

INTRODUCTION

Over the years, no aspect of comparative law has drawn and kept the attention of comparatists more powerfully than the relationship between legal transplants and legal culture. This is for good reason.

Comparative law has always had among its prime objectives the facilitation of law reform. One of the time-honored ways by which comparative law may make that contribution has been by making legal ideas and institutions that are at work in one jurisdiction available to law reformers in another. In the past, far more than today, transplantation was achieved by conquest and colonization. In recent times, legal ideas and institutions are no longer so much imposed. But rather are taken onboard more or less voluntarily by the receiving State.

Transplants that occur as a result of the importation of legal ideas and institutions from abroad probably stand a much greater chance of success than those that are essentially imposed. But no matter how it comes about, transplantation offers no guarantee of success. Ideas and institutions borrowed from abroad may work considerably less well in the new as compared to the old soil; they certainly may work very differently in the two environments.

None of this is to suggest that transplantation of legal ideas and institutions is somehow illegitimate. On the contrary, it may border on the irresponsible to initiate law reform in a given area without seeking to benefit from the experience of other legal cultures.

It is fair to say that there is no geographically wider inquiry into the interaction between legal transplants and legal cultures that has been conducted than the investigation from which the present volume emerges. In preparation for the General Report on the subject that Professor Jorge Sanchez Cordero delivered at the 18th International Congress of Comparative Law held in Washington, D.C., in July 2010; Professor Sanchez Cordero enlisted the research talent and effort of no fewer than 33 scholars from widely dispersed legal cultures, all of which at one time or another, and in one way or another, experienced the importation of legal ideas and institutions into their legal culture from abroad. The national reports that

Professor Sanchez Cordero elicited form the backbone of this book. Each of them presents, both analytically and critically, the transplant attempts that historically have been most salient in the recipient legal cultures that the book canvasses. The narratives are wide-ranging, but each records, in its own way, how conditions within the recipient legal cultures lent themselves, or failed to lend themselves to the receptivity that modern-day transplantation presupposes; how and why the process was ever launched; the manner in which it was carried out; and of course, the results to which it led. No field of law and no historical moment escape the story-telling that this volume represents, and no greater portion of the globe has ever been examined in an inquiry of this kind. What binds the stories together is that each identifies those characteristics of the recipient legal culture that determined the reception that occurred in each case.

What emerges from these pages cannot be summed up in a single or even a series of abstract propositions. Rather, each chapter confirms the specificity of the circumstances under which legal ideas and institutions crosses national boundaries. What makes this collection so valuable is that it not only reveals the cultural specificities that cause legal transplants to take root and develop differently in their new host climate, but it also provides a wealth of raw material on the basis of which anyone promoting a theory of legal transplants in the future may test that theory according to real and recorded experience.

Excellence in comparative law scholarship may validly be measured by the extent to which the findings it reveals serve over time to test hypotheses to which the imaginativeness of comparative law scholars leads. That is precisely the species of excellence that inheres in the superb annals of comparative law that this collection represents and in their insights into how, and how well, legal ideas and institutions travel, and why. The comparative law discipline cannot ask for more.

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