Reflections on the Emigré Scholar: In Memory of Arthur Lenhoff

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PROFESSOR ARTHUR LENHOFF
The matter with the law is the same as it is with the beer of Merseburg; first one feels a horror, but when one has drunk that beer one week, one can't live without it.

—Goethe

Every calling is great when greatly pursued.

—Justice Holmes

The ways in which a legal system can respond to great changes in the social and economic conditions of society are very often a function of its ability to use the experience of other legal systems. In America, the lessons of history are often the lessons of Europe; for the law, these lessons are founded in the experience of that great, diverse and historically mature system which goes under the name of the "civil law." As Pound demonstrated in his study of The Formative Era of American Law, we made great use of the civil law in the nineteenth century in adapting the common law to conditions very unlike those of England. Even though "there were no faculties of law, trained in teaching the civil-law tradition," scholarly works, translations, and study abroad were all ways by which we were able to assimilate many vital elements of the civil law. If, as Pound concludes, the "history of a system of law is largely a history of borrowings of legal materials from other legal systems and assimilation of materials from outside the law," the ways in which these materials are borrowed and the routes by which these "other" systems enter our own are significant questions in the history of ideas.

These ways and routes are, no doubt, many and difficult to trace. Conquest and colonization have been major routes, as in the spread of early Roman law and English law. The Napoleonic Code was carried through Europe by force of arms and by a radical rationalist zeal that seemed endemic, while the reaction was carried for a time outside France by royalist emigrés. The wanderings of persecuted or missionary Christians in the early centuries were routes...
for the movement of ideas just as in recent years Jewish emigré artists, scholars and scientists brought to these shores a spirit and learning that often transformed whole fields of knowledge. In addition to a dramatic movement of large numbers of intellectuals during periods of crisis, study abroad and "visiting" scholars are often the routes for bringing new ideas into a culture. Thus, whatever the catalysts were for the great revival of Roman law in twelfth century Europe, the way it spread from Italy to France, Spain, Germany and Scotland, seems clear: "mainly through the study of law in universities, at first by Transmontane students in Italy and then in the newer institutions beyond the Alps, and through the influence of lawyers and judges thus trained. . . . From one university to another Roman law was ordinarily carried by some travelling professor who lit the torch of learning in a new place."3

If in the nineteenth century the patterns of immigration did not provide those "faculties" of civil law Pound speaks of, in the twentieth century the misfortunes of Europe did. From Hitler-dominated Europe came a number of emigré scholars and lawyers trained in the civil law who could provide America with just such "faculties." Through their comparative approach, which was really a product of their encounter with a new system, they provided a creative critique of American law during a period of crisis of its own and when it had great need for just such leavening. It should be remembered that during the Depression American law was subject to extraordinary strains. Its ability to adapt to the needs of welfare legislation and a developing concept of administrative law was in no small measure enhanced by those emigrés who had already, in their own countries, faced comparable problems for many years.

Among these emigré lawyer-scholars was Dr. Arthur Lenhoff. Although it may be easy to speak of the large movement of ideas, it is difficult to speak of one man who kept the spark alive in a time of terror and unreason and rekindled torches in a strange and not always hospitable place. But even the briefest sketch of his life will give us the outlines, not only of a history of legal ideas that is yet to be written, but of a novel of character that perhaps died with his great contemporary, Thomas Mann.

Born in 1885 on the German side of the old Austro-Hungarian Empire, the young Lenhoff can first be seen as one of those spirited young students in Vienna, educated not merely at the University but at the theaters, clubs and cafes of that exciting fin de siècle city. Choosing the law, which then in no way limited the perspectives of a young intellectual, he graduated with highest honors from the law school, soon to become what he viewed as the complete lawyer: an eminent and successful practitioner in Vienna, a distinguished teacher and scholar at the University, and finally a judge of the Austrian

