JUDGES, LEGISLATORS AND PROFESSORS: CHAPTERS IN EUROPEAN LEGAL HISTORY. By R.C. VAN CAENEGEM. [Cambridge: Cambridge University Press. 1987. x + 203 pp. Hardcover: £22.50]

MOST books on comparative law try to explain the divergent evolution of law between England and the Continental Europe on the basis of ideological or intellectual developments in these two geographical areas. In this short but important study, Professor van Caenegem provides a refreshing and insightful alternative explanation to this divergence. He sees the development of the common law and the civil law systems as a manifestation of the power struggle between three competing groups (i.e. judges, legislators and professors) to control law and society. Professor R.C. van Caenegem is Professor of Medieval History and Legal History in the University of Ghent in Belgium and this collection is derived from the lectures he delivered as Goodhart Professor at Cambridge University between 1984 and 1985.

The book is divided into 4 parts. In Chapter 1, van Caenegem describes the different approaches by English and Continental law by reference to ten legal institutions. For example, he describes the introduction of the appellate process as a political event. He argues that the historical common law has only known two institutions that bear any resemblance to the present-day appeal: the accusation of false judgment and the writ of certiorari, and that the courts have traditionally been centralised in England and there was no real "hierarchical

prerequisite" for appeals.On the other hand, the political unification of France enabled her Kings to establish the Parlement in Paris as a court of appeal, making it normal practice for appeals to lie from the provincial courts to the Parlement. It "implies the subjection of lower, to the authority of higher courts, which is a question of power politics." Other illustrations include the unwritten constitutional system in England, the rule of exclusion under the common law and the importance of jurists and judges in the continental and common law systems respectively.

Chapter 2 is entitled "The Mastery of the Law: Judges, Legislators and Professors" in which van Caenegem explains why judges, legislators and academics are regarded differently under each system of law. All students of comparative law will know that judges are key players and are held in high esteem in a common law system. The judge in a continental system of jurisprudence is a faceless decision-maker who acquires little prominence in legal debates or discussion. On the other hand, the continental legal scholar is highly regarded and his opinions on all legal matters are taken seriously by the courts. The same cannot be said about English scholars. Indeed, up till a decade or two ago, citing a living author or academic in the courtroom was tantamount to heresy. These differences in the status of these groups of legal actors is largely due to the different characteristics of common and continental law. In this chapter, he debunks the idea that the Germans were drawn towards Roman law because the Germans, as a people, were imbued with a theoretical bent, and that the English rejected Roman law because they were inherently practical people. His explanation is that the adoption of the *Corpus Juris* as the cornerstone of German law was a politically motivated event. Professor van Caenegem shows that up till the end of the Middle Ages, the Germans had no interest in Roman law, but when they adopted Roman law, they were looking for a unifying legal element to forge a national identity.

Chapter 3 is a short chapter dealing with how each system of jurisprudence diverged from the other and the extent of divergence. Professor van Caenegem concludes the book by discussing the merits and demerits in each system in Chapter 4, entitled "Which is Best, Case Law, Statute Law or Book Law?" Those expecting a conclusive answer to the question posed by the title of this chapter will be disappointed. The qualities of each system are examined and reforms suggested in some areas, but judgment is reserved.

This book brings fascinating insights into an area of law that has often been written about. His clear and lucid style makes the book a pleasure to read. The lecture format is, to a large extent retained and this adds to the easy, informal nature of the discourse. Furthermore, the copious footnotes are appended to the end of the text and this prevents the reader from being distracted from the main arguments. It is definitely recommended to all who are interested in legal history, comparative law or the legal system in general.

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