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## Book Reviews

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## BOOK REVIEWS

**The Code Napoleon and the Common-Law World.** Edited by Bernard Schwartz. Lectures delivered at the Law Center of New York University. New York University Press. 1956. Pp. 438. \$12.25.

One might suppose that it would be only the exotic content of a volume of lectures celebrating the sesquicentennial of the Code Napoleon which would interest the practicing lawyer in America. But here is a volume which presents a foreign system of law in a very readable form. And, at the same time, there is a comparison with our own system that not only stimulates us to question some of our own presuppositions and practices but also teaches us a great deal about our own law, substantive and procedural.

The lectures were given by eighteen scholars at the invitation of New York University to celebrate the one hundred-fiftieth anniversary of the adoption of the great Civil Code which became the model for the codes of a large part of the civilized world. The following lectures were of particular interest to the American attorney: a discussion of the historical background that made such a code possible in Napoleon's France; a description of the relationship of a Napoleonic-type code to case law; a comparison of contract law under the Code with our own contract law, indicating some of our law's deficiencies in this field; a study of how much farther the civil-law world has gone in curbing unfair competition than has the common-law world; and a review of the various codes that have been adopted or proposed in England and America. Also the interesting story was told of the struggle now going on in Israel between lawyers partial to the common law and those partial to the civil law. In discussing the similarities and differences between the two great legal systems, Chief Justice Arthur T. Vanderbilt of New Jersey observes that in respect to the application of the doctrine of *stare decisis* America may be closer to France than to England. A discussion of the Code in Louisiana is included, and there are other lectures of equal interest.

Doubtless a reader learns more about "the other great system of law" from the diverse comments of these eighteen men than he would be likely to learn from a whole volume by any one author, and this particular collection has the added advantage of being directed to an American audience and of having the whole discussion constantly related to our own legal system.

These lectures make it clear that there is a basic distinction between a code as we normally think of it in England and America and a code of the Napoleonic type. One is unlikely to understand the code of the Napoleonic type until one becomes aware of the historical circumstances that gave rise to the first great Code of that type. The law, Roman and customary, in eighteenth-century France varied from one locality to another and was extremely confusing. It was said that a person changed law every time he changed horses. The courts and judges, as representative of the *Ancien Régime*, were not trusted. The revolutionists, infused with the rational spirit of the eighteenth century, believed it was possible to arrive at a code of laws based upon reason, all-embracing but simple enough to be understood by every citizen; and withal, concise. The theory was, and remains to this day, that the answer to every question involving private law—public law being a separate system and having separate courts—could be found in the Code or arrived at by logical deduction from the Code.

The Code Napoleon then is considered as *the* source of the law. By contrast, a code in a common-law country is normally construed against the background of the law which it replaced or changed, is construed in relationship to other laws and is, quite often, construed narrowly. Furthermore, as our decisions accumulate construing a code or any other legislation, the decisions themselves become a part of the law. In France, however, decisions of even the highest courts, while persuasive because presumably based upon sound deductions made from the Code never become law in the sense that our decisions do. In deciding each case a French court is expected to go back to the Code and to reason logically from it on the eighteenth-century fiction that the Code itself is all-embracing in its field and is self-sufficient.

One result of a legal system based upon a code of the Napoleonic type is, as some of the lecturers point out, that the law is very much less complicated and is less difficult to find. The French lawyer can rather quickly find the applicable section of the Code, and as a result legal fees are smaller than they are in common-law countries. Yet, because the Code is necessarily general, it appears to be no easier for the civil lawyer to predict the outcome of a trial than for the common lawyer.

Professor Schwartz of New York University, who is the editor of the volume, contributes a paper on public law, *i.e.*, the law applicable when the government or its agent is one of the parties. He reminds us that the Code Napoleon does not apply to the government, that public law is a completely separate field of law, administered by different rules and by different courts. In England and America, on the

other hand, the government, with certain important limitations, is subjected to the same law that governs relationships between individuals, and the law is administered by the same courts. What are the implications of the fact that the government itself is subject to this common law which our judges can "find" in the air? And what are the implications of the fact that in civil-law countries not only is the government not subject to the Civil Code which defines the rights of the individual but the government is itself the source from which this Code and these rights come? It is somewhat disappointing that the contributors to this volume do not really grapple with these difficult but important questions.

Here and there throughout the volume there are discussions of the problem of making the law adaptable enough to meet the requirements of changing society. It is pointed out that the courts in France, and especially the highest court, the Court of Cassation, have broadly reinterpreted Code provisions to meet changing times, justifying their actions on the theory that they are expressing the "*esprit du Code Civil*." In this way the Code Napoleon has, to some extent at any rate, overcome the prediction that it would be a strait jacket hampering the normal growth of the nation. The parallel development of the American Constitution, a document which is nearly a contemporary of the Code Napoleon, comes immediately to mind.

The reader of this volume is shown incidentally a delightful picture of Napoleon, not of an egotistical general and dictator, but of a young man of thirty-two presiding over long sessions of the Council of State which sometimes lasted till dawn, arguing ably for or against this or that provision in the Code, prodding, driving, insisting on language free of jargon, joking among the eminent jurists, talking of blondes and brunettes, of blue eyes and black, and of the belief that such things are important to the law of domestic relations, "the only whimsical, the only spontaneous person in the Assembly." Napoleon was determined to give France a unified code that would fulfill the revolutionary ideal of a simple, comprehensive and equitable law. To his charm and determination much of the credit must be given for the Code that has had so great an influence on the legal history of the world.

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