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Explorations in Economic History 41 (2004) 282–299

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Explorations in  
Economic History

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# The economics of feuding in late medieval Germany

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Received 14 June 2002

Available online 5 January 2004

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## Abstract

I examine the problem of contracting over time and space in late medieval Germany, where there was nothing like a modern state with a territorial monopoly of force. As a law merchant that could be used to enforce compliance did not exist either, the threat of resorting to a feud helped actors credibly to commit to contracts. The article analyzes which institutions restricted feuding and why these rules were generally respected, examines the calculus which led to the decision to declare a feud, and explains how this helped to realize gains from exchange.

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*Keywords:* Late Middle Ages; Germany; Exchange; Violence; War

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## 1. Introduction

Götz von Berlichingen (1480/81–1562) owes most of his fame to the play Goethe wrote about him, the autobiographical account he himself published late in his life being less well known (edited by Ulmschneider, 1981; see also Berlichingen, 1962/98). In his narrative, von Berlichingen tells how, as a young man, he came to wage his very first own feud. Hans Sindelfinger, a tailor from Ulm in present-day Baden-

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Württemberg and expert marksman, had won a shooting contest held by the city of Cologne. The city fathers, however, refused to pay him his promised 100 guildens prize money. Götz took up Sindelfinger's cause, wrote Cologne a letter in which he declared himself the "open enemy" of the city, engaged some sturdy helpers, and began to harass Cologne's trade. When eventually, after about 2 years of this, count Eberhard von Königsstein mediated a settlement, Cologne was willing to pay the tailor 1000 guildens. Presumably, some of the money ended up in Götz's coffers (Ulmschneider, 1981, pp. 83 ff.; the episode is extensively discussed by Ulmschneider, 1974, pp. 50 ff.).

Though this episode is no more than a footnote in history, it throws some light on a number of interesting points. Thus, consider that economic efficiency depends to a large measure on whether it is possible to realize gains from trade, and that this, in turn, depends to a large degree on how secure property rights are and how costly it is to exchange them over time and place.<sup>1</sup> While in small and closely knit social groups the interest in one's reputation may be sufficient to restrain opportunism and may even allow the emergence of fairly sophisticated forms of interaction (for example, see Bernstein, 1992; Greif, 1989), large and anonymous markets are often assumed to require the services of the state who protects property rights, regulates their transfer by consent, and guarantees compliance with obligations (cf. Eggertsson, 1990, pp. 59 ff.; North, 1981, p. 21; North, 1990, p. 14). However, as the episode described above shows, historically the existence of states—that is, of organizations invested with territorial monopolies over the legitimate means of coercion—cannot be taken for granted. As far as the Middle Ages and much of the early modern period are concerned, there were no monopolies of force in Central Europe (Boldt, 1990, pp. 82 f.).<sup>2</sup>

In spite of that, by the late Middle Ages society had reached a considerable degree of complexity. Economically, many parts of Germany had developed from the backwaters they had been in about the year 1000 to leading regions in Europe (Jenks, 2000, p. 68). While the medieval expansion of trade seems to have slowed down in the 14th century, it continued without much reversal into the modern age. In fact, gains from trade were realized to an extent that made merchants the economically preponderant social group and earned the economy of the 15th to the 18th centuries the name of "mercantile capitalism" (cf., e.g., Braudel, 1979, pp. 235, 359). Among some merchants, exchange networks were stabilized by reputational mechanisms, but this was possible only within relatively small social groups or among individuals who knew each other well. Reputation had, therefore, severe limitations as far as the economy as a whole was concerned. The tailor from Ulm and the members of Cologne's civic council, for example, did not expect to meet again and had consequently few incentives to care about their reputation with each other. Still, not everybody's experiences were as bad as Sindelfinger's. Successful interaction of members of

<sup>1</sup> For a discussion of what this implies for research in economic history see Greif (2000).

<sup>2</sup> This was due to the comparatively bad infrastructure and late development of literacy—factors which accounted for higher costs of setting up and maintaining the organizational structures of states than in Western Europe. Thus, though political authorities on all tiers of the feudal hierarchy organized courts of law, no party gained a territorial monopoly of force (Volckart, 2002).

different social groups may even have been more important for overall prosperity than transactions among merchants, who were, after all, a numerically relatively small group in society. Thus, there seems to have been a paradox: conditions were definitely non-anarchic and exchange thrived in the absence of states able to enforce property rights and the institutions underlying transactions.

