Zeitschrift des Max-Planck-Instituts für Rechtsgeschichte und Rechtstheorie
Journal of the Max Planck Institute for Legal History and Legal Theory

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.lhlt.mpg.de

http://www.rg-rechtsgeschichte.de/rg31
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 31 (2023)
http://dx.doi.org/10.12946/rg31/232-234

Rg 31 2023 232 – 234

Toomas Kotkas*

What's the Point in Quantifying Legal Codifications?

* University of Helsinki, toomas.kotkas@helsinki.fi

ready begun by this time, in the form of glosses they would continue to determine the appearance of many legist and canonist prints until the first half of the 17th century.

If one looks back from the end points to the beginnings of the development, this edited volume offers a good entry point to deal with an important aspect of the relationship between law and text in the Later Middle Ages in more detail. *Vivant sequentes*!

■

Toomas Kotkas

What's the Point in Quantifying Legal Codifications?*

Swedish medieval provincial law codifications *(landskapslagar)* and royal law codifications *(landslagar* and *stadslag)* have been the object of legal historical research for almost two hundred years now. A total of 13 provincial law codifications and 3 royal law codifications that date back to the 13th and 14th centuries have been preserved for posterity (some only partially). The law codifications were first published in original old Swedish by C. J. Schlyter in a thirteen-volume compilation called *Samling af Sveriges Gamla Lagar* (1827–1877). It was not until the 1930s and 1940s that the provincial law codifications were translated into modern Swedish by Åke Holmbäck and Elias Wéssen in a five-volume compilation, *Svenska Landskapslagar* (1933–1946). In 1962, their translation of Magnus Eriksson's Law of the Realm, *Magnus Erikssons landslag i nusvensk tolkning*, was published. Four years later, in 1966, they also published a translation of Magnus Eriksson's Town Law, *Magnus Erikssons Stadslag*.

These Swedish medieval codifications have been studied not only from a legal historical point of view but also, for instance, from the point of view of cultural history, social history and linguistic history. Despite different approaches, there have been a few general research themes that all historical research has been interested in. These are, among others, the question about the chronology of the provincial law codifications, i. e. which of the codifications are older and which more recent. Furthermore, historians have been interested in the question of regional characteristics of the provincial codifications, i. e. whether the codes can be divided into larger groups according to their geographical origin. Indeed, from early on, scholars have divided the codifications into ›southern region‹ *(Götaland)* and ›northern region‹ *(Svealand)* codifications.

Fredrik Charpentier Ljungqvist is Professor of History (esp. historical geography) at Stockholm University. He has previously studied historical climatic changes, plagues, and harvest yields in Sweden and in Scandinavia. Ljungqvist has also studied Nordic medieval law especially from the point of view of royal powers. In this regard, the present book is a natural continuation of his previous work.

In this book, Ljungqvist sets himself the following, more general, research aim: ›to systematically investigate, for the first time, the similarities and differences between ten of the fully preserved medieval Swedish laws (originating between c. 1225–1350) and their legal provisions, through employing mainly quantitative methods‹ (3–4). The similarities and differences between the codi-

* Fredrik Charpentier Ljungqvist, Quantitative Approaches to Medieval Swedish Law, Newcastle upon Tyne: Cambridge Scholars Publishing 2022, XIV + 209 p., ISBN 978-1-5275-8056-5

fications are investigated in regard to four specific themes: length and structure of the codifications (Ch. 3), fields of law in the codifications (Ch. 4), type of law and provisions, i. e. procedural / civil / criminal / public law, and casuistic / abstract provisions (Ch. 5), and legal consequences (Ch. 6). The quantitative methods used in the study are different correlation analyses (Pearson, Spearman, variation, Gini) as well as hierarchal cluster analyses (Euclidean, Ward).

At the beginning of each main chapter, Ljungqvist puts forward four to six hypotheses. These hypotheses are based on earlier research on the medieval law codifications. The aim is to test each hypothesis and either validate or refute them. Of the total of 21 hypotheses, 12 are validated, 5 refuted, and 4 neither validated nor refuted. In chapter 3, for instance, one hypothesis is that the laws tend to get longer over time, both in terms of number of words and number of provisions. This hypothesis was validated based on both the Pearson correlation and the Spearman's rank correlation. The conclusion is that codifications containing more words also contain more legal provisions. This seems obvious but it could also be otherwise; words could increase without the number of provisions increasing – and vice versa. One example of a hypothesis that was refuted is the one in chapter 6, according to which newer codifications contain more provisions on economic punishments than the older ones. The contrary was found to be the case.

One of the main problems of using quantitative methods in the analysis of medieval law codifications – or law codifications from any other period, for that matter – is the question of coding, i. e. how ›objectively‹ the material can be classified according to pre-set codes or parameters. For instance, it is not necessarily easy to decide whether an individual provision belongs to procedural law or criminal law. Or whether a particular provision is casuistic or abstract in nature. Ljungqvist is fully aware of this problem and is open about his methodological choices and coding. This is, of course, how all research should be – transparent.

