

Book Review

By Adam Boóc*

Trends in the Development of Private Law in Europe (Az európai magánjog fejlődése)

Gábor Hamza, Nemzeti Tankönyvkiadó, 2002, 362 pp

It was the end of 2002, when the monograph *Az európai magánjog fejlődése (Trends in the Development of Private Law in Europe)* was published by GÁBOR HAMZA in Budapest. GÁBOR HAMZA is chair professor of Roman Law and Comparative law at the Faculty of Law, Eötvös Loránd University of Sciences, and the head of the Department of Roman Law. The aim of this monograph is to describe the formation of the private law-systems of today based on the traditions of Roman Law.

The author intended to present the formation and the structure of the modern private law systems with the method of the comparative private law highlighting the subsequent fate of Roman Law.

There is no doubt that there are numerous studies in the international literature, which deal with the general presentation of the universal history of private law. There are also several general introductions to the comparative law (*droit comparé*) such as the works of RENÉ DAVID¹ and FRANZ WIEACKER². Taking into consideration these books, one has to underline the specific methodological basic-principle of professor HAMZA's study.

The present book should not be regarded as only the *historia externa* of private law, but one may also collect several pieces of information on the dogmatic questions and the history of institutes of private law. Nevertheless one can find useful data on the history of the science of private law, as well.

If one pays attention to the essence of this methodology it may not be surprising that the author puts high emphasis on Roman law and on the subsequent fate of Roman law. It is absolute beyond doubt that Roman law can function as a possibility for integration among the national legal systems. Overwhelming as it may be but Roman law can be regarded as a *lingua franca* of law.

If one takes a short look on the title of the present book, one may think that the monograph concerns only the European countries. Nevertheless, one may find the short legal history of private law of every European country. The book, however gives detailed analysis on the impact of the European civilian tradition on countries outside Europe. One can read chapters on the legal development of North America, Central America and South America, South Africa and some countries of Asia, as well.

The book can be divided into four parts, as follows:

1. The Origins of European Private Law;
2. The Development of European Private Law in the Middle Ages;
3. The Development and Codification of European Private Law in Modern Times;
4. The Influence of the European Civilian Tradition on Countries outside Europe.

The first part of the book gives a very useful introduction to the origin of the European private law. The very first paragraphs of the book are dedicated to the fate of Roman law after the demise of the West-Roman Empire. This chapter also contains an analysis on the codification

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¹ DAVID, R.—JAUFFRET-SPINOSI, C.: LES GRANDS SYSTÈMES DE DROIT CONTEMPORAINS. PARIS, 2002.¹¹ IN ENGLISH: DAVID, R.—BRIERLEY, J. E. C.: MAJOR LEGAL SYSTEMS IN THE WORLD TODAY. AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW. NEW YORK, 1978.

² WIEACKER, F.: PRIVATRECHTSGESCHICHTE DER NEUZEIT. GÖTTINGEN, 1967².

of Roman law in the Roman (Byzantine) Empire during the reign of Justinian. This codification can be regarded as the most important and most famous codification-process of the antiquity. DAVID DUDLEY FIELD, the famous American jurist in the 19th century, said that the code of Justinian is “a great achievement of human genius”. It is absolutely beyond any doubt that the Code of Justinian had a huge impact on the codifications of Europe in the modern times.

The second part of the book begins with a theoretical definition on the term of *ius commune*. In the favor of a better understanding it's worth quoting the definition of *ius commune* applied by the author:

*“Ius commune is nothing else but the surviving Roman law, which is functioning as a common legal system of the Europe of the Middle Ages and the very beginning of the Modern Times, including the countries having particular legal systems. This legal system is followed by the civil codes and other acts of the nations from the middle of the 18th century to the 19th century.”*³

This chapter gives a very detailed analysis on the development of law in Europe in the Middle Ages. Nevertheless, one finds very useful pieces of information on the legal development of bigger countries, such as France or the Holy Roman Empire, but one can gather really important data on the smaller countries in Europe, as well. For instance we can read some paragraphs on the law of Wales, which became the part of England in 1283. It may be interesting to pay attention to the fact that the English legal system was introduced in Wales no sooner than in 1536 and 1543, based on the *Act of Union*.

The book contains outstanding information on the field of general history, too. One can find out that it was IVAN, the Third (1462–1505) in Russia who used the title ‘*tsar*’ in international relations for the first time. The title ‘*tsar*’ is in very tight connection with the well-known theory of the ‘*Third Rome*’. (We can also find very detailed bibliography on the theory of Third Rome.)⁴

It is absolutely beyond any doubt that the most original part of the book is chapter 3, “*The Development and the Codification of European Private Law in Modern Times*”. Incredible as it may seem this chapter includes every European country without any exception. The first point of the chapter introduces the development of the European jurisprudence at the beginning of the modern era by sketching the most important scientific tendencies.

The first part of chapter 3 deals with countries of German language in Europe. The author gives a very detailed picture on the codification of the German Civil Code, BGB, which was put into force on the 1st of January, 1900. From the point of view of Roman Law, this code has particular relevance. As this code had become effective in Germany the force of the previous law, the so-called *Law of Pandects (Pandektenrecht)* — which is a subsequent version of classical and post-classical Roman law — ceased to exist.

