Foreword: Looking Back

With this issue the American Journal of Comparative Law completes 50 years of publication.¹ That milestone calls for consideration of the future, and the first issue of Volume 51 will honor that custom. It also is an occasion for retrospection and celebration, and this Foreword is presented in that spirit.

A transitional period of five years excepted,² my two predecessors between them account for more than two-thirds of that half-century. The long period of service enjoyed by each of them permitted the development and implementation of a sound, enduring intellectual concept for the publication.³ In the words of Hessel Yntema's, the founding Editor, this is what the Journal set out to do:⁴

"First, to provide the necessary material and techniques of legal science, which . . . is essentially comparative. Second, to refine the understanding of domestic law, which, conceived in terms of the prevalent nationalistic positivism, tends to be enshrouded in traditional, local preconceptions. Third, to make possible the understanding of foreign legal systems, which is of obvious practical importance . . ., as well as [being important] to establish a basis of reciprocal international understanding. Fourth, to prepare international unification of law, where appropriate . . . . Fifth, to

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¹ The reader may wonder how it is that Volume 1 appeared in 1952 and Volume 10 in 1961, but Volume 50 in 2002. The key lies in Volumes 13 through 15.

² Professor Hessel Yntema, the founding editor and spiritus rector of the entire project, died in the spring of 1966 as the result of an automobile accident suffered in the fall of 1965. His colleague, Professor B. J. George, then of Michigan, accepted the responsibilities of the position and was Editor-in-Chief for the period 1966-1968. At that time Professor Alfred F. Conard, also of Michigan, took over and served in this post during 1968-1970. The Journal moved to Berkeley with the appointment of our late colleague John G. Fleming, who served for the period 1971-1987.

³ The Journal's Executive Editor, Dr. Vera Bolgár, provided an illuminating perspective of the discussions leading to the creation of the Journal and its path under Yntema's leadership in "The American Journal of Comparative Law 1952-1966," 15 Am. J. Comp. L. 21 (1967).

⁴ An enduring institutional demonstration of this combination is the 50-year close association of the Journal with the American Foreign Law Association, whose members continue to represent a substantial part of the Journal's subscription base as well as to provide a close involvement with its substantive and editorial interests.
assist in the determination of legislative policy . . .; this, historically, has been the outstanding practical use of comparative law. And sixth, to define the ideals or values that should guide legal progress.”

The venture marked a long-overdue and important break with a long tradition of American exceptionalism, as was recognized by Justice Felix Frankfurter on the occasion of the publication of the Yntema Festschrift in 1961, when he praised Yntema’s “liberation from the thraldom of provincialism, with its narrow focus for gaining insight and its limited notions of relevance, [and] the application of reason to the complexities that transcend local interests and experience.”

The breadth of subject matter and the integration of scholarly and professional views that Hessel Yntema emphasized in his original concept mark the Journal’s continuation under Professors B. J. George and Alfred F. Conard. This direction was enthusiastically embraced by their successor, our late colleague John G. Fleming, who led the Journal for over 15 years; it guides our Editorial Board and publication choices to this day. This combination of the theoretical and the empirical, and above all the inter-national and inter-professional character of our contributors and audiences, together are the critical factors that distinguish the Journal from the occasionally self-referential closed-circuit style that marks some domestic United States law reviews. Our readers flourish in too many circles to permit that kind of introversion.

At the same time, in keeping with important new intellectual trends, the Journal has recognized the need to participate in the increasing contextualization of legal studies within the social sciences, both in their law-and-economics and their wider critical and social-theoretic aspects. Here, too, the nature of our interests, our contributors, and our audiences help the Journal reflect this shift in ways that provide a broader dimension to the often national focus of those trends. Of course there can be many views of this balance, depending on one’s scholarly predilections and impressions of the academic

Zeitgeist, but that is more a matter of detail than of policy. Presentism is an enduring if not endearing sin.  

For approximately three decades the practical and professional concerns of the bar and the governmental sector occupied considerable space in the Journal: the reports on foreign and international legislative and judicial developments; the documentation of drafts of conventions; the proceedings of various associations. Since the 1980s, the arrival of specialized journals and in particular the arrival of computers, databases, and websites caused these functions to recede in importance until today they play only a minor part in the Journal.

