Clio Themis
Revue électronique d'histoire du droit

Jacques de Revigny (d. 1296): Roman law as a means to shape French law

Jacques de Revigny (+ 1296) : Le droit Romain comme moyen de façonner le droit français

Abstract: This paper describes in brief which arguments were used by Revigny to create space for contemporary French law in his commentaries on Roman law.

Résumé : Ce papier décrit brièvement les arguments de Revigny pour développer la place du droit français dans ses commentaires sur le droit Romain.

Keywords: Jacques de Revigny – Bologne – French customary law – *retrait lignager*

Mots-clés : Jacques de Revigny – Bologne – droit coutumier – retrait lignager

1. Because it is not without importance to know where somebody's personal roots lie before an attempt is made to describe how Jacques de Revigny dealt with the legal situation in thirteenth-century France, first some basic data about Revigny. He came from Revigny-sur-Ornain, which is in the western part of Lorraine. Today it has little over three thousand inhabitants. In his days it must have been smaller. Jacques studied law in Orleans, after having obtained the degree of *magister artium*, probably in Paris. His teachers were all French although one of them had received his doctorate in Bologna. As a *bacalareus* still, Revigny became known as the person who had cornered a son of the Italian glossator Accursius during the debate following a guest lecture the latter gave in Orleans[1]. This happened about 1260. As of 1265 he began his career as a professor of Roman law in Orleans, with great success. He had many pupils, among them, for a short time, that other luminary of this law school: Pierre de Belleperche. We do not know exactly when Revigny stopped teaching. At any rate, it must have been before 1289, because in that year he returned to Lorraine, to become bishop of Verdun. He did not have a good time there. The citizens and local potentates made his life a continuous battle to secure his episcopal rights. In the end, he went to Rome to settle some of the disputes he had with his opponents. And to die, at Ferentino, to be precise. The troubles in Verdun continued after his death. What he left there – apart from troubles - was a charter for its citizens[2]. This was Revigny's most personal involvement with local law.

2. Revigny's Orleans heritage was incomparably more lasting. We have, partly in manuscript, partly in print, the reports of many of the lectures he gave on the body of Roman law. Unfortunately for him, the knowledge of these faded away after the fourteenth century, which resulted in an almost total ignorance until the end of the nineteenth century, when some French historians began to recover the glorious past of the medieval universities of France. It was the work of the Dutch legal historian Meijers, however, which put Orleans back on the map as an important centre of legal culture[3]. He did not yet make a clear

1 For the details, see F. P. W. Soetermeer, "Recherches sur Franciscus Accursii, ses *Casus Digesti Novi* et sa répétition sur la loi *Cum pro eo* (C. 7,47 un)", *Tijdschrift voor Rechtsgeschiedenis*, 51, 1983, p. 3-49.

2 Edition E. M. Meijers and J.-J. Salverda de Grave, *Le Livre des droits de Verdun*, Haarlem, 1940, p. 133-140.

3 French translation in E.M. Meijers, *Études d'histoire du droit*, III, Leiden, 1959, p. 3-148.

distinction between the ideas of in particular Revigny and Belleperche, one of the reasons why investigations in this area are still rewarding. Usually, it is Revigny who turns out to be the original mind, so let us see what he has to say about French law.

3. The French law of Revigny is predominantly customary law[4]. Royal legislation was only rudimentary and the statutory law of cities did not get much chance to develop under the eyes of the officers of the French king. Revigny mentions customs of regions, of counties, of towns, and of other places, generally without any precise indication of the territory intended. Sometimes I have been able to locate a particular custom, often not. Of greater importance are the customs apparently not limited to a certain territory. There are some well-known among them, and they would seem to belong to the *droit commun de la France*, the law common to all in the kingdom of France. In this sense Revigny is a precursor of Philippe de Beaumanoir, who used this term explicitly. This is the first and last time that the name of this holy icon of French legal history will be mentioned here: his time was to come later, when Revigny had already expounded his theories and had made his ill-fated career move to Verdun.

4. How do you deal with customary law if Roman law is the subject of your teaching? The most extreme option would be to reject any law that does not concur with Roman law as it was conceived at the time. This antiquarian approach would perhaps have appealed to some of Revigny's students imbued with the classical tradition of Chartres, but most of them would have considered it as utterly impractical. On the other hand, Roman law was not only a technical subject matter, it also stood for specific values not necessarily in accordance with French legal practice. A way in between had to be chosen, realistic and critical at the same time. Revigny knew this very well, and he never, I repeat, he never said that a particular custom was not valid. Only occasionally the verdict was "not just" or "lacking a reason". Actually, there are not many customs branded by him as *corruptelae*.

5. Three customs, in particular, have filled Revigny with indignation[5]. Number one: that in lay courts the losing party did not have to pay costs of litigation. He considered this a diabolical corruption and an intolerable error. You should know that procedure in lay courts was much briefer and less costly than the procedure based on Roman and canon law. A second custom, lacking any reason whatsoever, was the customary type of guardianship. Why? Well, because the guardian, usually a relative, was not obliged to give account of the revenues enjoyed. We can see his point, these days, I think.

