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Legal History in the Nordic Countries

A short history of Nordic legal history

Legal history is a well-established discipline in all five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden). The “father of Swedish legal science”, Johan Olofsson Stiernhöök (1596-1675), is often mentioned as the first Nordic legal author with an interest in legal history. Seventeenth- and eighteenth-century legal history was, following Lars Björne’s expression, largely patriotic, whereas source criticism was valued less. This patriotism resulted mostly in the attempt to portray national legal history as something unique, with some commentators finding “Swedish” legislators in the ancient Greek literature. In the eighteenth century, historical sources began to be approached more critically. Swedish legal scholars such as David Nehrman (1695-1769), Olof Rabenius (1730-1772) and Anders Schönberg (1737-1811), as well as the Danes Christian Ditlev Hedegaard (1700-1781) and Peder Kofod Ancher (1710-1788), all discussed historical themes alongside their dogmatic works.¹

As elsewhere in nineteenth-century Europe, legal history as a separate branch of legal studies started to develop in the Nordic countries in the vein of the Historical School of Jurisprudence. The Dane Paul Detlef Christian Paulsen (1798-1854) wished to establish what he called “Nordic legal history” (*ius scandinavicum*), and the “Grundrids af den danske Lovhistorie” (Introduction to the Danish Legal History) by Janus Lauritz Andreas Kolderup-Rosenvinge (1792-1850) was even translated into German by one of the foremost Germanists of the time, Karl Gustav Homeyer. Fredrik Peter Brandt from Norway (1825-1891) was the Norwegian pioneer of legal history where, as in Sweden, Johan August Posse (1815-1865) and Knut Olivecrona (1817-1905) carried the flag for the discipline. The nineteenth-century Finnish legal scholars were very much historically oriented, Matthias Calonius (1738-1817), Wilhelm Gabriel Lagus (1789-1859), Johan Jacob Nordström (1801-1874) and Johan Philip Palmén (1811-1896) serving as examples. The shift towards modern history writing and source criticism was, however, slow and gradual, and it was actually towards the end of the nineteenth century that the achievements of modern historical science started to influence legal historical research in the Nordic countries. The Danes Ebbe Hertzberg and Paul Johannes Jørgensen were the trail-blazers, followed by others in Denmark and the other Nordic countries in the twentieth century.²

The place of Roman law in the research agenda of Nordic legal scholars has traditionally been weak, although occasional works have appeared in that field as

¹ See Lars Björne, *Patrioter och institutionalister: Den nordiska rättsvetenskapens historia, Del I: Tiden före 1815* (1995), 93, 200-201, 362-374.

² See Lars Björne, *Brytningstiden: Den nordiska rättsvetenskapens historia, Del II: 1815-1870* (1998), 92-95, 143-145, 189-194, 219-224, 414-441.

well.³ The feeble tradition of Roman law is not difficult to explain, the weak reception of learned Roman law in the early modern having turned into an equally weak tradition of Roman law studies both in research chambers as well as university curricula. In traditional German terminology, Nordic legal historians have always been more Germanists than Romanists.

Estonia is not considered part of the Nordic countries in either a geographical or cultural sense. Historically, Estonia has been ruled by the Danes, Swedes, Russians, and Germans. Although Estonians have close linguistic and racial ties with Finns, the German cultural influence has been strong since the Middle Ages and continues to be important. Estonia is, however, included in this brief survey because of the close cooperation that Estonian legal historians have had with the Nordic countries since Estonia's independence in 1990. The historiography of Estonian legal history resembles that in Germany, with a strong nineteenth-century emphasis on both germanist and romanist research. The 1920s and 1930s saw the growth of a small but vigorous school of Estonian legal history, among whom at least Adolf Perandi and Jüri Uluots are worth mentioning.

Most of Nordic legal history is written in the national languages. Norwegian, Danish and Swedish are mutually comprehensible; Estonian, Finnish and Icelandic require special training in order to be understood by colleagues in other countries. However, a considerable number of texts have traditionally been published in German, which in turn is now increasingly giving way to English as the main non-Nordic language of publication.

In what follows I will sketch the state of Nordic legal history as it stands today. For practical reasons, I will limit the survey to the legal historians with doctoral degrees currently active in the law faculties of the region.⁴ Nordic legal historians are not numerous, however, which is understandable when one takes into consideration that the population of the region is only about 25 million.

