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The Approach to German Law

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THE APPROACH TO GERMAN LAW

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Two weeks ago you had the privilege of listening to a masterly exposition of certain basic features of the law of France. I have been assigned the parallel task of indicating to you approaches to the other principal branch of the Civil Law, the so-called Germanic laws.

As the prototype of that group, I shall use the law of Germany or, more specifically, the law of the Federal Republic of Germany. The relation between the law of that country and the other Germanic laws is not entirely the same as that between the law of France and the other Romance laws, all of which consist of legislative enactments consciously based upon the model of the laws of France. Of the Germanic laws only a few constitute planned receptions. German laws and institutions were intentionally adopted in Japan and, through Japan, in Korea. The German Civil Code also served as the model for the modern codes of China and Greece. The Swiss Civil Code was taken over almost literally in Turkey. Austrian models have been influential in the Balkans. But the kinship between the legal systems of the German speaking countries, *i.e.*, Germany, both West and East, Austria and Switzerland, is due to the community of language, history and tradition. This common tradition has had two roots, the customs of those Germanic peoples by whom Western and Central Europe was settled, and the Roman Law as it was rediscovered in the late Middle Ages.[1]

Both these roots have also been those of the laws of France and the other countries of Western Europe. Varying in detail from place to

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1. Of the numerous treatises on German legal history, only one of the older ones is available in English translation, viz., HUEBNER, HISTORY OF GERMANIC PRIVATE LAW (F. S. Philbrick transl., as vol. 4 of Continental Legal History Series, 1918); the history of German law as a part of the general legal history of Europe is treated in GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY (Continental Legal History Series, vol. 1, 1912) and in THE PROGRESS OF CONTINENTAL LAW IN THE NINETEENTH CENTURY (Continental Legal History Series, vol. 10, 1913).

A concise scholarly survey is given by Rabel, *Private Laws of Western Civilization*, 10 LA. L. REV. 1 (1949).

In the ENCYCLOPEDIA OF THE SOCIAL SCIENCES the following articles can be found: Kuenssberg, *Law, Germanic*, (vol. 9, p. 235, 1933); Declareuil, *Civil Law*, (vol. 3, p. 503, 1930); Lobingier, *Code Civil*, (vol. 3, p. 604, 1930); Lobingier, *Codification*, (vol. 3, p. 606, 1930); Hedemann, *German Civil Code*, (vol. 6, p. 634, 1931).

On the role of Roman Law, see KOSCHAKER, EUROPA UND DAS RÖMISCHE RECHT (2d ed. 1958), a masterly book, an English translation of which is urgently needed. A classic on medieval Roman Law is VINOGRADOFF, ROMAN LAW IN MEDIEVAL EUROPE (2d ed. 1929).

place, the amalgam of Germanic medieval customary laws and techniques of Roman jurisprudence constituted that great body of the Civil Law which was split into its two modern components only by and since the codification of the private law of France in 1804. By this event the private law of France was transformed from a plurality of local variants of the basically uniform Civil Law into a new, great, self-sufficient unit, the cultivation of which came to be centered around the Code. In Germany, national codification did not occur until 1896. During that period of almost a century, the old-style Civil Law continued in Germany. It was exposed to influences which caused the national codification of Germany to differ from that of France in some important respects.

Since the two systems have had such a long period of common development, since even after the French codification mutual influences did not cease to operate, and since politically both countries have come to be democratic republics, I can limit myselft to those aspects of the law of Germany which significantly differ from French Law. Let it be pointed out, however, that one difference in the political structure of the two countries has had much less influence upon Germany's lawyers' law than an American lawyer might expect. France is organized as a strictly centralized country. There is only one government, that in Paris. When Germany was re-unified as a nation in 1871, the American pattern of federalism was followed and the constituent states were preserved, each with its own government. The federal pattern was continued in the reorganization of Western Germany after World War II, so that presently eleven state governments are operating in addition to the federal government in Bonn. The division between federal and state law in Germany is different, however, from that in the United States. In Germany, practically all private law, together with procedural law and criminal law, *i.e.,* the bulk of the lawyers' law, is federal law. The uniform federal law is applied by state courts with one exception. The court at the top of the judicial pyramid, the *Bundesgerichtshof,* is federal, and as a general supreme court of, as we would say, law and equity, maintains uniformity throughout the fields of private law, criminal law and procedure. It is a busy court with a large number of judges. At one time there were about 150; today there are about eighty. Ordinarily the judges sit in panels of seven, but when one panel wishes to overrule a decision rendered by another, the presiding judges of all panels have to convene. From this observation you can already conclude that precedent is important in the courts of Germany.

