

Book Review – NIGEL FOSTER & SATISH SULE, **GERMAN LEGAL SYSTEM AND LAWS, 3RD. ED., (Oxford University Press, 2002).**

By *Sascha Ziemann* *

A. Introduction

Studying abroad demands a lot of enthusiasm. In the case of legal studies, the student not only has to cope with a different language and terminology, but also with a diverse legal tradition, often close related to the foreign country's political and social legacy. Adapting to this is a long process and as a student abroad one is glad of any kind of help. For English-speaking law students arriving in Germany, they will hopefully be provided with a copy of *German Legal System and Laws*, published in August 2002 in a revised and expanded third edition (first edition 1993). Author *Nigel G. Foster* -- Senior Lecturer in Law at Cardiff Law School, University of Wales -- is, in this edition, accompanied by his Cardiff colleague *Satish Sule*.

B. Contents

The introduction for the reader to the nature and distinctive features of the German Legal System, Part I, on pages 3-144, focuses on its character as a "code and statute-based legal system." Germany is in fact a "written law country", which means that the legal system attempts to present an area of law as a unified whole, containing both general and abstract rules and principles which can be applied to every legal problem.¹

Part II, found on pages 145-548, provides a comprehensive introduction to substantive German Law. In accordance with the traditional division, the book separates

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¹ Cf. for methodological orientation: Robert Alexy and Ralf Dreier, *Statutory Interpretation in the Federal Republic of Germany*, in D.N. MACCORMICK / R.S. SUMMERS, EDS, *INTERPRETING STATUTES: A COMPARATIVE STUDY*, 73, 121 (Dartmouth: Aldershot 1991).

Public Law (*Öffentliches Recht*) and Civil (Private) Law (*Privatrecht*)². “Public Law,” on pages 145-363 treats Constitutional Law and Basic rights,³ General and Particular administrative law, Criminal Law, and Criminal Procedure.⁴ “Civil (Private) Law,” on pages 364-481, includes mainly the classic Law of the German Civil Code,⁵ supplemented by modern Business and Labor law.

Additionally the authors provide helpful appendices, including Tables of Legislation and of Cases, a glossary containing German Legal terms, a list of abbreviations and an alphabetical index to the book as a whole.

The materials are presented in the same manner throughout, in a three step process: The code is first introduced as the primary source of German law. An example would be German Criminal Law⁶ and its code, the *Strafgesetzbuch*.⁷ A short introduction to the code’s history is provided starting on page 296, followed by an outline of its structure on page 297. The distinctive feature of the German written law tradition of the last 200 years has been the division into a General and a Special Part (*Allgemeiner und Besonderer Teil*).⁸ The Special Part of the German Criminal Code includes the particular elements of a criminal offense (murder, fraud, theft etc.), as well as laying down the degree of punishment. The General Part on the other hand contains rules applicable to all criminal offences, e.g. rules of individual responsibility and mitigating factors.⁹

The second step sees the legal doctrine of each area of German law, the comprehensive tradition of interpretation by German scholars and practitioners and the development of a code’s “leading principles” and “general concepts” for law-making and legal practice, presented. An example would be the important principle of culpability (*Schuldprinzip*) in Criminal law, according to which individual responsibil-

² Cf. NIGEL FOSTER & SATISH SULE, *GERMAN LEGAL SYSTEM AND LAWS*, 3RD. ED., 4 (Oxford University Press, 2002).

³ With its central code, the Basic Law (*Grundgesetz*).

⁴ With its code, the German Criminal Code (*Strafgesetzbuch*).

⁵ With its central code, the German Civil Code (*Bürgerliches Gesetzbuch*).

⁶ Recently *Volker Krey* presented a bilingual textbook for German Criminal law: VOLKER KREY, *GERMAN CRIMINAL LAW, GENERAL PART, TEXTBOOK IN GERMAN AND ENGLISH, VOLUME I: BASICS*, (Kohlhammer Studienbücher Rechtswissenschaft, Stuttgart, 2002). The book will be reviewed in German Law Journal this year.

⁷ FOSTER, *supra* at note 2, 295-336.

⁸ Cf. WOLFGANG NAUCKE, *STRAFRECHT. EINE EINFÜHRUNG*, 9TH. ED., Neuwied, 2000, 175.

⁹ FOSTER *supra* at note 2, 313.

ity decides on *whether* or not a defendant is legally blameworthy for the crime committed.¹⁰

Thirdly, the written legal text is supported by the presentation of famous and leading cases. While the German legal system is not bound by precedent as the common law, previous decisions of higher courts are observed and considered in practice.¹¹ Finally, every chapter is provided with further reading recommendations.

III. Conclusion

In its third edition, the book continues to be a prime source of solid introduction to and discussion of the contemporary state of German law. The authors present an immense amount of German law in a precise manner, taking care to be up to date in even those parts that have been receiving considerable amendments by way of legislation or adjudication. Their inclusion of the crucial changes in the Law of Obligations (contracts) in 2002, starting on page 404, is but one example of this. They very rightly highlight the immense impact of supranational European Community Law on the national German legal System.¹²

Finally, and particularly noteworthy, the book satisfies not only the needs of the practitioner but also provides the methodological fundament of German law in its written law tradition ("Legal methodology", pp. 58-65). Here the authors take a logical and teleological look at the legal method of interpreting and applying codified law.

In conclusion, *German Legal System and Laws* is to be strongly recommended for every law student considering a year of study at a German law school, but also for other foreign academics and practitioners keen on a thorough and well done exposition of the main features of the German legal system. With its encyclopedic character the book addresses both beginners and advanced students: while introducing beginners to German Legal terminology and the basic principles of the German Legal System, advanced students and more experienced foreign judges will immensely benefit from the de-

¹⁰ *Id.* at 299.

¹¹ Cf. FOSTER, *supra* at note 2, 40. For further reading see Robert Alexy and Ralf Dreier, *Precedent in the Federal Republic of Germany*, in D.N. MACCORMICK AND R.S. SUMMERS EDS., *INTERPRETING PRECEDENTS. A COMPARATIVE STUDY*, 17, 64, (Dartmouth: Aldershot 1997).

¹² See generally FOSTER, *supra* at note 2, 42.

tailed approach and analysis. Such is the book that both cannot fail to be enthused by the spirit of a written-law tradition.