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Law and Revolution – revisited

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Thirty years ago, in 1983, Harold Berman's Law and Revolution: The Formation of the Western Legal Tradition *was first published. His work had an enormous impact on legal scholarship all over the world. Many aspects of his central thesis – that there was something akin to a »papal revolution« in eleventh century Europe; that this ›revolution‹ set a pattern for future epochs of transformation; that the special relation between Religion and Law was a distinct feature of the »Western Legal Tradition« – were largely discussed by legal historians, historians and social scientists. Others, like his »Social Theory of Law«, received less attention. Although there had been strong criticism by scholars, especially medievalists, on some aspects of Berman's work, it has become a standard reference in scholarly writings, not least outside of Europe. Since its appearance in 1983,* Law and Revolution *has been translated into German, French, Chinese, Japanese, Russian, Polish, Portuguese, Spanish, Italian, and Lithuanian. Twenty years later, in 2003, with his project entitled* Law and Revolution II: The Impact of the Protestant Reformations on the Western Legal Tradition, *Berman presented the second volume of what was thought to be a trilogy. Twenty years had gone by, the political world order had changed, but Berman's main point, the importance of analyzing the role of Religion and Law, and the specific constellation of these two modes of normative thought, had gained new currency. In 2007, Harold J. Berman passed away, but not without having opened his historical and legal thought to the challenges of a globalized world.*

Berman's work, thus, has not only become part of our discipline's history, raising questions, for example, about the historical context of his construction of a »Western Legal Tradition« in the 1970s and 1980s, or his way of interrelating religion and law. It has also shaped the image of the »Western Legal Tradition«, inside and outside of Europe, inciting us to re-read his works, and to enter into a dialogue on a global scale, especially with those reading Berman from a different cultural perspective, such as Asian colleagues, who are highly interested in many of Berman's texts. Thirty years might provide us with sufficient distance to undertake such readings, and to take into account his impact on different fields and areas, often linked with the translation into different languages. This distance might also make it more possible to sum up new perspectives opened by his work, explore different interpretations and applications of the picture Berman drew, and to look back on the results of the scholarly debates that followed. Do we see things the way he did, thirty years later?

This was the invitation we sent out to a number of colleagues from different disciplines and areas, asking them to participate in this issue's *Forum*. It was also posted on our website. Most of those we asked answered positively. Some of those who previously had criticized Berman for having neglected many results of German scholarship on medieval legal history, for example, did not participate, mainly because they saw no reason for a renewal of the criticism they had raised when the book or its German translation were published. Others, on the contrary, were so enthusiastic that they exceeded the established word limit for contributions. We tolerated this, despite the injustice done to those contributors who made the effort of cutting down their texts to what they thought was the maximum space. The result is this collection of quite different perspectives on Harold Berman's work, its reception and the challenges it comprises for legal (historical) scholarship today. Obviously, not everything written corresponds to our or my own view; however, in the *Debate* or in the *Forum* of this Journal there is a peer review but no censorship. I am deeply grateful to all who have participated in this endeavor, sharing their views with us, and giving a panoramic view of why and how Berman's work is being praised or criticized today, may that be in Atlanta, Beijing, Warsaw or Zurich!

The *Forum* starts with two contributions that analyze the conceptual foundations of Berman's work. At the beginning, Michael Welker focuses on Berman's early years: The still unpublished 284-page college thesis at Dartmouth College, New Hampshire, dating from 1938, entitled ›Public Opinion‹, where young Harold Berman acknowledges his deep indebtedness to his teacher Eugen Rosenstock-Huessy. Welker demonstrates how substantial characteristics of Berman's later thought can be found in this early period. Gerhard Dilcher continues this analysis of the foundations of Berman's historical thought and shows that *Law and Revolution* can only be adequately understood in

the light of Rosenstock-Huessy's ›*Geschichtsdeutung*‹. For Dilcher, Berman transformed Rosenstock-Huessy's ultimately philosophical approach into an analytical historiography which has been confirmed, in its general outline, through historical scholarship of subsequent decades. In a way, these two contributions, with their emphasis on Rosenstock-Huessy's impact on Berman, but also Berman's intense reflection on Weber, show how Berman's *Law and Revolution* spans nearly a century of historical thought, encompassing two world wars, the cold war and leading to the present augmented awareness for global perspectives on legal history.

