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THE PENNSYLVANIA BAR AND THE REVIVAL OF INTEREST IN COMPARATIVE LAW

By

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The role of comparative law in the formative era of American law and the prominent place Philadelphia lawyers had in it are well known,¹ but it may perhaps come as a surprise to some that the Pennsylvania Bar and Philadelphia lawyers have had an important, if not decisive, part also in the revival, at the beginning of this century, of interest in comparative law in the United States. As will be seen some of the dominant features of present-day activities in comparative law, especially on the organizational level, are inseparably linked with the names of a group of far-sighted Pennsylvania lawyers. At a time when what they were striving for has become an accepted part of the activities of the American legal profession, it is only proper to recall their role.

At the turn of the century, registration of land titles was a much discussed subject in the United States. The happy experience of the British colonies with the Torrens system had become widely known. At the ninth annual meeting of the Pennsylvania Bar Association, held at Cambridge Springs in June 1903, Charles Wetherill, (1850-1912), of Philadelphia, read a paper entitled "On the Judicial Recording of Titles".² He gave a survey of legislation in force in parts of the United States and abroad, dealing in particular with the respective advantages of the Torrens system and the systems applied on the continent of Europe, notably Germany. Drafts for legislation were attached to his paper. Upon the proposal of William Draper Lewis, then Dean of the Law Department of the University of Pennsylvania, these drafts were sent to a special committee on registration of land titles for further consideration.³ Wetherill was made a member of the committee. The committee presented a complementary report to the next meeting, with further particulars on the German land registration system.⁴ It was at the meeting of the following year, 1905, that Wetherill's initiative led to results which had far-reaching consequences. Wetherill had continued his research, gathering information on foreign laws and their operation from publications and from correspondence with jurists abroad. In a very substantial survey, which was attached to the committee report submitted to the 1905 meeting,⁵ Wetherill deplored the lack of

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¹ Pound, *Comparative Law in the Formation of American Law*, 1 *Memoires de l'Academie Internationale de Droit Compare* 183 (1928); Nadelmann, Peter Stephen Du Ponceau, 24 *Pa. B.A.Q.* 248, 5 *Revue Internationale de Droit Compare* 284 (1953).

² 9 *Pa. B.A. Rep.* 316 (1903).

³ *Ibid.*, 252, 553.

⁴ 10 *Pa. B.A. Rep.* 121, 138 (1904).

⁵ 11 *Pa. B.A. Rep.* 143 (1905). cf. Wetherill, *Conveyancing as a Practical Science*, 55 *Am. L. Reg.* 297 (1907).

translations of foreign codes⁶ and suggested as a first step toward law reform, which would take into account experience gained abroad, that foreign codes and statutes be translated. He proposed formation of a standing committee with power to correspond and act with other associations of the Bar and with the law schools, to raise the needed funds and to have adequate translations and reviews made and published. The committee was to be known as the Committee to Forward Knowledge of Foreign Law.⁷ This proposal led to the creation at the 1905 meeting of a new committee of three, named the Special Committee on Comparative Jurisprudence.⁸ Wetherill became chairman of the committee; William Draper Lewis and William W. Smithers, (1864-1947), also of Philadelphia, were the two other members.⁹ Smithers had been actively engaged in research in foreign law, having written articles on the *Napoleonic Code*, the *German Civil Code* and the *Russian Civil Law* for the *American Law Register*, the publication of the University of Pennsylvania Law School.¹⁰ As for William Draper Lewis, his life-long interest in comparative law is well known.¹¹

The Special Committee on Comparative Jurisprudence, in a report prepared for the 1906 meeting of the Pennsylvania Bar Association, surveyed the needs in the field of comparative law and found that undertakings in this direction did not belong to a single state bar but should be intelligently projected and systematically accomplished under the direction of the American Bar Association or a general society to be formed for the purpose.¹² It further reported that it was cooperating with the Law School of the University of Pennsylvania in the production of a translation of the *German Civil Code of 1900*. The Association approved the report and appropriated \$350 for assistance in the production of the translation.¹³

This was in June 1906. A few months later, at the annual meeting of the American Bar Association, in St. Paul, Minnesota, Smithers, acting at the sugges-

⁶ 11 Pa. B.A. Rep. 159.

