8 Getaway into the Middle Ages? On topics, methods and results of ‘socialist’ legal historiography at the University of Jena

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Introduction

This paper chooses a personal and local approach to interpreting legal history in East Germany. It examines the topics and results of Gerhard Buchda's (1901–1977) own works and of the works of his graduate students at the University of Jena, where Buchda held the chair of German civil law, commercial law and German legal history from 1949 to 1967. ‘Buchda and his students at Jena’ may sound surprising, as Jena produced one of the most famous forerunners of socialist theory on the state, government and the law, namely Gerhard Haney (1926–2012). So why did we not focus on him and his work? The answer is: Haney's doctoral and postdoctoral theses (Haney, 1961; Haney, 1964a) did not focus on legal historiography, nor did they use legal history as a scheme or model of socialist law. His major project (Haney, 1967) is addressed to theory and philosophy of law. Moreover, Haney's publications on Theodor Maunz (1901–1993) (Haney, 1964b) were politically driven and not legal historiography (even though today they are most certainly a topic of legal historiography). In fact, Haney did not start publishing articles on legal history earlier than 1989 (Haney, 1989).

For the above reasons, this paper does refer to a person who ran legal history at Jena throughout the first decades of the German Democratic Republic (GDR)—Gerhard Buchda. Buchda is nowadays only little known as an expert of medieval Saxon law who studied the *Sachsenspiegel* as well as medieval municipal law. Born in Stadtroda near Jena, he studied law, finished his doctoral thesis in 1929 and was awarded the *venia legendi* in 1936 at Jena. After a short engagement in Berlin he was offered a professorship of German civil law and German legal history at the University Halle in 1937. In 1943 he joined the German army (*Wehrmacht*) as a private. After having returned to civilian life in 1945 he was dismissed by the University of Halle (cf. Lieberwirth, 1997, pp. 11–16), probably due to his membership in Nazi organizations. Buchda joined the National Socialist Association of German Legal Professionals (*Nationalsozialistischer Rechtswahrerbund*, NSRB) in 1933, the National Air Raid Protection League (*Reichsluftschutzbund*, RLB) in 1934, the National Socialist Teacher's League (*Nationalsozialistische Lehrerbund*, NSLB) in 1935, the paramilitary unit of NSDAP (*Sturmabteilung*, SA) in 1937, and the National

Socialist German Workers' Party (*Nationalsozialistische Deutsche Arbeiterpartei*, NSDAP) in 1939. There is to date no evidence that Buchda held leadership positions in any of them.

After his dismissal from Halle, he decided not to leave the Soviet occupation zone, joined the Liberal Democratic Party of Germany (*Liberal-Demokratische Partei Deutschlands*, LDPD) in 1946, and gained a second chance at (his beloved) Jena. It is reported that Buchda would have had a chance to take offers from universities in West Germany, but he 'stood his ground.' In 1963 he was Dean of the Jena Faculty of Law. He was Chairman of the 'Institute for State and Legal History' (*Institut für Staats- und Rechtsgeschichte*) by the time of his retirement. Moreover he was granted several visas to travel to congresses held in Austria, France and West Germany and was able to publish in Western publishing houses from 1950 up to 1974. At least once (in 1956) he spoke at the German Legal History Conference (*Rechtshistorikertag*) (cf. Buchda, 1958, pp. 274–348, 274).

As far as this study can assess, Buchda's articles in foreign journals and his contributions to congresses abroad did not bring any immediate benefit for GDR authorities or East German Universities—at least on the basis of the topics of Buchda's contributions and the methods he utilized, it is hard to see him furthering the socialist cause. Possibly his mere participation in international legal scientific events in the role of an 'elder statesman' or a 'notable colleague' was estimated to be beneficial from the point of view of the SED. Such an interpretation remains nevertheless speculative since one will hardly find any solid biographical proof of the fact that authorities tried to utilize 'old' or 'traditional' scholarship to their own ends. Anyway, Buchda took his leave in 1967 shortly before the 'Third Higher Education Reform' (to which cf. Kaiser, 2010) overruled traditional structures, values and contents of higher education in the GDR and demanded the abandonment of traditional modes of scholarly work.

During his years at Jena, Buchda was the doctoral adviser for eight doctoral theses with an emphasis on legal history. Despite Buchda's personal and academic CV during the Nazi regime, it is worthwhile studying whether his work and the theses of his students at Jena were contrary to socialist legal historiography or not, or whether Buchda and his students formed a scientific circle where pre-Second World War methods and topics were kept alive. We will start with a brief definition of what socialist (legal) history in the GDR entailed, as well as examining Buchda's own publications. This is followed by a discussion of the work of Buchda's students.

