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# Structures of Medieval Governance and the Thought-World of Otto Brunner (1898-1982)\*

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When Otto Brunner's *Land und Herrschaft* was published at Vienna in 1939, it inaugurated controversies in the interpretation of medieval government in Europe which have lasted until today. One of the leading legal historians of the time, Heinrich Mitteis,<sup>1</sup> opened the debate in 1941 with a forty-four page review in Germany's most prestigious historical periodical, *Historische Zeitschrift*,<sup>2</sup> an incisive piece of scholarship itself reprinted more than once.<sup>3</sup> Over the years Brunner's book has been through a mixture of six German editions and revisions, and was issued in an Italian translation in 1983. Now it is available in English in a careful translation by Professors Howard Kaminsky and James Van Horn Melton as *Land and Lordship. Structures of governance in medieval Austria*.<sup>4</sup> The preservation of *Land* in the title just cited is not a misprint. Throughout their version the translators have preferred to preserve Brunner's *Land* in the original German as a technical term for the medieval social community existing under the law rather than opting for the geographical and in the social sense neutral English word 'land'. Reasons for this decision will become apparent.

With iconoclastic enthusiasm Otto Brunner asserted that sovereignty in the classical or modern legal and political senses possessed no relevance for the European Middle Ages in spite of the existence of kings and princes, city councils and prelates of the Church, as well as many other individuals and organizations that exercised powers of government. By means of an analysis of the extremely formidable feuds launched as late as the sixteenth century by the nobility of Austria against their rightful dukes (whose theoretical authority was fortified by their titles of king of the Romans and German emperor after 1438), Brunner concluded that the normal political relationship between ruler and nobleman consisted of a simple and personal set of rights and obligations which included, as one of its understood

licenses, the feud. But feud was restricted in its application. In appearance at least, it had to be undertaken for good cause as an acceptable method for justifying claims not otherwise possible to establish by peaceful negotiation.

Any political history of the Middle Ages that ignores the feud bars itself from those insights that alone can describe medieval political action in a meaningful way, and will fail to grasp the inner structure or 'constitution' of a world in which the feud was an essential element. Only by examining the feud can one understand the structural relationship between state and politics, might and right, in the Middle Ages. Feuds, whether between the ruler and the local powers or among these powers themselves, were the vehicle for all political action that involved armed force.<sup>5</sup>

The Austrian feud, with this extraordinarily promoted historical significance, provided Brunner with the substance for the first of his five long chapters, 'Peace and Feud'.

Brunner maintained that our understanding of medieval political structures ought to be emptied, not of rightfully constituted authority as such, but of all modern notions of sovereign power and state superiority; of the levelling status of citizen and subject (in spite of their usage in texts influenced by Roman Law studies); and of notions about a realistic sanction against treason. His extensive theoretical discussion of all this, including a negative assessment of previous scholarship, make up his second chapter, entitled 'State, Law, and Constitution'. The simplification of the political landscape which was a consequence of Brunner's demolition work meant that radically new explanations had to be found for the actual structure of medieval politics and their governance. There had come into existence the law, the ruler who protected it, and the community over which the ruler presided, existing within a geographical space of fluctuating boundaries, and together they constituted the *Land* of Brunner's title. So this *Land* was a legal idea not merely analogous with an area or a named region or a political territory, but nearer to 'district' in one of its original senses as a juridical dimension<sup>6</sup> in which, in the medieval milieu, all rights, authority, and law added up to a shared endeavour partly to do with administering the law courts, partly to do with the defence of the land, and partly allowing for self-defence within the

land. Such definitions are explained in Brunner's third chapter, 'The *Land* and its Law'. Succinctly he commented that

... the *Land* was in fact a community of peace and Right united by a particular body of law. This community, the people of the *Land*, was also its political embodiment, which might or might not have had a territorial prince but did require a military leader and one who could preside at its judicial assemblies ... The law of the *Land* was the law of a landholding people, of a rural community (in the broadest sense) of these settled on the land.<sup>7</sup>