Denmark

The best-known figure of Danish legal history is Ditlev Tamm from the University of Copenhagen. Tamm has written extensively on a wide variety of subjects, including both legal and political history, such as the history of Danish legal science and the history of the Second World War in Denmark. He has also written works on the Argentine writer Jorge Luis Borges and the beginnings of Danish ballet.⁵ Henrik

³ The late Hannu Tapani Klami is one of the main exceptions. See, for instance, *Sacerdotes iustitiae: rechtstheoretische und historisch-methodologische Bemerkungen u ber die Entstehung des römischen "Rechtspositivismus"* (1978); *Zur römischen Prälegatsterminologie und D. 34. 3. 8. 6: Kritik der Textkritik* (1968).

⁴ Neither is this intended as a complete bibliographical survey; only the most important monographic works of recent decades will be mentioned.

⁵ See, for instance *Roman Law and European Legal History* (1997); *Det høje C: En bog om Det konservative Folkeparti 1965-1998* (1998); *Jorge Luis Borges: En introduktion* (2002); *Retshistorie. Danmark - Europa - globale perspektiver* (2002); *Juraen på Københavns Universitet 1479-2005* (2005); and *Bournonville* (2005).

Stevnsborg has written on the history of the police during the Second World War, but on earlier subjects as well.⁶

The younger generation of Danish legal historians mostly specialises in the middle ages. Helle Vogt (Copenhagen) wrote her doctoral dissertation on medieval marriage law,⁷ and Per Andersen (Århus) wrote on the growth of royal legislation in medieval Denmark.⁸ Beside medievalists, Pernilla Knudsen (Copenhagen) has written on the history of the Danish legal profession.⁹

Finland

Finnish legal history is mainly concentrated at the University of Helsinki, at the moment probably the most active centre of legal historical research in the Nordic countries. In Helsinki, Pia Letto-Vanamo writes on European legal history, European community law and procedural legal history.¹⁰ Jukka Kekkonen has written mainly on the history of control policy and the civil wars,¹¹ whereas Heikki Pihlajamäki deals with various aspects of comparative legal history in the context of early modern European and Western law.¹² Anu Pylkkänen's studies approach gender questions from both historical and current perspectives.¹³

The Helsinki Faculty has produced a considerable cadre of younger researchers, active on the international scene as well. Toomas Kotkas has written on the use of pardon in the early modern period and is currently concentrating on the question of police law in early modern Sweden.¹⁴ Mia Korpiola is a specialist on medieval and early modern marriage law,¹⁵ and Kaius Tuori is, more than anything else, a modern-style Romanist.¹⁶

Although Helsinki is definitely the centre of Finnish legal history, it is not everything. Lars Björne, certainly one of the leading legal historians in the Nordic countries, is active at the Law Faculty at the University of Turku. Björne has produced an impressive number of books on the history of legal science and is known principally

⁶ *Politiet 1938-1947* (1992).

⁷ *Slægtens funktion i nordisk højaldermiddelret - kanonisk retsideologi og fredsskabende lovgivning* (2005).

⁸ *Rex imperator in regno suo: Dansk kongemagt og rigslovgivning i 1200-tallets Europa* (2005)

⁹ *Lovkyndighed og vederhæftighed – Sjællandske byfogeder 1682–1801 – Professionalisering og kumulering* (2001).

¹⁰ See *Eurooppa oikeusyhteisöinä: Yhteistyön haasteet ja mahdollisuudet* (1998);

Käräjyhteisön oikeus: Oikeudenkäyttö Ruotsi-Suomessa ennen valtiollisen riidanratkaisun vakiintumista (1995).

¹¹ See *Laillisuuden haaksirikko: Rikosoikeudenkäyttö Suomessa vuonna 1918* (1991); *Suomen oikeuskulttuurin suuri linja: Suomalainen lakimiesyhdistys 100 vuotta* (1998).

¹² See *Evidence, Crime, and the Legal Profession. The Emergence of Free Evaluation of Evidence in the Finnish Nineteenth-Century Criminal Procedure* (1997); Heikki Pihlajamäki – Virpi Mäkinen – Jussi Varkemaa, *Keskiajan oikeushistoria* (2007).

¹³ *Puoli vuodetta, lukot ja avaimet* (1990).

¹⁴ *"Suosiosta ja armosta": Tutkimus armahdusoikeuden historiasta autonomian ajan Suomessa* (2003).

¹⁵ *Between Betrothal and Bedding: The Making of Marriage in Sweden, ca. 1200 – 1610* (2004).