Socialist legal history in a nutshell

In the GDR, the significance and place of legal historiography was always ambiguous: One could ask why have legal history at all as a subject in socialist education (and in courses for law students)? Officially, the legal system of the GDR did not have (and could not have) any historical dimension, nor was it based on any tradition. As this study proves, it took years to develop a genuine socialist legal historiography in the law schools situated in the GDR

(Berlin, Leipzig, Halle and Jena). Moreover, the birth and the coming of age of the new socialist state—under the leadership of the working class and its political ‘vanguard,’ the communist party—and its law had to be emphasized as something completely new, as revolutionary, as different from all that had been before. A researcher or a teacher who would try to constitute the principles of socialist law as disconnected to the socialist revolution was thinking and working against the basic rules of the development of mankind and society.

To overcome this dilemma and to get closer to understanding the standing of socialist legal history in the GDR, we (again) do not refer to Gerhard Haney and his post-GDR assessments but to Gottfried Härtel (born in 1925) and Elemér Pólay (1915–1988). In 1987 they noted concerning Roman Law and Roman legal history that the recognition of Roman law was indispensable for lawyers whose science refers to comparison and history and was of eminent practical importance for understanding legal events in the past and present (Härtel and Pólay, 1987, p. 9); which as such shows commitment to a socialist history of law in the late 1980s. They stressed that ‘a Marxist presentation of (legal) history is characterized by the recognition of the fact that any change in the socio-economic base is a source of the process of the development of law’ (Härtel and Pólay, 1987, p. 10). Here you find the classic Marxist position of base and superstructure and one of the basic suppositions of historical and dialectic materialism (here: ‘histMat’ and ‘diaMat’). ‘DiaMat’ supposes that every epoch in the history of humankind is characterized by so-called ‘basic’ or ‘antagonistic contradictions.’ Once these contradictions—necessarily class contradictions aroused by the property conditions of the means of production—quantitatively mount up to a point of intolerability, inevitably erupting into a revolutionary situation that creates a new quality of human relations. Accordingly, a Marxist legal historian will describe institutions, principles, institutes of law, law-making and law-makers of any historical period correctly only if he or she derives them from the then given socio-economic preconditions and will preferably refer to revolutionary situations. This is due to Karl Marx’s (1818–1883) and Friedrich Engels’ (1820–1895) keynote that the property conditions of the means of production shape all social relations. Marx and Engels, who remained classic references for socialist and communist interpretations of social relations and changes in East Germany until the end of the 1980s, studied one revolutionary situation as a fundamental example, namely, the French Revolution in 1789. Hence, the French Revolution remained a central point of interest and necessarily a benchmark for (legal) historians inspired by Marx and Engels. In other words: If you come across the works of a lawyer in one of the Eastern bloc countries that deal with legal problems or legal consequences of revolutions, namely, the French or the Russian revolution in a historical perspective, you will most probably at the same time find some genuine ‘socialist’ legal historiography. Proof of this are Hermann Klenner’s (born 1926) ideas on French revolutionary terror as a matter of legality (Klenner, 1953, p. 14f.). With these basic statements in mind, let us now turn to Gerhard Buchda and then to his scholarly followers and successors at Jena.

Buchda's work as a historiographer of law

Immanuel Kant's civil law, 1929

Buchda's doctoral thesis is a small paper of 95 pages. Buchda compares Kant's (1724–1804) *Metaphysik der Sitten* (1797) to the works of some predecessors, especially to Gottfried Achenwall's (1719–1772) *Prolegomena Iuris Naturalis* (1758) and *Ius Naturae in usus auditorum* (Achenwall, 1755)—books used by Kant for his own lectures. Buchda's thesis is a descriptive account, offering relations, receptions and differences between Kant's positions and those of contemporary scholars of natural law. The 28-year-old Buchda explains, arranges, points out and underlines, but he does not emerge as a critic. Hence there is little originality in Buchda's paper, though he does at least point out that Kant's natural law has some similarity to a 'nowadays aprioristic theory of law' (Buchda, 1929, p. 83). Here Buchda gains critical distance from his pattern of presenting a single position, noting that Kant's positions on donation are contradictory (Buchda, 1929, p. 88). Buchda's first paper affected only his own future work, for there is no sign of a response from the scientific community.

