Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte
Journal of the Max Planck Institute for European Legal History

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.rg.mpg.de

http://www.rg-rechtsgeschichte.de/rg21
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 21 (2013)
http://dx.doi.org/10.12946/rg21/212-214

Rg 21 2013 212 – 214

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# The reception of Law and Revolution in Finland

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I.

It took years after 1983 before I first laid my hands on Harold Berman's *Law and Revolution* (1983). In 1982, I had started my law studies and taken my first legal history course. Back then, those courses in Finland were still mostly concentrated on national legal history. To be sure, some signs of beginning internationalization were in the air. My legal history teacher, Professor Heikki Ylikangas had just published his textbook *Miksi oikeus muuttuu* [1] [Why law changes], which was to make a deep impression on many generations of law students. Historian not jurist by training, Ylikangas was influenced by the German *Methodenstreit* of the seventies and, in somewhat reductionist terms, presented legal change first and foremost as a result of group interests. Law itself played a much lesser role for him than law's social context. However, his book also included a largish part describing legal history of other countries, such as England, Germany and Russia. Today this would be called comparative legal history. It was this part of *Why law changes* that made a deep impact on me, as I suspect on many others as well.

The picture of legal history as something fundamentally else than only a national enterprise was thus starting to take shape towards the end of the 1980s, and I went with the wave. When I had first started to get serious about legal history around 1990, one of the eye-opening works for me was Berman's book. I do not remember whether this happened accidentally or how, but I read the book. After reading *Law and Revolution*, I went through its notes trying to get a hold of several other classics, of the existence of which I had barely been aware, such as the works of Paul Koschaker, Franz Wieacker and Helmut Coing. Berman introduced to his ignorant reader an endless amount of pivotal legal historical themes and discussions, of which the reader had heard or read only passing, such the significance of religion in law, the *ius commune* and the polycentric nature of medieval law. I do not know when my colleagues had first read Berman, but I suspect not much earlier, since not a single review was ever written about it. The group of us legal historians, feverishly interested in European legal history, at the Law Faculty of the University of Helsinki, consisted then of no more than three or four people, and we all read much of the same literature. The large context behind this interest was undoubtedly Europe's political integration, which was starting to invade Finnish discussions at all levels of society, law and legal studies included.

Curiously enough, it was thus an American legal historian, who among the first introduced European legal history in Finland. Whether he was *the* first in my case or in the case of my colleagues cannot be decided here, and it is not crucial. *Law and Revolution* was, in any case, one of the scholarly works which brought the European and international discussions to Finland's legal historical scene, not much more than two decades ago. Better late than never: *Law and Revolution* fell into fertile ground and amongst enthusiastic students. But what exactly did we learn? How did that learning alter our views? And, just as importantly, how did Berman's great book *distort* our views of European legal history?

II.

Berman highlighted the importance of what he called »the papal revolution« of the eleventh and twelfth centuries. Pope Gregory VII initiated this first of a whole series of legal revolutions: the Protestant Reformations, as well as the English, American, French and Russian revolutions, for Berman, all belonged to the same recurring pattern in Western legal history.

The papal revolution led to the creation of »the first modern state«, with secular states following

1 Ylikangas (1983).

only centuries later. A crucial instrument in the construction of the centralised church was ecclesiastical law, systematically developed by twelfth- and thirteenth-century canonists. They built their studies not only on traditional sources of canon law, such as the decisions of synods and the writings of the Church Fathers, but also on the steadily flowing mass of papal legislation from Rome. Canon law, needless to say, was not Berman's invention – not even his specialty – but he contributed greatly to linking church law with state formation and growth of other »bodies of law«, as he called feudal, manorial, mercantile, urban, and royal law. The close relationship of theology and law is fundamental for Berman, and it is also the theme that he continued in *Law and Revolution II* twenty years after (2003).

Berman saw all the other »bodies of law,« together with canon law, in the twelfth-century context of academic legal learning, »legal science«. All major bodies of law were, thus, also interconnected by legal scholarship. Some of this seems now – and seemed to experts already then – somewhat artificial. Berman's account of the growth of manorial law is based on narrow literature, and his views on the universal nature of *lex mercatoria* have now been shown outmoded. [2]

Being no expert on any of the areas he masterfully summarised in his book, Berman was indeed criticised for using predominantly secondary sources. In addition, he leaned primary on English-language sources, neglecting much of the newer literature in German, Spanish and Italian. [3] A compilation of huge masses of literature and an account of continent-wide developments in virtually all fields of law during many centuries, the book could hardly avoid being criticized here and there. However, many critics praised Berman's book precisely for bringing together large amounts of learning and for generally doing it, in general, accurately.

