

Winter 1964

An Introduction to the Legal System of the United States, by E. Allan Farnsworth

W. J. Wagner
Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/ilj>



Part of the [Law Commons](#)

Recommended Citation

Wagner, W. J. (1964) "An Introduction to the Legal System of the United States, by E. Allan Farnsworth," *Indiana Law Journal*: Vol. 39 : Iss. 2 , Article 10.

Available at: <https://www.repository.law.indiana.edu/ilj/vol39/iss2/10>

This Book Review is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES.
By E. Allan Farnsworth. New York: Oceana Publications. 1963. Pp.
184. \$5.00.

Professor Farnsworth's book was long overdue. As a matter of fact, though it may seem strange, it is the first publication of its kind: a concise study serving as an introduction to American law for foreign students interested in having a general idea about the broad principles of public and private law in the United States. Such a book should also be recommended as the first to be studied by every American citizen who because of his scholarly interest or practical considerations, wishes to familiarize himself with salient features of our legal system. In a mimeographed edition, the book was successfully used at Columbia University Law School in programs for foreigners, and at some American law programs abroad.

The book is divided into two fairly equal parts: one, entitled "Sources and Techniques," gives general information about the history and formation of American law, as well as the legal profession and organization of courts, while the other, under the title "Organization and Substance," deals with the outstanding features of the most important branches of American law. Thus, in each of the two parts the author took a different approach. It is interesting to note that in two recent foreign publications on American law, the authors treated the subject either from one perspective or the other. In their excellent introduction to the United States legal system,¹ bearing the same title as the first part of Professor Farnsworth's study, Professor and Mrs. Tunc abstained from going into a discussion of any specific American legal rules of fields of the law, and limited themselves to the description of the legal approach and ways of finding the law. On the other hand, Professor Parker, in his concise treatise on American private law,² limited himself to the analysis of some selected fields of the law.³

Professor Farnsworth's book is a success. In a short publication, the author includes the essence of what should be said on the American legal system. It is easily readable, the style is clear and the language

1. TUNC, *LE DROIT DES ETATS-UNIS D'AMERIQUE; SOURCES ET TECHNIQUES* (1955). The same authors also published two volumes on American constitutional law in 1954.

2. PARKER, *DAS PRIVATRECHT DER VEREINIGTEN STAATEN VON AMERIKA* (1960).

3. For a comparison between the two approaches, see Schlesinger, *BOOK REVIEW*, 11 *AM. J. COMP. L.* 458 (1962).

simple and effective. Occasionally, the reader finds some unusual literary expressions or interesting comparisons.⁴

The author begins the first part of the book by sketching a concise constitutional and legal history of the United States. Then, he proceeds to analyze the outstanding features of American legal education and examines the case method. From legal education, Professor Farnsworth passes to the legal profession, beginning with the bar, and then discussing the government lawyers, the bench and the teaching profession.

The next chapter describes the state and the federal judicial systems and the reciprocal jurisdiction of the courts. Next, the attention of the author centers around case law and the idea of *stare decisis*, and from there he passes to federal and state legislatures, the procedure to enact statutes and efforts either to codify the law or to make it uniform. Judicial attitude toward written law is the next problem and Professor Farnsworth devotes a few pages to the problems of interpretation. Getting to the "secondary authorities," the author emphasizes the importance of the *Restatements*. Here ends the first part of the book.

The second part begins with the problem of classification. The dichotomy of the law and equity is explained, and distinctions drawn between substantive and procedural law, as well as public and private law. Recognizing that "the line of demarcation is sometimes difficult to fix,"⁵ Professor Farnsworth places conflicts of law under the heading of procedure, "for the sake of convenience,"⁶ along with civil procedure, criminal procedure and evidence. The other most important fields of law are discussed either in the chapter on private law, or that on public law—classification well entrenched in the civil law world, but not as firmly established in the common law orbit. In the chapter on private law, the author covers contracts, torts, property, family law, commercial law and business enterprises. In the other chapter he outlines the outstanding features of constitutional law, administrative law, trade regulation, labor law, tax and criminal law.

In an appendix to the book, Professor Farnsworth reprints the opinion in *Greenberg v. Lorenz*,⁷ which "shows some of the techniques which may be used by a court faced with an embarrassing precedent,"⁸ and then utilizes the Safety Appliance Act of March 2, 1893, followed by

4. *E.g.*, "As in the case of wines, some precedents may improve with age, while others deteriorate." P. 55, n. 18.

5. P. 93.

6. P. 94.

7. 9 N.Y. 2d 195, 173 N.E. 2d 773, 213 N.Y.S. 2d 39 (1961), reprinted pp. 169-72.