History and critics of the German 'Gesamthandsgemeinschaft,' 1936

Buchda's second book is of special interest due to the special scientific spirit of the age in jurisprudence in the 1930s. The problem Buchda chose, 'joint ownership' (*Gesamthand*), was a classic problem of legal historians who followed the German or Germanic branch of legal history. It is raised by the *Sachsenspiegel* 'law of the region' (*Landrecht*) in chapter I, section 12, and many scholars since the 16th century have tried to elucidate a theory of *Gesamthand*. Discussion about it still continues (cf. BGHZ 146, 341 = NJW 2001, 1056). German legal historians are trying to work out a theory that could explain problems concerning the community of heirs, matrimonial property, non-trading, general partnership and so on. It is of interest whether Buchda was influenced by attempts of the younger generation of lawyers and legal scientists to design new and National Socialist theories of law in 1933. It is said that Buchda did not make any concessions to Nazi ideology; certainly, none of his publications show clear Nazi influences (Lieberwirth, 1977, p. 13).

What we can assume is that Buchda tried to evolve a theory of 'the intelligence of a thing's nature' or 'insight into the nature of things,' and hence his references to Kant (cf. Buchda, 1936, p. 235). In his own words, he wanted 'a nowadays aspired holistic consideration' that was 'urgently needed, not only in biology but also in legal sciences' (Buchda, 1936, p. 234). The task was first 'to study the special structure,' the 'proper legality of every entity' (Buchda, 1936, p. 234f.). Thus jurisprudence had to 'recognize' (especially if there was a legal entity) (Buchda, 1936, p. 255), but it was not the jurisprudence's responsibility to create or design legal entities. As Buchda said, '[I]deal legal subjects' were things that could be thought, but this would not refer to 'our view of life today'

(‘*Das würde nicht unserer heutigen Lebensauffassung entsprechen*,’ Buchda, 1936, p. 255). Reality first was Buchda’s headline; thinking (including legal examining) had to follow certain given conditions (cf. Buchda, 1936, p. 255).

The second question, whether an existing entity had subjective rights, ‘was a question of interpretation, of exegesis within the legal regime given’ (Buchda, 1936, p. 256). From the author’s point of view, this could refer to Edmund Husserl’s (1859–1938) so-called ‘intuition of essences and essential structures’ (*Wesensschau*) and could be related to the ‘concrete-order thinking’ (or more accurately: precise thinking in real regimes) offered by Carl Schmitt (1888–1985; cf. Schmitt, 1934, pp. 17–20, 43), though Buchda did not in fact quote Schmitt or Husserl. This examination becomes even more convincing when we consider that Buchda’s critique uses terms like ‘sound German attitude to life’ (Buchda, 1936, p. 260), appeals to ‘demonic religious forces in the sacred leagues of the Germans’ to emphasize the ‘spiritual community’ inside human corporations (Buchda, 1936, p. 261, Fn. 8) and finds that ‘leader and loyalty’ were ‘connected with love and fidelity, with trust and believe, with responsibility and obedience’ (Buchda, 1936, p. 234). Was this a concession to Nazi ideology? We rather think that the young Gerhard Buchda drifted with the tide. However, he did not hesitate to quote such Jewish colleagues as Konrad Engländer (1880–1933).

In the conclusion of his paper, he finally proves he was a follower of Otto v. Gierke’s (1841–1921) suppositions but not of his conclusions: ‘Joint ownership is not an institute but a principle of law; but it is (among other things) only a principle of acting, especially of legal transaction. Wherever human beings act together this represents what joint ownership is’ (Buchda, 1936, p. 265f.). But acting does not necessarily reveal what is behind it (Buchda, 1936, p. 270). What was ‘behind’ the ‘acting entity’ then was a question of positive law (and of interpretation and exegesis). Once the law gives a claim, a competence, a power to two or more humans as an entity, then this entity was a legal body, a corporate body, a ‘juristic person’ as far as the power was given (Buchda, 1936, p. 293).

In the 1940s, Buchda set aside his work on the history of dogma in jurisprudence and on the principles, institutions or institutes of civil law. By this time, he only wrote and published on legal history, and all his upcoming legal works focused on one major topic, namely, the jurisdiction of corporations in the Middle Ages and the Early Modern age.