¹⁶ *Ancient Roman Lawyers and Modern Legal Ideals: Studies on the impact of contemporary concerns in the interpretation of ancient Roman legal history* (2007).

for his four-volume history of the Nordic legal science.¹⁷ Also in Turku, Päivi Paasto is an authority on the history of ownership.¹⁸

Iceland

Iceland's new generation of legal historians consists of a group of general historians specialising in medieval legal history. All are active in the country's main academic institution, the University of Iceland in Reykjavik. Már Jónsson has written mainly on incest,¹⁹ while Lára Magnusardóttir recently defended her thesis on excommunication.²⁰

Norway

Under the leadership of Professor Dag Michalsen, the Oslo Faculty has experienced a tremendous boost in recent years. Michalsen and his students concentrate very much on constitutional questions of the nineteenth and twentieth centuries, as well as methodological questions.²¹ The history of legal scholarship is also high on the research agenda of the Norwegians, represented by Sverre Blandhol's work on Nordic legal pragmatism.²²

The Law Faculty at Bergen on Norway's west coast has Jørn Øyrehagen Sunde as its newly-appointed Professor of Legal History. Sunde's main research interests are in the eighteenth century. He is a prolific writer, however, and has produced extensively on other themes as well.²³

Sweden

Sweden has three law faculties, all with distinct profiles as far as legal history is concerned. The legal historians at the University of Stockholm, under the professorship of Claes Peterson, combine legal history with legal theory, concentrating on the nineteenth and twentieth centuries.²⁴ Marie Sundström specialises on the historical school of law and its influence on Swedish law,²⁵ and

¹⁷ *Nordiska rättsvetenskapens historia I–IV* (1995 – 2007); *Nordische Rechtssysteme* (1987); and *Deutsche Rechtssysteme im 18. und 19. Jahrhundert* (1984).

¹⁸ *Omistuksen juuret: omistusoikeuden perustelua koskeva oppihistoriallinen tutkimus* (2004); and *Omistuskäsitteistön rakenteesta: tutkimus jaetun omistusopin mahdollisuudesta ja merkityksestä omistuskäsitteistöissä 1700-luvun lopulle tultaessa* (1994).

¹⁹ *Blóðskömm á Íslandi 1270–1870* (1993).

²⁰ *Bannfæring og kirkjuvald á Íslandi 1275–1550* (2007).

²¹ See “Hva er ‘europeisk rettskultur’?”, in *Tidskrift for Rettsvitenskap* (115) 2002; *Law, Legal Science and the Norwegian Society* (1997).

²² *Nordisk rettspragmatisme – Savigny, Ørsted og Schweigaard om vitenskap og metode* (2005).

²³ See *Speculum legale – Retsspejelen; Ein introduksjon til den norske rettskulturen si historie i eit europeisk perspektiv* (2005); and *Den juridiske komedien: ein antologi over tanke og praksis i den norske rettskulturen si historie* (2007).

²⁴ See *Peter the Great's administrative and judicial reforms – Swedish antecedents and the process of reception* (1979); *Äganderätt, avtalsfrihet och fördelning av företagets vinster – vinstandelssystemet i svensk 1800-talsdebatt* (1984).

²⁵ See *Die Herrschaft der Rechtswissenschaft* (1989); and *Rättvetenskapens princip: till frågan om rättvetenskapens värdelöshet och Friedrich Julius Stahls rättsinstitutslära* (2004).

Max Lyles wrote his doctoral dissertation on Axel Hägerström, the philosophical forefather of early nineteenth-century Swedish legal realism.²⁶ As for the discipline of legal history at Uppsala, Rolf Nygren's research borders closely on legal sociology,²⁷ whereas Mats Kumlien has recently produced a book on the development of Swedish labour law.²⁸

The legal history section of the Lund Faculty in Sweden's southern-most tip has long been the most numerous in Sweden. Although Kjell Åke Modéer retired last year, it would be arbitrary and misleading to leave him out of the survey, since he continues to be very active on the international conference scene and in the Faculty. Modéer started his career with work on the seventeenth-century Swedish judiciary in the conquered lands of the Holy Roman Empire of the German Nation, but has lately shifted his interests more towards contemporary comparative legal history and problems concerning legal culture.²⁹ Per Nilsén, currently at Odense, Denmark, should perhaps best be mentioned in the Lund context as well. Nilsén is originally Modéer's pupil, and an authority on early modern Swedish legal science.³⁰ Christian Häthén's production falls within the history of criminal law.³¹

Estonia

For a small country, Estonia boasts a remarkable legal historical tradition, which is continued vigorously at the University of Tartu by Professor Marju Luts. She has written mainly on the history of nineteenth- and twentieth-century Estonian law, placing it in the German and Russian contexts.³² Several of her doctoral students are likely to finish their dissertations in the next couple of years.

