

BOOK REVIEWS

THE COMPLEXITY OF LEGAL AND ETHICAL EXPERIENCE:
STUDIES IN THE METHOD OF NORMATIVE SUBJECTS.
By F. S. C. NORTHRUP. Boston: Little, Brown and Company, 1959.
Pp. xvi, 331. \$6.00.

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The main thesis propounded by the author of this challenging book is the assertion that normative statements are capable of being proved right or wrong. If this proposition is true, the normative disciplines of law and ethics take on a scientific and cognitive character, permitting us to pass rational judgment on whether the fundamental legal norms and moral convictions of a given society merit the attribute of "good" or "bad." It is Professor Northrop's view that judgments of this character are possible and scientifically testable. Inasmuch as this thesis flies straight into the teeth of the philosophical theory and epistemology predominant in Anglo-American civilization today, Professor Northrop's book is bound to engender vehement controversy and perhaps even enmity. It should be emphasized at the outset, however, that regardless of how the individual reader reacts to the argument of Professor Northrop, everybody should concede that he courageously and unflinchingly faces a question which Aristotle in his *Nichomachean Ethics* described as the hardest that human philosophical effort is compelled to meet.

It is not possible for a reviewer to comment upon the cardinal propositions advanced by the author without first restating his basic line of reasoning. Inasmuch as Professor Northrop regards legal and ethical phenomena as complex forms of human experience, as the title of the book indicates, it is difficult to give a simple and succinct account of the essential elements of his theory. Prefaced by a caveat that the reviewer runs the risk of falling into undue generalization in undertaking this task, the attempt shall nevertheless be made.

Professor Northrop distinguishes among three layers of the law which in his opinion belong to the legal experience of all peoples and cultures. These three layers he denominates the positive law, the living law, and the natural law. The positive law consists of the statutes and judicial decisions of a particular jurisdiction. The living law is the "inner order" of a society or nation as reflected in its mores, legally relevant customs, and general value patterns. Natural law is the empirically verified theory of "first-order facts," which are defined as "the introspected or sensed raw data,

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antecedent to all theory and all cultures, given in anyone's experience in any culture." (p. 254).

Professor Northrop's criterion for judging the justice of the positive law of a society is the living law system of that society. Just positive law must conform to the living law norms of a culture. If it lags behind the patterns of value and basic conceptions of justice of a people, it is not only ineffective but cognitively bad. (p. 32).

Up to this point, the author's theory is essentially a restatement and amplification of the sociological jurisprudence of the Austrian jurist Eugen Ehrlich. But Professor Northrop is unwilling to accept a conclusion implicit in most versions of sociological jurisprudence, viz., the tenet that the relativistic cultural norms of a society constitute an ultimate standard for that society which is not susceptible of being judged by any yardstick or criterion of superior validity. One of the key notions in Professor Northrop's philosophy is his firmly-held idea that the justice of the living law of a people or nation may be appraised by reference to a standard of evaluation paramount to mores and cultural patterns. This standard of evaluation is the natural law. A law is good from the vantage point of natural-law jurisprudence if, in the words of Professor Northrop, it orders human beings "with respect to one another and nature in the light of a true, and as far as possible complete, knowledge of what men and nature are." (p. 11). This knowledge is made accessible to human beings by the experimentally verified findings of physics, biology, and other natural sciences, including psychology. Thus, in the view of Professor Northrop, nature as interpreted by science is the source of verification for a particular form of ethical and legal culture.

Upon first confrontation with this thesis, its generality and broad sweep may give pause to the appraising reader. In order to test the concrete implications of the theory, let us take the example of a society (such as ancient Greece) which resolves to exclude women from participation in the educational facilities on the assumption that women are the intellectual inferiors of men. If, in the light of the verified findings of biology and psychology, this assumption is proved to be false, this particular norm of societal life should be branded as "wrong" or "unjust" under Professor Northrop's criterion. Let us suppose, however, that this facet of the society's living law can also be sustained on the consideration that, due to a low state of technology and productivity, the educational facilities are so limited that selectivity in admission is imperative and restriction to males supportable on the ground that there is an important place for women in the home. Would the injustice of the arrangement from the natural-law viewpoint entirely override and eclipse the possible reasonableness of the regulation from the sociological point of view?

