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# Berman and Livonia – Two Prodigious Strangers

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Three decades after the first print of Harold J. Berman's *Law and Revolution* one might think it near impossible to find any relevant new subject matter, least of all primary sources, that might yield novel results when viewed in light of Berman's approaches and insights. After all, Berman's innovations have been widely discussed, his emphases noted and some of his theses woven into the very narrative against the background of which we view the legal reality and its transformations of the 11th as well as the 12th and the 13th centuries.

Yet odd as it may seem, Berman's views of the consequences of the Papal Revolution have in fact not been properly introduced to the study of the formation of Livonia (German *Alt-Livland*), the curious medieval conglomerate of polities on the territory of present-day Estonia and Latvia. Livonia, a loose confederation of the lands of the Teutonic Order, several Hanseatic towns and four bishoprics, all formally under the rule of the German emperor, developed and indeed blossomed from the 13th to the 16th century – only to be swallowed up by expanding empires on all sides. [1] Itself quite an oddity, Livonia grew out of an even stranger chain of events – the mission-turned-crusade-turned-conquest aimed at the native Estonians and Latvians, still unchristianised (!) in the first decades of the 13th century. [2]

These early events, a complex mesh of ambition, intrigue, rivalry and war, have offered rich symbols for a most diverse range of propagandist claims from the 19th century onwards. For the German-speaking Baltic nobility it was a »bringing of culture« to savages; for Estonian and Latvian nationalists, an »ancient struggle for freedom«; for the Soviet regime a »fight of the allied Estonian and Russian peoples against German invaders«. [3] Only recently have these events been resolutely demystified, albeit not wholly without controversy. [4]

Where does Berman come into all of this? The answer is – at the very core.

In a very brief summary, what happened in Estonia and Latvia in the last years of the 12th and the first years of the 13th century was the following. A priest from Germany arrived with some merchants visiting their well-established trading partners in what is now Latvia to preach Christianity among the still pagan peoples of the area. After some success (upon which he was consecrated a bishop), his small flock began to flounder; when he, an old man, died, his initial success had been rendered void. His successor was a man of short temper; having unsuccessfully demanded that the one-time converts return to Christian worship, he gathered in Germany a host of armed men, also securing from the pope the right to style this enterprise a crusade. This bishop died in battle. The third bishop now arrived, with armed pilgrims of his own, to a land where conflict was commonplace – between local nobles, as raids to and from further regions, and now also against Christians. Conflict between various groups of Christians – the clergy, the crusaders, members of a newly founded military order, to name some – was also quick to arise. All of this took place in the shade of a rising maritime empire of the king of Denmark, at first a looming threat, but by 1219 a reality of royal conquest in what is now Estonia. [5]

The interpretation of what took place in the first three decades of the 13th century has been determined, as referred above, first and foremost by the political needs of the scholar's own time. There was much fighting; eventually Western Christian warlords and ecclesiastical notables emerged as rulers of the previously pagan lands. If on anything, the

1 A systematic new compendium in Estonian on Livonia, Selart (2012), offers for the international scholar a comprehensive catalogue of (among others) English and German literature on Livonia.

2 A recent collection of English articles on this subject: Tamm et al. (2011).

3 For a more detailed account, see Kaljundi, Kļaviņš (2011).

4 Selart (2012) 25–80.

5 For the depiction of these events in the main narrative source covering the formation of Livonia, the Chronicle of Henry of Livonia, see in English Brundage (2003) 25–38, 173–174; in German and the original Latin, Bauer (1959) 2–20; 230–233.

various conflicting narratives agree on the »fact« that what took place was a secular conquest. [6] In the view of some, the missionary aims of the bishops were indeed just an excuse, an ideological veneer covering true aims of subjugation. [7]

It is with regard to the aims of the early Livonian bishops, their »master plan«, that Berman may offer some highly valuable clues. When paying in mind Berman's theses concerning the Catholic Church and canon law after the Papal Revolution, single terms and phrases in the sparse written sources may reveal much more than they have been thought to do. In the following, two problems with such potential will be briefly introduced, as well as a third with a different, yet not in the least a less interesting premise.

Throughout historiography the term *iura christianitatis*, »laws of Christendom«, found in the chronicle of Henry of Livonia, [8] has been rightfully seen as the gist of the changes brought about in the formerly pagan lands by the formation of the bishoprics and other polities. [9] The prevailing view today is that the term was used by Henry to express the grave changes brought about by marauding Christian warlords-turned-overlords. Efforts have been made to sum up all burdens laid upon this or that pagan ruler or region by militarily superior Christians throughout a tumultuous period of several decades, and the sum has been straightforwardly claimed to comprise the factual essence of the term *iura christianitatis*. [10] For obvious reasons, the logic of such reasoning is dubious at best.

