

**Comparative Studies
in the History of Insurance Law**

**Studien zur vergleichenden Geschichte
des Versicherungsrechts**

Volume / Band 8

From Guild Welfare to Bismarck Care

**Professional guilds and the origins of modern social
security law and insurance law in Germany**

by

Phillip Hellwege



Duncker & Humblot · Berlin

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Edited by/ Herausgegeben von
Prof. Dr. Phillip Hellwege

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Preface

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Augsburg, July 2020

Phillip Hellwege

Summary of contents

A. Introduction	15
I. Professional guilds and the origins of modern insurance and social security?..	15
II. The state of research	16
III. Defining the research object.....	29
IV. Overview.....	34
V. Eight final preliminary remarks	38
B. Guild support from the Middle Ages to the 17th century: loans and capacity building	43
I. Supporting master craftsmen and their families	45
II. Supporting journeymen and apprentices	109
III. Supporting miners and their families	142
IV. Supporting seafarers and their families	170
V. Conclusion	178
C. Guild support and insurance in the 17th and 18th centuries: a first phase of transformation	181
I. Supporting craftsmen and their families.....	181
II. Supporting miners and their families	216
III. Supporting seafarers and their families	228
IV. Contextualizing the process of transformation.....	230
V. Conclusion	273
D. The evolution of Germany's modern social security schemes in the 19th century	277
I. 19 th -century developments until Bismarck's legislation	277
II. Bismarck's social security legislation	306
III. Guild welfare and modern life insurance?.....	314
E. Conclusion	317

Contents

A. Introduction	15
I. Professional guilds and the origins of modern insurance and social security?..	15
II. The state of research	16
1. Modern research on the history of professional guilds.....	16
2. Modern research on the history of insurance and insurance law	20
3. Modern research on the history of social security	23
4. Sigrid Fröhlich’s monograph on the social protection offered by master craftsmen’s guilds and journeymen’s associations.....	26
III. Defining the research object.....	29
IV. Overview.....	34
V. Eight final preliminary remarks	38
1. Different legal contexts.....	38
2. Craftsmen, miners, seafarers, and other professions	38
3. No clear-cut periodization.....	39
4. Incomplete primary sources	40
5. Problems of translation	40
6. Germany and beyond	41
7. The concept of insurance	42
8. A comparative history of insurance law in Europe	42
B. Guild support from the Middle Ages to the 17th century: loans and capacity building	43
I. Supporting master craftsmen and their families	45
1. Forms of support	45
a) Financial support.....	47
aa) Granting repayable loans	47
bb) Non-repayable financial forms of support	50
cc) Conclusion.....	56
b) Non-financial support	56
aa) Caring for sick and old guild members.....	56
bb) Supporting sick guild members in continuing their businesses.....	58
cc) Supporting widows and orphans.....	61
dd) Non-financial support in funerals	71
c) Precautionary measures against risks	72
d) Creating an economic balance.....	73
2. Beneficiaries of support	74
3. Covered risks	76
4. Joining a guild.....	77

a)	Admission requirements.....	77
b)	Preferential treatment of master craftsmen's sons and of journeymen marrying master craftsmen's widows and daughters.....	81
5.	Guild finances.....	83
a)	The expenses side.....	84
b)	The income side.....	85
c)	The local authority's right to a portion of the generated income.....	90
d)	No separate funds for financing each function.....	92
6.	Legal enforceability.....	94
7.	Conclusion.....	96
a)	Guild support, as it had developed from the Middle Ages to the 17 th century, cannot be categorized as insurance, pre-insurance, or social security!.....	96
b)	The legal rules on guild support, as they had developed from the Middle Ages to the 17 th century, are of no importance for modern insurance law and modern social security law!.....	99
c)	A need for further research?.....	101
aa)	Guild statutes being silent on self-evident customs?.....	101
bb)	Guild office holders did not need authorization in guild statutes to grant loans.....	104
cc)	Guild statutes restricting the freedom of members and burdening them with obligations.....	105
dd)	Guild statutes reflecting anecdotal experience.....	106
ee)	A principle of solidarity?.....	106
ff)	Were guild statutes misleading?.....	107
gg)	A need for further research?.....	108
II.	Supporting journeymen and apprentices.....	109
1.	Support by master craftsmen.....	110
2.	Support by master craftsmen's guilds.....	113
a)	Financial support primarily in the form of a loan.....	115
b)	Non-financial support.....	121
c)	Joining a guild.....	121
d)	Financing support.....	122
e)	Legal enforceability.....	124
f)	Conclusion.....	124
3.	Support by journeymen's associations.....	125
a)	Financial support primarily in the form of a loan.....	128
b)	Non-financial support.....	133
c)	Beneficiaries of support.....	135
d)	The finances of journeymen's associations.....	136
e)	Legal enforceability.....	140
4.	Conclusion.....	141
III.	Supporting miners and their families.....	142
1.	Forms of support offered by operators of mines.....	149
2.	Forms of support offered by miners' guilds.....	155