As few economic historians have taken notice of the lack of states vested with territorial monopolies of force in late medieval Germany or indeed Europe (for an exception see Epstein, 2000), research has up to now not tried to resolve this paradox. However, a related problem has been examined. Assuming territorial states to have existed, research turned to the question of how merchants coped with differences between national legal systems that supposedly gave rise to uncertainty about which law to apply to what transaction and about how to proceed against partners who broke contracts. The hypothesis is that the lack of an overarching government which enforced a universally valid commercial law was compensated by the creation of an international law merchant, that is, of a body of institutions developed and enforced by the members of the international mercantile community themselves (Benson, 1992, p. 2; Berman, 1983, p. 333; Trakman, 1983, p. 39).<sup>3</sup> In recent years, this “medieval law merchant hypothesis” has come under attack. Volckart and Mangels (1999), for example, show that institutions devised and enforced by merchants themselves were valid only within mercantile organizations like guilds, while Boerner and Ritschl (2002) draw attention to the enduring importance of collective liability and civic courts in the late medieval and early modern era. It seems that at least in Central Europe a universally applicable and enforceable law merchant did not exist. Thus, the above mentioned paradox remains: How could contracts and the institutional underpinnings of transactions between strangers be enforced in the state-less environment of the late medieval and early modern ages?

The present article provides an answer to this question. Its central hypothesis goes back to incidents like the one concerning Sindelfinger’s and von Berlichingen’s feud against Cologne. The episode suggests that even in the early 16th century, the feud—often regarded as ultimate evidence of anarchy (e.g., Schulze, 1992, p. 103)—played an important and hitherto overlooked role in the protection of property rights, albeit at high costs to the individuals involved. In order to show why feuding became as important as it was in the late Middle Ages, the problems besetting transactions between strangers at that time are analyzed first (Section 2). Subsequently (Section 3), it is shown that feuding was restricted by a number of institutions that were widely respected (without being enforced by any court). In Section 4, the mechanisms through which feuds helped to protect property rights are analyzed. Section 5 contains a summary of the hypotheses of the paper.

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<sup>3</sup> Milgrom et al. (1990) present the most elaborate variant of this hypothesis, arguing that at the Champagne fairs of the 13th century there were merchants who specialized in collecting information concerning the honesty and reliability of other traders. As everybody who considered entering into a transaction with a stranger could turn to such a “law merchant” and buy information about his potential partners’ past conduct, reputation became an efficient means of enforcing contracts even in a comparatively anonymous market where merchants from diverse localities met.

## **2. Dispute resolution in late medieval Germany**

Lacking organizations that provided services like the protection of property rights within territorial monopolies, the medieval political system was in principle based on bilateral contracts between actors who were able to supply security and individuals who bought this good from them. In many ways, it resembled a market for protection (Volckart, 2002). Hence the question of which court of law was to settle whose legal disputes was not decided according to territorial, but to personal criteria. In theory, the German king or Holy Roman Emperor had an all-encompassing jurisdictional competence, being acknowledged as the empire's supreme judge. In practice, however, in the late Middle Ages matters were complicated by two circumstances. First, due to the fact that they had little regular monetary income and because of the growing military power of their vassals and of the free cities, the emperors lacked the means to enforce their verdicts, being therefore increasingly less able to exert an effective jurisdiction (Moraw, 1983, pp. 46 f.). Second, the competence to organize law courts and to administer the law became a right which could be bequeathed, sold, mortgaged, and even partitioned according to material or other criteria (Willoweit, 1983, p. 70). As a consequence, daily life was characterized by the frequent interaction of individuals who obtained security services from different authorities. Who had the competence to administer the law to whom was by no means always clear.

Turning to a regular court was not the only way to resolve a dispute. The parties could as well first try to find a solution on their own, either by entrusting negotiations to a mediator (Althoff, 1994, p. 250; Kamp, 2001, pp. 186 ff.) or, if that failed, by setting up an arbitration committee. This, however, required agreeing about the subject under negotiation, about who should sit in the committee, and about how to proceed with the discussions (Orth, 1973, pp. 18 ff.). If such an agreement was reached, the parties usually declared that they would accept the decision the committee would find (Orth, 1973, p. 22). However, if one or both parties decided after all rather not to give in, there was no way the sentence which the arbitrators had pronounced could be enforced.

If all attempts peaceably to come to terms without involving regular authorities failed, the disputing parties could still try to find a law court where they could settle their conflict. In principle, matters were simple enough if they had a common lord. However, not only the emperors, but all feudal lords lacked the means to pay the personnel needed to enforce their sentences, having instead to rely on the cooperation of their vassals (Willoweit, 1983, p. 69). This might be forthcoming, but if it was not, turning to a feudal court was practically pointless. If the parties to the dispute had contracted for security services with different lords, things were even more difficult. Because every party would be interested in being tried by his or her own lord, expecting that the other party's lord would not pass an impartial judgement, it was hard to find common ground. Therefore, agreeing on a judge required the parties in the first place to be accommodating towards each other and to be willing to give in.

Jurisdictional problems were least serious within towns. From the moment they originated, civic councils tried to exclude all other legal competencies from within

their walls and to monopolize law courts (Schultze, 1908, p. 522). True enough, their success was limited (Schild, 1985, pp. 144 f.). The competencies of the courts of law organized by craft guilds might be clearly separated from those of the civic courts, but this was nowhere the case with the ecclesiastical courts (Schwarz, 1985, pp. 63 ff., 69 ff.). Nevertheless, disputes between most inhabitants of one and the same town could be settled according to civic law.

