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Book Review

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BOOK REVIEW

AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES. By E. Allan Farnsworth. Oceana Publications, New York, 1963. Pp. 184.

Most of us have had occasion to be aware that the most difficult kind of question to answer is one which asks "what is?" something or other. As far as the law in general is concerned, heated and inconclusive debate has raged on the philosophical plane around the correct answer to the bland question "what is law?" Only less in degree, rather than in kind, of extent of profundity and breadth is the difficulty of answering the question "what is the law of the United States?" Yet Professor Farnsworth, in this slight volume, addresses himself to the difficult task of providing a quick answer to this unmanageable (and perhaps unfair) question.

Whatever the difficulties, or even impossibilities, it is a question which needs answering. It is certainly a nobler thing to undertake to provide this service than to boggle at scholarly and academic scruples that might make one look with horror and aversion at the notion that even the most summary account of the law of the United States could be attempted in less than a multi-volume treatise. Yet there is precedent for doing such a thing, as for example when Rene David, a few years ago, effectively presented the French legal system in his one-volume work. *Le Droit Francais*—a considerable more extensive work than Professor Farnsworth's—yet comparable in scope. The chief beneficiaries of such efforts are foreign legal scholars and practitioners who lack an acquaintance with the legal system in question, yet have the occasion to acquire some notion of it. For such a purpose, learned treatises and articles, confined to narrow areas of our law, are not suitable. At a time when trans-national legal contacts are becoming increasingly common the need for such general and introductory information necessarily increases apace.

The former lack of such a potential readership in any

appreciable quantity probably inhibited any earlier development of works of this type. For it is far too superficial to commend itself to an American legal audience, and is unlikely to have appreciable utility even as introductory material for first year law students. In the Preface to the book Professor Farnsworth indicates that his effort was motivated in the course of his teaching foreign students in Istanbul, and perceiving a need for a generalized treatment of this type in the law of the United States. Although he does not otherwise specifically identify the intended audience, it is presumably directed toward persons legally trained in systems other than that of American law. Hence, it presumes some sophistication in legal concepts generally, but none in United States law specifically. If this conclusion as to the purpose and direction of the book is correct, then an appraisal of it should be concerned with how well it, in fact, conveys to a foreign legal audience a basic grasp of our legal system.

Probably the persons best qualified to make such an appraisal are members of the foreign legal audience itself. Otherwise, as herein, some speculation is involved as to how efficiently these concepts are conveyed to the foreigner. From a standpoint of basic organization and selection of topics, it would seem very sound. The first half of the book is sub-titled "Sources and Techniques," and includes topics on historical origins of American law, legal profession and education, the significance and treatment of case law and statutes, and the function of legal literature. This is clearly a viable approach, and probably the most logical one, though other arrangements might be equally appropriate. The last half of the book is devoted to brief discussions of the major headings of the substantive law of the United States, following the conventional breakdowns, such as torts, property, criminal law, and constitutional law, among the sixteen basic categories selected. Again, this is a clearly justifiable organization, even if not above criticism or satisfactory to all tastes. Most of this is what would be handled in French and similar legal literature under the heading of *La Doctrine*. Thus the book seems to perform

the function of providing a basic outline of the structure of the law of the United States, and of exposing the foreigner to its most fundamental topics.

A most ticklish undertaking is that of describing "home" to a foreigner within the hearing of one's own countrymen. For everyone has his own concepts of home which he wants to have conveyed to the foreigner, and is likely to want to intrude his own version when he overhears some deviant account being related to a foreigner. Undoubtedly Professor Farnsworth is in that vulnerable position when being read by a fellow American jurist. In the Preface he displays some discomfiture on this point when he makes in advance some *mea culpa* protestations. But these will probably not stay the hand of the sharp-shooter who experiences a sense of outrage at some of the statements made. For example, there are those who may feel that the scope and sophistication of American legal conceptualism are flagrantly maligned by this footnote on page ninety-five: "[C]omparative law, and jurisprudence (as legal philosophy is frequently called), are not sufficiently indigenous to warrant discussion." On a "to each his own" basis, the book is probably replete with statements which will inflame various readers, in their particular areas of interest or specialization. But this is an occupational hazard of an undertaking of this type, and does not essentially undermine its basic worth.

On a plane somewhat above the sharp-shooting level, however, one may question the efficacy with which the sound original scheme is executed. This relates to the effectiveness of communication that may reach the foreign reader. While there is a conscientious effort to maintain the explanation on a simple level, inevitably the author lapses from time to time into professional jargon. Concepts and terminology which seem elementary to an American jurist may be quite puzzling to a foreigner. And in somewhat the same vein, non-distinctive features are sometimes cited as being peculiarities of United States law.

Another comment may be made with regard to style

in the use of footnoting. The bulk of the footnotes are used as parenthetical interjections of textual material. Most of these would seem to be normal and desirable parts of the text itself, and it is an annoying interruption of the flow of the reading to have to glance to the foot of the page (on pain of a nagging feeling of having missed something important) and then to find one's place again. The best practice approves this only as an exceptional device, but it occurs commonly in this book. The book is of such a nature that the omission of the scholarly ritual of citing authority to every affirmative statement is a refreshing and salutary feature. The bibliography is handled effectively by a brief list of suggested readings at the conclusion of every chapter. Deference is paid to the ironclad rule of American legal literature of automatically dropping a footnote citation anytime a case is mentioned, however inconsequential or incidental. It is to the author's credit, however, that he footnotes a citation to *Erie Railroad v Tompkins*¹ only the first time he mentions the case, and ignores footnoting on subsequent occasions when he refers to *Erie Railroad v Tompkins*.²

The bibliographical references are all to English language sources. There is some logic to this, since knowledge in English is of course necessary to read the book in the first place. Yet the problem of the foreign reader wishing to delve more deeply into American law may be more than linguistic. He will likely have access to limited, if any, legal material in English. Hence, it would have been more helpful to have cited the few works in foreign languages that do exist treating the law of the United States.

The book does not purport to be other than superficial, and never exceeds these pretensions. But it does pioneer a need in legal literature for a general exposition of our legal system. Hopefully, the future will see sequels to Professor Farnsworth's commendable effort in the form of somewhat more extensive and profound treatments without sacrificing

1. 304 U.S. 64 (1938).

2. *Ibid.*

the brevity that is such a valuable feature when the object is to give an informative panorama.

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