

This book on Nordic and Germanic legal methods includes contributions from a number of German, Swiss, and Nordic legal scholars and is a welcome contribution both to the national and the international debate on legal reasoning.

Clearly, we have reason to compare not only solutions to substantive legal problems, as comparative legal scholars usually do, but also the methods for the interpretation and application of the law used in different legal orders. Reading through these essays, then, the reader is likely to acquire some interesting information about the similarities and differences between the so-called legal methods used in the relevant legal orders and about the reasons why there are certain similarities and differences between those methods. What the reader will not get, however, is (i) a systematic discussion of whether there is anything specific enough to deserve the name of 'legal method' and, if so, what, exactly, this might be, or (ii) any general conclusions about the similarities and differences between the legal methods used in the various legal orders or about the reasons for the relevant similarities and differences. Moreover, the reader will not get (iii) a systematic discussion of the relation between the two aims of the collection, that is, (a) to describe and compare the legal methods in the different legal orders and (b) to explain any similarities and differences regarding the methods that may turn up in the comparison. For these reasons, although I do welcome the book, I am not entirely satisfied with it.

The aim of the book, then, is to describe and compare the legal methods in Germany (and in Austria and Switzerland), on the one hand, and the various Nordic countries, on the other, *and* to explain any similarities and differences that might turn up in the comparison (pp. 4, 7, 9, 17). These are, of course, interesting questions in themselves, but the editors of the volume also believe that insight into these matters may facilitate the efforts to harmonize the law of different countries and, more generally, to help us gain a better understanding of what they call the different legal realities (pp. 5, 17).

Explaining that the legal method can be described "as the procedure according to which legal problems are legitimately resolved within the relevant legal system" (p. 6), the editors point out that this method deals with three types of sub-questions, namely, (i) the identification of argument bases (roughly, but not exactly, sources of law), (ii) the interpretation of the material in the argument bases, and (iii) the weighing of one argument

base (or the interpretation of such an argument base) against another (p. 7) and emphasize that the legal method is equally relevant to the work of judges, attorneys, and legal scholars (p. 7). They then introduce a framework within which the explanation(s) of any similarities and differences can take place (pp. 6-8), and they go on to distinguish four groups of factors that may be used to explain such similarities and differences, namely, (i) legal culture, (ii) historical experiences in the relevant society, (iii) the realities that the relevant legal order aims to regulate, and (iv) international influences (pp. 8-16). But even though they have interesting things to say about legal culture, in particular, they do not elucidate the framework in sufficient detail; and as a result we are left with a framework for the explanation of the relevant similarities and differences that consists in little more than a division of explanatory factors into the four above-mentioned groups. However, without any information about the reasons for the division of the factors into precisely these four groups or about the relation between the groups (for example, can one factor belong to more than one group, and would that affect its explanatory value?, do the factors in one group carry more weight than the factors in some other group? Etc.), this is a rather meager framework, and its explanatory value may be questioned.

Against this background the contributors to the volume discuss some of the above-mentioned introductory points in more detail, others describe the legal method in a certain country, and yet others compare the legal methods used in two legal orders or discuss international influences on the legal method used in a given legal order. Because of space limitations, I shall be content to offer some scattered comments on only two of these essays, namely, the essay by the editors, Ingvill Helland and Sören Koch, in which they compare the legal methods used in Norwegian and in German law (pp. 267-322, and the essay by Johan Bucht, in which he compares the legal methods in Finland and Sweden (pp. 165-187).

Having identified a number of (rather obvious) similarities between Norwegian and German law, Helland and Koch proceed to identify and discuss four differences in regard to the legal methods used in these legal orders (pp. 274-316). These differences concern (i) the role of legislation, (ii) the role of preparatory works, (iii) the role of precedent, and (iv) the role of policy considerations. The authors argue, crudely put, that there is a stronger focus on legislation in German than in Norwegian law, that preparatory works play a more prominent role in Norwegian than in German law, that precedent is an integral part of Norwegian law but not of German law, and that Norwegian law is more transparent than German law as

regards the role of value-based considerations.

The authors conclude that the goal of legal uniformity cannot be achieved through a unification of substantive law alone, while pointing out that the solution to the problem of lack of uniformity is not to be found in the introduction of a common legal method in the relevant legal orders. For, they explain, there are fundamental differences in legal culture between different countries – such as, *inter alia*, the characteristics of statutes, the organization of the court system, the relation between courts and the legislature, or the level of confidence in the courts on the part of the general public – such that the approach to legal problem-solving used in legal order *A* would not work in legal order *B*, and vice versa (p. 316); and, as the authors note, such legal-cultural differences are not easily overcome.

As the authors also note, these differences will, at least insofar as they remain hidden, pose an obstacle to legal uniformity (p. 317). And I agree: If we cannot achieve the goal of legal uniformity through a unification of substantive alone, and if we cannot harmonize the legal methods used in the relevant legal orders, unless we first harmonize the relevant legal cultures, it seems there can be no legal uniformity at all, at least not any time soon. One may, however, wonder just how big the above-mentioned differences in regard to legal method are, and if and to what extent they will actually lead to different outcomes in different legal orders. If the legal method is as indeterminate as some suspect, one may well wonder if it really matters all that much if we understand it a bit differently in different legal orders. To answer these and similar questions is not easy, of course. But, at the very least, the authors have made an effort to clarify the problems that might arise in the efforts to harmonize the law in different countries. And this is a good beginning.