Notwithstanding the transparency, some choices are nevertheless open for criticism. For instance, in admitting the difficulty of classifying medieval law provisions into only casuistic and abstract ones, Ljungqvist comes up with a third category, ›formal casuistic‹. By this, he refers to legal provisions ›that are drafted in a rather casuistic form, but are clearly intended for a more general application‹ (95). Despite creating this intermediate category, Ljungqvist eventually considers formal casuistic provisions as casuistic law instead of abstract law. This has a direct bearing on the conclusions that he draws – older codifications contain a larger proportion of casuistic law than the newer ones. However, if one were to consider ›formal casuistic‹ provisions abstract law rather than casuistic, the conclusion would be different. In that case, the proportion of casuistic law seems to be more or less the same in all of the codifications (20–30 %, with the exception of 40 % in the *Guta Law*) and thus there would not be temporal differences.

Another example of problems related to coding concerns the question about the differences between the codifications of *Götaland* and *Svealand*. When compared in respect of the proportion of *different fields of law* in the codifications, Ljungqvist claims that the hypothesis that there were distinct differences between these two regions can be rejected. However, he immediately adds that provisions regarding the state, public administration, and property rights and management were more common in the codifications of the northern region (91). He also makes a disclaimer that ›the results in this study in no way preclude the presence of real and significant legal differences between the *Götaland* region and the *Svealand* region in other respects‹ (170). Indeed, if one has a closer look at the provisions *within* different fields of law *qualitatively*, differences start to emerge. For instance, the codifications of the southern region contain far more provisions on slaves and slavery, ›foreigners‹, taking oaths, and outlawry. So, whether we can detect differences between various codifications or not, this eventually comes down to the question of the scale of analysis. If we use a broad scale in studying the codifications, they are more likely to resemble each other. But if we use a smaller, more detailed scale of analysis, differences are more likely to be found.

Despite the problems that I have pointed out in the use of quantitative methods, Ljungqvist's book is an interesting addition to the already existing large body of research on the Swedish medieval law codifications. In regard to the question posed in the title of this book review, in my opinion the obvious answer is that the use of quantitative methods can offer some complementary points of view, but it cannot replace the qualitative study of

historical legal codifications, statutes or provisions. Of course, this is not something that Fredrik Ljungqvist would deny. He, too, sees the two methodological paradigms as complementary (36). However, my impression is that quantitative methods could be most useful in the historical linguistical / philological research of medieval law codifications, in which case one could utilize the smallest scale of analysis, i. e. having single words as coded units.

■

Rômulo da Silva Ehalt

The Multilayered World of Medieval Japanese Legal History*

Between the Ōnin War (1476–1477) and the late 16th century, the central Japanese military government lost much of its administrative power. During this transitional period, in which the central government was in the hands of the ever-adaptive Ashikaga shogunate, ephemeral alliances (known in Japanese as *ikki*) were often formed among country warriors, village leaders, farmers, Buddhist monks, Shinto priests, or city folk in order to resist attacks perpetrated by outsiders, neighboring powers, and bandits, as well as other military threats. The result was an intricate system of surviving medieval institutions, emerging local autonomous leadership, and new warlords competing for political power, the ability to resolve conflicts, and the rights to collect taxes throughout the archipelago. Law followed suit, becoming plural and multilayered, with multiple legislative agents operating in a sea of different customary norms and legal texts inherited from previous centuries.

The volume *Muromachi, sengoku jidai no hō no sekai*, edited by Matsuzono Jun'ichirō and published in 2021 by the Japanese publishing house Yoshikawa Kōbunkan, focuses on the legal complexities of the roughly one and a half centuries that encompass the late medieval and early modern period known in Japanese history as the »Warring States Period« *(Sengoku jidai)*. Even though there is no shortage of Japanese textbooks on legal history, this is a rare piece considering its chronological focus and the way it introduces students to current debates in each area. In the introduction, the editor delineates the general aspects and guidelines of the book as well as his views on the role of law, ethics, and custom as normative principles. As in his previous works, Matsuzono searches for ways to understand and conceptualize the various terms and forms of Japanese normativities – particularly the central ideas of *hō* and *ri*, which can be loosely translated as »law« and »principle« – from local sources rather than by comparing and forcefully adopting European legal concepts. Matsuzono's thought process is guided by questions such as: what legislative powers are behind each norm? What norms supersede others? Should written norms be understood as commands or were they the codification of practical or customary rules? Given the lack of simple answers and the absence of clear-cut limits between the various normative orders in force at the time, the book is aimed at presenting state-of-the-art research while pointing students to new research paths in Japanese legal history.

The main topics of the volume are the numerous legislative authorities of the period, the extent of their administrative and enforcing powers, the role of law in various spheres of life, and the general intricacies of the legal systems put in place in the period, with short considerations regarding

* Matsuzono Jun'ichirō, Muromachi, Sengoku Jidai no Hō no Sekai [The World of Muromachi and Sengoku Law], Tokyo: Yoshikawa Kōbunkan 2021, 292 p., ISBN 978-4-642-08397-3