We might take as a second test example the living law of a society which undertakes to segregate two races living under the same sovereignty for two reasons: first, because there exists a strong conviction that one of

the two races is biologically and morally superior to the other, and secondly, because it is believed that the mutual feeling of antagonism between the two races is so strong that only segregation can suppress or alleviate the friction. If science clearly establishes the falsehood of the first proposition, can the measure be reasonably upheld on the second ground? Professor Northrop's book does not contain an explicit answer to the problem posed by these two test cases. He might, however, argue with a good deal of validity that the connection between scientific truth and social expediency is so substantial that the victory of the truth will tend to bring about a readjustment of the living law. In other words, he might suggest that a shattering of the belief in the superiority of the male sex or of a particular race would go a long way towards a remodeling of the legal institutions of the society concerned in the direction of greater equality. Whatever the correct answer to the question might be, the relationship between justice and sociological inevitability in human social and legal ordering would appear to be one requiring thorough exploration. Insofar as the basic principle is concerned, this reviewer agrees whole-heartedly with Professor Northrop that factual truth and normative "rightness" are closely connected (even though the link is not one which can be established under the laws of formalistic logic).

The study of Professor Northrop's book suggests another query with broad ramifications. Would Professor Northrop approve or disapprove of an experimental attempt by the positive law to change a living law system comporting with the best scientific thought of its age, such change being motivated by the belief of high-minded reformers that the human character is not impervious to improvement and perfection, and that the scientific "natural law" of the future will sustain the experiment as a vindication of hitherto unverified potentialities of human nature? Although this reviewer does not believe in the unlimited pliability of the human physical and psychological constitution, he is not convinced that a hierarchy of legal sources which puts the positive law of the state at the bottom of the legal scale can be proclaimed as an absolute verity. It would seem that no *a priori* reason can be conceived why a reformist positive law may not, under certain circumstances, attempt to keep a few steps ahead of the living law, even though the living law may not do violence to the dominant scientific thought of the age.

The foregoing reflections bear only upon the central thesis of Professor Northrop's work. Many other ideas and thoughts, cutting across broad areas of human learning, are put forth by the author in the course of his exposition. For example, he sets out to demonstrate the inadequacy of the positivistic philosophy of law in the light of the unrelatedness of this approach to the most burning problems of our epoch. He also points up, in a very convincing way, the manifold ties that exist between ethical-legal doctrines and the theories of the physical universe held by an age (the dependence of the Kantian moral and legal philosophy upon Newton's

physics being a textbook example of such a link). He lays open certain similarities and divergences that can be discovered between ethical and legal thinking in the occidental and oriental countries. He launches upon a scouting expedition designed to explore the possibilities of an effective international law of the future. Above all, he endeavors to show how certain legal doctrines held in this country and given expression in some significant court decisions are predicated upon certain currents of general philosophical thought.

In this last-mentioned area, this reviewer has not always become persuaded by Professor Northrop's line of argumentation. Professor Northrop seems to hold, for instance, that a legal positivist who believes with Austin that the legislative command of a unitary sovereign constitutes the supreme source of law will consider the mandates of a constitution as exhortations of a moral character rather than legal precepts with obligatory force. While this position has to some extent been advocated by the positivistically-minded Judge Learned Hand, it is probably not a necessary concomitant of this type of legal thinking. A written constitution can very well be regarded by a legal positivist as an emanation of the sovereign power of the people which is superior to ordinary legislative law because of a specific command of the constitution-making power. This reviewer also disagrees with Professor Northrop's assertion that the Supreme Court's decision on school segregation can be justified only by an appeal to the natural-law philosophy of John Locke and Thomas Jefferson. (p. 217). It would seem that this ruling can be defended by a confirmed legal positivist as an interpretation of the equal protection clause of the Constitution which does not offend against the letter or spirit of this particular positive mandate. Turning to another area of Professor Northrop's discourse, there would appear to be grave doubt whether Hans Kelsen's *Pure Theory of Law* can be legitimately classified as a version of "ethical jurisprudence" even with the substantial qualifications which Professor Northrop attaches to this label in his discussion of Kelsen's views. (See pp. 48, 66-68).

Professor Northrop's book is composed, in large part, of articles previously published elsewhere and therefore does not constitute a systematic and organic whole. One will find many repetitions and duplications in the author's argumentation and exemplification. This, however, detracts very little from the great value and significance of the work. Just as a fine symphonic theme does not suffer from recurrent repetition, an original and persuasive thought may gain in emphasis and incisiveness by being restated several times. Nonetheless, some of the high-frequency repetitions in the volume might have been avoided.