Disputes with non-citizens, however, remained a problem. These so-called guests were generally granted some measure of protection before civic courts (Schultze, 1908, p. 486), but were still discriminated against. Guests were not only in danger of being arrested much more quickly, the assumption being that they would take any chance to renege on contracts and to flee the town (Kisch, 1914, p. 24; Planitz, 1919, p. 89), but were often tried at special commercial courts. The creation of such courts has sometimes been represented as a measure intended to promote trade (e.g., by Goldschmidt, 1891, p. 120)—a hypothesis which suggests itself when the function of modern mercantile courts of arbitration is considered (cf. Berger, 1994; Casella, 1992). Like there, proceedings at medieval commercial courts were generally quicker and simpler than at regular courts. However, whereas modern mercantile arbitration courts are independent of the national jurisdictional systems, medieval commercial courts were usually identical with the civic courts, being just staffed with fewer personnel, meeting more often, and allowing no appeals against their judgements (Ebel, 1966/74, p. 253; Schultze, 1908, p. 525). Though there were exceptions to this rule (as for example at the Lyons fairs in 16th-century France), most commercial courts were not created in order to promote trade but rather to allow citizens to retrieve credits they had advanced to guests before the foreigners had the opportunity to leave the town (Thieme, 1958, p. 215).

Thus, in Germany conditions were definitely less idyllic than the “law merchant hypothesis” mentioned above implies. Far from being regulated by an international and benign system of institutions, commercial transactions were subject to diverse town laws which constituted a compromise between the domestic merchants’ dependence on external trade on the one hand, and their rent seeking interests on the other (Ebel, 1966/74, p. 252). Altogether, non-citizens stood little chances in legal disputes with citizens, being constantly threatened with imprisonment and expropriation, and had every reason to be wary of civic jurisdiction. Hence, legal disputes between burghers and foreigners could not easily be settled.

Even when towns managed to establish a jurisdictional monopoly within their walls, it was frequently difficult to bring non-citizens to court. The common answer to this problem was collective liability, that is, holding all fellow citizens of the defendant responsible and confiscating their merchandise (Kisch, 1914, p. 32). While in the initial stages of the Commercial Revolution, collective liability may have provided incentives for civic authorities to dispense impartial judgements (Greif, 2002), by the 13th century it had proved to be so detrimental to trade that many towns concluded treaties among each other which exempted their merchants from this measure (Kisch, 1914, pp. 33 f.; Planitz, 1919, p. 171). In spite of this, collective reprisals were regarded as legitimate and were frequently practiced as late as the 15th century (Planitz, 1919, pp. 176 ff.). Obviously, they did not only disrupt trade and lead to lengthy

quarrels between towns, but also to a whole welter of disputes with merchants who felt themselves unjustly treated or found it difficult to retrieve their property.

Under conditions like these feuds played an important role in the protection of property rights. Feuding was by no means a first-best solution, but under the conditions given at that time, it may have been the second best. A primary aim of the individuals who resorted to this course of action was the enforcement of contractual claims, non-payment of monetary debts being, in fact, one of the most common causes feuds (Fehn-Claus, 1999, p. 115).

It is often claimed that feuds became more frequent in the course of the late Middle Ages (cf. Press, 1980, p. 37). Though the impression that this was the case may be due to the increasing number of sources—owing to the fact that in the course of the 14th century cheap paper began to replace expensive vellum—, there can be no doubt that feuds were endemic in late 14th- and 15th-century Germany. Frankfurt on the Main for example, where yearly fairs of international importance took place, was demonstrably involved in 229 feuds between 1380 and 1433 (Orth, 1973, pp. 185 ff.). Between 1404 and 1438, the city of Nuremberg, which was one of the wealthiest and most prosperous trading and manufacturing centers in Germany, was embroiled in up to 200 feuds, 145 of which are well documented (Vogel, 1998, p. 67).

Institutions that outlawed this kind of violence did not exist. Only at the very end of the Middle Ages, in 1495, feuds were banned by the emperor, his secular and ecclesiastical vassals, and the free cities gathered on an imperial diet (Wadle, 1999, p. 84; Zeumer, 1904, p. 226). Still, it took many decades to enforce this law and even longer to establish territorial monopolies of force. In the first half of the 16th century, merchants like Hans Kohlhaas—popularized by Heinrich von Kleist as “Michael Kohlhaas”—and members of the nobility like Götz von Berlichingen and Franz von Sickingen were still waging feuds—often with impunity, and sometimes even with the emperor’s open approval (Müller-Tragin, 1997; Rothert, 1940, p. 152; Scholzen, 1996; Ulmschneider, 1974).

The fact that late medieval sources make a clear distinction between feuds and illegal violence such as robbery shows that feuding was not only “legal” because political authorities able to suppress it did not exist, but that it was widely regarded as a legitimate means of enforcing claims (Brunner, 1939/92, pp. 36 ff.; Orth, 1973, pp. 54 ff.).<sup>4</sup> This distinction was based on institutions which are examined in the following section.