a) Granting repayable loans.....	158
b) Non-repayable financial forms of support.....	160
c) Non-financial support	162
3. Guild finances	164
4. Legal enforceability	167
5. Conclusion	168
IV. Supporting seafarers and their families	170
1. Support offered by skippers to sailors.....	170
2. Support offered by confraternities and guilds	172
3. Supporting seafarers' widows and orphans.....	177
V. Conclusion	178
C. Guild support and insurance in the 17th and 18th centuries: a first phase of transformation	181
I. Supporting craftsmen and their families.....	181
1. Confining guild autonomy	183
2. Institutional changes	186
3. Forms of support and insurance	190
a) Traditional forms of support	190
b) Forms of insurance.....	197
c) Shortcomings of traditional support schemes.....	211
4. Admission requirements.....	211
a) Joining master craftsmen's guilds	211
b) Joining voluntary death and sick boxes.....	214
5. Guild finances	214
6. Legal enforceability	216
II. Supporting miners and their families	216
1. Forms of support and legal enforceability.....	217
2. Guild autonomy and admission requirements	223
3. Guild finances	224
4. Improvements in the support offered by miners' guilds.....	225
III. Supporting seafarers and their families	228
IV. Contextualizing the process of transformation.....	230
1. The developments in the crafts and in the mining sector	231
2. The emergence of 'insurance thinking'	232
3. Marine insurance.....	232
4. Fire insurance.....	233
5. Factory health insurance schemes	236
6. Widows' and orphans' assurances	238
a) Pastors' widows' and orphans' assurances based on public and semi-public initiatives	244
aa) The 1559 pastors' widows' and orphans' box in Meißen	245
bb) The 1636 pastors' widows' box in Brunswick-Lüneburg.....	248
cc) The 1716 preachers' widows' and orphans' fund in Brandenburg	249

dd) The 1719 pastors' widows' assurance in Baden-Durlach	250
b) Pastors' widows' and orphans' assurances based on private initiatives	250
c) Widows' and orphans' assurances for other professions	253
aa) The 1707 widows' and orphans' assurance at the university of Rostock	254
bb) The 1742 civil servants' widows' and orphans' assurance in Brandenburg-Ansbach	256
cc) The 1749 assurance for the benefit of widows and orphans of servants in the royal stables in Saxony	258
dd) The 1768 civil servants' widows' and orphans' assurance in Brandenburg-Ansbach	261
d) Private widows' and orphans' assurances outside professional contexts	263
e) State-run widows' and orphans' assurances outside any professional context	265
f) Conclusion	266
7. Pension and invalidity funds	266
8. Ransom insurance	268
9. The emergence of public savings banks	271
V. Conclusion	273
D. The evolution of Germany's modern social security schemes in the 19th century	277
I. 19 th -century developments until Bismarck's legislation	277
1. The crafts	279
a) The legislative framework	280
b) Guild statutes	286
2. The mining sector	289
a) The legislative framework	291
b) Guild statutes	296
3. Seafarers	297
4. Factory workers	299
a) Statutes of factory health insurance schemes	300
b) The legislative framework	302
5. Poor relief and municipal health insurance funds	304
6. Conclusion	305
II. Bismarck's social security legislation	306
1. The 1883 Act Concerning the Health Insurance of Workers	306
a) Gemeindekrankenversicherungen	307
b) Ortskrankenkassen	308
c) Common Provisions for Gemeindekrankenversicherungen and Ortskrankenkassen	310
d) Betriebs- and Fabrikkrankenkassen	310

e) Innungsgkrankenkassen and Knappschaftskassen.....	311
f) Conclusion	311
2. The 1884 Work Accident Insurance Act and the 1889 Workers' Invalidity and Pension Insurance Act	314
III. Guild welfare and modern life insurance?.....	314
E. Conclusion	317
Archival and printed sources	319
Bibliography.....	322

A. Introduction

I. Professional guilds and the origins of modern insurance and social security?

The importance of professional guilds for the development of insurance and insurance law is stressed by many German scholars in the field of insurance history.¹ This asserted importance links to the narrative of the three roots of modern insurance and insurance law.² German literature claims that commercial insurance has its origins in maritime insurance whereas life and fire insurance are rooted in medieval guild welfare and early modern state-run insurance schemes.³ The resulting three different lines of development are said to have merged only in the early 19th century when the first commercial premium life and fire insurance companies were established in Germany. It is usually implied that the evolution of insurance law followed these developments of insurance as an institution. Thus, modern German insurance history literature claims that there is a continuous development from medieval professional guilds to modern (life and fire) insurance (law).