In its overall conception, the book should be welcomed by all thinkers and jurists who are interested in overcoming the sterility of some of the legal philosophies in vogue in large areas of the contemporary world. It is an essentially constructive work, conceived by its author in an endeavor to break the ground and furnish building stones for a better and more

satisfying ordering of human relations. Inasmuch as it is difficult to visualize a more important task for the social sciences of our day, this is perhaps the highest tribute that can be paid to a book in this domain of human thought.

SELECT CASES IN THE COURT OF KING'S BENCH: EDWARD III (Vol. V). G. O. SAYLES, EDITOR. London: Bernard Quaritch. 1958. Pp. cliv, 154. \$10.00.

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This is the fifth and final volume of Professor Sayles's monumental work on cases in the King's Bench during the reigns of the first three Edwards (1272-1377). The editor has been about his task for thirty-four years, and his introductory essays, appendices and marginal notes give us the advantage of those long years of learning and experience. In this volume, cases from only the first fourteen years of Edward III's fifty-year reign are presented, but the introductory essays, as in the previous volumes, consider the entire period covered by the three Edwards. They are devoted to three subjects: the minor officials of the court, the King's representatives before the court and a study of the place of equity in the King's Bench and Chancery to the mid-14th century.

The late 13th and early 14th centuries were a crucial time in the development of the legal profession. By the mid-13th century the legal profession had, in a small way, begun to take on some of its modern qualities. Though in very many instances litigants were not represented by professional counsel during the reign of Edward I,¹ in the second and third decades of the 14th century professional representation became more and more the practice. There were pleaders on retainer, and, as early as 1293, a suit to recover a retainer fee. The editor also notes judicial punishment for malpractice and abuse of the judicial process; such punishments were more severe for professional than for nonprofessional malpractice. There is considerable evidence of corruption in the staff of the courts. The clerks of the court frequently acted as attorney for litigants and, in their zeal to serve the interest of their clients, they sometimes doctored or falsified a record.² Nor was the period free of severe corruption in the dispensation

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¹ In 1297 the Exchequer forbade the use of professional pleaders and litigants had to appear in their own behalf. One wonders whether the early Exchequer may have been motivated by some of the same notions as motivated the American colonial governments which laid down similar rules.

² In the trials for corruption of this sort, juries were drawn from the peers of the accused—from his fellow practitioners in the case of an attorney's trial. See pp. lxxv-lxxvi, for a case of malpractice by an attorney acting for a dead client (1317); pp. 7-8, for a clerk's alleged forgery of court records (1327); p. 65, for a sheriff's clerk's forgery of an assize of novel disseisen (1331); pp. 27-28, for an imputation that a sheriff had accepted a bribe (1328); and pp. 95-96, for a city clerk's forgery of plea rolls (1337).

of justice: in 1289 all of the judges of the King's Bench and all but one judge of the Common Bench were removed for corrupt practices.

By far the most interesting chapter in the introduction is that entitled "Equity in King's Bench and Chancery." Professor Sayles's conclusions are not new, but they are spoken with authority. He skillfully avoids one of the principal pitfalls into which so many others have fallen—that of looking at institutions of the 13th and 14th centuries through present-day, rather than contemporary, eyes. He stresses at the outset that the King's courts had as their primary function the protection of the King's interests, and this is especially significant when it is borne in mind that the King himself was one of the principal litigants in his own courts. He also stresses the bureaucratic outlook of the chancellors and their clerks. Through his realistic approach, the editor parts company with the traditional view, which overplays the significance of the *in consimili casu* clause of the Statute of Westminster II.³

Professor Sayles is at his best in putting straight (with all the authority at his command) some misconceptions of the early development of the Chancery.⁴ In the 14th century Chancery jurisdiction was not "equitable" in the modern sense. Like the King's other courts Chancery merely applied the law of the realm. Since the King himself was often one of the principal litigants, justice was sometimes a hard commodity to come by; but that the King was subject to law was clearly recognized in a 1329 case.⁵ By a petition of grace to the King or the King in Council an aggrieved litigant would get a proper hearing according to law or, as it might be put in a writ, "according to the law and custom of our realm, with the grace that we can confer in due form." Such a petition did not seek an equitable remedy as we know it (though the petition might ultimately find its way to the chancellor for action) but rather the privilege of having a dispute determined by the rules of law, free of any force or duress that might have been exercised by the King, his privies, or other powerful persons. Contemporary thought did not contemplate courts of law that dispensed *law* and a court of Chancery that dispensed *more than law*. "The contrast ever present in men's minds was between common law and royal prerogative." (p. lxxxiv). That a petition directed to the King or to the King in Council might be sent to the chancellor was an administrative rather than a judicial course of events.

