only at the graduate law school level.[22] I would hope that the book can be used for introductory courses as well, but I think that a future edition, if there is one, should be substantially different. I suppose it will be difficult to persuade the authors to take a more normative, historical or doctrinal approach as a corrective to the corrective which their own book represents to prior methods. But I would urge it. I suppose it will be difficult for them to import into the book a Brierly, Bishop, or Oppenheim-like [23] structure and textual materials in areas of law not covered in the problems, but I would urge it. I suppose it will be difficult for the authors to abandon some of the seventeen problems and develop the remaining problems more fully, but I would urge it. I would also suggest that the authors reduce the number of questions and probably make a greater effort to "answer" their questions in later portions of the particular problem. The book puts quite a burden on the individual professor (at the same time that it provides great scope). I would urge an instructor's manual, as much for teaching methodology as for substance.

If the authors could find it within themselves to restructure the book along the lines suggested, it could have a long and honorable history of use. Otherwise, I suspect that many of its earlier users will find themselves drifting back to more conventional books, at least for the introductory courses.

DON WALLACE, JR.*

THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA. By John Henry Merryman.[1] Stanford: Stanford University Press. 1969. Pp. ix, 172. $6.50 (cloth), $2.45 (paper).

In *The Civil Law Tradition*, Professor Merryman writes for "the general reader who wants to know what it is that binds together the legal systems of Western Europe and Latin America, and that distinguishes them from the legal systems of the Anglo-American world" (p. vii). As is appropriate in a book of this kind, discussion focuses on historical development, institutional arrangements, and official doctrine. We do not see the system grappling with concrete problems; there is no chance to test theoretical formulations against specific experience. This is a price inherent in the effort undertaken. Moreover, in view of the

[22] Green, Book Review, *supra* note 5.

[23] L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE (8th ed. 1955).

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broad canvas chosen, the presentation necessarily involves a distillation from what are, in many ways, significantly different experiences and institutions. Thus, although a great deal of the discussion relates to the legal systems of France and Germany, Professor Merryman warns the reader that "both are in a sense the least typical of all" (p. vii). More typical are those systems, especially "in Mediterranean Europe and Latin America, but . . . also . . . to some extent [in] most other parts of the civil law world" that have, in Professor Merryman's view, received and fused French and German influences (p. vii).[2]

There are, as is inevitable, numerous interpretations on which one disagrees to some extent with Professor Merryman. It is open to question, for example, whether the drafters of the French Civil Code accepted the view that "it was possible to draft . . . systematic legislation" that would be complete, coherent, and clear "to such a degree that the function of the judge would be limited to selecting the applicable provision of the code and giving it its obvious significance in the context of the case" (p. 30). The four jurists charged with drafting the Code Civil prepared a *Discours préliminaire* to explain their approach. The *Discours* contains the following passage:

> A code, however complete it may appear, is no sooner promulgated than a thousand unexpected questions are presented to the judge. Because the laws, once written, remain as they were written. Man, on the contrary, never remains the same, he changes constantly; and this change, which never stops, and the effects of which are so diversely modified by circumstances, produces at every instant some new combination, some new fact, some new result.[3]

Another dubious proposition is that "[o]ne of the principal reasons for the quite different status of the civil law judge is the existence of a different judicial tradition in the civil law, beginning in Roman times" (p. 36). It is hard to see continuity between the Roman *iudex* and the concept of the judicial function that slowly emerged on the continent of Europe. Nor is it clear that medieval Europe thought in terms that permit a statement

[2] Here, as in many places in the book, the treatment and evaluation may reflect Professor Merryman's special interest in Italian and Latin American law. *See, e.g.*, M. CAPPELLETTI, J. MERRYMAN & J. PERILLO, THE ITALIAN LEGAL SYSTEM: AN INTRODUCTION (1967).