While the *Bundesgerichtshof* is the highest German court in which civil and criminal litigation is handled, it has, just like the French *Cour*

de Cassation, no regular jurisdiction in matters of public law. However, the line between private law and public law is not drawn at the same point. Litigation arising out of government contracts is a matter of public law in France; in Germany, however, the government is not thus privileged and any litigation arising out of a government contract is handled by the civil courts just like litigation between private parties. The same principle applies to claims for torts committeed by public officers in the course of their official activities. The state is liable but the litigation is handled by the civil courts. These courts cannot decide, however, matters of constitutional law. The mode of handling such problems in Germany is different from that of both France and the United States. In France, as you heard from Professor Lawson, the constitutionality of a statute cannot be questioned in any court. In the United States, I hardly need to remind you, the question of whether or not a piece of paper purporting to be a statute really is a statute is decided as an incident of each case in which it happens to be relevant. Review of the constitutionality of legislation rests with the regular courts and, in the last instance, with the Supreme Court of the United States. Since that Court has withdrawn almost completely from the exercise of jurisdiction in ordinary matters of law and equity, it has in reality become the constitutional court of the United States, and there no longer exists a judicial guardian of the uniformity of ordinary law.

In Germany the exercise of constitutional control has been taken from the regular supreme court of the nation and handed to a special Constitutional Court. Whenever there arises in a case a problem of constitutional law, especially of the constitutionality of a statute, the court must certify the case to the Constitutional Court, which thus constitutes the most august body of the judiciary. It is a small body composed not only of professional career judges, but also of law professors and other "jurists" of high standing who are elected to the Court by the federal parliament. These latter members, while being judges, are thus also men enjoying the confidence of the political party by the vote of which they have been elected. In this respect, as in that of constitutional structure, Germany differs from France. As far, however, as the lawyers' law goes, the differences are by no means so considerable as those between the Civil Law and the Common Law. They are not unimportant, however, and in the main they are due to the fact that German private law remained uncodified almost a century longer than French law.

The Systematic Character of German Law

The scholars of the Pandectist school ascribed primary importance to the building of a meaningful system of classification of the legal

phenomena, *i.e.*, a system which would not only, like an alphabetic arrangement, facilitate the search for the established law in point, but which would by itself help the lawyer find the right answer to new problems. That a "good" classificatory arrangement can be more than a framework for ready reference is strikingly illustrated in natural science. Information concerning the various kinds of matter in the world can be arranged in many ways, for instance under the heading of every single material to which it refers, and these headings then can be arranged alphabetically from aluminum to zinc. Such an arrangement is quite useful to one who wishes to obtain information on the characteristics of any particular mineral or chemical. But entirely new insights not only about particular species of matter but about matter in general emerged when all matter was divided into elements and compounds, and the elements were arranged according to their atomic weights. The mere fact that the elements were arranged in this periodic system of Mendeleyeff provided information which had not previously been available. It became known that an element's position in the system determines its physical and chemical characteristics. It became possible from an element's position to predicate characteristics which had escaped observation, to fill gaps in the system by the discovery of hitherto unknown elements, and to describe their characteristics accurately even before their discovery. Atomic weight turned out to be determined by the composition of an element's atomic nuclei, by which in turn, that element's physical and chemical characteristics are determined. Classification of the elements by atomic weight thus constitutes classification by their most essential aspect. It is far more useful to the scientist than an alphabetical arrangement or any other that is based upon criteria of an equally unessential character.