"The real difficulty arises," our editor notes, "when we try to find cases in which it is shown beyond doubt that redress could not be obtained at common law because it was deficient in its content." (p. lxxxviii). The

³ For similar approaches, see Dix, *Origin of the Action of Trespass on the Case*, 46 YALE L.J. 1142 (1937); Plucknett, *Case and Statute of Westminster II*, 31 COLUM. L. REV. 778 (1931); Plucknett, *Case and Westminster II*, 52 LAW Q. REV. 220 (1936).

⁴ Some of these misconceptions are suggested in WALSH, A HISTORY OF ANGLO-AMERICAN LAW 72-77 (3d ed. 1932).

⁵ Exchequer Plea Roll, 56, 3 Edw. 3, m.22d.

Chancery did not fill in such lacunae and the records, therefore, reveal no such cases. When the common law did not supply a remedy, the customary procedure was to apply for a legislative remedy through the King in Council. The Chancery, a typical bureaucracy, would, in this period at least, not consider initiating what might be regarded as a *new* writ without first consulting the Council: "the chancellor was the executive agent of the council from which he derived authority." (p. xciii). The proper means of changing or modifying common law was by statute—that is, an act of the King in Council—and to contemporary minds and courts, there was nothing whatever unusual in this.⁶

In closing this chapter, Professor Sayles remarks that: how Chancery "came to be more than a court of common law has yet to be told." (p. xcvi). But he succinctly points out that up until the mid-14th century, and probably for some years thereafter, the Chancery differed little from other courts or quasi-courts of the time; it did not originate practices or give remedies which are now thought of as essentially a product of the Court of Chancery. In the mid-14th century the Court of Chancery exercised only a limited common-law jurisdiction. What we think of today as equitable relief was available only in the more ancient courts. Writs and bills were presented to all the courts and petitions to the chancellor were relatively few. The *subpoena* which had been known in common-law courts since the 13th century did not originate in Chancery. Nor had justices of the King's Bench hesitated to put witnesses and parties on oath in civil cases, "examining them and reaching judgments on the facts thus elicited." (p. xcv). The situation was indeed a far cry from that which we are sometimes led to expect by those who reconstruct late medieval law on a modern pattern.

Professor Sayles's selection of cases gives a lively insight into conditions of life in early 14th century England. As mentioned above, the Crown had considerable problems with respect to the orderly administration of justice through breaches of duty by officers of the courts. But even when the officers were ready and anxious to do their duty, popular lawlessness sometimes made it difficult for their duties to be carried out.⁷ Thus, in 1328 we find the Sheriff of Wilshire responding to the King's instructions to deliver a prisoner to the King at York by informing the King that he dared not attempt to deliver the prisoner since (as we may infer) the sheriff would have to pass through country where the prisoner's friends might attempt to release him. The sheriff, therefore, proposed that he bring the prisoner through his own bailiwick and through Berkshire to Oxford and there deliver him to the King's marshall for transportation to

⁶ See 1 LONGMAN, THE HISTORY OF THE LIFE AND TIMES OF EDWARD THE THIRD 50 (1869).

⁷ Pp. 34-41. The "turbulent spirit of the times" (1331) was evidenced by armed men threatening judges and sometimes seizing them and holding them for ransom. The nobles, instead of aiding the sheriffs in punishing the lawless element, "kept these robbers in their pay and protected them." 1 LONGMAN, *op. cit. supra* note 6, at 51.

the King. The King apparently approved of this arrangement and the prisoner was so delivered, drawn and hanged for counterfeiting the King's seal. In the same year there is another instance of the lack of local cooperation in enforcing the law. The Statute of Winchester (1285) provided that when the people of the countryside failed to do their utmost to apprehend felons who had committed offenses in their neighborhood, the inhabitants of the area were liable for the loss incurred. Relying on this statute, two merchants who had been robbed of a large quantity of merchandise on the highway sued out a writ to recover the value of the goods against the people of the neighborhood who had allowed the thieves to escape. Probably in order to protect their friends and relatives who had committed the offense, the people presented in their defense an elaborate argument to the effect that the merchants were in collusion with the robbers who had, in fact, since been apprehended and convicted. All this seems to have been made up out of whole cloth, for the merchants were ultimately successful and were instructed to sue in Chancery for their execution.

