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Bibliography on Foreign and Comparative Law

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BOOK REVIEW

BIBLIOGRAPHY ON FOREIGN AND COMPARATIVE LAW. By Charles Szladits.¹ New York 11, N.Y.: Oceana Publications. 1955. Pp. xx, 508. \$15.00.

The traveler to some isolated mountain villages in Europe, Africa and Asia often is astonished by the extent to which the villagers share certain diseases and physical deformities, ranging anywhere from goitres to insanity. These are the result of a long continued practice of incestuous marriages, enforced by geography or tradition.

There is also such a thing as political incest, committed by an enforced isolation of a particular people from the rest of the world. The consequences of such a political incest may develop rapidly, and may take forms much more grotesque and disastrous than those of biological incest. The most recent and gruesome examples of this nature are not ancient history.

There may well also be a form of legal incest, the perpetuation and enlargement of particularly formalistic or even irrational practices among a given people for lack of fructification from the outside. But even short of grotesque deformities, a community's legal incest amounts to a stupefying self-restriction in the face of need for fresh and new ideas where such are readily available.

Since human ingenuity in a particular community is no greater than the aggregate of ingenuity of its leading men, it follows that when this ingenuity is exhausted, further cultural development is arrested. Hence, the more extended the area from which new ideas can be conceived, the greater is the likelihood to reach the most rational conclusions. Let us take an example from the field of law: When "A" city is perplexed about its juvenile delinquency problem, all attempted remedies having failed, it would be absurd for the city fathers to give up all hope for a solution. Instead, "A" city's council will shop around for ideas and examine what "B" city, once plagued by a similar problem, has done. A comparison of the legal (and extra-legal) remedies applied in both cities may hold the answer. And if nobody in the entire state has been able to find a solution, then law must cross state lines or even national boundaries, until the solution has been found, or all possible sources are exhausted.

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Perplexing problems lurk in all areas of law and public administration. Confinement to the few remedies known to any given community, and to the ideas of its limited number of leading citizens, would be legal incest with disastrous results. Our federal government has long been a pioneer in comparative law, and has utilized the ideas derived from a study of foreign legal systems. To refer to but one early example, in 1854, the President of the United States by Executive Document No. 68 published a report on *The Different Systems of Penal Codes in Europe*, prepared by H. S. Sanford, late Chargé d'Affairs of the United States at Paris. This report played a major role in the development of federal penal law. Recently many states recognized the advantages of comparative law and undertook and utilized extensive surveys of the experiences of foreign countries within particular fields of law.²

Unlike the chemist, the lawyer does not have a laboratory in which to test the success of his proposed remedies. Every attempted test might cost many lives and fortunes. On a large scale the consequences of a legal test series would be fatal to the public welfare and to the peaceful continuation of civic and political life. Thus, before putting an idea to a practical test in the community, is it not wiser to examine whether somebody else has had experience with the same idea and, if so, what the nature of this experience was? Comparative law, therefore, is the nearest substitute to a testing laboratory for the field of law.

For centuries lawyers and statesmen have practiced comparative law. The greatest legal systems known to history have been those which did not hesitate to incorporate the fertile ideas of foreign legal systems, e.g., the Roman law of the *praetor peregrinus*, Anglo-American Equity, and the Swiss Civil Code, to name but a few. Only the most conceited dictators and nationality-drunk legislators have ignored the experiences of other countries and relied on their own judgment and faculty of prediction solely.³

² E.g., *General Report of the Illinois Commission on Sex Offenders to the 68th General Assembly of the State of Illinois*, Springfield, 1953, with this reviewer's report on *Present Trends in Continental European Sex Crime Legislation*, Abstracted, p. 31, reprinted (mimeographed) Seattle, 1953.

³ E.g., the Legislative Commission for the Introduction of a Federal Code of Criminal Procedure of the German Reich, 1873, refused to listen to comparative law arguments on the question of the use of the jury, an institution with which the common law had gathered considerably more experience than the civil law. The commission report contained this reason: "The German people which now stands second to no other people in the world in greatness and in power, can not be satisfied to go the old and disreputable way of copying [legislation]. This is now irreconcilable with its greatness." Deutsches Reich, *Ämtliche Denkschrift*, etc., 21 *Goltd. Arch.* 40, 46 (1873).

As soon as the American people dropped the fetters of the Monroe Doctrine and began their way toward world leadership in civilization, they had to widen the horizon of their legal thinking. Today, more than ever before, we must have an understanding of foreign legal systems, simply for the purpose of getting along with the peoples with whom we are in daily communication. Leadership, however, requires more than that. A friendly advice as to law revision may be worth more than a hundred tons of relief butter. But such advice can come only from the well-informed, for occasionally well-meant advice may be tantamount to carrying owls to Athens. Knowledge of the affairs of the party to be advised is a *sine qua non* for the adviser. Again, comparative law, the rational study of foreign legal systems, is the proper means to the end. It was precisely this practice which made for the beneficial, successful and lasting spread of Roman law ideas over the entire known world 2,000 years ago.

Even more important than all this today is the practitioner's need for knowledge of rules of foreign law. Our assumption of peaceful world leadership is evidenced by our economic and cultural trade with foreign nations. To an extent never known before, American ships are trading in foreign ports, and foreign ships come to our ports. There is hardly a city in the free world which is not visited by American merchants, and hardly an American city is outside the orbit of foreign commerce. Dealings across national boundaries have ceased to be a rarity, even for the businessmen and attorneys of the hinterland. The offices in the coastal cities no longer are the sole centers for the conclusion of foreign contracts and the application of foreign law. Smith & Son, whose little shop only a generation ago supplied the local townspeople with kitchen implements, now ships its mass-produced quality products to Pakistan and Austria, to Portugal and Argentina.

