

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg21>

Rg **21** 2013 203–210

Wang Jing

Law and Revolution in China

In memory of the 30th anniversary of Law and Revolution's publication

Wang Jing*

Law and Revolution in China

In memory of the 30th anniversary of *Law and Revolution's* publication

Introduction

2013 is the 30th anniversary of the publication of *Law and Revolution: The Formation of the Western Legal Tradition*, one of the most important works of Professor Harold J. Berman, and also the 20th anniversary of its Chinese translation.¹ During the past 20 years, *Law and Revolution* has exerted a great influence on Chinese legal studies, history and other humanities and social science, as it has done in the western academic community.

As a world-famous expert in socialist law, Prof. Berman once visited China in 1982.² But even when the Chinese translation of *Talks On American Law* edited by him was published in China mainland in 1988,³ Chinese scholars were still unacquainted with Prof. Berman. The feeling of strangeness didn't disappear until the Chinese translation of *The Interaction of Law and Religion* was published in 1991.⁴ The argument »Law has to be believed in or it will not work«⁵ has become one of the most popular and controversial propositions in Chinese legal studies. As the Chinese translation of *Law and Revolution: The Formation of the Western Legal Tradition* was published in 1993, Prof. Berman became a scholar who couldn't be overlooked by those who studied western legal history in China. Before Prof. Berman, the only American jurist whose works could be translated constantly and influence China so greatly was his colleague – Roscoe Pound. I used to take advantage of the data of Literature Cited (1998–2011) in

Chinese Social Sciences Citation Index⁶ to conduct a statistical analysis. The result shows that *Law and Revolution* takes the 6th⁷ in the ranking of the most cited translation works and the citation number has exhibited a uniform distribution during the last 10 years – more than 40 per year from 2001 to 2011, which reveals the book's enduring influence. The influence of *Law and Revolution* was proved again with two reprints of its Chinese translation in 1996 and 2008. In 2008, the Chinese translation of *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition*⁸ was published by Law Press China, the best legal publication agency in China. The latest Chinese translation of Prof. Berman's works is *Faith and Order: The Reconciliation of Law and Religion*,⁹ which was published in 2011.

The great influence of *Law and Revolution* in China is both accidental and inevitable. On the one hand, *Law and Revolution* studied western problems and followed the western academic tradition. Prof. Berman traced the origin of western legal tradition and modernity back to Papal Revolution. By reconstructing the history of Papal Revolution, Prof. Berman tried to find a solution to the integrity crisis that the western legal tradition had encountered in modern society. In this sense, the book had nothing to do with China, so the attention it had drawn in China was accidental. On the other hand, it's just because of focusing on a western problem that *Law and Revolution's* popularity in China was inevitable. Since the First

* Assistant Research Fellow, East China University of Political Science and Law.

1 The translation was reprinted by China University of Political Science and Law Press in 1996 and Law Press China in 2008.

2 In 2006, Prof. Berman came to China again and visited Peking University, Shandong University and Zhejiang University etc.

3 It was first published by The World Today Press in Hong Kong in 1977. The book comprised lectures of 16 professors from Harvard University

who briefed the American legal system on Voice of America.

4 BERMAN (1991).

5 BERMAN (2003) 3.

6 Chinese Social Sciences Citation Index, whose abbreviation is CSSCI, is the most authoritative database of citation in Chinese humanities and social science journals currently. The database use both quantitative and qualitative methods to select about 500 Chinese humanities and social science journals among more than 2700 ones. These selected journals are thought to be highly academic,

standardized edited and covering a wide range of disciplines. Literature Cited refers to all literature cited in the articles of the selected journals.

7 *Law and Revolution* is cited in 711 articles. The leading five are Montesquieu's *The Spirit of Laws* (2521), Edgar Bernheimer's *Jurisprudence: The Philosophy and Method of the Law* (2139), Maine's *Ancient Law* (879), Beccaria's *On Crimes and Punishments* (838) and Richard Posner's *Economic Analysis of Law* (832).

8 BERMAN (2008).

9 BERMAN (2011).

Sino-British Opium War in 1840, western invasion had forced China to start modern transformation in all social systems including law. The western legal system, though totally different from the Chinese traditional law in concepts, rules and values, has been transplanted into China, and the transplant is proceeding today. By following the research approach used in *Law and Revolution*, which considered the problems of modernity and reconstructed history in order to cope with present problems, we can find some inspiration with respect to whether and how China can become a modernized nation-state.