The Contribution of the Scholars

The material with which the man of the law has to work is constituted by controversial situations of social life and the rules which the legal order holds ready for their solution. Since both the controversies and the rules pertaining to them belong to the realm of ideas rather than that of physically observable objects, they are less easily ascertained and defined than are elements, plants or physical processes. The first task of a science of law is thus the observation and definition of the controversies and their rules of solution. That task is one of great difficulty. The quality of its solution is closely tied to the quality of performance in the law man's second task, *i.e.*, that of finding the "best" classification for the arrangement of the innumerable life controversies with which

they have to deal. In a law which is dominated in its development by professors we shall find a greater approximation to the highest insight yielding system of classification than in a law dominated by judges, attorneys, conveyancers, priests, prophets, or administrators.

Ever since its rediscovery in the late Middle Ages, the law of the Roman *Corpus Juris Civilis* constituted the subject-matter of professorial concern, first in the school of Bologna, then, in the 16th, 17th and 18th centuries, of the legal scholars of Western Europe, especially of France and the Netherlands. The classificatory work of the scholars, particularly Pothier, constituted an essential basis for the arrangement of the materials in the French Civil Code of 1804. But that arrangement, while constituting an enormous improvement over that of the *Corpus Juris* or the collection of French customary laws, the *coutumes,* is crude when it is compared with that of the younger Civil Code of Germany.

The 2,281 articles of the Code Napoleon are divided into three books, of which 509 constitute the First Book on Persons, 195 the Second Book on Goods and the Various Modes of Property, and 1,571 the Third Book on Manners of Acquiring Property. The subject matters respectively dealt with in Books I and II are held together by intrinsic connection and are of fairly homogeneous character. The Third Book, however, contains a hodgepodge of such heterogeneous topics as torts, sales, matrimonial property rights, wills, mortgages, the statute of limitations, the general rules on contracts, etc.

Germany gave her legal scholars almost another century for work preparatory to codification, and during that period the German professors paid intensive attention to the problem of classification and arrangement. In consequence, the draftsmen of the Civil Code could resort to a "system" that is not only more elaborate than that of the French Civil Code but also more useful in the sense of yielding more information through the simple device of relative place. The system is also more complicated in the sense that one has to have studied it thoroughly in order to be able to use it. From the mere reading of the Code, a foreign lawyer will seldom be able to deduce the solution of an actual case. For him, however, who has grasped that system, it constitutes an invaluable source of insight and information.

The essential feature of this "system" of the German Civil Code is the arrangement of the material from the specific to the more general and on to the highest possible generalization. A concrete example will help to illustrate this cryptic statement. Let us assume that in an action for the price of an automobile the buyer pleads the following defenses: that the car tendered by the seller was defective; that upon his demand

for delivery of a properly functioning car the seller has done nothing; that the alleged contract had never been concluded at all because he, the buyer, had never accepted the seller's offer; and, if he should be held to have accepted it, his acceptance would not be binding because he had been induced to declare it by the seller's fraudulent misrepresentations.

Where in the Code do we have to look to find the provisions respectively concerned with the problems raised by each of these pleas? In the Code we find a title with the heading "Sales"[2] and in that title we find a number of sections dealing with the problem known in American law as that of a seller's warranty of quality. If we thus wish to know whether or not under the facts of the case a buyer is entitled to reject the tender of goods because of an alleged defect of quality, we turn to these sections of the Code. The problem of determining in the case of a sale the respective rights of buyer and seller if the goods are defective, is peculiar to transactions of sale and is dealt with in the Code, together with other problems peculiar to sales, in the title on Sales.