The medieval Pössneck collection of jurymen’s votes

Through this work, Buchda has gained an established position among German legal historians. In cooperation with the historians Reinhold Grosch and Willy Flach (1903–1958), he carried out extensive research on the jurisdiction of municipal, jurymen’s and University courts from the 13th to the 19th century. He examined votes, sentences, decisions and expert opinions or arbitraments given by Saxon and Thuringian corporations. One of his projects was dedicated to the jurisdiction of the Faculty of Law in Halle (Buchda, 1942a, pp. 210–294; Buchda, 1943, pp. 251–318; Buchda, 1944, pp. 223–347; Buchda, 1954), another to the jurisdiction of the

municipal court of Pössneck, a small Thuringian town near Stadtroda and Jena (Grosch et al., 1957–1972). Grosch, Flach and Buchda found 355 jurymen's votes, sentences and arbitrations from Magdeburg, Leipzig and Pössneck itself from the 14th and the 15th century. Buchda ran this project throughout his years at Jena. The project resulted in a book of four volumes, published by Böhlau's in Weimar from 1957 to 1972. Buchda was responsible for volumes 3 and 4. Herein he examined the importance of the votes and sentences for a 'general history of law.' His indexes (on subjects and on persons) are in actual fact not indexes but a full commentary on *Sachsenspiegel* law as executed by the Magdeburg and Leipzig chairs of 'jurymen' (*Schöffenstühle*). The result stands comparison with Guido Kisch's (1889–1985) *Leipziger Schöffenspruchsammlung* (Kisch, 1919) and complements it, with Adalbert Erler's (1904–1992) *Der Oberhof zu Neustadt an der Weinstraße* (Erler, 1968) and with Friedrich Ebel's (1944–2005) Magdeburg editions (Ebel, 1983). To this day, scholars can use it to check medieval and Early Modern corpora of law and legislation against the reality of jurisdiction. This is of significant relevance for comparative approaches to the *Sachsenspiegel* law.

Buchda wrote numerous articles for the journal *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, and the Halle project was published there (cf. Buchda, 1936, p. 261, fn. 8). Buchda also published smaller works to achieve a better understanding of medieval and especially *Sachsenspiegel* law (Buchda, 1937, pp. 468–474; Buchda, 1939, pp. 194–207; Buchda, 1941, pp. 257–265; Buchda, 1942b, pp. 353–355; Buchda, 1942c, pp. 355–358; Buchda, 1950, pp. 416–440; Buchda, 1952, pp. 385–399; Buchda, 1955, pp. 205–215; Buchda, 1958; Buchda, 1961, pp. 64–92 and (posthum) Buchda, 1974, pp. 90–116). Another paper was published in the *Vorträge und Forschungen* of the *Konstanzer Arbeitskreis für mittelalterliche Geschichte* (Buchda, 1964, pp. 7–24). We have found theses from 1937 to 1974, and altogether nine theses were printed during Buchda's Jena years. None of these theses broached the issue whether medieval law is an aspect of class conflicts or to what extent it is influenced by the propriety conditions of the means of production. His texts do not refer to 'diaMat' at all, and is it not surprising to read Buchda's own short conclusion about his focus as a scholar in 1966 shortly before he retired: 'Litigation of the chairs of lay assessors, high courts and legal faculties from the 13th to the 19th century in connection with the history of judicature, the law of procedure and the substantive law' (*Spruchstätigkeit der Schöffenstühle, Oberhöfe und Juristenfakultäten vom 13. bis zum 19. Jh. in Verbindung mit der Geschichte der Gerichtsverfassung, des Prozeßrechts und des materiellen Rechts*). This is truly his legacy and it is worth questioning whether it influenced the work of his graduated students.

The influence of Buchda's work on legal historiography

The Faculty of Law

We now turn to Buchda's influence on legal historiography. First, there is new information on the elder Buchda as a teacher. Rolf Henrich, one of the founders of the NEUES FORUM in 1989 and one of the most profound inside critics of

socialist law, who was a student of law at Jena from 1964 to 1967, mentions Buchda's lectures in his recently published memoirs (Henrich, 2019, p. 54f.). Henrich certifies that Buchda had been a voice of courage and honesty who did not refer to the class struggle (Henrich, 2019, p. 54). Buchda's *Sachsenspiegel* lecture was—according to Henrich—far away from any wisenheimery and provided the (very few) students with an understanding of normativity that any scholar had to ascertain for himself due to the fact that it referred to an understanding of law whose presuppositions modern people did not share (Henrich, 2019, p. 55). Finally, Henrich notes that the *Sachsenspiegel* understanding of law ('God is justice himself, that is why justice is beloved by him' [*got is selve recht, dar umme is em recht lef*']—*Sachsenspiegel* prologue) appeared to him as a law student to be an antidote against Leninist legal nihilism (Henrich, 2019, p. 55). A strong comment, for sure—but are there echoes of this personally toned attitude in some contemporary scientific elaborations?