Otto Brunner's research was concerned chiefly with the *Land*, nobility, and rulers of Austria. A march separated from the duchy of Bavaria in 976, the duchy of Austria was established by imperial charter in 1156, and subsequently other lands were acquired by Austria's rulers as separate principalities with a *Land* structure of their own;<sup>8</sup> Styria in 1192, Carinthia and Carniola in 1335, and Tyrol in 1363. Brunner created an evocative and convincing account of the institutions in these *Länder*, to back up his theory of the *Land* as a political-legal community in action. We hear about the exercise of ducal lordship, the evolution of representative estates, rights of taxation, court meetings and the execution of the law, urban rights and obligations, the use of the ducal fisc, means of defence, and the application of *Landfrieden* (here, local peace-keeping associations). Brunner's purpose therefore was not solely to replace a state-bound and anachronistic concept of rulership with a fresh definition nearer to medieval reality, but to describe and to explain the actual exercise of lordship in the *Land* with an account of the relevant orders and institutions of society at work. For Brunner the hallmark of this distinctively medieval version of a nobility-dominated society remained the justifiable inclusion of the feud into political life as an important and custom-bound means of redress.

The feud was as integral to medieval political life as war is to the modern state and international law. Indeed, the feud was an essential element of medieval constitutional structure. To have actually eliminated the feud, as opposed merely to issuing ineffective prohibitions against it, would have transformed the very structure of the medieval polity. That is not to say

that the feud, however inescapable as a fact, was not seen by contemporaries as the consequence of sin ... It considered the feud an evil, but one as unavoidable as crop failures and famine.<sup>9</sup>

In Brunner's conception of the *Land* not merely as a geographical or political region put together by some German noble dynasty or prince-bishop, but as a human communal structure (however severe its fracture-lines of violence) embracing the law and the people with their socio-economic needs and activities, he recognized that in normal circumstances such a community in medieval Germany did require direction by a territorial prince.<sup>10</sup> But for Brunner the point was that such structures preceded, in the sense of Germany's social history, the actual political history of the rise of princely dynastic authority from the eleventh century onwards. A *Land* was 'an order having its own characteristic economic and political structure, and however different its various historical manifestations, its common trait was its character as a political association of those cultivating and ruling the land .... It belonged to a world that was overwhelmingly agrarian, even after the rise of towns.'<sup>11</sup> It struck Brunner that this species of social arrangement long preceded the rise of noble dynasties and their exercise of ruling power, and must have been implied in the society which followed the collapse of the Roman imperial order in the West.

*Civitas*, tribe, and *Land* were associations of arms-bearing men, peasant or noble, able to fight for their rights. For every pursuit of rights, whether in a feud or in court, was a fight. The lawbreaker who committed a felony became an 'enemy' of the individual or community whose rights he injured. Once an individual transgressed the fundamental laws of the community, he was deprived of peace and the protection it guaranteed. He was now peaceless, an outlaw and an enemy.<sup>12</sup>

It was useful for Brunner's case to claim antique pedigree for his concept of the late medieval *Land* since it functionally connected his analyses of *Land* communities with the general evolution of German society, law, and politics into which the history of territorial lords had to be fitted: '... the *Land* as a unitary entity could not exist without a judicial community, the people of the land, living by its law. It

was they, not the lord, who were the "core" and embodiment of the *Land*.<sup>13</sup>

In reverting to the subject of the prince and his authority as phenomena incorporated into the *Land* structures, Brunner devoted the last two of his five chapters to analysing the nature of lordship as exercised by princes in particular and by the nobility of the *Länder* in general. He defined lordship as protective authority, '... the right of protection - the heart of all lordship',<sup>14</sup> hedged by duties and derived ultimately from the Germanic tribal usage of the 'house' or noble residence as the basis of protective lordship, hence the title of his fourth chapter, 'House, Household, and Lordship'. Discarding any descent from the Roman legal application of *dominium*, for Brunner the house was the nucleus of all lordship; '... the lordship's organizational and legal center was the lord's house, and not even the most firmly consolidated lordship was thought of in terms of a whole circumscribed area.'<sup>15</sup> The 'house' was updated in the era of larger residential stone castles setting in by the end of the eleventh century in the sense that they now provided toponyms for the dynasties involved, as well as emerging as the functional centrepieces of princely jurisdiction.<sup>16</sup>