The past 20 years witness the influence that *Law and Revolution* has exerted on Chinese legal studies and practice. Although it has also aroused controversy in Chinese academic circles, there is no doubt that *Law and Revolution* is one of the most influential western legal works in China in recent years. This article gives a brief summary and analysis of this influence.

1

Although there had been traditional legal interpretation and annotation theory in China since the Qin and Han Dynasty, modern Chinese jurisprudence was transplanted from the west. In the process of learning western jurisprudence, the translation of western law codes and legal works played an important role. *Law and Revolution's* Chinese translation was published in 1993, when China was in a new climax of legal translation. The last climax has to be traced back to the late Qing Dynasty. Although nearly 100 years have passed between the two climaxes, the essential problem China faces – how to complete the transformation from a traditional empire to a modern nation-state – remains the same. This is the most important background when *Law and Revolution* was translated into Chinese.

China's modern transformation was not a process of evolution driven by the spontaneous factors

of traditional society, but one of reform compelled by the pressure of invasion from the west. This special historical background required that legal translation in modern China serve the utilitarian aim of saving and enriching the nation-state, and the aim of enlightening people is set in second place.¹⁰ During the process of transformation, the west turned out to be a target that China both opposed to and learned from. Just as the definition by Prof. Berman in *Law and Revolution*, the west mentioned here is not merely a concept of geography and politics, but one of history, culture and civilization. So International Law made up the majority of legal translation in early modern China. For example, the earliest legal translation was organized by Lin Zexu, the first Chinese who was going to look at the world in modern times. When he was suppressing opium in 1839, he invited Parker and Yuan Dehui to translate part of Emmerich De Vattel's *The Law of Nations, or Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns* into Chinese.¹¹ The first Chinese translation of a western legal book is Henry Wheaton's *Elements of International Law: With a Sketch of the History of the Science*.¹² The defeat in the First Sino-Japanese War forced Chinese literati and officialdom to learn from the west and Japan comprehensively. Montesquieu's *On The Spirit of the Laws*, Adam Smith's *The Wealth of Nations*, John Mill's *On Liberty*, Jhering's *The Struggle for Law* and other numerous foreign legal and political books were translated into Chinese. In order to carry out political reform, the Qing government set up the Law Revision Agency (修订法律馆, Xiu Ding Fa lu Guan) in 1903 and the Bureau of Constitutional Reform (宪政编查馆, Xian Zheng Bian Cha Guan) in 1907, both of which translated a great many foreign codes and legal books. All these translations helped to assure the continuity of the legal system when the Qing government fell and the Republic of China (RC) was founded. During the period of the RC, legal translation was promoted by the Chinese students who studied abroad. In the

10 LI ZEHOU (2004a) 1–43.

11 It was named by »各国律例 (Ge Guo Lu Li)«.

12 It was translated by William A. P. Martin in 1864 and was named by »万国公法 (Wan Guo Gong Fa)«.

1930s, the Chinese translation of main concepts and terms of western jurisprudence became fixed with the establishment of the Chinese modern legal system and jurisprudence.

After the foundation of the People's Republic of China (PRC) in 1949, the Republic of China's legal system was completely abandoned and legal books of capitalist countries were criticized. Considering socialist ideology and the international political situation, China learned its legal system and jurisprudence comprehensively from the Soviet Union. Professor Jiang Ping, the organizer of the translation of *Law and Revolution*, was among the students selected for the first time by the central government in 1951 to study law in the Soviet Union. From 1949 to 1978, 280 foreign legal books were translated in all, of which non-Russian ones were less than 20.¹³ After 1965, under the slogan of »smash public security organs, procuratorates and people's courts« and »close political science and law colleges«, legal translation fell into stagnation. In the Third Plenary Session of the 11th Central Committee of the CPC in 1978, China rethought the lessons of the »Great Proletarian Cultural Revolution«, and began to implement reform and an opening-up policy, and decided to »develop socialist democracy and strengthen the socialist legal system«. Legal translation and legal education recovered. During this period, to establish academic autonomy and legitimacy, legal studies' main theoretical resources were the classic works of Marxist thinkers and the ones who were praised by Marxist thinkers, such as Aristotle, Rousseau, Montesquieu, and Locke etc.¹⁴ The main legal translations were several books in the Com-

mercial Press' Chinese translation of the world's top academic works¹⁵ and some other individual works.¹⁶