Nor is our contact with foreign legal systems restricted to the commercial field. Our soldiers and tourists, technicians and merchants abroad can not help falling in love with the daughters of other nations. Domestic relations laws come into play, and all of a sudden the attorney in Hometown, U.S.A., is asked to untie a Gordian knot of American and foreign domestic relations laws, in order to facilitate a marriage, or to liberate an over-trusting client from a spider web into which he has been drawn unwittingly. The creation of airports, housing developments, pipe lines, wharves, industrial plants and other structures abroad calls for the application of foreign property laws, foreign laws of master and servant,

and so on. Even in cases where the final arrangements are left to foreign counsel, the American attorney needs some basic knowledge before he is ready to begin discussions with foreign attorneys. The list of examples could be extended. Suffice it to say that no part of foreign law is barred from entering the law office of American attorneys.

Up till now a rational solution of foreign law problems was hardly possible, except by engaging foreign counsel, or one of our few American experts on foreign legal systems, for the solution of even the simplest problems. The cost of such engagements was prohibitive to all but the wealthiest clients. More often than not a preliminary investigation of a general nature could have disposed of the problem.

Our literature on foreign and comparative law has been growing constantly. But even the wizard of legal bibliography could find references only by expending an enormous—and sometimes unwarranted—amount of research time. The vast riches of the English and American literature on foreign law were inaccessible and, thus, doomed to lie fallow. For years we have been waiting for somebody sufficiently skilled and courageous to undertake the Herculean task of making this immense literature accessible for everyday work. Here, finally, is the bibliography which not only makes the English-written works on foreign law available, but also takes some of the mystery away from the study of foreign law. By including all English-written books and articles in one well-organized bibliography, what was once scattered, inaccessible, remote and mysterious, has now become an easy working tool for the American attorney, administrator and scholar. With this guide, a once strange and closed field has been opened up. One can not help seeing the analogy to the task which the railroads have performed in opening up the vast riches of the huge American continent.

Dr. Charles Szladits, the compiler of this bibliography, is a mature scholar trained both in the civil and the common law. The author of a number of previous—and well received—books and articles dealing with comparative law, Dr. Szladits was the right man to accomplish the instant task. Not only is he equipped with the necessary knowledge, but also with the proper spirit. As Professor of Law at the University of Budapest, Hungary, he taught comparative and common law, instilling in his students the need for a wide horizon in legal thinking. Unwilling to submit to the political and legal incest of the new communist dictators of Hungary, Dr. Szladits was forced to leave his country and seek haven

in the free world. (Let us be grateful to the Hungarian communists!)

In years of painstaking work as a research associate of the Parker School of Foreign and Comparative Law of Columbia University, Dr. Szladits collected the almost 14,000 entries, books and articles, which make up his book. The collection is as complete as humanly possible,⁴ up to April 1, 1953, with a selection of important publications beyond this date, up to press date, September 1955. I understand that plans have been made to keep the collection up to date by the publication of periodical supplements.

Prior to the appearance of this book anybody who would have suggested that there might be over 5,000 books and articles on foreign law written in the English language, would have been ridiculed. It is astonishing to realize how much valuable material on foreign law we have available in our own language, and it hurts to think that most of it had dusted on the shelves, unnoticed and unnoticeable.

With the aid of this bibliography at his fingertips, most written accounts of foreign law are now no further away from every attorney than the closest law library with its periodical collection; and even remoter books and articles can now be conveniently ordered through inter-library loans from one of the larger law libraries.

The bibliography is arranged in a way which would please the most demanding scholars. The main body of the book is made up of the master index, containing all entries, and arranged in ten parts, two of which deal with general principles and with works on the method of comparative law and foreign research, the other eight corresponding to the main topics of law as known to the American lawyer. These parts are broken down into sections and subsections, making the finding of an entry on any particular subject a task accomplishable by a grade school student. Within the subsections books have been listed first, articles next, in alphabetical order according to author or country. Many of the important entries, as well as titles not sufficiently descriptive of their contents, have been briefly annotated by the compiler. Entries of particular importance are marked by asterisks. Since this index includes all books and articles in the English language dealing with systems of law "foreign" to our own, we find here also ample references to civil law systems of the English speaking world, or those of a semi-civilian nature, *e.g.*, Louisiana, Quebec, Scotland, South Africa,

⁴ A few oversights—not important enough to be listed here—have been called to the attention of the author in the hope that correction will be made in a subsequent edition, or in the supplement.

Ceylon. The main index is followed by a geographic index, listing all pages on which the laws of any particular foreign country (there are ten dozen) may be found. The last index, listing the authors, should be helpful to those who have acquired some familiarity with the names of the most reliable writers on foreign and comparative law.

The scholarly accuracy and practical usefulness of the work are matched by the clear and easy-to-read types, as well as the flawless type-setting to which we have been accustomed in the books of Oceana Publications. The binding is sturdy and august, as that of most law books.

May Dr. Szladits be congratulated on his magnificent contribution toward the development of legal literature, on his foresight and endurance in making accessible to all of us the literature on foreign law in our language. The Parker School of Foreign and Comparative Law deserves our commendation for sponsoring the right work of the right author at the right time.—It is certain that in the America of today no law library, no court and no law firm of any importance can afford to be without this work.

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