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Anton D. Rudokvas

Russian Pandectistics meet Tolstoj

Gerechtigkeit als Leitgesichtspunkt der städtischen Ordnung entdeckt und zu ihrer Bewahrung bestimmte Regeln und Grundsätze schriftlich als *grammatá* und später als *nómoi* fixiert. Aber dann bleibt immer noch die Frage unbeantwortet, was das spezifisch Rechtliche an der Idee *politischer* Gerechtigkeit und ihrer schriftlichen Fixierung gewesen sein soll?

Diese Frage stellt sich umso mehr, als die Gesetzgebungen ihrerseits niemals Gegenstand eines Denkens wurden, das nach der Einhaltung von Rechtsgrenzen bei der politischen Gesetzgebung gefragt hätte. Es gab in Griechenland politisches Denken und Gerichtsrhetorik, aber gerade kein Denken, das für eine rechtliche Grenzziehung Kriterien entwickelt und diese etwa bei Magistrats- oder Gerichtsentscheidungen zur Geltung gebracht hätte. Mit anderen Worten: Es fehlte für den Bereich des Rechts gerade an einer Beobachtung zweiter Ordnung, die sich vorbehält noch zu prüfen, ob ein sich als rechtmäßig beschreibendes Handeln dies zu Recht oder zu Unrecht tut. Dass Solon seine Gesetzgebung als Teil der Herstellung einer »guten Ordnung« reflektierte, ist nur eine andere Formulierung dafür, dass die Griechen einen Beitrag zur Ausdifferenzierung des westlichen Politikbegriffs, nicht aber des Rechtsbegriffs geleistet haben. Reichardt kann mit seiner Untersuchung also allenfalls beweisen, dass die *Politik* die »wesentliche Bedingung« für die Entfaltung des theoretischen Denkens war. Ich würde auch dieser These widersprechen wollen, aber sie hätte dem Unternehmen Reichardts eine größere Konsistenz verliehen.

Thomas Vesting

Russian Pandectistics meet Tolstoj*

According to the author's own estimation, the reception of Roman law in Russia has still not been sufficiently investigated. He has decided to make his own contribution to this study by analyzing the academic biographies and legal views of the most noteworthy civilians of pre-Revolutionary Russia – Dmitrij Mejer, Nikolaj Djuvernua and Iosif Pokrovskij. Retrospectively, all these jurists seem the most prominent representatives of three successive generations of Russian academic lawyers. All of them had much in common in the character of their professional formation, being educated in Germany and therefore strongly influenced by German legal science in the theoretical background to their research activities. As the senior of them, Dmitrij Mejer laid the foundations of the study of Russian civil law as a system elaborated on the basis of the application of the categories and logic of German *Pandektenwissenschaft* to the material of positive Russian law. His successor, Nikolaj Djuvernua, already worked within the framework of this normative mainstream, while the last of them, Iosif Pokrovskij, devoted himself to Roman law studies more than to the study of contemporary national law.

It seems that Avenarius has made an accurate selection of the individuals who may be considered representative for an understanding of the development of legal consciousness in late imperial Russia. He has tried to make them a medium for the understanding of this epoch in

* Martin Avenarius, Rezeption des römischen Rechts in Russland. Dmitrij Mejer, Nikolaj Djuvernua und Iosif Pokrovskij (Quellen und Forschungen zum Recht und seiner Geschichte, Bd. XI), Göttingen: Wallstein 2004, 80 S., ISBN 3-89244-767-5

the history of legal science in Russia, and it is impossible to deny that they can play such a role. In regard to biographical details, the author describes the historical context of that time, giving attention to such global problems as the real character of the Digest of Laws of the Russian Empire (*Svod Zakonov 1832*), the general appreciation of the degree of importance of Roman law for the Russian legal mind, the influence of the liberal reforms of the second part of the XIXth century upon the development of Russian law, etc. The individual parts of every section of the monograph have included in them special short studies containing descriptions of the opinions of the heroes of the book on the concrete problems of civil law theory and practice, illustrating their views and methodological approaches to the analysis of private law material. The author examines these subjects through the prism of seeking their roots in the influence of Roman law upon the legal thinking of the jurists considered.

A special feature of the book of Avenarius consists in the fact that he gives attention also to some interesting aspects of the interrelations between the personages of his book and the cultural context of the epoch. For example, he describes specially the interrelations between Dmitrij Mejer and the famous Russian writer Lev Tolstoj. Such details, rather unexpected in an academic work, make it interesting for a wider circle of potential readers and not only for historians of law. In general one may say that the author's survey of the Russian civilian tradition in the most important period of its formation through the mechanism of a biographical description of its most prominent representatives is both useful and interesting.

