

## Lords Ask, Peasants Answer:

### Making traditions in Late Medieval village assemblies\*

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In the western parts of late medieval Germany, subject peasants were invested with the authority to tell the local law (*weisen*). Sworn representatives of peasant communities declared the law at least once a year in the assembly, attended usually by all male full-members of the community in question. The norms, rights, and rules which they expounded were claimed to have been handed down to them from their ancestors. As a rule, they were not read out from some record but reconstructed orally in a complex ceremonial dialogue between lords and peasant jurors. The lord or his representative put the questions; the peasant jurors were to give binding answers.<sup>1</sup>

The lord summoned the assembly on traditional dates, often three times a year. On the evening prior to the assembly the lord arrived at the village and received food and lodging from the peasants. The assembly was ceremoniously opened the following morning, a privileged space was marked off from its surroundings and a special peace was proclaimed. In the middle the peasant jurors, often called *Schöffen*, formed a circle, along with the chairman of the court, usually the lord or his local representative. After the presence of all the peasants obliged to appear in court had been verified, the laws were related by the peasant jurors, a practice known in German as *Weisung*. The specific contents of the *Weisung* differed from one lordship to another; it almost invariably included the lord's main claims vis-à-vis his peasants — labour dues and rents — and enumerated peasants' collective obligations.<sup>2</sup> A typical *Weisung* might also comprise descriptions of fines and penalties, regulations concerning rights of common, rules pertaining to modes of inheritance, stipulations on the local land-market, weights and measures and so on. The declaration could also address village affairs and sometimes also some peasant counter-claims vis-à-vis the lord. Peasant *Weisung* encompassed yet more than rights and claims pertaining to the inner workings of rural lordship. Peasant jurors

often proclaimed who the lord of the community in question was and in what capacity he was ruling; they reported the rightful claims of the territorial prince and how powers of jurisdiction were to be allocated among different lordships represented in the village; they also provided minute descriptions of the boundaries of lordships and communities.

What happened after the *Weisung* was not so strictly regulated. If the date of the assembly coincided with that of the delivery of peasant dues, the lord might then demand them from his subjects. He might ask whether anyone knew of any encroachments on his rights in the village, or whether anyone had any charges to bring; this would open the court session. Peasants were under obligation to inform the lordship of infractions of the law; judgment was given by peasant jurors, the lord's role being basically confined to presiding the court, enforcing its decisions if necessary and collecting the fines paid. Fines from jurisdiction were in fact an important source of revenue for lords, yet occasionally the jurors or the whole community had a share, especially in the smaller fines. Many of the fines were immediately paid during the assembly with wine and bread, which were distributed among the assembled, and the whole event was often sealed off with a meal, sometimes served only to the jurors, at the lord's expense. Court records were seldom kept in medieval Germany whereas written documents related to the *Weisung*, the most formal part of the assembly, have survived in growing numbers from the twelfth century onwards, reaching a peak in the fifteenth and sixteenth centuries.

That peasant communities were governed according to a body of 'customary' law 'found' by local jurors was not exceptional in late medieval western Europe; west German peasant communities seem to have differed in that this body of norms did not remain implicitly embedded in the practice of local courts, nor merely alluded to occasionally to support some unusual decision, but explicitly reconstructed in a special ceremony at the opening of rural assemblies, the *Weisung*. More importantly, the fragmentation of political authority in western Germany and the peculiar form assumed by processes of state formation in the early modern period lent unusual weight to peasant *Weisung*. Peasant declarations of law were extensively used by rival lords — territorial rulers included — who were eliciting such statements from their peasants in order to present them in courts in order to corroborate their claims, enhancing thereby for a while peasant legal authority.

The same process also played a crucial role in shaping the written evidence of rural legal traditions. *Weistümer* — written documents related to *Weisung* events — often owed their production to attempts to export the products of local normative traditions into more remote legal markets by having them written down. *Weistümer* did not survive in such quantities simply by virtue of having

once been written down. To survive, they had to be recorded, committed to archives, constantly transcribed and summarized, cited and refuted. It was rather the special position *Weistümer* assumed within the changing legal landscape of late medieval and early modern western Germany, circulating between courts and quoted by diligent scribes, which accounts for their survival. This was thus not a simple derivative of written documents' material properties but a relational outcome of a complex social process, involving practices of conservation and modification. The profusion of written *Weistümer* is an effect of a specific social, political and legal configuration, which enhanced temporarily the value of allegedly oral rural traditions, before the further consolidation of legal systems and the advancing monopolization of legal authority by learned jurists relegated them to the newly reconstituted realm of folklore and 'Tradition' — only to be rediscovered there almost immediately by nineteenth-century folklorists and historians.

In the fifteenth century, however, these processes, which were to transform the notions of both law and tradition, were still incipient. In the following I shall neglect these wider contexts of peasant *Weisung* and the varying combinations of oral and written representations to which they gave rise, and focus on the local implications of this practice. A further limitation results to a large extent from the kind of sources available. Since few court records have survived from late medieval Germany, litigation and justice, arguably the more important part of their dealings in the local context, cannot be adequately analyzed.<sup>3</sup> In their absence, the role of *Weisung* in the context of local peasant society remains perforce unilluminated and leaves a whole series of important questions unanswered. How effective was the apparent exclusion of women from full participation in the assembly and what did it imply for gender-related notions of normativity and authority?<sup>4</sup> In what ways was the recitation of particular claims and rights in the assembly alluding obliquely to local alliances and conflicting interests within villages? Similar difficulties arise in trying to assess the jurors' behaviour in the context of rural society. Most seem to have been village dignitaries of some kind; yet the extent to which they were able, for instance, to use their position in court to influence community affairs can seldom be assessed. It is, however, important to point out their ambiguous position between lords and the rest of the villagers.<sup>5</sup> Although they owed their authority partly to nomination and recognition by lords,<sup>6</sup> they had to rely on community support and assent in declaring the law. Unlike their late medieval urban counterparts, members of German village elite could not establish a formal monopoly over their positions of authority and legal competence. Their social career of this group was often arrested by the presence of lordship and their necessary reliance on village support.

Some of these constraints can be discerned in the structure of the *Weisung* itself. The spokesman for the jurors, stepping forward to pronounce the answer in the face of a demanding, potentially menacing lord, remained under the eyes of the whole assembly (*Umstand*). The assembled peasants were more than spectators exercising passive censorship over jurors' performance; although one usually expected the jurors to declare the *Weisung*, legal knowledge was assumed to reside among all members of the community, a fact underscored by jurors regularly retreating to 'consult the community' in order to return with an authorized answer,<sup>7</sup> or at time by peasants interfering in the dialogue between lord and jurors in order to correct their statement of the law. In the middle of the fifteenth century, for instance, the jurors of Bruttig, a wine-growers' village on the Mosel river, were publicly contradicted by community members and hastily revised their statement.<sup>8</sup> I can say very little, though, about the inner divisions of village society which might have been the cause for such conflicts.

Because we have to rely on accounts of the *Weisung* as a body of norms without the records of particular decisions and detailed knowledge of local conditions, hidden edges and subtle modes of collaboration are bound to escape our notice. Instead, the *Weistümer* foster an image of a frontal encounter between lords and peasants in the assembly. They offer, however, some possibilities to explore the making of traditions as shaped by continuous dialogues between unequals and the specific representation of the past embedded in such a practice.

Being involved in the making of tradition had serious implications for peasants. In the case of the *Weisung*, 'tradition' did not stand for the unofficial refuge of subjects excluded from the making of 'real' law: it was itself the law, and peasants took active part in transmitting and reshaping it. In this respect, peasant participation in the work of tradition was a resource at least some of them could deploy and an important constraint on lords' freedom of action, a point stressed notably by Max Weber.<sup>9</sup> Weber seems to have overlooked, however, the darker side of peasant participation in the making of legal tradition. His analysis of the implications of lay participation in law finding in different medieval settings remained too formal: A given institutional arrangement might have contradictory implications in different social contexts. Regular participation in law-finding may have represented an important asset for nobles attending feudal assemblies, but its consequences for subject peasants remained deeply ambiguous. For peasants, telling the law was both a resource and a burden, since in the *Weisung* they were taking part in legitimizing their own subjection by publicly recognizing their manifold obligations. A typical *Weisung* from the mouth of peasant jurors was mostly about peasant obligations: rents to be paid, labour dues to be performed, and various fines to be

paid for not attending the assembly, poaching in the woods or not asking for the lord's permission when alienating land. Ascribed authority weighed even heavier on peasants having to recite publicly the disabilities of serfdom. But even seemingly innocent stipulations might contain a hidden edge. In wine-growing regions, for instance, jurors were routinely proclaiming the prohibition to begin the vintage until a lord's agent arrived in the village and gave the signal – a typical measure intended to prevent peasants from depriving lords from their due share in the produce. It did so, however, by impairing the labour process and thereby endangering the vintage itself.<sup>10</sup> Giving authoritative answers in the assembly could have dangerous implications for the speakers themselves, as later court protocols show. In Kesten the *Weisung* was followed in 1592 by a court session. After having recognized in the *Weisung* the penalty for wine-growers who persistently failed to keep their vineyards in good condition, one of the jurors, Peter Schenneten, was himself denounced for the very same infraction.<sup>11</sup>

Lords or their representatives came to villages, as a recurrent formula had it, in order to listen to peasants tell the law; jurors' answers had, however, undeclared addressees, as they were actually reminding themselves and the assembled peasants who they were and what obligations they had. To the extent that lords' claims upon subject peasants were represented in the *Weisung* as handed down from the past and hence legitimate, peasants were sharing with their lords the work of transforming again and again the past of lordship into the seeming lordship of the past.