3. Haskins, The Renaissance of the 12th Century 209 (1927). Many currents contributed to this "revival," carried by both books and emigré scholars; e.g., Greek philosophical and scientific works were first translated into the Arabic in the eighth and ninth centuries, and then mainly by Jewish scholars into Hebrew in the twelfth century, and thence into Latin and the vernaculars.
Constitutional Court. In 1938, after a career of some thirty years, Hitler's Anschluss forced him to flee Austria—not only as a Jew but as a judge of the Constitutional Court which had a few years earlier invalidated the Nazi-influenced "students' order" which sought to impose racial classification on the Austrian universities. High on the Nazi blacklist, he escaped their vengeance only by a stroke of good fortune. On the day of the Anschluss, he was in Switzerland on an arbitration and, hearing the news, called his wife immediately to join him with their young daughter. Hours later, when the Gestapo knocked at his door in Vienna, he had already become, at the age of 52 and at the peak of his powers, one of the stream of refugee lawyers and scholars coming to the United States.

His age, the fall from eminence, the new language, and the profession itself—an entirely different system of law—all made it more likely that Arthur Lenhoff would end as an insurance broker or clerk in an import house than as a distinguished scholar of the common law. It was notoriously difficult for lawyers to adjust to the new country. The assistance provided them was significantly less than that for physicians, and what was available, through the Committee for the Re-education of Refugee Lawyers, was devoted to younger men. Through the adventurous spirit of Dean Francis M. Shea, however, Dr. Lenhoff was brought to the law school at Buffalo where (fortuitously, it would seem) Professor David Riesman, Secretary of that Committee, had already foreseen something of the impact of the civil lawyers on the growth of American law.

For Dr. Lenhoff to begin anew in 1939 as librarian and law student was to exemplify Professor Riesman's prescience that American law would benefit from even "five or ten refugees of exceptional ability and personal adaptability who would be equipped to do some real cross-fertilization, not so much of comparative law or European legal methodology as of the social sciences in which, much more than the average American lawyers, they had been steeped by training and inclination." Although he became more a comparatist than social scientist, Dr. Lenhoff's work may still be seen as part of that great influx of European ideas into the stream of American legal scholarship. At times these ideas influenced court decisions directly; more often they made creative contributions to the growing critical spirit in which our legal institutions and rules were viewed, a spirit which eventually influenced teachers, scholars, students, lawyers, legislators and courts alike.

When a study was made to determine which of the refugee lawyers had succeeded in bridging the cultures, and what factors might have been in-

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5. Davie, op. cit. supra note 4, at 290.

6. Dr. Lenhoff's own influences are, in some small measure, discerned in some of the essays that follow. In those of Buergenthal, Hall, Homburger, Kunert, Laufer and Summers, ranging over a diversity of fields, Dr. Lenhoff's mark will be noted.
fluential, the best that could be said was that those who succeeded "almost invariably possessed an optimistic, buoyant spirit that seemed to delight in the challenge of hardship." However, to the results of "studies," we might prefer the authority of Goethe, whose works were the touchstones of Dr. Lenhoff's life and whose words were in a continual flux with his own. To illuminate the success of a 52-year-old student's life, Goethe's epigram might be read: "Everybody wants to be somebody: nobody wants to grow." And then, as if speaking of the Dr. Lenhoff many of us knew, in words he himself might have quoted, Goethe tells us: "To measure up to all that is demanded of him, a man must overestimate his capacities."

What his capacities were in fact may be measured by the "second" career that took him through a mastery of the common law, and brought him a professorship, admission to the New York bar, and a distinguished career as teacher, scholar and, to remain the "complete" lawyer, counsel to an eminent Buffalo law firm. Though his scholarly work in the civil law—he had authored or co-authored more than fifteen books and almost seventy articles—may have lain dormant in Nazi-occupied Europe, it was far from dormant in the ferment of ideas he brought to the common law. Having had an important impact on Austrian labor law—he was the first man to teach the subject in an Austrian university and was appointed in 1937 draftsman of an Austrian Labor Code—he brought new ideas into the developing American law on labor. His writings on collective contracts and his editorial participation in those two most influential volumes of teaching materials, The Employment Relation and the Law (1957) and Labor Relations and the Law (1960), must be counted as important contributions to the field. In his work on conflicts of law and legal process—he authored comprehensive casebooks on Legislation and Equity—one finds the continual fertility of a mind at once encyclopedic and innovative.