Thus, for other contributors, Berman's conceptual framework still seems inspiring, but ultimately insufficient for legal scholarship or legal historical research today. After reviewing some of the critique on *Law and Revolution*, especially from scholars of the history of canon law, Andreas Thier points out the big potential that lies in Berman's attention to ›revolutions‹, raising the question of how to conceptualize legal history as an evolutionary process that shows periods of accelerated legal change and others of greater stability. For Thomas Vesting, neither the term ›Revolution‹, nor Berman's use of ›Christendom‹ and ›Constitution‹ offer the conceptual complexity necessary to grasp or even explain, the specific legal evolution that Berman observed in the West, especially in view of the transformation in late eighteenth and early nineteenth century. According to Vesting, it was not so much the productive and complex antagonism between law and justice ultimately underlying Berman's dualistic perspective, but the potential for developing techniques of a management of uncertainty which constitute a prevailing challenge for modernity's law, an aspect Berman overlooks.

Some contributions focus less on conceptual issues, but on different features of Berman's historical account. Again, both appraisal and criticism are closely intertwined. Concentrating on Berman's vision on the fundamental interconnectedness of belief systems and business, Wim Decock concludes that Berman's historical account of medieval law merchant might need to be updated in some respects, »but his insight into the fundamental interplay between commerce, law and belief systems remains accurate today«. Pierre Monnet underlines the importance of Berman's insistence on the significance of the High Middle Ages for the founding of political and juridical concepts of European history, showing lines of continuity to modernity, often underestimated by the separation of history in medieval and (early) modern period. He reads Berman, who has been translated into French with a certain delay but introduced into the debates previously, as a still valid invitation for historians to reconsider the significance of law in their historiographical work, and for a refreshed dialogue between historians and legal historians. In a similar way, Diego Quaglioni emphasizes Berman's merit of having worked out, through the two parts of his *Law and Revolution* and his other works, like *Faith and Order*, the particular continuity of western legal tradition that comprises its dialectic transformations through ›revolutions‹. For him, one of the central merits of Berman's work consists of making us see the religious dimension of law and the legal dimension of religion. Tomasz Giaro also draws attention to the importance Berman gave to canon law as a main factor of western legal tradition and the consequences for some established views on European legal history. Giaro acknowledges that Berman not only counterbalances the still nearly hegemonic narrative of a Roman-Germanic European legal history, written from a private law perspective, but also succeeds in showing how what might be called ›public law‹ emerging from canon law thought, helped to bridge the supposed gap between civil and common law parts of Europe, integrating both into a common legal tradition. In spite of this, and notwithstanding Berman's higher sensitivity to Eastern European contributions to western legal tradition, for Giaro, Berman's central thesis of the ›unity of western legal tradition‹ is, in light of a more differentiated analysis of legal history in the early modern and modern period, »unfortunately […] unacceptable«.

Some authors dedicate their texts to analyzing the significance and impact Harold Berman's work on *Law and Revolution* had – and still has – in different fields of knowledge or academic communities. Alessandro Somma shows how the very concept of a Western legal tradition can be seen as an attempt to establish or maintain a discursive superiority of civil and common law traditions united in a common western legal tradition-paradigm. For him, this image was created by western scholars, and used especially by comparative law scholarship that served modernizing ideologies,