Second: Between 1948 and 1967, the Jena Faculty of Law awarded seven scholars the doctorate of law with Buchda as doctoral supervisor (of course there were more doctorates at Jena in this period—but not focused on legal history). In 1969 Buchda once more acted as doctoral supervisor *emeritus*. Two cases show a collaboration with Gertrud Schubart-Fikentscher (1896–1985) from Halle as the second reviewer; one thesis indicates that Rolf Lieberwirth (1920–2019) from Halle was the second reviewer. None of the seven Buchda scholars had ever published more than this one paper as a legal historian, and none of them had ever given their own lecture course on the history of law. This proves that a Buchda doctorate was in no case the take-off for an academic career as a legal historian in the GDR. But let us now take a closer look at these theses. Before starting, one should consider that the East German law of higher education did not obligate candidates to print doctoral theses with the help of a professional publisher. Consequently, doctoral theses did not circulate among libraries. One might say that they were not written for scientific discussion. Moreover, the papers were written on typed paper and are today in a very bad condition.

- 1 The first thesis under the aegis of Buchda was written by Christian Hopf from Halle. It was disputed in 1951 and deals with 'The utilization of forests and forest management within the limits of Thuringian sources of law from the 16th to the 18th century' (Hopf, 1952). After a short introduction and a description of the sources, Hopf discusses historic forest management. We found no reference to Marxism and cannot estimate whether Hopf followed a special Buchda interest. Anyway, he dealt with Thuringian history of law and thus chose both a traditional approach and method for his doctoral thesis.
- 2 Gottfried Werner from Weimar was Buchda's second doctoral candidate. He graduated in 1952. His thesis is about 'The Constitution and municipal law of Arnstadt' (Werner, 1952). This relatively brief paper of only 89 pages provides some information on local constitutional history and reports in chapter 1 on Arnstadt as a settlement and marketplace by the end of the 12th century. Chapter 2 is about Arnstadt as a civic corporation by

1850. This paper contains descriptions rather than assessments. It is of interest for the local history of Arnstadt only and is in no way influenced by Marxist theory.

- 3 In 1952 another scholar, Hermann Wolf from Greiz, graduated with a doctoral thesis entitled 'The development of judicature, especially of penal jurisdiction in the former principality of junior branch *Reuß*' (Wolf, 1952). Wolf's paper is dedicated to the judicature of the smallest territory of German nationality in the Holy Roman Empire that ever existed. It offers a description of the courts' constitutional history. The methodological approach is traditional. The chapters follow epochs as described by traditional historiography (e.g., offspring, the reception of Roman law, the fall of the Holy Roman Empire, the civil revolution of 1848, the foundation of the 'Second Reich,' etc.) and did not refer to 'histMat' stepping stones of social development. Wolf like Hopf and Werner did not publish any further articles.
- 4 In 1955 Buchda's fourth candidate was Witho Holland from Schmalkalden, a Thuringian town for toolmakers since the Middle Ages. Holland dealt with local Schmalkalden craftsmen's guilds and their law (Holland, 1955). His thesis offers a sketch of how craftsmanship in Schmalkalden had developed, describing the guilds' certificates and the constitution of the Schmalkalden guilds, including the law of the apprentices, journeymen and master craftsmen. He comments on the guilds' courts and their penal law. Unlike Hopf, Werner and Wolf, Holland continued to write on legal matters and became active in legal affairs: later he worked as an in-house lawyer for the local, then the regional and finally the national 'Konsum' cooperative society, which was one of the two national players of trade in East Germany. In 2008 he published a paper about the legal and economic development of the 'Konsum' cooperatives in the GDR (Holland, 2008). It is noteworthy that Holland (like Buchda), a former member of the NSDAP joined the LDPD in 1946, was elected to the Volkskammer from 1963 to 1990 and took part in the central 'Round Table' Discussions in Berlin in autumn and winter 1989–1990.

Holland's doctoral thesis under Buchda's supervision can to a certain extent be described as innovative: It dealt with the legal history of corporations that had an impact on the economy, and Holland as an in-house expert may have used it to design a socialist law for cooperative societies. But to this day, we do not know more about Holland's contributions to law-making. It would be useful to have a biography of Witho Holland.

- 5 Gerhard Günther from Greiz was a graduate student of Buchda who worked as his tutor's assistant for three years. Whilst his retirement was in process in 1967, Buchda planned to make Günther his successor as chairman of his Institute for State and Legal History (Lingelbach, 1997, p. 42f.). However, the plan failed and Günther did not become Buchda's successor. Günther's doctoral thesis from 1956 was about how Roman civil law was received in Thuringia by 1350 (Günther, 1956). His topic is up to date: it is an examination of canon jurisdiction and lawyers as pace-makers of 'early

reception' (*Frührezeption*) and would be in keeping with modern efforts to examine expert cultures. Probably in accordance with Buchda's empirical research, Günther focuses on whether and to what extent 'legal instruments' (*Urkunden*) prove the application of *Jus Commune* already in the 13th and 14th century. If this thesis had been produced in Göttingen or Freiburg, for example, Günther's academic career may well have taken off. We did not find echoes of Marx's and Engels's positions in his work.