But where do we find the provisions dealing with the next plea of the buyer, *i.e.*, the plea that he does not have to perform his part of the bargain because the other party has not performed his? That problem is not peculiar to sales. It can arise just as well in a contract for services, in a construction contract, a contract of lease, or any other contract which involves mutual obligations of two or more parties. Consequently it is dealt with in that part of the Code which is concerned with problems common to all contracts of mutual obligations.[3]

The plea that the seller's offer was not accepted raises a problem which can arise not only in contracts of mutual obligations but with respect to an alleged contract of any kind. Hence, it is dealt with in that part of the Code which deals with those problems which are common to all kinds of contracts, those containing mutual obligations as well as others.[4]

Finally, the plea that the alleged buyer's acceptance of the seller's offer had been induced by fraudulent misrepresentations raises a problem that can arise not only in connection with contracts but also with a conveyance, a marriage, a will, a notice of termination, a rescission, or any other kind of declaration of intention. Hence, for its proper handling we have to look to that part of the Code which deals with those problems which can arise in connection with declarations of intention generally and of any kind.[5]

2. §§ 433-515.
3. §§ 320-327.
4. §§ 145-157.
5. §§ 116-144.

This mode of arrangement results in a continuously increasing degree of abstraction.[6] It requires an intensive training and concentrated mental effort on the part of the user. It also results in a great economy of thought. The lawyer does not have to study and store up separately in his memory the rules on the effects of misrepresentation in sales, leases, insurance contracts, loans, conveyances, mortgages, etc. He only studies the rules on misrepresentation in connection with legal transactions of all and any kind, observing that they are the same except for some special transactions such as marriage, the execution of wills, or subscribing to corporate stock.

The method has an additional, and even more important, advantage. If the legal order has failed to enunciate a rule on the effect of misrepresentation on some peculiar transaction, for instance the confirmation of a letter of credit, such a rule is available in the general form in which it is stated as applicable to all legal transactions of any kind. The availability of the general rule does not, however, free the court of the duty to determine whether the general rule is really appropriate for the transaction in question or whether the transaction is so peculiar that an exception to the general rule ought to be made. Rules of broad generality are not to be applied mechanically but discerningly so that they serve the pursuance of those general lines of policy which have found expression in the Code and the legal order in general. The very statement of such basic policies is indeed the central task of the Code.

Let us return to the example of a sale and assume that, before or after the actual handing over of the car by the seller to the buyer, one or the other of them is declared to be a bankrupt, or that the car is attached by the sheriff for a creditor of the seller or of the buyer. The answer to the problem of whether the car may be so attached or whether it belongs to the bankrupt estate depends on the passage of title from the seller to the buyer. When and how does title pass? The rules concerning the passing of the title to chattels can, of course, hardly be expected to be much simpler in German law than in American law. At the moment we are not interested in knowing what these rules are, but only where they can be found in the Code. An American lawyer will expect to find them in the title on Sales. But he will not find them there in the German Code. A transfer of title may be made in connection with a contract of sale, but it may also occur upon the ground of a contract of donation, of partnership, of security for debt, of barter, of compromise, of factoring, or perhaps upon no particular ground at all. The problem

6. The sequence of arrangement is such that the more general provisions precede the more special ones.

is thus to be treated in a context broader than that of a sale. Indeed, it is regarded as being of a character quite different from that of determining what are the rights and duties of the parties to a contract. Promises, how they become legally binding, what duties they imply, how they may be discharged, etc. present problems of a kind essentially different from those which relate to ownership in things, what such ownership means, and how it is acquired, lost or encumbered. Problems of the former kind are treated in the Second Book of the Code, entitled *The Law of Obligations,*[7] while problems of the latter are provided for in the Third Book, entitled *The Law of Things.*[8] In the field of sales this treatment means that all questions concerning the mutual rights and duties of buyer and seller are dealt with in the *Law of Obligations,* while those which concern the passing of the title are dealt with in the *Law of Things.* To an American lawyer this separate treatment of the two sets of problems may appear artificial, but upon closer inspection he may find that it results in a deepened insight into the issues, interests and policies which are respectively at stake, and consequently a treatment of each of the two sets of problems more adequately serving the peculiar needs of each. After all, the problems concerning the mutual rights and duties of the parties are primarily of concern to these two parties, while the problems of title are of basic concern to third parties, such as creditors and subsequent purchasers.