Research tendencies in Nordic legal history

Some conclusions can be drawn on the basis of the description above. First, surprisingly many of the younger Nordic legal historians concentrate their work on medieval subjects (Andersen, Jónsson, Korpiola, Vogt). The early modern period is also fairly well covered (Björne, Letto-Vanamo, Nilsén, Paasto, Pihlajamäki). Modern and contemporary legal history of the 1800s and 1900s is, however, the most popular research period (Blandhol, Kekkonen, Kotkas, Kumlien, Luts, Lyles, Michalsen, Modéer, Peterson, Sandström). Clearly, this categorisation is rough and does not do

²⁶ *A call for scientific purity: Axel Hägerström's critique of legal science* (2006).

²⁷ *Subordination och enskild integritet: studier kring ett militära trossa kerhetskomplex* (1981).

²⁸ See *Continuity and contract: historical perspectives on the employee's duty of obedience in Swedish labour law* (2004); *Uppfostran och straff: studier kring 1902 års lagstiftning om reaktioner mot ungdomsbrott* (1997).

²⁹ *Rätt och kultur i fokus: trettiofyra Brännpunktsartiklar 1992-1996* (1997); *Gerichtsbareiten der schwedischen Krone im deutschen Reichsterritorium: Voraussetzungen und Aufbau 1630-1657* (1975).

³⁰ *Att "stoppa munnen till på bespottare": den akademiska undervisningen i svensk statsrätt under frihetstiden* (2001).

³¹ *Stat och straff: rätthistoriska perspektiv* (2004); *Straffrättsvetenskap och kriminalpolitik - de europeiska straffteorierna och deras betydelse för svensk strafflagstiftning 1906-193: tre studier* (1990).

³² *Juhuslik ja isamaaline: F. G. v. Bunge provintsiaalõigusteadus* (2000).

justice to many scholars who have worked in more than one period and continue to do so, to the extent that some of the most prolific writers cannot be categorised at all (Björne, Tamm).

The tendency toward more recent times, nevertheless, calls for an explanation. Legal history's continuous need to reaffirm its position in the law faculties may be one of reasons behind the legal historians' wish to produce research which might enable them to communicate with their faculty colleagues and students in a more meaningful way. The Stockholm legal historians openly express their wish to cooperate with the dogmatic legal disciplines, but similar reasons may be found elsewhere as well. This does not mean that contemporary subjects are not important as such, nor do all legal historians share this view – not even all those who work on contemporary matters. On the contrary, to a certain extent it is only natural that legal historians of younger nations tend to turn to more recent subjects. This is most evident in the case of Estonia, but has relevance for Finland and Norway as well.

Second, Nordic legal history has devoted its attention fairly evenly to different branches of law. Thus, criminal and procedural law have been widely researched, as well as the history of the legal profession. Public law of the nineteenth and twentieth centuries has also been widely researched. If anything, Roman law has not ever been much studied, which may have led to the fact that some general areas of private law are in need of much more research. In the Nordic countries, the paradigm of legal history is traditionally not that of *Privatrechtsgeschichte*.

Another obvious tendency amongst the Nordic legal historians is the striving towards comparative research and beyond traditional national contexts. This has naturally led to increased international networking and publishing on international ventures in languages other than the Nordic ones.

The Nordic cooperation in legal history

Nordic cooperation, however, remains important. In the past three years, the Nordic cooperation in the field of legal history has been institutionalised in the form of a common doctoral training network called *Legal history on the edge of Europe: Nordic law in the European legal community 1000–2000 a.d. (REUNA)*. The REUNA (the Finnish for 'edge') network consists of about 40-50 legal historians from Finland, Estonia, Sweden, Denmark, Norway and Iceland, the majority of whom are doctoral students. The purpose of the network is to assist younger legal historians to escape national and regional confines and to take part in legal history debates in a European context. The activities of the network have been arranged into a series of symposiums in all the participating countries over a period of seven years (2004-2009). The network is administered by the University of Helsinki and financed by NordForsk, which operates under the Nordic Council of Ministers.

We may already say that the network has been a success. It has created a sense of commonality not only amongst the doctoral students but Nordic legal historians in general, since not only doctoral students but more experienced legal historians as well attend the seminars. The conferences have been popular, not only because of the

chance to meet Nordic colleagues, but also because of the impressive list of non-Nordic keynote speakers, including world-class scholars such as Michael Stolleis, Marie-Theres Fögen, James Whitman, Dirk Heirbaut, David Sugarman, Pietro Costa, Marcel Senn, António Hespanha and Emanuele Conte. The network has also produced other forms of cooperation, such as books and projects. It has already been decided that, once the funding of REUNA ceases at the end of 2009, the institutionalised cooperation will be continued in the form of biannual Nordic legal history conferences.