However, there is also a second narrative. The importance of professional guilds is stressed not only by German specialists in insurance history. There is a general awareness of the lasting impact which such guilds allegedly had on Germany's modern social security schemes. The first miners' guild, a *Knappschaft*,⁴ is said to have been established in 1260 at the Rammelsberg, a mountain outside the city of Goslar in the Harz Mountains.⁵ On the occasion of its 750th anniversary, a memorial stone was unveiled in Goslar. It exhibits the inscription: '750 Jahre Knappschaft – Rammelsberg – Wiege der Sozialversicherung' ('750 years Knappschaft – Rammelsberg – The cradle of social security'). This narrative suggests a continuous development from medieval miners' guilds to Germany's modern social security schemes.⁶

¹ See pp. 20 ff., below.

² On this narrative, see *Hellwege*, Germany, in: *Research Agenda* (2018), 172–180.

³ See, e.g., *P. Koch*, *Versicherungswesen*, in: *Erlar et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 5 (1998), 815 f.

⁴ On the term *Knappschaft*, see pp. 31 and 143 ff., below.

⁵ On the first miners' guilds, see pp. 142 ff., below.

⁶ See pp. 23 ff., below.

II. The state of research

There is an immediate problem with both narratives: the impact of professional guilds on the history of insurance and the history of insurance law as well as their importance as a root of today's social security is commonly asserted but it has never been analytically established.

1. Modern research on the history of professional guilds

Of course, there is abundant modern research on the history of professional guilds in Germany. For the purpose of this introduction, I will restrict myself to summarizing modern research on craft guilds.⁷ This research has focused on the different aspects of these guilds and the many functions which they served.⁸

⁷ The research object of the present contribution will be defined on pp. 29 ff., below. Professional guilds other than craft (and merchants') guilds will be discussed on pp. 142 ff. and 170 ff., below.

⁸ On what follows, see, e.g., *Kluge*, Zünfte (2009), passim; *von Heusinger*, Zunft im Mittelalter (2009), passim; *idem*, Geselle, in: Cordes et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte, vol. 2 (2nd edn., 2012), 282–286; *Oexle*, (1982) 118 Blätter für deutsche Landesgeschichte 1–44; *idem*, Conjuratio und Gilde (1985), 151–214; *H.K. Schulze*, Kaufmannsgilde und Stadtentstehung (1985), 377–412; *Brand*, Zunft, in: Erler et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte, vol. 5 (1998), 1792–1803; *Schulz*, Zunft, in: Lexikon des Mittelalters, vol. 9 (1998), 686–690; *Fouquet*, Gilde, in: Cordes et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte, vol. 2 (2nd edn., 2012), 383–386; *Stradal*, Gilde, in: Erler et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte, vol. 1 (1971), 1687–1692; *Baum*, Handwerk, in: Lexikon des Mittelalters, vol. 4 (1989), 1910–1914; *S. Fröhlich*, Soziale Sicherung (1976), 17–21, 25–29; *von Loesch*, Kölner Zunfturkunden, vol. 1 (1907), Einleitung, 14–24, 29 f., 47–114, 119, 140; *Gramich*, Verfassung und Verwaltung der Stadt Würzburg (1882), 48, 55; *Günther*, Zunftwesen der Stadt Bad Salzuflen (1930), 2 f., 8, 21–24, 32 f., 45–52; *Krumholtz*, Einleitung, in: Gewerbe der Stadt Münster (1898), 4–8, 14–41, 57–77, 133–140, 172–191; *M. Meyer*, Handwerkerpolitik, vol. 1 (1884), 17 f., 28–31; *Wilda*, Gildewesen im Mittelalter (1831), passim; *von Hegel*, Städte und Gilden, vol. 2 (1891), passim; *Eulenburg*, Innungen der Stadt Breslau (1892), 5, 22–35; *Hemmen*, (1910) 18 Jahrbuch für die Geschichte des Herzogtums Oldenburg 195–262; *Bodemann*, Zunfturkunden der Stadt Lüneburg (1883), vii–lxxix; *Engemann*, Gilden der Stadt Goslar (1957), passim; *Fromm*, (1899) Archiv für Frankfurts Geschichte und Kunst 1–103; *Nigge*, Gilden der Stadt Lünen (1912), 13–75; *Horsch*, Konstanzer Zünfte (1979), 20–62; *Geering*, Handel und Industrie der Stadt Basel (1886), 43–136; *Stieda/Mettig*, Gilden der Stadt Riga (1896), 6–222; *Böhmert*, Geschichte des Zunftwesens (1862), 1–30; *Bergholz*, Beckenwerkgilde zu Braunschweig (1954), passim; *Göttmann*, Handwerk und Bündnispolitik (1977), passim; *Hof*, Wettbewerb im Zunftrecht (1983), passim; *Wege*, Zünfte als Träger wirtschaftlicher Kollektivmaßnahmen (1930), passim; *R. Ennen*, Zünfte und Wettbewerb (1971), passim; *Keutgen*, Ämter und Zünfte (1903), passim; *Lentze*, Kaiser und Zunftverfassung (1933), passim; *idem*, Handwerk, in: Erler et al. (eds.), Handwörterbuch zur deutschen Rechtsgeschichte, vol. 1 (1971), 1977–1984; *Luther*, Zunftdemokratie? (1968), passim; *Schulz-Nieswandt*, Gilden als 'totales soziales Phänomen' (2000), 13; *Ehmer*, Zünfte in Österreich (2002), 87–126; *Müller*, Frage des Ursprungs (1910), passim; *Eberstadt*, Ursprung