It was not until the 1990s when Chinese legal translation truly flourished again. In 1993, China confirmed the legitimate status of the socialist market economy in the Constitution. The close relations between the market economy and the legal system drove the focus of legal studies to transfer to interpreting legal provisions and studying »law in action«,¹⁷ whose theoretical resources couldn't be fully provided by Marxism and Chinese traditional legal interpretation and annotation theory. Legal translation therefore appeared an explosive development. There is a large increase in the number of the translated works, which covered more countries, languages and legal departments. Furthermore, legal translation was gradually conducted purposefully, systematically and in the form of programs.¹⁸ *Law and Revolution* was the first published translation in the program of *Foreign Law Library*¹⁹ which was one of the most influential legal translation programs in 1990s. In this sense *Law and Revolution*'s publication was pioneering for Chinese legal translation after 1978. Besides, *Law and Revolution* was thought to be the model which met the standard of »Faithfulness«, »Expressiveness« and »Elegance«.²⁰ The Chinese edition of *Law and Revolution* fixed the Chinese translation of some terms in western legal history, especially in the field of canon law and medieval history. A case in point is the translation of the names of internal organs of Roman Church after Papal Revolution. Moreover, the Chinese edition was edited in a standardized format, such as attach-

13 LIU Yi (2012).

14 SU LI (2004) 9–10.

15 Including *The Codes of Napoleon* (translated by Li Haopei, Wu Chuanyi and Sun Minggang, published in 1981), Montesquieu's *The Spirit of Laws* (translated by Zhang Yanshen, published in 1982), Rousseau's *The Social Contract* (translated by He Zhaowu, published in 1982), Maine's *Ancient Law* (translated by Shen Jingyi, published in 1985), Justinian's *The Institutes* (translated by Zhang Qitai, published in 1989), Lauterpacht's *Oppenheim's International Law* (translated by Wang Tieya and Chen Tiqiang, published in 1989).

16 Such as Roscoe Pound's *Social Control Through Law & The Task of Law* (translated by Shen Zongling and Dong Shizhong, published by Commercial Press in 1984), E. Bodenheimer's *Jurisprudence: The Philosophy and Method of the Law* (translated by Deng Zhenglai and Ji Jingwu, published by Hua Xia Publishing House in 1987) and B. Schwartz's *Administrative Law* (translated by Xu Bing, published by Qun Zhong Press in 1986.) etc.

17 POUND (1910).

18 SU LI (2004) 97–121, HE WEIFANG (2007).

19 The program was chaired by Prof. Jiang Ping and sponsored by the Ford

Foundation. By 2013, the program has published 31 (38 volumes) translations. The program is still in progress nowadays.

20 Yan Fu, late Qing Dynasty thinker, put forward the standard when he translated Huxley's *Evolution and Ethic*. Since then, the standard has been widely accepted for translation by Chinese academic circles. Generally speaking, the so-called »Faithfulness« means to express the meaning of the original text correctly; the so-called »Expressiveness« means fluent translation; the so-called »Elegance« means the translation is full of literary aesthetics. LIU YUNHONG / XU JUN (2010) 13–18.

ing notes, bibliography and an index to the Chinese translation, listing the corresponding page number of the original text in the margin, all of which facilitated Chinese readers of *Law and Revolution*.

2

Good timing of publication and high quality of Chinese translation contributed to *Law and Revolution*'s popularity, but the characteristics of its content are the requisite to exert such a widespread influence in China.

The first characteristic is to make up for some historical materials and literature that were once absent in China. With his excellent capability of synthesis and comparison, Prof. Berman figured out the process of formation and evolution of the western legal tradition from a large quantity of historical materials and literature, gave a detailed description of the factors which were key to forming the tradition, and presented in *Law and Revolution* a more vivid scene of the Middle Ages which helped to change Chinese traditional image of the Middle Ages, such as darkness, ignorance and fatuity. Therefore *Law and Revolution* provided much new information about western legal history for China and supplied an amount of 100 pages (in Chinese translation) of bibliography as an important index for further study. According to my statistics, in *Social Sciences in China*, the most authoritative journal in the field of Chinese humanities and social science, *Law and Revolution* was cited 16 times between 1998 and 2011, of which its historical materials²¹ represented over 7 times. In the authoritative legal journals *China Legal Science* and *Chinese Journal of Law*, the ratio of citing *Law and Revolution* for historical materials to all citations is 50:97. In the authoritative historical journals *Historical Research* and *World History*, the ratio is 22:34.

