

PREFACE

No apology is warranted at this stage for writing anything on Comparative Law, yet a word on the nature of the present volume would be appropriate. This is not intended to serve as a text-book—though there is much that the student can draw upon. Nor is it presented as an inspirational document for the advanced scholar—though he will also find some useful hints in the chapter on future research in India. The volume is primarily aimed at the teacher of Comparative Law.

It is a truism that Comparative Law is not a subject but a method. It is not susceptible to any hard and fast definition. It cannot be explained except by way of reference to its objects and scope. Half of the present volume is aimed at establishing this. When once it is agreed that Comparative Law is not a subject but a method, it is left to the teacher to choose any facet, institution, structure, etc., of a particular field of law in more than two legal systems and demonstrate its operation. The object then becomes a better understanding of one's own legal system.

A. T. von Mehren chose a general comparison between the Common and Civil Law Systems. For R.B. Schlesinger the intricacies involved in the invocation of a foreign legal system in a court of law had primordial significance. Rene David assumed that the presentation of a broad spectrum of the major legal systems of the world would promote better understanding of one's own legal system.

The market of comparative law thus is determined (to adopt the terse phraseology of Khan-Freund) by the "producer's choice". The only text-book in the strict sense of the word therefore is that little classic produced by H.C. Gutteridge. It would be presumptuous to attempt an improvement over this. It can only be up-dated. We have made a very humble and modest effort in this direction in the longish introduction. The teacher is left free to determine his own area of interest and teach the same comparatively. It is hoped that the bibliography would be of some use in the selection process.

In tune with David's method of teaching comparative law to undergraduates, namely, by presenting synoptic summaries of the legal systems of a number of countries, we have chosen the neighbouring countries. The aim obviously is to promote better understanding of the laws and legal systems of countries which are of immediate interest to us. Promotion of international understanding is an acknowledged objective of Comparative Law. To facilitate the adoption of this method of teaching we have produced, with the permission of the publishers, articles dealing with the legal systems of Japan, Afghanistan, Malaysia, and China in part III of the monograph. The piece on Ceylon was commissioned specially.

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