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## Studies in Israel Law, by Guido Tedeschi

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# ESSAYS AND BOOK REVIEWS

STUDIES IN ISRAEL LAW. By Guido Tedeschi. (Hebrew University Legal Studies No. 7), Jerusalem: Hebrew University Students' Press, 1960.

This volume is a collection of papers by a much honored member of the Faculty of Law of the Hebrew University in Jerusalem. The material deals with problems involved in the pull and haul of creating an Israeli legal system for Israeli society. Approximately half of the book deals with law more or less in general, while the balance concentrates more closely on specific problems of contemporary Israel. There are eight chapters in all. The first chapter is a proposal for an inductive study of law; the second deals with the position of legislation in modern private law; the third and fourth chapters examine approaches to legislation for the still quite new Israel, with special attention focused on the problems presented by her present period of transition and the uncertainty of her future. In these chapters the problems involved in communication between draftsmen and legislators, and legislators and the society for which they legislate, are examined and proposals are offered. In the fifth chapter, Professor Tedeschi reviews the movement toward westernization and codification in neighboring states that, like Israel, have roots in the Ottoman Empire (*e.g.*, Turkey, Egypt, Iraq, Lebanon). The sixth chapter examines the principle of *stare decisis* and the different uses to which it is put and its adaptability to a positivistic system. The last two chapters are devoted to the study of problems peculiar to Israel, such as its development out of a British Mandate territory, and its religious foundations and their involvement in the generally accepted legal notions. To the extent that the book as a whole can be said to support a thesis, it seems to be that Israel, and probably everyone else, needs a generalized statement of abstract principles that can be enacted by a theoretically omnipotent legislator and applied by its obedient servants, the courts, to any and all cases without undue grumbling from the people who are being legislated for. The division of jurisdiction implicit in the statement that "the legislator enables the citizen to participate in the lawmaking process," in those cases where there is no indefeasible legislative rule, is one to which this reader cannot wholeheartedly subscribe.

In his first chapter, Professor Tedeschi examines the problems of the inefficacy of law and the tendency of a society to construct for itself

non-legal institutions for the regulation of conduct, without regard for parallel institutions that are made available by law for the same purpose. He also examines cases where the legislator has apparently desired that no firmness of law develop.<sup>1</sup> The case is persuasively put for a science of law that will serve in legal work as a science of entomology serves in dealing with insects. In addition to the body of normative rules that is law, we need a descriptive science that will enable us to learn about law and how it works; what is its social impact, wherein is it not doing what we have believed it was doing, and does it have effects of which we have no inkling. Current research into law and the behavioral sciences would seem to be the sort of thing that Professor Tedeschi would approve as furtherance of his inductive science of law. An exception is that much of the current work seems to be in terms of a law that "is" only as it effects behavior.<sup>2</sup> Professor Tedeschi's position, repeated throughout the book, indicates a belief in law defined primarily in terms of legislative pronouncement. He wants the same sort of information as do contemporary realists, but he will find from it not what the law is, but whether it is being evaded or violated; or whether gaps have been found and supplied in the practice of the community which call for legislated rules.

Though he suggests that legal norms may be enacted by a legislature, created by judges or spontaneously produced by society, it is clear that Professor Tedeschi prefers to limit law to legislated norms that may either require or permit action by members of a society. If this narrower view of law is to be adopted, the descriptive science that is needed will have to be much broader than a mere science of law; it will need within its reach the full range of normative controls to which the society is subject, whether they have legislative sanction or not. Professor Tedeschi points out in the chapter that although such study will require the assistance of statisticians, economists, and sociologists, it is still lawyers' work. To this reader, it seem unnecessary that the work be begun with an attitude of law reform. It is better, perhaps, to see what we currently have in the way of law before we set out to reform it. If the study that is proposed does what is clearly envisaged for it, the sentiment for reform will grow quite naturally from the work, assuming, of course, that re-

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1. The negative provisions of legislation to which continental authors are apt to refer are not as numerous with us in the common law. The principal place where such negative provisions are found in our law is in the field of constitutional law; especially with regard to the relation between departments of government. When such provisions appear, they are usually the result of a finding of judges, the legislator having omitted to speak. See *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

2. As a recent example of law and behavioral science study, see Mentschikoff, *Commercial Arbitration*, 61 COLUM. L. REV. 846 (1961).

form is necessary. Unless one defines law broadly to include all the influences in society that are directive of conduct as did Duguit,<sup>3</sup> it is not clear why this social research is an inductive study of law.

