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Harold Berman’s »Law and Revolution«: A Necessary Challenge for Legal History Research
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I. A Monumental Historical Perspective and its Problems

Harold Berman’s two voluminous books on »Law and Revolution« comprise all attributes of a truly inspiring contribution to historical and legal science. Both volumes do impress their readers with their concise style, their distinctive arguments and with Berman’s courage to draw long lines through more than thousand years of European history. At the same time, Berman maintains a masterly combination of legal historical, legal philosophical and legal sociological perspectives, which has become rare in a frequently highly specialized discourse tending sometimes towards a segmentation into different, unrelated subdiscourses. This approach finds its counterpart in the breadth of perspective in Berman’s main arguments, in his idea of the existence of a more or less uniform Western legal tradition, not based (as it might be assumed), Roman law as permanent constant of changing legal cultures, but emanating from a »Papal revolution« starting with Gregory VII and having been shaped by a series of successive revolutions up to the 20th century. The foundation of these revolutions in changing religious beliefs with strong apocalyptic notions – be it biblical visions of a new Christian reign, be it »Deist versions of the same« as in the revolutions of the 18th century, or be it the belief »in the messianic mission of the Communist party to prepare the way to a classless society« – links them among each other. They are also connected by the underlying evolution of a specific Western legal tradition, which »was renewed by such revolutions«.

It is easy to understand that this monumental historiographical concept and its impressive literary realization has received much praise and attention. That does not change the fact, however, that Berman’s handling of historical detail is sometimes problematic and even frustrating for those of his readers who are used to work with the sources and on the topics Berman has covered in his books. Berman’s argument, for instance, that Gregory VII »made known« the contents of the Dictatus Papae thus proclaiming his revolutionary program to the world is questionable, to say the least: As far as we know today, this document had no addressee and, moreover, there were only very few (if any) contemporary reactions to it. There are numerous other instances of superficial and thus highly imprecise dealing with sources and facts (not to mention the limited use of scholarly literature) in Berman’s first book, which has even been called »a keen disappointment«. Similar objections have been raised towards Berman’s second book criticizing that the religious dimensions of the English revolution »are in certain important re-

1 Berman (1983); Berman (2003).
4 For this kind of perspective see for example Koschaker (1947), Stein (1996/1999), Zimmermann (1990).
7 For the widespread reception of Berman’s first book see the survey in Helmholz (1993) 478–488.
pects neglected and obscured». Nevertheless, even Berman’s fiercest critics do concede that his overall picture of the facts and figures is correct. In the case of pope Gregory VII, for example, a new quality in the relationship between law and theological concepts with a rising importance of legal normativity is characteristic for the papal rule making since Gregory’s pontificate, which would in fact set new standards of juridification for a more and more papally dominated church. So, Berman provides his readers with a big impressive picture, whose details are not always correct and need further elaboration by those, who, as Berman presumably would put it, are «concentrating on bits and pieces of history». Nevertheless, not only for this type of researcher books like Berman’s are indispensable as challenging and sometimes also provoking reference point.

II. A Grand Narrative in the Period of Post-Narratives

Berman’s narrative of the revolutions as decisive factors of historical change sets forth a tradition of the early 20th century, when several scholars like Berman’s mentor Eugen Rosenstock-Huessy turned their attention to the historical importance of revolutions. Moreover, Berman himself put his concept in the tradition of former historical meta-narratives as they were conceptualized in the works of Karl Marx and Max Weber. In that regard, Berman’s books represent a long standing tradition of historiography, which might be traced back to the early efforts of universal history. By now, however, it appears as if those «grand narratives» have gone, as Lyotard has stated it in his famous reference point. Nevertheless, not only for this type of researcher books like Berman’s are indispensable as challenging and sometimes also provoking reference point.

14 Thier (2011) 279–334 (on the period until the concordat of Worms 1122 and the rules on episcopal elections).
15 Berman (2003) 21 with regard to conventional periodizations.
20 For this kind of approach Stollberg-Rilinger (2010) 4–32.
evolutionary layers and, presumably, patterns with different speeds of historical time. Berman might be mistaken in his belief that only revolutions represent this kind of accelerated legal change, because there might be – depending from the changing cultural, social and economic contexts of legal normativity – other phenomena of such acceleration. But his argument for a deeper research on the evolutionary mechanisms of the Western legal orders in comparison to other legal traditions is certainly right.

Bibliography

- Chappell, Elizabeth (2011), Bibliography, Harold J. Berman, 1946 to 2008, Emory University, available online only, URL: http://pid.emory.edu/ark:/25593/8vj8t/PDF (retrieved: 24/06/13)
- Deve, Thomas (2012), Von der Europäischen Rechtsgeschichte zu einer Rechtsgeschichte Europas in globalhistorischer Perspektive, in: Rg 20, 18–71
- Koschaker, Paul (1947/1966), Europa und das römische Recht, München
- Lyotard, Jean-François (1979/1986), La condition postmoderne, Paris, German translation by Otto Pfersmann as: Das postmoderne Wisen, Graz, Wien
- Thier, Andreas (2011), Hierarchie und Autonomie. Regelungstraditionen der Bischofsbestellung in der Geschichte des kirchlichen Wahlrechts bis 1140, Frankfurt