### 3. Institutional restrictions of feuding

There was practically no aspect of feuding that was not regulated by institutions, and strikingly, these rules seem to have been widely respected even though there were

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<sup>4</sup> In the absence of a generally applicable positive law, such claims could be based, e.g., on traditional usage, contractual agreements, or privileges granted by some political authority (Fehn-Claus, 1999, p. 102).

no courts of law competent or able to enforce them (Althoff, 1998). One set of rules that was particularly important applied to actions individuals were expected to take before they declared a feud. The clear distinction between illegal forms of violence and feuds, which the contemporaries were able to make, was mainly based on whether feuding actors had conformed to these institutions.

A legitimate feud could not be begun just by committing random acts of violence. Instead, most sources indicate that the actors were expected first to try and find a peaceful solution to their dispute. It is not quite clear whether this meant that feuds were supposed to be subsidiary to law courts or whether informal negotiations or an appeal to an arbitration committee were sufficient (cf., Wadle, 1999, p. 83). Evidently, there were cases where the function of feuds was reduced to the execution of verdicts pronounced by regular courts (Vogel, 1998, p. 55; cf. Brunner, 1939/92, p. 43). Usually, however, any way of first asserting one's claim non-violently seems to have been acceptable in order to establish the legitimacy of a feud begun later (Orth, 1973, p. 66; Vogel, 1998, pp. 168 f.).

While first trying to settle a dispute peacefully was a necessary condition for beginning a legitimate feud, it was not sufficient. Another institution was even more important: one was expected to announce one's intentions openly and in writing, that is, one had to send one's opponent a formal note of enmity called "challenge" or "defiance" (Brunner, 1939/92, p. 63). By the late Middle Ages, the structure of challenges had become largely standardized. They named the opponent, the challenger, and sometimes the cause of the feud. In all cases, they mentioned that by sending the note of defiance the challenger wanted to preserve his honor—an important phrase the meaning of which is discussed below. Finally, the letter noted the date and the fact that the challenger had attached his seal (Müller-Tragin, 1997, p. 18; Orth, 1973, p. 35).

There was one last institution that agents who wanted to declare a feud had to observe: the challenge had to reach the opponent in time to give him the chance to prepare. A contract that the emperor and his principal vassals concluded in 1235 in order to regularize the use of violence in the Holy Roman Empire stipulated that three days were sufficient (Zeumer, 1904, p. 53), but this rule was frequently disregarded. Thus, in the early 15th century, the members of the city council of Nuremberg did not have any concrete period of time in mind, usually being content to have been notified in time to warn merchants travelling in convoy through the dangerous regions (Vogel, 1998, p. 179).

The waging of feuds was institutionally less restricted than their initiation. Most feuding actors resorted to "distressing" their opponent, that is, they tried to do him and his dependents as much damage as possible by plunder, looting, and devastation (Algazi, 1995, pp. 41 ff.; Brunner, 1939/92, p. 69; Vogel, 1998, pp. 209 ff.). If the opponent was a landlord, his peasants were often forced to do homage to the feuding actor and to pay him their feudal dues at least for the time of the feud (Brunner, 1939/92, p. 75). This practice bordered on another strategy frequently employed: not only peasants were forced to pay, but any opponent the feuding individual could lay his hands on. Money was extorted by the threat of pillaging and burning from burghers who owned rural property. Merchant caravans were ambushed and the

travelers captured and held for ransom (Orth, 1973, p. 69). Here, collective liability was regularly practiced. A feuding actor did not only “distress” his opponents personally, but held their hometowns and all their fellow citizens responsible (Vogel, 1998, p. 118).

Still, participants in such acts of violence were subject to some constraints. For example, when an opponent was captured in a fight, he used to be called upon to appear at the time and place intended as his place of custody. Until then, he was left at liberty in good faith (Orth, 1973, p. 72). Obviously, many individuals must really have placed themselves at the disposal of their captors who otherwise would not have been willing to set them free on parole. Another restriction applied to the killing of one’s opponent. True enough, if he was a landlord, his peasants usually suffered, and when their homesteads were burned and pillaged, many of them were killed (Patzé, 1983). However, as the aim of feuding was to force the opponent to acknowledge one’s contractual claim, it made little sense to destroy him. Most actors who waged feuds seem to have tried to avoid deliberately killing their opponent (Brunner, 1939/92, p. 68; Vogel, 1998, p. 227).

Usually, a feud ended when one of the antagonists announced that he was willing to come to terms with the other. Talks were agreed on and usually entrusted to mediators, and a settlement was reached (Althoff, 1998, pp. 160 f.). In nearly half of the cases concerning the city of Frankfurt, this meant that the opponent renounced his original claim, while somewhat fewer feuds were ended by compromises reached during the negotiations. As a rule, damages done while waging the feud were not a subject of these negotiations, and in the letters of atonement both parties handed to each other they relinquished all claims which might have derived from their actions during the feud (Orth, 1973, p. 96).