No legal system will ever be completely legislative, but the relationship existing between statute and judge-made law is viewed quite differently in different systems. Professor Tedeschi, trained in the civil law, is dealing with a residuum of law derived from the Ottoman Empire, British Mandate and, more recently, legislation of the Knesset. He is discussing a common law which, under the mandate of the Palestine Order in Council of 1922, is as spotty as the Roman Common Law decreed for Germany by Emperor Maximilian. He sees the judge-made law as a filler of *lacunae*. On the other hand, an Anglo-American common lawyer is more apt to think of judge-made law as the great mass, with legislation filling *lacunae* or making the adjustments required by unanticipated shifts in social, political and economic relations. The fact that "juristic law" came first in the history of law, and legislation only thereafter,<sup>4</sup> may be a reason for the present state of Anglo-American law. We have not suffered the frustrating diversity or the violent social revolutions of Europe, and have not, therefore, had occasion for as much legislated change as have some countries. As a result, our law has a smaller portion of enacted rules. It is not clear that because of this deficiency, our law is more primitive, unless one accepts the proposition put forth by Maine<sup>5</sup> that the ultimate in legal development is a second stage of codification. The examples given in the first chapter of the schemes being used to circumvent the rules of strict law<sup>6</sup> would indicate that Israel is still well within the bounds of the stage at which fiction is operating as a modifier of the traditional law. The incorporation of *miri* lands<sup>7</sup> seems to be the use of the *laetit* and *quo minus* to gain remedies otherwise unavailable. The fact that the rule being evaded are legislative rules of a recent period, rather than traditional rules of long standing, would seem to indicate only that the society is at present unprepared for further rigidification. If they are ancient rules of the traditional law, and even if they are written in authoritative texts, they are perhaps better left to be transmuted by the people and the courts into rules reflecting the contemporary thought of the community rather than laid down in some new and rigid

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3. Duguit, *Objective Law*, 21 COLUM. L. REV. 17 (1921).

4. And this is not the case unless one discounts the suggestions by Savigny and Maine, on both of whom Professor Tedeschi relies, that a stage of codification preceded juristic law.

5. MAINE, *ANCIENT LAW*, ch. 2 (1931).

6. TEDESCHI, *STUDIES IN ISRAEL LAW* 7-8 (1960).

7. *Id.* at 5.

legislative text. If the legislator is "democratic," as Professor Tedeschi asserts (especially as opposed to the courts and lawyers), he can fairly be expected to want to enact a rule that is desired by the people for whom he legislates.

The conflict between conservative rules of law, which always follow a bit behind practice, and law enacted by the legislator, which tends to direct uncertain or even reluctant practice, is sharply drawn by Professor Tedeschi in his chapter "Private Law and Legislation Today." Though one cannot doubt that the sphere of legislative and administrative rule is growing at a frightful pace, the suggestion that this growth is evidence that the body of private law cannot properly be left to be shaped by judicial processes is not convincing to one trained in a common law system. The slower moving body of law so easily called reactionary lends reliability to the expectations of law demanded by a society. A measure of reliability in law is essential if we are to have a legal order rather than a series of arbitrary fiats, whether these fiats be judicial or legislative. This is recognized even by authors who are concerned with combating notions of a rigid doctrine of binding rules.<sup>8</sup> Where court-made rules prove not to meet the needs of a community, the legislature will be called upon for departures of a more radical nature than is appropriate for judge-made law. Furthermore, it is not only within the common law that we find concern with custom as a source of law:

