

BOOK REVIEW

The History of Law in Europe: An Introduction

Markus McDowell¹

Bart Wauters and Marco de Benito. *The History of Law in Europe: An Introduction*. Edward Elgar Publishing, 2017. ISBN: 978-1-78643-075-5. 190pp.

Introduction

The *History of Law in Europe* is an ambitious work, and therefore the small size of the volume might surprise a reader. After all, it covers civil law from the Roman Empire, to the Early, Middle, and Late Middle Ages, to the early Modern Age, with a final chapter on the Common Law. But these authors have done an excellent job of meeting the challenge of covering such a wide span of time and topics in an introductory title. Targeted to law students and this interested in ‘essential aspects of European history’, the authors leave out footnotes (but include a healthy bibliography), focus on the sources of law, a bit of jurisprudence, and provide concise and summarizing descriptions of character, topics, and institutions. The skill with which the authors accomplish this tricky act is a testament to their grasp of the topics.

The authors, Bart Wauters and Marco de Benito, are professors of law at IE University in Spain. Wauters is also the author of *De Controverse Rond De Jurisdictie Van De Nuntius : Het Placet Op De Geloofsbrieven Van Spinelli, Valenti-gonzaga, Tempi En Crivelli, 1725-1749* (Universi-

¹ Dr. McDowell is a legal researcher and writer, a freelance editor, and an author. He serves as the Editor-in-Chief of the *Legal Issues Journal*.

taire Pers Leuven, 2001); de Benito published *Convenio Arbitral* (Civitas Editions, S.L.) in 2010. Both have published in a number of journals as well.

The goal of this book is to provide ‘a short introduction, not an encyclopedic overview of the legal traditions of every single European country’ (2). To do so, they focus on civil law and common law families, giving little or no analysis of other legal customs unless they had an impact on the former.

The authors also intend the book ‘to help lawyers and legal professionals, of today and tomorrow, to develop the ability to critically assess their own professional endeavors’ (3). That is, to place their own work in the context of its development, the effects of current and past social and political trends, and how it interacts with culture and intellectual endeavors.

The authors focus their account on four sources of law: legal science, legislation, courts, and customary law. The approach is comparative, which serves well the subject at hand. The developments of law in the larger civil and common law worlds, and within each country, is placed in its cultural and political contexts.

Contents

The book contains six chapters, along with an introduction and an epilogue. An extensive “for Further Reading” section, which is categorized, and a helpful index are included.

Chapter one addresses Roman Law, beginning with the Justinian period and the codification of Roman law in the *Corpus Iuris*. To provide context, the second section traces the history of Rome from its founding to the post-classical period. Finally, the authors trace the evolution of law through the latter period.

Chapter two turns to the Early Middle Ages, beginning with Germanic law with its beginnings in the second century BCE. Law in this period was characterized by its oral and customary character: a ‘...personality of law: each individual is to be judged in accordance with the legal rules of the group to which he belongs’ (35). The authors note that period was also characterized by extreme fragmentation and diversity, as one might expect in a feudalistic society.

The Late Middle Ages is the subject of chapter three, and the authors first contextualize the period by focusing on the history, political institutions, and the church. With elegant summaries and examples, the chapter reveals the significant developments of the *ius commune*, the *iura pro-*

pria, along with the misty beginnings of the Bologna law school around 1088. Here is the re-discovery of the Justinian's *Digest*. The authors address the flurry of research and activity that followed, with Bologna setting the model for European universities ordered around Theology, Roman Law, Canon Law (Church Law), and Medicine. Examples of the systemization of law are presented, which resulted in more trained jurists, better record-keeping, and a decrease in the fragmentation of legal systems.

Chapter four addresses the Early Modern age. Again, the authors begin with an outline of history and politics, and the important development of the modern State. They described how Church law continued to play a significant role in legal systems, but set out how political considerations and conflicts led to changes in its position. Legal humanism, attention to international law, and competing jurisprudential models are all addressed, of course. The rest of the chapter is a discussion of the beginnings of modern legislation, the administration of justice by the State, and the scientific study of the law and the State.

"The Bourgeois Age" is the title of the fifth chapter, covering the 18th and 19th centuries. While this covers a smaller time period than the previous chapters, it is also the period of the most change—the changes which led to our modern systems. After an introduction to the economic, political, and religious history of the period, the chapter describes law and jurisprudence during the Enlightenment. The authors describe how philosophers turned their attention to law and the state, codification projects sprang up all over Europe, including, most importantly, Napoleon's *Code Civil*. Various schools of jurisprudence are discussed: exegetic, historical, and pandectism, the latter which led to the *Bürgerliches Gesetzbuch* in Germany and Swiss codification. The chapter ends with a brief recitation of other countries who followed suit.

The final chapter addresses the Common Law. Though it had little or no effect on the evolution of Continental law until the 18th century. In fact,

[u]ntil the beginning of the 12th-century, the legal systems in England and on the European mainland were roughly the same in outlook. The dominant source of law was unwritten custom... locally organized courts...[with] no unified, nationwide law...and... court system. (144).

This chapter explores how such a different tradition developed on the British Isles than on the Continent. Beginning with the withdrawal of the Roman military and government leaders in the 400s, the authors trace the influence and evolution of the Anglo-Saxon period, the Norman Conquest, and the development of the Royal Courts. The unique concept of Writs, centralization of the courts, and the rise of equity and chancery are

all explained. The chapter then moves onto the peculiarities of the common law system, and its expansion throughout the British Empire and to the United States of America. It closes with a discussion of the relationship between common law and the *ius commune*.

Finally, the Epilogue brings this sweeping recitation of the history of law to a summary and presents some conclusions.

Analysis

A short book on the entire history of European law is a heady endeavor. The authors have navigated this project with aplomb and insight. Most worthwhile books on the legal history Europe are massive or focus on one aspect. The authors have presented a book that is truly an introduction, orienting a reader to the subject in manageable and understandable manner. Yet they have accomplished more than just a summary. Through examples of legal texts, insights into relevant persons and jurisprudential movements, and the contextualization in culture and politics, the writers effectively elucidate the different periods and their character.

While the narrative is in roughly chronological order, there are times where the authors jump back to follow another line of sources. The necessity of this back and forth in time is potentially confusing, but a quick review of the table of contents (or even writing out a brief timeline) solves this problem.

One might critique a volume that attempts to cover so much material in such a short book. In its defense, it *is* an introduction. The book could also be faulted for making statements that are debated (or debatable) among legal historians without footnoting. The authors are aware of this drawback, and state as much in the introduction (5). The extensive bibliography is meant as a resource for the reader who wants to delve into the nuances and authorities behind the book.

Conclusion

The History of Law in Europe meets its goal of providing a short introduction to the legal history of every European country. As an orientation to the subject, it is an excellent choice. Concise, it still gives the reader a sound overview. For those wanting to dig deeper into some of the subjects, the extensive bibliography is a more-than-sufficient starting point. *The History of Law in Europe* would serve well as a first text in legal

history for students, or for anyone who desires an introduction to the subject.