⁷ *Ibid.*, 166.

⁸ *Ibid.*, 200. Comparative jurisprudence is an expression which was in use already at the times of Joseph Story. See Nadelmann, *Joseph Story's Sketch of American Law*, 3 Am. J. Comp. L. 3, 8, n. 41 (1954).

⁹ 11 Pa. B.A. Rep. 418.

¹⁰ Smithers, *The Code Napoleon*, 49 Am. L. Reg. 127 (1901); *The German Civil Code*, 50 Am. L. Reg. 685 (1902), 51 Am. L. Reg. 14 (1903); *Russian Civil Law*, 52 Am. L. Reg. 137, 213, 632, 678 (1904). Later writings: *Restraint of Trade: France, Germany, England*, 1 Comp. L. Bureau Bull. 21 (1908); *History of the French Notarial System*, 60 U. of Pa. L. Rev. 19 (1911); *Public Law as Affecting Legal Procedure in Civil Causes*, 7 Proc. Second Pan-Am. Scientific Congress 329 (1917). *Matrimonial Property Rights under Modern Spanish and American Law*, 70 Am. L. Reg. 259 (1922).

¹¹ As director of the American Law Institute he secured a French translation of the Restatement of Conflict of Laws and pressed for production of foreign law annotations to the conflicts volume. See *Annual Report of the Director*, 14 A.L.I. Proceedings 44, 54 (1937). Cf. Nadelmann, *William Draper Lewis*, 1 *Revue Internationale de Droit Compare* 439 (1949); *Memorials in 98 U. of Pa. L. Rev.* 1, 3, 8 (1949).

¹² 12 Pa. B.A. Rep. 160 (1906).

¹³ *Ibid.* 216. The translation by Walter Loewy of San Francisco appeared in 1909, with a historical introduction by Smithers and notes giving references to provisions in other codes prepared by Wetherill. See the preface to the translation and 15 Pa. B.A. Rep. 145 (1909); 16 Pa. B.A. Rep. 151 (1910).

tion of the Pennsylvania committee, offered a resolution that a committee on comparative law be appointed "to suggest a method of cooperation with the several state bar associations, institutions of learning and other interested bodies, whereby important legislation of foreign nations affecting the science of jurisprudence can be brought to the attention of American lawyers and become available in the general study of private law".¹⁴ The resolution was adopted and a committee appointed with Smithers as chairman.¹⁵ At the 1907 meeting, held at Portland, Maine, in a short but well-balanced report, the committee proposed creation of an auxiliary body of the Association, to be known as the Comparative Law Bureau, with the object to present and discuss methods whereby important laws of foreign nations affecting the science of jurisprudence may be brought to the attention of American lawyers and institutions of learning and become available in the general study of law.¹⁶ Smithers successfully steered the proposal through the Association meeting, assisted by George W. Kirchwey of Columbia, then president of the Association of American Law Schools.¹⁷ The subject had been simultaneously considered by the Association of American Law Schools,¹⁸ which heard an address by James Bryce, then the British Ambassador to the United States. Bryce outlined comparative law activities in England and referred to the work of the British Society of Comparative Legislation.¹⁹

The Comparative Law Bureau was organized in Portland immediately following the favorable vote. Judge Simeon E. Baldwin of Connecticut, one of the founders of the American Bar Association and also one of those most active in matters of international and foreign law, was made director of the Bureau. William W. Smithers became its secretary and chairman of the editorial staff.²⁰ Reporting in 1908 to the Pennsylvania Bar Association on the event, Wetherill, speaking for the Committee on Comparative Jurisprudence, stated, "We may claim the honor of being pioneers in the work of comparative jurisprudence, and this Bureau of the American Bar Association is virtually a continuance of the work that this Association first undertook."²¹ The Association decided to join the Bureau as a member.²²

¹⁴ 29 A.B.A. Rep. 81 (1906).

¹⁵ *Ibid.*, 172.

¹⁶ 30 A.B.A. Rep. 749 (1907).

¹⁷ *Ibid.*, 90 et seq.

¹⁸ *Ibid.*, 1028.

¹⁹ *Ibid.*, 1061.