Writers of the nineteenth century had a tendency to deny that custom was a source of civil law. . . . In reality, custom is an important source of civil law. One may even discern two forms: Custom properly so-called, of popular origin, which is the practice followed by the generality of people, and custom of learned origin . . . evolved by jurists (perhaps with the implicit approval of the generality of people), but to which time, in any case, has given a patina.<sup>9</sup>

It does not seem useful at this point to explore the question of the Roman varieties of custom. Though we might well ask why modern Israel or any other contemporary state should be governed by the distinctions drawn in a legal system that has been officially dead for nearly fifteen hundred years, we may note that "precedent, though unrecognized in the lawyers' lists of sources, is well enough known . . . to the rhetoricians,

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8. "The law is not properly susceptible to whim or caprice. It must have the sturdy qualities required of every framework that is designed for substantial structures. Moreover, it must have uniformity when applied to the daily affairs of men." Douglas, *Stare Decisis*, 49 COLUM. L. REV. 735 (1949).

9. 1 CARBONNIER, DROIT CIVIL 96-97 (1955).

and undoubtedly played some part in the development of the law. Judgments might even be read in court, at any rate in [Roman] Egypt. . . ."<sup>10</sup>

The full impact of the social legislation so popular today is rarely, if ever, foreseen by the legislator. A statute regulating milk prices, for example, can be expected to have legal impact on existing as well as future contracts. These problems are as numerous and individualized as are the contracts involved. The effect of a statute or regulation will necessarily be worked out in a judicial forum, no matter what the legislator prescribes. It is not clear why this obvious and necessary process is acceptable when the legislator has laid down impinging norms, but is undesirable where the norms are the outgrowth of social and commercial practice as distilled in judicial statements. The judge-made norms are not statements of lawyers' opinions; they are statements of lawyers' conclusions about the practices of segments of society as they are represented in litigation.<sup>11</sup> The views thus crystallized do not constitute an ideology of the whole community. Legal rules taken in significant bundles are not only unlikely to constitute an ideology, but are unlikely even to be thought of by those members of the society on whose activities they are not at the moment impinging. It is fiction to say that a whole community has accepted or is willing to accept a rule as ideology just because a parliament rather than a court has laid down the rule. Legal rules generally do not achieve effectiveness by being clothed with ideological acceptability, although they may become so clothed because of a habit of obedience.<sup>12</sup> If the legislated norm diverges far enough from practice, as opposed to ideology, the habit will necessarily be overcome.

Professor Tedeschi well reminds us that, faced with a tyrannical legislature, juridical science is not an effective safeguard for society. This is so even though, as Dean Pound has indicated, courts have found five heads under which limitations upon legislative power can be effected by them.<sup>13</sup> Professor Tedeschi has no sympathy with any such limitations. This reader concurs in Lord Radcliffe's belief "that the ordinary

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10. JOLOWICZ, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* 569 (1952). See also C. K. ALLEN, *LAW IN THE MAKING* 159-60 (6th ed. 1958).

11. It is noteworthy that a recent writer on the sources of the civil law found it appropriate to discuss *la coutume d'origine savante*, and that he distinguished it from custom in the ordinary sense (popular custom) in that it is not produced by a practice of the people at large. 1 CARBONNIER, *DROIT CIVIL* 96 (1955).

12. AUSTIN, *THE PROVINCE OF JURISPRUDENCE DETERMINED*, lecture 6 (1954).

13. The five heads: (1) conflict of legislation with natural law; (2) interference of a temporal legislator in spiritual affairs; (3) attempts of Parliament to derogate from the royal prerogative prior to the Bill of Rights; (4) conflict of legislation with rules of international law; and (5) friction between the terms of a statute and the doctrines or principles of the common law. Pound, *Common Law and Legislation*, 21 *HARV. L. REV.* 383 (1908).