The Contribution of the Civil Service

Acute analysis of problems, separation of issues, and elaboration of clearly defined and consistently used terminology have been the work of the professors. A second group which has placed its stamp upon the legal order of Germany is the high bureaucracy. With technical competence, occasional narrowness, but always with respect for the dignity of the individual and an earnest desire to do justice, the members of the high civil service influenced legal development in the pre-constitutional era, and continued to influence it, in close cooperation with the parliamentary bodies of the periods of constitutionalism and of post-World War I democracy. Even the Third Reich of National-Socialism could not function without their administrative skill and experience and could not entirely eliminate their moderating influence.

Like his counterpart in Sweden, France or Italy, the high civil servant of Germany is a man of the law. The desire of the service for na-

7. §§ 241-853.
8. §§ 854-1296. Book 4 of the Code (§§ 1297-1921) deals with Family Law, and Book 5 (§§ 1922-2385) with Succession on Death.

tional uniformity of regulation constituted one of the most powerful incentives to legal unification, especially in Austria, Prussia and France. The benevolent paternalism of the German civil service has found expression in the system of judicial organization in which the administration of justice has been made easily accessible, inexpensive, and in many cases completely free of cost.

In passing, it might be observed that German civil procedure is even more informal than French, especially because it relies less on documentary evidence. Juries were used in serious matters of crime between 1848 and 1924, when, with general approval, they were abolished during the course of an economy drive. Lay judges are used extensively, however, in criminal, commercial and labor cases, and in many proceedings of public law. They sit together with the professional judges, forming one unitary bench, and participating in all phases of the trial and decision. Criminal procedure, it may also be observed, presents elaborate safeguards for the accused, who is, of course, presumed to be innocent until his guilt has been proved by the prosecution.

Returning to the role of the high civil service, other expressions of its influence can be found in those numerous provisions of the codes and statutes which are designed to protect the economically weak and to secure justice for them in a social order of economic liberty and competition.[9] It expressed itself also in the loving care expended upon the elaboration of such branches of the law as guardianship, illegitimacy, criminal law or installment buying, *i.e.*, the law of the little man, which tends to be neglected in a legal system dominated by attorneys. The tradition of the civil service has also been instrumental in securing in

9. Note, for instance, the following provisions of the Civil Code:

§ 138. A transaction which violates good morals, is void. Void in particular is a transaction by which a person, exploiting the state of necessity, the rashness or the inexperience of another, obtains for himself advantages, or the promise of advantages which surpass the value of his own performance so considerably that under the circumstances the value of the former is conspicuously out of proportion as compared with the value of the latter.

§ 618. [In a contract for services] the employer must so establish and maintain the rooms, appliances and tools which are to be supplied by him, and must so organize the services which are to be rendered upon his orders or under his direction, that the employee is protected against danger to his life or limb as far as is possible with respect to services of the nature in question.

If the employee has been received into the household of the employer, the employer has to make all those arrangements concerning living room and room for sleep, food, and time of work and recreation which are required by proper regard for the health, the morals and the religion of the employee.

§ 157. Contracts are to be interpreted in accordance with good faith and fair dealing.

§ 242. An obligor must render performance so as is required by good faith and fair dealing.

§ 826. A person who wilfully causes harm to another in a manner which violates good morals is obliged to compensate the other for such harm.

the German legal order a large place for considerations of good faith, fair dealing and good morals. These considerations permeate the entire body of German law; they set limits to the exercise of every right; they prevent the abuse of the letter of the law for unconscionable purposes; they constitute the tools by which the laws, without textual changes, can constantly be adapted to changing conditions of even the most shattering kind. It may be appropriate to remember that in England the inventors of Equity, the Chancellors, had also been high civil servants.