There are also some instances which indicate that the sheriffs were quite dilatory in executing and returning the King's writs, presumably out of fear of or friendship toward the person on whom the writ was to be served. In 1327, the King's order of distraint went out against the Chancellor and Scholars of Cambridge University, but, in spite of successive orders to the sheriff at each term of court, the order was not finally executed, if then, for an entire year.⁸ Again in 1330, a writ to the Archbishop of York bearing implications of treason was not promptly served; the King ultimately dropped the matter eight months later.⁹

Several cases throw some light on the relationship between the law of the realm and that of the church. A plea of clergy was at this time of no assistance to a first offender if the ordinary refused to claim the prisoner.

⁸ Nor was the chancellor cooperative in obeying the King's writ, and his sureties had to surrender their pledges when he failed to appear. His failure to appear when initially served occasioned the order of distraint.

⁹ Pp. 43-45. In 1329 and 1330, Roger Mortimer, Earl of the Marches of Wales and the principal power behind the throne of young Edward III, spread a rumor that Edward II was still alive and held captive in the Corfe Castle. Mortimer's aim was to induce his enemies to attempt Edward's restoration and thereby commit treason. The strategem worked against the King's uncle, Edmund, Earl of Kent, who was hastily tried and executed. The Archbishop of York was also apprehended in seeking the aid of Donald, Earl of Mar, cousin of the young David II of Scotland, to release the allegedly captive King. After Mortimer's fall and execution, Edward III pardoned the archbishop and others who had been parties to Edmund's foolhardy scheme.

In 1334 the archbishop was again called, this time to account for consecrating a bishop without the King's consent. At the King's enraged behest the council devised a writ of *venire facias* by which the archbishop was required to appear before the King to answer for his act. The archbishop appeared by his attorney and argued that the writ was improper in that it ordered the archbishop to come before the King in a manner that was not customary, "in contravention of the law and custom of the realm." The King's counsel apparently agreed but argued that "in a novel case novel redress has to be applied." Either out of deference to the archbishop or as a result of the appealing argument of his attorney, the King pardoned the archbishop for his offense. Pp. 77-79.

(pp. lxiii, 58). On another occasion the court ignored the plea until after conviction. (p. cxxxix). In 1333, a defendant successfully urged the defense of excommunication which was to survive well into the 19th century. The defendant was able to prove that the plaintiff had been excommunicated and it was not until two months later (when the plaintiff had been absolved) that the trial could proceed. In 1331, three men of London were tried for witchcraft, the jury finding that they were attempting by sorcery to cause the death of Robert of Ely, one of the King's ministers, and of his mother, Margery. But the Council found that since they were unsuccessful in their attempt, no offense had been committed against the law of the realm—and the wizards were turned over to the Bishop of Winchester for proper proceedings under the canon law.

From the standpoint of the conflict of laws clearly the most interesting case in the collection is one of 1331. At the King's behest Howel ap Gruffyd, a Welshman, brought an appeal of felony against William of Shalford, whom Howel accused of counselling and encompassing the death of the King's late (but little lamented) father, Edward II. William was accused of being a party to the conspiracy in connection with which Roger Mortimer and a number of his confederates had recently been executed. A day was set for trial by battle,¹⁰ but Howel did not appear until two days later, explaining that he had become ill on his way from Wales and had been unable to arrive on time. The matter was then adjourned to a later date, at which day William moved for a nonsuit on the ground of Howel's failure to appear at the originally appointed time. The latter did not deny the effects of the law of England in this regard, but argued that since he was Welsh and the offense charged had occurred in Wales, the law of Wales should apply and the trial should be conducted there. It was concluded that certain matters should be adjudged according to the law of England and certain other matters under the law of Wales and therefore the matter could not "be brought to final issue in the king's court" in England. Both parties were, therefore, to go *sine die*.