What might help understand the original meaning of *iura christianitatis* is Berman's trail of thought concerning the emergence of several distinct Western legal systems in the aftermath of the Papal Revolution. [11] It is Henry's curious use of the plural, »*laws* of Christendom«, that tempts one to ask whether his choice of words might be a first-hand piece of evidence, a witness report so to say, of this emergence and distinction. The whole affair of christianising Livonia was able to take off because German merchants had established contacts with their pagan colleagues from across the Baltic Sea. Might it be that Henry's *iura* were canon law and the law merchant (the latter closely connected not to say entwined with urban law), systems of law now to be followed by the newly Christian local traders in active commerce with the West? Hanseatic towns were quick to be founded in Livonia and Lübeck's as well as other German towns' laws received already during the 13th century. [12] Or on the other hand, these *iura* were »laws of *Christendom*« and came to rule the lives of former pagans exclusively through the mediation of Roman Catholic clergy. Perhaps Henry the priest was referring to the two layers of canon law as distinguished by Gratian and underlined by Berman – the *ius antiquum* or the pre-Revolution customs of the Church as well as the new, sophisticated canon law already a strong century in the making by Henry's time. [13] A thorough analysis of primary sources with these options in mind is of course necessary before any certain conclusions may be drawn, but the perspective of Berman's work as a key to one of the central problems in the historiography of early Livonia seems most promising.

Secondly, some of Berman's emphases may offer a path to a paradigm of the formation of Livonia that does not imply an inherent urge of conquest in every German notable setting foot on the eastern shore of the Baltic in the early 13th century. The nationalist narrative of a struggle for freedom is based strongly on the fact that Henry as well as the unknown authors of some contemporary documents did indeed use words like »under the rule«, »obey« and so forth to describe the situation of the natives after receiving baptism from the bishops. [14] The idea in general is not his, of course, but Berman did make it a point throughout his work to hammer home the fact that the post-Revolution Catholic Church was without reservation a full-fledged public authority, a state – in Berman's words, the first modern state – in itself. [15] This emphasis must in the case of early Livonia come hand in hand with another, again not originally his but emphasised and expanded by Berman, namely that in post-Revolution medieval Europe power

6 Arbusow (1918) 25; Vahtre (1990) 128; Nielsen (2005) 221; Jensen (2011) 199; Selart (2012) 41.
7 Naan (1955) 117; Leimus (2011) 19.
8 E. g. Brundage (2003) 107; Bauer (1959) 126–127.
9 Leimus (2011) 9.
10 Leimus (2011) 12–17.
11 Berman (1983) 115–119.
12 Selart (2012) 123–140.
13 Berman (1983) 202.
14 E. g. Brundage (2003) 121; Bauer (1959) 150–151; Bunge (2006 [1853]) 134–135.
15 Berman (1983) 113–115.

held by public authorities came in two varieties, the ecclesiastical as well as the secular. [16] When a source speaks of, say, a local ruler's duty after baptism to »subject« himself to the laws of Christendom and convey annually to the clergy certain amounts of grain (as tithes), [17] there is no need to see a subjugation of the local peoples to foreign tyrants. Berman's perspective offers instead a narrative of the transformation of a society of commoners and lords into a more complex society of commoners, lords and clergy – a less ideological and, arguably, a more plausible frame of interpretation.

Last but definitely not least, some remarks Berman made rather in passing might in fact offer a solution to a problem that has puzzled Estonian historians and archaeologists for decades. Henry in his chronicle did not once call a pagan Estonian ruler a king, *rex*. He did, though, call a newly baptised Livic lord – from a people closely related to Estonians, the Livs, inhabiting in Henry's time what is now the central part of Latvia – a »quasi-king«, *quasi rex*. [18] Yet, for instance, the king of Denmark was a *rex* without question. [19] This difference in styling has been the foundation for a long-time dominant theory of a more »democratic« society of medieval Estonians as compared to their neighbours. Authority was said to have grown stricter the more south the society – thus the Livic *quasi rex*. [20] Archaeologists have, on the other hand, found the physical remains of the era's culture in Estonia incompatible with a presumed egalitarian freeholder-peasant society. There most certainly were lords and subjects, and the archaeological and the sparse written evidence in sum tell of a bloody history of battles for supremacy and several emerging pagan states by the early 13th century. [21] Why the difference in styling, then? In discussing post-Revolution royal law, Berman noted ecclesiastical recognition as one of the means for legitimising medieval Western kingship. [22] One might suppose that for the clergy this was not just one, but the preferred one, and when immortalising on parchment the great deeds of brave bishops and diligent priests in pagan Livonia, Henry knowingly differentiated a Christian ruler, *rex*, from the rest. And the Livic lord? He had just recently been baptised, and had started his kingship as a pagan. He was a king, but not quite a proper one – a sort-of-king, *quasi rex*.

The number of ways the Soviet occupation still aches in our minds is legion. Probably not least among them is the fact that such a seminal work as Harold J. Berman's *Law and Revolution*, originally excluded by regime and doctrine, is only now becoming to be truly known among Estonian scholars. Yet such a situation may also have its upside. What is used is not forgotten, and as these above pages have hopefully allowed to glimpse, the uses of Berman in Estonia might be legion as well.

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