citizen would be both surprised and dismayed to have it brought home to him that his legal system was, theoretically, at the mercy of [the legislative] assembly and could be radically remodeled by it, as it were, overnight."<sup>14</sup> Even with the doctrine of restrictive interpretation of statutes,<sup>15</sup> a court is no match for a legislature when it comes to tyranny. The suspicion of legitimate legislative activity that is behind the tendency to restrict legislation to its smallest possible ambit is unfortunate. A stated doctrine of restrictive interpretation is not the evil, however. This writer agrees with Professor Tedeschi to the extent that when a legislator enacts the "abolition of constructive malice,"<sup>16</sup> it is not desirable for judges to put malice constituted by a proved intention to inflict grievous bodily harm back into the law of murder;<sup>17</sup> and this is so even if they can find language upon which, in continental manner, they can hang their decision.<sup>18</sup> One might ask, however, why relations between individuals before the court should be governed by a law unless the legislator has used the language at his disposal to clearly cover the case, especially if the rule has been pronounced since the parties fixed their own positions in reliance on established earlier practice. It does not take an Aristotle to see that the legislator cannot have had in mind the multitude of individual relations that may be effected by their efforts.<sup>19</sup>

The case for reading legislation "broadly" is no stronger than that for reading it "narrowly"—and neither aim is the business of the court, which has the single task of deciding the case before it. It is for this purpose that the law, whether legislative, judicial or other, must be taken to mean something:

A statute is the expressed will of the legislative organ of a society; but until the dealers in psychic forces succeed in making of thought transference a working controllable force (and the psychic transference of the thought of an artificial body must

14. RADCLIFFE, *THE LAW & ITS COMPASS* 11 (1960).

15. This well-known doctrine has a steadily diminishing following. The influence of a number of influential jurists has helped to reduce its effect. See CARDOZO, *THE PARADOXES OF LEGAL SCIENCE* 10 (1928); 3 POUND, *JURISPRUDENCE* 669-70 (1959). However, danger of encroachment by the judiciary on legislative authority is not new to American history by any means. See *THE FEDERALIST* No. 81.

16. Homicide Act, 1957, 5 & 6 Eliz. 2, C. 11, § 1.

17. *Director of Public Prosecutions v. Smith*, 3 *WEEKLY L.R.* 546 (1960).

18. Given "where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when not done in the course or furtherance of another offense," the court turned its decision in the Smith case, *supra* note 17, on a reference to "the words in parentheses."

19. See Learned Hand's discussion of ARISTOTLE, *ETHICA NICHOMACHEA* V 1137, lines 12-28, and ARISTOTLE, *RHETORICA* I 1373, lines 18-40. HAND, *THE BILL OF RIGHTS* 21-25 (1958).

stagger the most advanced of the ghost hunters), the will of the legislature has to be expressed by words, spoken or written; that is, by causing sounds to be made, or by causing black marks to be impressed on white paper. . . . [F]rom this impression [the judge] has to reproduce the thought of the law-giving body. The process is far from being merely mechanical; it is obvious how the character of the judge and the cast of his mind must affect the operation. . . . As between the legislative and judicial organs of the society, it is the judicial which has the last say as to what is and what is not Law in a community.<sup>20</sup>

If the case is not one in which relations between the parties depend upon the meaning of the words, but one where relations depend on policy statements from the legislature, such policy is still going to be a product of judicial opinion unless the legislature has been extraordinarily explicit or takes unto itself the task of deciding cases.

The difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the Legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.<sup>21</sup>

How, indeed, are we to find a policy when legislators shift from one policy to another in the course of the same legislative session or even the same enactment.<sup>22</sup> Even with the improvements expected to accrue from adoption of Professor Tedeschi's proposals for preparation of legislation, it is unwise to expect miracles.

It is doubtful that a "real philosophy [to] determine the fundamentals of good and evil for individual and society" is attainable with any greater unanimity than is our present set of specific rules that are tied to assortments of fact situations. What appears to be sought is an articulation of a social ideology. However, since society does not speak for itself and there is no particularly impressive reason why a judge's philosophy or one arrived at by parliamentary compromise would be useful were it to be exposed to view, the suggestion is not satisfying. This writer cannot join Professor Tedeschi and Goethe in the sentiment that disorder is more pernicious than injustice. Disorder, like order, is

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20. GRAY, *THE NATURE AND SOURCES OF LAW* 170-72 (2d ed. 1927).

