
Joseph Dainow
Book Reviews

**TRAITÉ ÉLÉMENTAIRE de DROIT CIVIL COMPARÉ**, by René David.*


Comparative law has been a subject of discourse and disagreement for some considerable time among legal scholars. However, the dearth of basic and elementary books, for the use of students and for the rank and file of lawyers, has just begun to be relieved. It is significant that two such works should appear almost at the same time, the one in France and the other in the United States. Each represents an attitude and an approach quite different from the other; an examination of the two creates some very interesting comparative impressions.

Professor René David of Paris has been devoting himself for many years to the study of comparative law, not only in teaching and writing and in numerous organizations, but also in learning and living the law of different countries. He has spent a considerable amount of time working in England as well as in other continental countries; he has been in South America, and is visiting professor this year at Columbia University in New York. Professor David has become the interpreter and translator of modern foreign laws to French students and scholars. He is also the ambassador of the continental civil law at the court of the Anglo-American common law; through his perception and reporting, the lawyers of the civil law in Europe are getting to see and grasp something of the modern common law.

For Professor David, the objectives of comparative law start with the broadened cultural values, which in turn foster a better comprehension of one’s own law and promote mutual understanding with greater rapprochement between peoples. In its more specific applications, he envisages the improvement of local law and also the realizable possibilities of unification of law through comparative study.

* Professor of Comparative Civil Law, Faculty of Law, Paris, France.
† Associate Professor of Law, Cornell University, Ithaca, New York.
Professor David emphasizes "comparative method," but his approach is quite different from that of his English colleague, Professor Gutteridge of Cambridge. David's sights take in the globe. He considers it necessary to have a very extensive perspective of the more important contemporary legal systems of the whole world, and he arranges them in groups. The French group (essentially the civil law) includes France, the Latin and Germanic countries of Europe, and the Latin-American states. The Anglo-American group (essentially the common law) includes England and the United States, but with special sections for the civil law islands of Louisiana, Quebec, Scotland and South Africa. Separate units are devoted to the Soviet, Mohammedan, Hindu, and Chinese legal systems.

For each country, there is an outline of essential characteristics, including sources, structural pattern and general spirit. The material is entirely the author's text and consists of very comprehensive topics, such as the reception of Roman law in the French and Latin systems of Europe and their use of similar legal concepts, the place of doctrinal writings and court decisions. For Germany there is some discussion about the fusion of Roman and Germanic concepts and techniques, the codification process, and the general spirit of the system.

For the common law of England, there is a broad description of its nature through judicial development, with discussions of custom, precedent, interpretation, procedure, and the separate fields of law and equity. In the process, several comparisons are made with similar topics in the French legal system.

In the United States, the reception of the common law is compared to the reception of the Roman law in Germany. There are of course a number of divergencies duly explained.

The other legal systems are given similarly broad and brief treatment, with particular reference to such things as the socialist economy in the Soviet and the place of the Koran in Mohammedan law.

For practical assistance, there are lists of foreign institutions, libraries and publications, and about one hundred pages of bibliography for eighteen different countries.

Professor Schlesinger's book, *Comparative Law Cases and Materials*, is the first published work of its kind in the United

---

2. See David, Introduction a l'etude du Droit Prive de l'Angleterre (Paris 1948), which Professor David wrote with the collaboration of Professor Gutteridge of Cambridge, and Professor Wortley of Manchester.
States. As professor of law at Cornell University in New York, he brings a background of European legal training coupled with the experience of law practice in New York City. As clerk to the New York court of appeals, and as consultant to the New York State Law Revision Commission, he has participated in many aspects of the common law in action. The object of his concern is the common law student and lawyer, and his immediate mission is to acquaint them with the civil law systems. In his opinion the practicing lawyer—both in private practice and in government service—is coming into sufficient contact with cases involving reference to foreign law to warrant a special branch of legal training for that purpose.

Schlesinger's objective is to "build a bridge" connecting the minds of the common law lawyer and a civil law lawyer by bringing to the common law lawyer a "modicum of understanding" which will enable him (1) to communicate intelligently with an attorney in a foreign country, either to have the American client's interest properly looked after in the other country or to render useful service in America to the foreign attorney whose client has a problem here, (2) to examine and cross-examine experts testifying in American courts as to the law of a foreign country, and (3) to prepare and to handle better his own local cases which involve any consideration of foreign law.

In the light of this objective, the materials are concentrated on those civil law countries which have provided the ancestor code systems of the modern civil law jurisdictions, namely, France, Germany, and Switzerland. All the materials are presented in English, and include code provisions and statutes, texts and cases, and many excellent notes and questions all through the work.

Aiming at the practicing lawyer, the first part of Professor Schlesinger's book deals with the nature of a foreign law problem, and most of these materials are directed at the matter of the proof of foreign law in American courts. This includes the qualification of experts and some inquiry into the system of legal education and the organization of practicing attorneys in foreign countries. While these activities are primarily of a practical nature, their successful performance is necessarily predicated upon a scholarly understanding of the background of the foreign law as well as of the expert who testifies about it.

The second part of the book contains almost one-half of the total materials and concentrates mainly on describing the civil
law system. This covers the historical background and description of codified law as a system, judicial interpretation and the place of precedent, also the elements of procedure. Problems of language and classification are also mentioned.

The third and last part of the book consists of “selected civil law problems confronting American practitioners” to illustrate the use of sources and methods. The topics are of the practical kind, including a few points on agency, such as power of attorney; a few on corporations, such as limited responsibility companies and protection of creditors; and two points on conflict of laws: nationality and “ordre public” (public policy).

Professor Schlesinger readily admits that his book covers only a very small part of what might be called comparative law, but his choice of purpose and materials indicates what is probably considered by a great many metropolitan lawyers as the practical approach to a useful program of comparative law. It is an excellent book and contains a most useful and extensive classified list of the articles on comparative and foreign law which have appeared in the English language.

The two new books on comparative law by David and Schlesinger, the one presenting the rest of the world to the continental civil law lawyer, and the other presenting the civil law world to the American common law lawyer, must be considered in the longer historical perspective as marking a very significant point in the development of a mutual awareness and rapprochement between the world’s legal systems and the peoples they represent.

JOSEPH DAINOW*


Panoramic studies are delicate undertakings; the tasks of discarding minutiae and integrating selected raw material can be performed only by the mastercraftsman. Studentship is a desirable qualification for the proper discharge of these tasks. So is actual experience in applying the material to the disputes of daily life. Because Elias Lieberman brings to his latest book, Unions Before the Bar, a large equipment of practical knowledge and theoretical skill, what he has to say deserves the widest audience. The felicitous style in which the book is written assures that it may be read not only with profit but with pleasure.

* Professor of Law, Louisiana State University.
† Member of the New York Bar.