
An outsider reflecting upon the discipline of law in European universities might find the curricula of many law faculties throughout Europe curious in their seeming disinterest, either in what is, surely, a rich historical tradition of law, or in the legal traditions of countries other than the one in which the faculty is located. Of course this is not to suggest that German law students are not exposed to legal history or to aspects of French law (or whatever) or that French students do not have the opportunity to study the common law. English students can now take joint law degrees in many UK universities. Yet the emphasis in any law faculty is overwhelmingly on learning national law. This can be explained, without doubt, by professional needs. In continental countries the university law degree has for a millennium been the essential part of the professional training (like the medical school) and until recently the English law faculty saw itself as providing an academic dimension to what for many graduates would be a professional career. The outsider might still find it curious, however, that the contributions to legal thinking of jurists such as Gaius, Bartolus, Cajus, Pothier, Savigny, and Kelsen (to name but some) are, in an English law faculty, not essential to the subject of law itself. After all, would a graduate from a film studies degree be considered educated in cinema with knowledge only of the directors, producers, and writers from a single national tradition?

If there were to be a law degree founded on a tradition wider than the one attached to a single national State, Professor Strömholm’s book *L’Europe et le droit* would be a good introductory starting point. It is not a textbook, nor does it set out to be one. It is simply an elegant introduction to the European legal tradition that takes care, not surprisingly given the author’s nationality and the original place of publication of the book, to include Sweden’s part in this tradition. There are, it must be said, many such introductory books and so it is important to point out that Strömholm’s book does have a number of strengths to recommend it, always assuming of course that the potential reader has the ability to cope with French. One particular strength is that the book goes beyond the descriptive; the author takes the reader from the ancient Greeks to the contemporary world of European Union and Human Rights law, offering useful insights into the methodological and (to a certain extent) epistemological contributions of the various schools. He makes the good point, by no means original, that legal thought dominated the social and economic thinking up until ‘modern times’ (42) thus re-emphasizing the importance of understanding the role of legal categories and concepts in European rational thinking in general. In other words the book is able, to some extent, to indicate to the first year student that law is not just a set of rules applied to sets of facts: it can be a total vision of the world in the way law constructs a social reality. In doing this, the book gets other good points (although again by no means original) over to the student. Thus, for example, the author stresses the role of the canonists in constructing the foundations of public law and the importance of the Roman and their medieval successors in fashioning a seemingly self-supporting legal method. These points are necessary ones in any initiation to the civil law tradition.

However, that said, the epistemological view is very much one of the more traditional civil-
ian rather than the contemporary comparatist sensitive to recent scholarship on method and theory in comparative law. This does not undermine the project but it does mean that a particular vision is being offered to the student. Law, for example, is seen as being about norms and thus the late medieval jurists are regarded as having developed general principles waiting to be applied to particular sets of facts (‘La seule méthode raisonnable’) (57). This kind of comment is quite possibly very true, after all the development of law as a closed inference model can be located without too much difficulty in the work of the sixteenth-century humanists (see eg 171). And they, of course, did not fashion their methods ex nihilo. Nevertheless the methods and intellectual schemes of the medieval jurists are much more complex than this kind of comment can capture (as Professor Strömholm has acknowledged in his other writings) and it is thus important to stress, for the common lawyer, that the medieval Romanists’ methods might not have been so different from those found in the contemporary common law (one thinks of the scholastic use of divisio and distinctio in for example Birmingham CC v Oakley [2001] 1 AC 617).

Yet there is another problem here. The common law tradition, while not completely ignored, is somewhat marginalized (see, eg, 173) and not too much care is paid to accuracy (see 133). No doubt this is because the common lawyers have not been formed within the great European rational tradition (198). This then is a Europe that rather excludes the United Kingdom in respect of le droit. Professor Van Caenegem, perhaps one of the more interesting (and learned) authorities on the history of European law, would never present such a vision of the history of legal thinking in Europe. And this is why, perhaps, one will always prefer Van Caenegem to Strömholm when it comes to recommending what continental works might be translated into English. An index might have helped as well.

GEoffrey Samuel*


The present work, which covers particular areas of German law, namely constitutional law, human rights, rights and obligations, contract, tort law, and criminal law, should be of considerable interest to all students of German law. Its use can be recommended to such students and their teachers, particularly in conjunction with relevant textbooks, which have become increasingly available in English in recent years, thanks to the excellent work of Professor Markesinis and others.

The introduction to the book deals with such matters as problems of translation, the use of particular words and expressions, and the sources of German law. The writer mentions the hierarchy of statutory norms in Germany, and indicates that judicial decisions may be a source of German law. The book contains a considerable number of decisions, including ones given by the Federal Constitutional Court, the Federal Administrative Court and the Federal Supreme Court, as well as one given by the Oberlandesgericht (Regional Appeal Court) of Hamm. The author has deemed it necessary to give the entire text of the cases which he includes in this large work. As the author correctly points out, the reports of German cases tend to be longer than those of French decisions, and they often make copious reference to doctrine. The translations are generally clear and perfectly comprehensible, although they are not always expressed in elegant language, and sometimes reflect the complexities of legal German.

The first of the substantive chapters of the book is concerned with the Federal Constitution of 1949 (as amended). In addition to dealing briefly with certain fundamental provisions of the Constitution, like the 1994 edition, the 2002 edition contains reports of two interesting comparatively recent cases, the Bosnia Flight Exclusion case and the All German Election case. The first case was concerned with whether a temporary order (einstweiliger Anordnung) could be given preventing the deployment of certain German forces in Bosnia. The Court, somewhat unsurprisingly,

* Kent Law School