Upon reading this chapter, one gets familiar with the background of the German Civil Code, i.e. with the German science of private law, *Historical School of Law (Historische Rechtsschule)*, *Legal Science of Concepts (Begriffsjurisprudenz)*, etc. One can also read important information on the most outstanding representatives of these trends.⁵

As it is wide-known, Germany was separated into two parts, *Bundesrepublik Deutschland* (BRD) and *Deutsche Demokratische Republik* (DDR) after the Second World War. DDR belonged to the group of the so-called socialist countries; therefore its legal system had to

³ Cf. HAMZA: *op. cit.* 45.

⁴ Cf. HAMZA: *op. cit.* 89. To the theory of the *third Rome*, see especially: STRÉMOUKHOF, D.: *Moscow the Third Rome. Sources of Doctrine*. Speculum 28 (1953); and GOEZ, W.: *Translatio imperii*. Tübingen, 1958.

⁵ In this regard, see esp.: *Hundert Jahre Bürgerliches Gesetzbuch. Entwicklung des Privatrechts im deutschen und Mittel-osteuropäischen Sprachraum seit dem Inkrafttreten des BGB*. (hrsg. G. HAMZA). Budapest, 2006.

be taken into accordance with the socialist theory and economic structure. As a consequence of this, there were many modifications on the legal system after the changes. It is worth mentioning that DDR adopted its own Civil Code, called *Zivilgesetzbuch* in 1976. After the reunification of the two parts of Germany, BGB became effective on the territory of the former DDR, as well.

One has to take into account as well, that this book also pays attention to the very important modifications of BGB, which were adopted at the very beginning of 2002.

The chapter 3 gives a very thorough description on the law of Switzerland, containing private law doctrine and the codification of private law, too. One can clearly see how ZGB and OR was composed with regard to the law of the cantons in Switzerland.

It is not only the BGB, which had huge impact on the codification of other countries. Under no circumstances can we underestimate the influence of the French Civil Code, *Code civil*, adopted in 1804. This Code declares in Art. 1732 that unlawful damages should be compensated by the liable person:

“Art. 1382. — *Tout fait quelconque de l’homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer.*”⁶

This principle is the very basic of the *delictual liability*.⁷ This principle shows up in the majority of the modern civil codes, too.⁸

The author analyses the composition of the French *Code civil*, as well. He clarifies that the codifiers of *Code Civil* paid attention to the prior French written law (*droit écrit*) and customary law (*droit coutumier*), as well. As it is known, *Code civil* had four fathers (“*Pères du Code civil*”), two of them were experts of Roman law (JEAN-ETIENNE MARIE PORTALIS and JACQUES DE MALEVILLE), while two of them were specialists of French customary law (FÉLIX-JULIEN-JEAN BIGOT DE PRÉAMENEU and FRANÇOIS-DENIS TRONCHET).

French law is also in effect in the overseas-counties and overseas parts of France, as well: *départements d’outre-mer* (French-Guyana, Guadeloupe, Martinique and Réunion), *collectivité départementale* (Mayotte), *collectivité territoriale* (Saint Pierre, Miquelon) and *territoires d’outre-mer* (French Polinesia, New-Caledonia, Wallis and Futuna). One has to take into account that there are several differences of legal and administrative nature between these territories.⁹

The author provides a good introduction to the law of the so-called mini-states in Europe. Hence, we may get information on Monaco, as well. It is not widely known that at the present day Monaco does have its own civil code — called *Code civil* —, consisting of 2100 articles. One can learn a lot about such mini-states, as the Channel Islands or the Isle of Man.

Western—European lawyers and researchers may find extremely interesting those parts of the book, which deal with the Central-Eastern European countries (Hungary, the Czech Republic, etc.), the former Yugoslav territories (Slovenia, Croatia, etc.) and the Soviet-successor states (Estonia, Armenia, Ukraine, etc.). It is not overwhelming to declare that many important historical and economic changes have happened in these territories, which have immeasurable legal significance, as well. The book is the first to report about these changes in Hungarian language. The book provides a thorough historical and political introduction.

Without a good view to the historical changes, one would not be able to understand those legal changes of high relevance, which were able to build the very basic of the market economies

⁶ *Code civil*, 1990. (red.: LUCAS, A.). Paris, 1990. 629.

⁷ The term of delictual liability is pretty much equivalent with the term tort liability applied by Common Law countries.

⁸ Cf. § 339 of the Hungarian Civil Code of 1959.

⁹ For this question, see esp.: G. Hamza: *La développement du droit privé européen. Le rôle de la tradition romaniste dans la formation du droit privé moderne*. Budapest, 2005.

in these former socialist countries. Of course, this transition has not been put into practice to the same extent in each country. It has many reasons of political, social, economic nature, as well. To sum it up, having read this part of the book one may see the common legal roots of these countries and may find ideas how they will find their place in Europe of the future.