Despite the undoubted merits of this work by a distinguished German professor, an impartial judgement is obliged to indicate some deficiencies. Admirable as the work is, some minor caveats are warranted. First of all, the title of the book would suggest a far deeper and more varied analysis than that which could be given in a small monograph of only 65 pages (excluding the bibliographical supplement). Of course, it is true that such figures as Dmitrij Mejer, Nikolaj Djuvernua and Iosif Pokrovskij are in many aspects typical and characteristic for their time, but it should be acknowledged that the problem of the reception of Roman law in every country and in every period of history is too complicated to settle the matter even by a full description of the influence of Roman law studies on the legal minds of a few notable academic lawyers of the epoch. For example, one ought to take into consideration that not all Russian jurists demonstrated the same sympathy to Roman law as did the three personages of the present monograph. Nor should it be overlooked that many Russian civilians were more or less influenced by the same criticism of Roman law which was so popular in Germany in the second part of the XIXth century, when Romanistic legal science was challenged by the romantic Germanist lawyers on the one hand, and by materialism, formed from an amalgamation of science and industry, on the other. There were also Russian nationalists who neglected German Pandectist science and tried to find an alternative to it by generalizing and systematizing the customary law of Russian peasants. In what degree all these contradictory tendencies had a real influence upon current legal practices and civilian doctrine in pre-Revolutionary Russia could be estimated only after a scrupulous study of the case law. Without such a study, every possible appreciation of the character of the Russian law of that time must remain subjective.

It seems also that the subject of the research requires a closer definition. In his book the author gives many references to Russian authors who differ in the quality of their works and also are very contradictory among themselves on the subject of the degree of Roman law influence in Russia. It is difficult to understand the position of Martin Avenarius in this discussion, since in the absence of a strict definition of the term reception in the Russian context it remains unclear what he understands by this concept. Further, while certainly bearing in mind a clear distinction between Roman law and the *jus commune*, the author does at times leave the reader confused as to their proper relationship in the Russian context. For this reason it is sometimes difficult to understand the real character of the presupposed reception in the interpretation of the author. Indeed, to many readers the conceptual framework based on the notion of reception may seem all too familiar. More interesting might be a detailed and concrete historical comparison, an examination of the interaction of legal transplants between the Russian legal order and the different individual European legal traditions.

In the end, the real value of this book lies not so much in its general conclusions, but rather in supplying colourful details and added insights. As such, it is a valuable contribution to the study of Russian legal history, and it remains to express the hope that the author will continue his fruitful work on the subject.

Anton D. Rudokvas

Il paradiso perduto dei giuristi?*

1. Chi mostra interesse al diritto nel mondo diffidente, ieri e oggi, degli ›umanisti‹ è un benemerito; ancor più se si tratta di operare in Francia, dove pur con una grandissima tradizione la storia del diritto ha oggi vita anche più difficile che altrove; se poi lo stesso ha anche il merito di portare al grande pubblico di lingua francese – come Patrick Gilli ora – un tema difficile e poco praticato ormai come quello del rapporto tra giuristi e umanisti, le lodi diventano imbarazzanti. Non per me, tuttavia dato che non conosco personalmente Gilli, ma del quale da alcuni anni registravo la circolazione o l'annuncio di lavori di largo interesse, condotti in esecuzione di un programma di ricerca articolato, ampio e intelligente, che ci riguarda da vicino.

Allievo di Philippe Contamine, Gilli non proviene dalla storia del diritto, essendo essenzialmente uno studioso della cultura rinascimentale, in particolare del '400 italiano. Un suo primo libro impegnativo sulla presenza della Francia nella cultura italiana di fine Quattrocento apparve nel 1997,[1] mentre apparivano suoi studi di dettaglio sulla cultura umanistica.[2]

Cresceva però il suo interesse per i giuristi e il loro pensiero. Nel 1998 pubblicava un articolo riguardante il conflitto tra il giurista e l'oratore[3] e subito dopo studiava Baldo consulente per i Visconti, l'Impero e l'italianità nel '400, impegnandosi nel frattempo ad organizzare due ghiotti convegni con Diego Quaglioni (ecco la ›legal connection‹ !): nel 2001 sulla cultura giu-

* Patrick Gilli, La Noblesse du Droit. Débats et controverses sur la culture juridique et le rôle des juristes dans l'Italie médiévale (XIIe–XVe siècles), Paris: Champion 2003, 372 pp., ISBN 2-7453-0975-7

1 Nella collana dell'Ecole française de Rome, ove ha ora (2004) curato un bel volume, con contributi molto ricchi, sull'umanesimo e la Chiesa in Italia e Francia meridionale (XV – metà XVI secolo).

2 Per brevità, indico con il solo rinvio alle pagine (ora e altrove) dove si possono trovare citati i lavori in questo libro, perché purtroppo la bibliografia finale (appesantita dalla divisione tra sezione giuridica e umanistica) non accoglie tutti gli studi ricordati nel libro: si guardi intanto, quindi, ai lavori di Gilli ricordati a 51, 246 e 358.

3 Avignone, 1431–32: v. 342. Per i contributi citati subito dopo v. 24 e 144, 342.