### Questions and Responses

In the case of the *Weisung*, 'tradition' did not form a fixed body of norms nor a pre-given, bounded text handed down, for both did not exist independently of the encounters between lords and peasants in the assembly. In principle, no single encounter could be held to be an exhaustive embodiment of the local law; new questions might be posed, and answers could vary. Tradition might better be provisionally understood as the ongoing *process* of shaping legal norms, rules, claims, and obligations in dialogues between lordship and its subjects.

How misleading a hypostatized notion of tradition can be, becomes more evident when we ask, where would 'tradition' in the sense of a body of norms be thought to be 'located'? It was not thought to reside in peasants alone, whose declarations were considered valid only when given publicly as answers to lords' questions; neither did it officially reside in lords' archives. Seigniorial officials might possess notes with lists of common questions and expected

answers (Ringholz 1904: 205); still, in order to be considered ‘traditional’, that is legitimate, the answers had to be declared in the assembly by peasants. Peasants’ answers, in their turn, were shaped by lords’ questions. Hence, instead of abstracting a body of norms from their interactions and confrontations, I suggest we look at the whole assembly as a contradictory *inscription system*, whose actual working can be provisionally termed ‘tradition’. No single actors could be considered as ‘bearers’ of authorized versions of the local law; their social configuration could: The visible interactions between lords and peasants were bringing forth publicly recognized, binding and transient versions of the past; they were shaped by an underlying institutional framework and a common repertoire of accepted moves and counter-moves. Both the game and the moves were embedded in the social organization of lordship, constraining and enabling the production of the legal past. The *Weisung* thus presents a good case of the dialogic production of the past under lordship.

Modifying Halbwachs’ broad concept of collective memory, Roger Bastide has proposed to apply the term only to those cases in which the structure of a group itself functions as a memory structure (Bastide 1970; 1978; cf. Wachtel 1986: 211-217; Douglas 1986). Without adopting Bastide’s terminology or committing myself to his actual findings, his model can be used in order to bring out by way of comparison and contrast the distinctive features of the *Weisung*. Studying the transformations of African religions in Brazil, Bastide has depicted their rites as symbolic enactments of group structure. Social roles and activities were reproduced in the articulation of roles assumed by participants in religious ceremony. Bastide has suggested that ‘collective memory’ could be usefully understood as ‘a memory of a scenario, of links between roles’, so that ‘it is the structure of the group which furnishes the frameworks of collective memory, defined not as collective consciousness, but as a system of interrelations between individual memories’ (1970: 92, 94). In Bastide’s account, forgetting is also shaped by the structure he portrays. As the Brazilian descendants of African slaves tried to reconstitute the ceremonial ensemble after the dislocations brought about by slavery, omissions and gaps emerged. The absence of participants due to death or dispersion did not entail, however, ‘total forgetting’, because it was felt as a missing part in a structure of coordinated actions and expectations created by the scenario (ibid: 96). Bastide can thus show how structured silences and bounded forgetting can be conceived as specific effects of a social practice.

The *Weisung* was likewise not a monological text; it was an orchestrated performance, in which peasants were not mere spectators but active participants. The mutual dependency of participants’ roles in the ceremony was expressed in the formal allocation of roles in the dialogue, with lords posing questions and peasants giving answers. To obtain a valid declaration of their

rights and claims, lords had to have community representatives tell it; to tell the law legitimately, peasant jurors had to be properly asked by their lord. Dialogue roles, however, were neither exchangeable nor symmetrical. Speaking turns in the *Weisung* were allocated according to a fixed scheme. The jurors spoke only when spoken to, and were expected to give relevant answers. The distribution of legitimate speech was controlled quantitatively and qualitatively by the lord posing questions. It was his right and privilege to ask while peasants were under obligation to answer. They could seldom pose counter-questions to their lord. Moreover, the obligation to answer extended beyond the jurors alone and comprised the whole community, formally required to help to tell the law and to confer with the jurors.<sup>12</sup>

Posing questions in the assembly also had political and symbolic dimensions. It was an attribute of lordship, so that when disputes arose between lords over rights of lordship in villages, parties often adduced evidence to prove that they were holding assemblies and posing questions regularly.<sup>13</sup> More generally, being questioned was also closely associated with peasants' experience of lordship, because for both church authorities and secular lords, questioning their subjects was an important aspect of exercising power. On the other hand, situating the question-and-answer form in the context of the existing 'repertoire of available interrogative strategies' (Goody 1978a: 5) also brings out the differences between the *Weisung* and the interrogation of individuals by worldly lords or the examination of Christian believers by their church superiors. Lords were held to respect customary procedures when posing questions in the *Weisung* and only occasionally could they attempt — with varying success — to go beyond the set of received questions. Peasants for their part could make use of a repertoire of legitimate counter-moves and strategies. Thus, depending on local circumstances and the temporary balance of power, questions put by lords' representatives could sound like anything between a cautious request for an answer and a penetrating interrogation.

If the lord was the one who puts questions, then the one who puts questions could be presumed to be the lord. Accordingly, since the right to ask was an attribute of lordship, peasants' willingness to be asked implied recognizing it. Such recognition was implied in answering questions (Toch 1986: 667–668), in obeying the bells summoning the assembly and attending it, in fact, already in accommodating the lord when he arrived in the village and providing for his needs. This is well indicated by cases of resistance and rebellion, signalled by peasants not attending the assembly. Thus, as in the rites studied by Bastide, the ceremony of *Weisung* itself constituted an act of commemoration of the lord's authority, the explicit declaration of law comparable to the myth accompanying a rite. By participating in the assembly,

peasants were reminding themselves who they were, that is, to whom they were subjected.

On the other hand, in contrast to what Bastide's model implies (1978:245), no simple correspondence existed between the social organization of the group in question and the image of relationships projected by the ceremony. The *Weisung* was a carefully controlled inversion of the everyday visage of lordship, as lords were ascribing legal authority to their subjects. Peasants could perhaps be made to say what lords wanted to hear, but for their answer to be considered representative and authoritative, they had at least to appear to be speaking freely and uncoerced, especially when scribes were present.<sup>14</sup> In order to elicit effects of legitimacy from rural assemblies, lords had to work their way through a host of ritual constraints. The *Weisung* was therefore not a transparent projection of existing social relations on the gathering, but a transfiguration of existing power. It remains to be seen whether it was also accompanied by the kind of collective belief on the part of participants which Bastide seems to surmise for the rites he has studied.

A central aspect of the transfiguration of lordship in the *Weisung* consisted in backgrounding the threat of violence and the means of coercion at lords' disposal.<sup>15</sup> A strict demarcation of the assembly as the setting for the declaration of law was maintained by a series of ritualized opening questions and a special peace proclaimed for its duration (Burchard 1893; Feigl 1974). Within the *Weisung*, lords had to translate their power into discursive resources which would allow them to control its course. The right to put questions was foremost among them. It allowed lords to elicit answers, to direct attention, and to control to a large extent the making of issues and non-issues (Goody 1978b:17–43). Asking questions was essential to the organization of social bias in the assembly. But it was not enough to secure a proper *Weisung* for lords were still dependent on obtaining the 'right' answers.