Some feuds were begun without previous attempts peacefully to come to terms, and formal letters of enmity were sometimes not handed over. There were actors who arranged for their challenge to be delivered at so short notice that their opponent had no chance to prepare. Likewise, violations of the other institutions restricting feuding did occur (Rothert, 1940, pp. 151 ff.; Vogel, 1998, p. 180). Still, the available literature gives the impression that on the whole the rules applying to feuds were respected (cf. Brunner, 1939/92, p. 44; Dickmann, 1971, p. 103; Vogel, 1998, p. 63). In fact, as these institutions did not constitute a codified body of law, they are discernible only because the actors were conforming to them (Althoff, 1998, p. 157). Why did they do this? What made them adhere to a set of rules whose violation must in many cases have been advantageous? Though the literature on feuding offers some isolated hypotheses, research has hitherto never systematically tried to answer these questions. However, given the lack of courts which were able to enforce institutions restricting feuding, two mechanisms come to mind which may have helped to restrain the actors: reputation and reciprocity on the one hand, and esteem on the other.

To see why reputation and reciprocity were important, consider the modern international law of war that is a direct descendent of the institutions restricting the feud (cf. Dickmann, 1971, pp. 103 f.), and is not enforced by any superior court of law, either. Since the law of war was developed it has been violated many times, but there

were also many occasions when it was respected. This was partly because it is in the interest of states waging a war to consider the reaction of the enemy who, if they break the rules of the international law of war, may retaliate in kind (Anderson and Gifford Jr., 1995, p. 29). Fundamentally, belligerents are in an iterated Prisoner's Dilemma where tit for tat is an equilibrium strategy. Axelrod (1990, pp. 73 ff.) demonstrated this using the actions of soldiers in World War I as a case in point, but individuals who were carrying on feuds in late medieval Germany were in a similar situation: they needed to restrain violence lest their opponents reciprocate.<sup>5</sup>

Modern states that are waging a war need not only take the reactions of their adversaries into account, but also those of neutrals and allies who may be driven into the camp of the enemy by violations of the law of war (Anderson and Gifford Jr., 1995, p. 27). Similarly, when in the late Middle Ages feuding actors respected certain institutions, they did this also because they wanted to avoid turning neutrals into enemies. For example, when raiding a village where more than one landlord exercised rights of lordship, one had to restrain oneself in order to restrict the damage to the property of one's opponent. Likewise, when merchants from several towns formed a caravan which was ambushed, the feuding actor had to take care not to harm individuals with whom he had no dispute. Unrestrained violence led to conflicts with the lord of the affected peasants or with the home-towns of the merchants—conflicts which could not be in the interest of the actor who waged the feud (Vogel, 1998, pp. 212, 216).

It was not only the possibility that neutrals or allies might be directly driven into the enemy's camp which ensured compliance with institutions relevant for feuding. As will be shown in the next section, feuds were mostly waged by members of the nobility who were socially and economically dependent on each other in many and diverse ways: they needed each other to provide their younger sons with livings at cathedral chapters, they advanced each other credits, guarantees, etc. Having a reputation as trustworthy and rule-abiding in one context—e.g., feuding—signaled probity (cf. Fremling and Posner, 1999); arousing distrust, in contrast, invited exclusion from many areas of life which were essential for one's economic survival (Zmora, 1995, pp. 102 f.).

The other mechanism mentioned above—esteem—may have been of equal importance though it is more difficult to pin down. In recent years, esteem has received increasing attention by social theorists analyzing how institutions may be enforced in the absence of formal courts of law. The problem is that incentives to contribute to the punishment of violators are frequently lacking because enforcing a rule does not only require resources, but means providing a public good. According to McAdams (1997) and Brennan and Pettit (2000), esteem is a solution to this problem. There is an important difference between it and reputation as discussed above: whereas reputation resembles a resource or an investment good that is needed to realize future

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<sup>5</sup> In spite of the fact that some institutions which restricted feuding appear in imperial ordinances, they were probably not created by fiat. Presumably, the ordinances codified long standing practices (Vogel, 1998, p. 41). The institutions seem to have emerged spontaneously as game theoretic equilibria.

gains from exchange, esteem is cherished—very much like a consumption good—for its own sake. Because esteem may be withdrawn costlessly, individuals have the chance to sanction violators of rules without the need to incur costs. If “honor” is read in place of “esteem,” this fits to the argument put forward by contemporaries: as mentioned above, every single note of enmity contained a passage with which the challenger “preserved” his honor. In effect, he thereby pledged it, acknowledging that others were free to withdraw the esteem they had put in him if he violated the institutions regulating feuding.

If reputation, reciprocity, and the demand for esteem were sufficient to ensure that actors waging feuds conformed to the pertinent rules, this means, of course, begging for questions in another context. Specifically: why did not the mechanisms discussed above ensure that institutions applying to intertemporal and impersonal exchange were respected, as well? The answer is that both sets of institutions addressed different groups of actors. Feuds were carried on mostly by noblemen who were a comparatively small and moreover stationary social group. Most members of the nobility gained their living as landlords, being vassals of some feudal overlord with whose other vassals they maintained close social contacts and interacted continuously (Press, 1980, p. 42). In such a group, information about one member’s conduct can be expected to spread quickly among the other members, reputation being therefore an effective mechanism. Contracts over space and time, in contrast, did not only link the members of specific social groups but in principle all members of society who did not necessarily expect to interact again. Therefore, here the mechanisms analyzed above were ineffective.

