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## Hans-Albrecht Schwarz-Liebermann von Wahlendorf (1922-2011)

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## HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF (1922-2011)

In the fall of 1976, when he was a fourth-year law student at the Université Jean Moulin in Lyon, the author of this note discovered a course mysteriously called *Droit comparé*, taught by a tall, lean, and elegant grey-haired German professor, who spoke perfect French and used words and phrases in Greek and Latin, English, German, and Russian, and seemed to know several other languages. He instructed his students on the foundations of comparative law and the history of this discipline, and gave a fascinating introduction to the history and the spirit of English law. The ‘disciple to be’ received this teaching like sand absorbing unexpected rain, as he had been fed all these years with dry legislative positivism. The following semester, he was his student in legal philosophy, and it became clear that the desert would blossom into fertile land. The aspiration to become a scholar of comparative law kept germinating in the mind of a student who just a few months earlier was questioning his aspiration to become a jurist.

A former Lutheran partly of Jewish descent and converted to Roman-Catholicism, the master led his disciple to the Promised Land. The year after, the disciple majored in the *D.E.A. de droit comparé* (a graduate program in comparative law) of which the master was the director. Despite the latter’s warning that he was a foreigner and an outsider, and therefore not the best leader on the path to a French academic career, the disciple insisted on having him as his *Doktor Vater* or doctoral supervisor. The master adopted his disciple and the disciple elected his spiritual father. “Law is right reason,” he was fond of saying, and this sounded like a mantra. The ideas of coherence and reasonableness, the ontological connection between law and morals, the legal necessity to objectivize purely subjective relationships and communication, the meta-legal foundation of responsibility and its transcendental connection to freedom, the need to mediate and the unique function of the judge in this respect, the notion that comparative legal studies amount to applied legal philosophy; all these and many other ideas would fuel the disciple’s research and teaching. His constant focus on coherence led the disciple to elect estoppel and the protection of reasonable reliance as the topic of his doctoral dissertation. The nine hours spent in the graduate program discussing Lord Atkin’s neighbor principle in *Donoghue v.*

*Stevenson*<sup>1</sup> would turn the author of this note into a scholar of English law and the law of obligations, among other things.

This personal testimony is a pale reflection of the master and his teaching. Here is a short resume. Born in Berlin, in 1922, son of a Prussian diplomat, Hans-Albrecht Schwarz-Liebermann von Wahlendorf received an aristocratic education. He was homeschooled in the leading European languages and graduated from the Bismarck-Gymnasium. He escaped the Nazi persecutions, and studied Russian and philosophy. Immediately after World War II he joined the Christian Democratic Union (CDU), and studied law in Tübingen where he got his doctorate. He did academic work at the Hague Academy of International Law, at the University of Cambridge (he later sent me to Sydney Sussex College, his home in Cambridge, where I met my wife, who is from Swabian Southern Germany, like his mother), and at several law schools in the United States, including the University of Michigan. From 1952 onwards, he worked at European integration projects at the German Ministry of Foreign Affairs, in close cooperation with Heinrich von Brentano, Walther Hallstein, and later joining future Chancellor Kurt Georg Kiesinger and Chancellor Konrad Adenauer's efforts on international and security issues. He contributed to the drafting of the first European treaties. In 1957, he became NATO's Associate Director for political affairs. After having lectured all around the world (1960-1961), he was made Director for research and university cooperation for the Council of Europe (Strasbourg, 1962-1967).

A man of action, he remained a scholar. In 1968, he was made an Associate Professor at the University of Nice, and in 1974, he joined the law faculty of Université Jean Moulin in Lyon, where he was made full professor, teaching comparative law and legal philosophy. He left Lyon with the title of Professor Emeritus in 1982 and also gave up his position as Associate Director (de facto director) of the Lyon Institute of Comparative Law, in which I would succeed him in 1985. Back in Germany, he resumed with his political life in Hamburg, and also sat on the board of the Max Planck Institute for Foreign and International Law (Hamburg, 1984-1992). He was very active in Germany's foreign policy all these years, with important missions in the Soviet bloc, whilst working to convince German students of the necessity of deploying Pershing missiles in West Germany, to oppose the SS-20 missiles deployed in countries of the Warsaw Pact, and ultimately end the Cold War. He travelled extensively during the chancellorship of Helmut Kohl, the German federal government

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1. *Donoghue v. Stevenson* [1932] A.C. 562 (H.L.).

sending him to the United States, Russia, India, Japan, South East Asia, Australia, and New Zealand. He was President of the Robert Schuman Institute for Europe (1984-1994) and was made Honorary Director of the Édouard Lambert Institute of Comparative Law (Lyon, 2001).

In 1989, he moved to Rheinbreitbach, near Bonn, where my family and I visited him several times. He was a man of great cordiality and aristocratic courtesy, expressing all thoughts, simple or complex, in subtle language and long-winded sentences. His diction was slow, with sentences ending softly, in what he described as Berlin laziness. In 1955, he married Denise Kerdilès, from France (he described her as *rocher de Bretagne, Lumière du Ciel*),<sup>2</sup> who left this world two years before him. She used to receive us with grace and simplicity, in this aristocratic mansion adorned with art you usually see only in the finest museums. He was also a poet and a painter. He gradually lost the support of both legs in the final years, and no longer left his bedroom upstairs, where I saw him on my last visit. His intellect was intact, and I never saw a man so prepared to appear in front of his Creator. He died peacefully at home on August 6, 2011, four days after his 89<sup>th</sup> birthday.