- 6 Buchda's next doctoral candidate proves that Buchda's own work on municipal courts and jurymen's votes may well have influenced others. Jörgen Haalck, born in Potsdam, graduated in 1957 with a thesis on the responses and sentences of the Rostock Faculty of Law (Haalck, 1957). He describes the process of the normative basis of responding and deciding for courts abroad (*Aktenversendung*) (Carolina, RPolO, Bützower Privileg 1762), the process inside the Rostock Faculty (*Rotulationsverfahren*), the Rostock Faculty of Law as an authority for decisions in penal inquisitions and the content of the Rostock archive. Moreover, he examines how the faculty as a sentencing authority was organized internally and deals with the intensity and effect of the faculty's activity concerning territories and the law itself. What Buchda did concerning Halle, Haalck did concerning Rostock.
- 7 The last Jena scholar who Buchda actively and successfully supervised was Gerhard Haas from Chomutov/Komotau (Haas, 1967a). He returned to what Buchda's second graduate, Gottfried Werner, did 15 years prior and worked on the constitution and on the municipal law of Arnstadt, though Haas included a few more Thuringian municipalities: Königsee, Saalfeld and Stadtilm. This thesis is remarkable due to the fact that Haas was not a graduated lawyer but nevertheless was awarded the 'doctor iuris.' Haas studied law from 1951 to 1955, did not graduate as a lawyer, studied history and education science and worked as a schoolteacher (cf. Haas' CV; Haas, 1967b, appendix). His thesis is purely a presentation of municipal history, the constitution, courts, municipal iura regalia and municipal law. The focus is on the Middle Ages and Early Modern times. He gives, for example, only one page to the history of Arnstadt from the 17th to the end of the 19th century (Haas, 1967a, p. 64). Haas states that the 1543 statutes had remained the basis for 'legal relations' in Arnstadt by the 19th century and that they had not been critically worked over or emended since then. Only regulations on firefighting had been revised. Some decrees or edicts had been given by the Earls of Schwarzburg-Rudolstadt on guard service, on land surveys, on marriage, on mills and on public bookkeeping. And that is it—nothing whatsoever on socio-economic drivers of changes and developments in law. We find the same method concerning the municipal constitution of Arnstadt (Haas, 1967a, pp. 36–39): Haas lists, what the municipal council in the 19th century was, by whom it was elected, what the council was expected to do, and which authority supervised the execution of various matters.
- 8 An eighth graduated student, who started with a (now) typical Buchda-topic in Jena, did not finish his work on 'The constitution and the law of the

municipality of Gera in their historical development by the 17th century' in the GDR. The author, Lothar Krahner, member of the CDU since 1949, left the GDR westbound and was—with this work (Krahner, 1965)—successfully awarded the legal doctorate at the Faculty of Law of the Goethe-University Frankfurt/M. in 1965 under the supervision of Adalbert Erler. We suppose correspondence or at least contact between Buchda and Erler according that case. Due to the fact that Krahner's paper was not finished in Jena, we did not include it to our survey as regards content.

- 9 Did things change after Buchda's retirement? Yes, they did, especially when the class struggle and revolutionary events were introduced into graduate students' work. In 1969 Hans-Jürgen Ziegler wrote on the influence of the French Revolution concerning the development of German commercial law (Ziegler, 1969). Like Günter, Ziegler worked as an assistant at the Institute for State and Legal History. Buchda and Haney acted as his doctoral reviewers. His thesis describes the condition of German commercial law 'at the eve of the French Revolution,' tries to give a picture of the 'present condition of commercial law' and gives a short history of the 'bourgeois character of commercial law.' He then discusses whether French commercial law was affected by the French Revolution (here a definition of class conflict and revolution is given; Ziegler, 1969, p. 73) and whether the French Revolution was a creative power for German commercial law. Ziegler uses 'diaMat' schemes: 'The essential aspects of the socio-economic fabric of feudalism, respectively the municipality, the inner fabric, are decisive for explaining and assessing their politico-legal, external manifestations' (Ziegler, 1969, p. 42). Moreover, Ziegler criticizes bourgeois legal historiography in detail—and this critique is like a door opener for socialist legal historiography. His point is that the 'cosmopolitanism of trade,' as 'bourgeois' legal historians argued, made the development of commercial law 'universal.' Ziegler's contradiction is as follows. By that argument (commercial law was universal) an aspect of bourgeois legal historiography that (generally) marked legal positivism came to light: that is to say 'shortening of legal history to the history of the legal form only' (Ziegler, 1969, p. 50f.). Economic history and political history would thus, if taken into consideration at all, only be marginal (Ziegler, 1969, p. 51). Hence, scientists who only referred to the continuity of a form without considering the discontinuity of its functions would be forced into error (Ziegler, 1969, p. 51). Ultimately, Ziegler's job, as he saw it, was to identify law-making both as an agent and as a result of revolutionary class conflicts: the '*Code de commerce*,' for instance, 'accomplished the revolutionary creation of legal unity concerning commercial law. It maintained the revolutionary principle of civil equality and eliminated commercial law as a burgher's privilege' (Ziegler, 1969, p. 119). Ziegler then focuses on how the *Code de commerce* was received in Germany. Buchda had never himself taken this 'class conflict' perspective.