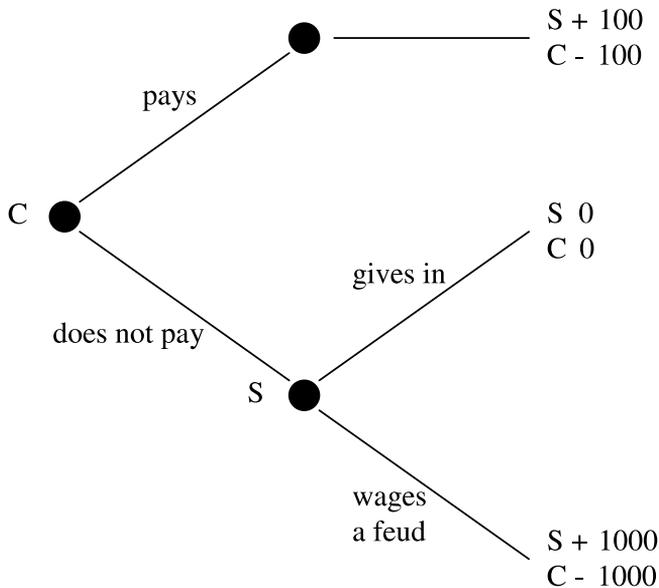
#### **4. Feuding and the gains from exchange**

Fundamentally, the problem the actors in the state-less environment of late medieval Germany had to solve was how to achieve the kind of complex contracting that allowed gains from exchange to be realized on a grander scale than within small groups where reputation was sufficient to restrain opportunism. The solution looks straightforward: agents are conforming to contracts when the gains of living up to the agreements exceed the gains from defecting. However, when is this condition given?

An important step to answering this question was taken by Shepsle (1991) who pointed out that commitment to a contract may be credible either because both players would lose by breaking it—in this case, the contract is self-enforcing—or, because conforming to the agreement is enforced with the help of coercion. Obviously, most contracts underlying impersonal and intertemporal transactions are not self-enforcing, at least one party having the chance to gain by defecting. To demonstrate this, consider Hans Sindelfinger and his dispute with Cologne. Here, it was the members of the city council of Cologne who chose defection over honoring their commitment to pay him his 100 guildens prize money. The situation was structured like a one-shot Prisoner’s Dilemma where defecting is the dominant strategy. The law merchant hypothesis sketched above claims that it was possible to overcome such dilemmas because there was an international body of institutions which provided sanctions for defection, thus

modifying the pay-off-structure of the original Prisoner's Dilemma in a way that made conforming the dominant strategy. However, as shown in Section 2, at least in late medieval Germany there was no universal law merchant. In fact, institutions that changed the pay-off-structures of the Prisoner's Dilemmas posed by exchange over time and space, though existing in towns, were enforced so unevenly that in many cases defecting remained dominant. Nevertheless, there was a course of action which provided a chance for the actors credibly to commit to agreements they concluded.

In order to see why this was the case, consider the options the city council of Cologne and Sindelfinger had. Because they did not reach their decisions simultaneously, these options may be best represented as a sequential game.



After Sindelfinger (S) had won the shooting contest, the city fathers of Cologne (C) could either pay him his prize money or refuse to pay. If C paid, they lost 100 guldens while S gained this sum. If C did not pay, S had two options: he could either give in, or decide to declare a feud against C. If he gave in, he gained 0, just as C lost 0. If he decided to wage a feud, he gained 1000, and C lost this sum. If C had known from the start that their options were either losing 100 or losing 1000, they would never have considered refusing to pay. Their commitment to the promise they made when they organized the shooting contest—namely to pay the winner 100 guldens—would have been credible. However, given their lack of information about the resources at the disposal of S and the general uncertainty about the future, they risked defection.<sup>6</sup> As it turned out, this was a decision which backfired.

<sup>6</sup> As feuding was obviously an off equilibrium path behavior, uncertainty and imperfect information are essential for explaining why actors decided to wage feuds at all.

The decision tree above shows only an example. However, in spite of the fact that for many feuds neither the amount in dispute nor the compensation offered at the settlement of the conflict are known, the basic structure seems to have been the same regardless of whether a tailor was cheated out of his prize money, a merchant was not paid for goods he had delivered, or a feudal lord refused to honor an agreement with one of his vassals (cf. Brunner, 1929, pp. 448 ff.). In all such cases, the feud turned the one-shot Prisoner's Dilemma posed by transactions over space and time into an iterated game, giving the actor who had conformed to the contract in the first round and had been cheated the opportunity to punish the defector. In view of this, it cannot come as a surprise that feuds became as frequent as they were in the late Middle Ages.

