

Book Reviews

Law in the United States of America in Social and Technological Revolution

Reports from the United States of America for the IX Congress of the International Academy of Comparative Law; Editors: John N. Hazard and Wenceslas J. Wagner; published for the American Association for the Comparative Study of Law, Inc. by Etablissements Emile Bruylant, Brussels, Belgium, 1974, 697 pages.

Reviewed by BENJAMIN BUSCH

Although by now reduced to the level of cliché, it is nevertheless a truism and an accurate definition, that comparative law is legal methodology, a comparison between systems, not legal theory. But the success of the method lies not alone in scholarly research, but also in the clarity of communication, the ability to make others comprehend the differences, in fact and in trend, between the laws of the jurisdictions compared.

This task is extremely difficult and a challenge always to comparativists engaged in the classroom or in the writing of reports. Consider then the awesomeness of a project requiring more than a score of scholars to report on the law of the United States to a world-wide congress of comparativists, not only in the more familiar fields of law, but also with respect to the impact of scientific and technical progress on the development of United States law, comparative law and scientific explanation, damage by mass media, the law applicable to multinational corporations from the perspective of the United States, rural law in the United States, tourist contracts under United States law, the legal status in the United States of foreign workers, the right of privacy and its limitation in the United States, the role of the executive branch in the protection of the environment in the United States, compensation for detention prior to acquittal, unification of methods of legal automation, as well as other subjects illustrative of the law of the United States in a social and technological revolution.

This was the responsibility of the scholars chosen to report on those aspects of United States Law for the 9th International Congress of Comparative Law in Ramsar, Iran, in August-September 1974. How well they succeeded is

exemplified in this invaluable volume containing the reports edited by the scholarly and knowledgeable team of renowned comparativists, Professors John N. Hazard and Wenceslas J. Wagner, in almost 700 pages that will serve as a bible on these subjects, as well to the foreign members of the International Academy of Comparative Law as to every practicing lawyer in the United States.

As eloquently stated by the editors in their preface:

The reports prove to be more than informative of reporters abroad seeking to define world trends. As with the first volume published in 1970 by the same publishers, this second volume in what is becoming a series permits law trained investigators in the United States itself to lift their eyes above the horizon of the inevitably narrow field of the individual's specialization to the whole sweep of the law. The forest, which is the whole legal system, rather than the tree of the individual discipline becomes visible. Consequently this second volume, like its predecessors, serves as a survey of contemporary law in the United States in the critical areas currently noted for their tensions. . . .

The volume is, however, more than a conference document: it is a rich source of information and ideas. Each essay surveys developments in the discipline and speculates on trends. Readers unrelated to the Congress may, therefore, refresh themselves on what is happening in their own fields as seen by a colleague and peer into other fields beyond their necessarily limited horizons to grasp development of much of the law of the United States of America.

This reviewer was particularly impressed with the contributions of Willis Reese (Choice of Law in The United States: The Past, the Present and Some Prophecies for the Future); John N. Hazard (The Role of the Ministère Public in Civil Proceedings); Edward D. Re (The Judicial Role in the United States); Alfred F. Conard (Changes in the Capital of Corporations); W. J. Wagner (The Right of Privacy and its Limitations in the U.S.A.), and M. C. Bassiouni (The Privilege Against Self-incrimination: A Historical Analysis and Contemporary Appraisal), and with so many others of these splendid essays, mention of which is limited only by space.

In the wake of "Watergate" and the activities of Judge Sirica, it was extremely topical to read the discussion by Judge Re of the "American exaggerations of the common law contentious procedure," and his quotation from Dean Roscoe Pound that "It leads the most conscientious judge to feel that he is merely to decide the contest, as counsel present it, according to the rules of the game, *not to search independently for truth and justice.*" (Emphasis supplied.)

A fascinating essay and almost a course in comparative law itself is the report on Louisiana Law entitled "To What Extent are Judicial Decisions and Legal Writings Sources of Law?" by Professor Oppenheim of Tulane University. One can well imagine the interest of the European scholars in this anomaly of United States Law. A jurisdiction, whose law has been influenced by French, Spanish and Roman law in its development, but which is surrounded and exposed to the impact of the common law of its neighbors. It retains "forced heirship" and

many other features of civil law and is the only state that has not adopted the Uniform Commercial Code.

As Prof. Oppenheim concludes in his evaluation, Louisiana has not succumbed to the common law on the question of *stare decisis*, but rather it retains the French doctrine of *jurisprudence constante*; it has not retained a purely civilian jurisdiction but possesses common law influences and doctrines which have made it a hybrid jurisdiction, and quite obviously it has not departed entirely from the civilian tradition.

These essays totally fulfill the need expressed by the editors:

The dynamics of change are evident in all legal systems as legislatures and judges attempt to resolve the tensions of our time created by clashing ideologies and scientific and technical innovation. Prevailing trends in both domestic and transnational relations include, irrespective of men's commitments to an ideology, recognition of the equality of men, their right to privacy, protection against unrestrained police and prosecutorial officers, expansion of legal services for the indigent, activation of the judge and of a *Ministere Public* or its equivalent to assure equality of parties before the court, a measure of worker participation in industrial management, justice for the foreign worker, restraints on governmental administrators, preservation of the environment against excessive exploitation to the detriment of mankind, discouragement of terrorists and hijackers, and even protection of tourists against avaricious agents. . . .

. . . a search for solution is aided by comparison between systems, not solely of rules but of cultures: legal and otherwise.

The above is well illustrated by the concluding quotation of Professor Berger, of Columbia University, in his report "RURAL LAW IN THE UNITED STATES" from *State v. Shack*, 58 N.J. 297 (1971), which held that migrant workers had property rights which an employer could not infringe:

The employer may not deny the worker his privacy or interfere with his opportunity to live with dignity and to enjoy associations customary among our citizens. These rights are too fundamental to be denied . . . and too fragile to be left to the unequal bargaining strength of the parties.

This volume is highly commended to all members of the Bar.