It must be pointed out that *Law and Revolution*'s role in making up for the deficiency of historical materials in China demonstrated not only the

progress of Chinese academic research, but also the low research level of related disciplines. In fact, the problems concerning *Law and Revolution*'s historical materials were sharply criticized in the western academic community, which included not making use of original historical materials, errors in historical facts and citing dated research literature and paradigms etc.²² We can tell that, with the development of Chinese academic research, *Law and Revolution*'s role in providing historical materials will and must be weakened. In fact, Chinese scholars have noticed that defects of historical materials and literature in *Law and Revolution* strengthened some errors which Chinese scholars inherited from the history research of the Soviet Union.²³ Nevertheless it has a long way to go for Chinese scholars to properly appraise Prof. Berman's status in western academic history.

The second characteristic is the approach of sociology of law. In *Law and Revolution*, Prof. Berman pointed out the importance of central political, social and economic, and spiritual events to the development of the western legal tradition between the 11th and 12th century. Besides, the work exhibited extensive research beyond the national and institutional boundaries which had confined the study of European legal history. What's more, with his clear sense of problem and theoretical self-consciousness, Prof. Berman tried to construct a theory of sociology »beyond Marx« and »beyond Weber«. Prof. Berman emphasized two points: one is an integrative and interacting perspective. In Prof. Berman's view, a sociological theory of law should emphasize the interaction between substance and spirit, idea and experience. At least, the sociological theory of law couldn't attribute the law in western history completely to the substantial conditions or idea and value system; it must regard law partly as an independent element in the development of society, politics, intellect, ethics and religions, which is not only one of the results, but one of the causes.²⁴ In this sense, law and its connections with other social elements were considered to be over-simplified in Marx's and Weber's theories. Legal positivism, the natural

21 Including citing other historical materials through *Law and Revolution*.

22 PETER (1985) 692–695, SWEENEY (1984) 197–205, JORDAN (1985) 676–679.

23 PENG XIAOYU (2006) 124–127.

24 BERMAN (1993) 51.

law school and the historical school of law should be synthesized into an integrated legal science.

The other point is to emphasize the role of religion in shaping the western legal system. Berman suggests that the western legal system originate in the Papal Revolution between the 11th and 12th century. It's vital for the western world to take an appropriate approach to compile legal history to understand the current legal system and to make up the future law.

Marxism has been taken as the dominating ideology in China for a long time, so Chinese scholars are familiar with Prof. Berman's way of paying close attention to the relationship between social conditions and a legal system. Compared with Marx, the difference of Prof. Berman's theory is

(1) The relationship between economic foundation and superstructure (including law) was not dominating but equal;

(2) Law could also be regarded as a decisive element for economic and political development.²⁵

Berman's theory met Chinese demands of developing the market economy with the aid of the legal system in the 1990s. Furthermore, since 1978, a lot of foreign laws have been transplanted into China and the law's function of social control expanded greatly, so contradictions between modern law and inherent Chinese legal traditions emerged clearly. Legal studies were required not to dwell on political propaganda or only interpreting provisions, but to pay close attention to legal practice so as to turn »law in books« into »law in action«. Sociology of law in China consequently revived.²⁶ *Law and Revolution* followed the trend to some extent. Especially, *Law and Revolution* indicated that coexistence and competition of all kinds of autonomous legal systems and independent jurisdictions were helpful to forming the supremacy of law in a specified political community. Besides, Prof. Berman emphasized the role of an autonomous legal profession in systemizing laws and combining the law and ideas of justice with social life. Those ideas were inspiring for Chinese Scholars in 1990s.

Perhaps not coincidentally, several translators (including *The Interaction of Law and Religion's*

translator Liang Zhiping), all of whom are famous Chinese jurists now, followed the approach of sociology of law. Before translating *Law and Revolution*, several translators were already promising scholars in Chinese sociology of law.²⁷ *Law and Revolution* fitted into translators' academic interests – how to construct Chinese rule of law – and furthered their academic developments. In 1993, the same year *Law and Revolution* was published, four translators He Weifang, Gao Hongjun, Zhang Zhiming and Xia Yong started an investigation into Chinese society development and protection of civil rights, whose result *Toward an Age of Rights: A Research on the Development of Civil Rights in China*²⁸ became classic works of contemporary Chinese sociology of law.

