1960

Book Review. Comparative Law: Cases, Text, Materials by R. B. Schlesinger

Wencelas J. Wagner

Indiana University School of Law

Follow this and additional works at: https://www.repository.law.indiana.edu/facpub

Part of the Comparative and Foreign Law Commons, and the Legal Education Commons

Recommended Citation

https://www.repository.law.indiana.edu/facpub/2357

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
effect of the party's failure to adduce proof of foreign law. Comparative viewpoints on how foreign law is used in England and in civil law countries (France, Switzerland, Germany and Austria), and statutory proposals for proving foreign law are also presented.

A wealth of material to support the text is contained in more than 400 notes, which refer to over 450 cases in many jurisdictions and a variety of legal literature. The book is indispensable to any lawyer participating in the counseling of foreign transactions and litigation involving overseas contacts. It affords an invaluable source of information and insight into the workings of international judicial procedure.

MARTIN DOMKE


The growing interest in comparative law may well be illustrated by the present volume of Professor Schlesinger, an extended and thoroughly revised second edition of his pioneering work, and by the publication of Professor von Mehren's materials on the civil law systems. The book under review contains four parts, an appendix and indexes. The first part presents the comparative method and discusses the problem of foreign law in our courts. The second one, by far the longest, is also the most essential: it presents the basic concepts and techniques of the civil law system as compared with the common law. In the third part, the author illustrates the points made previously by cases and materials from three fields of law: Agency, Corporations, and Conflict of Laws. The last part deals with the special hazards of comparative law: language difficulties, differences in classification, and the contrast between the printed word and actual practice. To this reviewer's personal regret, very good and rather extensive materials on the corruption of the administration of justice in the totalitarian systems of law, found in the first edition of Professor Schlesinger's book, were omitted.

The problem of selection of materials is not easy for any author of a text or a casebook. Undoubtedly, it is most difficult for a comparatist. The subject matter of his investigation has no limits, and to compress the law of all civilized nations, even if its most salient features alone are concerned, into one volume, would seem a hopeless undertaking. However, Professor Schlesinger performed this task in a masterly manner. Among the maze of American and foreign cases he found two scores of excellent ones, most of which discuss quite a few points. The fact that among the 18 American cases six date from 1952 to 1956, illustrates the thorough revision of the previous edition. Many provisions of European codes, the primary source of law in civil law countries, are reprinted, together with some excerpts from writings by recognized legal scholars. The materials
are linked by notes remarkable in their clarity and accuracy. The whole attracts the constant attention of the reader and is readily teachable.

The book is supplemented by a one-hundred page appendix, very helpful for the purpose of research, containing a survey of articles on comparative law, an index, and tables of cases and authors cited. The whole presents not only an excellent teaching tool, but a valuable source of information for legal practitioners and scholars, as well as any person interested in international legal studies.

W. J. Wagner


In the first part of his book, the author recounts the gradual progress of world opinion towards a more just appreciation of colonialism, which must lead in the end to the total emancipation of all the peoples of the earth.

In the second chapter of his book, which covers the preliminary discussions leading up to Chapter XI, Dr. Engers traces the course followed by the United States from the standpoint of anti-colonialism, which seemed ineradicable at the outset, to a position of compromise with the views of the administering Powers led by Great Britain. The author recalls how this change was largely the result of pressure exerted by the military for securing control of the Japanese Islands needed as defense bases.

The third part of Dr. Enger's book deals with the interpretation and application of Chapter XI, especially the provisions of Article 73(e) on the transmittal of information. The non-administering Members of the United Nations have always contended, and tried to implement this in various Assembly resolutions, that the obligation to transmit information on non-self-governing territories to the Secretary General was with a view to and for the purpose of permitting the General Assembly to initiate substantive measures designed to achieve the goals set forth in the preamble to Article 73. The author depicts what might be called the process of aggrandizement of the prerogatives of the General Assembly and the authority of the various Committees set up by it on colonial matters, which took place from 1946 thru 1955, which is the period covered by his book. Despite the relentless opposition of the administering Powers, the General Assembly of the United Nations, in which ever-growing majorities of non-administering Members had been building up over the years, managed to create a sort of "jus novum" for colonial administration which went far beyond what the letter of the Charter permitted.

From a strictly legal point of view, Chapter XI has been quite sterile; in practice, however, it has helped to create a favorable climate, of which most of the non-self-governing nations have taken advantage to achieve or hasten their independence. It is on this point that the author hinges an observation which merits attention. Legal roadblocks do not halt the march of history. The things the administering Powers either refused or