After the war, Dr. Lenhoff again made contributions to the civil law, returning to it his deep knowledge and feeling for the common law. He once again wrote for European journals, served as reporter or delivered papers at international conferences, and lectured once again at Vienna and Lund, Hamburg and Cologne. No history of the two legal systems can be written now without taking into account how men like Dr. Lenhoff brought back into the civil law the great currents of Anglo-American legal and political ideas. America's Cultural Contributions to Europe in the Realm of Law was a theme he delighted to expound upon. It would perhaps have surprised him to think, dur-

8. These Goethe epigrams may be found in The Viking Book of Aphorisms 52, 57 (Auden & Dronenberger eds. 1962). The Goethe quotation that appears at the beginning of the article is taken from Dr. Lenhoff's essay, Goethe as Lawyer and Statesman, 1951 Washington Univ. L.Q. 151, 152.
9. For a complete bibliography of Dr. Lenhoff's works in both German and English, see Halvy, Bibliography of the Writings of Arthur Lenhoff, infra at p. 267.
10. Dr. Lenhoff's 1951 Phi Beta Kappa Address on that topic is published for the first time in a legal periodical, infra at p. 7.
ing his darker moments, that he himself would become part of that cross-current.\textsuperscript{11}

But one cannot write of him as a contributor to knowledge without recognizing how deeply and essentially he was a teacher. As varied as his careers in the law were, the classroom experience was the focus of his life, and if his demands upon his students were heavy it was because he knew that the calling they aspired to would demand as much, or more. And it must have been the same in Vienna, for I have heard the testimony not only of his former student in Vienna and later colleague at Buffalo, Dr. Adolf Homburger, but also in the chance remarks of the now eminent philosopher of science Gustav Bergmann of the University of Iowa, who had heard Dr. Lenhoff lecture in the mid-thirties. But he was a teacher to more than just students. Professor Riesman reports that he brought with him to his new colleagues at Buffalo a great cosmopolitan charm and intellectual breadth as if in Buffalo, with Riesman and Mark DeWolfe Howe, Louis Jaffe, Frank Shea, Philip Halpern and Ernest Brown, he was part of a great “government in exile.” Although I arrived in Buffalo long after those halcyon days, I can remember still how he made the sparks fly, and how, if one could come to terms with his powerful spirit, he gave to a young colleague a warmth and vitality which were exemplary. He took great pleasure in intellectual give-and-take; his interests were so broad that he responded to ideas and problems in every field, on every level. Conversation with him was never merely lawyers’ talk, however. It “took off” not only into philosophy and the social sciences but into the whole body of culture, so that one knew that law was not just a vocation, but a humane science and a liberal art. Quotations from Goethe, the Bible, lessons from history, memories of artists and playwrights, Vienna in its heyday, the satire of Karl Kraus—all spiced his talk and gave it a quality of both seriousness and lightness.

If, in the end, we view him as one of the cross-fertilizers of the law, it is perhaps appropriate to say that the essays in this volume are dedicated to all those “visiting” professors who nourished American law not only with the ideas they carried with them but with the force of their characters. In his essay, The Influence of Islamic Culture on Medieval Europe, Sir Hamilton Gibb comments that “in the conflict of cultures, it is more blessed to receive than to give; and the real quality of any civilization is shown less perhaps by its indigenous products than by the way in which it constantly grafts new shoots on to its own trunk, to stimulate further growth and to achieve richer and more differentiated products.”\textsuperscript{12} It was in this knowledge that Arthur Lenhoff died a proud American, a good European, a civilized and extraordinary man.

\textsuperscript{11} His posthumous influence may yet be greater; his last work, completed only weeks before his death, was a major treatise on jurisdiction and judgments in conflicts and international law. It is to be brought out as a multi-volume publication by the Parker School of Foreign and Comparative Law of Columbia University, and may take its place with Rabel’s famous work on conflicts.

\textsuperscript{12} Change in Medieval Society: Europe North of the Alps, 1050-1500, at 158 (Thrupp ed. 1984).