The ritualization of the course of *Weisung* also served to control the behaviour of peasant jurors in a setting which excluded the use of unconcealed threats by lords. Lords were not formally confined to putting only customary questions, though peasants could claim they did not know the answer to novel questions. Peasant jurors, however, were bound to answer in ways consistent with their previous declarations. Lords could therefore insist on 'traditionality' and refer recalcitrant peasant law-finders to their own or their predecessors' past recognitions.<sup>16</sup> Accordingly, many a *Weisung* was itself about the customary course of *Weisung*, as peasants were asked not to cite their ancestors but to cite themselves citing their ancestors, that is to remember how they usually 'remember'.<sup>17</sup> This reduced to a degree the risk of wild interpretations and uncontrolled production of the past by peasants. Ascribing to them



the authority to produce binding versions of the legal past restricted to a degree lords' possibility to argue directly against peasants by adducing their own version; thus, not the remembered past itself, but past 'remembering' was used to constrain peasant *Weisung*. Peasants' would thus be confronted with their own past statements and the lord's power over the living could assume the form of the lordship of the past. It is important to see how a specific representation of the past, of 'tradition' and 'traditionality' — indeed, 'traditionality in the second degree' — were not a feature of some peasant culture but a specific effect of an institutionalized practice in a given social context. When actually confronted with lords or their legal counsellors waving written documents in the assembly, peasants were not facing some disembodied 'power of the written word' but their past acts of recognition noted down, extracted and cited in order to shape their recitation of the law.

Still, controlling the ceremony and even supervising the words spoken did not ensure lords full control over the production of tradition, as long as the relevant interpretative community consisted of peasants. Symbolic gestures embodying legal claims, for instance, were liable to be given contradictory interpretations by lords and peasants.<sup>18</sup> Peasants' 'wild interpretations' could not be easily discarded by lords because legal competence was ascribed to peasants by the very same gesture which sought to install lords' archives in their 'memory'. The case of the Brauweiler monks and the villagers of Klotten in the electorate of Trier is especially revealing in this respect. The Brauweiler peasants in Klotten were allowed to intermarry with subjects of a small lordship in Klotten, whose patron was St. Peter; they were thus permitted to marry 'the people of St. Peter'. In 1501 the Brauweiler chronicle noted that some peasants from Klotten married 'foreign women'. The peasants cited the local *Weisung* in support of their claim that they were entitled to marry any 'man of St. Peter', that is, any subject of the territorial principality governed by the archbishop of Trier, whose patron saint was also St. Peter. This interpretation would amount to making the imposed marriage limitation practically void. The Brauweiler lordship forced the peasants to renounce publicly their heretic interpretation of the local *Weisung* and to pay the marriage fines; it also seems to have taken measures in order to incorporate the 'proper' interpretation more clearly in the *Weisung* of 1511.<sup>19</sup> Yet by 1652 the peasants of Klotten enjoyed the right of marriage denied to them.<sup>20</sup>

Besides peasants remembering their own past 'remembrance', there was a further central act of remembering involved in the *Weisung* which may be easily overlooked. Opening the *Weisung* session, the lord's representative usually reminded (*[er]mahnt*, a loaded term which also means 'admonished' or 'warned') the jurors and the community of their oath of allegiance and asked

them to declare the law. Thus, the appeal to peasants' memory within the *Weisung* was itself embedded within lords' reminding them of their status as subjects owing allegiance. This was a way of introducing pre-existing power relations into the circumscribed setting of the *Weisung* without laying bare the device. Before peasants were to assume their formal *personae* as law-finders, the imprint of lordship on their peasant selves was evoked by reminding them of their oath. As far as lords were concerned, they would be expected to speak as freely and authoritatively as their ritualized role as jurors could demand, but also as faithfully and loyally as their social subjection implied. Different dimensions of peasant social identity were thus invoked and played against each other. Such evocations could also be deployed during a *Weisung*, as in Fankel on the Mosel in 1422. Taken aback by the statement of the unruly jurors, who omitted the rights of his lord, the Count of Sponheim, from their *Weisung*, the agent of the Count reminded them that they were his lord's jurors and had sworn by the saints to declare the law only when admonished on their oath and when being asked to do so.<sup>21</sup> Then the jurors gave a proper *Weisung* 'as it was handed down to them from their forefathers', as the lord's agent reported with satisfaction. Yet resistance did not subside and in 1438 some Fankel peasants were still refusing to do homage to the Count and were arrested.<sup>22</sup>

Lords' power was thus backgrounded but never wholly missing from the scene of the *Weisung*; the interaction was constructed as a carefully framed setting, in which participants might point beyond it to its enclosing frames. The presence of the lords' following is further a case in point. Lords' right to accommodation by their subjects had an obvious economic importance. The number of followers he was allowed to bring with him was often specified in *Weistümer*, with some lords having the *Weistümer* describe in great length the food and drinks to be served, the bed and lodging required for the lords, not omitting bread for their dogs and enough fodder for their horses. Leaving aside the issue of the onerous proximity of lords intruding as guests into peasant milieu and maintaining the focus on the *Weisung*, it is worth noting that lords' followers were not only *representing* lordly lifestyle in the village; their actual presence as armed retainers affected the interaction. Thus, within the ceremony their presence was a component of lordly representation, a symbolic attribute of lordship; at the same time, it tacitly pointed to their role beyond the ceremony as part of the means of coercion at lords' disposal,<sup>23</sup> finally, in written accounts of the *Weisung* they were often listed only in the concluding section as witnesses authenticating the document. Written documentation hence neutralized the effects of their presence, but variations between declarations of law given by the same communities within a short span of time can be plausibly

accounted for by shifts in the immediate balance of power generated by the presence of lords' armed retainers at the assembly. Thus, in the 1422 case of the Fankel jurors, it seems that it was not the Sponheim agent's admonition alone which made jurors 'remember' the proper *Weisung*, but the actual presence of 'friends' of the Count of Sponheim at the scene of the assembly.<sup>24</sup>

Lordship, transfigured, underlay the *Weisung* event. The *Weisung* owed its form to the social organization of the seignior mediated through self-concealing strategies and an accepted repertoire of moves and counter-moves by lords and peasants. 'Remembering' was not a straightforward derivative of group structure but the social effect of a series of reminders exchanged between unequal parties. Whereas in Bastide's model 'memories are articulated together with the memories of others in the well-ordered interplay of reciprocal images' (1978:247), such could hardly be expected in the strained articulation of the *Weisung*. Such well-ordered interplay existed on paper, in scenarios for proper *Weisung* produced by scribes for the use of lords' bailiffs. In actual *Weisung*, questions were not necessarily followed by answers and the images of the past projected by lords' questions were not always met by transparent peasant consciousness reflecting it back and lending it its authority. This can be shown if the relationship between lords' questions and peasant answers is examined more closely.

The subject matter of a question is partly determined by the answer.<sup>25</sup> It was therefore not enough for lords to be entitled to put questions in order to determine completely the topic of the interchange in the assembly. An attempt by peasants radically to redefine the subject would clearly be perceived as an open challenge to the lords' position. This was what the Fankel jurors actually did in the *Weisung* referred to above. Asked about the rights of the Count of Sponheim, they responded by declaring the rights of his rival, the prince-elect of Trier. The count's angry official insisted that 'no-one asked them about that *Weistum*' and what they did was unlawful. Peasants' possibility to redefine questions did have its limits, but these were limits to be explored and pushed further as the occasion arose. Jurors could evade a question<sup>26</sup> append a peasant complaint<sup>27</sup> or a counter-claim<sup>28</sup> to a required recognition of lords' rights.

A limiting case consists in answering a question with a question and trying thereby to take control of the course of the conversation.<sup>29</sup> Take the case of the peasants of Ensheim near modern Saarbrücken, subjects of the monastery of Wadgassen. In 1511 and 1520 they were recorded as responding to the ritual question opening the *Weisung*, 'whether it is the right day and hour to hold the lord's yearly assembly' with the routine answer, 'when it seems to my lord of Wadgassen that it is the right day and hour, then this is the time'.<sup>30</sup> In

1538, however, the speaker for the jurors posed a counter-question: he wishes to know, ‘whether my lord the abbot of Wadgassen is willing to leave the jurors and the court to their old customs and usage; to which the [lord’s] provost gave them this answer: My lord the abbot of Wadgassen is not of the wish or of the intention to deprive you of some old rights, usages and customs or to diminish them, but to keep them rightfully to the best of his ability.’ Only then did the jurors give the expected answer allowing the assembly to resume its course.<sup>31</sup> Here, peasants seem to have left the realm of ritualized exchange and entered open negotiations with their lord, probably taking advantage of some favourable constellation. It is tempting to see this as a local repercussion of the German Peasant Revolt (1524–1526) intervening between the earlier *Weisung* and this one. Indeed, many villages of Wadgassen took part in the revolt, but Ensheim apparently did not; it may, however, have benefited from the revolt by refraining from participating, since the abbot is reported to have favourably considered the list of grievances they submitted in 1525.<sup>32</sup>