Well aware of the consequences of larger castles for the waxing power of the nobility, Brunner was able to dovetail all this with other phenomena which improved aristocratic authority after 1100. For example, in the long exposition which makes up his fifth chapter, 'Lordship over the *Land*; The *Land*-Community', he correctly associates lordship in the principalities with the *Landfrieden*, regional peace-keeping associations, being proclaimed by the imperial court. The sanctions of the *Landfrieden* were explicitly being delegated to the princes, that is, the only servants of the crown who could possibly make them effective in the violent circumstances of twelfth- and thirteenth-century German politics.<sup>17</sup>

The prince's general protective power extended over 'land and people' as a whole. Here his function was to safeguard peace and Right, the peace of the *Land*, thereby preserving the common good or *salus publica*. Although this had traditionally been the duty of every ruler, it took on greater importance with the territorial peace movement of the central Middle Ages, and we already find the laws of territorial peace embodied in the Austrian territorial law of the thirteenth century.<sup>18</sup>

Even in translation, Brunner's text is very demanding, and yet in abandoning what he took to be the 'prevailing conceptual apparatus of the nineteenth century,'<sup>19</sup> in constructing a working model of the *Land* as a juridically integrated community, and in uncovering new perspectives on the nature of lordship itself from thoughtful examinations of Germanic and medieval institutions at work, it is not difficult to realise the liberating effect which Brunner's work was bound to make upon the students of Germany's medieval and early modern principalities. This was reinforced by his insistence upon a reformed conceptual vocabulary uncluttered by Roman Law overtones and in accordance with what the primary sources actually said and meant.

Although scholars such as Heinrich Dannenbauer and Walter Schlesinger came to parallel conclusions about the nature and origins of medieval lordship in Germany,<sup>20</sup> many of the historians of the regions other than the Austro-Bavarian cluster studied by Brunner found that his associative, almost purposive *Land* did not fit at all well with the legal, social, and territorial variety uncovered elsewhere. Austria, in other words, was the exception. Ferdinand Seibt asserted that 'What Brunner had accepted about a *Land* as a legal community of persons possessing the country in the sense of a constitutive, purported unity did not find countenance either in legal history or in regional history beyond Austria,'<sup>21</sup> and for the north German territories he studied, Hans Kurt Schulze found 'the territorial unity of the land to have been not the point of departure but the end result of *Landesherrschaft*, lordship over the land'.<sup>22</sup>

It is possible that such critics misunderstood or rejected Brunner's refusal to be subjected to a developmental chronology of *Landesgeschichte*, regional history, but more serious were the doubts raised by legal historians about Brunner's positive and central conception of 'lordship' as a powerful engine of medieval political evolution. Ironically, just as Brunner deliberately abandoned the liberal and bourgeois tradition of German nineteenth-century constitutional historiography, so he may well have relied too heavily upon another irrelevancy, a nineteenth-century sociological construction favoured by Hegel and Gierke, that is, the concept of lordship itself. Karl Kroeschell, for example, has argued that 'lordship' may have no concrete meaning that can be attached without misleading anachronism and false analogy to medieval manifestations and institutions, and calls for more analysis to ascertain whether lordship 'existed as a homogeneous historical phenomenon or whether this concept simply



has a polemical or ideological function in modern sociological and historical research.<sup>23</sup> One problem is that the equivalent Middle High German word for lordship<sup>24</sup> appears to have changed its meaning only in the thirteenth century from a quality applied to persons, translatable roughly as 'distinction' or 'prominence', to the more concrete domination of things, persons, or territories<sup>25</sup> (perhaps in response to a newly perceived need for German equivalents to the vocabulary of Roman Law, in this case *dominium*). This shift in meaning, if it did take place in the thirteenth century, would prove inconvenient for Brunner's theory which requires a politically more formative version from the eleventh.<sup>26</sup> But recently Johannes Laudage has questioned Kroeschell's scepticism on this issue. He asserts that the reality of an historical phenomenon such as medieval lordship need not rest upon a fully clarified and consistent terminology.<sup>27</sup> The debate will go on.