6. The bad custom that got most attention would at first sight seem to be quite harmless. It concerned the English right of the eldest son to the entire inheritance of his deceased father. Revigny even consulted theologians about this (foreign) custom, but they did not agree on its perniciousness to the soul of the first-born son. Revigny suggested this son should at least give his sisters and brothers some (financial) support when they got married. I do not exclude that he had political consequences in mind, the English king being a vassal of the French king for large parts of the Midi.

7. These bad customs have in common that Revigny was not much inclined to deal with them with the usual legal methods of arguing. They simply fell outside his legal world for lack of an adequate reason. It is time now to have a look at some customs not marred by this defect. According to Roman law a woman could not be a witness to a last will [Inst. 2,10,6]. Practice in France was different. How could this practice be reconciled with Roman law? Revigny uses an argument *a contrario (sensu)*. He says: a Roman last will contained the appointment of an heir. French testaments do not. Therefore the text about the incompetence of women is not applicable to French last wills[6]. Because the essential element of the Roman last will is absent, another rule may apply. This may seem artificial, but it is an effective way to create space for contemporary practice. It should be remarked that also in the south of France, where Roman law had a strong presence, people often used the simpler codicil to dispose of their property.

4 On the subject, see K. Bezemer, "French customs in the commentaries of Jacques de Revigny", *Tijdschrift voor Rechtsgeschiedenis*, 62, 1994, p. 81-112.

5 See K. Bezemer, *Ibidem*, p. 100-108.

6 On this argument, see K. Bezemer, *What Jacques saw. Thirteenth-century France through the eyes of Jacques de Revigny, professor of law at Orleans*, Frankfurt am Main, 1997, p. 127 and 130.

8. The custom of *retrait lignager* was common to large parts of France. It allowed the relatives of someone who had sold family estate to reclaim the estate within a certain period, usually a year and a day, on payment of the purchase price and expenditures made. To prevent the exercise of this right, buyers sometimes made excessive and unnecessary expenditures on the estate. This was a well-known type of fraud. It was intolerable, as Revigny saw *retrait lignager* as a custom having a good reason, that is, to ensure people's rights of succession. So, how can Roman law, which is unfamiliar with this custom, be used to protect it? This time, Revigny uses an analogical argument[7]. He says: someone who has bought an estate liable to *retrait lignager* is like a pledgee who should know there is a fair chance that the pledge has to be returned to the pledger, who is not obliged to compensate unnecessary expenditures made on the pledge. In a similar way a buyer of family estate cannot undermine the exercise of the right of *retrait lignager*. I have to remark that Revigny was the first academic jurist who paid much attention to this custom, a tradition that was continued until the end of the *ius commune* period.

9. In France the thirteenth century was a period when many serfs (bondmen) were emancipated. This caused a lot of friction between former owners and former serfs. A typical case is described by Revigny[8]. A former serf of the cathedral chapter of Chartres, who had become rich and freed himself from his bondage, had, so it is related, offended the dean of the chapter at a meeting. The dean wanted him to be reduced to slavery. Roman law states that an ungrateful freedman can be reduced to (Roman) slavery. But, could this rule be applied to this case? Revigny knew that the serfs of the Chartres chapter were not real slaves in the Roman sense. They could make a will, and buy and sell things. So, the culprit could not be deprived of these rights. Again, we see the application of an argument *a contrario*: because this man was not a slave in the Roman law sense, the Roman law punishment could not be meted out. There was even someone in the chapter – ignorant of Roman law, says Revigny –, who said that natural justice was against it. Revigny may have felt that way too, because – and this is speculative –, he may have been a descendent of people of servile condition. Yet, he did not like such arguments, unless they had a firm basis in the texts of Roman law.

10. The last example I want to give is about an academic dispute that shows how in Orleans conflicting visions on customary law could clash with long lasting effects. When Pierre de Belleperche – the other Orleans luminary –, was still a *bacalareus*, about 1275, Revigny presided over an academic dispute for which he had devised the following question[9]. Someone owes an amount of money. He dies, leaving two heirs. According to Roman law, each of the heirs owes half the amount because it is a divisible debt. So, there is a very simple solution. The debate, however, took a different turn. Suppose one of the heirs offers to pay his half. Is the creditor obliged to accept this payment? Revigny defended the view that he is not. He argued that the original debtor had not been able to pay his debt in parts, unless agreed upon, and that the position of the creditor had been deteriorated, having two debtors now, instead of one. Belleperche must have smelled the chance to gain a victory over the formidable Revigny. So he advanced the Roman law solution I just mentioned. Immediately he was crossed by an important man, maybe a former student of Revigny, who said: Face it, young man, people holding your view have no text to speak for them. And he came with a text (C. 2,18,3), that cannot have convinced Belleperche. But he was not in a position to decide the dispute, and, all he could do, several years later, when he had a school of his own, was to tell his students that he would have given a penny for this text, in this way expressing his low opinion of the argument.

