codice di commercio von 1882. Seeversicherungsrechtliche Tradition, Feuerversicherungspraxis und die Rezeption ausländischen Rechts (2021); Delphine Sirks, Fire and life insurance in the Dutch Republic. Development and legal aspects (2021); Matthias Bogner, Das Versicherungsvertragsrecht – ein Spiegel der vorgesetzlichen Praxis? Das Binnenversicherungsvertragsgesetz (1908) (2021); Ervis Caja, Der Einfluß der englischen Feuerversicherungspraxis auf die Entwicklung deutscher Feuerversicherungsbedingungen (working title).

six theses either reassessing the history of life insurance and life insurance law or focusing on the interplay between insurance practice and insurance legislation or analysing the history of insurance supervision. Overall, the project has had a strong focus on the history of life and fire insurance law. The reason is simple: hitherto, many European historiographies simply had a strong focus on marine insurance law, leaving the history of life and fire insurance law under-researched.

In comparative law and comparative legal history, it seems to have become state of the art that a volume editor develops a list of questions which the different authors should discuss. The great advantage of such an approach is that all contributions address similar points, allowing an in-depth comparison. Nevertheless, I have refrained from following such an approach for the present and the past volumes. There is always the danger, that such a questionnaire will reflect the editor's Vorverständnis (literally: pre-understanding) of the topic, that he or she asks his or her questions in a way that is unsuitable for some countries, and that the editor developing such a questionnaire has blind spots and thus misses important points. A questionnaire used in the process of producing an edited volume only makes sense if the list of questions is constantly revised and if all authors to the volume have a word to say on which questions should be addressed in each contribution. More importantly, such an approach has as a prerequisite that there is a high degree of comparability. However, it is the very aim of the present volume to see whether and to what extent the national developments are in fact comparable to each other, and the present volume also wishes to uncover the extent to which the national developments differ from each other. Consequently, a questionnaire seems to be the wrong tool. Furthermore, it quickly became clear that in some European countries, fire insurance and fire insurance law began to develop much earlier than in others. It follows that the different contributions to this volume cover very different time frames. This again makes it close to impossible to develop a questionnaire that works for all contributions alike. Finally, as editor, I want to be surprised by contributions addressing points which I had not thought of before, points that further my own understanding of the topic. Developing a questionnaire and then implementing it with rigour has the danger of eliminating this stimulating moment of revelation. In this volume I have thus used the same approach as in the past volumes. I have asked the authors to produce contributions that reflect the state of

⁹ Michael Bachmann, Die französischen Lebensversicherungsbedingungen zwischen 1788 und 1880. Englischer Einfluss und autonome Entwicklung (2019); Katharina Doll, Die Lebensversicherung in Italien von den Anfängen bis 1800. Entwicklungen, Erklärungsansätze und Alternativen (2021); Thomas Heuermann, Einflüsse der englischen Lebensversicherungspraxis auf die Entwicklung deutscher Lebensversicherungsbedingungen (working title); Silvia Karmann, Die Ordonnance de la marine und die französische Versicherungspraxis. Die Entwicklung des Versicherungsvertragsrechts in Frankreich vom Guidon de la mer bis zum Code de commerce (2021); Veronika Leitenbacher, Die Entwicklung der Versicherungsaufsicht in Frankreich. Vom Ancien Régime bis zum ersten Versicherungsaufsichtsgesetz 1938 (2020); Laura Zampano, Die Ursprünge der Versicherungsaufsicht in Deutschland und Italien aus historisch-vergleichender Perspektive (2021).