8. P. 169.

the opinion in *Johnson v. Southern Pacific Co.*⁹ to illustrate "a variety of techniques of statutory interpretation."¹⁰ The book is supplemented by an index, and after the several chapters and sub-chapters, there are references to "suggested readings."

Professor Farnsworth's observations are illustrated and documented by discussions of, and references to, all possible sources of the law and authorities, be they of a binding or persuasive character: cases, the first of which is—in accordance with the tradition—*Marbury v. Madison*,¹¹ the Constitution; statutes; and writings of legal scholars. Occasionally, some statements of the author may be challenged. He states, *e.g.*, "codification was common in the early stages of some of the colonies,"¹² though even the Massachusetts efforts of the seventeenth century can hardly be treated as amounting to anything comparable to the idea of codification in the sense familiar to civil law world lawyers, to whom the book is primarily devoted.¹³ Again, granting that English law is far from having the same importance in the United States system as it had years ago, it may be doubted whether indeed its influence "which had virtually ended by the time of the Civil War, is negligible today,"¹⁴ even if this may be the frequent belief. Of course, the problem depends on the meaning of "negligible."

The assertion that "judges are generally required to be admitted to practice"¹⁵ is not borne out by the usual statutory requirements, and even though today it is exceptional for a judge not to be a member of the bar, for a long time non-lawyers were members of even the supreme courts of some states.¹⁶ It does not seem that it is a well settled practice of the Supreme Court "to grant certiorari only on the concurrence of at least four justices."¹⁷ Chief Justice Hughes stated that sometimes the petition is granted if three, or even if only two justices feel that certiorari should be allowed.¹⁸ The statement that a judicial opinion "may vary in

9. 196 U.S. 1 (1904), reprinted pp. 174-80.

10. P. 172.

11. 5 U.S. (1 Cranch) 137 (1803), cited p. 5. It is hardly surprising that in a short book of this kind, the author did not mention Professor Crosskey's theories. CROSSKEY, *POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES* (1953).

12. P. 7.

13. See Wagner, *Codification of Law in Europe and the Codification Movement in the Middle of the Nineteenth Century in the United States*, 2 ST. LOUIS U.L.J. 335, 347 (1953).

14. P. 12.

15. P. 28.

16. WAGNER, *THE FEDERAL STATES AND THEIR JUDICIARY; A COMPARATIVE STUDY IN CONSTITUTIONAL LAW AND ORGANIZATION OF COURTS IN FEDERAL STATES* 190 (1959).

17. P. 41, n. 13.

18. WAGNER, *op. cit. supra* note 16, at 316.

length from less than one to more than twenty pages"¹⁹ would adequately represent the German practice, but it would be advisable to draw to the attention of the foreign reader the fact that some American court opinions are real treatises on some points of law, and that there are Supreme Court decisions requiring fifty or a hundred pages to be reported on. Not five, as stated by the author,²⁰ but only four states adopted the Field civil code,²¹ Louisiana and Georgia having their own civil codes.²²

The above observations about some assertions which may be subject to some doubt should not be taken to diminish the value of the book in any way. In most instances, they result from the necessity of making generalizations without the possibility of qualifying them due to space limitations.²³ In others they are statements which could be made by some scholars, though others may dissent.²⁴ Professor Farnsworth should be sincerely congratulated for filling a gap in the English language literature on introductory observations concerning the American legal system.

W. J. WAGNER†

19. P. 45.

20. P. 66.

21. California, Montana, North Dakota and South Dakota.

22. Wagner, *supra* note 13, at 347. It could also be added that in New York the code was vetoed twice (by Governors Cornell and Robinson) and not only once. See Wagner, *supra* note 13, at 353.

23. Thus, the statement that the President's power of removal of the heads of administrative agencies before the end of a fixed term "is severely circumscribed," p. 151, can seem incomplete without a reference to the case of *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), in which it was held that the President has no power to dismiss a commissioner except for one of the causes provided for in a statute. The statement that in criminal cases, pleas of guilty "are entered in the great majority of cases," p. 111, may very easily be misunderstood unless it is added that it covers all petty offenses, misdemeanors like traffic violations, etc.

24. *E.g.*, the author states that legal philosophy is frequently called jurisprudence, p. 95, n. 10. By the prevailing view, however, the two terms are not identical—jurisprudence being much broader. According to Professor Jerome Hall, it covers, besides the philosophy of law, the sociology of law and analytical jurisprudence. HALL, READINGS IN JURISPRUDENCE (1938).

In rare instances, a statement is just the result of a mixup of words; thus, it seems that in a year, the Supreme Court of the United States and the Court of Appeals of New York deliver opinions in well over one hundred and fifty cases rather than under. P. 46.

† Professor of Law, Indiana University.