
**Reviewed by** W. Douglas Catterall (Cameron University)

**Published on** H-Poland (February, 2019)

**Commissioned by** Anna Muller (University of Michigan - Dearborn)

The routine of legal systems frequently escapes our notice, and imperial ventures only compound this challenge. They either ignored indigenous law or subsumed it in the cogs of colonial administration. Heikki Pihlajamäki’s *Conquest and the Law in Swedish Livonia,* however, does not shrink before these obstacles. Working with a far from complete set of records across a number of linguistic boundaries—German, Latin, and Swedish, to name the main ones—Pihlajamäki explores how Livonia’s colonial courts worked from the medieval period, when the Teutonic Order held sway, through the end of Swedish rule in 1710. He concludes that Sweden’s institutions influenced Livonia, but Sweden’s law did not, giving us a fresh look at this historically interlegal space. Pihlajamäki’s examination of imperial transformation through legal practices also rescues Livonia from the role of imperial plaything.

This is no mean feat as, according to Pihlajamäki, Livonia’s colonial past possesses its historiography as much as its history. Worried about Russian cultural dominance, nineteenth-century German Baltic scholars sought to establish the status of the Baltic (and within it Livonia) as an independent region. Then Estonians reclaimed Livonia’s history for their nation-building project during the interwar years of the 1920s and 1930s. After that the succeeding Soviet period saw scholars produce little. More recently, and somewhat ironically, German, Swedish, and other Scandinavian scholars (to include Pihlajamäki) have tried to understand Livonia’s Swedish period more on its own terms.

Pihlajamäki opens with Livonia’s early thirteenth-century experience of crusading, because, for Livonia, the colonial record is the early historical record. He first establishes the decentralized institutional space that the Teutonic Order’s *Ordenstaat* projected in Livonia, admittedly leaving out aspects of the Danish presence. From here he moves on to the Polish institutional overlay that shaped its courts. Over the years a tortuous institutional landscape arose. Its varied features allowed Livonia’s many communities to coexist and permitted all social groups a role in legal matters. Those of free status even had some choice as to their preferred legal framework.

Connecting Livonia’s many institutions, communities, and inhabitants to one another was the legacy of the Livonian Order, a branch of the Teutonic Order. Roman law or *jus commune,* capitulations between indigenous peoples and the order, and agreements between the *Ordenstaat* and other rulers all stemmed from its presence. Even local community law had Livonian Order roots. Urban law likely came from Bishop Albert of Riga, founder of the order’s predecessor, who may have imported the laws of Visby, while feudal and manorial law arose as members of the order and German settlers interacted with one another and indigenous populations. *Jus commune* served as the bedrock into which these other approaches to law anchored. This prominent role began with legal appeals to the Holy Roman Empire’s courts.
and Livonia’s ecclesiastical institutions in the medieval era, and accelerated in the sixteenth century with the Polish period’s onset. Only royal law had no major impact on Livonia.

Swedes, however, lived out their lives under royal law according to Pihlajamäki. Starting with provincial and peace laws in the High Middle Ages, then moving to the first royal laws in the fifteenth century, and to lawgiving from the 1520s on, royal influence consistently shaped Sweden’s law and institutions. Where Livonia’s monastic overlords provided its manorial and urban law, Sweden’s had royal origins. Even Sweden’s estates, which acquired a constitutionally independent role over time, accepted the Swedish Crown’s legal sway. *Jus commune*, so important to legal practices across the Baltic, played little part in Swedish law prior to the imperial era, even if *jus commune* ideas seeped into Swedish legal discourse.

The different developmental path that legal systems took in the Holy Roman Empire and the *Ordenstaat* led Sweden to adapt their legal traditions when they expanded into the Baltic littoral. Swedish authorities, though not wanting to micromanage the legal systems of newly conquered regions, sought to tie their institutions to Sweden. They achieved this objective in the Duchy of Estonia but not in fractious northern Germany where noble estates and other actors openly resisted. Livonia demanded a middle way.

From a purely institutional standpoint, the Swedish presence touched most of Livonia’s judicial establishment. Polish-installed courts had largely ceased to function by the early 1620s when the Swedes arrived. In response, Swedish authorities revised Livonia’s court structure substantially, even creating the High Court of Dorpat, which opened an appellate path to Stockholm. In the end, only urban courts in major towns survived the Swedish era unchanged.

But compromise defined the Swedish approach to implementing change. Pihlajamäki pronounces cautiously on the impact of Swedish legal reform for the majority of Livonia’s inhabitants, conceding that the operation of manorial courts and peasant access to Swedish-inspired appeals processes remain unclear. Swedes also proved open to compromises in the matter of legal culture. They mixed Swedish law, Livonian law, and *jus commune* as appropriate. And German remained the language of the courts, while Germans and Livonians continued to staff them, working alongside Swedish judges in the provincial courts. The rise of professional lawyers from the mid-seventeenth century pushed the *jus commune* dimensions of Livonia’s legal system forward as well.

The heart of Pihlajamäki’s account comes in chapter 4 on the transformation of Livonian court procedures during the Swedish period. In it he lays out the steps for civil and criminal trials, drawing many of his examples from Pernau District Court records and procedural legal sources, such as the 1632 *Verbesserte Landgerichtsordinanz*. Those interested in the day-to-day workings of courts and in dispute resolution will find many gems here. Pihlajamäki’s examples of serfs’ legal capacity flesh out his discussions of their access to Livonia’s courts in chapter 3, and his story of a defendant who discredited the arsonist he had allegedly hired as a witness for the prosecution is particularly memorable. He also shows how Swedish ordinances on the Livonian courts forbade some common *jus commune* civil procedures, such as the calumny oath. In the early decades of Swedish rule in Livonia oral proceedings were more common too, and Swedes successfully banned judicial torture and dueling in the 1680s.