10. In my view it was French customary law that made Revigny, and the important man, defend an opinion that goes against Roman law. It was a rule of customary law that debts had to be paid from moveable property (*les meubles sont le siège des dettes*). So it depended on the division of the inherited property between the heirs who of them had to pay the debts. That was probably what Revigny had in mind when he came with his question. And the text put forward by the important man was, again, one of those analogical arguments used by Revigny to support French customary law. It says that someone who

7 On this argument, see K. Bezemer, "*Ne res exeat de genere*, or How a French custom was introduced into the *ius commune*", *Rivista internazionale di diritto comune*, 11, 2000, p. 67-115 (at 74-75).

8 See K. Bezemer, *What Jacques saw*, *op. cit.*, p. 37-38 and 39-40.

9 See, K. Bezemer, *Pierre de Belleperche. Portrait of a legal puritan*, Frankfurt am Main, 2005, p. 40-41.

has paid a debt for his brother and coheir, can claim the money back from that brother. The suggestion is that only this brother had to pay the debt because he was the one who had inherited the moveable property.

11. Before I formulate some conclusions, I believe it is necessary to point out that Revigny's tool box did contain more than the arguments presented so far. I have not yet mentioned it but Revigny sometimes used Aristotelian logic, especially when he wanted to analyse unclear sentences in the Roman law texts. I leave it at that, but let nobody think that he used this instrument in every commentary. I know only a few examples[10].

12. More important for our subject is the concept "common parlance" (*usus communis loquendi*). For instance, in France it was usual to speak of possessions when you meant real property[11]. So, not in the Roman law sense. According to Revigny this had to be taken into account if a lay person used this expression. He used the same argument for the interpretation of a contract[12]. What does it mean if a lay person says "I want to buy or sell"? Is it only to express an intention for the future or is it an actual wish to be bound? Another way to take account of local ways was to consider the social position of the parties to a contract. A cloth merchant, for instance, had to give different, that is more information about his merchandise to a simple student about his merchandise, than to someone who was a professional buyer of cloth[13]. A final remark should be made about the error that brings about another (*error ex errore*). Revigny uses this argument in particular in the context of public law[14]. If you accept the existence of "emperors" that are not real emperors in the sense of Roman law, you should not be surprised that these alleged emperors act as if they were real emperors and assume the powers accorded to them by Roman law. The most conspicuous example being, of course, the King of France. It is a special type of the argument by analogy.

14. Time to conclude. First and foremost: Revigny did not only use Roman law for its intrinsic meaning. He was not a mere philologist who wanted to find out how exactly the ancient Romans had organized their society. In several instances, he wanted to show how Roman law texts could be used to defend the sometimes very different rules of French customary law. Classical romanists may see this as an abuse of the holy texts of Roman law. It was not. It was an attempt to create space for a legal world that could not be ignored. The method had its drawbacks: the parallel world of French customary law was built up from the outside. The arguments Revigny used to legitimize French law did not necessarily form a coherent whole.

15. Revigny was immediately attacked by more orthodox romanists such as Belleperche. It did not prevent that in the long term certain institutions of French law successfully resisted the pressure of Roman law. Revigny has contributed to this by means of that same Roman law.

Kees Bezemer
Leiden Law School Leiden University

10 For an example, see K. Bezemer, "Later fortunes of a famous text. The *lex Cogi* from the viewpoint of some commentators", *Ius romanum – Ius Commune – Ius hodiernum. Studies in honour of Eltjo J. H. Schrage on the occasion of his 65th birthday*, H. Dondorp, J. Hallebeek, T. Wallinga, L. Winkel (eds.), Amsterdam-Aalen, 2010, p. 26-27 and 34.

11 Cf. K. Bezemer, *What Jacques saw*, *op. cit.*, p. 15 and 20-21.

12 For the following question, see Revigny at C. 4,38,13 (MS Paris BN lat. 14350 fol. 412 va/ ed. Paris, 1519; repr. Bologna, 1967, fo. 199 vb): "*Unde de vi verborum (ille) qui dicit sic 'volo vendere', et ille qui dicit 'volo emere' non sequitur quod vendat vel emat, nisi habeant contrahentes ex communi usu loquendi qui cum ipsi vendebant vel emebant sic loquebantur: 'volo vendere', 'volo emere'*, per l. ff. de supell. l. l. Labeo (D. 33,10,7) et ff. *de fundo instruc.* s. l. Cum delanionis § *Asinam molendinarum* (D. 33,7,18,2)."

13 On this, see K. Bezemer, *What Jacques saw*, *op. cit.*, p. 124.

14 Cf. K. Bezemer, *Pierre de Belleperche*, *op. cit.*, 127-128.