In a very specific way the civil servants have influenced the law in their capacity of legislative draftsmen. Legislation is invariably drafted in the departments of the central government, all of which have staffs of skilled law-drafting specialists. The most proficient are likely to be those on the staff of the Federal Ministry of Justice, from which originates practically all legislation of lawyers' law. These specialists are also the permanent watchdogs of the law, always scanning the total body of the law for defects and obsolescences for which remedial legislation is indicated. Such legislation will be carefully prepared in close consultation with the representatives of all interested groups concerned. The final political decisions rest, of course, with the cabinet and the parliamentary bodies, but the law is likely to be kept up to date and the technical properties of the pertinent legislation are usually of a high quality. In the face of pressing demands for speedy enactment during the years following World War II, the traditional standard could not always be preserved, but even in these times of legislative mass production it has by and large been remarkably high.

The Contribution of the Judiciary

A third group of men by whom the general character of German law has been markedly influenced is the judiciary. Ample room exists in the German legal order for judicial law making. In some fields, especially that of administrative law, the statute law is so sporadic that, just as in France, the major part had to be developed by the administrative tribunals.

A wide room for judicial creativeness also exists in those fields which are covered by the Codes, especially the Civil Code, insofar as they contain broad statements of policy. Detailed provisions are, of course, used for the regulation of topics which require clear rules capable of immediate application, such as the statute of limitations, mortgages, marital property rights, intestate succession, or the formalities of conveyancing or the organization of business corporations. There are other topics, however, for which the drafters of the Codes found it more ap-

propriate to limit themselves to the pronouncement of policies, more or less broadly stated, by which the courts should guide themselves. While the provisions on torts[10] are not so completely vague as articles 1381 and 1382 of the French Civil Code, they are still sufficiently broad to require much judicial implementation. Even provisions going into narrow detail require judicial interpretation, and their application, as well as that of all law in general, must always be understood to be made so as to keep them in accord with the paramount principles of good faith and fair dealing and with public policy and good morals.

With the steadily increasing rate of political, economic and social change, the judges have also come to find themselves compelled to engage in judicial law making in the sense of adapting the existing law to new conditions. Traditionally the task of changing law has been considered a function of the legislature. Law making by judges appears to be repugnant to the principle of democracy by which the legislative power is entrusted exclusively to the properly elected representatives of the people. The parliamentary bodies have worked in close cooperation with the civil service of the governmental departments. But policy decisions were regarded as the exclusive domain of the legislatures.

This mode of division of functions between the legislatures assisted by the civil service on the one hand, and the courts on the other, has undergone a modification since World War I. The needs for adaptation of the law to rapid and constantly recurring changes of conditions have become so pressing that the legislatures have not been able to keep pace. At times there also emerged situations in which conflicting interests were so evenly balanced in a legislature that it found itself unable to act. Since action of one kind or another had to be taken, the task fell to the judiciary, which, after initial reluctance, has come to accept its expanded role as maker of new law.

The most spectacular occasion was presented by the catastrophic inflation of the German currency after World War I. In 1914 one United States dollar was the equivalent of 4.20 German marks; by November, 1923, the rate of exchange was 1 dollar to 4 trillion 200 billion marks. The currency law expressly stated that notes of the Reichsbank constituted legal tender. Hence, by the tender of devaluated notes in the nominal amount of M 10,000, a debtor could, in 1923, effectively discharge the obligation on a loan which had been given to him in 1913 in gold coin. When he had received the 1000 gold pieces of 10 M each, their purchasing power was enough to cover the cost of construction of a comfortable one-family dwelling. At the time of repayment in 1923

10. §§ 823-53.

the note bearing the imprint of "10,000 M" was insufficient to pay for a pastry roll or a streetcar ride. Every debtor, of course, availed himself of this opportunity. By the middle of 1923 long term debts had disappeared. Of course, nobody had any investments either; savings had been wiped out. The result was wonderful for debtors and catastrophic for people who had to live on savings. As these results became apparent, savers and other investors began to press for remedial legislation that would require debtors to pay more than the mere nominal amount of their debts. However, debtor interests were strong enough to prevent the legislature from passing such a law. When the situation became intolerable, the judges acted. In a decision rendered on November 28, 1923, the Supreme Court held that the debtor had not discharged his debt until he would pay an additional amount so that his total payment would roughly approximate the original purchasing power.[11] The Court could not, of course, change the wording of the currency law which still provided that the tender of notes in the nominal amount of a debt constituted a discharge. The Court did hold, however, that a debtor would violate the general postulate of good faith and fair dealing if he would invoke this law and refuse to pay his creditor as many notes of the now stabilized currency as good faith and fair dealing required him to pay under the circumstances of the individual case.