3

»Law and Religion« was not only the consistent thread running through the planned three-volume *Law and Revolution*, but also the problem which Prof. Berman concentrated on during all his life. *The Interaction of Law and Religion* and *Law and Revolution* reflected Prof. Berman's theory of »law and religion« from different aspects: The former is a brief theoretical interpretation of the relationship between law and religion; the latter is its detailed historical justification. But in the face of Chinese legal practice, Prof. Berman's theory, especially the argument »Law has to be believed in or it will not work«, was entitled to different understandings, which embodied intensely the Chinese scholars' debate about »legal faith or legal belief«²⁹ in recent years.

In the view of Prof. Berman, the western legal tradition originated during Papal Revolution (1075–1122). Since then, the German Lutheran Reformation, English Protestant Reformation, American Revolution, French Revolution and Russian Revolution had changed the western legal tradition, but still remained in the tradition and became an opportunity to develop it. The western legal tradition includes:

25 BERMAN (1993) 50.

26 JI WEIDONG (1989), LIU SIDA (2010) 25–37.

27 HE WEIFANG (1991), LIANG ZHIPING (1992).

28 XIA YONG (ed.) (1995).

29 In China, both terms could be translated by »法律信仰« despite that there are some differences between them. The following text would analyze the differences.

(1) The idea of coexistence of several »law bodies«;

(2) Scholastic technique, which is to coordinate contradictions among authoritative texts and deduce general concepts from rules and cases provided by those texts;

(3) Belief in the capability of law to develop in a few generations continuously and belief in the historicity of law;

(4) Belief in the capability of law to dispose of the conflicts among competing political authorities within a jurisdiction and belief in law's supremacy over political authorities.³⁰

This tradition based on faith in Christianity. To be specific, the impact of Christianity on western legal tradition includes:

(1) Human ideas of time, which contains prophetic vision for the future and faith in eschatology;³¹

(2) The principle of reason, in which scholastic technique originated. Canon law jurists took use of scholastic technique to draw abstract conceptions from complicated categories and classifications to transform ancient Roman law;

(3) The principle of conscience, which means law can be found not only in the scholastic reasoning, but also from the lawmakers' or the judges' minds;

(4) The principle of legal growth, which means legal theories and legal systems should be consciously based on previous authorities and adapt to current and future needs.³²

So Prof. Berman argued that the western legal tradition was closely related to Christian ideas. Even if the German Lutheran Reformation led to the emergence of legal secularization and legal positivism, the idea – individual could take advan-

tage of his/her will to change nature and innovate the social relationships by virtue of the grace of God – was the key to modern contract law and property law. And Calvinism contributed the obligations of changing the world for Christians and put forward the belief that groups of believers were higher than political authorities and the idea of social contract. In the revolutions thereafter, the religious nature of the western legal tradition began to be removed with the rational process of disenchantment. The influence of Christianity was still retained in the law but no longer through the institutional church. If a developing country tries to ask Prof. Berman a Weberian problem, why the western world – and only the western world – formed a rule of law which had universal significance, the answer would be the faith in Christianity.

Some Chinese scholars who accept Berman's answer argue that legal faith/legal belief is the requisite of the rule of law. To construct a modern rule of law one must ensure people's faith in law in order to develop respect for law and enhance the authority of law.³³ Some scholars think legal faith in contemporary China should be based on rationalism and the Confucian belief if the Confucian belief could develop the useful and discard the useless.³⁴

But others don't think Chinese people should have faith in law, because the concept of law in a Chinese context is different from Prof. Berman's.³⁵ The former is a positivist one, which refers to the rules formulated by the state and implemented by coercive power. So the concept of law in China doesn't contain transcendent religious values and has nothing to do with ultimate and transcendent *faith*.³⁶ The latter is so integrated and inclusive that

30 BERMAN (2008) 17. The citation is translated from Chinese because I can't get the original version of Berman's book. Thus it may be different from the original text.

31 BERMAN (1993) 30.

32 BERMAN (2003) 40–67.

33 DING YI (1999), XU JUAN (2009).

34 REN QIANG (2004).

35 Berman used to give several legal definitions. »Law is more than a whole set of rules. It is people's legislating, deciding, executing and bargaining activities. It is the live procedure which allocates rights and obliga-

tions, solves disputes and creates cooperation.« BERMAN (2003) 11. Here Berman stresses that law is both »law in books« and »law in action«. »Law is also humans' idea about justice.«

BERMAN (2003) 36. Here Berman means law's aspect of natural law.

