

AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES. By E. Allan Farnsworth. [New York: Oceana Publications, for the Parker School of Foreign and Comparative Law. 1963. 184 pp. U.S. \$5.]

This book is based on a series of lectures given by Professor Allan Farnsworth of the Columbia Law School to the students of comparative law at the University of Istanbul. The object of the book, as the author points out in the Preface, "is to set forth those fundamentals of our legal system that are most important as background in the event of further inquiry and most likely to be novel or troublesome to one not trained in it". He therefore stresses certain points familiar to common law lawyers, and omits others which are familiar to lawyers trained in the civil law system. But this does not make the book less valuable to the American lawyer. He is made to look at his own law from outside, in the same manner as a foreigner would look at it. The result is that he sees its various facets from different angles,

sees it well and sees it whole, though not the details. The book would, therefore, appear to be more than an *Introduction* to the American lawyer.

The book is divided into two parts. The first entitled 'Sources and Techniques' includes discussion of the historical background of federal jurisdiction and of the special characteristics of United States case-law. Speaking of precedent Professor Farnsworth says:

"Skill in the use of precedent is more art than science. It is no easier to acquire by reading a discussion of the doctrine than it is to learn to ride a bicycle by studying a textbook on mechanics...." (p. 50)

In a footnote (p. 55, note 18) he has something more homely to say: "As in the case of wines, some precedents may improve with age, while others deteriorate." And he proceeds to explain: "Certainly the accretion of supporting authorities with the passage of time lends strength; on the other hand changing circumstances erode it" (*Ibid.*).

The second part styled 'Organisation and Substance' deals with classification of law and procedural law. It also gives, as the blurb has it, 'capsule introductions' to various branches of law. Even when viewed as capsules, some of them appear to be too tiny to be of great help to the civilian. For instance, consideration in contract, a concept unfamiliar to the civilian in its common law form, is given less than thirty-five lines in a book of 184 pages devoted to the common law system of the United States. The subject of contract itself is dealt with in less than four pages and a half. The civilian, however, cannot complain that he is taken unawares: for, it is stated in the Preface: "It is only fair to warn the reader of the obvious fact that what follows is general rather than specific and illustrative rather than exhaustive. Prevailing or conventional views on controversial points may be presented without notation of conflicting or dissenting opinion, and *significant matters may be omitted entirely.*" (emphasis added). The civilian who may be disappointed with these capsules is invited to a rich repast indicated in the reading list provided at the end of each chapter.

There is a very useful appendix containing reports of two cases, one in which the Court of Appeals of New York can be observed overruling previous decisions of its own, and the other which illustrates the various techniques adopted by a common law court in the interpretation of statutes. One of the highlights of the opinions in the first case is the following observation by Chief Judge Desmond:

"....the present rule which we are being asked to modify is itself of judicial making since our statutes say nothing at all about privity [of contract] and in early times such liabilities were thought to be in tort. . . .Alteration of the law in such matters has been *the business of the New York courts* for many years.".... (p. 171, emphasis added).

If the English lawyer is scandalized, is he not himself to blame for his conservative attitude to the doctrine of precedent?

Those who are familiar with David and de Vries's *The French Legal System*, published for the Parker School of Foreign and Comparative Law, would find in this book a lineal descendant not unworthy of its pedigree.