The Faculty of Philosophy and the Faculty of Economics

Buchda held a position as a reviewer of doctoral theses for the Faculty of Philosophy on three occasions. He cooperated with Friedrich Schneider (1887–1962), who held the chair for Medieval History at the FSU Jena from 1947 to 1956. Schneider was a Dante Alighieri expert (Schneider, 1960) and it has been said that he was a ‘bourgeois historian’ (Heimpel, 1963, p. 249). In 1946 he became a member of the LDPD (like Buchda and his student Hoffmann). The three Schneider graduate students worked on topics related to Thuringian history and matters of law. Their methods and results can be compared with those of the Buchda scholars, Werner, Wolf and Günther.

Gregor Richter (1927–2002) from Weimar dealt with the public policies of the Dukes of Sachsen-Weimar (Richter, 1956) from 1446 to 1589. Unlike Buchda’s students, Richter argued in 1956 that these policies were of class nature. Regulations on luxury, for example, marked the differences between noblemen, patricians, peasants and craftsmen (Richter, 1956, p. 4). One could say, however, that this was a badly chosen example and merely Marxist lip service. Helmut Roob (1924–2017) from Gotha, later regionally known as an archivist and historian of the city, wrote on the constitution of Gotha from the 13th to the 19th century and especially focused on the Duchy of Sachsen-Gotha and Veit Ludwig von Seckendorff (Roob, 1958). Ruth Böckel (biographical data could not be found yet) presented a study on the relations between the University of Jena, the council of Jena and the Duchy of Sachsen-Weimar during the 18th century (Böckel, 1958). Her thesis is about student misrule, clashes with soldiers, expulsions (from the University), debt, illegitimate pregnancies and censorship, though with no echoes of ‘histMat’ or ‘diaMat.’ Buchda finally was second reviewer for theses written for the Faculty of Economics on two occasions, though these theses made no reference to legal history (Hädrich, 1950; Kopp, 1950).

Post-Buchda years

After Buchda’s retirement, some more doctoral theses on legal history were written at Jena. Did they refer back to Buchda’s interests or are they examples of a new, socialist legal historiography like Ziegler’s thesis?

In 1978 Gerhard Lingelbach from Greiz graduated with a doctoral thesis on the relation of German jurisprudence towards the French Revolution between 1789 and 1820 (Lingelbach, 1978). This thesis originated under the aegis of Gerhard Haney, and ideological echoes can be heard: ‘Feudal nobility fought for the primacy of feudal ideology in jurisprudence’ (Lingelbach, 1978, p. 41), or ‘The bourgeois state and bourgeois law are instruments of domination to maintain the power of a minority over the majority of the masses (...). The oppression of the exploited is the principal duty of the feudal and of the bourgeois state and government’ (Lingelbach, 1978, p. 41). Referring to the role of jurisprudence, Lingelbach writes:

Due to the fact that the bourgeois consciousness of law on the eve of the French Revolution was only weakly evolved and hung behind the material conditions of the second half of the 18th century, sciences and especially jurisprudence were ideological institutions that played an important role in protecting the power of feudal nobility. Hence the nobility tried to control it [the law]. (Lingelbach, 1978, p. 43)

Lingelbach's work refers to a 'histMat' and 'diaMat' scheme to assess German jurisprudence around 1800, and he used this scheme to measure whether a scholar was progressive or reactionary. Progressiveness around 1800 was credited to lawyers which spoke up for 'bourgeois' rights and liberties (e.g., civil equality), 'bourgeois' law codes and the 'bourgeois' government of the state. This indicates that historical science on bourgeois lawyers and their work (here on the historical school of German jurisprudence) in a socialist setting was possible once researchers dressed their topic in 'diaMat' clothing and showed an interest in dealing with classic topics of 'histMat' such as the French Revolution. In this way, researchers could in fact preserve historical knowledge and could even (courageously or 'under cover') emphasize liberal attitudes in a scientific world ruled over by a socialist ideology that intrinsically rejected such attitudes. Hence, Lingelbach's paper is an example of historical science in a totalitarian setting, though contemporary readers may well have to read between the lines to discern the implicit and explicit meanings of the text.