The most protracted of the collected cases is one involving an action of assault and false imprisonment against a Cambridge University master by one of his more troublesome students. In 1292, Edward I granted a charter to the Chancellor, Masters and Scholars of Cambridge University, providing that if a layman should injure a clerk in the University, the offender should be arrested and imprisoned until he should make reasonable compensation to the clerk. Similarly if a clerk should injure a layman, the clerk should be imprisoned in the town until the chancellor claimed him.¹¹

¹⁰ It is not clear why the King should have chosen to try William by battle rather than by a jury of his peers, except perhaps that there might have been some doubt that a jury would have convicted him.

¹¹ In 1327 there had been some contest as to the legality of a charter granted by Edward II to the Chancellor and Scholars of Cambridge with respect to jurisdiction in comparable cases of trespass, but the record here offered does not indicate whether the case ever came to trial. Pp. 13-14.

In November 1335, William of Willingham, a clerk in the University, committed an assault on a fellow clerk for which the then chancellor, Henry of Harrowden, had William imprisoned, after what seems to have been a fairly fierce scuffle between them. A year later William brought an action of trespass against Henry claiming damages of one hundred pounds. The master, purporting to rely on the charter of 1292, failed to appear, William was awarded his damages, and the master was promptly locked up in the Marshalsea of the King's Bench until he made satisfaction. Master Henry then presented his bill of exceptions to the record. Much inconclusive argument followed. In October 1338, William sued out execution against Henry to recover his judgment. In order to prevent William from prosecuting his case, Henry had the bedell of the University summon William before the chancellor, Henry's successor in that office. That stratagem was temporarily effective, though William succeeded shortly thereafter in having Henry fined for contempt for his obstruction of justice. In November 1338, the master finally obtained a writ to the King's Bench enabling him to be released on mainprise in order to pursue his writ of error. The proceedings were delayed until late in 1339, since the justice who sealed Master Henry's bill of exceptions failed to appear during three successive terms of court to prove his seal, despite the fact that he was consequently distrained for contempt. Finally, when all the parties appeared in court in Michaelmas term 1339, the justice denied that he had sealed the bill of exceptions and the master was again put in the custody of the marshal. Subsequently the plaintiff came into court to announce that he had received satisfaction for his damages, and Henry was fined and released. Though Master Henry had tried to bluff his way through a conflict with a difficult student, it says something for the English law of the time (slow in functioning though it was) that the master was unable to succeed when he had no authority to act as he did, regardless of unquestionable provocation. One must also admire the student's persistence.

The English translations of the cases appear on pages opposite the original Latin text. The translations seem to have been rendered with great accuracy.¹² The type is that customarily used by the Selden Society, and the physical quality of the book, like the quality of its contents, meets the high standards that we have come to expect of all Selden Society publications.

¹² What the editor translates as "these presents" at pp. 6, 60, 61 & 99 is most varied, and at p. 88, the words seem to be supplied. At p. 62 n.2 the editor surely means "22 Mar." rather than "22 Apr." and at the top of p. 115 "Cambridge" rather than "Canterbury" must be intended.

BOOK NOTE

COMPARATIVE LAW. CASES—TEXT—MATERIALS. By RUDOLF B. SCHLESINGER. Second Edition. Brooklyn: The Foundation Press, Inc., 1959. Pp. xliv, 635. \$11.00.

GUIDE TO FOREIGN LEGAL MATERIALS. FRENCH, GERMAN, SWISS. BY CHARLES SZLADITS. (Parker School Studies in Foreign and Comparative Law). New York: Published for the Parker School of Foreign and Comparative Law, Columbia University, by Oceana Publications, Inc., 1959. Pp. xv, 599. \$13.00.

Imre Zajtay †

The interest in the study of foreign and of comparative law has everywhere greatly increased since the end of World War II. To a great extent this is due to the realization of the utmost importance, in the field of private international transactions as well as in the various movements for international cooperation, of valid information on foreign law and on the method and reasoning of foreign lawyers.

There are few countries where the value of the study of foreign and of comparative law has been better understood than in the United States. The great importance attached to such studies in this country has been clearly declared by outstanding American lawyers.¹ It has also been evidenced by the considerable intensification of comparative and international law studies in several American law schools and, last but not least, by the impressing number of valuable works published in these fields during the last few years. To these valuable works belong the two volumes under review.