That decision was sensational, not only because of its impact upon the economy, but also because never in modern German law had a court so openly eliminated a rule of statutory law. It may well be said that the inflation cases initiated a new era of judicial method. The courts' attitude toward the texts of the codes and other statutes came to be one of much greater freedom than before, an attitude which turned out to be just the one required in times when the need for constant and quick adjustment of the law to rapid social changes was not fully satisfied by the legislature.

Case law has thus come to play a significant role. Although precedent is not formally binding, it is readily followed. The practicing attorney will look up cases as a matter of course, will cite to the court those which are favorable to his cause, and try to distinguish those which are against him; and the court itself will take notice of the cases and quite possibly devote much of its opinion to their discussion. So important is the role played by the case law that a lawyer is held liable for malpractice when in drafting a contract he fails to take into account a case

11. 107 ENTSCHEIDUNGEN DES REICHSGERICHTS IN ZIVILSACHEN 78.

having a decisive bearing on the judicial interpretation of a crucial clause.[12]

Insofar as the significance of precedent is concerned, an American lawyer should not find it too difficult to understand the ways of his German colleague. He will not find it quite so easy, however, to follow him in his use of treatises and in the handling of statutes. The tone of argumentation is different. The starting point of legal reasoning is the statute, its particular provisions, their relative positions in the context of the legal system as a whole, and the principles to be derived from them. Legal discourse tends to be more attentive to the totality of the legal system and the policies underlying it, and concepts are apt to be used with greater sharpness of definition and greater consistency than in the United States.[13]

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12. *Cf.* Reichsgericht, Juristische Wochenschrift 1937, p. 1633 (March 2, 1937).

13. For those desiring further information in English, the following books may be useful:

COHN, WOLFF et al., A MANUAL OF GERMAN LAW, was provided in 1950 by the Foreign Office of the United Kingdom for official use by the Military Government of the British Zone of Occupation in Germany. It constitutes an excellent general introduction. Professor W. Mueller-Freienfels' article on German Law in 10 ENCYCLOPAEDIA BRITANNICA 216 provides a condensed survey of the entire legal system of the country. Extensive materials on the codes, the courts and other general aspects of German Law are contained in VON MEHREN, THE CIVIL LAW SYSTEM, CASES AND MATERIALS FOR THE COMPARATIVE STUDY OF LAW (1957), and SCHLESINGER, COMPARATIVE LAW, CASES AND MATERIALS (2nd ed. 1959).

SCHUSTER, THE PRINCIPLES OF GERMAN CIVIL LAW (Oxford 1907) and BORCHARD, GUIDE TO THE LAW AND LEGAL LITERATURE OF GERMANY (1912), although in many respects obsolete, may still be profitably used for purposes of introduction.

The translations of the CIVIL CODE by WANG CHUNG HUI (1907) and LOEWY (1909) present the original text, which has been repeatedly amended since. The amendments have been most extensive in Book 3 (Family Law); Book 2 (Law of Obligation), on the other hand, has hardly been changed.

The original languages of the Swiss Civil Code of 1907, and the Swiss Federal Code of Obligations, which forms a part of the former, are German, French and Italian. The Code has been translated, but without the Code of Obligations, by R. P. Schick, with annotations by C. Wetherill (1910), and by Ivy Williams (Oxford 1925).

The Code of Obligations has been translated by WETTSTEIN, THE SWISS FEDERAL CODE OF OBLIGATIONS; ENGLISH, SPANISH AND FRENCH; (2 vols., Zuerich 1928/30).