In their excellent introduction to a demanding text from any translator's viewpoint, Professors Kaminsky and Melton have considered a quite different problem which will disturb the reader of today. Just as he was assembling *Land und Herrschaft*, Otto Brunner thought that National Socialism was providing the answer to the unresolved pan-Germanist views which he took up in his youth. After a long probation he was admitted to the NSDAP in 1943. This may come as a surprise in that so many educated, middle class Austrians of his generation were quick to see through the pretensions of Hitler and Nazism, and realized that they would work against Austria's, and indeed Germany's, real interest. Be that as it may, was *Land und Herrschaft* therefore a fascist history book, evoking an imaginary past where the supposed elitist virtues of *Deutschtum* or 'Germanism' flourished in a medieval environment uncontaminated by bourgeois liberalism and hypocrisy? Although well-known historians of medieval Germany such as Albert Brackmann and Hermann Aubin did serve the Third Reich in its attempt to re-arrange the historical record of Eastern Europe in its own interest,<sup>28</sup> Brunner's own contribution was confined to co-editing a *Festschrift* for Brackmann. In *Land und Herrschaft* his approach to the sources and his method of explanation were sober and professional, and it would be hard to detect that his scholarly exposition of the medieval Austrian lands and their 'Structures of Governance' have really been tainted by false notions about the historical driving forces of *Volk* and *Führung*, 'people' and 'leadership', although legitimate medieval versions of

such concepts do occur. As an ex-Nazi, Brunner lost his chair at Vienna University in 1948.

In spite of the uproar a book of this scope and deliberately polemical approach (Mitteis noticed this in his review) was bound to attract, Brunner's work assisted in coaxing German *Landesgeschichte* or regional investigation, so vital to an understanding of the vast medieval empire and an enterprise still flourishing, out of unrealistic or conformist interpretations. Even if Brunner is somehow 'wrong' about crediting the justified feud as a new key for unlocking a room full of fresh pictures about medieval politics and has overstated the integration of *Land* as community with *Herrschaft* or lordship bound together under the law as a structural whole, then his panorama of medieval law, politics, and society in Austria and its associated lands adds up to convincing *Landesgeschichte*, for which it remains one of the most stimulating of all texts.

To my mind the other great virtue of *Land and Lordship* lies in its forthright attempt to answer one of the most important questions in medieval German history. Recently this was rephrased by Tilman Struve as 'the question of the boundaries between the spheres of influence of kingship and of the aristocratic order of lords - the central problem of medieval German history'<sup>29</sup> Although Brunner does not say very much about the crown's authority as such, his views about what is to be found within the boundary of the aristocracy's 'sphere of influence' will profitably be studied for a long time to come.

## NOTES

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<sup>1</sup> See A. Erler, 'Mitteis, Heinrich' in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. ii, ed. A. Erler and E. Kaufmann, Berlin 1984, cols 614-17 and T. Reuter, 'Mitteis, Heinrich' in *The Blackwell Dictionary of Historians*, ed. J. Cannon et al., Oxford and New York 1988, p.282.

<sup>2</sup> 'Land und Herrschaft. Bemerkungen zu dem gleichnamigen Buch Otto Brunners', *Historische Zeitschrift* 163, 1941, 255-281, 471-489.