In order to assess the function feuds had in late medieval German society, it is necessary to consider a number of points not shown in the simplified decision tree representing Sindelfinger's and Cologne's options. First of all, the decision tree presents only part of the episode. It does not show the beginning, that is, Sindelfinger's decision to take part in the shooting contest and the costs he incurred on his journey from Ulm to Cologne. More importantly, it also omits the costs incurred while the feud was carried on.

What were these costs? In the example, the actor resorting to a feud in order to enforce his claim did not take action himself but employed an agent—namely von Berlichingen—who waged the feud in his interest. Acting like this was not uncommon, though the reason why certain claimants entrusted their feuds to so-called “benefactors” is under dispute. Most of the pertinent literature assumes the right to wage feuds to have been reserved for the members of certain social groups, a knightly life-style being a necessary condition (Brunner, 1939/92, pp. 44 f.; cf. Algazi, 1995, p. 40; Dickmann, 1971, p. 102; Orth, 1973, p. 28). However, on the one hand it is widely recognized that up to the 16th century the so-called blood-feud—that is, the archaic form of blood revenge carried on by the relatives of a victim against a murderer and his family—was practiced by members of all social strata (Brunner, 1939/92, p. 16; Boockmann, 1999, col. 333).

On the other hand, it is difficult to imagine how a universally valid rule restricting the right to feud to members of certain social groups could have been enforced in the Middle Ages. In view of the general problems besetting the enforcement of institutions, it seems that this would not have been possible—a corollary which is supported by recent research. Vogel (Vogel, 1998, pp. 115, 133) points out that at least the city council of Nuremberg seems to have regarded even peasants and Jews as authorized to carry on feuds, and concludes that in principle everybody had this right (cf. Müller-Tragin, 1997, pp. 15 f.; and among the older literature, e.g., von Klocke, 1938, p. 9 ff.; Rothert, 1940, p. 150). However, as in most cases the circumstances of burghers and peasants did not allow them to wage feuds on their own, they employed benefactors. Benefactors were usually members of the nobility who did not only have the necessary leisure but were also to some degree specialized in the use of violence. They would take action in their principal's interest (at least

ostensibly)<sup>7</sup> and receive a share in the sum paid as settlement (Brunner, 1939/92, p. 50; Orth, 1973, p. 29). For the claimant who initiated the feud, this share constituted part of his costs.

In the 15th and early 16th centuries, the possibility to entrust a feud to an agent led to the development of feuding as a profession carried on by specialized actors. Götz von Berlichingen was one of them. As the council of Nuremberg, who had reason not to like him, put it: “It (was) clearly felt” that Götz “was particularly prone unfoundedly to meddle in the affairs of others which do not concern him, and to stick his sickle into foreign sheaths.” In fact, not one of the many feuds Götz waged in the course of his life concerned a dispute in which he himself was involved (Ulmschneider, 1981, p. 19). The statement of the council of Nuremberg may even indicate that he tried to gain as fearful a reputation as possible—this, at least, would have been the behavior to be expected under the incentive structure he faced. Another professional was Franz von Sickingen (1481–1525) who became famous as a protector of Martin Luther and patron of many Humanists and Reformers. Von Sickingen’s feuds against cities like Worms and Metz and against princes like the landgrave of Hesse reached war-like proportions, being often at least partly and formally in the interest of others. In September 1518 alone, his income from feuding amounted to more than 80,000 guildens (Scholzen, 1996, p. 134).<sup>8</sup>

Most of the profit agents like these made from feuding did not consist of their share in the sum paid in order to settle the dispute. This leads to another category of costs caused by feuds and not represented in the simple decision tree shown above. Feuding was certainly a way to enforce contractual claims, but a way that had massive external effects—the above description of what “distressing” an opponent meant shows this clearly enough. The economic consequences of these externalities are difficult to assess. Brunner (1939/92, p. 88) suggests that waging a feud was often a negative-sum-game, costing even the actor who had declared the feud more than it brought him in. Other authors seem to imply that feuds were zero-sum-games, that is, that they were in effect just redistributing property. Orth (1973, p. 74), for example, points out that most knightly opponents of the city of Frankfurt concentrated

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<sup>7</sup> The relation between the actor in whose interest the feud was to be waged and his benefactor posed the typical principal-agent problems. Due to the partners’ different utility functions, control costs and informational asymmetries, the agent had wide scope for opportunism. There was no guarantee that he would indeed act in his principal’s interest (cf. Eggertsson, 1990, pp. 40 ff.). As a matter of fact, the only restriction of opportunism consisted in the existence of potential other benefactors to whom a principal might turn. In this, conditions resembled the Paris credit market of the seventeenth and eighteenth centuries where notaries were trustworthy not because the government enforced rule compliance but because they competed with each other (cf. Hoffman et al., 2000, pp. 114 ff.).

