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## *Comparative Law in the University of Chicago Law School*

In 1934 the Max Pam Professorship for Comparative Law was established at the University of Chicago Law School, and since that time instruction in comparative law has been offered at the School. Since 1949 there has also been maintained a small research staff in the field.

The courses and seminars offered in comparative law are partly concerned with sociology of law and partly with introduction to modern civil law.

Like sociology of law, comparative law finds a parallel in such other "comparative" sciences as comparative religion or comparative linguistics.

For centuries philologists have studied the grammar, structure, vocabulary, and history of this or that particular language, especially Latin, Greek, Hebrew, Arabic, and the modern languages of the Western world. Comparative linguistics arose when "exotic" languages, such as those of the East, the American Indians, or the natives of Africa or Oceania, were made the subject of scientific study and when, under the impetus of the acquaintance with the seemingly totally different, philologists came to search for the common features and were then driven to

such problems as those of the origin and growth of language in general or its role in human society. It was then discovered that languages could be grouped in families, that languages change, and that their changes can be related to certain changes in the development and living conditions of the peoples in question, that one could find certain structural laws, etc. In other words, in addition to the scholarly investigation of particular languages, there developed a new science of language in general which in many ways came to throw new light upon the structure, the history, and the function of all the several languages, including our own.

Similarly, comparative religion was built up on the side and above the long-established theologies of Christianity, Catholic and Protestant, of Judaism, Islam, Hinduism, and Buddhism, paying attention to the less-developed religions of antiquity and of more primitive or archaic civilizations, and trying to investigate and define the phenomenon "religion" as such, its general role in human life, its types, structures, development, and relations to other phenomena.

In law we have an analogous situation. In each country the men of the law, both as practitioners and as scholars, are concerned only with the positive rules of the particular country's legal systems. There are as many sciences of law as there are legal systems. While the sciences of physics, of musicology, of medicine, of mathematics, or of practically all others are the same all over the world, the sciences of American, of German, of French, of Japanese, or of Uruguayan law are all different from one another. An eminent expert in American law is still a layman in Mexican or Swedish or any other law.

However, in addition to our being lawyers, we are human beings with curiosity and the urge for knowing and understanding the world in which we live, and in that capacity we may well come to ask questions about the phenomenon "law" as such, especially when we find out that abroad law is not the same as here or that in the past it has not been the same as it is today. Why is it different; why does the law change with changing times; what makes it change; why is it now the way it is; what is this thing "law" in general; what is its role and function in society; can we evaluate it in general and as to its



particular manifestations; is there "good" and "bad" law; what is the standard for such value judgments?

These, or at least some of these, questions have been asked for centuries. They have traditionally been regarded as constituting the sphere of jurisprudence or philosophy of law, and they have been treated in the method of philosophy, i.e., speculation in the sense of concluding, through the use of reason, from the observable and known to the unknown, or through deriving answers to specific problems by conclusions from first principles. This is not the place for a critical evaluation of the role and merits of legal philosophy. It will suffice to state that we are driven to it by that irresistible urge to know and understand that mysterious universe in which we are finding ourselves and, confiding in that cherished gift of reason, to find answers of at least subjective certainty to questions as to which we have to take a stand if we are to live, however insoluble they may be to the finite human mind.

In comparative law we are approaching the same questions about law in general, but in a more modest way. Rather than being a philosophical science, comparative law is an observational one. But its subject matter is constituted by the laws of all times and climes. Refraining from speculation, it endeavors to collect, observe, analyze, and classify them, and, like other sciences in the narrower sense of the word, it searches for typical collocations, coincidences, and sequences, or, in other words, for "laws"; laws, of course, not in the sense of statutes, precedents, or other ought norms of human behavior, but laws in the sense in which the word is used in the natural sciences, laws of the kind of Newton's laws of gravitation or Gresham's law in economics; laws, as it may also be appropriate to observe, not in the sense of immutable intrinsic necessities, but in that sense in which the word is understood in modern natural science, i.e., simply as coincidences or sequences which observation reveals as typically occurring under certain conditions.

The seminar courses which we have offered in this sociology of laws at the University of Chicago Law School are of a twofold kind. In connection with current work of translating and annotating the part on sociology of law in Max Weber's monumental treatise of sociology, we have several times offered a seminar on Max Weber's sociology of law in which we have read and discussed the text which will shortly be available on the book market. This short text ranges over a vast field. Weber's knowledge is truly phenomenal. He literally draws on the laws of all times and climes, on modern civil and common law, on Roman, Greek, and Germanic laws, as well as on Islam, Hindu, or Chinese law, or on the laws of primitive tribes. All this vast material is centered, however, around one basic problem which constitutes the unifying theme of the entire book with its chapters on the sociology of power, of political, administrative, and economic organization, and even of music. Is it true, as the Marxists maintain, that all social phenomena

are determined by economic facts, especially the relations of production? Or can it, perhaps, be said, as some have believed in answering the Marxists, that religious phenomena are determinants of all others? Is it possible and permissible at all to search for any one sphere of social life as determinative of all others? Or do we have to recognize a more subtle and more complex interplay of all social phenomena among one another? Having, at an earlier date, investigated the interplay between religious and economic phenomena, Weber, in his magnum opus, undertakes, among other things, to search for the interplay between legal phenomena, on the one hand, and economic, religious, political, and administrative, on the other. Perhaps, the central thesis of his sociology of law is constituted by the section on the types of law specialists by whom the legal system of a given society is cultivated or dominated. Wherever a legal system has been manipulated by priests or theologians, it presents certain characteristic features which are significantly different from a law practiced by tribal assemblies of one or another type, or a law dominated by gentlemen of leisure as in Rome, or a squirearchy as in eighteenth-century England, or conveyancing counselors, or the bureaucratic officialdom of Continental monarchies, or scholars of the type of the nineteenth-century German Pandectists, etc. In constant relation with his central theme, Weber discusses such problems as the development of freedom of contract in different civilizations, the growth of the concept of corporate personality, the modes in which legal concepts are formed in different laws, comparing especially the formalistic rationality of the later civil law with the different techniques of the common law, of ancient Roman law, of the sacred laws of India, Islam, Judaism, and the Roman church, etc. The richness of the contents of Weber's book, the acuteness of his observations, the objective exactitude of his method, and the suggestiveness of his own thought can only be hinted at. The wealth of the book cannot be exhausted in a short seminar of forty hours. But it can be used to stimulate the students' thought, to fire their imagination, and to open their eyes to the vast mass of the phenomena which are comprised within the law and to make them aware of its universality as well as of its infinite variety and of its role and function in civilization in all its variants.