Hans-Albrecht Schwarz-Liebermann von Wahleendorf published extensively between the early 1950s and 1990s, in German, in French, and also in English. His publications in German discuss NATO, Germany's foreign politics, and include significant works in International Law.<sup>3</sup> Publications in English are not many, but combine scholarship in international and comparative law.<sup>4</sup> During his years in Nice, he published two

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2. Dedication page, HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, *RÉFLEXIONS SUR LA NATURE DES CHOSES ET LA LOGIQUE DU DROIT-CONTRIBUTIONS À L'ONTOLOGIE ET À L'ÉPISTÉMOLOGIE JURIDIQUES* (Paris, La Haye, Mouton 1973).

3. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, *VORMUNDSCHAFT UND TREUHAND DES RÖMISCHEN UND ENGLISCHEN PRIVATRECHTS IN IHRER ANWENDBARKEIT AUF VÖLKERRECHTLICHER EBENE-EINE STUDIE ZUR STRUKTURPROBLEMATIK DES VÖLKERRECHTS* (Tübingen, J.C.B. Mohr 1951); *MEHRHEITSENTSCHEID UND STIMMABWÄGUNG-EINE STUDIE ZUR ENTWICKLUNGES VÖLKERVERFASSUNGSRECHTS* (Tübingen, J.C.B. Mohr 1953); *STRUKTUR UND FUNKTION DER SOGENANNTEN ZWEITEN KAMMER - EINE STUDIE ZUM PROBLEM DER GEWALTENTEILUNG* (Tübingen, J.C.B. Mohr 1958).

4. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, *SOME ASPECTS OF THE INFLUENCE OF PROCEDURE AND COMPOSITION ON THE MATERIAL ACHIEVEMENTS OF INTERNATIONAL AND SUPRANATIONAL EUROPEAN ORGANIZATIONS* (Bonn 1954); *THE FORMS OF ACTION AT INTERNATIONAL LAW* (Birmingham 1981).

fundamental books in French on legal philosophy,<sup>5</sup> to be followed by remarkable volumes published in the prestigious *Bibliothèque de philosophie du droit*, at the Librairie générale de droit et de jurisprudence.<sup>6</sup> *Droit comparé - Théorie générale et principes* and *Introduction à l'esprit et à l'histoire du droit anglais* are gems, awaiting to be reprinted.<sup>7</sup> *Positions internationales de la Russie soviétique*<sup>8</sup> shows his familiarity with the Russian language, Russian culture and literature (large excerpts are cited, translated by the author), and unique expertise in Russian foreign policy over many centuries, describing Moscow as the third Rome. It must be read again, more than twenty years after the ending of the Soviet Empire. Three other books, written during the Lyon years, convey the author's faith in the development of Europe and are worth being read in this period of doubt as to the political future of the European continent.<sup>9</sup>

I cannot but cite *Regards et réflexions*, published in 1987.<sup>10</sup> Not only does it reveal the author's philosophical thoughts and spiritual depth—he was a man of faith—but it gives a poetical glimpse of a magnificent soul that rejected the collective monstrosity of the past century and generated powerful moral and legal thoughts as to the only way to resurrect human dignity and ensure its protection in the centuries to come.

These bibliographical notes are by no means exhaustive and omit a number of significant articles, monographs, and

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5. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, FONDEMENTS ET PRINCIPES D'UN ORDRE JURIDIQUE NAISSANT—ESSAI DE PHILOSOPHIE EMPIRIQUE DU DROIT (Paris, La Haye, Mouton 1971); RÉFLEXIONS SUR LA NATURE DES CHOSES ET LA LOGIQUE DU DROIT, *supra* note 2.

6. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, ÉLÉMENTS D'UNE INTRODUCTION À LA PHILOSOPHIE DU DROIT (1976); LES DIMENSIONS DU DROIT (1978); IDÉALITÉ ET RÉALITÉ DU DROIT—LES DIMENSIONS DU RAISONNEMENT JUDICIAIRE (1980); POLITIQUE, DROIT, RAISON—RECUEIL D'ÉTUDES (1982).

7. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, DROIT COMPARÉ—THÉORIE GÉNÉRALE ET PRINCIPES (Paris, L.G.D.J. 1978); INTRODUCTION À L'ESPRIT ET À L'HISTOIRE DU DROIT ANGLAIS (Paris, L.G.D.J. 1977).

8. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, POSITIONS INTERNATIONALES DE LA RUSSIE SOVIÉTIQUE—TRADITION ET IDÉOLOGIE (Paris, Librairie des cinq continents 1977).

9. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, DÉMOCRATIE EUROPÉENNE (Lyon, L'Hermès 1977); QUELLE EUROPE? MÉDITATIONS D'UN CHRÉTIEN DÉMOCRATE (Lyon, L'Hermès 1979); RÉSISTEZ! UN MANIFESTE POUR L'EUROPE (Paris, La pensée universelle 1983).

10. HANS-ALBRECHT SCHWARZ-LIEBERMANN VON WAHLENDORF, REGARDS ET RÉFLEXIONS—FRAGMENTS PHILOSOPHIQUES ET POÉTIQUES (Paris, Bière 1987).

speeches. They are an invitation to discover or rediscover an immense legal mind who transcends the limits of legal thinking and questions who we are, confronting us on every page with our limited and unlimited dimension. He is not honored here for his reverence for the civil law: though educated in the law at one of the hubs of the Pandectist School and more familiar than many with the dynamism of Roman law, he rather preferred the English common law and its focus on the judge.<sup>11</sup> Without his seminal influence, however, the Journal of Civil Law Studies would not exist and may not have been conceived as a forum for comparative legal studies.

Olivier Moréteau

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11. See his comments on Right Reason, Case v. Code, in *POLITIQUE, DROIT, RAISON*, *supra* note 6, at Part II.