A particularly pleasant experience in reflecting on these decades and these first 50 volumes of our Journal is the reacquaintance with the eminent scholars involved with it over this half-century. Pride of place should go to Professor Arthur von Mehren, only recently honored with a Festschrift, whose review of the first decisions of the Federal Constitutional Court of the new Federal Republic of Germany appeared in the first issue of the first volume, and whose many subsequent publications in the Journal's pages culminate, for now, in a review of the Hague Conference published in 2001. Another contributor to the first volume, Professor Eric Stein, remains active to this day, though writing principally in public international law; so does his Michigan colleague, Dr. Vera Bolgár, the Executive Secretary of the Journal during its entire Michigan tenure. The

8. The understandable Eurocentrism of the immediate postwar period was not as predominant as some may assume. In particular, the experiences of decolonization were well reflected in the many reports on African and Indian law; further, the more professional interest in Latin American law also resulted in a large number of publications about this region during that era. In any event, taken together, these presentations during the first half of this half-century are not trivial in number or quality, and this can only in part be explained by the printing of specific legal reports for professional information. Consider, just in the first decade, the works on Egyptian private law (e.g., 10:76) and public law (e.g., 1:256); on Islamic law (e.g., 9:187; 8:133); on Hindu jurisprudence (e.g., 8:29); on Malay law (7:248) – not to mention the dozens of papers on East Asian, and Socialist legal issues. Indeed, some became major building blocks within the legal system they assess; see, e.g., though appearing later, Damian & Hornick, “Indonesia’s Formal Legal System: An Introduction,” 20 Am. J. Comp. L. 492 (1971), an analysis much used in Indonesia.


number of colleagues who published in the Journal during its first decade and continue to do so today makes for an impressive list.\textsuperscript{14}

The United States comparative- and private international law academic establishment was slow to join other states in showing its accomplishments. Americans participated in the formation of the International Academy of Comparative Law in 1924 and in every Congress from the first in 1928 onward, often as General Reporters.\textsuperscript{15} Yet as late as 1966, by which time 11 countries already were publishing their national reports, there was no sign of American interest in this worthy competition. Finally, in 1970, commencing with the Tenth Congress of the International Academy of Comparative Law, the late John Hazard and our colleague Wenceslas Wagner took on the task of editing and arranging for the publication of the United States Reports to this quadrennial meeting.\textsuperscript{16} Then, with the Twelfth Congress of 1978, the Journal took over the publication of these reports. That Supplement is the only “national” element of the Journal and of the American Society of Comparative Law. It was and remains both a self-evident proposition and a source of strength and pride that our pages from the beginning have welcomed contributions by scholars and practitioners from all legal systems. That is the one essential attribute of the first half-century of this venture, which began in the aftermath of disaster and upheaval. It justifies one prediction as we move to Volume 51: We shall continue to be a pillar of the international community of academics and professionals, whose interests in comparative law and private international law require and support an open and universal society.

\textsuperscript{14} One example, also indicative of the range of interests fitting within the capacious arms of our discipline: Fikentscher, [Comment] “Germany: Political Strikes Under German Law,” 2 Am. J. Comp. L. 72 (1953); Cooter & Fikentscher, “Indian Common Law: The Role of Custom in American Indian Tribal Courts,” 46 Am. J. Comp. L. 287, 509 (1998). Among others who fit the description in the text, I have located, without pretense to comprehensiveness, Tugrul Ansay, Giorgio Bernini, Thomas Buergenthal, Georges Delaume, Rolando Drago, Ulrich Drobnig, Bernhard von Falkenhausen, Benjamin Ferencz, Hugo Hahn, Peter Hay, Peter Herzog, John Honnold, Ole Lando, Peter Merkl, Michael Schwind, Ignaz Seidl-Hohenfelder, Hans Smit, Wenceslas Wagner, and Athanassios Yiannopoulos. It should go without saying that this array well reflects the international provenance of the Journal’s contributors from the beginning.