Their authors need not be introduced to the American nor, as a matter of fact, to the European reader. The first edition of Professor Schlesinger's *Comparative Law* (1950) was reviewed in some fifteen law reviews published in America, and as to the European echo of this work, reference need only be made to the intensive review written by Professor André Tunc.² Dr. Charles Szladits is well known both to American and to European comparative lawyers especially for the lasting service he rendered with his *Bibliography of Foreign and Comparative Law* (1955).³

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¹ See Yntema, *Foreword to* LAWSON, A COMMON LAWYER LOOKS AT THE CIVIL LAW (1955); Re, *Comparative Law Courses in the Law School Curriculum*, 1 AM. J. COMP. L. 233 (1952); Rheinstein, *Teaching Tools in Comparative Law*, 1 AM. J. COMP. L. 95 (1952).

² 2 REVUE INTERNATIONALE DE DROIT COMPARÉ 802 (1950).

³ Reviewed by Professor René David in 7 REVUE INTERNATIONALE DE DROIT COMPARÉ 892 (1955).

I

The task of the author of any casebook is a difficult one; it is particularly so if he has to deal with so boundless a subject as comparative law. At present two leading works exist and are used in this field in the law schools of the United States: one is the book under review, the other is *The Civil Law System* (1957) by Professor Arthur von Mehren. They differ from each other in their scope and method; in the analysis of their differences the reader will find many points of interest. An endeavor "to compare" may lead the reader also to observe that neither of these two excellent American teaching tools contains a "General Part" (notion, method, history, values of comparative law, and the like) which seems to have been the main object of the treatise of Gutteridge⁴ and is an essential part in the treatises of David,⁵ of Arminjon, Nolde & Wolff,⁶ and of Schnitzer.⁷

I do not intend to repeat here the laudatory comments received—and well deserved—by the first edition of this casebook. The years which followed the first edition were, in Professor Schlesinger's own words, not years of "complacent satisfaction" but of searching re-examination. The result of this continued effort can be seen at various points of the new edition. One of the most important improvements is certainly the considerable increase in those historical materials which are indispensable to an understanding of foreign legal institutions.

From the rich content of this work two chapters merit particular mention: those entitled "Foreign Law in American Courts" (p. 31) and "The Force of Precedents in a Code System" (p. 287). Their well-selected materials provide, I have found, valuable help for a course in comparative law.

II

The work of Dr. Szladits is not a bibliography: it is considerably more. The author knows that a mere bibliography of French, German or Swiss law is not sufficient to serve as a guide to the Anglo-American lawyer who intends to do research in one of these civil law systems. The first condition of any useful research in foreign law is a certain knowledge of the role and the relative significance of the various *sources of law* in that particular system. This work provides that indispensable information.

The volume is divided into three books dealing separately with French, German and Swiss law. Each book is again divided into two parts: a description and analysis of the sources of law (legislation, customary law, case law, doctrinal writings, and other possible sources such as equity or natural law concepts) and a bibliographical description of the repositories of law (collections of laws and commentaries, collections of reports, en-

⁴ COMPARATIVE LAW, AN INTRODUCTION TO THE COMPARATIVE METHOD OF LEGAL STUDY AND RESEARCH (1946).

⁵ TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL COMPARÉ (1950).

⁶ TRAITÉ DE DROIT COMPARÉ (1950).

⁷ VERGLEICHENDE RECHTSLEHRE (1945).

cyclopaedias, law dictionaries, doctrinal writings). In addition to his scholarly comments the author adds useful explanations, wherever necessary, on technical points such as the citation of references in French works and periodicals, the various indexes in German reports, and the like. Each book contains also a very complete list of the most frequent legal abbreviations which—particularly in German law—are widely used in judicial decisions, review articles and even in manuals, and which sometimes render their reading rather difficult.

The strength of the work is that it covers practically every field of the law including such subject matters as jurisprudence, legal history and ecclesiastical law. Moreover, the wealth of his bibliographical knowledge has enabled Dr. Szladits to represent in his book the general framework of the three legal systems.

The last chapter contains a comparative analysis of the practical difficulties which the common lawyer has to face when working within the civil law area. (p. 509). The reader will follow with interest the author's developments on the different authority and use of source materials in French and German law, on the reading of decisions, etc.—two carefully established indexes (Authors and Titles; Subjects) contribute to facilitate the use of this volume.

Both in scholarly and in practical research Dr. Szladits' *Guide to Foreign Legal Materials* will render precious services to the law teacher, the attorney and the law librarian.