- 3 In the Mitteis collection *Die Rechtsidee in der Geschichte*, Weimar 1956, and in the Wissenschaftliche Buchgesellschaft series *Wege der Forschung*, vol. ii, entitled *Herrschaft und Staat im deutschen Mittelalter*, ed. H. Kämpf, Darmstadt 1956, 1972.
- 4 University of Pennsylvania Press, Middle Ages Series, Philadelphia 1992: hereafter Brunner, *Land and Lordship*.
- 5 Brunner, *Land and Lordship*, p. 92.
- 6 J.F. Niermeyer, *Mediae latinitatis lexicon minus*, Leiden 1954-64, p.343 under 'districtum' (4) and 'districtus' (3).
- 7 Brunner, *Land and Lordship*, p. 195.
- 8 See H. Appelt, *Privilegium minus. Das staufische Kaisertum und die Babenberger in Österreich*, Böhlau Quellenbücher, Vienna, Cologne, and Graz 1973 and K. Lechner, *Die Babenberger. Markgrafen und Herzoge von Österreich 976-1246*, Veröffentlichungen des Instituts für österreichische Geschichtsforschung, vol. 23, Vienna, Cologne, and Graz 1976, pp.46-217.
- 9 Brunner, *Land and Lordship*, pp.90f.
- 10 On princes and their rule, see now B. Arnold, *Princes and territories in medieval Germany*, Cambridge 1991, pp.77-132, 186-233.
- 11 Brunner, *Land and Lordship*, p.158.
- 12 *Ibid.*, p.27.
- 13 *Ibid.*, p.194.
- 14 *Ibid.*, p.211.
- 15 *Ibid.*, p.211.
- 16 See G. Streich, *Burg und Kirche während des deutschen Mittelalters. Untersuchungen zur Sakraltopographie von Pfälzen, Burgen und Herrensitze*, Vorträge und Forschungen, vol. 29 (Sonderbände), Sigmaringen 1984, pp.461-65 on this process.
- 17 See e.g. H. Appelt, R.M. Herkenrath, and W. Koch, eds, *Die Urkunden Friedrichs I. 1168-1180*, Monumenta Germaniae Historica, Die Urkunden der deutschen Könige und Kaiser, vol. 10, part 3, Hanover 1985, no 774, pp.328-30 (1179).
- 18 Brunner, *Land and Lordship*, pp.299-300.
- 19 *Ibid.*, p.364.
- 20 H. Dannenbauer, 'Adel, Burg und Herrschaft bei den Germanen. Grundlagen der deutschen Verfassungsentwicklung', *Historisches Jahrbuch* 61, 1941, 1-50, subsequently revised for *Herrschaft und Staat*, ed. Kämpf,

1956, pp.66-134 and W. Schlesinger, 'Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte', *Historische Zeitschrift*, 176, 1953, 225-75 and revised for *Herrschaft und Staat*, 1956, pp. 135-90. A large part is translated in F.L. Cheyette, ed., *Lordship and Community in Medieval Europe. Selected Readings*, New York 1968, pp. 64-99.

<sup>21</sup> 'Land und Herrschaft in Böhmen', *Historische Zeitschrift* 200, 1965, 292.

<sup>22</sup> Adels Herrschaft und Landesherrschaft. Studien zur Verfassungs- und Besitzgeschichte der Altmark, des ostsächsischen Raumes und des hannoverschen Wendlandes im hohen Mittelalter, *Mitteldeutsche Forschungen*, vol. 29, Cologne and Graz 1963, p.207.

<sup>23</sup> 'Herrschaft' in *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 2, col. 107.

<sup>24</sup> See 'hêr-schaft' in M. Lexer, *Mittelhochdeutsches Handwörterbuch*, I, Leipzig 1872, cols 1261-62.

<sup>25</sup> See D. Willoweit, 'Herr, Herrschaft' in *Lexikon des Mittelalters* 4, ed. R.-H. Bautier et al., Munich and Zurich 1989, cols 2176-79.

<sup>26</sup> This is also the implication of Stefan Weinfurter's consideration of Salian lordship in the Rhineland in the eleventh century, in 'Herrschaftslegitimation und Königsautorität im Wandel: Die Salier und ihr Dom zu Speyer' in *Die Salier und das Reich I: Salier, Adel und Reichsverfassung*, ed. S. Weinfurter, Sigmaringen 1991, pp.62-67.

<sup>27</sup> 'Hausrecht und Thronfolge. Überlegungen zur Königserhebung Ottos des Grossen und zu den Aufständen Thankmars, Heinrichs und Liudolfs', *Historisches Jahrbuch* 112, 1992, 33-35.

<sup>28</sup> Their role is examined in M. Burleigh, *Germany turns Eastwards. A study of Ostforschung in the Third Reich*, Cambridge 1988, passim.

<sup>29</sup> In 'Die Wende des 11. Jahrhunderts. Symptome eines Epochenwandels im Spiegel der Geschichtsschreibung', *Historisches Jahrbuch* 112, 1992, 344.