<sup>8</sup> It is under dispute whether it is appropriate to call actors like von Berlichingen and von Sickingen feuding entrepreneurs or military entrepreneurs (cf. Redlich, 1964–65, p. 35; Ulmschneider, 1981, p. 23). Some authors emphasize that they were only too willing to use the legal claims of others as a pretext for violence, and that they lacked all innovative and constructive characteristics of real entrepreneurs (cf. Scholzen, 1996, pp. 165 f.).

on attacking objects which promised valuable booty.<sup>9</sup> Moreover, when feuds are assumed to have been unprofitable, it is difficult to explain why in the 15th and 16th century some noblemen specialized in feuding and literally made a living by it. Even more used feuds substantiated by their own or other people's legal claims as a pretext for outright robbery, utilizing the resources thus appropriated in order to maintain their life-style or political autonomy or for their advancement at princely courts (Zmora, 1997, esp. p. 106).

However, when research is stressing the economically adverse effects of feuds, pointing to the widespread insecurity and to the substantial external costs, this may lead to a distorted assessment of the importance of feuds. For one thing, the institutional restrictions to feuding discussed above need to be taken into account. Just like it is one function of the modern international law of war to make wars less of a negative-sum-game than they are (Anderson and Gifford Jr., 1995, p. 25), the fact that feuds did not consist of completely unrestrained acts of violence helped to turn the scales in favor of the positive effects.

We moreover have, after all, information only about feuds which really occurred. We do not know how many feuds did not need to be carried on because the threat of feuding effectively deterred actors from defecting, thus allowing gains from exchange to be realized. Here, Greif's (2000, p. 259) dictum that "the effectiveness of contract enforcement institutions is usually best judged like that of peacetime armies—by how little they must be used" applies literally. If the many and diverse problems of enforcing contracts between strangers are considered, it becomes plausible that the threat of feuding helped actors to take credible commitments, thus contributing to solving the problem of transacting over time and space. In this context, the possibility to engage a benefactor in order to wage a feud seems to have been particularly important because it enabled individuals who were not specialized in the use of arms credibly to threaten their opponents with feuds. Given the lack of states and the non-existence of a law merchant, it is difficult to imagine any other solution to the problems presented by intertemporal and impersonal exchange. All this leads to the hypothesis that the economics of feuding were actually a positive-sum-game.

## 5. Conclusion

This paper contributes to the discussion about how the problem of contracting over time and space was solved in the Middle Ages. It starts out from three propositions:

1. In 14th- to 16th-century Germany, there were no states in the sense of political organizations which successfully claimed territorial monopolies of force and enforced compliance with contracts.

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<sup>9</sup> According to Vogel (1998, p. 216), this was the reason why peasants in villages dependent on Nuremberg relatively rarely suffered from feuds.

2. Neither was there a law merchant, that is, a universally valid body of institutions created and enforced by merchants themselves and applicable to non-simultaneous transactions between strangers.
3. Given these circumstances, feuds were widely regarded as a legitimate means of enforcing legal claims, and were frequently resorted to by actors from all strata of society.

Feuding was subject to institutions which were altogether respected even though no authority existed which was competent or able to enforce them. While these institutions applied to all phases of the feud, those concerning its beginning were most important because if an actor did not conform to them, the violent acts he committed afterwards were regarded as illegitimate. Compliance with the rules resulted from considerations about the opponent's ability to reciprocate in kind, about the feuding actors' reputation with neutrals and allies, and from his concern for his "honor," that is, for the esteem others conferred on him.

Feuds helped stabilize exchange by turning the one-shot Prisoner's Dilemmas posed by non-simultaneous transactions between strangers into iterated games where the cheated party had the chance to punish the defector. That is, feuds modified the long-term pay-offs of the participants to transactions, thus allowing actors credibly to commit to contracts over space and time and helping to create conditions which allowed gains from exchange to be realized. In this context, the fact that it was possible to employ more or less specialized agents who would wage one's feud was of particular importance, as it allowed individuals who lacked the time or means needed for feuding credibly to assert their ability to punish defection.

There is, of course, no denying that feuds had substantial external effects which must be weighed against the gains from exchange which they made possible. However, in this context two circumstances need to be taken into account:

1. Given the virtual lack of a functioning and above all impartial judiciary, there was frequently no other means credibly to commit to contracts. Without the threat of feuding, many mutually advantageous contracts probably would not have been concluded at all; the corresponding chances to increase welfare would have been forgone.
2. In order to assess the importance of feuds, it is insufficient to consider only those feuds and the damages done by them which really occurred. There is, of course, no way to determine how many feuds were not waged because the threat of feuding deterred potential defectors from violating a contract. However, just because feuds were so damaging, the hypothesis that they created incentives to conform to contracts is plausible.

The realities of life in late medieval Germany were less idyllic and more violent than the law merchant hypothesis implies. Feuds were an integral part of these realities. Still, for a limited period of time, say, between the central Middle Ages and the late 15th century, they allowed an increase in exchange and overall prosperity, even though many people suffered. A further expansion of trade, however, became possible only when the emerging German states began to create more or less impartial judicial systems, thereby providing a less costly alternative to feuds. It was then that "commercial capitalism" really came into its own.

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