Not only were peasants’ responses not necessarily followed by the answers lords expected, a lord’s question could be pending in the air for a while before answered. Jurors would sometimes retreat and confer among themselves or with members of the community before returning to the circle to pronounce their reply. They could deploy this right in order to gain time before pronouncing an answer likely to irritate the lord facing them, as the jurors of Fankel did in the 1422 *Weisung* cited above.<sup>33</sup> Also, by leaving the court and ‘conferring with the community’, peasant jurors could turn attention to their official mask, their role as representatives and mediators between lord and community, moving in a space carved out between their personal status as subjects and their institutionalized role as jurors in the assembly. However, it is worth pointing out that the room for such strategies was partly opened up by lords themselves, whose scribes often emphasized that peasants’ favourable answers were given ‘after due deliberation’ in order to lend them special weight.<sup>34</sup>

The time span separating a question from an answer could be stretched even more when jurors claimed they do not know the *Weisung* and need a recess to think it over.<sup>35</sup> This was a recognized move and could sometimes end up in the lords’ question not being answered at all.<sup>36</sup> Asked about the obligations and liabilities of serfdom, the jurors of Gersheim claimed they did not know the answer and were given a month to think it over (*gemude*). In reply, the representative of the lordship, the monastery of Herbitzheim, confronted them with a rather unconventional question: what happens when jurors take time to consider an answer and do not give an answer within the set term — who pays for the costs? In response, the jurors asked for a month to consider this question — and presumably also its implications for themselves.<sup>37</sup>

### Differential Silences

Cases in which the ceremonial exchange between lords and peasants turned into an actual dialogue bring to the surface the tensions which the usual, ritualized flow of the ceremony may conceal. This does not serve to discard the ceremony as mere form but to disclose the efforts and the risks involved in keeping appearances and the specific strategies they gave rise to. Instead of the almost mechanical reciprocal mirroring of shared visions postulated by Bastide, we find in the *Weisung* a strained refraction of conflicting images of the past, with peasants being reminded by their lords of what they were supposed to remember, and seeking to counter this ascribed remembrance by reshaping the questions put to them or claiming ignorance.

Claiming ignorance can be considered the only recognized form of peasant silence within the *Weisung* situation, whereas remaining completely silent, ignoring the lord speaking, would be a direct affront. Besides formally claiming ignorance one could try and pass upon an issue in silence, evade the question or misunderstand it. Since the *Weisung* was a structured event, a ritualized dialogue, silences were articulated as omissions where answers were expected. Peasants' attempts to pass over certain issues in silence are therefore easily noticed as issues raised by lords' questions and avoided by peasants. In contrast, lords' unformulated questions, the issues lords preferred not to raise at all, such as their obligations towards the peasant community, are easily overlooked; they are non-issues. Even in those cases in which peasant jurors managed to make lords promise to respect peasant customary rights, such rights were summarily referred to and did not become the subject matter of a detailed *Weisung*, because lords could not be made to put the necessary questions.<sup>38</sup> Hence, whereas peasants' silence emerges easily to the surface of preserved texts, lords' strategic evasion and suppression of potential questions are not felt to be missing. This is another aspect of the inequality structuring the encounter: lords' and peasants' silences were not equally audible. Note that this mode of organizing social bias is a feature proper to the oral event, not to mention the further effects of silence generated by the written record.

Peasant silence as a discursive strategy within the *Weisung* can be contrasted with a much more radical kind of silence, when a whole community defied its lord by failing to show up at the assembly. Such silence was eloquent enough. But it was again only a relative one, for it referred only to the occasion at hand, namely the encounter with the lord: a lot of peasant talk could be expected to happen somewhere else, in autonomous peasants assemblies, a major form of organization of medieval peasant rebellions.<sup>39</sup> Suppressing peasant rebellion, as in Germany after the Peasants' War, involved rechannelling

peasant public speech to assemblies held under the aegis of lordship and a strict prohibition of gathering without lords' permission and without the presence of their agents (Stockmann 1975:320-322).

Still, the radical challenge posed to lordship by collectively not attending the assembly should not be wholly severed from everyday infractions and conflicts making up the daily workings of *Herrschaft*. There were some recognized grounds excusing individual peasants who failed to attend the assembly;<sup>40</sup> repeated non-attendance, however, would be taken as a indication of defiance and punished accordingly.<sup>41</sup> In Bruttig for non-attendance villagers paid the 'small fine' (ten Pfennig), which was immediately consumed by the peasants attending the assembly, a provision paralleled by common stipulations in neighbouring villages, where the fine for individual non-attendance was paid as a *sester* or a bottle of wine, to be distributed among the villagers present. A peasant considered defiantly absent, however, would be punished by the lord at his will.<sup>42</sup> It seems that peasants could be usually trusted to implicate themselves in the daily practice of *Herrschaft* by denouncing those absent, pronouncing judgment and consuming the fines. This changed, however, once a certain threshold had been crossed and non-attendance assumed a new meaning. Collective absence seems to have been a much less ambiguous matter than individual evasion.

On this level as well, differential meanings are ascribed to silences. For although one needed both lords and peasants for the ceremony to take its course, lords' absence had a different implication. Lords were not under obligation to appear; failing to hold a *Weisung* for an extended period of time, however, entailed the danger that lordship, or at least some of its essential claims, would sink into oblivion.<sup>43</sup> The need to counter 'forgetting' of this sort constituted a major stake in the *Weisung*. As in the case of peasants' non-attendance, lords' repeated absences mattered. By failing to claim his rights, a lord was risking the possibility of custom turning from ally into enemy, since silence and non-presence would acquire normative power by prescription. Here the differences with Bastide's account of forgetting as a result of participants' absences from the ceremony is telling: in both cases 'forgetting' is structured by the scenario, felt and shaped by the articulation of complementary roles. But the differential effects of lords' and peasants' absence show the *Weisung* to be not a simple collective ceremony but an imposed structure intended to instil 'memory'. The formal mutual dependency of question and answer may conceal from us the fact that peasants could very well do without lords' asking them questions. As a community of producers and neighbours they seem to have regulated their use rights without a similar question-and-answer ritual. Through the *Weisung*, lords were actually trying to

insert themselves into the process of tradition,<sup>44</sup> yet peasant populations endowed with communal institutions had no difficulty to imagine themselves doing well without lords.<sup>45</sup> One could see here a parallel to late medieval lords' attempts to control potentially independent peasant household production. Indeed, it has been suggested that the emergence of the *Weisung* institution may be related to west German lords' gradual retreat from direct involvement in production on their domains in the High Middle Ages, so that *Weisung* was to bind peasants to lordship as its grip on their labour power was loosened (Patzelt 1924).

### Wine and memory

Not only words and texts circulated in the *Weisung*. To grasp the system at work, the material flow at the assembly should be at least summarily considered. Food and wine were not only jurors' and peasants' reward for attending the assembly and helping to recite the *Weisung*; law-finders' recurring insistence on their proper distribution suggests that their material importance should not be underestimated. Wine and memory were intricately bound. In some villages white bread was given out at the assembly 'as a token', 'for remembrance'.<sup>46</sup> More generally, according to a widely prevalent legal practice, by drinking 'testimonial wine' (*vinum testimoniale*) one was bound to retain things said and done. This should be borne in mind when considering the role of food and wine in village assemblies. Avoiding the concluding meal or the wine shared after some public legal proceeding could indicate dissent and refusal to be committed in the future to its outcome.<sup>47</sup> Hence by consuming food and wine given out by their lord, peasants were actually committing themselves to serve as vessels of legal acts performed in the assembly,<sup>48</sup> their position analogous to that of jurors formally required to retain a testimony in their memory after having consumed 'testimonial wine' (Beyerle 1934:258-260; Erler 1971).

The circulation of wine and food was however more intricate than this account might suggest. During the assembly, wine circulated also among the villagers, as peasants' small infractions were brought forward and commuted to fines paid on the spot, often in wine (or beer) or bread. Different circuits of wine intersected in the assembly, and the flow of wine among community members channelled through the court also furnished lords' agents with valuable information and assisted their control of village life. The ambiguities involved can be gleaned from the proceedings in Unterneudorf in 1457, where the fine for not attending the assembly customarily consisted in paying for a round of drinks for all the villagers assembled. The lord's interest in compulsory attendance at the assembly was thus linked to the communal enjoyment of

the fines for failing to attend it; this could be expected to encourage reciprocal denouncements and intensify divisions within the community. The lord's bailiff was faced, however, with repeated cases of peasants refusing to drink this wine and donating the fine back to the villager found guilty; he therefore insisted that if they refused to drink the fine, it would nevertheless have to be paid, but directly to the lord (Krebs 1903:225–228).