In his essay, Bucht compares the legal methods used in Finland and in Sweden and finds that while there are many similarities, there are also a few interesting differences (pp. 185-6). Speaking of ‘legal interpretation’ rather than of the ‘legal method,’ Bucht finds (i) that preparatory works (*travaux préparatoires*) are considered to be more important and weighty in Swedish than in Finnish law, (ii) that Swedes, unlike Finns, are inclined to ascribe considerable weight even too older preparatory works, and (iii) that the objective teleological approach to statutory interpretation, which Bucht takes to be popular in Swedish law, does not have a counterpart in Finnish law.

Although Bucht writes clearly and interestingly about these matters, I would like to raise an objection to his distinction between sources of law and standards of interpretation (p. 167) – which he takes from Aulis Aarnio and Aleksander Peczenik – namely, that the category of sources of law appears to be too heterogeneous, including as it does not only legislation (“statutory law” in Bucht’s terminology), custom (“customary law”), and precedent, but also preparatory works, legal principles, legal doctrine (academic literature), and practical considerations (pp. 167-9). If these latter entities all fall into the category of sources of law, then I wonder what a source of law is. Bucht’s answer (p. 167) to this question is that sources of law are “sources of legal argumentation it is permitted to invoke as a basis for reaching a decision and their relative normative weight”. But if sources of law are nothing more than permitted sources of legal *argumentation*, how do they differ from standards of interpretation? According to Bucht (p. 167), standards of interpretation “relate[] to how these sources [of law] are to be interpreted and applied to particular legal problems”. But this is confusing! Does Bucht mean to say that we use the standards of interpretation to interpret preparatory works, legal doctrine, or practical considerations? If so, I disagree. In my view, these (alleged) sources of law – preparatory works, legal principles, legal doctrine (academic literature), and practical considerations – are better conceived as standards of interpretation than as sources of law.

My view, then, is that whereas sources of law – such as legislation, precedent, and custom – concern the question of *validity*, That is, they are something you consult in order to determine whether a given norm is a legal norm in the sense of belonging to the relevant legal order, standards of interpretation (or interpretive arguments) concern the *interpretation* of the legal raw-material you find the sources of law. And as far as I can see, preparatory works, legal doctrine, and practical considerations typically play precisely the *latter*, but not the former, role in legal thinking, which is why I conceive of them as standards of interpretation and not as sources of law. Thus judges use preparatory works to *interpret* legal norms, not to determine whether these norms exist as legal norms. More specifically, judges use them to learn about the intent (or the will) of the legislature, which they make use of when they adopt an intentionalist or a purposive (subjective teleological) approach to the interpretation of statutory provisions.

I should like to say in conclusion that although the volume contains valuable information about the legal methods used in different legal orders, the volume is rather thin on the

methodological side. First, there is very little general discussion of what, exactly, the legal method is and of its often claimed indeterminacy, though at least the former question is touched upon in various individual chapters. Is there really anything like a legal method? If there is something like a method, is it really determinate enough to deserve the name 'method'? While I acknowledge that it is difficult to offer a precise description of what the legal method is, I do believe that the reader would have benefitted from a general discussion of the difference, if any, between questions of validity (or existence) and questions of interpretation and application, and of the different tools that make up the legal method, such as the interpretive arguments (textual, systemic, intentionalist, and teleological (or purposive) arguments, the modalities of decision, as we might call them, (analogical application, *contra legem* decision, liberal and strict interpretation, analogical application and *e contrario* decision), the principle of legality, the conflict-solving maxims *lex superior*, *lex posterior*, and *lex specialis*, the rule of lenity, and perhaps various interpretive presumptions. As for the alleged indeterminacy of the legal method, if there is a legal method, how can it be the case that we so often have dissenting opinions in the courts? Should we really conclude, say, that the dissenting justices have misunderstood or misapplied the legal method? I do not think so. Instead, I seek the answer to this question in the indeterminacy of the legal method. In any case, it would have been interesting to get the views of the contributors on these questions.

Secondly, there is very little discussion of the relation between the two, rather different, aims of the collection, namely (a) to *describe* and *compare* the legal methods in the different legal orders and (b) to *explain* any similarities and differences regarding the methods used in different legal orders that may turn up. Whereas the first is clearly and straightforwardly a legal task, the second is more of a sociological task, and it is quite clear that the methods and techniques used in legal dogmatics (the study of the law of the land, including comparative law) are not the ones needed in the sociology of law. To interpret the law is one thing, and to explain why the law itself or the methods and techniques used for interpreting it differ from one legal order to another is a very different thing. And while I do not wish to argue that a group of legal scholars cannot undertake both tasks at the same time (or in the same project), I do believe that the matter deserves more discussion than is provided in this volume.

Finally, I cannot see that there are in the volume any clear and general conclusions on these

points. True, the authors of the individual chapters draw certain conclusions, but what is needed is a general and systematic discussion of the main claims in the individual chapters. One way to accomplish this would be to write an introductory essay that gives the readers an overview of the main types of question discussed by the authors of the individual chapters and of their main arguments and conclusions. Such a discussion would have been beneficial not only to the reader, but also to the contributors to the volume themselves.

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