

MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW. By RENE DAVID & JOHN E.C. BRIERLEY. (Third Edition). [London: Stevens & Sons. 1985. xvi + 624 pp. Limp: S\$71.20].

THIS book is the third and latest revised English edition of Professor Rene David's *Les Grands Systemes de Droit Contemporains* which was first published in France in 1964, and has since become an acknowledged classic in the field of comparative law literature and is presently in its eighth edition (1982). This French work was first translated and adapted for English-speaking readers in 1968. The first English edition was based on the second French edition of 1966. Since then, the English edition has undergone two further revisions, each time to reflect the changes made in successive editions of the original French work. This latest English edition, for example, was necessitated by the changes made by Professors David and Camille Jauffret-Spinosi in the eighth French edition of 1982. Each successive English edition has attempted to adapt the original French treatise to an English readership. This has necessitated certain textual changes and alterations or additions to the notes and bibliography. All three English editions were translated and adapted by Professor John E. C. Brierley of McGill University, Montreal, Canada.

The purpose of this book is “to supply a guide for a first examination of... many laws for those who, whatever their reason, wish to be introduced to a particular foreign law”.<sup>1</sup> To carry out this objective, the book surveys the world’s contemporary major legal traditions, examining their historical development, structure and sources of law. Unlike certain other works with a broadly similar purpose,<sup>2</sup> this book does not include any study of selected areas of substantive law such as contract or tort law. Its primary focus is thus on legal infrastructure. The book is divided into four main parts, the first three of which deal with the world’s three major legal traditions, *i.e.*, the civil law, socialist law and the common law. Part Four of the book deals with a miscellaneous assortment of legal traditions which may be of particular interest to the Third World reader: Muslim Law, Indian Law (including Hindu Law), Far Eastern Law (including Chinese and Japanese Law), African and Malagasy Law. These are collectively subsumed under the heading “Other Conceptions of Law and the Social Order”. Part Four examines these traditional conceptions of law and their interaction with European conceptions, and considers the extent to which they have been successfully harmonised with European legal concepts, as well as the fundamental problems encountered in this process.

From the foregoing brief description of its contents, it is readily apparent that the task attempted by this book is a fairly daunting one, and this may perhaps explain why so few have ventured upon it. A project with such a vast coverage obviously cannot be competently undertaken without very extensive study and research, facility in several languages, and an exceptional breadth of knowledge and experience — qualifications which are not easily acquired. To quote from Professor David’s preface to the first French edition (1964): “It requires little talent to teach what one knows, but a great deal to teach what one doesn’t.”<sup>3</sup> Indeed, Professor David’s treatise was the culmination of several decades of scholarly work. The English edition of his work has enabled the English-speaking world to share the fruits of Professor David’s considerable scholarly labours. This is indeed both welcome and commendable, particularly in the light of the relative scarcity of works of this kind in the English language.<sup>4</sup>

The book provides a useful basic introduction to the world’s major legal traditions for students and newcomers to comparative and international law. Good organisation is among its many virtues. For example, the civil law, socialist law and common law traditions are each analysed in terms of historical evolution, sources and structure of law. This is a rather convenient format as it facilitates cross-referencing and a comparative study of specific topics (*e.g.* sources of law) in each of the three major legal traditions. The book is

<sup>1</sup> p. 18.

<sup>2</sup> *E.g.* K. Zweigert & H. Kotz, *An Introduction to Comparative Law: Volumes I and II* (1977).

<sup>3</sup> R. David & J.E.C. Brierley, *Major Legal Systems in the World Today* (1st ed. 1968), p. vii. Professor David was, in turn, quoting from Montesquieu, *Lettres persanes*, 58.