Such acts of refusal seem to have been an exception. The amounts of wine usually consumed during assemblies can be gauged from occasional complaints about excessive drinking.<sup>49</sup> The Brauweiler abbot complained that his jurors in Klotten used to drink so much they were neither able to keep their mouths shut during the ceremony nor to declare the law properly.<sup>50</sup> A fourteenth-century document has a peasant concluding a *Weisung* declaration by saying: *Aultres choses ne vous raporte pour le présent fors que Dieu vous doint bonne vie et allons boire, je vous en prie.*<sup>51</sup> Drinking wine in the assembly might have served to soothe local animosities, but also provided ample occasions for new quarrels to break out, resulting in further fines to be paid by the parties for breach of the assembly's special peace and thus feeding the interaction further. Wine was flowing through the assembly especially in autumn, when many lords were entitled to impel their subjects to buy a certain quantity of lords' wine (*Bannwein*). In order to give a full account of the intricate flow of wine and the material exchanges in the assembly, one would also have to juxtapose peasants' meal at the lord's expense with the hospitality accorded to the lord and his followers when coming to the village. Finally, in wine-growing regions peasants were often paying their dues in kind, so that to the flow of wine downwards and upwards, from lords and among villagers through the court, one should add the presentations of wine to lords, some of which was solemnly tasted and evaluated in the assemblies.<sup>52</sup> The whole gathering took place amidst an intensive flow of wine and talk; villagers were eating and memorizing, denouncing and drinking, settling petty accounts with their neighbours or resolving quarrels with them.

The late medieval *Weisung* can thus be pictured as a contradictory inscription system. German peasants were required to perform for and with their lords a particular kind of 'labour of memory', governed by a complex and unequal division of labour. Rural assemblies were the actual sites of production of traditions, linking lords, peasants, armed followers and scribes, questions and answers, wine, bread, and presentations in kind, scribbled notes, notarial documents, and expanding seigniorial archives, and operating according to locally variable sets of ceremonial rules and recognized repertoires of moves and counter-moves.



### The Shapes of the Past

A contradictory system for the production of the past under lordship, the *Weisung* entailed a specific mode of shaping the past. The binding, publicly produced and jurally usable past was not a finished product but always at stake in the repeated, yet not fully repeatable encounters between lords and peasant subjects. Hence, lords' interactional resources and their control of the situational dynamics impinged greatly on the long-term process of shaping local law. Lords' rights could easily sink into oblivion, at least as far as peasants were concerned. A medieval lord would like to hear the things which his peasants would like to forget — or rather 'forget to tell'. That is the reason why he put the questions.

Putting questions, however, was not only means to thematize existing norms and obligations, or to operate a selection on transmitted law, but a way of producing norms. Only when certain questions were posed were some norms and rights elicited, given form and binding force: 'Before someone asks you a question, you often do not know what you think' (Elias Canetti). By being formulated, declared as answers to questions posed in the required setting, accustomed practices could be transformed into customary ones, and sometimes into prescriptive rights. Such attempts are best observed when failed; otherwise they efface their own traces as the norms elicited and successfully turned 'traditional' cannot be distinguished from 'more traditional' ones.<sup>53</sup>

Lords needed their peasants in order to catapult present practices beyond the proximate temporal horizon and present them as existing 'since time immemorial'. In this sense, the *Weisung* was usually not about things past, but about the past in the present, that is, those 'segments' of the present which, under the existing balance of power and with due respect for customary forms, could be successfully projected onto the past. The past typically produced by *Weisung* was shallow, an extension of the present.

The nature of 'remembering' involved can be further illuminated by considering the apparently special case of newcomers joining the lordship. Some *Weistiimer* stipulate that at the assembly, newcomers should first take a public oath of allegiance to the lords in order to be able to join immediately afterwards the rest of the peasants in reciting the law. Such a stipulation makes clear that when peasants were said to be looking backwards and citing their ancestors, they were often actually looking sideways and listening to their neighbours, learning by participating what they have always 'remembered'. This kind of 'memory' could only be ascribed to the group, not to each

individual peasant; it came about by listening, mumbling, and joining in the recitation. It did not apply to things *passé*, but referred obliquely to present consensus forged in the community under the watchful eye of lordship.<sup>54</sup>

This seems familiar enough from common accounts of ‘traditional societies’; it also suits well-entrenched images of the ‘traditional peasant’<sup>55</sup> and can easily be made to fit in with common representations of ‘oral culture’. Such accounts tend to ignore the specific social constraints on ‘structural amnesia’ and the struggles over ‘forgetting’ discussed above. Moreover, in the case of the *Weisung*, ‘tradition’ itself was not simply a given of medieval ‘culture’ or ‘mentality’, but the outcome of a specific social configuration: in the context of lords-peasants relations in late medieval Germany, ‘tradition’ functioned as a mode of legitimation in a historical configuration in which lords and peasants could not resort to alternative sources of legitimation (such as common interest) in order to justify basic social arrangements.<sup>56</sup> More specifically, as I have tried to show above, in our case ‘traditionality’ was not an expression of some peasant ‘mentality’ but a strategy embedded in the practice of rural *Weisung* and occasionally used to control peasant declarations.

Peasants were indeed authorized to tell the law; but in any given moment, they were held to tell the law in the same way they had done before: when speaking, they were always held to be citing. The moment in which peasants could make an authorized and free statement of the law was entrapped in infinite regression, constantly projected by the *Weisung* and constantly receding into the past, always re-enacted. It was allowed to be present only as a representation; yet so transformed, it could serve to lend legitimacy to lordship. In the *Weisung*, a counter-factual state of affairs was enacted recurrently, carefully framed and controlled. A mode of legitimation by consent was actually embedded in the *Weisung* as a form of customary law-making. Unlike other modes of constantly deferring original consent, here consent was constantly receding into the past. You had to be your own dead ancestor in order to elude the restraints imposed by the presence of lordship on the production of the past.

The deep ambivalence of custom was well captured by the sixteenth-century German jurist Ulrich Zasius. He repeated the common learned opinion that both custom (*consuetudo*) and prescription (*praescriptio* – a right or an entitlement arising out of uninterrupted usage) derive their normative power from the assumption that they embody implicit past consent to a given state of affairs; the difference being, he writes, that prescription always works in favour of the people whose past practice serves as evidence for its observance, whereas custom may work *against* them.<sup>57</sup>

The projected moment of consent, however, was not receding by itself, as a side-effect of a pre-given ‘traditionalism’. Lords had to see to it that it was

pushed back against a countervailing tendency by peasants to endow it with reality, to take hold of the vanishing moment projected by the *Weisung*. They were seldom able to do so. To the extent that lords' power seemed secure and incontestable, peasant acquiesced and contributed to the process of legitimation, exacting from lords what they could for their cooperation. But that outcome was not all that they could think of. It is therefore essential to round out an account of the *Weisung* in the context of lordship by considering what peasants did when they had a choice.

#### 'Self forgetting' and projected *Vorzeiten*

Constructing traditions in the assembly cannot be accounted by referring to the available technologies of communication and transmission; it was inextricably related to the practice of seigniorial lordship. Late medieval German lords were not unfamiliar with techniques of record-keeping; when records were damaged, they could hold a special inquiry and question their peasants. This special measure, known also in other parts of late medieval Europe, is not to be confused with the regular practice of *Weisung*, which German lords retained even when in possession of functioning chancelleries. Peasants were rather to serve as extensions of their archives, a living *conservatoire* (Bourdieu 1980:chap. 4). In order to properly consider the social role of the *Weisung*, one has to place it in the context of the inherent difficulties of reproducing late-medieval lordship over peasants and reconstruct the contemporary discourse about 'forgetting' and the dangers that it spelled for lordship and the existing social order.

Here, the crucial fact is German lords' exclusion from the production process, their growing reliance since the central Middle Ages on increasingly autonomous production by peasant households and on social organization provided by peasant communities.<sup>58</sup> This structure of production impinged directly on the reproduction of rural lordship. As far as economic relations were concerned, late-medieval German lordship faced the constant danger of being 'forgotten'; not only was a social order from which lordship would be absent imaginable, but many believed that it actually existed in the Swiss confederation. 'Custom' or 'traditionalism' could not be trusted to countervail this tendency. In order to do so, German lords indeed resorted to 'extra-economic coercion'. Such coercion, however, is often conceived of as naked and direct violence, the kind used by each lord against his peasants. Also, it evokes images of manifest coercion and diverts attention from potential violence, underlying social relations, and structuring expectations. In my view, 'extra-economic coercion' should more usefully be applied to lordship's attempts to

inscribe itself onto peasant subjects both by means of traditional violence and of the violence of tradition.