If Berman relied heavily on English-language secondary literature, he at the same time created a major presentation of European medieval legal history in the English language. The appearance of such a book was not only important for English-speaking countries, but also for countries such as Finland where the knowledge of the German language – a long time *lingua franca* of legal history – was already in sharp decline in the 1980s and 1990s. The situation was not alarming as professional legal historians were concerned, but one could certainly no longer give law students German materials to read at that time. *Law and Revolution* became an important tool with the help of which medieval European legal history could be brought to the students in a relatively compact and accessible form. Naturally, the book also directed its readers to the literature that they found in its footnotes, thus contributing to the Anglicization of legal history. [4]

Regardless of the language question, Berman's book helped to bring at least two important questions to the attention of the Finnish legal historians. First, *Law and Revolution* made us sensitive to a larger picture, the European legal history. [5] Indeed, legal history was in the avant-garde of Finnish legal science when it comes to opening its views other than predominantly national. It may be correct to say that *Law and Revolution* was one the books which gave a decisive impetus to a trend towards comparative legal history and towards caring less about national boundaries. This trend then led to what is now commonly called comparative legal history. Personally, I see comparative legal history the only meaningful way to look at legal history – at least when comparative legal history is understood in a permissive, non-categorical way. Comparative legal history, then, is not only about comparing A and B (although it may be that as well), but it is about describing and explaining phenomena of legal past in terms which are not primarily determined by the borders of the national states. Instead, although the research questions themselves may be local, they are always at least potentially seen as part of a larger picture. Just like Berman did.

Second, *Law and Revolution* greatly contributed to the sensitivity of the Finnish legal historians *vis-à-vis* questions concerning law and theology. Can-

2 See Kadens (2012).

3 See, for instance, the review by Professor Peter Landau; Landau (1984).

4 The Anglicization of legal history is not a bad thing, at least not *per se* any worse than the discipline's overly dependence on the literature and discussions of the German language area. Looking at scholarly dependencies and traditions from a peripheral Scandinavian perspective, the best we can do is to know all the major languages and to follow as many international discussions as we can.

5 See Letto-Vanamo (1995). Although well versed in German legal historiography, Letto-Vanamo used also *Law and Revolution* as well.

on law had, in the Protestant country, played hardly any role in the teaching of legal history nor in research. It was actually only towards the late 1990s that the role of religions, both Catholic and Protestant, was truly acknowledged. Again, it should be emphasized that Berman's book was not the only one bringing about these changes, but it was certainly one of the most important.

III.

How did Berman's magisterial *Law and Revolution*, then, distort the views of the Finnish legal historians (and, perhaps, other Nordic colleagues as well)? Distortion may be too strong a word. Berman's understanding of the essential features of legal development in the middle ages as predominantly a history of the core geographical areas of Europe is, however, slightly disturbing. If anything, *Law and Revolution* describes the legal developments in Western-Central Europe (Italy, France, Germany and England), leaving most of the fringe areas with much lesser attention. There is less than a page on Denmark; none on the other Nordic regions. Still Berman often tends to be read as a general work on European legal history.

And yet, just as it would an exaggeration to credit only Berman for opening our views towards literature and research questions on European and comparative law, or law and theology, it would be unfair to blame him alone for presenting legal history in a distorted way. Berman represented, more than anything, another version of European legal history, in which Europe is mainly seen in terms of its core geographical areas. Doing this, he only continued the tradition of Calasso, Wieacker and Coing. [6]

Another defence applies as well, and it is much better. In fact, Berman never set out to write a Western legal history; such a book yet remains to be written. Instead, as the subtitle of his book clearly states, he traced the origins of the Western legal tradition – a rough equivalent of modern law. Berman is really after the »big bang«, the birth of modern law, neither more nor less. It is then up to the historians of different areas to test his findings against the information of such parts of the »West« which have received lesser attention in his book. This is how comparative legal history, indeed, should work in general. This – a search for a Nordic legal identity – is precisely what has occupied many Nordic legal historians during the past couple of decades.

■

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6 See Osler (1997).