Lingelbach's second thesis from 1985 about the change of the accused's position in overcoming the feudal inquisitional procedure mirrored by German jurisprudence (Lingelbach, 1985) again under the aegis of Gerhard Haney, also uses the 'diaMat' scheme continuously. Such matters as penal law in general, procedure, 'man price' or 'blood money' (*wergeld*) penalties, torture, the position of a person charged with an offense following 'objective circumstances,' 'the processes of material appropriation,' protected and guaranteed the property conditions, ruled conflicts 'objectively' occurring—all these issues, it was argued, reflected economic and political structures, and gained new dimensions on account of and after revolutionary events (for all quotations cf. Lingelbach, 1985, pp. 5–46, 74f.). Concerning to Lingelbach, the inquisitional procedure in particular was a product of a period that saw the decay of feudalism (Lingelbach, 1985, p. 29). He stated that the procedural position of the individual followed the individual's social embedding in feudal society, and property conditions determined socio-economic and legal inequality as well as offering protection (Lingelbach, 1985, pp. 35–40)—truly an up-front appreciation. Again one can say that Lingelbach made an attempt to understand the social and legal relations reigned by fiefdom and vassalage in a non-unidimensional way. In his willingness to abstract from details (Lingelbach, 1985, p. 48, p. 85f., p. 99) he showed an affinity for the new 'diaMat' approach yet remained open-minded about legal historiography. These comments also apply to Sigurd Leitel's doctoral thesis from 1989 (Leitel, 1989). Haney and Lingelbach were Leitel's reviewers.

Conclusion

Traditional history of law at Jena died quickly within the ‘Buchda years.’ The former Institute for State and Legal History (*Institut für Staats- und Rechtsgeschichte*) collapsed with the third Higher Education Reform (*Hochschulreform*) in 1969. The temporal coincidence between Buchda’s retirement and the collapse of his institute was not accidental. Buchda and seven of his scholarly followers did not succeed in offering any topic or any perspective on socialist legal historiography—or perhaps they did not want to offer such an approach. In fact, their works (which were carried out in quick chronology in the 1950s) did not refer to Marxist ‘diaMat’ at all. Neither Buchda nor his seven followers chose topics to do with socialist legal historiography, such as ‘the revolution and the law,’ ‘the legal history of the working class movement’ or ‘capitalism or imperialism and the law,’ and instead they stuck to traditional topics. We assume that Buchda has supervised research with regional, sometimes local perspectives and has directed his students into the Middle Ages and Early Modern times. The legacy of Buchda’s own research apparently lived on in some of the theses he supervised (e.g., Günter and Haalck) but definitely not in the last one he supervised (Ziegler). All in all, this can be seen as a researcher’s and a teacher’s escape, a getaway from educational politics driven by the SED, from building a new socialist society, education and from establishing a new socialist (legal) historiography. Buchda had the chance to be more political in his teaching—expressions like ‘reality first’ and ‘contemporary attitude towards life’ were not mere rhetoric to him—but he chose not to.

The first doctoral candidate with a topic of legal history who referred to ‘diaMat’ (Ziegler) graduated in 1969, with Gerhard Haney as the second reviewer. This cannot have been an accident. We did not find solid proof that Haney dictated the choice of topic and method for the candidate, and we do not know to what extent Buchda was the real spin doctor behind the last doctoral thesis under his aegis. Nevertheless, our review shows the possibility of pursuing legal history without using Marxist-Leninist theory in universities in East Germany during the 1950s and 1960s. ‘The Third Higher Education Reform’ of 1969, however, changed matters quickly and completely. Both the GDR system of higher education and the GDR legal system had no need for research that resembled Gerhard Buchda’s work—disconnected from the contemporary debates on the fundamentals of socialist law and/or legality (cf. Klenner, 1953). Buchda stood alone on ‘Last Standing Hill.’ After a quick step in 1969 (Ziegler), it took the Jena law school 10 years to establish a new ‘diaMat’ affine legal historiography (Lingelbach).

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