The subtle violence of tradition is exemplified in the *Weisung*; it is the one embedded in uneasy questions, induced remembering, obligatory drinking and forced hospitality. Traditional violence, however, was at least equally essential. Its major manifestation was the feudal ‘private war’ (*Fehde*). ‘Feudal anarchy’ — noble feuds and petty raids — was not necessarily undermining the social structure but was to a certain extent one of its foundations. It was a form of the social production of violence, that is, the uncoordinated production by the lords of the need for protection. Lordship would not sink into oblivion as long as the need for lords was constantly reproduced. German lords’ insistence on their right to wage ‘private wars’ among themselves betrays how important this practice was for the social production of violence. Lords needed not consciously cooperate in order to subdue peasants; it was exactly the uncoordinated nature of the social production of violence as an unintended consequence of lords’ pursuing their particular interests and defending their honour through feuds, which allowed it to produce its own ideological effects, setting up individual lords as protectors from external threat while simultaneously revealing and concealing their role in its production.<sup>59</sup> In fact, both violence and tradition were explicitly represented by some fifteenth-century authors as means to make peasants ‘remember who they were’, to work against peasants’ deeply ingrained ‘forgetfulness’: Both violence and tradition were expected to (re)form proper peasant subjects (Algazi 1993).

In order to break with lordship, peasants had to break away from the past of lordship, indeed to break with themselves as entangled in its production, whereas lords for their part could turn peasants’ ascribed authority against them. Peasants’ tendency to ‘forget’ lords’ claims was to be constrained in the *Weisung*. More significantly, in the late Middle Ages, peasant rebellion itself was termed an act of ‘self forgetting’. This was the expression used by members of the estates who convened in the diet of Speyer in 1526 to discuss the urgent concerns of the Holy Roman Empire, after the suppression of the Peasant Revolt: the rebels, they said, ‘have quite severely forgotten themselves’ (Koch 1745:II,274). Consequently, it was necessary to remind them of their duties once the rebellion was over (Friedensburg 1887:537 [appendix vii]). The use of this term may give us an idea of socially determined contemporary notions of both ‘forgetting’ and ‘self’. By rebelling, peasants were ‘forgetting’ society within themselves, their socially ascribed ‘self’ as a locus of obligations. When peasants were said to ‘have forgotten themselves’, not a momentary, involuntary, individual state of mind was intended; ‘self forgetting’ denoted in this context collective, organized social action, just as ‘remembrance’

in the *Weisung* was not an act of solitary rumination, but a structured interaction. To ‘remember’ in the *Weisung*, peasants had to be reminded by their lords; the same holds for the practice of violently ‘reminding peasants who they really were’. By ‘self-forgetting’ peasants were misrecognizing themselves; they were trying to assume an improper social identity. Their ‘real self’ was socially ascribed and was to be violently re-inscribed if ‘forgotten’.<sup>60</sup> In a *Weisung*, peasants were to recognize their true figure in a mirror held out by their lords.<sup>61</sup>

What lords termed and treated as criminal ‘self forgetting’, peasants could consider a radical ‘recollection’ of lost rights and freedoms. Reconstructing the kind of past repressed by the *Weisung*’s tradition-making is essential for grasping its function. In reply to lords’ attempts to curb those few peasant rights that were actually included in a *Weisung*, peasants could try to refer to those rights in their answers. Yet in order to question lordship more radically when deeply implicated in the production of the past of lordship, peasants had to find a province of the ‘past’ beyond the reach of lordship, a surface on which they could project their views of what was lawful and right. The *Weisung*’s past was typically an extension of present of lordship. In a sense, statements in the *Weisung* were actually about the present, about the way things are and ‘always’ have been ‘as far as one can remember’; they were not about the way things had been before. Peasant thus often assigned their claims to the time ‘before’, to *vor zeiten* (‘former times’ or ‘times ago’).

The term, denoting in modern German ‘ancient times’ or, in the singular, ‘prehistory’, appears to be a temporal expression, but actually denoted a structural property attributed to some aspects of the past contrasted with present ones. Both lords and peasants were familiar with claims located *vor zeiten*. Lords were occasionally referring to *vor zeiten* when trying to revive an extinct practice or pressing a right which they claimed to have found documented in their archives. In such cases, they sometimes preferred to resurrect worn-out documents by having peasants lend their living voices to them.<sup>62</sup>

In contrast, peasants’ *vor zeiten* were usually not enshrined in a *Weisung*. Therefore, whereas lords were often able to project successfully their archive-based claims onto peasant ‘memory’, peasant claims would seem in comparison wild and inarticulate, emerging out of nowhere. At times, however, we catch a glimpse of other sites of tradition-making, of assemblies held beyond the reach of lordship and therefore seldom documented; one can surmise that the notions of lawfulness upheld in such assemblies surfaced in times of conflict and open rebellion. Take the monks of Brauweiler, lords of the village of Klotten, who launched an elaborate memory policy to inscribe their claims in the consciousness of their peasants. They had their official *Weisung* under control; but they seem to have been anxious to lay hold

of villagers' other assembly, held on St Valerius' day. However, to judge by the extant evidence, only once did they actually procure a report on its course. In at least one documented case, collective action against the lordship of Brauweiler in a struggle over the nearby woods appears to have begun in this gathering regularly held on St Valerius' day.<sup>63</sup>

The *Weisung* was thus not the ultimate embodiment of public village tradition; at times it was a contested site of tradition-making, standing somewhere between lords' archives and some other sites of norm-making lying further away. Still, one of the important weaknesses of peasants' reliance on claims located *vor zeiten* was that they were not properly embodied in public statements or written documents. It was accordingly not uncommon for peasant rebels to demand lords to produce withheld documents, in which peasants believed their freedoms and privileges were recorded.<sup>64</sup> German peasants' recourse to the 'old law' to justify their claims during the Peasant Revolt of 1524-6 has usually been seen as evidence of their 'traditionalism'; indeed, it has even been claimed that they relied on *Weistümer* to substantiate their claims.<sup>65</sup> It has been overlooked that peasants' notion of 'old' in the context of rebellion might differ from the notion of 'old law' and the image of the past embedded in institutions such as the *Weisung*. 'Old' could designate a time before the era under the tight grip of lordship or, more generally a time in which a set of alternative social arrangements had existed.<sup>66</sup> During the Reformation, in a complex process I cannot properly deal with here, German peasants came to find the charter of this past in the Bible. The vanishing moment projected by the *Weisung* thus turned into flesh. It was, however, a reference to the 'old law' which implied a *rejection* of custom, since 'bad custom' is how original subjection sought to transfigure itself into lawful lordship. Why should peasants have some attitude to 'The Past', a learned construct, a massive abstraction? Instead of ascribing to medieval peasants some attitude to an undifferentiated 'past', to argue about 'traditionalism' or its absence, we should see how — to adopt a hypostatized language — different 'segments' of the past were differently controlled and shaped. We need to see the different regularities governing the production of such 'segments' of 'the past'.

This is still too unrefined to stand. In the late Middle Ages, *vor zeiten* did not denote a 'time' but rather was used as an adverb denoting things past.<sup>67</sup> Claims and norms said to have existed *vor zeiten* were not necessarily assumed to have existed at the same 'time', that is, to have formed a part of some historical 'whole', a 'past'. We may thus be dealing not with a peasant image of 'The Past', but rather with fragmented 'former times', in which various practices and norms could be located without necessarily having to be inter-related or to form part of an image of a former time. Only in a complex

process did perhaps variously located images of *vor zeiten* begin to crystallize into a former time (*Vorzeit*), a real ‘first time’ (cf. Price 1983).

To a significant extent, the segment of past produced by officially recognized systems for ‘tradition-making’ such as the *Weisung* was a mode of inscribing lordship in peasants. Most of this past was neither of peasants’ own making nor wholly in their lords’ image and likeness. In the *Weisung*, lords called upon peasants to find within themselves that which lords were anxious to hear. Lordship was taking part in the making of peasant selves, since the strategies peasants used to disengage themselves from full involvement in the production of the past — ignorance, forgetting, and silence — could themselves inform peasants’ make-up. Would the practice of feigned ignorance in the face of lordship fail to leave some mark on peasants’ image of themselves? Could peasants regularly participate in the *Weisung* and try to outmanoeuvre their bailiffs without implicating themselves even further in the workings of lordship? The boundaries between cooperation and collaboration traversed peasants’ subjects, because they formed a part of an externalized memory structure, incorporating both lords and their subjects. The contradictions of the *Weisung* practice, of authority ascribed and power withheld, may partly explain why German peasants are seldom known to have protested when disinvested of the authority to tell the law. Thus the reconfiguration of the legal field was not only robbing them of a voice in legal affairs, turning their normative traditions into legal folklore, but also freeing them from the burden of tradition.

## Notes

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<sup>1</sup> Most of the examples discussed below are drawn from a small group of villages in Western Germany, mostly on the Rhein and the Mosel rivers, between 1350 and 1550, though occasionally material from other villages will be used for comparison and illustration. Main collections of sources used are Grimm 1840–1878; Weizsäcker 1957–1973; Krämer and Spiess 1986. A useful introduction is Blickle 1978 to which one should add the instructive introduction by Spiess to Krämer and Spiess (1986). Research until the 1970s is summarized by Werkmüller 1972. Two important monographs are Eder 1978 and Hinsberger 1989. Some of the arguments were to prefigure a book project *Herrschaft der Tradition. Weistümerstudien*

and were presented here in compressed form without all the supporting evidence. In the following, references to sources usually begin with the name of the village or the seignior in question, followed by the document's date if available, and the usual references to printed editions.