The second kind of seminar in "comparative law—sociology of law" has been built around the theme of the human endeavor to replace the rule of violence by a regime of law and order. It seems that, perhaps universally, we can find a typical sequence of development. In almost all primitive societies of the past or present of which we have knowledge, it seems that we find small kinship groups within which the use of violence is regarded as illegitimate, while in the relations of the group with others resort to violence is the only, or at least the usual, way to adjust disputes. Vengeance and the blood feud seem to constitute the practically universal meth-

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## *Corporate Law* (Continued from page 2)

ods of dispute "settlement" between kinship groups which, in their internal structure, on the other hand, constitute peace units. What was the way from this primitive state of affairs to the great peace areas of the modern nations: How did there develop the way stations of mediation, arbitration, adjudication, federation? In our seminar we have been trying to trace these processes in antiquity or the Middle Ages, then to study the spheres of violence still existing in present society, such as the duel, lynching, gang warfare, and permissible self-help. Upon this basis we then proceeded to discuss the possible ways in which the rule of law might be achieved in the last great spheres of force left today—labor relations and the international scene. Necessary expert information has been provided in this seminar by members of the faculties of other departments of the University of Chicago, especially the Oriental Institute and the Department of Sociology. Additional stimulus has been injected by the participation of students of sociology, political science, theology, oriental studies, and other fields.

In the second group of courses in comparative law we have been trying to give to our students an introduction to the so-called civil law, that is, that group of legal systems which prevails in the Western world outside the common-law countries—the United States and the countries of the British Commonwealth. Obviously we cannot even try to “teach” French, German, Swiss, or Mexican law in forty hours. We are an American law school, and within it courses of introduction to foreign law are justified only in so far as they help to make our students better American lawyers. Our instruction is thus to be geared toward practical ends, which can be formulated as follows:

1. Contact with foreign law should make our students aware of the fact that our institutions, laws, and methods are not the only possible ones in the world.

2. Studying some institutions and methods of a highly developed foreign law should deepen our students' understanding of the corresponding institutions and methods of our own law.

3. Our students should be made aware of the fact that when they have to deal with foreign lawyers in business matters, in diplomatic negotiations, or in litigation, they cannot expect these foreign lawyers to think and to argue in the ways we do.

4. Our students should be induced on their own initiative to broaden and deepen their acquaintance with the treasure house of stimulating or useful ideas and experiences which foreign countries have accumulated and from which we may profit for our own purposes.

These aims can be pursued in various ways. In our opinion the best way is that of resorting to the incisive treatment of one or several fairly narrow but important sets of problems which present themselves in all modern countries and which are placed before the students in that way with which they are familiar, i.e., through cases. This method requires that there be placed in the hands of the students a collection of cases, taken from representative foreign systems, and dealing with issues which come up for decision both here and there. They must be centered around problems which are significant in themselves and the treatment of which in the several systems concerned is apt to throw light upon their characteristic methods of legal thought.

In our courses at the University of Chicago Law School we have used materials from various fields of private law. For several years we concentrated upon problems of the law of torts, especially those which are connected with the treatment of negligence cases and with the protection of privacy. In other years we took certain problems of the law of contract (duress, mistake, impossibility), of sales (warranty for quality, risk), or conflict of laws (characterization, substance and procedure, renvoi, personal status). The preparation of the materials, especially the translation of the foreign cases, was, of course, a cumbersome and time-consuming job.

In recent years young foreign lawyers have been coming to American law schools, not to obtain a full train-



ing in American law, but to acquaint themselves with the basic institutions of this country and with the methods of its legal thought. Without special guidance and advice their efforts may be wasted, and they will return to their homelands disappointed. At our Law School we have paid special attention to this kind of comparative law. We have established counseling service for our law students from abroad and a special seminar in which the strange world of American legal, political, economic, and social institutions is sought to be explained to them through comparison with the corresponding phenomena of their own countries.

The task which comparative law can fulfil in American life is vast. Teaching constitutes but a small part. In order to make available to this country the immense store of the world's legal thought and experience and to make America's contribution felt in the emerging science of law as a world-wide phenomenon, research and publication are required on a vast scale. The University of Chicago is trying to contribute its share through its Comparative Law Research Center. Under the direction of the Max Pam Professor of Comparative Law the translation of Max Weber's *Sociology of Law* has been completed, and, in order to make this work useful for America, there has been added a voluminous apparatus of explanatory annotations. In connection with the American Bar Association's Interprofessional Commission on Marriage and Divorce Law, there has been undertaken a study of developments in the field of divorce in the principal foreign countries.

Other research work is carried on in the field of conflict of laws.

Together with eleven other law schools, the University of Chicago Law School has combined to form the American Association for the Comparative Study of Law, Inc., which has just started to publish the *American Journal of Comparative Law* and which thus aligns this country with those other nations in which the cultivation of the science of comparative law has long had important and respected organs of scholarly and practical publications.

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