[3] Portalis, Tronchet, Bigot-Préameneu & Maleville, *Discours préliminaire*, in 1 J. LOCRÉ, LA LÉGISLATION DE LA FRANCE 251, 258 (1827). Merryman may suggest that the drafters of the German Civil Code of 1900 were less imbued with the notion of logical completeness than were the drafters of the Code Civil. *Cf.* p. 31. The contrary seems to have been the case, however. *Compare* A. VON MEHREN, THE CIVIL LAW SYSTEM 57–62 (1957), *with id.* at 65–70.

that the "judge had no inherent law-making power" (p. 37).[4] In fact, the late — in comparison with England — emergence of an effective, centralized administration of justice in continental Europe provides a far more significant explanation for the civil law's approach to judge's role and function. By the time an effective centralization of the administration of justice had been achieved in France (c. 1800) and in Germany (c. 1880), it was no longer feasible as a practical matter to develop through judicial decision a law common to the effective political and economic unit. Before codification, the civil law judge simply never had the opportunity to play the creative role that his English counterpart discharged so effectively. Whether he could have played such a role had judicial centralization come earlier is unanswerable historical speculation. One notes, however, that as the codes grow older and the societies they serve change, judges in such civil law countries as France and Germany are playing an increasingly creative role in spite of the theoretical and traditional obstacles to which Professor Merryman points.

There are a variety of other interpretations and several points of detail[5] that could be discussed. But one concluding observation respecting the validity of Professor Merryman's view that "the civil law is dominated by a misdirected scholarly tradition, diverting the great potential influence and enormous energy, creativity, and cultivated intelligence of civil law teachers-scholars into essentially arid pursuits" (p. 153), must suffice. This characterization is, I suspect, much more valid for Italy and for some parts of Latin America than for France, Germany, or Switzerland. And the condition described is very possibly sustained less by the intellectual tradition of the civil law and by its inherited institutions than by sociological and political circumstances. When orderly social and economic change lag, for one reason or other, well behind the felt needs of large segments of the society, law tends to have a mechanical and dogmatic quality. And this is more particularly so where, as in many parts of Latin America, a legal order was imported with little attention to how well it fitted the needs and behavior patterns of large segments of the society.

[4] *Cf.* von Mehren, *The Judicial Conception of Legislation in Tudor England*, in INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES (P. Sayre ed. 1947).

[5] Among these is the statement that the German Constitutional Court has "the exclusive power to decide on the constitutionality of legislation" (p. 147). In fact, while only the Constitutional Court can hold legislation unconstitutional, other courts proceed to decision in cases involving constitutional issues unless there are serious doubts with respect to constitutionality, in which event the constitutional issue is referred to the Constitutional Court for decision. Consequently, in the German system, it can be difficult to bring a law, generally thought to be constitutional by courts, before the Constitutional Court.

Difficulties of the kind suggested above are inherent in Professor Merryman's enterprise. He undertook a very difficult task; on the whole, he performed it well. His book is a welcome addition to the literature of comparative law. It should make an important contribution to the task of making lawyers and nonlawyers alike more aware of the civil law tradition and, thus, better able to understand the legal orders of many countries.

ARTHUR TAYLOR VON MEHREN *

FAMILY LAW IN ASIA AND AFRICA. Edited by J. N. D. Anderson.[1] New York: Frederic A. Praeger Co. 1967. Pp. 301. $12.50.

In an article published in 1953, Anthony Allott, a pioneer in the study of African law in England, wrote that "the aim of legal research is narrow, to record those rules of custom or usage which are either enforced in the courts, or are of a kind which the courts would enforce. Appreciation of the part which these rules play in the social structure is therefore irrelevant . . . ."[2] It is an unfortunate aspect of *Family Law in Asia and Africa*, which is based on papers delivered by a series of lecturers at the Department of Law, School of Oriental and African Studies, University of London, that this view of legal research characterizes its general approach. Despite the vast geographic area covered, the book offers an exceedingly narrow view of what family law in developing countries is all about.

What this volume provides is a basic indoctrination in the history and concepts of family law in specific countries and regions of Asia and Africa. (Eight of the papers deal with Asia, five with Africa, and one with Islamic law on both continents.) It provides compact and highly readable discussions of some of the main themes and history of family law in India, Singapore, Communist China, Uganda, and southern Africa, among others.

While such basic indoctrination is necessary to anyone beginning a study of this field, those who have advanced further will be disappointed. Most significantly, the book fails to convey a sense of the context in which the various legal systems operate; it fails to give any indication of the complexities and subtleties of the family law process in countries undergoing tremendous so-

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[2] Allott, *Methods of Legal Research into Customary Laws*, 5 J. AFRICAN ADM'N 172 (1953).