<sup>2</sup> I am generally confining myself in the following to the practice of *Weisung* in rural lordships (whose written version is often called *Hofweistum*); laws were similarly recited by jurors in non-seignorial rural courts (*Gerichtswleistum*) and in parish assemblies (*Sendweistum*).

<sup>3</sup> For the difficulties involved in combining the records of particular lordships in order to reconstruct demographic patterns, economic relations and social structures in medieval German rural communities, see Sabeian 1972.

<sup>4</sup> See, however, Vanja 1986.

<sup>5</sup> For similar observations on England see Razi 1987:273. See also the discussion of a juror's position according to the Kesten court protocol cited below.

<sup>6</sup> Modes of nomination, the scope for jurors' co-optation and the degree of community participation varied greatly (Wunder 1985). I use the term 'jurors' (German *Schöffen* or *Urteiler*) to designate members of a peasant collegium declaring the law, giving judgment and sometimes also running community affairs; they should not to be confused with the English jury.

<sup>7</sup> In a text from Schweppenhausen (1407), villagers' authority is especially underscored: *wen sie hielden vnd erkennen vor einen obirstn heren zu Schweppenhausen in dem gerichte? Da gingen die scheffenne vnd dinglute mit einander vß, want als die scheffenne besaden, so hatten die dinglute vff den tag moge vnd auch recht zu straffen vnd zu erkennen, als die scheffene, vnd beryeden sich vnd qwamen da wiedervmb an die gerechtstait vor dem scholtheißen...* (Grimm 1840–1878: II,184).

<sup>8</sup> Bruttig, 1461–1464 (Krämer and Spiess 1986:40, no. 11); the case retold in 1468 (ibid:50, no. 13).

<sup>9</sup> Weber 1972:438–439. Weber's account is still superior to most recent attempts to conceptualize the *Weisung* institution (cf. the opening chapters of Weitzel 1985).

<sup>10</sup> See the list of grievances submitted to the diet of 1526 (Franz 1963:594–595, no. 209).

<sup>11</sup> It is not clear whether Schenneten was formally a 'juror', but he is said to have answered the first question, probably as a speaker for the small community (about thirty-five inhabitants). Notice that although the incriminating question was addressed specifically to him and to one Georg Hansen, Schenneten is not explicitly mentioned as having answered it, which may imply sudden silence on his part. Schenneten's important position in the village may explain, however, why among the five men formally denounced in court for the same offence only he was granted an extension. For the text, see Laufner 1957:42–44

<sup>12</sup> The point is explicitly insisted upon in a *Weisung* about a *Weisung* from the Mosel region: 'Everyone belonging to this lordship and paying rent, must come and pay the rent and assist the lord to do a *Weisung* of the law and to hold the assembly'. Later on it is specified that villagers are 'obliged to confer with the jurors in order to do a *Weisung* of the lords' rights' (*alle die ghene, die dair gehorich synt off zynss gelden, dat sy komen und betzalen den zynss und helpen ouch dem heren recht und gedynge zo wysen und zo behalden; schuldich, myt den scheffen zo beraden, omb der heren heyrlicheyt zo wysen*). Brauweiler court in Cochem, 1507 (Krämer and Spiess 1986: 103, no. 25).

<sup>13</sup> See, for instance, the attempts by the monastery of Herbitzheim to elicit from the peasants of Gersheim (1508) recognition of its exclusive right to pose questions (Weizsäcker 1957–1973:625–631).



<sup>14</sup> See, for example, Weiden 1478 (Grimm 1840–1878:II, 137–138); Veihe 1395 (ibid:II, 688–690). Note the ironies of peasants’ alleged freedom from coercion in Wahlhausen 1419 (ibid:III, 338–339).

<sup>15</sup> See, though, a jurors’ appeal not to be chastised if found to have made mistakes in their *Weisung* in Tettingen (undated, Grimm 1840–1878:II, 46–47).

<sup>16</sup> See Gillenbeuren 1564 (Krämer and Spiess 1986: no. 9); Klotten 1446 (ibid: no. 57).

<sup>17</sup> Bruttig 1468 (Krämer and Spiess 1986: no. 13).

<sup>18</sup> In a contest between rival lords over their rights in Bruttig, it turned important whether the pail of wine given was locally named *Vogteimerwein* or *Raucheimerwein*, which could have different legal implications (Bruttig 1469: Krämer and Spiess 1986: 68, no. 17). Yet by far the most intense conflicts arose over the legal meaning attributed to peasants furnishing hens to lords in Shrovetide, a practice which could be interpreted as a token of serfdom. As Andreas Alois Wiest wrote in 1835, ‘the natural history of juristic hens is still to be written’.

<sup>19</sup> Klotten 1511 (Krämer and Spiess 1986: 265, no. 61). This is an extraordinary *Weisung* done in writing. It is not clear whether the jurors’ statement in a usual *Weisung* was also modified to suit lords’ version; it was enough for the jurors to use the shorter formula ‘St. Peter’ instead of the fuller one — ‘St. Peter of Cologne’ — in order to give room for diverging interpretations.

<sup>20</sup> Klotten 1652 (Krämer and Spiess 1986: no. 67).

<sup>21</sup> *und daz wisetum gedan ee myns herrn wisetum, und enhan ich noch myns herrn vaged noch nymans sie nach dem wisetum zu male nit gefraget und meynen, daz sie daz unmöglich gedan haben, diewile sie myns herrn scheffen sint und zu den heyligen gesworen hant, daz sie kein urteyl wisen sollen me dan sie mit irem eyde ermanet und gefraget werden. Item darnach hant sie zum rechten gewist und hant gesprochen als es von iren aldern off sie komen sy...* (Fankel, 20.1.1422; Krämer and Spiess 1986: 198, no. 46).

<sup>22</sup> Krämer in Krämer and Spiess 1986:96; Goerz [1861] 1969: 170.

<sup>23</sup> For this dimension, see Grimm 1840–1878:II, 132.

<sup>24</sup> The count of Sponheim was trying to assert his rights against the Archbishop of Trier. In an earlier session that year, Trier officials were present and Sponheim’s agent had to put up with the jurors’ reply that they were unaware of Sponheim’s rights in the village, whereas in the succeeding session discussed above, no Trier agents were mentioned.

<sup>25</sup> For a subtle analysis of the issues involved see Goffman 1981.

<sup>26</sup> Ensheim 1465 (Weizsäcker 1957–1973: 397); Blieskastel 1570 (ibid: 144); Bruttig 1469 (Krämer and Spiess 1986: 68, no. 17).

<sup>27</sup> See Ensheim 1435 (Weizsäcker 1957–1973: 388–389). The case is analyzed in detail in Algazi 1996: chap. 1.

<sup>28</sup> An example in Schweppenhausen 1407 (Grimm 1840–1878:II, 184–185).

<sup>29</sup> Encrevé and Formel 1983: 3–30.

<sup>30</sup> *Am ersten ist der scheffen beladenn worden zu recht, ob ys zyt sye von stun[de] vnd dage, daß man dem hern jargedinge besitzen sulde; the jurors’ answer: want es mynen herrn von Wad[egassen] dhunckt zytt sin vonn dage stunde, so sie es is zyt.* Ensheim 8.10.1511, 1.10.1520 (Weizsäcker 1957–1973: 399; 405).

<sup>31</sup> *Darvff Henrich der scheffen von syner mitgesellen vnd syn antwort bracht alßo: Der scheffen thut eyn frage vnd begert zu wissen, ob myn herr apt von Wadagassen den scheffen vnd das gericht by irem alten herkumen vnd gebruch laßen wolle; darvff hat der probst inen also antwort geben: Myne herr apt zu Wadagassen ist nyt des willens oder vornemens, vch*

*einichen alten rechten, gebruych oder herkommens zu smaellen oder zu nemmen, dan synß vermoegens darby wie recht zu handtfesten vnd behalten.* Ensheim 30.9.1538 (Weizsäcker 1957–1973: 411–412). The evidence of the 1537 *Weisung*, apparently with few witnesses present and reported by the Wadgassen scribe, seems doubtful; see especially questions 10 and 25–28 (Weizsäcker 1957–1973: 408–410). In some communities, similar counter-questions by jurors were part of the routinized sequence of the *Weisung*; this does not seem to be the case in Ensheim, though it cannot be excluded that a Wadgassen promise to respect peasants' customary rights had been omitted from earlier records.