»Law, I refer to the legal system which has originated in the »west« countries since 12th century, including constitutional law, philosophy of law and legal science, the principles of criminal law, civil law and procedure law. Although they vary in time and space, they share the same historical basis,

concepts and methods.« BERMAN (2008) 2–3. Here Berman stresses the law's historicity.

36 FAN JINXUE (2012).

it could be connected with *faith*. Thus, to establish legal faith/legal belief in China would lead to some bad results. For example, all the problems are easily attributed to people's lack of faith in the law, exaggerating the role of law and over-interfering with individual's minds etc.³⁷

The debate reflects the difference between Chinese scholars and their western colleagues when dealing with the relations between law and religion.³⁸ Christianity is one of the pillars of Western civilization. The reason why Prof. Berman reconstructed the historical development of the western legal tradition is to cope with the integrity crisis which western legal tradition and civilization encountered in the 20th Century. Prof. Berman thought the causes of the crisis were that western society lost legal faith and religious faith.³⁹ So Prof. Berman's solution is to reconstruct the dialectical interactive relations between law and religion. China has never had a nationwide religion. Indeed, people don't have enough belief in law and statutes sometimes can't work very well in China nowadays. The problem is not only because the rationalization process of modern society exiles human spiritual faith,⁴⁰ but also because of Chinese people's traditional »practical reason«. »Practical reason« stands for the main character of Chinese traditional thoughts and still has influence today. It isn't constrained by transcendent faith and seeks secular practical purpose.⁴¹ This mode of thinking is easy to join in the rationalization process and looks on law as a means to achieve certain ends. To enhance people's respect for law or ensure belief in law in China nowadays, we need not only consider the problem of modernity, but also take our tradition seriously. In this sense, Prof. Berman's theory on interaction of law and religion

can't fit into China, because it ignores the influence of Chinese traditional thoughts.

4

In 1840, China encountered »a catastrophe not seen in thousands of years« (by Li Hongzhang), which may attribute more meaning to the history about origin and prophesy about development in *Law and Revolution*. Comparing the interaction of law and religion, Prof. Berman's concept of historicity may be more inspiring. In Prof. Berman's theory, »History« is the most important dimension and was given a normative sense. »If there's no reintegration to the past, we can neither trace back our past track nor find guiding lines for the future«. ⁴² The so-called »historicity« is to use past experiences to meet changing needs. Just as Luther used to translate the *Holy Bible* into German, which inspired Germans to create a native language and develop national culture, Chinese modern transformation also needs to rethink and reconstruct Chinese history and tradition.

No matter how many inspirations we can get from *Law and Revolution*, our practice to pass through »Historical Three Gorges« (by Tang Degang) couldn't be replaced by foreigners. We can transplant laws by state authority. But without hard »struggle of freedom«, the transplanted laws which used to work well would degenerate into »rigid legalism«. ⁴³ In this sense, legal faith or legal belief is not and needs no expression, but a person's or a state's life style which exhibits itself during the hard struggle and exploration.

■

37 FAN YU (2008).

38 The difference was first reflected in the translation of »Law has to be believed in or it will not work«. In the sentence, »believed in« was translated as »信仰« in *The Interaction of Law and Religion*. BERMAN (2003) 3. It was translated as »信奉« in *Law and Revolution*. BERMAN (1993), Preface III. In Chinese, both »信仰« and »信奉« are closely related to religion, so they are nearer to »faith« in meaning. But

»believe in« is usually translated as »相信«, »确信« and »信任«, so they are nearer to »ascertain« and »confidence« in meaning and less related to religion. Using the translation related to religion can meet Berman's context, but is liable to cause confusion in China where there is not a nationwide religion. A more detailed analysis can refer to ZHANG YONGHE (2006) 181–183.