(1) their origins and genesis; (2) their differentiation in connection with the differentiation of professions; (3) their internal constitutions; (4) their social composition, including the background of their members and the distribution of wealth; (5) their political role and their constitutional functions in medieval towns as well as the resulting conflicts; (6) their rise and fall analysed from both political and socio-economic perspectives; (7) the extent of their autonomy; (8) the extent of their jurisdiction; (9) the conflicts between the different types of professional guilds within medieval towns, especially between merchants' guilds and master craftsmen's guilds and between master craftsmen's guilds and journeymen's associations; and (10) their market-regulating functions. The market-regulating functions of professional guilds again involved numerous aspects: regulating the products, their prices, and their quality; regulating the purchase of raw materials and the marketing of end products; regulating the admission requirements for guilds and for the professions; regulating the working conditions of apprentices⁹ and journeymen, including their salaries; and regulating the size of businesses. With respect to the last aspect, the 1648 statutes of the bookbinders' guild in the city of Münster, for example, stated:¹⁰

'Es wird einem jeden meister erlaubt, 2 gesellen beneben 1 lehrjungen zu halten und nicht darüber.'

'Every master craftsmen is allowed to have two journeymen alongside one apprentice, and not more.'

According to the 1678 statutes of the whittawers' guild in the city of Wittstock as well as in the regions of Prignitz and Ruppín, no whittawer was allowed to have two workspaces in his workshop:¹¹

'Keiner der Weissgerber soll weder in seinem noch in eines andern gemietheten Hause eine gedoppelte Werckstelle halten, bey Sechs Thaler Straffe [...].'

'No whittawer shall, neither in his own nor in a rented house, have a double workspace, at a fine of six talers [...].'

des Zunftwesens (2nd edn., 1915), passim; *Uhl*, *Handwerk und Zünfte in Eferding* (1973), passim; *Weider*, *Recht der Kaufmannsgilden* (1931), passim; *Bucher*, *Zunft- und Verkehrs-Ordnungen der Stadt Krakau* (1889), xxviii–xxxvi; *Schrader*, *Schleswiger Zünfte* (1913), passim; *Schwarz*, *Lage der Handwerksgelesen in Bremen* (1975), passim; *Mascher*, *Das deutsche Gewerbewesen* (1866), passim. And see the accounts by *Wissell*, *Des alten Handwerks Recht*, 6 vol. (1971–1988), passim and *Gierke*, *Genossenschaftsrecht*, vol. 1 (1868), 344–409. For the special case of Nuremberg, see, e.g., *Schoenlank*, *Sociale Kämpfe* (1907), passim.

⁹ On apprentices, see most recently *Stöger/Reith*, *Actors and Practices of German Apprenticeship* (2020), 138–162.

¹⁰ Cited from *Krumbholtz*, *Gewerbe der Stadt Münster* (1898), 186. In addition, see the source reproduced in *Nyrop*, *Danmarks Gilde- og Lavsskraer*, vol. 2 (1895–1904), 89 (shoemakers' guild, Flensburg, 1437).

¹¹ Cited from *M. Meyer*, *Handwerkerpolitik*, vol. 1 (1884), 314.