<sup>32</sup> Helmut and Alexander Wilhelm, *Ortschronik Ensheim* (Ensheim, Saarbrücken, n.d. [1977]), p. 41. The situation of Wadgassen lordship in the years following the revolt can be gauged from the fact that it had to rely on peasant cooperation in order to reconstruct records listing its claims in the villages, which had been destroyed during the revolt.

<sup>33</sup> *Daroff hant sie eynen berait geheischen, sich zu bedenken, und hant geantwert...* (Krämer and Spiess 1986: 198, no. 46). See Bruttig 1469 (ibid: no. 17).

<sup>34</sup> Bruttig 1468 (Krämer and Spiess 1986: no. 13). Lords were also occasionally asking 'the community' to confirm jurors' consequential answer. See Briedel 1468 (Grimm 1840–1878:II, 414–415); Freiensteinau 1452 (Grimm 1840–1878:III, 884–886).

<sup>35</sup> Jurors could also ask for time in order to go to another rural court (*Oberhof*) and get an authorized answer from the local jurors, which they were later to pronounce as their own statement in a subsequent session. The practice (*Rechtszug*) should not be confused with an appeal; it did not take place on the initiative of some party questioning a verdict and the law 'fetched' was strictly local, not implying some formal hierarchy of courts and legal knowledge (Weitzel 1981).

<sup>36</sup> Bruttig 1461–1464 (Krämer and Spiess 1986: 40, no. 11).

<sup>37</sup> *Item wann der scheffenn ein gemude nemmet ein zeit vnn kemme nit vsser dem gemude inn der zeit, als das vffgenommen wer, gieng cost vnnd schadenn darvff, wer das geltenn solde, des hat der scheffenn auch ein gemude genommen ein monat lanngk.* Gersheim 1533 (Weizsäcker 1957–1973: 631–633); Eder 1978: 55, note 171, suggests that the text should be dated to 1453. For the jurors' answers on the same questions concerning serfdom, see the *Weisung* of 1508 (Weizsäcker 1957–1973: 628); it may be an allusion to the behaviour of the jurors of Breitung, which reacted similarly (Weizsäcker 1957–1973: 194).

<sup>38</sup> An exceptional *Weisung* containing a relatively detailed list of peasant claim only underlines the rule: It is a case of three lords who came to divide the lordship over the community of Bliesmengen (1580). In this case questions did not serve to remind peasants of their obligations but actually to elicit authoritative information on local procedure and usage. Accordingly, instead of a series of detailed questions by lords we find the lords asking 'which question should the lords now pose', a query that actually cedes conversational control over the definition of topic to the jurors. To one such question the jurors replied by demanding that the lords be asked whether they were willing to respect the old usage of the community; to which the local officials of the lords answered in the affirmative. Near the end of the long *Weisung*, they were asked again what should happen next. They took the opportunity to declare mainly their own rights in the woods, though they also mentioned lords' rights in it (Weizsäcker 1957–1973: 150–151; see Eder 1978: 65).

<sup>39</sup> On assemblies held during rebellion, see for example Franz 1963: 165, 138; Liliencorn 1865–1866:III, no. 285, lines 78–82, 88–89.

<sup>40</sup> Such as service to some lord, illness, or departure for pilgrimage.

<sup>41</sup> Many village courts used a simple system of fines, distinguishing the 'small fine' (often ten Pfennig, a quarter or a *sester* wine) the 'high fine' (often five or ten Mark in the fifteenth

century), though this does not imply that these were the sums actually paid. Ordinary absence would be fined by the 'small fine', 'defiant or criminal absence' with the 'high fine'.

<sup>42</sup> Bruttig, no date (Krämer and Spiess 1986: 82–84, no. 21); compare no. 28.

<sup>43</sup> See Buschoven 1547 (Grimm 1840–1878:II, 664). A late document from Fankel (1666–1673) can be adduced here for the rare explicit statement it contains about the dangers for lordship which the practice of *Weisung* was to encounter: the monastery of Engelpport asked for permission to establish in Fankel an assembly with a regular *Weisung* following the tumults of the Thirty Years' War, during which 'peasants did as they pleased without fear' (*ohne forcht gehaußet undt gethan, waß sie gewölt*). The Fankel peasants tried to resist the attempt (Krämer and Spiess 1986: no. 53).

<sup>44</sup> Grinberg (1988) makes a similar point concerning French seigniories of a later period.

<sup>45</sup> On the crucial role of 'conditionally feasible social alternatives' in forming judgment concerning existing social relations, see Roemer 1986: 102–105. The accessibility of imagined social alternatives and its implications for late medieval German peasants is dealt with in Algazi 1996: chap. 5.

<sup>46</sup> See, for example, Rastatt 1370 (Grimm 1840–1878:I, 441); Gillenbeuren 1555 (Krämer and Spiess 1986: 21–25, no. 8); Gillenfeld 1561 (Grimm 1840–1878:II, 412–414).

<sup>47</sup> See the case of Hägbach 1487 (Grimm 1840–1878:I, 397–403).

<sup>48</sup> Buschoven 1547 (Grimm 1840–1878:II, 662–664); see also Muggenheim 1555 (*ibid*:IV, 767).

<sup>49</sup> See, for instance, Schifferstadt (Grimm 1840–1878:V, 589).

<sup>50</sup> Klotten 1571 (Krämer and Spiess 1986: 277, no. 65).

<sup>51</sup> Rights of Abbey of Saint-Vincent de Metz in Norroy-le-Veneur, fourteenth-century manuscript cited by Perrin 1946:33.

<sup>52</sup> Klotten has some of the most detailed descriptions (Krämer and Spiess 1986: nos. 57–71).

<sup>53</sup> See Gersheim 1508 (Weizsäcker 1957–1973: 627). For a more complex case, see Ensheim 1435, discussed in my *Herrengewalt und Gewalt der Herren*, chap. 1. The jurors of Bacharach did answer in 1407 a question about the due punishment for their own infringements but asked the lord's agent not to pose this question in the future, that is, not to make it part of the customary repertoire of questions in the *Weisung* (Grimm 1840–1878:II, 218).

<sup>54</sup> Alflen 1507 (Grimm 1840–1878:II, 407–409); Bruttig 1609 (Krämer and Spiess 1986: no. 21).

<sup>55</sup> See, for instance, the recent German agrarian history by Edith Ennen and Walter Janssen, *Deutsche Agrargeschichte: Vom Neolithikum bis zur Schwelle des Industriezeitalters* (Wiesbaden: Franz Steiner, 1979), 208–209.

<sup>56</sup> For the argument, see Algazi 1996: chap. 2, 6.

<sup>57</sup> *Item praescriptio praescribenti tantummodo prodest, sed consuetudo populo etiam aliquando nocet: quia potest contra populum, per ipsum populum consuetudo induci*. Zasius 1550: I, cols. 396–409, here col. 399.

<sup>58</sup> Marx [1872] 1987: 523–534, esp. 524–525, 533–534; 1964: 798–801; Bois 1976: 352–356; Kuchenbuch and Michael 1977: 694–761, esp. 710, 732; Kriedte 1980: 1–10.

<sup>59</sup> The structural role of lords' violence and its ideological effects are more fully discussed in Algazi 1996.

<sup>60</sup> See, for example, Unrest 1957: 93, 99, 85.

<sup>61</sup> For different modes of 'self-forgetting', the models of 'self' embedded in them, and the contradictory consequences of attempts to reject ascribed 'selves', see Algazi 1995: 387–400.

<sup>62</sup> Fankel 1554 (Krämer and Spiess 1986: 219, no. 52).

<sup>63</sup> For Brauweiler's attempts to obtain information see Klotten 1511 (Krämer and Spiess 1986: 267–268, no. 61); see no. 69 and the differences with Brauweiler's note (no. 57); the assembly on St Valerius' day served as the occasion for organized action against lords (Eckertz ed. 1868: 244–246). A parallel in Alsace for the role of the community assembling as *Waldgenossenschaft* in organizing resistance is discussed by Saarbrücker Arbeitsgruppe 1980: 138, 148.

<sup>64</sup> Franz ed. 1977: 206, no. 73. For an English parallel, see Faith 1981.

<sup>65</sup> Waas 1938–1939. This assertion cannot be sustained and relies on a misleading use of the term *Weistum*.

<sup>66</sup> For an example of peasants contrasting 'former times' (*vor zeiten*) with the near past extending into the present (*zu zeiten, jetzt*), see the grievances of the community of Lauenheim (1525) in Merx ed. 1923:I/1, 282–283, no. 366.

<sup>67</sup> Jacob Grimm, Wilhelm Grimm et al., *Deutsches Wörterbuch* (Leipzig, 1854–1948), vol. 16 by Rudolf Meiszner, cols. 1994–1999

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