21. Gray, *op. cit. supra* at 173.

22. 3 POUND, *JURISPRUDENCE* 670 (1959).



pernicious only if unjust; and to the extent that it leaves individuals free to order their own destinies, it is less inclined to be pernicious than is the perfectly ordered system of imposed commands.

If unification of law is sought, as in Germany and Italy in the nineteenth century, legislation is the only efficient means. There has been a good deal of talk in the past forty years of unification of private law generally. If that goal is to be achieved legislation on an international scale is a necessity. The case for unification, however, other than with regard to commercial law and rules of private international law, is not strong. The bulk of private law best serves a society if it is cut and stitched to order. A suit of clothes tailored so that it will fit both father and sons may, indeed, be a beautiful example of the art of compromise; it will not, as tailoring, be very satisfactory to any one of them.

If we look to the peculiar situation in which Israel finds herself today, we do find some need for a form of unification. Her people have come from all over the world, and they represent an almost infinite diversity of local custom. On the other hand, among immigrants to Israel one finds a basic unifying element in the Hebraic tradition. To the extent there is diversity among her citizenry, it would seem to be desirable that the rules ultimately worked out depend not on who succeeds in being elected to the Knesset but rather which rules succeed in surviving. This, it is submitted, will have to be the result of a so-called "common law development." Unlike many of her neighbors who are also survivors of the Ottoman Empire, Israel has not inherited a tradition of decree law or of codification. She has not had the influence of the French tradition, as has Egypt; she has not had the need and desire for the sudden westernization that led Republican Turkey to adopt the German, Swiss, French and Italian codes as a body of law. The very diversity of historical influence that Professor Tedeschi points out is a cogent reason for letting the future legal system work its way out, rather than be simply another historical influence imposed by fiat. It is clear that in a modern state a good deal of legislation is required. However, in terms of the on-going relationships of everyday law, it seems desirable for the rules to be a product of those relationships, rather than the product of politiking in the back rooms of a parliament.

Discussing law as a creation of judicial science, Professor Tedeschi is led to address himself to precedent. Lawyers accustomed to a form of *stare decisis* will find stimulation and much information in his examination of the great variety of positions taken on this subject by the legal systems of the world. To an observer not accustomed to the formulae of the civil law, however, the distinctions may appear to be rather trans-

parent. To speak of judge-made law in a significant sense implies decisions that are binding beyond the reach of the case that provoked the pronouncement of the rule. To say that a rule so pronounced is not binding, because lower courts *do not have to* follow the rule, only leaves us with a need for another word to replace "binding," which we will then limit so as to make it useless in a discussion of law. Of course, judges do not *have to* follow precedents, as nothing can prevent judicial error (though it would seem that legislative error is a metaphysical impossibility). If there is no appeal or review in a legal system, there is no binding precedent, except as discussed below with reference to courts of last resort. In the absence of some protection against arbitrary action, there is probably no justice either.<sup>23</sup> Uniformity of the law is essential to justice in a legal system and every mature system has raised some sort of apparatus to ensure it. In England, the Divisional Courts, the Court of Appeal and the House of Lords work at controlling the trial courts, which bear the primary burden of applying law in every system. In the United States, we have state and federal supreme courts and many intermediate courts of appeal. In France, there are courts of appeal and a supreme court, the latter called the Court of Cassation. So it is all over the world.

If there is opportunity for appeal or review and the higher court has the power to reverse, modify or set aside the lower court's decision, there is binding precedent. A party who has prevailed in a trial court that did not follow a rule laid down in a higher court has not gained much if it is subject to appeal or review. To find an absence of binding precedent in the fact that losing parties may not have sufficient resources or the interest to prosecute an appeal or petition for review, is to build one's legal theory upon a weak spot in the legal practice.