<sup>4</sup> It is interesting to note that yet another well-known work which attempts a survey of the world’s major legal traditions, namely, *An Introduction to Comparative Law: Volumes I and II* (1977) by Professors Zweigert and Kotz, was translated from the original German by Professor Tony Weir.

also written in a clear, readable style, uncluttered by excessive footnoting. This latter feature has both advantages and disadvantages in that while minimal footnoting makes for a simpler, neater and less distracting presentation, it is not particularly helpful to readers wanting to locate more information on specific points mentioned in the text. However, this feature is probably in line with the book's more modest objective of providing just an initial guide for newcomers to comparative law. In line with this objective, the book includes two appendices which contain useful bibliographical information and other references to guide those interested in pursuing further study of the broad topics covered by the book. However, the bibliography furnished is not intended to be exhaustive, and is confined to information which is especially useful to those embarking on an introductory study of an individual legal system or the use of the comparative method. Furthermore, it is restricted to publications in English, French, German, Spanish and Italian. Nevertheless, this should be sufficient to start off the beginner in comparative law.

There are a few additional comments which this reviewer would like to make. Firstly, in view of the fact that the third English edition is a revised one, it would have been more helpful to readers if the authors had gone beyond simply stating that the third English edition was the result of changes in the eighth French edition of 1982, and included an outline of the specific revisions which had taken place and the respects in which the third edition differed from the second one. As it is, from a superficial comparison, it will readily be noted that the third edition has retained the subject and chapter headings of the second edition, and the reader is left trying to guess at the changes which necessitated the third edition.

Secondly, this reviewer feels that the book would have been more appropriately entitled "Major Legal Traditions (or Legal Families) in the World Today" rather than "Major Legal Systems in the World Today". In comparative law parlance, there seems to be an accepted distinction between these two terms,<sup>5</sup> and the book is really about the major legal traditions rather than any specific legal systems. Professor Merryman defines a legal system as "an operating set of legal institutions, procedures, and rules".<sup>6</sup> In this sense, the United States, for example, has one federal and fifty state legal systems, and there are as many legal systems as there are sovereign states. Professor Merryman goes on to define a legal tradition as "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organisation and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught. The legal tradition relates the legal system to the culture of which it is a partial expression. It puts the legal system into cultural perspective".<sup>7</sup> "Legal family" is used synonymously with

<sup>5</sup> See e.g., J. H. Merryman, *The Civil Law Tradition* (2nd ed. 1985), pp. 1-5; K. Zweigert & H. Kötz, *An Introduction to Comparative Law: Volume I: The Framework* (1977), pp. 57-67. Professor R. B. Schlesinger refers to "groups" of legal systems in his book, *Comparative Law. Cases-Text-Materials* (4th ed. 1980), pp. 303-328.

<sup>6</sup> *Ibid.* at p. 1.

<sup>7</sup> *Ibid.* at p. 2.

“legal tradition”. The book itself seems to accept the above distinction between “legal systems” and “legal traditions”,<sup>8</sup> and in fact uses the terms “legal family” or “legal tradition” rather than “legal system” in the text itself.<sup>9</sup> In view of this, this reviewer thought it somewhat odd that the book was entitled “Major Legal Systems” when “Major Legal Traditions” would have reflected its contents more accurately.

Finally, although perfection is clearly not expected, and typographical errors are not such a rare phenomenon in most publications, it seemed to this reviewer that Part Four of the book, in particular, contained an inordinate number of typographical errors.<sup>10</sup>

Notwithstanding the foregoing “faults”, this book is, overall, a commendable effort, particularly in view of the relative paucity of similar works in the English language in this area. Its considerable virtues far outweigh the above-mentioned “faults” which are, in essence cosmetic imperfections which do not detract substantially from the basic value of the book. As a first guide for newcomers to the field of comparative law, this book fulfills its functions very adequately. It provides a good starting point for those seeking a general or basic understanding of the major legal traditions in the world today.

<sup>8</sup> See *e.g.*, pp. 20-21.

<sup>9</sup> See *e.g.*, pp. 1, 17-31.

<sup>10</sup> See *e.g.*, p. 454 (“universal”); p. 459 (“Irak”); p. 461 (“theoretically”); p. 462 (“reality”); p. 463 (“vary”, “neglible”); p. 464 (“Christina”); p. 507 (“cocept”); p. 515 (“constituant”).