These Swedish influences notwithstanding, Pihlajamäki finds that *jus commune* became the standard for civil cases in Livonian courts. Written methods, such as the *Artikelprozess*, exemplified this reality. Chieflly owing to Livonia’s weaker state structures, a less standard version of *jus commune* also dominated in criminal proceedings. The accusatorial as opposed to the inquisitorial approach to crimes held sway when the Swedes conquered Livonia, and private parties still commonly initiated criminal cases at the end of the Swedish period. Even once inquisitorial procedure had risen to prominence by the 1680s, public prosecutors still acted through the accusatorial procedure to address many public order problems. The two modes even blended, diluting the inquisitorial procedure’s influence, which its rank-specific impact further diminished. With torture inherent to its methods, those with more power and influence—burghers, nobles, and other free rural dwellers—avoided the inquisitorial procedure. Chiefly peasants faced its tender mercies.

In the end, Pihlajamäki concludes, the “Germanization” of Livonia’s law proceeded apace throughout the Swedish period. Those operating Livonia’s courts typically relied on *jus commune* principles before or, at the very least, alongside other legal canons. Arbitration too was chiefly the province of courts, not individuals leveraging the judiciary’s power for their own purposes. Only the possibility of judicial oversight in Sweden allowed for access to courts operating wholly within the Swedish
law.

Conquest and the Law in Swedish Livonia raises important questions concerning how the law functioned in what became a central colonial space for early modern Sweden. Pihlajamäki’s work will prove particularly valuable for historians who do not specialize in legal history. His findings convincingly put an end, for example, to any notion of a uniform *jus commune*. Similarly enlightening are his discussions of serfs’ access to the law in Livonia. Pihlajamäki shows, for example, precisely how Livonian peasants experienced their reduced social and legal position as serfdom came to dominate the southern Baltic littoral during the early modern period. Most powerfully, Pihlajamäki’s discussion of the interface between the Swedish state and its would-be imperial possessions suggests a new way to conceptualize the Swedish Empire. Rather than the more usual, metropolitan considerations of its military capacities, might it not make sense to examine the Swedish Empire’s capacity to promote change on the ground as Pihlajamäki does?

Considering his project’s importance, though, it is worth bringing to the fore some tensions in Pihlajamäki’s study. Pihlajamäki uses the concept of the composite state to frame his project. This enables him to argue for broad similarities between expansionist states. He describes Spain, France, Britain, Sweden, and Russia as having faced similar issues around integrating new territories into their realms. Formally speaking, this interpretive gambit works. Recent work by the colonial Latin Americanist Mark Burkholder has highlighted the importance of the realm in Spanish administrative thinking on the Americas; Dutch Atlantic historians stress the role of the province for Dutch imperial spaces, such as New Netherland. But composite states’ solutions to common administrative problems differed dramatically, as Pihlajamäki admits. Spain’s Royal and Supreme Council of the Indies aspired to gain firm control over law in Spain’s colonies in the Americas. The Board of Trade did not attempt this for Britain’s colonies. Facts on the ground varied considerably as well. *Audiencias* did not incorporate Native Americans, however elite, into their judiciary ranks. The Swedish Empire did precisely this with, by then, indigenous nobles in Livonia (and elsewhere). It seems worth asking whether Sweden’s status as a composite state matters for Pihlajamäki’s argument if that category cannot usefully relate Sweden’s colonial projects to those of other states. In short, did formal similarities in state architecture meaningfully shape policy-making?

The role of *jus commune* as an integrating colonial law within Swedish Livonia also has its problems. Pihlajamäki’s central argument that Swedish imperial authorities conceded ground to local and regional practices in quite fundamental ways is clear. But he complicates things with the dizzying array of categories that he applies to the Roman legal inheritance, which he refers to as Roman law, canon law (or Roman canon law), *gemeines Recht*, *jus commune*, and even as separate, regional *jures communes*. The interchange between categories implies different approaches to the law, but more often Pihlajamäki treats them as synonymous; his introduction to *jus commune* illustrates both approaches. Identifying the legal categories in play with more consistency would increase the power of Pihlajamäki’s analysis of common laws in Swedish Livonia. He could also come to grips with a notable lacuna in his study, that he treats *jus commune* in part as a local law whereas many Livonians saw it as anything but.

The relationship between legal formalism and the use of evidence in Pihlajamäki’s study bears mentioning too. In many passages Pihlajamäki relies on the rhetoric of *jus commune* to demonstrate its presence. He notes, for example, that because the Dorpat City Council appeared to have used an inquisitorial procedure in a case of witchcraft during the Polish period, it must have been using *jus commune*. While likely true, it would be good to have more than a few lines about something so important to the focus of Pihlajamäki’s project. This reliance on snippets and phrases to categorize entire areas and periods of legal praxis is most prominent in the final chapter. Here often only a few short passages suffice to demonstrate the presence of *jus commune* thinking. This may be the way to sketch the legal lay of the land, but it seems at odds with Pihlajamäki’s nuanced discussions of procedure in Livonian courts.

Despite these challenges, though, Conquest and the Law in Swedish Livonia is an important study. The larger interpretive enterprise of which it is a part calls on us all to do better by the history of the Baltic world.

If there is additional discussion of this review, you may access it through the network, at:

https://networks.h-net.org/h-poland

URL: http://www.h-net.org/reviews/showrev.php?id=50462

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.