It is, of course, true that not all societies have evaluated the interests involved in the same way. In the Anglo-American tradition we complain that appeals permit litigation never to end. In other systems, such as the French system, there is less concern that litigation be brought to a prompt conclusion than there is that the conclusion be correct. The obtainment of the latter is thought to be gained by exposing the case to the thought processes of a large number of judges. In France, if a case is appealed from a civil court to a court of appeal, the latter is supposed to set aside so much of the judgment as is erroneous, and then enter the judgment that ought to have been rendered in the first place. This alone, to this writer, is proof of the existence of binding precedent in the system. The

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23. Although there may be some protection in the *prise à partie* action against a judge as found in the French system, such protection is difficult to conceive.

party who has failed on the appeal may then petition the Court of Cassation to review the case of the law. If the Court of Cassation hears the case (such review is discretionary), and finds that the court below erred in its application or interpretation of the law, it will set aside the judgment and remand the case for rehearing. This further points out that there is binding precedent in the system, even though the court to which the case is remanded is not obliged to follow the Court of Cassation's view on the law. Should it fail to do so, a further petition to the Court of Cassation is possible and the judgment may again be reversed; if it is reversed for the same reasons as before, the court to which it is remanded the second time must follow the Court of Cassation. An interesting example of this system is the case of Pierre Bonnard's unsold paintings. The case was first decided by the civil court in Paris (three judges); the court of appeal of Paris (three judges) modified the judgment; the Court of Cassation (three judges), ruling that the civil court had been correct, set the judgment aside and remanded the case to the court of appeal in Orlean (five judges), which decided that all three of the earlier decisions had been wrong. The litigation had extended over a period of seven years and this writer lost track of it at that point. However, a further petition to the Court of Cassation, this time sitting *toutes chambres réunies* (at least thirty-five judges) is possible. Again the judgment may be reversed, and if it is reversed for the same reasons as before, the court to which it is remanded the second time must follow the Court of Cassation. By that time the case will have been dealt with by approximately fifty judges. There is surely going to be little doubt about such a case should it appear in court in the future. The precedent is binding, though the procedure is slow.<sup>24</sup>

All of this goes only to precedent operating in the context of higher court control of lower courts. A doctrine of *stare decisis* in its most significant use implies that a court is bound by its own decisions. On this point there is a divergence of practice that is easily discernible as we look to the courts. The line of difference is not, however, a line between common law and civil law courts. As is well known, the House of Lords considers itself absolutely bound by its own decisions.<sup>25</sup> Erroneous decisions can be reversed only by Parliament through legislative enact-

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24. For a summary outline of appeal and review in French law, see Kock, *Machinery of Law Administration in France*, 108 U. PA. L. REV. 366 (1959). For an extensive comparative discussion of the French court system, see Dainow, *The Constitutional and Judicial Organization of France and Germany and Some Comparisons of the Civil Law and Common Law Systems*, 37 IND. L.J. 1 (1962).

25. See *Great Western Railway Co. v. Owners of S.S. Mostyn* [1928] A.C. 57, 63.

ment.<sup>26</sup> Though under modern practice one must concede that it does not work very well, the idea is not unsound. In theory, it is not only the House of Lords that decides the cases, but also the Parliament; and it is Parliament that can then overrule them. Thus we have the same body both making and changing the rules, a procedure not unusual in the United States and in a number of other countries. In practice there is difficulty because legislative correction of judicial errors is often difficult to effect.<sup>27</sup> Short of legislative repeal, there is the opportunity to distinguish, but that too has been disapproved.<sup>28</sup> The Court of Criminal Appeal was until 1960 the court of last resort for even the most serious criminal cases.<sup>29</sup> That court has taken the position that the doctrine of stare decisis is not applicable in criminal cases, "where the liberty of the subject is involved."<sup>30</sup> This ruling has been disapproved by commentators.<sup>31</sup> The Privy Council, the court of last resort for the Palestine Mandate, though it is in law a judicial body, maintains the practice one might expect of a body related as it is to the legal system. It is a privy council, and its duty is to make a report or recommendation to the Queen in Council who then renders an order, as it were, *ex gratia*.<sup>32</sup> The council does not consider itself bound by its previous reports and recommendations.<sup>33</sup>