²⁰ *Ibid.*, 1001. Cf. Jaggard, *The Study of Comparative Law*, 8 So. Dak. B.A. Rep. 59, 65 (1908). Managers of the Bureau became, Dean James B. Ames, of Harvard; Dean Andrew A. Bruce, of the University of North Dakota; Edgar H. Farrar, a trustee of Tulane University; Edwin A. Jaggard, of St. Paul; Dean George W. Kirchwey, of Columbia; Dean William Draper Lewis; Congressman Charles E. Littlefield, Rockland, Maine; Clifford S. Walton, Washington, D.C.; and John H. Wigmore, of Chicago. See the account by Charles S. Lobingier in 58 A.B.A. Rep. 79 (1933).

²¹ 14 Pa. B.A. Rep. 375.

²² *Ibid.*, 376.

The further history of the Comparative Law Bureau will not be given in detail here. In his address, "Comparative Law as a Practical Science", before the Annual Convention of the Pennsylvania Bar Association in 1909,²³ Smithers was able to report that the work of the Bureau had become known generally to the lawyers of the country and to a great extent abroad²⁴ through the publication of its first annual *Bulletin* on July 1, 1908. Robert P. Shick, (1869-1947), another Philadelphian who became connected with the Bureau and in 1914 succeeded Smithers as the Bureau's secretary, described the work of the Bureau in detail in a speech before the Ohio State Bar Association in 1921.²⁵ In addition to publication of the *Bulletin*,²⁶ there was a yearly report by the director to the convention of the American Bar Association on major developments in foreign law, and, perhaps most important, there was a production of four code translations. Translated were the *Visigothic Code*, the *Argentine Civil Code*, *Las Siete Partidas*, and the *Swiss Civil Code*. It was Shick who translated the *Swiss Code*. Wetherill, who helped the Bureau until his death in 1912,²⁷ furnished notes with cross-references to provisions in other codes for the Shick translation.²⁸ When Judge Baldwin retired as chairman of the Bureau in 1919, Smithers was made the successor.²⁹ He served until 1932 when he became honorary chairman.³⁰

Smithers' name is connected with still another major development on the national level. When the American Foreign Law Association was organized in New York in 1925, Smithers was made its first president.³¹ He kept an active interest in its work and events in the field³² until his death in 1947. At its recent thirtieth anniversary celebration, the American Foreign Law Association, which now represents this country on the International Committee of Comparative Law, paid due tribute to the memory of its first president.³³

²³ 15 Pa. B.A. Rep. 371, 378 (1909).

²⁴ 38 Bulletin de la Societe de Legislation Comparee 106 (1909), 11 J. Comp. Leg. (N.S.) 200 (1910).

²⁵ Shick, The Work of the Comparative Law Bureau, 66 Ohio L. Bull. 117 (1921); cf. Shick, How may Lawyers of one Country be Most Easily and Effectively Made Acquainted with the Laws of Another Country? 7 Proc. Second Pan-Am. Scientific Congress 598 (1917).

²⁶ The Bulletin appeared until 1914. Afterwards the material was published in the American Bar Association Journal.

²⁷ See Smithers' tribute in 6 Bull. Comp. L. Bureau 6 (1913).

²⁸ The translation appeared in 1915.

²⁹ 44 A.B.A. Rep. 397 (1919).

³⁰ 57 A.B.A. Rep. 578 (1932).

³¹ See Hubbard, American Foreign Law Association, 11 A.B.A. J.270, 272 (1925); Note, American Law Association Formed, 3 N.Y. L. Rev. 167 (1925); Report of the Chairman, Comparative Law Bureau (Smithers), 50 A.B.A. Rep. 651 et seq. (1925); cf. 49 A.B.A. Rep. 41, 571 (1924).

³² He addressed the American Foreign Law Association in 1927 on "The Effect of French Divorce Decrees in the United States", Proceedings of the American Forum of Law Associations, November 21, 1927. In 1941, he attended the first conference of the Inter-American Bar Association at Havana. Inter-American Bar Association, Proceedings of the First Conference 33 (1941).

³³ See Eder, Thirtieth Anniversary of the American Foreign Law Association, 4 Am. J. Comp. L.— (Spring, 1955).