39 BERMAN (2003) 8–11.

40 WEBER (2010) 183.

41 Its Chinese translation is »实用理性«. LI ZEHOU (2004b) 288–290.

42 BERMAN (1993) Preface, V.

43 BERMAN (2003) Introduction.

Bibliography

- BERMAN, H. J. (ed.) (1988), *Talks On American Law*, translated by CHEN RUOHUAN, Shenghuo-Dushu-Xinzhi Joint Publishing Company, Beijing
- BERMAN, H. J. (1991), *The Interaction of Law and Religion*, translated by LIANG ZHIPING, Shenghuo-Dushu-Xinzhi Joint Publishing Company, Beijing
- BERMAN, H. J. (1993), *Law and Revolution: The Formation of the Western Legal Tradition*, translated by HE WEIFANG, GAO HONGJUN, ZHANG ZHIMING and XIA YONG, Encyclopedia of China Publishing House, Beijing
- BERMAN, H. J. (2003), *The Interaction of Law and Religion*, translated by LIANG ZHIPING, China University of Political Science and Law Press, Beijing
- BERMAN, H. J. (2008), *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition*, translated by MIAO WENLONG and YUAN YUCHENG, Law Press China, Beijing
- BERMAN, H. J. (2011), *Faith and Order: The Reconciliation of Law and Religion*, translated by YAO JIANBO, Central Compilation & Translation Press, Beijing
- DING YI (1999), *The Role of Legal Faith in the process of Rule of Law*, in: *Studies in Law and Business* 6, 43–45
- FAN JINXUE (2012), »Legal belief«: A Over-misread Myth, in: *Tribute of Political Science and Law* 30, 161–172
- FAN YU (2008), *A Criticism of »Belief in Law«*, in: *Modern Law Science*, 10–17
- HE WEIFANG (1991), *The Style and Spirit of Traditional Chinese Judicial Decisions: Based Mainly on the Song Dynasty and Comparing with that of England*. in: *Social Sciences in China* 3, 74–95
- HE WEIFANG (2007), *Legal Translation in China Since 1949*, in: *Journal of China University of Political Science and Law* 1, 119–122
- JI WEIDONG (1989), *The Sociology of Law in China: Overview and Trends*, in: *Law and Society Review* 23, 903–914
- JORDAN, WILLIAM CHESTER (1985), *The Crisis of the Western Legal Tradition*, in: *Michigan Law Review* 83, 670–681
- LI ZEHOU (2004a), *On Contemporary Chinese Thoughts*, Tianjin Academy of Social Sciences, Tianjin
- LI ZEHOU (2004b), *On Ancient Chinese Thoughts*, Tianjin Academy of Social Sciences, Tianjin
- LIANG ZHIPING (1992), *On Law: Chinese Law's Past, Present and Future*, Guizhou Renmin Press, Guiyang
- LIU SIDA (2010), *History and Reflection on Chinese Sociology of Law*, in: Su LI (ed.), *Law and Social Science*, Law Press China, Beijing
- LIU YI (2012), *Legal Translation and Modernization of Law*, in: *Journal of Beijing Institute of Technology (Social Sciences Edition)* 14, 117–127
- LIU YUNHONG, XU JUN (2010), *Theoretical Innovations and Practical Applicability: »Faithfulness«, »Expressiveness« and »Elegance« as Translation Criteria in Action*, in: *Chinese Translators Journal* 5, 13–18
- PENG XIAOYU (2006), *The Oriental Context of Misreadings of Western History: Legal Revolution, the Reformation and Monastic Life*, in: *Historical Research* 1, 124–127
- PETERS, EDWARD (1985), *The Origins of the Western Legal Tradition*, in: *Harvard Law Review* 98, 686–696
- POUND, ROSCOE (1910), *Law in books and Law in Action*, in: *American Law Review* 44, 12–36
- REN QIANG (2004), *To make law sacred: Reflection on the belief foundation of Chinese and western legal idea*, in: *Law and Social Development* 5, 46–54
- SU LI (2004), *Perhaps Be Happening: Legal Studies in China's Transformation*, Law Press China, Beijing
- SWEENEY, JAMES ROSS (1984), *Book review*, in: *Journal of Law and Religion* 2, 197–205
- WEBER, MAX (2010), *The Protestant Ethic and The Spirit of Capitalism*, translated by KANG LE and JIAN HUIMEI, Guangxi Normal University Press, Guilin
- XIA YONG (ed.) (1995), *Toward an Age of Rights: A Research on the Development of Civil Rights in China*, China University of Political Science and Law Press, Beijing
- XU JUAN (2009), *How could law be believed in: to discuss with those who think law couldn't be believed in*, in: *Science of Law* 5, 3–12
- ZHANG YONGHE (2006), *Faith and Authority: A Comparison Study among Curse, Swear and Law*, Law Press China, Beijing