In the United States, though some state supreme courts are more reluctant than others to change rules they themselves have laid down, there is no rule against such changes.<sup>34</sup> Mr. Justice Douglas was quite accurate when he wrote that such overruling does not bring about an abrupt change in the law; it rather recognizes a *fait accompli*. It is true, of course, that one of the parties before the court has only just before argued the contrary. There is a loser in every litigation, and this is so even if it is statutory language that is at issue. We may certainly agree that there is change in the law. There must be if it is not to be more conservative (anti-democratic) than even Professor Tedeschi presents it.<sup>35</sup>

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26. *Id.* at 82.

27. Douglas, note 8 *supra*.

28. Jones v. South-West Lancashire Coal Owners Ass'n, [1927] A.C. 827, 830.

29. The attorney general's fiat permitting appeal to the House of Lords was granted in only 23 cases from 1907 to 1960. Williams, *The Administration of Justice Act 1960*, [1961] CRIM. L. REV. (Eng.) 87.

30. Rex v. Taylor, [1950] 2 K.B. 368.

31. Winter, *Divisional Court Precedents*, 9 MODERN L. REV. 257 (1946); 9 HALSBURY'S LAW OF ENGLAND 448, n. h (Simonds ed. 1952).

32. British Coal Corp. v. The King, [1935] A.C. 500.

33. Nkambule v. The King, [1950] A.C. 379, 397.

34. In areas like taxation it may be conceded that stare decisis is next to useless. See Lowndes, *Federal Taxation and the Supreme Court*, [1960] SUPREME CT. REV. 222.

35. Though it is true that Williams v. North Carolina, 317 U.S. 287 (1942) changed the rule laid down in Haddock v. Haddock, 201 U.S. 562 (1906), as Professor Tedeschi

In French practice it is true that judges are prohibited from pronouncing general rules when they have cases before them,<sup>36</sup> but we see also that an elaborate apparatus has been established to assist the Court of Cassation to maintain uniformity of its decisions. The central index of decisions created in 1947 has grown into an organization manned by a score of persons of magisterial rank.<sup>37</sup> In addition, the first president of the court may call into being an *assemblée plénière* composed of at least fifteen of the senior members of the court when he feels it is necessary in order to avoid contrariety of decisions. It is appropriate that a court charged with securing the uniformity of the law should concern itself with keeping its precedents in order.

Professor Tedeschi discusses the various methods for the study and preparation of legislative codes and the multitude of problems and viewpoints that become involved when one tries to work out a national law in an area in which many diverse historical influences have had their play. The chapter on the relation of the religious and the secular in a state that does not proclaim secularism probes fundamental questions of great interest.

There is a danger that a reader with presuppositions about a legal system that differs greatly from those of his author will misread the author's text. This reviewer has taken care to avoid that danger, but if he has in fact succeeded, much of that success must be credited to Professor Tedeschi's understanding of the kind of law with which this reviewer is familiar. Professor Tedeschi is stimulating; the need exists for an English edition of his *Studies in Private Law*.

GERALD L. KOCK†

EXPULSION OR OPPRESSION OF BUSINESS ASSOCIATES—"SQUEEZE-OUTS" IN SMALL ENTERPRISES. By F. Hodge O'Neal and Jordan Derwin. Durham, North Carolina: Duke University Press. 1961. Pp. vii, 247. \$10.00.

This comprehensive study on the causes of and remedies against oppression or elimination of partners or stockholders in small business

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indicates in his note 55 on page 133, this reviewer does not agree with Professor Tedeschi's statement of the new rule. For accurate discussion of the *Williams* case, *supra*, see Guild, *Stranger Attack on Sister-State Decrees of Divorce*, 24 U. CHI. L. REV. 376 (1957).

36. FRENCH CIVIL CODE, Art. 5.

37. See Article 19, Decree 58-1281, December 22, 1958.

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