WAUTERS, Bart; BENITO, Marco de. *The History of Law in Europe: An Introduction*. Cheltenham: Edward Elgar Publishing, 2017. 190 pp.

Review by

Tomáš Gábriš

Faculty of Law, Comenius University in Bratislava, Slovakia

tomas.gabris@flaw.uniba.sk

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Bart Wauters and Marco de Benito, two professors of law employed at the IE University in Spain, have undertaken a difficult task of providing a brief, but relatively complex overview of history of law in Europe, covering 2.500 years of evolution on altogether 175 pages. It is thereby to be acknowledged that in their challenging enterprise, the authors have not resorted to an easy way of mechanical shortening of any of the older works on the same topic – instead, they have introduced numerous original solutions as to both structure of the book and topics covered. Their selection of topics and approaches is explained in the very introduction to the reviewed book – foremost, the authors announce quite frankly that Western European legal history predominates in their publication, which had become a characteristic feature of writings on history of law in Europe. Despite of that, the authors have strived at inserting Eastern Europe into the broader picture of history of law in Europe at least in some aspects, albeit in the end of the day this actually means one section on page 110, one section on page 143, and a few lines on page 124 (wrongly claiming there that the Austrian Civil Code – ABGB – was in use in Slovakia). Nevertheless, even this minor attempt should be perceived as a very welcome first step towards a possible inclusion of legal history of Eastern Europe into the second or subsequent editions of the book, be it in the form of a separate chapter or in providing more information on Eastern Europe within the main chapters of the book. There is namely a number of specificities of evolution present in eastern regions of Europe that are definitely worth to be mentioned – starting from the early medieval period with deeply rooted heathen rites, an evidence to which is well reflected in the extant codes written down in Slavic languages (whereby legal terminology of the codes is still in use in Eastern Europe). Similarly, the influence of western constitutional and legal models at the end of the 19th century as well as a strong idea of “one ethnic nation – one state” are certainly worth inclusion into the “common” history of law in Europe. Thereby, these traits of legal and political history, together with the remnants of “communist” (Soviet-oriented) legal system still

influence the current situation in Eastern Europe, making it a region different from Western Europe.

But enough with recommendations as to possible future shape of the book; let us introduce now the actual structure and contents of the publication. The authors have divided their account of history of continental European legal system into five chapters, subsequently wrapping up the history of common law system in the final (sixth) chapter. Thereby, in the five chapters on continental legal system, an original approach was taken by the authors – namely that of attention being paid to four basic historical sources of law in Europe – jurisprudence, custom, court decisions and legislation. Another original trait is that in contrast to other similar books, the reviewed publication has refrained from searching for roots of European law in Mesopotamia or Egypt. The authors have even excluded Greek legal history from their scope, and only start from the Roman period, claiming that it was actually the Roman law which first (and ultimately) provided a shared legal vocabulary and grammar of legal language in Europe.

The first chapter of the book thereby starts somewhat *in medias res* by elaborating upon Justinian's role in the codification of Roman law, being an important move towards preservation of Roman legal knowledge, at the same time introducing to Europe (besides other earlier and later Roman/Byzantine codes) an idea of codification of law. Only after this appraisal of Justinian's period the authors start their chronological undertaking of summarizing first the evolution of Roman empire from archaic period to period of dominate, and subsequently offering an overview of development of Roman law from archaic times to post-classical law.

The second chapter then dwells on history of law in the early middle ages, providing an insight into the most ancient codes inspired by Roman models, being divided into *leges barbarorum* and *leges romanorum*, based on the principle of personality of law. Here, to repeat our above criticism of the book, any mention of eastern European codes and their nature is lacking completely. The chapter then continues with basic information on the beginnings of canon law, to finally introduce some characteristic features of feudalism – whereby again, only the western European definition of feudalism is offered, being based on the senior-vassal (fief) relationships, while eastern European specificities (no vassals, no fiefs, but rather a specific economic system of exploitation of peasants representing the backbone of feudalism) are completely omitted.

The chapter number three then provides an insight into history of law in late middle ages, traditionally making the distinction between *ius commune* (being “learned law” taught at the universities, but hardly used in practice) and *iura propria* (customary law used in practice). Especially valuable is the attention paid to legal scholarship of the late middle ages, emphasizing thereby that learned law served primarily as a tool for developing critical legal thinking, and only

indirectly influencing the actual legal practice. At the same time, however, the medieval legal scholarship – exactly due to its separation from daily legal practice – made it possible to consider legal science a proper science comparable to other university disciplines. This might be considered an interesting parallel to modern-day criticism of legal studies, sometimes considered by legal practitioners as too theoretical and lacking direct link to legal practice, even challenging the very “scientific” nature of jurisprudence itself.

The legal history moved in direction towards combining legal theory with actual legal practice only in the early modern age, as discussed by the authors in chapter four of their book. There, various schools of legal thought are being briefly introduced, ranging from legal humanism and school of Salamanca, up to *usus modernus pandectarum* and natural law school. A minor problem with this chapter might be found in transliteration/translation of surnames of historical figures – while in most cases, a vernacular form of surnames is being used (e.g. Budé instead of Latinized Budaëus), in case of Donellus (p. 93) and Grotius (p. 101) the Latinized form is used.

Finally, chapter five on bourgeois age sums up the evolution from 18th Century onwards, starting with enlightenment period, going through the important Napoleonic codifications, underlining here the tradition of French exegetic school, compared with German historical school and German pandectist school (with its fruits in the form of German and Swiss civil codes). It is thereby correctly observed by the authors that German-rooted systematic thinking still prevails in modern continental legal thought (including the “German cultural sphere of influence” in Eastern Europe) in contrast to French exegesis tradition based on interpretations of the text of law rather than on any systematic theory.

The last, sixth chapter of 20 pages, is then devoted to the already mentioned account of common law system and its historical evolution, including the relationship between United Kingdom and the USA, and successfully contrasting the system of Scots law with British legal system.

All in all, to conclude this brief review, despite some critical notes mostly related to disregarding the history of law in Eastern Europe, this book surely represents a helpful tool for students of law, to be recommended mostly for introductory courses on legal history of Western Europe. At the same time, however, it might and also should serve as a model – as to its structure and methodology – for similar attempts at writing a book on legal history of Eastern Europe in English language, which seems highly necessary should the legal history of Eastern Europe be included in any future textbook of the reviewed kind.