The fourth and last part of the book deals with the influence of the European civilian tradition on countries outside Europe. This chapter makes known what kind of impact the European tradition of private law had on states, which are not located in Europe.

Hence, we find very relevant information on the legal development of North America, Central America and South America, South Africa and some countries of Asia.

The author gives a good summary of the role of European private law in legal development of Louisiana. Louisiana does have a very specific situation among the member-states of the USA, hence this state was bought by the USA from France in 1803. The first civil code of Louisiana, *Louisiana Civil Code* was adopted in 1808. This code, which was originally composed in French is predominantly based on the French *Code civil* of 1804, but it has also many connections to Roman law¹⁰. In the present days Louisiana does have its third civil code, which was adopted in 1870. The *travaux préparatoires* to modify this Code began in 1979. This Code still maintains the characteristics of the European civil law, but one may also realize the influence of the *Common Law*, as well. All things considered the legal system of Louisiana — being *mixed jurisdiction* — is unique among the member-states of the USA.

One has to take into consideration that the legal system of Canada is also very similar to the European, mainly the French law from many aspects.

The author summarizes the legal development of the Central American and South-American states. It is very important to pay attention to the efforts to unify private law in the Central American and South American states. These trends for unification are rooted in the common legal traditions, which are undoubtedly based on Roman law.¹¹

From this point of view the *conference of Arequipa* (Peru), which was held between 4–7, of August, 1999 with the participation of Argentina, Bolivia, Peru and Puerto Rico, has particular significance. On this conference the *Acta de Arequipa* was passed, which contains the basic principles for unification private law in Central America and South America.

From the aspect of the Romanists the part, dealing with South Africa is extremely interesting. As it is known, the so-called *Roman-Dutch Law* is still in force in the Republic of South Africa. The expression Roman-Dutch Law originates from Simon van Leeuwen who used it first in Latin then in Dutch. In Afrikaans language Roman-Dutch Law is *Romeins-Hollandse reg*. Nowadays, with regard to the influence of Common Law the legal system of the Republic of South Africa can be considered as a *mixed-jurisdiction*, as well.

Although the legal history of every Asian country cannot be found in this book, nevertheless one gathers very interesting information on the legal development of several Asian states. For instance it is very fascinating to keep in mind that the German law, especially BGB had huge impact on the legal development of Japan and South-Korea. It is in connection with the very strong economic relationship between the countries mentioned. The author puts high emphasis on the scientific emphasis on ROSCOE POUND who played very important role in the spread of Roman law traditions and comparative law in China.

One has to pay attention to the fact that the author provides a very rich bibliography to his book. The bibliography can be divided into two parts. On the hand one can find bibliography by each country. On the other hand one can read a twenty-five-page long general bibliography at the

¹⁰ HERMAN, SH.: *Der Einfluß des römischen Rechts auf die Rechtswissenschaft Louisianas vor dem amerikanischem Bürgerkrieg*. ZSS RA 113 (1996) 293–345.; PALMER, V. V.: *Two Worlds in One: The Genesis of Louisiana's Mixed Legal System, 1803–1812*. In: *Louisiana: Microcosm of a Mixed Jurisdiction* (ed.: PALMER, V. V.). 1999.

¹¹ GARRO, A. M.: *Unification and Harmonisation of Private Law in Latin America*. AJCL 40 (1992) 587–616.

end of the book, which may serve as a perfect guide for further researches. The list of abbreviations, the index and the table of contents in six languages (Hungarian, English, French, German, Spanish and Italian) makes the entire work easy and quick to use. It is very likely that the English edition of this book is to appear soon. It should be pointed out that a German version of the book was published at the end of 2002.¹² This version covers the most important European states, with special emphasis on the influence of the German, Austrian, Swiss and Hungarian jurisprudence to the codifications of Central- and Eastern-Europe.

The book can be regarded as a course-book and handbook, as well. I find it very important to highlight that the monograph assumes the basic knowledge of history and institutes of Roman law. Hence it is advisable to use it together with the textbook of Roman law by professor ANDRÁS FÖLDI and professor GÁBOR HAMZA, which was published in the fall of 2005 in its tenth revised and extended edition.¹³

Professor HAMZA's monograph on the development of private law in Europe is outstanding in international measures, as well. This book is strongly recommended for both law-students and researchers. Not only does have the book an extremely rich database on the development of private law but it also does analyze the most important trends of the present and future in a very logical and clear system. Therefore, this book might be also useful for practicing lawyers, who often meet problems of conflicts of law or international commercial law. The book has utmost significance in our days, when the creation of the *ius commune (privatum) Europaeum* is in progress. One can recommend this book to those who intend to have a general, as well as substantial knowledge on the development of private law in Europe and countries outside Europe with regard also of the trends of legal development.

¹² HAMZA, G.: Die Entwicklung des Privatrechts auf römischrechtlicher Grundlage unter besonderer Berücksichtigung der Rechtsentwicklung in Deutschland, Österreich, der Schweiz und Ungarn. Budapest, 2002.

¹³ FÖLDI, A.—HAMZA, G.: History and Institutes of Roman Law. Budapest, 2005¹⁰.