advocating for the primacy of western legal traditions by appealing to an allegedly scientific neutrality and a dissociation between law and society, like in the ›legal transplants‹-debate. From a Chinese perspective, Wang Jing – representing one of the legal cultures deeply concerned with the legal transplant-theories just mentioned – integrates the translations of Berman's books into Chinese into a larger vision of how China has tended to search for modernizing its law by looking at European or ›Western‹ experiences. In this account we can recognize some traces of what Somma mentioned about the construction of hierarchies by creating a distinct feature of Western legal tradition, but also some remarkable differences. Following Wang, for many Chinese scholars, Berman not only offered a comprehensive introduction to Western legal history, but did so by combining this historiography with theoretical considerations about the profound relation of law and society, in a constant and critical dialogue not least with Marx and Weber. Moreover, there is quite a pragmatic interest in the way Berman seems to have been read, and a self-confident one: Berman gives a comprehensive picture of what for China are ›the others‹. For Wang, Berman's success might also be due to the fact that he addressed a problem that has turned out to be crucial for modernization efforts in China since the 1990s: the problem of how to enhance the ›belief‹ in law as a regulatory force. However, taking into account how western societies worked out their solution, by intertwining religion and law, does not equate with accepting this model for the ›Chinese way‹.

The big impact that Berman's work had on Nordic legal historians is described by Heikki Pihlajamäki. Despite earlier works in the German tradition, like those of Coing, or Wieacker, it was Berman's book – a work of an American dedicated to the Papal revolution – that brought ›European Legal History‹ to the Nordic countries, enhancing studies on the relation between Law and Religion in a Protestant world. Pihlajamäki also underlines the function of Berman as a treasure of secondary literature in English on key issues of European legal history, dominated by German authors. The contribution by Kristjan Oad is a vivid example of this stimulating effect of Berman until today in areas dominated for a long time by national perspectives on legal history, and less attentive to canon law traditions, as has been the case in Estonia, formerly part of the Soviet Union. Berman simply succeeded in being read, even though much of what he synthesizes in his writing had been stated before, but enshrouded in expert's discourse inaccessible to larger parts of academic communities locked up in their respective traditions.

The *Forum* is concluded by two contributions written by close companions of Harold J. Berman: Charles J. Reid and John Witte, Jr. Reid gives a vivid example of how Berman's notion of tradition (»It provides continuity in disruptive times, but it is not itself constraining«) can be used in the Catholic church's discourse, with its particular necessity of integrating change into an enduring and uninterrupted tradition. Berman's academic successor in Atlanta, and literary executor, John Witte Jr., emphasizes the visionary personality and work of Harold Berman.

Witte has recently edited another book of Berman, unpublished until now, drawing on a manuscript started in the sixties, giving a larger introduction into Berman's work. The concluding chapter of this book *Law and Language* is entitled »Can communication build one world?« Having raised this question at this early stage might again confirm what has been mentioned in many contributions of this *Forum*: that despite the many criticisms, the broad perspective and independent world view of Berman is outstanding. Born in a Cold War world, his first book on *Law and Revolution* added a distinct, highly suggestive, and forceful narrative to the traditional, civil law-centered views on legal history of Europe and the west. It also shed important light on the religious dimension of law, in a climate of common belief in secularization. Today, a growing global academic community, searching to understand their legal systems in a post-national world, more sensitive towards the force of religious thought and its impact on law, and tempted to build up identities by constructing distinct historical features of their own tradition, is taking up many aspects of this grand narrative, written in today's *lingua franca* of global legal and historical scholarship.

One might say that the enduring significance of Berman's view on western legal tradition tells us more about those using Berman, or about the bottle-neck-effect of big historical synthesis written in English – than about the quality of the book itself. But do, then, Berman's *Law and Revolution* and his subsequent works not signify an even bigger challenge, thirty years after the first publication of what is probably his most influential

book? – I believe they do. If this *Forum* motivates scholars to accept this challenge, inviting all of us to some re-readings of Berman, and to a transregional dialogue about the way we are constructing and delimitating the images of those legal cultures we want to ascribe ourselves to, it has achieved its aim.

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